

Introduced by:	Scalzi, Brown, Navarre
Date:	4/16/96
Hearing:	5/21/96
Vote:	Enacted
Action:	6 yes, 2 no

**KENAI PENINSULA BOROUGH
ORDINANCE 96-14**

**AN ORDINANCE ENACTING KPB CHAPTER 21.13 REQUIRING PERMITS
FOR CERTAIN LAND USES WITHIN THE BOROUGH**

WHEREAS, on January 5, 1993, finding that common law nuisance rights could be adequately protected through the court system the KPB Assembly enacted Ordinance 92-58, repealing KPB Chapter 21.12 which had established a land use permit requirement for property owners whose use was determined by the borough planning commission to be potentially noxious, injurious or hazardous to the surrounding properties; and

WHEREAS, since that date Assembly members have repeatedly been asked to adopt a new measure providing public input into certain land uses in the borough; and

WHEREAS, Goal 5.5 of the Kenai Peninsula Borough Comprehensive Plan adopted in May, 1992 is to reduce conflicts arising from incompatible land uses outside of incorporated cities, and one listed action for achieving that goal provides for replacing Chapter 21.12 of the Borough Code of Ordinances with a more objective ordinance which includes definitions, standards, and procedures to obtain advance notification of proposed future land uses; and

WHEREAS, pursuant to AS 29.40.040, land use permit requirements may be adopted to encourage or discourage specified land uses or to minimize unfavorable effects of uses; and

WHEREAS, Goal 5.4 of the Kenai Peninsula Borough Comprehensive Plan adopted in May, 1992 is to maintain the freedom of property owners in rural areas of the borough to make decisions and control use of their private land, to be implemented by ensuring that any land use regulations are the minimum necessary to control uses which affect public health and safety or infringe on the rights of adjacent property owners;

WHEREAS, the Kenai Peninsula Borough Coastal Zone Management Plan Section 10.5 requires reclamation upon completion of gravel extraction, including grading disturbed areas to stable slopes that blend with the natural topography and revegetation to control erosion;

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

SECTION 1. That a new Chapter 21.13 of the Kenai Peninsula Borough Code of Ordinances entitled "Land Use Permits" shall be enacted to read as follows:

21.13.010. Jurisdiction.

Chapter 21.13 applies to all land within the rural district of the Kenai Peninsula Borough, as designated in KPB 21.04.010.

21.13.020. Purpose.

It is the purpose of this chapter to require advance public notice, to provide an opportunity for public comment, and impose minimum standards for certain land uses which may be potentially damaging to the public health, safety and welfare, in a manner that recognizes private property rights.

21.13.030. Definitions.

For the purpose of this chapter, unless the context requires otherwise:

A. "Correctional community residential center (CCRC)" means a community residential center, other than a correctional institution, for the short-term or temporary detention of prisoners in transition from a correctional institution, performing restitution, or undergoing rehabilitation or recovery from a legal infirmity. CCRCs may not be used for detention of prisoners who pose a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four hour physical supervision. The determination of whether a prisoner poses a threat or danger to the public for violent or sexual misconduct without imprisonment or physical confinement under guard or twenty-four hour physical supervision shall be made by the commissioner of corrections for state prisoners and the United States Attorney General, or the U. S. Director of Bureau of Prisons for federal prisoners.

B. "Correctional institution" means a facility other than a correctional community residential center providing for the imprisonment or physical confinement or detention of prisoners under guard or twenty-four hour physical supervision, such as prisons, prison farms, jails, reformatories, penitentiaries, houses of detention, detention centers, honor camps, and similar facilities.

C. "Federal Prisoners" means offenders in the custody or control or under the care or supervision of the United States Attorney General or the Bureau of Prisons.

D. "Person" shall include any individual, firm, partnership, association, corporation, cooperative, or state or local government.

E. "Prisoner" means:

1. a person held under authority of state law in official detention as defined in AS 11.81.900;
2. includes a juvenile committed to the custody of the Alaska Department of Corrections Commissioner when the juvenile has been charged, prosecuted, or convicted as an adult.

F. "Sand, gravel or material site" means an area used for extracting, quarrying, stockpiling, or conditioning gravel, sand, rock, peat, pumice, pumicite, cinders, clay sod, topsoil or other similar resources.

G. "Seasonal high groundwater table" means the highest level to which the groundwater rises on an annual basis.

H. "Stable condition" means the rehabilitation, where feasible, of the physical environment of the site to a condition that allows for the reestablishment of renewable resources on the site within a reasonable period of time by natural processes.

21.13.040. Permit required for commencement of certain land uses.

It shall be unlawful for any person to use land, or to assist another to use land, within the rural district of the Kenai Peninsula Borough for the following uses without first obtaining a permit from the Kenai Peninsula Borough in accordance with the terms of this ordinance:

1. Correctional community residential center ("CCRC"); and
2. Sand, gravel or material site.

21.13.050. Application procedure.

In order to obtain a permit, an applicant shall first complete and submit to the Borough Planning Department a permit application form, along with the appropriate fee as established and required by the Planning Department fee schedule.

Permit applications shall identify the applicant, anticipated type of land use, location, a description of the anticipated size, scope and hours of operation. Applicants must provide such other information as the planning director deems appropriate and necessary in order to determine compliance with this chapter.

21.13.060. Standards for correctional community residential centers.

CCRCs shall not be located within one-half geographical mile of any pre-existing public or licensed private school, a pre-existing licensed day care facility, or a pre-existing licensed senior citizen facility. The Assembly may waive this requirement if any schools or facilities, as set forth above, located within one-half mile of the proposed CCRC expressly non-oppose so locating the CCRC.

21.13.070. Standards for sand, gravel or material sites.

The following requirements apply to permits issued for commercial sand, gravel or material sites:

A. Ground water disturbance. All permitted land use activities shall be conducted in a manner that minimizes disturbing ground water. Except as provided below, all permits shall be issued with a condition requiring the applicant to maintain a vertical distance of at least four feet above the seasonal high groundwater table for the subject property. A permit may be issued without requiring the applicant to maintain this four foot vertical distance if, after a hearing, the Planning Commission determines that the proposed activity is not likely to reduce the seasonal high groundwater table for property within a one-half mile radius of the site, excluding the site. If the applicant provides, from a duly licensed and qualified engineer, a statement delineating all effects of de-watering on any lands and certifying that the activity, as proposed, is not likely to

reduce the seasonal high groundwater table level for property within a one-half mile radius of the site, excluding the site, a rebuttable presumption is created that the activity will have no such effect.

B. **Buffer Zone.** A permit shall not be issued unless the applicant provides and maintains a buffer zone between the site boundary and the property boundary of all contiguous parcels and roads. The buffer zone shall provide and retain a basic buffer of either 50 feet of natural or improved vegetation, a minimum six-foot earthen berm or a minimum six-foot fence. The vegetation and fence shall be of sufficient height and density to provide visual screening of the proposed use.

C. **Reclamation.** A permit shall not be issued unless the applicant agrees to re-seed and reclaim all disturbed land upon completion of the proposed land use, or within a pre-determined time period for long term activities, so as to leave the land in a stable condition. As a condition of issuing the permit, the applicant shall submit a reclamation plan and post a bond to cover the anticipated reclamation costs in an amount to be determined by the Planning Director. This subparagraph shall not apply to sand, gravel or material sites for which an exemption from state reclamation plan and bond requirements for small operations has been obtained pursuant to AS 27.19.050.

21.13.080. Issuance or denial of permit - Public hearing required.

A. Within 21 days of receiving an application, the Planning Director or designee shall review the submitted application for completeness and compliance with this chapter. If it is incomplete or does not meet the requirements of this chapter, the Planning Director shall notify the applicant in writing. The Planning Director shall thereafter either return the application to the applicant or schedule the application to be considered by the Planning Commission at the next appropriate scheduled meeting.

B. When the application is scheduled to be considered, the Planning Commission shall conduct a public hearing to consider the permit application, and shall either approve, modify or disapprove the permit application. The applicant shall present substantial evidence to the Commission, which may include the engineer's certificate referenced in KPB 21.13.070 if appropriate, justifying the requested permit stating fully the grounds for the application and the facts relied upon. Those wishing to contest issuance of the permit may submit evidence and be heard at the hearing. Before granting the permit, the Commission must find at a minimum that the proposed activity complies with the requirements of this chapter, it will not be detrimental to the public welfare, and it will not be injurious to other property in the area. Planning Commission approval of these land use permits shall be by resolution. Permits shall be conditioned upon continued compliance with this chapter.

21.13.090. Notice.

Notice of the pending application shall be published two times in a newspaper of general circulation in the local area in which the land use is proposed. The notice shall also be posted in the post office of the impacted community. At the beginning of the notice period a copy of the notice shall be sent by regular mail to all owners and/or leaseholders of record of residential property located within a radius of one-half mile of the subject property. The notice shall contain a description of the proposed location, the type of proposed land use, the applicant's name, where

written comments may be submitted, the last date for which written comments may be submitted, and the date, time and location of the public hearing.

21.13.100. Compliance with other laws.

Applicants' land use operations shall comply with all applicable federal, state and local laws.

21.13.110. Permit Revocation.

A permit issued pursuant to this chapter may be revoked by the Planning Commission if the applicant fails to comply with the provisions of this chapter. The Planning Director shall provide at least thirty (30) days written notice to the permittee of a revocation hearing before the Planning Commission. The notice shall provide specific grounds for the proposed revocation. If the applicant provides written evidence to the Planning Director demonstrating reasonable compliance with this chapter within the thirty day period then the revocation hearing may be canceled, at the discretion of the Planning Director.

21.13.120. Penalty for violation.

For any violation of this chapter the owner, or owner's agent, of property where such violations have been committed or shall exist, or any other person who uses any property or premise in violation of this chapter, shall be subject to a civil penalty up to \$300. Each day that a violation continues shall be considered a separate violation for purposes of this chapter.

21.13.130. Appeals.

An aggrieved party may appeal the denial, modification, approval or revocation of a permit by filing an appeal to the assembly, sitting as a board of adjustment, within thirty (30) days of the denial or revocation. Appeals from actions taken under this chapter shall be conducted in accordance with the appellate procedures established in Chapter 21.20 of this code.

21.13.140. Conflict with local option zoning districts.

To the extent this chapter may conflict with any grant or previous delegation of land use regulation authority from the Borough, such previous delegation is modified or limited so as not to conflict with this chapter. Except as otherwise specifically provided by another provision of this chapter, the restrictions on use of land activity established by this chapter shall be in addition to any other restrictions adopted by any state, federal or local authority.

21.13.150. Regulations.

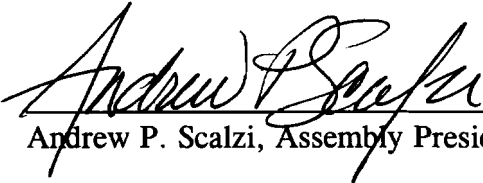
The mayor is authorized to adopt regulations implementing this section.

21.13.160. Prior existing uses.

This chapter shall not apply to uses commencing before the effective date of this ordinance provided that the subject use continues in the same location and such use is not expanded beyond the smaller of the lot, block, or tract lines as they exist on the effective date of this ordinance.


SECTION 2. That this ordinance shall become effective upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 21ST DAY OF MAY, 1996.



Andrew P. Scalzi, Assembly President

ATTEST:



Gaye J. Vaughan, Borough Clerk