

Introduced
Date: Mayor
August 5, 1997
Hearing: September 2, 1997
Action: Enacted as Amended
Vote: 5 Yes, 4 No

**KENAI PENINSULA BOROUGH
ORDINANCE 97-55**

**AN ORDINANCE REPEALING, IN PART, AND AMENDING PROVISIONS OF
KPB TITLE 21 PROVIDING FOR CONSISTENT ENFORCEMENT
REMEDIES FOR LAND-USE VIOLATIONS**

WHEREAS, inconsistencies exist among the various chapters of Title 21 for enforcement of land use regulations; and

WHEREAS, there are no permit revocation or enforcement order provisions for many of the borough's land-use regulations; and

WHEREAS, currently, violations are addressed by misdemeanor provisions which require expensive and time-consuming court proceedings; and

WHEREAS, a code compliance position was established in the planning department in 1996 to enforce provisions of KPB 21, 14.14, and 14.40; and

WHEREAS, administrative fines and enforcement proceedings allow the borough more flexibility in working with violators and allow for convenient, consistent, economical, and fair enforcement; and

WHEREAS, an infraction provision which provides a court appearance and a non-jury trial is desirable for the more egregious or repeat violations;

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

SECTION 1. KPB 21.06.030(D) shall be amended as follows:

- D. [PENALTIES FOR] Noncompliance[.]--Enforcement. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violations of this chapter are infractions, and are subject to civil fines. Violation of the provisions of this chapter by failure to comply with any of its requirements [(INCLUDING VIOLATIONS OF CONDITIONS AND SAFEGUARDS ESTABLISHED IN CONNECTION WITH CONDITIONS) SHALL CONSTITUTE A MISDEMEANOR. ANY PERSON WHO VIOLATES THIS CHAPTER OR FAILS TO COMPLY WITH ANY OF ITS REQUIREMENTS SHALL UPON CONVICTION THEREOF BE FINED NOT MORE THAN \$300.00 OR IMPRISONED

FOR NOT MORE THAN 5 DAYS, OR BOTH, FOR EACH VIOLATION, AND IN ADDITION SHALL PAY ALL COSTS AND EXPENSES INVOLVED IN THE CASE. NOTHING HEREIN CONTAINED SHALL PREVENT THE KENAI PENINSULA BOROUGH FROM TAKING SUCH OTHER LAWFUL ACTION AS IS NECESSARY TO PREVENT OR REMEDY ANY VIOLATION.] shall be enforced pursuant to the provisions of KPB 21.24.

SECTION 2. That a new section KPB 21.09.120 shall be adopted as follows:

21.09.120. Violations--Enforcement. Violations of KPB 21.09.060, 21.09.070; 21.09.080; 21.09.090(A), (B), and (E); are infractions and are subject to civil fines. Enforcement of the provisions of this chapter shall be done in accordance with the remedies set forth in KPB 21.24.

SECTION 3. That KPB 21.13.120 shall be amended as follows:

21.13.120 Penalty for violation

[FOR ANY] Violations of this chapter [THE OWNER, OR OWNER'S AGENT, OF PROPERTY WHERE SUCH VIOLATIONS HAVEN 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] are infractions and are subject to civil fines. Enforcement of the provisions of this chapter shall be done in accordance with the remedies set forth in KPB 21.24.

SECTION 4. That KPB 21.18.110 shall be amended as follows:

21.18.110 [PENALTY FOR VIOLATION]Violations--Enforcement.

[FOR ANY VIOLATION OF THIS CHAPTER THE OWNER, AGENT, OR CONTRACTOR OF A BUILDING OR PREMISE WHERE SUCH VIOLATIONS HAVE BEEN COMMITTED OR SHALL EXIST, OR ANY OTHER PERSON WHO MAINTAINS ANY BUILDING OR PREMISE OR CONDUCTS AN ACTIVITY 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 IMPOSING THE PENALTY. THE PROVISIONS OF KPB 21.24.020 SHALL NOT APPLY TO VIOLATIONS OF THIS CHAPTER. **PENALTY VIOLATIONS--ENFORCEMENT.** VIOLATIONS OF THIS CHAPTER ARE INFRACTIONS AND ARE SUBJECT TO CIVIL FINES. ENFORCEMENT OF THE PROVISIONS OF THIS CHAPTER SHALL BE DONE IN ACCORDANCE WITH THE REMEDIES SET FORTH IN KPB 21.24.] Violations of this chapter are infractions and are subject to civil fines. Enforcement of the provisions of this chapter shall be done in accordance with the remedies set forth in KPB 21.24.

SECTION 5. That KPB 21.24.020 shall be repealed in its entirety.

SECTION 6. That KPB 21.24 shall be amended by adding the following new sections:

21.24.030 Infraction.

- A. Fine. For violations of the provisions of Title 21 the owner, agent or contractor, lessee or tenant of a building or premises, or part of a building or businesses, where such violations have been committed or exist, or any other person who commits, takes part or assists in such violations is guilty of an infraction and upon conviction shall be fined not more than \$300.00. Each and every day that such violation continues shall be deemed a separate and distinct violation.
- B. Citation. The charging document for an infraction shall be a citation. The citation shall state the time within which the defendant must respond to the citation, that the defendant is entitled to a trial, to engage counsel, to confront and question witnesses, to testify, and to subpoena witnesses on plaintiff's behalf. The citation shall also state that a mandatory court appearance may be waived by payment of the minimum fine stated on the citation. The citation shall inform the defendant that defendant has 10 days to respond from the date of the service of the citation, and shall state where defendant must respond.
- C. Fine Schedule. The following fines are the minimum fines for violations. The minimum fine for an offense may not be judicially reduced.

Code Chapter Section Citation	Chapter/Section Title	Minimum Fine
KPB 21.06.040	Failure to obtain a development permit	\$75.00
KPB 21.09.060	Violation of nonconforming use/structure provisions	\$50.00
KPB 21.09.070	Prohibited use	\$100.00
KPB 21.09.080	Violation of development standards	\$50.00
KPB 21.09.090(A)	Violation of home occupation standards	\$50.00
KPB 21.09.090(B)	Sign size violation	\$50.00
KPB 21.09.090(C)	Prohibited home occupations	\$100.00
KPB 21.25.040	Failure to attain land use permit	\$75.00
KPB 21.14.030	Failure to attain a mobile home park permit	\$75.00
KPB 21.18.050(A)	Failure to attain fuel storage/logging permit	\$75.00
KPB 21.18.060	Prohibited activity in habitat protection area	\$100.00
KPB 21.18.072	Failure to attain commercial activity permit	\$75.00
KPB 21.18.080	Failure to attain a conditional use permit	\$75.00
KPB 21.18.090(D)	Failure to attain expansion/enlargement conditional use permit	\$100.00
KPB 21.24.050	Violation of or removal of an enforcement order	\$100.00
KPB 21.42.060	Violation of nonconforming use/structure provisions	\$75.00
KPB 21.42.090	Prohibited use	\$100.00
KPB 21.42.100	Violation of development standards	\$50.00
KPB 21.42.110(D)	Failure to attain a home occupation permit	\$75.00

21.24.040 Statutory injunction.

In addition to other lawful remedies, a violation of KPB Title 21 may be enjoined or abated. Pursuant to AS 29.25.070(b), upon application for injunctive relief and a finding that a person is

committing a violation or threatening to commit a violation, the superior court shall enjoin the violation.

21.24.050 Enforcement orders.

- A. The borough code compliance officer may issue an enforcement order which describes the violation, specifies the code section being violated, and orders:
 - 1. the discontinuation of a use, activity, development, or occupancy that is in violation;
 - 2. the abatement, or removal of development, structures, material, vehicles, equipment, or things that are in violation;
 - 3. the discontinuation of activity preparatory to occupancy, use, development or activity that is in violation;
 - 4. the suspension or revocation of an entitlement issued under this chapter, which is being used as authority for a violation;
 - 5. any restoration, repair, or replacement necessary as a result of a violation or to eliminate a violation; or
 - 6. any other lawful action considered necessary by the borough to prevent, abate, or discontinue a violation and to bring a violation into compliance with this chapter.
- B. An enforcement order may require a time frame for compliance.
- C. When an enforcement order is posted or lawfully served, all activity contrary to the terms of the order shall cease until the order is rescinded and removed by the borough, or continuance is authorized in writing by the borough.
- D. Unless otherwise specified in the enforcement order, an enforcement order which is posted at the violation site, or at the property owner's residence or office, or that is served personally or by certified mail, is final if not appealed to the planning commission pursuant to the procedures set forth in KPB 21.20.
- E. When necessary to avoid or abate an imminent or existing nuisance, noxious use, or hazard to public health, safety, and welfare an enforcement order need not be issued before any other remedy available at law or equity is pursued.
- F. Issuance of an enforcement order does not stay or preclude any other action at law or equity related to the violation.
- G. Enforcement orders may be appealed to the planning commission pursuant to the terms of KPB 21.20. Appeals from the planning commission shall not be taken to the board of adjustment, but shall proceed to superior court pursuant to the provisions of the Alaska Rules of Appellate Procedure, Part 6.
- H. Removing an enforcement order or violating an enforcement order is a separate violation of this code.
- I. The provisions of this section are applicable to cease and desist orders issued pursuant to KPB Title 21.

21.24.060 Permit Revocation.

- A. Violations of enforcement orders or conditions of permits issued pursuant to the provisions of Title 21 may result in permit revocation. Where the process for permit revocation is not set forth in the chapter governing issuance of the permit the procedures set forth in this section shall govern.
- B. A permit issued pursuant to this title may be revoked by the Planning Commission if the applicant fails to comply with the provisions of this title. 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 title within the thirty-day period then the revocation hearing may be canceled, at the discretion of the Planning Director.

- C. Permit revocations are appealable to the Planning Commission, and ultimately the board of adjustment pursuant to the provisions of KPB 21.20.
- D. Notwithstanding the provisions of KPB 21.24.060(B), the borough may seek a statutory injunction as provided by KPB 21.24.040.

21.24.070 Civil fine.

The Borough code compliance officer may assess a \$100.00 civil fine for each violation of this chapter. Notice of a fine shall be served personally or by certified mail on the property owner, lessee, operator, or occupant of the parcel upon which the violation occurs. The fine may be appealed to the Planning Commission pursuant to the terms of KPB 21.20. Each day a violation occurs is a separate violation. Citations for fines may be included in an enforcement order. Appeals from the planning commission's determination shall not be taken to the board of adjustment, but shall proceed to the superior court pursuant to the Alaska Rules of Appellate Procedure, Part 6.

21.24.080 Remedies cumulative.

The remedies set forth in this chapter are cumulative, any or all of which may be pursued for a particular violation.

21.24.090 Exemptions and exceptions.

The remedies in this chapter do not apply within the Seldovia district.

SECTION 7. That a new section KPB 21.42.150 shall be adopted as follows:

21.42.150 Violations--Enforcement.

Persons violating KPB 21.42.060; 21.42.090; 21.42.100; 21.42.110(A)(C) and (D) are guilty of infractions. Enforcement of the provisions of this chapter shall be in accordance with the remedies set forth in KPB 21.24.

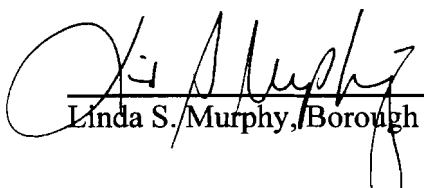
SECTION 8. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 2ND DAY OF SEPTEMBER, 1997.



Jack E. Brown, Assembly President

ATTEST:



Linda S. Murphy, Borough Clerk

