

Introduced by: Brown
Date: 01/05/99
Amended by Substitute: 04/06/99
Hearings: 03/16/99, 04/06/99,
05/18/99, 09/07/99,
11/02/99
Action: Failed
Vote: 0 Yes, 9 No

**KENAI PENINSULA BOROUGH
ORDINANCE 99-01
(Brown) Substitute**

**AN ORDINANCE ENACTING CHAPTER 21.30 PROVIDING FOR THE
CREATION OF A RURAL RESIDENTIAL DISTRICT, A MIXED-USE
DISTRICT, AND A NIKISKI INDUSTRIAL DISTRICT WITHIN THE
RURAL DISTRICT OF THE BOROUGH OUTSIDE OF HOME RULE
AND FIRST CLASS CITIES**

- WHEREAS,** a number of disputes have arisen regarding the location of certain land use activities in close proximity to and disruptive of neighboring residential uses; and
- WHEREAS,** residents from different areas of the borough have approached the Kenai Peninsula Borough seeking to limit land use activities which, for various reasons, they felt threatened the peaceful enjoyment of their properties; and
- WHEREAS,** many private parcels in the borough are vacant making establishment of land use zones for specific uses premature at this time;
- WHEREAS,** according to Chapter 5 of the Comprehensive Plan, multiple uses are developing throughout the borough with most developed parcels having residential use;
- WHEREAS,** residential neighborhoods are located throughout the rural district of the borough; and
- WHEREAS,** borough-wide standards of general application should be developed for industrial and commercial uses of lands and resources within the borough's residential areas; and

WHEREAS, affording minimal land use protections to property owners within predominantly residential areas will protect property values, safety, peaceful enjoyment, and residential character of neighborhoods; and

WHEREAS, Goal 5.4 of the Kenai Peninsula Borough Comprehensive Plan is to adopt minimal regulations to protect public health and safety and the rights of adjacent property owners; and

WHEREAS, the people within given areas or communities of the borough should be able to develop more restrictive standards for their areas if appropriate; and

WHEREAS, Goal 5.5 of the Kenai Peninsula Borough Comprehensive Plan promotes the reduction of land use conflicts; and

WHEREAS, Goal 5.5 objective 2(A) of the comprehensive plan promotes an “objective ordinance which includes definitions, standards, and procedures to obtain advance notification of proposed future land uses”; and

WHEREAS, Goal 5.5 objective 2 of the comprehensive plan recommends creation of standards of which developers will be cognizant before engaging in projects; and

WHEREAS, there are substantial industrial uses in the Nikiski area; and

WHEREAS, portions of the borough’s arterial road corridors are convenient and conducive to commercial development and have experienced a mixed development trend with both commercial and residential uses;

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

SECTION 1. That this ordinance is adopted under the authority of AS 29.40.

SECTION 2. That KPB 21.24.030(B) and (C) shall be amended to read as follows:

B. Citation. The charging document for an infraction shall be a citation and shall be filed in the District Court of Alaska. 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] state that the 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] scheduled fines for violations. The [MINIMUM] scheduled fine for an offense may not be judicially reduced.

Code Chapter Section Citation	Chapter/Section Title	[MINIMUM] <u>Scheduled</u> Fine
KPB 21.06.040	Failure to obtain a development permit	\$150.00
KPB 21.09.060	Violation of nonconforming use/structure provisions	\$100.00
KPB 21.09.070	Prohibited use	\$200.00
KPB 21.09.080	Violation of development standards	\$100.00
KPB 21.09.090(A)	Violation of home occupation standards	\$100.00
KPB 21.09.090(B)	Sign size violation	\$100.00
KPB 21.09.090(C)	Prohibited home occupations	\$200.00
KPB 21.13.040	Failure to attain land use permit	\$150.00
KPB 21.14.030	Failure to attain a mobile home park permit	\$150.00
KPB 21.18.050(A)	Failure to attain fuel storage/logging permit	\$150.00
KPB 21.18.060	Prohibited activity in habitat protection area	\$200.00
KPB 21.18.072	Failure to attain commercial activity permit	\$150.00
KPB 21.18.080	Failure to attain a conditional use permit	\$150.00
KPB 21.18.090(D)	Failure to attain expansion/enlargement conditional use permit	\$200.00
KPB 21.24.050	Violation of or removal of an enforcement order	\$200.00
<u>KPB 21.30.100(B)</u>	<u>Violation of permit conditions</u>	<u>\$100.00</u>
<u>KPB 21.30.150</u>	<u>Failure to attain a conditional use permit</u>	<u>\$100.00</u>
KPB 21.42.060	Violation of nonconforming use/structure provisions	\$150.00
KPB 21.42.090	Prohibited use	\$200.00
KPB 21.42.100	Violation of development standards	\$100.00
KPB 21.42.110(D)	Failure to attain a home occupation permit	\$150.00

SECTION 3. That KPB Title 21 shall be amended by adding a new Chapter 21.30 entitled "Land Use Districts" and shall read as follows:

Chapter 21.30

LAND USE DISTRICTS

21.30.010. Intent - Authority.

The intent of this chapter is to provide standards and procedures for encouraging commercial and industrial development while protecting lands, property values, and the health and safety within the borough's residential areas.

21.30.020. Districts.

A. Rural residential district. Within the rural district the rural residential district (RRD) is established consisting of all property east of Cook Inlet outside the mixed-use district, but excluding state and national parks, wildlife refuges and legislatively designated critical habitat areas. Commercial and industrial activities are regulated within the rural residential district; such regulations may be modified by local option districts under KPB 21.08..

B. Mixed-use district. Within the rural district east of Cook Inlet, the mixed-use district (MUD) is established consisting of certain lands within 1/8 mile on either side of certain arterial roads designated on the official land use map of the Kenai Peninsula Borough. The MUD may be modified by KPB 21.08 local option districts.

C. Nikiski industrial district. Within the rural district the Nikiski industrial district (NID) is established consisting of those lands so designated on the official land use map of the Kenai Peninsula Borough.

21.30.030. RRD—Allowed uses.

The following uses are allowed in the RRD without first acquiring a conditional use permit:

A. Home occupations: Home occupations are an allowed use provided that such use is conducted entirely in accordance with the following standards:

1. Permanent occupants of premises engage in such occupation;
2. The use of the dwelling unit for the home occupation is clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 30 percent of the combined floor area of the dwelling is used in the conduct of the home occupation;
3. There is no change in the outside appearance of the building or premises or other visible evidence of the conduct of such home occupation other than one sign, not exceeding four square feet in area, non-illuminated and mounted flat against the wall of the principal building;
4. Traffic is not generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and specifically not more than five additional vehicles per day on average will be drawn to the lot as a result of the home occupation;
5. Equipment or process is not used in the home occupation which creates noise, vibration, glare, fumes, odors, or commercial electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single-family residence or outside the

dwelling unit if conducted in other than a single-family residence. In the case of electrical interference, no equipment or process shall be used which creates visual audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises;

6. Outdoor storage of materials or equipment is contained in an accessory building or if stored outside is fully screened from view by adjacent properties and the road;
7. There is no storage of toxic, explosive, or other dangerous or hazardous materials, substances, or chemicals for commercial purposes upon the premises.
8. Home occupations that do not meet all criteria of KPB 21.30.030(A) are subject to the conditional use permit provisions of this chapter.
9. Generally, the following uses are allowed home occupations if volume remains within the standards of this section:
 - a. family child care home for not more than five children excluding those residing in the home;
 - b. dress making and millinery;
 - c. beauty parlor or salon;
 - d. tutoring and musical instruction;
 - e. telecommuting;
 - f. other uses meeting the standards of this section.

B. Dwellings. Single-family and multiple-family dwellings up to and including four-plexes.

C. Bed and Breakfasts.

21.30.040. Uses prohibited as home occupations.

A. The following uses are prohibited as home occupations regardless of volume of traffic, sales, or business and must receive a conditional use permit:

1. commercial auto, boat, airplane or other vehicle garage or repair shop;
2. commercial kennels or similar uses;
3. mortuaries or funeral homes;
4. private schools with organized classes;
5. restaurants;
6. alcoholic beverage sales;
7. hotels;
8. junkyards;
9. industrial uses.

21.30.050. Conditional use permit - Application.

A. Application. Any property owner or authorized agent of a property owner desiring to make new, different, or expanded commercial or industrial use shall make application for a conditional land use permit on forms provided by the borough planning department.

B. Content. The application shall set forth:

1. Names and addresses of the applicants, and of the operators if other than an applicant;
2. A description of the proposed use;
3. The legal description where the use will occur;
4. A site plan including proposed or existing location of all buildings and structures on the site, size, height, and bulk of building, signage, access points, proposed buffering, landscaping, vehicular and pedestrian circulation patterns, parking areas and the specific location of use or uses to be made on the site.
5. A tentative schedule for construction and for operation;
6. Proposed days and hours of operation;
7. A list of other applicable federal, state, and local permits;
8. Additional information the planning department deems necessary to the permitting process;

C. Application Fee. The application shall include an application fee of \$25.00, to help defray hearing and processing costs, plus the actual costs of public notice associated with the permit application.

D. Burden. The burden is on the applicant to show that the proposed use meets the standards set forth in this chapter.

21.30.060. Exemption.

A. An exemption from the permitting requirements and conditions of this chapter may be granted to an applicant where the applicant registers the exempt use by completing the conditional use permit application, and either of the following conditions are met:

1. There is not a parcel with a residence within 1/8 mile of the outer boundaries of the parcel seeking a permit. An exempt use under this section must abide by the minimum setbacks set forth in KPB 21.30.100(A)(1).
2. The parcel subject to the use is at least 20 acres in size. An exempt use under this paragraph must abide by a 50-foot front, side, and rear yard setback. An exempt parcel

that is subdivided must comply with the permitting provisions of this chapter for any portion of the parcel smaller than 20 acres after subdivision.

B. Under KPB 21.30.060(A)(1) and (2), the planning director shall determine whether the use is exempt from the ordinance after meeting the notice provisions of KPB 21.30.070(A)(1)(a)(b)(c)(d) and notice by first-class mail is given to all property owners within 1/8 mile of the applicant parcel's boundaries at least 20 days prior to the close of the comment period. The exemption shall not be granted if the use does not at least meet the criteria of this section. The exemption shall be recorded in the recording district within which the subject subdivision is situated and kept on file at the borough planning department. The applicants for the exemption must pay the recording fee.

C. Applicant shall pay a \$25.00 registration fee in addition to the actual costs of public notice associated with processing the exemption.

21.30.070. RRD—Conditional use permit—Notice and hearing required.

A. Conditional use permit. The application for a conditional use permit shall be placed on the planning commission agenda for public hearing not later than 60 days following the date of submission to the planning department. Incomplete applications shall be returned to the applicant, and a new 60-day period will begin upon resubmission of the application to the planning department.

1. Notice and publication. Notice of the hearing together with a synopsis of the use applied for shall be given not less than 20 days prior to hearing. Notice shall be given at least as follows:
 - a. By first-class mail to the address of record in the borough tax records to owners of properties within 1/2 mile of the boundaries of the applicant parcel.
 - b. By publishing once in a newspaper of general and customary distribution in the affected area.
 - c. By the applicant's posting at the U.S. postal facility located closest to the affected area.
 - d. By the applicant's posting at or near the location of applicant's parcel at the planning director's discretion.
 - e. Failure by the applicant to post under KPB 21.30.070(A)(1)(c) and (d) may result in the delay of the public hearing and permitting process.
2. Hearing. A public hearing will be held regarding issuance of the permit.

21.30.080. Permit—Effect—Modification—Termination.

A. Duration. A conditional use permit attaches to the land specified in the permit except as hereinafter stated. All subsequent owners of the property and operators of the facility are subject to the provisions of the permit.

B. Cancellation. The owner(s) of land subject to a permit which is not being utilized may petition the planning commission for cancellation of the permit. Such action shall be by resolution of the planning commission.

C. Extensions. A conditional use permit shall automatically expire three years after the date of issuance if the intended use of land has not occurred.

D. Revocation. A conditional use permit may be revoked in accordance with the provisions of KPB 21.24.

21.30.090. RRD—Standards.

A. A conditional use may be approved only if it meets the general requirements of this section in addition to any other standards required for a particular use by Title 21.

1. Findings. In granting a conditional use permit the planning commission must make written findings of fact which support the following conclusions:
 - a. the conditional use is compatible with and will preserve or not materially detract from the value, character and integrity of the surrounding area;
 - b. that granting the conditional use permit will not be harmful to the health, safety, property values, and character of the parcels within ½ mile of the conditional use;
 - c. that sufficient setbacks, lot area, buffers or other safeguards are being provided to meet the conditions listed in KPB 21.30.090(A)(1)(a) and (b) of this section.
2. General Standards. The planning commission may weigh factors contributing or detracting from the development of a safe, healthy, and attractive residential community, including, but not limited to:
 - a. The potential negative effect upon other properties in the area due to such factors as dust, noise, obtrusive advertising and glare, including the size, location, and type of signage, its intensity and direction;
 - b. The potential negative effect on the safe, efficient flow of traffic on a road which provides access to and from the establishment;
 - c. Whether access to the premises will create an unreasonable traffic hazard due to inadequate road conditions or impaired right-of-way vision, inadequate signage or traffic controls;
 - d. Whether a reasonably expected increase in traffic due to the proposed use will damage the subdivision's roads;
 - e. The adequacy of access for emergency, fire, and police protection;

- f. The adequacy of provisions for waste disposal;
 - g. The effectiveness of any measures to reduce negative effects upon adjacent and nearby properties by property line buffers, planted berms, landscaping, reduction or elimination of obtrusive or garish signing or other features;
 - h. Whether there are adequate parking facilities to accommodate a reasonably expected increased demand for parking created by issuing the permit;
 - i. Whether the use is incompatible with the residential character or development trends within ½ mile of the applicant use.
 - j. Whether the proposed plan for any outdoor display or storage negatively impacts the quiet and aesthetic character of the adjacent parcels, property values, or safety;
3. The commission shall deny the application if with placement of conditions on the permit it still does not meet the applicable standards.

21.30.100. RRD—Conditions for regulated uses.

A. Conditions for regulated uses within the RRD may include the following:

1. **Buffers.** Safety and screening buffers between the site boundary and the property boundary of contiguous parcels may be required. At a minimum there will be 25-foot side yard and rear yard setbacks, and a 30-foot front yard setback from property boundary lines for any commercial or industrial use in the RRD unless the variance standards of KPB 21.05 are met. A road may not be construed as an adequate buffer without a variance.
2. **Dust control plan.** Where the activity to be permitted is of the type reasonably anticipated to create the generation of fugitive dust, applicant must provide a dust control plan to control and minimize fugitive dust. Dust created by additional traffic on borough-maintained roads as a result of the permitted activity may also require a dust control plan.
3. **Traffic controls.** Where residential is the predominate land use for developed parcels within ½ mile of the permitted use and the use is expected to generate atypical volumes and types of traffic for the vicinity, the borough may place conditions on the amount, types, and patterns of traffic generated by the proposed use, and parking conditions including signage. No permitted business shall have vehicles parked on a borough right-of-way unless the permit conditions specifically allow for on-street parking. Any condition regarding parking in rights-of-way may also require the permittee to post parking signs.
4. **Other conditions.** Additional conditions may be placed on the proposed use in order for the use to meet the standards set forth in this chapter.

B. Failure to abide by the conditions set forth in a conditional use permit subjects the property owner and use operator to the remedies set forth in KPB 21.24.

21.30.110. RDD—Variances.

Variances may be granted pursuant to the terms of KPB 21.05.

21.30.120. RRD—Decision.

The planning commission, after considering the application, any staff report, written comments, and public testimony and closing the public hearing, may direct the planning director to issue the conditional use permit upon written findings that the application appropriately addressed all standards required by this chapter for the use or deny the permit upon written findings supporting the conclusion that the application does not appropriately address all required standards. The written decision shall be issued within 30 days of the planning commission's vote on the permit.

21.30.130. RRD—Appeals.

Parties of record may appeal actions of the planning commission under this chapter to the borough assembly sitting as a board of adjustment under KPB 21.20.

21.30.140. RRD—Nonconforming uses.

A. Determination. Nonconforming uses in effect on the date of initial adoption of KPB 21.30 are permitted to continue operation. Failure to apply for a determination after receiving written notice to do so from the borough shall result in termination of all right to continued operation as a nonconforming use and thus require full conformance with all provisions of this chapter for issuance of a conditional use permit. The application shall provide the same information as required for application for a conditional use permit, so that the borough will have record of the location, nature, and size and scope of nonconformance of all such uses, except that the provisions of KPB 21.30.050(B)(5) need not be met. The burden of proof that the nonconforming use existed before adoption of this chapter is on the applicant. If the planning director denies nonconforming use status the applicant shall obtain a conditional use permit or may appeal denial of nonconforming use status to the planning commission. There shall be no application fee for a nonconforming use determination. The notice provisions set forth in KPB 21.30.070(A)(1)(a) shall be followed, except no public hearing is necessary. The planning director may issue a decision regarding the nonconforming status based on the written application and any other written comments or evidence submitted.

B. Discontinuance. Any nonconforming use of land or building which has ceased by discontinuance for a period of two years shall thereafter conform to the provisions of this

ordinance. Lack of intent to cease use or abandon the use does not suspend the two-year time period after the use has been discontinued.

C. **Restoration Limitation.** Any nonconforming building or buildings housing a nonconforming use which has been destroyed or damaged by fire or explosion through no fault of the owner or by natural disaster or public enemy to the extent of sixty percent or more of its assessed valuation, shall thereafter conform to the provisions of this ordinance. Where more than forty percent of the assessed value of the building remains after such damage, such structure may be restored to the same extent the nonconforming use existed before such damage, and the restoration must be completed within two years of the date of the damage. The restoration must be completed within two years of the damage.

D. **Expansion Prohibited.** No nonconforming use of a building may be increased, intensified, or expanded or moved to any other part of the lot, tract, or parcel it occupies at the time this ordinance is adopted, nor may the use be moved to a parcel, lot or tract which is subject to this ordinance without a permit.

E. **Change of Use.** The use of a nonconforming building may be changed only to a use conforming to this chapter.

F. **Standards.** In order to qualify as an allowed nonconforming use a commercial or industrial use must be operational. The purchase, clearing, or improvement of land preparatory to the use is inadequate to qualify the parcel for nonconforming use status, unless the site has been prepared or construction completed to the extent that it is no longer feasible to use the property for a conforming use.

21.30.150. RRD—Prohibited use—Remedies.

A. New or expanded commercial or industrial use of lands or resources within the RRD without a permit or otherwise in violation of this chapter is prohibited.

B. Violations of this chapter shall be enforced pursuant to the provisions of KPB 21.24.

21.30.160. Mixed-use district.

A. All uses are allowed uses in the MUD without a permit, except uses regulated pursuant to KPB 21.25 must obtain the conditional land use permit authorized by KPB 21.25 in order to be located in the MUD.

B. Pursuant to KPB 5.____.____ as authorized by AS 29.45.050(f), a tax exemption is available to property owners in the MUD who enhance the exterior or aesthetic quality of land

or structure through alteration of the natural features of their land, new maintenance, repair, or renovation of an existing structure.

C. A parcel which lies partially within the MUD and the RRD shall be considered within the MUD.

21.30.170. Nikiski industrial district.

Within the NID the following uses are allowed: petroleum processing, manufacturing, and other industrial uses.

21.30.180. Conflicts with local laws.

A. If there is a conflict between the requirements of the RRD and other land use chapters within this title, the more restrictive law shall apply, unless the other land use chapter by its terms specifically exempts the use from this chapter's permit provisions. If it is necessary to acquire a permit within a local option district or pursuant to other provisions of this title as well as within the RRD, the applicant may make a simultaneous application for both permits, pay a single fee, and receive a single permit. The greater fee will be charged as the single fee.

B. Conditional land uses regulated pursuant to KPB 21.25, unless otherwise provided by this title, must apply for a permit in the RRD and MUD.

C. Material sites may only be located in the NID, MUD and RRD upon receiving a permit under the provisions of KPB 21.26.

D. CCRCs may only be located in the MUD and on parcels owned by the government in the RRD, and must be permitted under the provisions of KPB 21.27.

21.30.190. Other applicable laws.

Nothing in this chapter exempts an applicant from the need to abide by all applicable laws and obtain other local, state, or federal permits required for their use.

21.30.200. Policies and procedures.

The planning commission by resolution may adopt policies and procedures for the interpretation and enforcement of this chapter, consistent with the provisions of this chapter.

SECTION 4. This ordinance shall take effect 90 days after the date of its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS *
DAY OF *, 1999.**

William Popp, Assembly President

ATTEST:

Linda S. Murphy, Borough Clerk