KENAI PENINSULA BOROUGH
ORDINANCE 92-58

AN ORDINANCE REPEALING KPB CHAPTER 21.12, "NOXIOUS, INJURIOUS OR HAZARDOUS USES"

WHEREAS, in 1966 the KPB Assembly enacted KPB Chapter 21.12 which established a land use permit requirement for property owners whose use is determined by the borough planning commission to be potentially noxious, injurious or hazardous to the surrounding properties; and

WHEREAS, the scope and meaning of KPB Chapter 21.12 have been defined through the decisions of several Alaska Superior court cases to the point where the chapter now essentially provides a preliminary borough procedure for enforcement of common law private nuisance complaints; and

WHEREAS, through that procedure a person may initiate his/her private nuisance abatement action for initial determination by the borough planning commission, with appeal of that decision first to the borough assembly and then to Superior Court; and

WHEREAS, the recent history of this process has established a consistent practice of appeal of the borough planning commission and assembly decisions to the Superior Court with the borough consequently incurring legal defense expenses and possible liability for the appellant's costs and attorneys fees, all in the defense of a private interests of a small local group; and
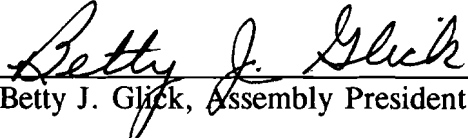
WHEREAS, the repeal of KPB 21.12 will not result in the loss to any resident of his/her right to judicial consideration and enforcement of those common law nuisance rights through filing of a personal lawsuit directly to the Superior Court;

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

SECTION 1. That KPB Chapter 21.12 is hereby repealed in its entirety.

SECTION 2. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 5th DAY OF JANUARY, 1993.

Betty J. Glick, Assembly President

ATTEST:

Gaye J. Vaughan, Borough Clerk