

Introduced by: Drathman,
Navarre, Scalzi, Glick
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Vote: 2 Yes, 7 No

**KENAI PENINSULA BOROUGH
ORDINANCE 94-52**

**AN ORDINANCE ESTABLISHING THE KENAI RIVER OVERLAY DISTRICT,
ESTABLISHING CONDITIONAL USE PERMIT REQUIREMENTS AND SETTING
FORTH CONDITIONAL USE PERMIT APPROVAL CRITERIA**

WHEREAS, the Kenai River System is recognized as a critical natural resource upon which, to a very large degree, the economic well being of the Kenai Peninsula Borough is depended, and which provides recreational and subsistence opportunities which enhance the quality of life to the citizens of the Kenai Peninsula Borough; and

WHEREAS, numerous and adequate studies have been completed detailing and inventorying the complexity and scope of the Kenai River ecosystem; and

WHEREAS, the aforementioned studies are unanimous in concluding that the health and well being of the river is in grave jeopardy and appropriate tools are presently not available to control the ongoing habitat degradation; and

WHEREAS, the Kenai Peninsula Borough is responsible for land use planning within its boundaries;

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

SECTION 1. That Chapter 21.05 of the Kenai Peninsula Borough Code is enacted to read:

21.05.010. Kenai River Overlay District.

A. The Kenai River Overlay District establishes special requirements for the development and use of land adjacent to the Kenai River, tributaries of the Kenai River, Skilak Lake and Kenai Lake. These requirements are designed to mitigate the impacts of human activity on the river while also providing opportunities for development and uses which will not cause erosion, ground or surface water contamination or adverse alteration of fish habitat. Should a conflict between provisions of this section and any other section of the Kenai Peninsula Borough Code or any other code of the cities of Kenai or Soldotna occur, then the more restrictive provision shall apply.

B. The Kenai River Overlay District (KRD) shall apply to all lands that are located between the waterline of the Kenai River and 150 feet therefrom, or from the waterline to the line that

defines the 100 year flood plain as shown on the Flood Insurance Rate Maps (F.I.R.M.), whichever is further from the river.

C. For the purposes of this chapter, "waterline" is defined as the edge of the Kenai River that, in tidally influenced portions of the river is referred to as the "mean high tide line" and, in portions of the Kenai River that are not tidally influenced as the "ordinary high waterline."

D. The KRD is an overlay zone. Where the KRD overlay applies, the underlying zoning district provisions, if any, are neither abandoned nor repealed, but are augmented by the KRD requirements. In case of conflict, this ordinance controls, however, cities may enforce standards more restrictive within their city limits should they choose to do so.

E. The mayor, with the consent of the borough assembly, may enter into intergovernmental cooperative agreements with the cities of Kenai and Soldotna and agencies of the state and federal government for the purpose of joint administration and mutual enforcement of this code.

1. The Kenai Peninsula Borough may delegate responsibility by cooperative agreement with the cities of Kenai and Soldotna to hear and decide appeals regarding enforcement of this chapter as applied within the territory of those cities.

2. The borough may assume delegate responsibility by cooperative agreement with agencies of the state and federal government a "one stop" general permitting authority for administration and enforcement of laws affecting land and water uses within the Kenai water district.

3. The intent of this section is to eliminate duplication of personnel enforcing laws and codes applicable to land and river uses; to provide singular accountability for decisions affecting land and river uses and to provide a source of intergovernmental financial assistance to assist the borough in administering and enforcing this code.

21.05.020. Use permit required.

A. Except as otherwise permitted in this section, development or use of land within the KRD requires approval and issuance of a use permit by the Kenai Peninsula Borough planning department.

B. For the purposes of this section, "development" is defined to mean any alteration of the natural condition of the land or alteration of any existing structure on the land within the KRD.

21.05.030. Classification of areas within the KRD.

A. The area between the waterline of the river and 50 feet shall be referred to as the bank area.

B. The area from the bank area for a distance of 100 feet or to the line that defines the 100 year flood plain shall be referred to as the protection area.

River	Bank Area ----50'----	
River	Bank Area ----50'----	Protection Area --100' or the 100 year flood plain, whichever is further--

21.05.040. Uses within the bank area.

A. The primary purpose of the bank area is to protect the river bank and the adjacent fish habitat. The bank area is also to allow the river to function in a dynamic natural state, thus enabling fish and wildlife resources to maintain critical life functions and productivity. Activities which could degrade the integrity of the river bank, the riparian zone, the contiguous wetlands, or the adjacent waterbodies shall not be allowed.

B. The prohibited uses within the bank area are the following:

1. commercial logging or clear cutting of vegetation;
2. removal of vegetation, other than minor cutting or trimming;
3. construction of any habitable structure;
4. groins, jetties and bulkheads;
5. upland support structures for jetties, groins and bulkheads;
6. industrial, commercial and manufacturing uses or structures;
7. extractive industry, including gravel and peat removal;
8. use of persistent herbicides, pesticides or other toxicants;
9. landfills, dumps, junkyards, storage yards or disposal of hazardous wastes;
10. commercial or public storage of materials used for snow and ice control including sand, salt, sand/salt mixtures and/or the dumping of snow from snow removal operations;
11. septic systems, leaching fields, waste water treatment plants;
12. storage or use of persistent herbicides, pesticides or toxicants for other than home or personal garden use;
13. boat launches or ramps;
14. hydropower projects, dams, impoundments, diversion channels, navigation channels, off channel boat harbors and canals;
15. commercial agricultural uses and/or grazing;
16. fuels tanks.

C. Uses requiring permit.

1. bank stabilization which is designed to protect shorelines and reduce erosion;
2. ladders, platforms, boardwalks, stairways and walkways designed to protect shorelines, riparian vegetation and reduce erosion;
3. floating docks designed to protect shorelines and reduce erosion;
4. access to sanitary facilities, day use areas, and campsites;
5. effluent holding tanks;
6. directed and/or collected stormwater discharge;
7. roads, bridges, driveways, parking lots and paved areas;
8. storm drains or storm water discharge devices;
9. any excavation.

21.05.050. Uses within protection area.

A. The purpose of the protection area is to allow the river to function in a dynamic natural state, thus enabling fish and wildlife resources to maintain critical life functions and productivity. In this area, few activities which could degrade the integrity of the riparian zone, contiguous wetlands, or the adjacent waterbodies should be allowed. Maintenance of a high percentage of vegetation in this area is important.

B. The prohibited uses within the protection area are the following:

1. commercial logging or clear cutting of vegetation;
2. landfills, dumps, junkyards, storage yards, and the storage or disposal of hazardous waste.
3. commercial or public storage of materials used for snow and ice control including sand, salt and sand/salt mixtures or the dumping of snow from snow removal operations.
4. extractive industry, including gravel and peat removal;
5. septic systems, leaching fields and waste water treatment plants in the first 100 feet of the protection area;
6. use of persistent herbicides, pesticides or other toxicants;
7. hydropower projects, dams, impoundments, diversion channels, navigation channels, off channel boat harbors and canals;
8. commercial agricultural uses and/or grazing;
9. fuel tanks within the first 100 feet of the protection area if the first 100 feet of the protection area are within the 100 year flood plain.

C. Uses requiring permits:

1. bank stabilization which is designed to protect or enhance fishery habitat;
2. open space non-vehicular uses such as parks, wildlife management, tent camping, picnic areas, other forms of outdoor recreation, and associated sanitary facilities;
3. support facilities for water or shoreline-dependent activities;
4. overhead and subsurface utility lines providing that revegetation and stabilization will occur;
5. temporary storage of hazardous wastes and construction materials;
6. commercial, manufacturing, industrial uses and structures which will not cause significant erosion, ground or surface water contamination or cause adverse alteration of fish and wildlife habitat;
7. pipelines or utility lines;
8. roads, bridges, driveways, parking lots and paved areas;
9. effluent holding tanks;
10. septic system, leaching fields and water treatment plants shall be permitted in the protection area only if sewer systems are not available; and
 - a. the system is no closer to the river than 150 feet; and
 - b. if the system is so contained as to prevent leakage into the river in the event of flood waters covering the system;
11. storm drains or storm water collection and discharge devices;
12. access to sanitary facilities, day use areas, and campsites;
13. fuel tanks in the first 100 feet of the protection area if the first 100 feet of this area is not in the 100-year flood plain and the tank is above ground and either double-sided or has a containment basin large enough to hold one and one-half times the contents of the tank;
14. fuel tanks beyond the first 100 feet of the protection area if this area is located within the 100-year flood plain, only if:
 - a. the tank is above ground and either double-sided or has a containment basin large enough to hold one and one-half times the contents of the tank; and,
 - b. the tank must be so designed so as to contain and prevent leakage in the event of flood waters reach the tank;
 - c. the tank must be securely fastened to the ground so as to prevent tank

flotation should waters reach the tank.

21.05.060. Use permit procedure.

A. An application, provided by the borough planning department, must be completed and submitted for planning department approval. Each application must be accompanied by a completed site plan.

B. The site plan submitted with the application must delineate the following:

1. the plan must clearly show the boundaries of the parcel and the location of all existing and proposed structures, natural resource extraction sites, toxic or hazardous material storage areas and their content identification, septic systems and waste water treatment and/or treatment sites, wells, fuel tanks, excavations and/or fill areas, sewer systems;
2. the site plan shall be drawn at a scale of 50 feet to the inch if the property is less than three acres in size and 100 feet per inch if the property is three acres or more in size;
3. date, drafter's name and address, north point and scale indicator;
4. location of the 100 year flood zone;
5. the location and dimensions of all existing and proposed drives, parking area, snow storage areas, streets, alleys, sidewalks, walls, slopes of 22% or more, fences and landscaping;
6. the size and location of all existing and proposed public and private utilities;
7. the method, if any, of drainage for storm water runoff;
8. a description of all materials or substances to be used on the property which may be harmful to fish, wildlife or habitat;
9. a description and drawing of any existing or proposed erosion control, or slope stabilization measures; and
10. a listing of all state and federal permits which are required in connection with the proposed development.

21.05.070. Notice.

A. Notice of an application for a use permit shall be mailed to real property owners within a three hundred foot periphery of the parcel affected by the proposed action. Said notice shall invite comments of the recipient and give notice of any hearings scheduled.

B. In addition to any other notice required by this code, or deemed specifically appropriate by the planning department, the planning department shall send notice of an application for a use permit on any parcel within the KRD to the following agencies to provide an opportunity for review comments prior to the date scheduled for permit determination:

1. Kenai-Kasilof Soil and Water Conservation District
2. City of Kenai Planning Department;
3. City of Soldotna Planning Department;
4. Alaska Department of Natural Resources, Division of Parks and Outdoor Recreation;
5. Alaska Department of Fish and Game;
6. Alaska Department of Environmental Conservation; and
7. United States Fish and Wildlife Service.

C. The above listed agencies shall be encouraged to offer special technical assistance and recommendations to mitigate harmful effects of the proposed use relating to erosion, ground or surface water contamination or significant adverse alteration of fish and wildlife habitat.

21.05.080. Issuance of permit.

A. The planning commission, with assembly approval, shall prepare and publish regulations governing administration and application of this chapter.

B. Before a use permit shall be approved for property within the KRD, the planning department must complete a written statement of evidence and findings that the use will not cause erosion, ground or surface water contamination or adverse alteration of fish and wildlife habitat consistent with the provisions of this chapter and any regulation adopted thereunder. A permit may not issue without these written, satisfactory findings.

C. Any party aggrieved by the issuance or non-issuance of a use permit, or its included or non-included conditions, may, within 30 days, appeal to the planning commission. Any party aggrieved by the action of the planning commission, may within 10 days, appeal to the assembly. The decision of the assembly shall be final.

D. Planning department decisions on applications submitted shall be made within 30 days after filing, unless the applicant agrees to an extension of time.

21.05.090. Regulations.

(To be added)

21.05.100. Nonconformity.

A. When any lot, parcel, use or occupancy legally exists prior to the date this ordinance takes effect, but does not meet the requirements of Chapter 21.05 it shall be considered a non-conforming lot, parcel or use. Nonconforming uses may continue but may not be expanded beyond the present lot or parcel boundaries.

B. All structures and uses made nonconforming by this title may be continued only on the lot or parcel which contained the structure or use prior to the date this ordinance takes effect. Once the nonconforming use is discontinued, or the structure not used for the specific use for more than one year, it shall not be permitted.

C. It shall be the responsibility of the owner to show proof of continuing nonconforming use of any property or structure which is in nonconformity with this title.

D. This section shall not be construed as a limitation or restriction of the authority of the Kenai Peninsula Borough to enact legislation regulating the means or methods of the conduct of such non-conforming uses.

21.05.110. Variance.

A. A variance may be granted to provide relief when a literal enforcement of Chapters 21.05.010 through 21.05.060 would deprive a property owner of reasonable use of his real property.

B. A variance may only be granted by vote of the planning commission. Two-thirds of the planning commission must find that all of the conditions specified in section C exist.

C. All of the following conditions shall exist before a variance may be granted:

1. a literal interpretation of the provisions of Chapters 21.05.010 through 21.05.060 would deprive the applicant of rights commonly enjoyed by other properties in the same area;

2. special conditions and circumstances exist which are peculiar to the land or structures involved and which are not applicable to other lands and structures in the same area;

3. setback requirements cannot be met because of the size of parcel and the

subdivision including the subject parcel was approved prior to the date this ordinance takes effect.

4. the special conditions and circumstances have not been caused by actions of the applicant;

5. financial hardship or inconvenience shall not be the sole reason for granting a variance;
6. other nonconforming land use within the area shall not be considered grounds for granting a variance;

7. a variance shall be the minimum variance necessary to permit the reasonable use of the land or structure;

D. Either party, the planning department or the applicant, may appeal the action of the planning commission to the assembly, within 30 days from the date of the planning commission action.

21.05.120. Penalties for violations.

Failure to comply with the requirements of this chapter, or to engage in any prohibited activity herein listed, is a violation which subjects the violator, whether land owner, agent or trespasser, to a fine of \$1,000 per violation, per day.

SECTION 2. That Chapter 20.20 of the Kenai Peninsula Borough Code is amended by adding the following section:

20.20.270. Kenai River Overlay District requirements.

In its consideration of subdivision plats, the commission shall ensure that streets, easements and pedestrian ways in the Kenai River Overlay District (established at Chapter 21.05 of this code) are designed to minimize degradation of the bank and protection areas. There shall be no direct discharge of drainage, runoff or effluent without appropriate use of settling ponds, oil/grease separators or other treatment methodologies designed to ensure that the discharge is in compliance with Alaska Water Quality standards. There shall be erosion control measures designed to protect the shoreline, water quality and fish rearing habitat. Pedestrian ways shall either be located at least 50 horizontal feet away from the shoreline or on elevated walkways or elevated boardwalks designed to minimize degradation of riparian habitat.

SECTION 3. [THIS SECTION WILL EITHER ADD TO TITLE 21, OR ENACT IN ANOTHER TITLE, A SECTION CERTIFYING THAT AN IMPROVEMENT MADE PURSUANT TO TITLE 21 IS KPB APPROVED FOR A PROPERTY TAX CREDIT PURSUANT TO, AND SUBJECT TO THE LIMITATIONS OF AS 29.45.046.]

SECTION 4. That this ordinance becomes effective upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS ____
DAY OF _____, 1995.

Andrew P. Scalzi, Assembly President

ATTEST:

Gaye J. Vaughan, Borough Clerk