

Introduced by:	Local Affairs and Lands Committee
Date:	3/03/92
Hearing:	4/07/92
Postponed to:	5/05/92
Amended:	5/05/92
Action:	Defeated
Vote:	7 yes, 7 no
Reconsideration	5/19/92
	Failed 9 No 6 Yes

**KENAI PENINSULA BOROUGH
ORDINANCE 92-18**

**AN ORDINANCE AMENDING KPB CHAPTER 21.12 TO PROVIDE
EXPRESS OBJECTIVE STANDARDS FOR GRANTING AN EXCEPTION FOR
CONTINUATION OF A POTENTIALLY NOXIOUS, INJURIOUS OR
HAZARDOUS USE REGULATED BY THAT CHAPTER**

WHEREAS, KPB Chapter 21.12 which regulates noxious, injurious or hazardous uses currently provides the major land use regulation mechanism of the Kenai Peninsula Borough; and

WHEREAS, as currently written, KPB Chapter 21.12 sets no express objective criteria for determination of the application of its regulations to a specific activity and thus has been difficult to apply in a manner which will be upheld by the Alaska courts; and

WHEREAS, over the past few years several Assembly task forces and committees have spent a significant amount of time in drafting standards which can be utilized by the Planning Commission to determine the applicability of Chapter 21.12 and to condition an exception permit applied for under that chapter; and

WHEREAS, the Local Affairs/Lands Committee has completed its work in preparing proposed amendments to KPB Chapter 21.12 which are presented herein for the Assembly's consideration;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1. That the current KPB 21.12.010 and 21.12.020 are hereby repealed and that new sections 21.12.010, 21.12.020, 21.12.030, 21.12.040, and 21.12.050 are hereby enacted to read as follows:

21.12.010 Definitions

For the purpose of this chapter, the following words and phrases shall be defined as follows:

- A. Air contaminant - An emission into the atmosphere which affects the ambient air quality.
- B. Continuous Noise or Vibration - A noise or vibration persisting continuously for more than 22 minutes.
- C. Dust - Fine, dry particulate matter which is airborne or on the ground.
- D. Explosive materials - Any substance which reacts with a violent expansion of gases and the liberation of heat upon detonation, impact, or spontaneous ignition.
- E. Hazardous - Any use which poses a present or potential significant harm to human health or the environment.
- F. Impulsive sound - Sound of short duration, usually less than one second and of high intensity, with an abrupt onset and rapid decay, examples of which include explosions and the discharge of firearms.
- G. Injurious - Inflicting or tending to inflict injury; hurtful, harmful, detrimental.
- H. Noise - Any sound not occurring in the natural environment, including, but not limited to, sounds emanating from industrial, commercial, residential and recreational sources.
- I. Noxious - Harmful or destructive to man or his/her environment.
- J. Odor - That property of an air emission that affects the sense of smell.
- K. Refuse matter - Any garbage or other discarded materials, including, but not limited to, liquid, solid, semi-solid, or contained gaseous material resulting from industrial, commercial, community and domestic activity.
- L. Significant harm - By significant harm is meant harm of importance, involving more than slight inconvenience or petty annoyance. The law does not concern itself with trifles, and therefore there must be a real and appreciable invasion of the complainant's interest before he can have an action for either a public or private nuisance.
- M. Smoke - Small gas-borne particles resulting from incomplete combustion, consisting predominately, but not exclusively, of carbon, ashes, or other combustible material.
- N. Vibration - Any physical or audible process characterized by cyclic variations in amplitude, intensity or the like, as in a wave motion, (a single, complete oscillation).
- O. Vibration Perception Threshold - The minimum ground- or structure-borne vibrational motion necessary to cause a normal person to be aware of the vibration by sensation, touch or visual observation of moving objects.

21.12.020 Applicability This ordinance applies to the rural district of the borough. It does not apply within the municipal district or zoned areas of the rural district.

21.12.030 Permitted when--Exception required All significantly harmful uses that may be noxious, injurious or hazardous to surrounding property or persons by reason of the production or emission of dust, smoke, refuse matter, odor, air contaminants, or similar substances or conditions or the production or storage of explosive materials shall be permitted only by exception as defined in Section 21.12.040 and applying the standards of 21.12.050.

21.12.040 Exception--Grounds for granting An exception for any noxious, injurious or hazardous uses may be granted only upon finding that the people's, individuals and the public's economic and environmental interests are adequately protected considering the benefit to the community derived from the use. An exception may also be granted if the owners or occupants

of property in the vicinity who are specifically affected are adequately protected or compensated. Such exceptions as defined in this section are subject to the standards of Section 21.12.050.

21.12.050 Standards

A. Dust

1. No person may cause or permit the handling, transporting or storage of any material in a manner which permits particulate matter to be emitted off-site which exceeds federal standards for fugitive emissions.

2. All point source emissions of dust shall be in compliance with state and federal standards for suspended particulate matter and opacity.

B. Smoke

1. No person shall cause, permit, or allow the emission of smoke from a source into the open air from any manufacturing, industrial, commercial, or waste disposal process of which the shade is darker than number two (2) on the Ringelmann smoke chart or is in violation with state or federal air quality standards.

2. Start-up operations may produce darker emissions for up to fifteen (15) minutes per start-up in any one hour and not to exceed three (3) start-ups per stack in any twenty-four (24) hour day.

3. Tolerance may be granted for a darker emission resulting from an emergency or breakdown conditions, provided that prompt remedial action is initiated.

C. Refuse Matter

1. A person disposing or storing solid or putrescible waste shall dispose of or store said waste in a manner which avoids the spread of litter, attraction of wildlife or disease vectors, or creation of a health or safety hazard, and in accordance with Alaska Department of Environmental Conservation requirements.

2. No person may deposit or place garbage, rubbish, ashes or other refuse upon a street, or upon any property owned by another or in a refuse container owned by another, except with the consent of the owner and for the purpose of collection.

3. A person who owns or operates a regulated solid waste facility, landfill, or septic disposal facility which accepts or disposes of waste generated by other persons or businesses shall:

- a. Obtain required waste disposal permits and comply with the applicable regulations of the Alaska Department of Environmental Conservation;
- b. Ensure that adequate steps are taken to prevent water pollution of surface and groundwater, and control dust, odor, noise, traffic, and the spread of windblown litter;
- c. Maintain a fence or vegetated buffer between the facility and adjacent properties or public rights-of-way if the Planning Commission determines this is necessary to restrict access to the facility, or to provide visual screening or separation from adjacent properties.

D. Odor

1. No person shall emit or cause to be emitted into the outdoor air any substance which creates an objectional odor beyond his property line. An odor will be deemed objectionable when:

- a. A staff member of the planning department determines, following personal observation, that the odor is objectionable taking into

- account its nature, concentration, location and duration; or
- b. 50% or more of a group of at least five impartial people appointed by the planning director and exposed to the odor believe it to be objectionable in usual places of occupancy.

E. Air Contaminants

1. No person shall cause or allow the emission of air contaminants which are in violation of state or federal air quality standards.

F. Explosive materials Storage and handling of explosive materials shall be in compliance with Article 77 of the Uniform Fire Code, as adopted by the Alaska Department of Public Safety, and with adopted municipal or fire service area standards.

Section 2. That the current KPB Code sections 21.12.030 through 21.12.120 are hereby renumbered in the same order as 21.12.060 through 21.12.150.

Section 3. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 19th DAY OF May, 1992.

Betty J. Glick
Betty J. Glick, Assembly President

ATTEST:

Gaye J. Vaughan
Gaye J. Vaughan, Borough Clerk

By Beverly Dole