

Introduced by: Nash
Date: 5/19/92
Hearing: 6/16/92
Postponed to: 7/21/92
Postponed to: 8/18/92
(Referred to Local Affairs/
Lands Committee
Defeated: 8/18/92
Vote: 2 yes, 13 no

**KENAI PENINSULA BOROUGH
ORDINANCE 92-28**

**AN ORDINANCE ENACTING CHAPTER 21.05 TO PROVIDE FOR THE CREATION
OF LAND AND RESOURCE MANAGEMENT AND DEVELOPMENT DISTRICTS
AND FOR LAND USE PERMITS FOR COMMERCIAL USES OF LANDS AND
RESOURCES WITHIN THE KENAI PENINSULA BOROUGH**

WHEREAS, a number of disputes have arisen regarding the location of certain land use activities in close proximity to and disruptive of neighboring residential uses; and

WHEREAS, residents from many different areas of the borough have approached the Kenai Peninsula Borough seeking to limit land use activities which, for various reasons, they felt threatened the peaceful enjoyment of their properties; and

WHEREAS, the only non-area-wide borough land use control for areas outside of the cities is the Noxious, Injurious or Hazardous Uses ordinance, under 21.12, which has been frequently challenged; and

WHEREAS, KPB 21.12 is a complaint-driven ordinance which must be triggered by a formal complaint; and

WHEREAS, borough wide standards of general application should be developed for industrial and commercial, non-agricultural uses of lands and resources within the borough; and

WHEREAS, the people within given areas or communities of the borough should be able to develop more restrictive standards for their areas if appropriate;

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

SECTION 1. This chapter is adopted under the authority of AS 29.40.010 to 29.40.190.

SECTION 2. That KPB Title 21 is amended by adding a new Chapter 21.05 entitled LAND

AND RESOURCE MANAGEMENT AND DEVELOPMENT DISTRICTS which shall read as follows:

Chapter 21.05.

LAND AND RESOURCE MANAGEMENT AND DEVELOPMENT DISTRICTS

Sections:

- 21.05.010. Intent - Authority.
- 21.05.020. Regulated uses - Rural district.
- 21.05.030. Land use permits - Application.
- 21.05.040. Land use permits - Issuance.
- 21.04.050. Appeals.
- 21.04.060. Permit - Modification - Termination.
- 21.05.070. Standards for general regulated uses.
- 21.05.080. Federal and state regulations.
- 21.05.090. Exceptions.
- 21.05.100. Nonconforming Uses.
- 21.05.120. -.180. Subdistrict standards. (Reserved)
- 21.05.190. Prohibited use - Penalties.
- 21.05.200. Definitions.

21.05.010. Intent - Authority.

The intent of this chapter is to provide, to the greatest extent practicable, for application of standards and procedures for the commercial and industrial, non-agricultural, development of lands and resources in the rural district, except where the people desire to establish specific standards, and to control litter and unauthorized trash disposal, and to provide for enforcement of those standards and limitations and to protect lands within the borough.

21.05.020. Regulated uses - Rural district.

The following land uses when undertaken for commercial non-agriculture purposes are regulated uses within the rural district except to the extent modified by subdistrict standards or by local option zoning.

A. Excavating/Extracting: includes coal and mining sites, oil and gas drilling sites, sand and gravel extraction sites, and other uses of similar character and impact.

B. Industrial: includes asphalt and cement batch plants, energy generating plants, oil and gas pipeline pumping stations, oil and petrochemical refining or liquefaction processed, and other uses or activities of similar character and impact.

C. Manufacturing: includes sawmills, seafood processing facilities, and other uses or activities of similar character and impact.

D. Aeronautical: includes water and land based operations for fixed and rotary wing aircraft other than from a facility approved and licensed or registered by the Federal Aviation Administration.

E. Hazardous or toxic materials handling facilities: includes explosives storage sites,

underground storage tanks, above-ground storage tanks, chemical storage facilities, transportation depots and transfer sites, and other uses of similar character and impact of hazardous or toxic materials.

F. Material/Waste handling facilities: includes incinerator, landfills, septic waste disposal sites, sewer treatment plants, junkyards and other uses of similar character and impact.

G. Hazardous waste disposal facilities: includes storage for over 90 days, treatment, and disposal sites, transportation depots, and injection wells for hazardous waste.

H. Drilling waste disposal facilities: includes sites for disposal or storage for over 90 days, including injection wells, for the disposal of fluid and solid drilling wastes.

I. Other uses provided by subdistrict plans.

21.05.030. Land use permit - Application.

A. Any person desiring to make new or expanded commercial or industrial use of land or resources within any resource management or development district shall make application for the appropriate land use permit on forms provided by the borough planning department.

B. The application shall set forth:

1. Names and addresses of the applicants, and of the operators if other than an applicant;
 2. The resource management and development district where the use will occur;
 3. A description of the proposed use;
 4. The category of land use within which the use falls or a statement that the proposed use is not regulated within that district or that the area is zoned for the proposed use;
 5. The legal description where the use will occur;
 6. Names and addresses of the owners and lien holders of record of the lands where the use will occur, all lands adjoining the subject lands, all lands within any required buffers, and all persons whose lands would reasonable be substantially and directly affected by the proposed use;
 7. List of all applicable federal, state and local permits which will also be required;
 8. Public health, safety and environmental issues or concerns which will be addressed by the applicant and an outline or plan of the anticipated method of addressing each of those issues;
 9. An operations plan which includes a narrative, together with maps and aerial photos of the general area affected, showing a tentative schedule for construction and for operation;
 10. Safety plan outline, or a narrative clearly showing why a safety plan is not required;
 11. All requirements of the subdistrict where the use is intended, if any;
 12. Any other information which may be required by the planning department;
- C. The application shall include the application fee required by regulation.

21.05.040. Land use permit - Issuance.

A. Use not regulated. Upon receipt of the application fee and the completed application, the planning director or his designee shall promptly issue the land use permit for

any requested use which is either not regulated within that district or subdistrict or for which the lands are zoned to permit the proposed use.

B. Regulated use permit. The application for a regulated use permit shall be placed on the planning commission agenda for public hearing not later than 60 days following the date of submission of the completed application unless the applicant requests or agrees to a later date;

1. Notice and publication. Notice of the hearing together with a synopsis of the use applied for shall be given by the applicant in the format required by the planning department not less than 20 days prior to hearing. Proof of notice shall be required. Notice shall be given as follows:

a. By first class mail to the address of record in the borough tax records to owners and lien holders of adjacent property, property within required buffers, and all property which would reasonably be substantially and directly affected.

b. By publishing in a newspaper of general and customary distribution in the affected area.

c. By posting at the U.S. Postal facility located closest to the affected area.

2. Decisions. The planning commission, after considering public testimony and closing the public meeting, shall issue the land use permit upon a finding that the application appropriately addressed all standards required by the applicable district or deny the permit upon a finding that the application does not appropriately address all required standards.

C. Recording. The earliest effective date of a land use permit is the date of recording in the applicable recording office.

21.05.050. Appeals.

Appeals from actions of the planning director or planning commission under this chapter shall be heard by the borough assembly as a board of adjustment under KPB 21.20.

21.05.060. Permit - Effect - Modification - Termination.

A. A land use permit attached to the land specified in the permit except as hereinafter stated. All subsequent owners of the property and/or operators of the facility are subject to the provisions of the permit.

B. The owner(s) of land subject to a permit which is not being utilized may petition the planning commission for cancellation of the permit. Such action shall be by resolution of the planning commission which may be recorded in the applicable recording district.

C. A land use permit shall automatically expire five years after the date of issuance if the intended use of land has not occurred or a modification to the time schedule has not been requested, or upon a period of five years of non-use. The planning department or the permittee may record a notice of such expiration in the appropriate district recorders office.

21.05.070. Standards for regulated uses.

A. Specific standards. Specific standards for regulated uses within each rural district, except as modified by subdistrict standards, are as follows:

1. Buffers. All categories of regulated uses must provide and retain a buffer between the site boundary and the property boundary of all contiguous parcels of unzoned and unregulated uses. A safety and screening buffer of natural or improved vegetation is required

between the site boundary and all nonconsenting property boundaries as set forth below. A road shall not be construed as a property boundary where the ownership on both sides of the road is in the same person or entity.

- a. Excavating/extracting sites - 300 feet.
- b. Manufacturing - 660 feet.
- c. Industrial, material/waste handling, and drilling waste disposal - junkyards, landfills and similar facilities, 660 feet; incinerators, septic waste disposal sites, sewer treatment plants and similar facilities - 1,320 feet.
- d. Aeronautical - 660 feet laterally and 1,320 feet longitudinally, except that applications for commercial float plane operations departing and returning passengers from and to a lake must include written non-objection of all owners of all properties adjacent to the lake.
- e. Hazardous waste management and material handling facilities - 1,320 feet.

2. Safety plan. Applicants for land use permits for a hazardous or toxic materials handling facility, hazardous waste management facility, drilling waste disposal facility, industrial or aeronautical use or any other use which could reasonably be perceived to create a risk to the general public within that area must provide a safety plan setting out the following information

- a. description of measures and precautions to be used to prevent spillage of potentially harmful materials/substances onto the ground or into surface or ground water;
- b. response plan for on-site accidents;
- c. plan to public information/notification of accidents;
- d. other safety requirements deemed necessary by the planning commission; and
- e. the place and manner by which members of the public may obtain copies of the plan.

3. Erosion/dust control plan. Where the activity to be permitted is of the type reasonable anticipated to create erosion or the on site generation of fugitive dust, applicant must provide an erosion control plan describing methods to be utilized to prevent or minimize erosion and to maintain or preserve the natural drainage pattern of the site and surrounding area; and/or a dust control plan to control and minimize on-site generated fugitive dust.

4. Surface water and water wildlife plan. Where the activity to be permitted is of the type reasonably anticipated to affect surface water and water wildlife, the applicant must obtain a written non-objection to its plan of minimization of affect to surface water and water wildlife from the Alaska Department of Fish and Game and the United States Fish and Wildlife Service.

5. Controlled Access. Where it is found necessary for public health and safety, or environmental or wildlife protection, the planning commission may require access control.

B. Emergency standards. (Reserved)

21.05.090. Exceptions.

The planning commission may authorize exceptions to any of the requirements set forth in this chapter. The application for land use permit upon exception shall present the commission with substantial evidence justifying the requested waiver or exception stating fully the grounds for the exception and the facts relied upon. An exception will not be granted on a claim of financial hardship or inconvenience. The commission shall find the following facts before granting any exceptions:

- A. that special condition and circumstances exist which are peculiar to the land or structures involved and are not generally applicable to other lands and structures in the rural district.
- B. that the special conditions and circumstances have not been caused by actions of the applicant.
- C. that the granting of the exception will not be detrimental to the public welfare or injurious to other persons or property in the area where the permitted property is situated.
- D. that the value of adjoining properties will not be significantly impaired.

21.05.100. Districts - Subdistricts - Creation.

- A. There are created land and resource management and development districts, the boundaries of which shall be the same as that portion of the rural district located within each assembly district.
- B. The people of any area within the rural district of the borough with similar cultural, geographic, or developmental interests, whether or not within the same assembly district, may petition the borough assembly to form a resource management and development subdistrict in the same manner by which service areas are created under Chapter 16.04.
- C. The elected board of the subdistrict shall, from time to time, after public hearing and consideration of the recommendations of community councils and advisory boards, if any, establish or modify uses of lands and resources to be regulated within that subdistrict, and establish specific standards for the issuance of permits for those regulated uses which will be permitted within that subdistrict.
- D. Local regulations for use of lands and resources and specific standards established by local boards which are approved or modified by the borough assembly shall be codified in this chapter.

21.05.110. Nonconforming uses.

A. Nonconforming uses in effect on May, 1, 1992, are permitted to continue operation provided that the owner or operator makes application for a nonconforming land use permit within 24 months of enactment of this chapter. The application shall provide the same information as required for application for a land use permit so that the borough will have record of the location, nature, and size/extent of nonconformance of all such uses. Failure to apply for a permit within 24 months of enactment of this ordinance shall result in an automatic termination of all right to continued operation as a nonconforming use and thus require full conformance with all provisions of this chapter for issuance of a land use permit. There shall be no application fee for a nonconforming use permit.

B. No existing nonconforming use shall be expanded to include an adjacent parcel or parcels without the issuance of a land use permit.

C. No nonconforming use which is abandoned shall be renewed without full compliance with the requirements of this chapter.

21.05.120. -.180. Subdistrict standards. (Reserved)

21.05.190. Prohibited use - Penalties.

A. new or expanded commercial use of lands or resources within any resource management and development district in violation of this chapter is prohibited.

B. The intentional abandonment of any item or personal property upon borough lands or any dedicated right of way other than in approved solid waste disposal or transfer sites is prohibited.

C. The burning of household garbage other than in a properly vented above ground container, or which contains human or animal parts or waste or any substance derived from refined hydrocarbons other than household paraffin, is prohibited within 1,320 feet of any nonconsenting property boundary.

D. Each day that a prohibited or regulated use wilfully continues constitutes a separate violation.

E. The borough or any interested person may institute a civil action against any person, company, corporation or other entity in violation of a provision of this chapter or of a condition of a permit notwithstanding the availability of any other remedy to any person or the borough. In addition to injunction relief, a civil penalty not to exceed \$1,000 for each wilful occurrence, and actual damages suffered by any person or the borough, including remedial relief and punitive damages may be awarded, together with actual costs and full attorney's fees.

D. The remedies provided by this section are in addition to any other action permitted by law, and are not intended to limit any action by any person or property owner suffering actual damages as a result of the violation.

21.05.200. Definitions.

A. "Abandoned" means a discontinuation of a permitted or nonconforming use for the period of five years or as otherwise prescribed by permit, ordinance or law.

B. "Agricultural use" means a use consisting of the growing, harvesting, conditioning and storage of a planted or seeded crop, other than trees produced for wood products; the feeding and breeding of fowl or animal for human consumption of all or any part or by-product, other than slaughter or meat packing on premises; and commercial fishing enterprises, other than processing on premises.

C. "Chemical storage facilities" means any facility storing, for a period of over 10 days duration, any chemical substance of an amount in excess of the threshold planning quantity listed for regulation under SARA Title II including the "extremely hazardous substances" listed in 40 CFR Part 355, and CERCLA hazardous substances listed in CFR Part 302, Table 302.4, and SARA Section 313 toxic chemicals, and any petroleum and natural gas product whose composition and characteristics would place it under the above cited regulations but for the exemption provided by 42 U.S.C. Section 9601 (14).

D. "Commercial nature" means any use operated for production of income whether or not income is derived, including activities for which business deductions are claimed under the internal revenue code, and including all activities directly subsidiary.

E. "Drilling wastes" means all waste substances as defined by the Alaska Administrative Code at 18 AAC 60.910(19).

F. "Hazardous" means (1) any substance designated pursuant of section 311(b)(2)(A) of the Federal Water Pollution Control Act, (2) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Act, (3) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act, but not including any waste in the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress, (4) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (5) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (6) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does include petroleum, including crude oil or any fraction thereof, and the term does include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixtures of natural gas and such synthetic gas.

G. "Hazardous waste" means all waste substances defined by the Alaska Administrative Code at 18 AAC 63.900.

H. "Natural vegetation" means vegetation of the type, kind and size typically native to the general area, whether appearing at the site in it's original state or having been introduced.

I. "Regulated use site" means all land utilized, altered or disturbed by the construction, development, and/or operation of a regulated use and shall include all structure, other appurtenances, and improvements, other than access roads constructed for the use of the site, utilized in conjunction therewith.

J. "Seafood processing facilities" means those facilities required to obtain a waste water disposal permit under the regulations of the Alaska Department of Environmental Conservation.

K. "Toxic" means those substances or substance combination, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through the food chains, will, on the basis of information available, cause death, disease, behavioral or physiological abnormalities, malignance, genetic mutation, or physical deformations, in affected organisms or their offspring.

L. "Transportation depots and transfer sites" means any site utilized or transfer of "hazardous or toxic materials" or "hazardous wastes" from one transport (i.e. truck, railroad car, etc.) to another. Waste generators are excluded from this definition for handling or those wastes generated on site.

M. "Wilful occurrence" means the doing of an act or the failure to halt a condition which the violator knows or reasonably should have known was in violation of this chapter.

SECTION 3. This ordinance takes effect immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS
___ DAY OF _____, 1992.**

Betty J. Glick, Assembly President

ATTEST:

Gaye J. Vaughan, Borough Clerk