

Introduced by: Mayor  
Date: 11/18/08  
Shortened Hearing: 12/02/08  
Action: Withdrawn by Sponsor  
Vote:

**KENAI PENINSULA BOROUGH  
ORDINANCE 2008-36**

**AN ORDINANCE PLACING A MORATORIUM WITHIN THE SEWARD-BEAR  
CREEK FLOOD SERVICE AREA ON THE ISSUANCE OF PLATS UNDER KPB  
TITLE 20, SUBDIVISIONS, AND PERMITS UNDER KPB CHAPTER 21.06,  
FLOODPLAIN MANAGEMENT, FOR 12 MONTHS PENDING ADOPTION OF  
REGULATIONS**

- WHEREAS,** flooding occurs in the Seward-Bear Creek Flood Service Area (SBCFSA) annually; and
- WHEREAS,** a federal disaster has been proclaimed within SBCFSA three times since 1986; and
- WHEREAS,** the Flood Insurance Rate Maps (FIRMs) are outdated and inaccurate; and
- WHEREAS,** the Federal Emergency Management Agency (FEMA) is in the process of preparing new FIRMs; and
- WHEREAS,** there has been millions of dollars in damage to private properties and public infrastructure over the past 20 years caused by flooding events; and
- WHEREAS,** gravel deposits are steadily and rapidly increasing in SBCFSA streams, and the risk of flooding and related loss increases; and
- WHEREAS,** subdivision and development in SBCFSA has increased dramatically since 1996, increasing flood loss potential; and
- WHEREAS,** FEMA Disaster Assistance only provides a minimal amount of funding to repair damages to a home not covered by insurance to return it to a safe, sanitary, and functioning condition, but not to rebuild the home to current codes; and
- WHEREAS,** merely returning the structures to their preexisting condition results in potential for repeated flood damage and destruction to the same properties; and
- WHEREAS,** according to the 2005 KPB comprehensive plan enforcement of floodplain requirements is primarily through voluntary compliance and assistance from mortgage companies since the borough does not require building permits or inspections; and

**WHEREAS,** the City of Seward has permitting regulations in place to assist with flood issues in that area of the SBCFSA; and

**WHEREAS,** KPB Chapter 21.06 contains the minimal regulations allowed by FEMA for floodplain management, and these regulations have not proved an effective tool for mitigating flood damage in the SBCFSA; and

**WHEREAS,** allowing further subdivision within the SBCFSA encourages further development which will be unprotected from flooding; and

**WHEREAS,** the administration is considering and researching a number of options to permanently reduce flood hazard in the SBCFSA; however, it will take time to adopt and implement these measures; and

**WHEREAS,** the implementation strategies of the 2005 All - Hazard Mitigation Plan include enhancing floodplain permit compliance, improving floodplain mapping, controlling flood damage, revising floodplain development and subdivision and road construction standards, implementing alternative floodplain management strategies, protecting the floodplain, and enhancing emergency preparedness; and

**WHEREAS,** at its meeting of \_\_\_\_\_ the Planning Commission recommended \_\_\_\_\_; and

**WHEREAS,** at its meeting of November 17, 2008, the SBCFSA Board recommended \_\_\_\_\_.

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

**SECTION 1.** Processing and approval of subdivision plats pursuant to KPB Title 20 is suspended until November 17, 2009.

**SECTION 2.** Processing and approval of permits under KPB Chapter 21.06, Floodplain Management, is suspended until November 17, 2009.

**SECTION 3.** Federal, state, and municipal public projects are exempt from this ordinance.

**SECTION 4. A.** Stream maintenance and restorative projects may be exempt from this ordinance upon recommendations by a hydrologist through the Public Works Director approved by the SBCFSA. The permit applications must still receive approval under the applicable code after approval by the SBCFSA board.

- B. Approval of the service areas board required by Section 4(A) prior to processing a permit application is waived if the mayor has declared a local disaster.
- C. Approval by the service area board required by Section 4(A) is waived if the mayor upon recommendation of the public works director or hydrologist declares time is of the essence to process the permit application and perform the stream work to protect life and property.

**SECTION 5.** KPB 21.24 is amended to add a new section as follows:

**21.24.100. Seward-Bear Creek Flood Service Area moratorium violations and enforcement.**

- A. Citation. A citation may be issued for violations of Ordinance 2008-\_\_\_\_, placing a moratorium within the Seward-Bear Creek Flood Service Area on the issuance of plats under KPB Title 20, permits under KPB CHAPTER 21.06, Floodplain Management, and permits under KPB 21.18 Anadromous Stream Habitat Protection Ordinance. The citation may be issued to the property owner, his agent, contractor, tenant, or lessee of property or building on property where the violation occurs. The citation shall state the fine, the ordinance or section violated, that the recipient is entitled to a hearing to contest the citation, and that the recipient is allowed to testify and present evidence and witnesses. The citation shall set forth the procedures the recipient need follow in responding to the citation, and consequences of failure to respond.
- B. Enforcement order. The citation may be issued in addition or independent of an enforcement order under KPB 21.24.050 to prohibit or prevent violation of Ordinance 2008-\_\_\_\_. The hearing and appeal for citations and enforcement orders related to violations of Ordinance 2008-\_\_\_\_ shall be as set forth in this section. Violation of an enforcement order is subject to a \$500 fine and is a separate violation from the violation which caused the enforcement order to be issued. Each day a violation continues shall constitute a separate and distinct violation.
- C. Answer; payment. The recipient may respond to the citation or enforcement order by paying the fine within 10 days of issuance of the citation or enforcement order or requesting a hearing on the citation form within 10 days of citation issuance. Failure to respond to a citation or enforcement order shall result in a fine of \$500 per day as long as the violation continues. Each day a violation continues shall constitute a separate and distinct violation.

- D. Hearing. The planning director shall set the hearing giving at least 15 days' notice of the date, time, and place of the hearing. The director may delegate the role of hearing officer to another employee. For good cause the director may delay the date of hearing. The director shall set the agenda for the hearing and may call witnesses and request additional evidence. The director may allow for telephonic participation in the hearing. If necessary the director may continue the hearing to gather additional evidence or take the subject matter of the hearing under advisement. Upon the presentation of the testimony, evidence, and witnesses, the director shall issue a written decision with supporting findings and conclusions within five business days of the hearing conclusion. The director may uphold the charge and fine, modify the charge, dismiss, or reduce the fine and issue whatever related compliance orders are necessary.
- E. Appeal. The recipient may appeal the director's decision to the planning commission within 15 days of the date the written decision is issued. Procedures for the planning commission hearing process shall be established by planning commission resolution. The recipient may appeal the planning commission decision pursuant to Part 6 of the Alaska Rules of Appellate Procedure to the Superior Court in Kenai, Alaska.
- F. Collection. Unpaid fines are collectible through filing actions in the trial courts of the State of Alaska and may include judgments for the fine, costs, and attorneys fees. Fines for charges appealed to superior court are subject to collection unless the appellant receives a stay pending appeal from the court. Arrangements for payment plans may be made by the director if the director determines it is in the borough's best interest.
- G. Pursuant to KPB 21.24.080, the remedies available in this section are cumulative to other remedies available to the borough under this chapter.

**SECTION 6.** The effective date of this ordinance is retroactive to November 18, 2008.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \* DAY OF \* 2008.**

\_\_\_\_\_  
Milli Martin, Assembly President

ATTEST:

\_\_\_\_\_  
Johni Blankenship, Borough Clerk

Yes:

No:

Absent: