

Introduced by: Glick,
Brown, Merkes
Date: 3/7/95
Hearing: 4/18/95
Amended & postponed to: 5/02/95
Postponed to: 6/06/95
Action: Defeated
Vote: Unanimous

**KENAI PENINSULA BOROUGH
ORDINANCE 95-09**

**AN ORDINANCE AMENDING THE CODE TO AUTHORIZE THE ISSUANCE OF
LICENSES FOR THE TEMPORARY USE OF BOROUGH LANDS**

- WHEREAS,** the present code of ordinances does not provide a mechanism tailored for allowing long-term, non-exclusive use of borough lands with appropriate fees and bonding requirements; and
- WHEREAS,** several different user groups including mineral claimants and fish site operators are interesting in obtaining licenses for such use; and
- WHEREAS,** certain borough lands are subject to state or federal ownership of the subjacent mineral estate and the borough as owner of the surface estate needs a mechanism by which to authorize appropriate uses of the surface estate by mining claimants; and
- WHEREAS,** allowing a very limited amount of such borough land use beyond the scope of the mineral estate on a temporary basis is consistent with borough land policies promoting the orderly development of borough land; and
- WHEREAS,** other users of borough land including without limitation fish site owners have operations that do not realistically fit with existing land use permit programs offered by the borough; and
- WHEREAS,** it is in the best interests of the borough to regulate the surface use of borough lands by any of these users;

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

SECTION 1. KPB 17.10.180 (A) is amended as follows:

17.10.180. Temporary use of borough land — Permits.

A. A person who wishes to use borough land for a temporary use of one year or less shall apply for a nonrenewable permit on a form provided by the land management division and accompanied with the appropriate application fee as required by the fee schedule. A permit shall not be issued until the applicant has complied with Section 17.10.120(F).

SECTION 2. KPB 17.10.185 is added to the Kenai Peninsula Borough Code of Ordinances as follows:

17.10.185. Temporary use of borough land — Licenses.

A. Licenses: A person wishing to use borough lands for a temporary use of more than one year shall apply for a license on a form provided by the land management division and accompanied with the appropriate application fee as required by the fee schedule. A license shall not be issued until the applicant has complied with Section 17.10.120(F).

B. Term: A license is nontransferable and is valid for no more than five years from the date of issue. Upon application for a renewal, the land management officer may renew a license if the licensee complies with the provisions of this section and has met the terms of the prior license.

C. Annual Fee: For mineral claimant licensees using only so much of the surface estate as is deemed necessary by the borough for the mining operations, the annual license fee shall be \$100. For all other licensees, the annual license fee shall be equal to six percent of the fair market value of the subject surface estate, or \$1,000, whichever is greater. The first payment shall be due at the time the license is issued. The fee may be paid in quarterly, semiannual or annual installments on the dates specified in the license. Additionally, all licensees shall timely pay all property taxes related to the surface estate and improvements, and any other applicable taxes. Licensee's failure to timely pay any installment or tax when due shall be good cause for revoking the license.

D. Authorized Uses: A license shall authorize the nonexclusive use of the subject borough land. In reviewing the proposed uses the land management officer shall only approve uses that are consistent with other provisions of this code, with the Coastal Zone Management Program and are compatible with surrounding surface uses and with the land use plan in effect, if any. Surface use that is inconsistent with this code, with a land use plan or a Coastal Zone Management Program adopted either before or after a license is issued, is prohibited. Unless the borough determines that the issuance of the license would not be in the best interests of the borough, the land management officer shall issue a license upon the applicant's fulfillment of all requirements set forth in or adopted pursuant to this chapter. Any such decision shall identify the factors on which the best interests determination was based.

E. Mineral Claimants: Without a license or other appropriate land use authorization from the borough, a mineral claimant is prohibited from using surface borough lands. In addition to the other requirements contained in this chapter, all mineral claimants must provide bonding to the borough to cover reclamation costs as necessary to restore the land and as provided in AS 27.19.040. The amount of such bond shall be determined by the land management officer by taking into consideration the level and type of activity planned, historical activities of the applicant, the topography of the subject and surrounding land, and any other relevant information. The bond shall not exceed the maximum amount required by applicable state statutes. Any such license to a mineral claimant shall automatically terminate if the licensee fails to obtain a Mining and Reclamation Permit or equivalent authorization from the mineral estate owner.

F. Temporary and Permanent Improvements: The installation of any improvements must be authorized in advance by the land management officer. Only temporary improvements will be authorized, except that the land management officer may give advance approval for the installation of permanent improvements such as roads and utilities when reasonably necessary for the licensed use and in the best interests of the borough. Temporary improvements are self-contained, not built on a permanent foundation, and readily removable without damage to either the improvement or the

land. All permanent improvements shall, unless provided otherwise by written agreements or in this chapter, be the property of the borough and remain with the premises, and licensees waive all claims for damages to or loss of any property belonging to the licensees that may be in or upon the premises.

G. Security Deposit: The land management officer shall require the applicant to post an advance cash deposit or bond with the borough to ensure that the applicant will remove all temporary improvements and restore the land to reasonably the same condition it was in at the time the license was issued. The bond amount shall be a minimum amount of \$1,000. In requiring any additional amount, the land management officer shall consider the condition of the premises at the time of licensing, the level and type of activity planned, historical activities of the applicant, and any other relevant information. For mineral claimants, this bond is in addition to the reclamation bond required under state statutes. Any such deposit or bond shall not be released unless and until licensee has complied with all license conditions upon termination of the license.

H. Hazardous Materials: Licensees shall not cause or allow any hazardous materials or hazardous wastes to be released upon the surface lands. In addition to other bonds and fees, where the proposed use will entail the storage of more than 500 gallons of fuel, or may reasonably involve substantial quantities of other hazardous materials or hazardous waste, the mayor shall require the licensee to provide a security deposit or bond in the minimum amount of \$25,000 to help defray costs that the borough may incur in the event of any such release. Licensee shall indemnify and hold the borough harmless from all environmental cleanup costs that the borough may incur. This provision shall not apply to mineral claimants only using as much of the surface estate as is deemed necessary for the mining operations.

I. Liability Insurance: All licensees shall maintain liability insurance insuring against all damages to persons or property arising out of licensee's use of borough lands in the minimum amount of \$250,000 with the borough named as loss payee. This provision does not apply to mineral claimants only using so much of the surface estate as is deemed necessary for mining activities.

J. Inspection: The borough land may be inspected at any time, without notice, to ensure compliance with conditions of the license. Nothing contained in this section shall be construed to require the borough to inspect the licensed premises or operations at any time. As the licensee has control of the premises and operations, the licensee bears sole responsibility for maintaining a safe operation. The licensee shall indemnify and hold the borough harmless from any and all claims for loss or damage arising out of the licensee's use of the premises.

K. Termination: The land management officer may, for cause and without notice to the licensee, immediately revoke a license. Unless it is renewed, a license shall also automatically terminate upon expiration. The licensee whose license has terminated for any reason shall, within forty-eight hours of the termination, remove from the borough land all personal property and improvements placed on the land by the licensee or its agents, except as otherwise authorized in writing by the land management officer. Any property of the licensee not removed within that time may, at the sole discretion of the mayor, become the property of the borough. The mayor may elect to either retain, dispose of or destroy any unauthorized property remaining on the land at the end of the forty-eight hour period, at the expense of the licensee.

L. Other Resources: The license does not grant licensee the right to extract sand, gravel, timber, peat, or any other materials valuable for commercial purposes from the borough lands except as may be specifically authorized in writing by the borough. The borough may recover from the licensee the value of any materials extracted without authorization together with all costs and expenses of determining and recovering that value. A license may be revoked by the land management

officer if licensee causes or allows the removal of such resources without prior written authorization from the land management officer. The borough also specifically retains the right to enter and extract from such lands any such surface materials, and to grant or construct easements or rights-of-way across the subject land. The license fee shall be adjusted to account for any resulting modification in the licensed area. Licensee shall bear all costs associated with moving licensee's property.

M. Additional Terms: The mayor may include such additional terms and conditions in a license as the mayor may reasonably deem to be in the best interests of the borough. Licensee shall comply with such additional terms and conditions or the license may be terminated without notice.

N. Appeals: A licensee or license applicant may appeal any written determination made by the mayor or the borough administration pursuant to this section by filing a written appeal with the Assembly sitting as a board of adjustment, in compliance with the applicable requirements of KPB Chapter 21.10. An appeal from an assembly decision may thereafter be filed with the superior court in Kenai under the rules of appellate procedure governing appeals from administrative agency decisions, within thirty days of the date of distribution of the written assembly determination. Otherwise, a challenge or protest of a determination of the mayor or borough administration made under this section is barred.

O. No Interest Created: A license does not create any interest in the land title, nor any preference right for purchasing or leasing the land.

SECTION 3. Existing Uses: Any application for a license to use borough land in a manner otherwise allowable under this ordinance, but commencing or constructed prior to the effective date of this ordinance, shall not be denied simply because the use began prior to the effective date of this ordinance. Applications for a license for a prior existing activity must be made within 45 days of the effective date of this ordinance. This section is not to be construed to automatically authorize or "grandfather in" any existing surface uses of borough land, and all such prior uses must meet all conditions applicable to a proposed new use that would be authorized pursuant to this ordinance.

SECTION 4. That this ordinance shall take effect immediately upon its enactment.

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

Andrew P. Scalzi, Assembly President

ATTEST:

Gaye J. Vaughan, Borough Clerk