

Introduced by: Mayor  
Date: 12/02/08  
Hearings: 01/06/09, 01/20/09  
Action: Failed Introduction  
Vote: 0 Yes, 7 No, 2 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2008-37**

**AN ORDINANCE PLACING A MORATORIUM WITHIN THE ROAD SERVICE AREA AND SEWARD-BEAR CREEK FLOOD SERVICE AREA OUTSIDE THE SEWARD CITY LIMITS ON THE ISSUANCE OF PLATS UNDER KPB TITLE 20, SUBDIVISIONS, PERMITS UNDER KPB CHAPTER 21.06, FLOODPLAIN MANAGEMENT, AND RIGHT-OF-WAY CONSTRUCTION PERMITS ISSUED UNDER KPB CHAPTER 14.40, FOR 12 MONTHS PENDING ADOPTION OF REGULATIONS**

- WHEREAS**, flooding has occurred 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- WHEREAS**, the Flood Insurance Rate Maps (FIRMs) are outdated and inaccurate; and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 have 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 the area of the SBCFSA within city limits; 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,** a temporary moratorium will maintain the status quo and allow currently permitted projects and activities to continue but prevent new development that will be subject to flood loss; and

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

**WHEREAS,** at its meeting of \_\_\_\_\_, the SBCFSA Board recommended ; and

**WHEREAS,** at its meeting of November 25, 2008, the RSA Board recommended \_\_\_\_\_.

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

**SECTION 1.** Processing and approval of subdivision plats within the SBCFSA outside the Seward city limits pursuant to KPB Title 20 is suspended until January 19, 2010, unless the moratorium is terminated in whole or in part by the assembly prior to that date. Subdivisions which remove lot lines or make minor revisions to lot lines to resolve encroachments are exempt from this moratorium.

**SECTION 2.** Processing and approval of permits within the SBCFSA outside the Seward city limits under KPB Chapter 21.06, Floodplain Management, is suspended until January 19, 2010, unless the moratorium is terminated in whole or in part by the assembly prior to that date. There shall be no construction within the FIRM mapped floodplain, nor the 1986 and 1995 KPB GIS mapped flood data. A map showing this floodplain and flood data and a list of properties represented by this map shall be retained by the planning department and made available to the public. If any portion of a lot is included in the flood data mapped area the entire lot shall be subject to the moratorium.

**SECTION 3.** Processing and approval of right-of-way construction and maintenance permits pursuant to KPB 14.40 within the SBCFSA outside the city limits of Seward is suspended until January 19, 2010, unless the moratorium is terminated in whole or in part by the assembly prior to that date.

**SECTION 4. A.** **Mandatory Exemptions.** The following activities are exempt from the moratorium:

1. Federal, state, and municipal public projects;
2. Utility installation and removal;
3. Replacement of pre-existing borough-permitted services and structures;
4. A pre-existing structure within the 1986 and 1995 KPB GIS mapped flood plan data that is damaged or destroyed during the moratorium may be repaired or replaced to the same or better floodplain and construction standards as was the previous structure without acquiring a floodplain permit.
  - a. A structure that would require a KPB Chapter 21.06 permit during the moratorium in the KPB GIS 1986 and 1995 mapped flood data where the applicant can present satisfactory evidence that start of construction commenced prior to enactment of this ordinance need not acquire a permit to continue construction. Within six months of enactment of this ordinance, evidence of the start of construction shall be presented to the planning director before continuing or resuming construction in order to receive the recognition of preexisting status. Written recognition of pre-existing status shall be issued to those qualified to receive it by the planning director.

- (1) "Start of construction" means the first placement of permanent construction of a structure on a site, such as pouring of slabs or footings or any work beyond the stage of excavation or the first permanent framing or assembly of the structure or any part thereof on its piling or foundation when a structure is without a basement or poured footings.
- (2) "Structure" means anything constructed or erected, the use of which requires more or less permanent location on the ground, or attached to something having a permanent location on the ground, including, but without limiting the generality of the foregoing, buildings, carports, haysheds and machinery sheds (with or without walls), trailers or mobile homes, signs, fences, pilings, wells, and septic systems. Off-site utility lines intended to serve the parcel are not considered "start of construction."

**SECTION 5. A.** Discretionary Exemptions for stream work. Stream maintenance and restorative projects may be exempt from this ordinance in accordance with the following process:

1. A hydrologist through the Public Works Director will make a recommendation to the SBCFSA regarding whether a permit application should proceed based upon a determination that the project will minimize damage in the event of a flood and is a stream maintenance or restorative project. For the project to be approved, the SBCFSA shall find that there is a public benefit in proceeding with the permit application. The permit applications must still receive approval under the applicable code after approval by the SBCFSA board.
2. Approval of the SBCFSA required by Section 5(A)(1) prior to processing a permit application is waived if the mayor has declared a local disaster.
3. Approval by the SBCFSA required by Section 5(A)(2) 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 6.** 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 for KPB Chapters 21.06 and 14.40.**

- A. Citation. Work which would require a permit but for the moratorium imposed by this ordinance is prohibited during the moratorium. A citation may be issued for violations of Ordinance 2008-\_\_\_\_, prohibiting work which requires a permit under KPB Chapter 21.06, Floodplain Management and KPB Chapter 14.40, right-of-way construction and maintenance permits. The citation may be issued to the property owner, his agent, contractor, tenant, or lessee of the property or a building on the 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. Enforcement orders may be issued for KPB Chapters 21.06 and 14.40 moratorium violations. 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 by paying the fine within 10 days of issuance of the citation or a recipient of a citation or enforcement order may request a hearing within 10 days of issuance of the citation or enforcement order. 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.** For a violation of the KPB Chapter 21.06 moratorium, the planning director shall set the hearing giving at least 15 days' notice of the date, time, and place of the hearing. For a violation of the KPB Chapter 14.40 moratorium, the roads director shall set the hearing giving at least 15 days' notice of 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 recipient may call witnesses and provide other evidence at the hearing. 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 for a KPB Chapter 21.06 violation and to the RSA board for a KPB Chapter 14.40 violation within 15 days of the date the written decision is issued. Procedures for the hearing processes shall be established by planning commission or RSA board resolution as appropriate. The recipient may appeal the planning commission or RSA 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 KPB Chapters 21.24 and 14.40.

**SECTION 7.** This ordinance shall become effective immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \* DAY  
OF \* 2009.**

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

ATEST:

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

Yes:           None

No:            Knopp, Long, Smalley, Smith, Sprague, Superman, Martin

Absent:       Fischer, Pierce