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**KENAI PENINSULA BOROUGH
ORDINANCE 99-02**

**AN ORDINANCE REENACTING DEFINITIONS IN INDIVIDUAL CHAPTERS OF
TITLE 21 AND ADOPTING A SINGLE CHAPTER OF UNIFORM DEFINITIONS FOR
TITLE 21**

WHEREAS, various chapters of Title 21 contain definitions; and

WHEREAS, sometimes definitions are found at the beginning, middle, or end of chapters; and

WHEREAS, some chapters within Title 21 have no definitions; and

WHEREAS, this ordinance sets forth a uniform set of definitions for Title 21 in a single chapter providing consistency and ease of reference;

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

SECTION 1. That KPB 21.02.150, Definitions, is hereby repealed.

SECTION 2. That KPB 21.06.020, Definitions, is hereby repealed.

SECTION 3. That KPB 21.13.030, Definitions, is hereby repealed.

SECTION 4. That KPB 21.14.020, Definitions, is hereby repealed.

SECTION 5. That KPB 21.18.140, Definitions, is hereby repealed.

SECTION 6. That KPB 21.20.210, Definitions, is hereby repealed.

SECTION 7. That KPB 21.42.140, Definitions, is hereby repealed.

SECTION 8. That KPB 21.79.010 is hereby enacted to read as follows:

21.79.010. Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Terms that are not defined shall have the meaning ordinarily given the terms in the English language.

“Access” means a way to provide entry to property.

“Accessory use” means a use customarily incidental and subordinate to a principal use and located in the same building or on the same parcel.

“Aggrieved party” means a party adversely impacted by the decision of the board of adjustment who participated in the board of adjustment hearing either by written or oral presentation.

“APC” means an advisory planning commission.

The “appellant” is the party who pays the filing fee, if any, and initially files the notice of appeal.

The “appellee” for KPB 21.20 board of adjustment proceedings is the petitioner for a borough entitlement or recipient of a borough enforcement order where another party is the appellant. The appellee is the borough where the appellant is the petitioner for a borough entitlement or the recipient of a borough enforcement order.

“Arterial road” means a road usually on a continuous route primarily for through traffic although there may be direct access to lots or access through frontage roads.

“Automobile wrecking” means the dismantling of used motor vehicles or trailers, or storage or sale of parts from dismantled or partially dismantled, obsolete, or wrecked vehicles, including but not limited to automobiles, planes, and boats.

“Beauty parlor or salon” means a commercial establishment providing services such as hair treatment, manicures, and facials.

“Bed and Breakfast” means a transient occupancy commercial establishment with no more than 12 rooms, that caters to no more than 24 guests, that provides a continental or cook-and-serve breakfast as part of the purchase price of the overnight accommodations. The owner or operator of the establishment must live on the premises in order for such a transient occupancy establishment to be considered as a bed and breakfast as opposed to a hotel, motel, or other type of transient accommodation.

“Boardwalks” shall mean elevated walkways utilizing wooden planks as a surface.

“Breakaway wall” means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building.

“Buffer” means a strip or parcel of land designated and improved or maintained in either its improved or natural state to insulate or separate a particular land use from other land uses for safety, visual or audio screening purposes.

“Campground/fish camp/recreational vehicle park” means any lease or rental of the use of a lot for overnight accommodation of people outside of a dwelling unit or rental cabin authorized by KPB 21.42.

“Child care facility” means a place where child care is regularly provided for children under the age of 12 for periods of time that are less than 24 hours in duration and that is licensed pursuant to Alaska Statutes 47.35.005 et seq., excluding child care homes and child care group homes, as currently written or hereafter amended.

“Coastal high hazard area” means the area subject to high velocity waters due to wind, tidal action, storm, tsunami or any similar force, acting singly or in any combination resulting in a wave or series of waves of sufficient magnitude, velocity or frequency to endanger property and lives.

“Commercial” means any use operated for production of income whether or not income is derived, including sales, barter, rental, or trade of goods and services, and including all activities directly subsidiary.

“Conditional use” under KPB 21.18 shall mean a use that would not be appropriate without restrictions throughout the habitat protection area but which, if controlled as to number, area, location, relation to the habitat or method of operation, would not cause or lead to significant erosion, destruction of wetlands or riparian habitat, or result in or increase ground or water pollution.

“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.

“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.

“Cut bank” shall mean banks of the Kenai River with exposed soil surface that have occurred from natural or manmade causes whether the exposed surface extends to the high water mark or not.

“De novo hearing” means hearing a matter anew as if it had not been heard before and as if no decision had been previously rendered.

“Development” under KPB 21.06 means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

“Discontinuation” of a permitted or nonconforming use means the cessation of the use, regardless of the user’s intent, for the period of two years or as otherwise prescribed by permit, ordinance or law.

“Dressmaking” means sewing or mending articles of clothing.

“Dwelling” means a building designed or used as living quarters or private residence for people.

“Erosion” shall mean significant sloughing, washout, or discharge of soil arising from manmade sources or causes.

“Ex parte” means by or for one party; done for, on behalf of, or on the application of, one party only.

“Family child care home” means a private residence where care, protection, and supervision are provided for a fee at least twice a week to no more than five children at one time including children of the adult provider.

“Federal Emergency Management Agency” is the agency responsible for administration of the National Flood Insurance Program.

“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.

“Flood hazard area” means the land area covered by the flood, having a 1 percent chance of occurring in any given year. See also “100-year flood.”

“Flood Insurance Rate Map (FIRM)” means the map of the community issued by the FEMA which delineates the area subject to the 100-year flood, the water surface elevation of the base flood and the flood insurance rate zones.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height, usually 1 foot, at any point.

“Floor area” means the total of each floor of a building within the surrounding outer walls excluding vent shafts and courts.

“Four-plex” means a building with four dwelling units each with self-contained bathroom and kitchen facilities.

“Front yard” means that portion of a lot which is bounded by a dedicated public right-of-way.

“Fuel storage tank” shall mean any vessel for the storage of petroleum based fuels including gasoline, diesel, kerosene and heating oil having a liquid volume of 200 gallons or more.

“Funeral parlor, funeral home, or mortuary” means a building or part of a building used for human funeral services which may include embalming and preparing the dead for burial; the performance of autopsies and other surgical procedures; the storage of caskets, funeral urns, and other related funeral supplies; the storage of funeral vehicles; the storage of dead bodies before cremation or burial; and the performance of funeral services.

“Fugitive dust” means dust which travels outside the boundaries of the premises upon which the dust is generated.

“Garage, public” means any garage other than a garage used exclusively as an accessory to a residence available to the public commercially operated, and which is used for storage, repair, rental, greasing, washing, servicing, adjusting or equipping automobiles, boats, airplanes, or other vehicles.

“Gratewalks” shall mean elevated light penetrating (ELP) walkways utilizing some variety of open grate material as a surface.

“Ground or water pollution” shall mean the discharge, application, spread or release of chemicals, toxic materials, fuels, pesticides, petroleum based fuels on or into the soil and waters within the habitat protection area.

“Hazardous chemical” means a chemical that is a physical hazard or a health hazard.

“Hazardous substance” means substances defined at AS 46.08.900(6) and AS 46.09.900(4) as amended.

“Hazardous waste” means all waste substances defined by AS 29.35.590(8), and 18 AAC 63.900 as amended.

“Heavy industrial” means the manufacture of materials or products predominantly from extracted or raw materials, or a use engaged in storage of or manufacturing processes using flammable or explosive materials, or storage or manufacturing processes that involve hazardous or commonly-recognized offensive conditions.

“Home occupation” means an accessory commercial occupation conducted in a dwelling unit by the resident in accordance with the standards set forth in the applicable home occupation ordinance.

“Hotel” means a facility offering transient lodging accommodations on a daily rate to the general public and providing additional services, such as restaurants, meeting rooms, and recreational facilities.

“Industrial” means any activity which includes manufacturing, processing, warehousing, storage, disposal, distribution, shipping, and other related uses. Examples of industrial uses include, but are not limited to asphalt and cement batch plants, energy generating plants, oil and gas pipeline pumping stations, oil and petrochemical refining or liquefaction processes, septic or sewage processing or treatment facilities, and other uses or activities of similar character and impact.

“Junkyard” means a privately-owned outdoor location where junk and or salvage is gathered and stored. Junk includes but is not limited to any worn out, wrecked, scrapped partially- or fully-dismantled discarded tangible material, combination of materials or items, including motor vehicles and machinery missing major component parts, metal, rags, rubber, paper, plastics, and building materials. Junk may include any other materials which are not being altered or reconditioned to be used for their original purposes. See “salvage.”

“Kenai River” shall mean the main stem of the river from and including Kenai Lake to the mouth including Skilak Lake. The main stem shall include all sloughs, channels, boat basins, distributaries, and lagoons. For the purpose of this chapter, the mouth shall be described as the western most section line common to Section 5 and Section 8, T5N, R11W, Seward Meridian.

“Kennel, commercial” means a building or land where grooming, breeding, boarding, training or selling of animals is conducted as a business.

“Landfill” means a disposal site employing an engineering method of disposing of solid wastes in a manner that minimizes environmental hazards by spreading, compacting to the smallest volume, and applying cover material over all exposed waste. Landfills are not sites for the disposal of hazardous waste.

“Letter of interest” is a letter sent to the mayor stating there is interest in starting the process of forming an advisory planning commission in an area pursuant to KPB 21.02.

“Light industrial” means a use engaged in the manufacture predominantly from previously-prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products, but excluding basic industrial processing.

“Logging” shall mean removal or cutting down more than 50 trees per acre that have a breast diameter height of 6" or more.

“Lot” means an individual parcel of land legally subdivided and recorded according to the borough code of ordinances and the Alaska Statutes.

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than the basement area, is not considered a building’s lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter found at Section 21.06.050(B)(1).

“Manufactured home” means a structure, transportable in 1 or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term “manufactured home” also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term “manufactured home” does not include park trailers, travel trailers, and other similar vehicles.

“Manufacturing” means processing or making a raw material into a finished product, processing a good into a further finished product, or the processing of a product typically with the use of industrial machines, includes sawmills, seafood processing facilities, and other uses or activities of similar character and impact.

“Mean high water line” or “ordinary high water line” shall have the definition given in 11 AAC 53.900(15) as it currently exists or as it may be renumbered or revised.

“Meeting” is defined in AS 44.62.310(h)(2)(B) as now enacted or as may be hereinafter amended.

"Millinery" means an establishment where hats are made or created.

"Mobile home" means any vehicle or similar portable structure having no foundation other than wheels, jacks and/or skirtings designed or constructed to permit permanent occupancy.

"Mobile home park" means any plat or ground or group of lots or parcels under single ownership or unified management upon which 4 or more mobile homes or transportable dwelling units have been located; provided, however, that if the density of mobile homes and/or transportable dwelling units does not exceed 4 per acre and no charge is made for such accommodations the development shall not be considered a mobile home park.

"Multi-purpose senior center" is a facility where persons 60 years of age or older are provided with services and activities suited to their particular needs. The services and activities may include, but are not limited to, health examinations, legal assistance, recreation programs, general social activities, telephone reassurance programs, nutrition classes, meals at minimum cost, counseling, protective services, programs for shut-ins and education programs, and that complies with Alaska Statutes 47.60.010-47.60.090, as currently written or hereafter amended.

"Natural vegetation" means vegetation of the type, kind and size typically native to the general area, whether appearing at the site in its original state or having been introduced.

"Nonconforming use" means a lawful use of land that does not comply with the current use regulations for its district but which complied with applicable regulations at the time the use was established.

"Nuisance" means ongoing or repeated personal conduct or use of one's property either real or personal in a manner that interferes with other's lawful activities for at least 30 consecutive minutes. Activities which may constitute a nuisance include, but are not limited to, smoke, fumes, noise, vibrations, odor, heat, or glare.

"100-year flood" (also called "regulatory flood," "base flood" or "special flood hazard area") means a flood of a magnitude which can be expected to occur on an average of once every 100 years. It is possible for this size flood to occur during any year, and possibly in successive years. It would have a 1 percent chance of being equalled or exceeded in any year. Statistical analysis of available streamflow or storm records, or analysis of rainfall and runoff characteristics of the watershed, or topography and storm characteristics are used to determine the extent and depth of the 100-year flood.

"Ordinary high water mark" shall have the definition given in 11 AAC 53.900(23) as it currently exists or as it may be renumbered or revised.

"Party of record" means:

- a. The applicant before the planning commission,

- b. Any person or government agency affected by the decision who appeared before the planning commission with either an oral or written presentation;
 - (1) A signature on a petition does not qualify the signatory as a party of record without a separate oral or written presentation to the planning commission.
- c. The person to whom an enforcement order is issued.

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

“Petition of interest” is a petition form, prepared by the planning department, to be used to obtain signatures of residents interested in forming new a APC under KPB 21.02.

“Planning department” means the planning department of the Kenai Peninsula Borough.

“Planning director” is the principal executive officer of the planning department as defined in KPB 2.36 or the planning director’s designee.

“Principal use” means the major or predominate use of a lot or parcel of land.

“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.

“Private school” is a school comprised of kindergarten through 12th grade, or any combination of those grades, that does not receive direct state or federal funding and that complies with either Alaska Statute 14.14.030 or 14.45.100-14.45.130, as currently written or hereafter amended.

“Prominent place” means a public location visited during normal business hours by most residents within a community.

“Public school” is a school comprised of kindergarten through 12th grade, or any combination of those grades, that is operated by the State of Alaska or any political subdivision of the state.

“Rear yard” means that portion of a lot bounded by the lot line which is opposite and most distant from the front yard lot line.

“Restaurant” means a commercial establishment selling unpackaged food to the customer in a ready-to-consume state in individual servings or containers.

“Riparian habitat” shall mean the areas within and adjacent to the river containing spawning and rearing habitat for salmon or that provide immediate cover or stability for salmon and eggs at all stages of development.

“Salvage” means

- a. used material which is saved from disposal for future use or recycling (when used as a noun);
- b. the act of saving material from waste or disposal for the purpose of reuse or recycling (when used a verb).

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

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

“Senior housing project” means senior housing as defined for purposes of construction or operation in 15 Alaska Administrative Code 151.950(c), as currently written or hereafter amended.

“Service station” means any building, structure, premises, or other space used primarily for the retail sale and dispensing of motor fuels, tires, batteries, and other small accessories; the installation and servicing of such services which do not customarily require the services of a qualified automotive mechanic.

“Side yard” means that portion of a lot bounded by a lot line which is neither a front yard nor rear yard lot line.

“Soil erosion” shall mean the increased movement of soils that occurs as a result of human activities or development.

“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.

“Start of construction” includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include

excavation for a basement, footings, piers, or foundation or erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

“Structure” means a walled and roofed building including liquid or gas storage tank, as well as a manufactured home that is principally above ground.

“Structure” shall mean anything which is constructed, erected or moved to or from any premises and which is located above, on, or below the ground, including buildings, roads, signs, billboards, satellite antennas and other communication structures, fences, and mobile homes.

“Substantial evidence” means relevant evidence a reasonable mind might accept as adequate to support a conclusion.

“Substantial improvement” means any remodeling, repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started or, if the property has been damaged and is being restored, before the damage occurred.

“Substantially complete” shall mean essentially completed and available for the owner’s beneficial use for the purpose and in the manner intended for the structure.

“Telecommuting” means using a computer terminal connected by a telephone line to a central office or computer.

“Toxic” means those substances or substance combinations, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through the food chains, will, on the basis of information available, cause death, disease, behavioral or physiological abnormalities, malignance, genetic mutation, or physical deformations, in affected organisms or their offspring.

“Transportable dwelling unit” means any mobile home, camper, bus or other vehicles, trailers or any other moveable unit occupied for use as a dwelling or sleeping quarters for 1 or more persons.

“Tutoring” means offering lessons or instruction on a one-on-one basis for a fee.

“Variance” means a grant of relief from the requirements of this chapter, which permits construction in a manner that would otherwise be prohibited by this chapter.

“Wetlands” shall have the meaning given in 16 USC § 1302 as applied to land within the habitat protection area.

SECTION 2. That this ordinance take effect immediately upon enactment.

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

William Popp , Assembly President

ATTEST:

Linda S. Murphy, Borough Clerk