

Introduced by:	Mayor
Date:	09/07/99
Hearing:	10/12/99
Action:	Enacted
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 99-54**

AN ORDINANCE ESTABLISHING THE NORTH FORK ONE ZONING DISTRICT

WHEREAS, Chapter 21.08 of the Kenai Peninsula Borough Code provides for property owners to petition the assembly for a greater restriction on land use than otherwise provided in Title 21 of the code; and

WHEREAS, Goal 5.4 of the Kenai Peninsula Borough Comprehensive Plan is to maintain the freedom of property owners in rural areas of the borough to make decisions and control use of their private land; and

WHEREAS, in April 1999 property owners in the Anchor Point - North Fork area petitioned the borough for greater land restrictions in compliance with Chapter 21.08;

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

SECTION 1. That a new Chapter 21.40 to the Kenai Peninsula Borough Code is enacted to read:

Chapter 21.40 North Fork One Zoning District

- 21.40.010. Purpose.
- 21.40.020. Title.
- 21.40.030. Area.
- 21.40.040. Application.
- 21.40.050. Zoning map.
- 21.40.060. Nonconforming structures.
- 21.40.070. Nonconforming uses.
- 21.40.080. Principal permitted uses.
- 21.40.090. Development standards.
- 21.40.100. Home occupations.
- 21.40.110. Rezones and amendments.
- 21.40.120. Variances.
- 21.40.130. Public hearings—Notifications.
- 21.40.140. Enforcement.
- 21.40.150. Appeals.
- 21.40.160. Subdivisions and replats.

21.40.170. Definitions

21.40.010. Purpose.

The purpose of this chapter is to provide a safe, quiet, aesthetic residential neighborhood through land use regulation.

21.40.020. Title.

This chapter shall be titled the "North Fork One Zoning District."

21.40.030. Area.

A. Within the rural district, the North Fork One zoning district is established and encompasses the parcels set forth in this section within the Homer Recording District, Third Judicial District, State of Alaska:

B. The following parcels comprise the single-family residential (R-1) zone:

A parcel of land located in the SE 1/4 of the NE 1/4 of Section 3, T5S, R15W, S.M. Alaska;

A parcel of land located in the NE 1/4 of the NE 1/4 of Section 3, T5S, R15W, S.M. Alaska;

A parcel of land located in the W 1/2 of the NW 1/4 of Section 2, T5S, R15W, S.M. Alaska;

Trident Subdivision, Block 1, Lots 1-8, according to Plat 76-69 filed in the Homer Recording District; and

Spruceridge Subdivision, Tracts 5-7, according to Plat 76-49 filed in the Homer Recording District.

21.40.040. Application.

The regulations set by this chapter shall apply uniformly to the district.

21.40.050. Zoning map.

The Kenai Peninsula Borough base maps (scale 1:500) shall be the official zoning map. The official zoning map shall show the boundaries of this district.

21.40.60. Nonconforming structures.

Any structure, which existed prior to the adoption of this chapter but does not meet the provisions of this chapter, shall be allowed to continue subject to the following conditions:

A. No alterations may be made which increase the nonconformity;

B. Any nonconforming building which has been destroyed or damaged by fire, explosion, act of God, or by a 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 nonconforming use as existed before such damage.

21.40.070. Nonconforming uses.

A. Determination. Nonconforming uses in effect on the date of initial adoption of KPB 21.40 are permitted to continue operation. 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 must qualify for a home occupation permit in order to continue the use. Failure to apply for a nonconforming use determination within 60 days after receiving written notice from the borough shall result in termination of all right to continued operation as a nonconforming use and require full conformance with all provisions of this chapter. Written notice of the nonconforming use application requirements shall be given by certified mail or personal delivery to the property owner or operator of the nonconforming use. If notice cannot effectively be given by these methods, the planning director may post the subject property.

B. Decision. The planning director shall give notice of the application to property owners within the district. The notice shall include a summary of the application, a vicinity map, and a deadline for submitting written comments or evidence regarding the existence of the use prior to making a determination. The planning director shall issue a decision regarding the nonconforming status based on the written application, written comments, or evidence regarding the existence of the use prior to the adoption of this chapter. The planning director's decision may be appealed to the planning commission within 15 days of distribution of the decision pursuant to KPB 21.20.

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

D. Expansion Prohibited. A nonconforming use of a building may not be increased, intensified, or expanded or moved to any other part of the lot, tract, or parcel it occupies at the time this chapter is adopted, nor may the use be moved to a parcel, lot or tract which is subject to this chapter.

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 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.

21.40.080. Principal permitted uses.

The parcels set forth in KPB 21.40.030(B) shall be used only for single family dwellings to provide for a safe, aesthetic, stable and quiet residential environment, except as otherwise provided by this chapter.

21.40.090. Development standards.

A. There shall be a 20 foot building setback from all dedicated rights of way.

B. Structures commonly associated with residential dwellings, i.e. garages, storage sheds, greenhouses, workshops, and a single, noncommercial guest house per parcel are allowed within the district.

C. Minimum lot size shall be 40,000 square feet.

21.40.100. Home occupations.

A. Home occupations permitted. Home occupations are permitted within the zoning district on residential lots after a public hearing, subject to meeting the standards and obtaining the permit required by this section.

B. Home occupations prohibited. The following activities are prohibited within the district, and may not be permitted as home occupations.

1. Automobile wrecking;
2. Barber shops and beauty parlors;
3. Campground/recreational vehicle park;
4. Dance studio;
5. Funeral parlors, funeral homes, or mortuaries;
6. Heavy and light industrial uses;
7. Hotel/motel; a bed and breakfast is not a prohibited use, and may be permitted as home occupation as long as the standards and conditions set forth in KPB 21.40.100© and (D) are met.
8. Junkyard whether or not commercial;
9. Kennel/stable whether or not commercial;
10. Licensed day care;
11. Private clubs.
12. Repair, paint, or service station;
13. Restaurant;
14. Sand, gravel, or material site, commercial;
15. Sawmill/lumber yard; and
16. Storage yard/three or more commercial vehicles;

C. Permit-decision; findings. Any proposed home occupation that is not specifically prohibited by subsection (B) shall be likened to the nearest use in terms of impact on the neighborhood and properties and residents within the zoning district. Permitted home occupations must not detract from the quiet, and aesthetic qualities of a single-family residential neighborhood nor negatively impact property values and the health, safety, and welfare of the district's residents. The planning commission may grant a permit upon finding that the home occupation will not create negative impacts in the zoning district similar to those caused by uses prohibited as home occupations. If the proposed home occupation is found to have similar impacts as a prohibited use the planning commission may deny the permit. The home occupation must be able to meet the conditions set forth in KPB 21.40.100 in order to be permitted. However, the planning commission may grant the permit if it finds that placing conditions on the permit sufficiently negates the home occupation's negative impacts and will aid compliance with the conditions set forth in KPB 21.40.100(D). Any permit approval or denial must be accompanied by written findings of fact and conclusions.

D. Mandatory permit conditions. Upon finding that the home occupation will not violate the standards set forth in Section 21.40.100(C), the planning commission may grant a permit subject to the following conditions:

1. Only permanent occupants of the 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;
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

two square feet in area, non-illuminated and mounted flat against the wall of the principal building;

4. Sewerage, water use, parking, and traffic is not generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood; 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 that creates noise, vibration, glare, fumes, odors, dust, or commercial electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the lot, or causes fluctuations in line voltage off the lot;

6. Outdoor storage of materials or equipment is not required for the home occupation;

7. There is no storage of toxic, explosive, or other dangerous or hazardous materials, substances, or chemicals upon the premises.

8. A home occupation, including studios or rooms for instruction, shall provide off-street parking area adequate to accommodate needs created by the home occupation, however the home occupation shall generate no more vehicles to the premises than allowed by the planning commission.

9. All borough taxes related to the home occupation and underlying realty shall remain current throughout the life of the permit.

10. An application for renewal of the permit shall be filed every five years or in accordance with current Borough code.

11. The planning commission may require additional conditions consistent with the provisions of KPB 20.40.100© and (D) that protect the health, safety and welfare of residents in the district.

E. Permit application. An applicant for a home occupation may obtain a permit application from the planning department. The application shall include at a minimum the name, physical and mailing address, and phone number of the applicant; the type of home occupation; equipment or machinery used in the occupation; a borough tax compliance certificate; a parking and traffic circulation plan; a drawn site plan; photographs of the premises, any requested variances, and additional information required to aid the planning commission's review. Staff may perform a site inspection as part of the application and compliance processes. An applicant who is a resident, but not the owner, of the premises must have the owner's notarized permission to proceed with the home occupation. An application fee may be established by planning commission resolution.

F. Activities not covered. A home occupation permit is not required for a home office, tutoring, or telecommuting which involves no outside sign, no increase in traffic to the premises, violates none of the conditions set forth in 21.40.100 (D) and creates no visits by members of the public to the home.

G. Permit renewal. Every five years a home occupation permittee shall apply for a renewal permit. If the planning director determines that the permittee continues to meet the standards set forth in KPB 21.40.100, the permit shall be granted. If it appears the permittee no longer meets the standards set forth in KPB 21.40.100, the planning director shall set the matter for a public hearing before the planning commission with notice of the hearing issued to property owners within the district. If a public hearing is required, a renewal fee is also required as established by planning commission resolution. The planning commission shall make a determination whether the permittee

continues to meet the KPB 21.40.100 standards.

21.40.110. Rezones and amendments.

- A. Amendments to this zoning district may be initiated by:
1. The Borough Assembly or the Planning Commission;
 2. Any property owner within the district provided that a petition is submitted bearing signatures of a majority of property owners within the zoning district.
 3. An owner of property contiguous with the boundaries of the local option district may petition for an amendment to the district to include his property.
- B. Petition forms shall be provided by the Borough Planning Department. A fee shall be required as established by planning commission resolution. A hearing will be held before the Planning Commission on the amendment after notice to all owners within the district. If the amendment will not have a negative impact on the residential character of the district, the Planning Commission may recommend approval of the amendment to the assembly.

21.40.120. Variances.

Variances from the requirement of this chapter may be granted pursuant to the provisions of 21.05.

21.40.130. Public hearings -- Notification.

Public hearings and notification of surrounding property owners shall be done in conformance with Chapter 21.11 of the borough code, unless otherwise specified in this chapter. Notice in conformance with KPB 21.11.020 of home occupation permit applications shall be given to real property owners within the district.

21.40.140. Enforcement.

This chapter may be enforced by all remedies made available by KPB 21.24.

21.40.150. Appeals.

Appeals of planning commission decisions regarding nonconforming determinations or permits granted or denied under this chapter shall be taken to the assembly pursuant to KPB 21.20.

21.40.160. Subdivisions and replats.

Subdivisions and replats are allowed within the district in conformance with KPB Title 20. However, the regulations set forth in this chapter remain applicable to all parcels created by subdivisions and replats unless an amendment or rezone is permitted pursuant to KPB 21.40.110.

21.40.170. Definitions.

A. In this chapter, unless the context requires otherwise, the singular shall include the plural, the masculine shall include the feminine, and terms not defined by KPB 21.40.070 shall be given their common uses and meaning.

B. The following words shall be defined and construed as set forth below:

"Accessory use or structure" means a use or structure on the same lot and of a nature customarily incidental and subordinate to the principal use or structure. This definition also applies to multiple

lots or parcels under contiguous ownership.

"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/barber shop" means a commercial establishment providing services such as hair cuts and hair treatment, manicure, and facials.

"Bed and breakfast" means commercial lodging and at least one meal per day offered in a private home to no more than five guests per day.

"Campground/recreational vehicle park" means a lease or rental of the use of a lot for overnight accommodation of people outside of a dwelling unit or rental cabin.

"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.

"Dance studio" means a commercial operation for the purpose of gathering people for dance or dance instruction.

"Day care, licensed" means an occupied home to which the licensing requirements of the state of Alaska are applicable which is used and maintained to provide care, supervision, and guidance, for less than 24 hours per day, for children or adults.

"Dwelling, single family" means a detached building constructed on a permanent foundation, designed exclusively for occupancy by one family and having housekeeping facilities for only one family, and constituting one dwelling unit.

"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.

"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.

"Industrial, heavy" 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 waste, chemicals, substances, or conditions.

"Industrial, light" 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.

"Home occupation" means an accessory commercial occupation conducted in a dwelling unit in accordance with the standards set forth in KPB 21.40.100(D).

"Home office" means a room in a dwelling place, or accessory buildings to a dwelling place, where commercial activity is conducted.

"Hotel" means a commercial operation consisting of guest rooms which offers transient lodging accommodations to the public and may provide additional services such as restaurants, meeting rooms, and recreation facilities.

"Junkyard" means a privately-owned outdoor location where junk and or salvage is gathered, stored, exchanged, bought, or sold. 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."

"Kennel" means a premises where a person owns or keeps four or more dogs over the age of six months in the operation of a business, which includes buying, selling, training, boarding, grooming, or breeding.

"Lodging" means overnight accommodation or sleeping quarters.

"Motel" means a group of attached or detached buildings, containing individual sleeping or living units offered as temporary lodging for compensation and providing at least one parking space for each unit located on the same premises and convenient to each unit. "Motel" includes auto courts and motor lodges. (see hotels)

"Planning Director" means the planning director of the Kenai Peninsula Borough or the planning director's designee.

"Private club" means a corporation, association, or organization of persons owning or operating a facility or building for social, educational, recreational, or other special purposes not customarily carried on as a business, whether or not for profit.

"Repair or paint station" means a place where the following services may be carried out: general

repair, engine rebuilding or repair, reconditioning or rebuilding of motor vehicles; and collision service including body, frame and fender straightening and repair, painting and undercoating of motor vehicles or boats.

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

"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 disposed for the purpose of reuse or recycling (when used as a verb).

"Sand, gravel, or material site" means an area used for extracting, quarrying, or conditioning gravel or substances from the ground that are not subject to permits through the state location (mining claim) system (e.g. gold, silver, and other metals) nor energy minerals including but not limited to coal, oil, and gas.

"Sawmill/ lumberyard" means a commercial establishment that saws logs, by hand or machine, into boards, planks, or other structural members known as lumber, and/or sells lumber.

"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.

"Sign" means any device, structure, fixture, or placard using graphics, symbols, and/or written copy designed primarily for the purpose of advertising or identifying any establishment, products, goods or services.

"Stable" means a premises where a person owns or keeps two or more horses over the age of six months in the operation of a business which includes buying, selling, trading, bartering, training, bordering, leasing, or breeding.

"Storage yard" means an area where vehicles or equipment are bought, sold, exchanged or stored.

"Structure" means anything that is constructed or erected and located on or under the ground. For purposes of minimum setback requirements under KP.B 21.40 the following items are not considered structures: fences; retaining walls; parking areas; roads, driveways or walkways; window awnings; a temporary building when used for 30 days or less; utility poles and lines; guy wires; clothes lines; flag poles; planters; incidental yard furnishings; water wells; monitoring wells and tubes; patios, decks, or steps less than 18 inches above average grade.

"Telecommuting" means working in the home by using a computer terminal connected by a telephone line to a central office or central computer.

"Tutoring" means offering lessons or instruction to no more than four pupils in the same session on

a commercial basis.

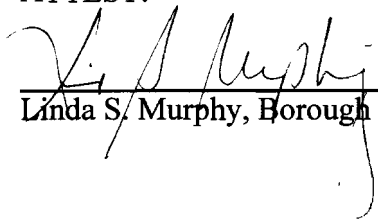
SECTION 2. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 12TH DAY OF OCTOBER, 1999.



Ronald Wm. Drathman, Assembly President

ATTEST:



Linda S. Murphy, Borough Clerk

