

Introduced by:	Mayor
Date:	05/18/10
Hearing:	06/22/10
Action:	Enacted as Amended
Vote:	7 Yes, 1 No, 1 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2010-23**

**AN ORDINANCE AMENDING CERTAIN SECTIONS OF KPB CHAPTER 21.44 BY  
APPROVING AN R-W, RESIDENTIAL WATERFRONT, LOCAL OPTION ZONING  
DISTRICT, ADDING CERTAIN DEFINITIONS, AND CLARIFYING LANGUAGE**

- WHEREAS,** Chapter 21.44 of the Kenai Peninsula Borough (KPB) Code allows property owners in the rural district the ability to petition the assembly for a greater restriction on land use than is otherwise provided in Title 21 of the code; and
- WHEREAS,** Goal 6.5 of the 2005 KPB 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,** Goal 6.5, Objective 1 of the 2005 KPB Comprehensive Plan is to “ensure that land use regulations adopted by the Borough are necessary to control public and private land uses that affect public health and safety, address adverse impacts on the rights of adjacent property owners, or further the goals and objectives of the Comprehensive Plan”; and
- WHEREAS,** Goal 6.6 of the 2005 KPB Comprehensive Plan is to “reduce conflicts arising from incompatible land uses outside of incorporated cities”, and
- WHEREAS,** Goal 6.6, Objective 1 of the 2005 KPB Comprehensive Plan is to “facilitate the development of local or regional land use plans or ordinances in areas where there is support from local property owners”; and
- WHEREAS,** Implementation Action D, Objective 1, Goal 6.6 of the 2005 KPB Comprehensive Plan is to “improve regulation of specific land uses and types of land, including gravel pits, floodplains, correctional facilities, mobile home parks, steep slopes, and coastal beach and shoreline bluffs per Borough Ordinance (Chapter 21) to protect or minimize adverse impacts of flooding or erosion to neighboring properties or conflicts with surrounding land uses”; and
- WHEREAS,** the proposed Residential Waterfront (R-W) local option zoning district addresses the issue pertaining to River Corridor Development listed in Chapter 6, Land Management & Use, of the 2005 KPB Comprehensive Plan which states, “Excessive or poorly planned development adjacent to rivers or streams can affect fish and wildlife habitat”; and

**WHEREAS**, there has been confusion with the use of the words “permit” and “allow” in this chapter; and

**WHEREAS**, the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of June 14, 2010 recommended enactment;

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

**SECTION 1.** That KPB 21.44 is hereby amended to add the following zoning district:

**21.44.175 Residential Waterfront (R-W).**

A. Purpose. The purpose of this district is to promote orderly development adjacent to anadromous water bodies as defined by AS 41.17.950(1) consistent with the purpose clause of KPB 21.18.020.

B. Allowed principal use. One of the following uses is allowed per lot for a permanent residence in this district:

1. No more than two single-family dwellings;

2. One duplex.

C. Allowed secondary uses. Secondary uses allowed in the R-W district are parks, playgrounds, schools, community centers, libraries, churches, and home occupations as provided in 21.44.175(D).

D. Development standards. The following development standards apply to principal use and accessory structures:

1. Setbacks. Setbacks shall be a minimum 30 feet from the front yard line, a minimum of 20 feet from the rear yard line, a minimum of 15 feet from the side yard lines, and 50 feet from the mean high water mark of the river/lake, and where applicable subject to the provisions of KPB 21.18.

2. Maximum building height. Maximum building height shall be 2½ stories above ground or 35 feet above average grade, whichever is less.

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

4. Drainage ways. Existing natural drainage ways shall be retained.

5. Buffers. A forested buffer of at least 20 feet shall be retained between the building site and all rights-of-way. Dead and diseased trees within the buffer area which are a safety hazard or which threaten structures may be removed.

This section does not require revegetation of a buffer area that was cleared before the formation date of the local option zoning district.

6. Accessory structures. Accessory structures commonly associated with residential dwellings, i.e. garages, storage sheds, greenhouses, workshops, and a single, noncommercial guesthouse per parcel are allowed within the district.

7. Prohibited uses and structures. The following uses and structures are prohibited in the R-W district:

a. The owner of the property shall not sublease, subcontract, or market the property for non-allowed uses.

b. No more than two travel trailers or motor homes may be kept on each lot.

c. Pit-style outhouses are not allowed.

d. Dog lots and kennels are prohibited.

e. Domestic farm animals are prohibited.

E. Home occupations. In addition to the home occupation uses listed in KPB 21.44.130, the following home occupations are allowed provided they do not violate any of the provisions of this title:

1. Bed & breakfast;

2. Guide & guide services;

a. Licensed fishing guide operations are limited to two boats per lot, each not exceeding 22 feet in length.

3. One rental cabin, not to exceed 500 square feet, may be occupied from May 1-October 31.

**SECTION 2.** That KPB 21.44.040 (A) is hereby amended as follows:

**21.44.040. Area and petition requirements.**

A. Except as otherwise provided, the minimum area that may be included in a local option zoning district is 12 lots. The minimum area that may be included in a local option zoning district in an industrial district as described in KPB 21.44.200 is six lots. At least thirty percent of the lots within a proposed R-W district must be directly adjacent to the water. Two-thirds of the parcels within the proposed district must be of the average size prevailing within the proposed district. However, districts with disparate parcel sizes may be formed where 100 percent of the parcels vote in favor of the district. Lots and parcels in a petition area must be contiguous or separated only by a street,

alley, right-of-way, or easement. Petitioners shall coordinate with the Planning Department to designate appropriate districts.

B. The petition shall:

1. show opposite each signature, an adequate legal description of the property owned,
2. set forth whether the district will form a R-1, R-R, R-W R-M, C-3, [C-4,] I, or R-C zone including a copy of the standards for the applicable zone, and
3. include a map of the proposed local option zoning district.

**SECTION 3.** That KPB 21.44.080(C) is hereby amended as follows:

**21.44.080. Application.**

- C. All local option zoning districts must comply with KPB 21.25, Conditional Land Use Permits; KPB 21.06, Floodplain Management; and KPB 21.18, [KENAI RIVER] Anadromous Streams Habitat Protection; and must be consistent with the enforceable policies of the Kenai Peninsula Borough Coastal Management Program. However, application of other ordinances may not result in allowing a use not otherwise [permitted] allowed in a district formed under this ordinance.

**SECTION 4.** That KPB 21.44.100 (B)1 and 2 are hereby amended as follows:

**21.44.100. [PRE-] Prior existing structures.**

- B. Any [pre-] prior existing building which has been destroyed or damaged to the extent of 50 percent or more of the assessed value shall thereafter conform to the provisions of this chapter. The right to reconstruct in nonconformity with this chapter is forever lost if
- [(1)] 1. the application for reconstruction is not made within six months of the date of damage or
- [(2)] 2. if the application for reconstruction is approved but the structure is not reconstructed within 24 months [TWO YEARS] of the date of the approval of the application for reconstruction [THE DAMAGE OCCURRED].

**SECTION 5.** That KPB 21.44.110(A) is hereby amended as follows:

**21.44.110. Nonconforming uses.**

- A. *Determination.* Nonconforming uses in effect on the date of initial adoption of the local option zoning district are [permitted] allowed 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 any permit required by the zone in order to continue the use. Failure to apply for a nonconforming use determination within one year from the date of adoption of a local option zoning district ordinance 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.

**SECTION 6.** That KPB 21.44.120 is hereby amended as follows:

**21.44.120. Nonconforming lots.**

An undeveloped lot which is nonconforming as to lot dimension or area may be used for any use [PERMITTED] allowed in the district in which it is located provided:

- A. It was legally created and of record prior to the date of original adoption of the local option zoning district; and
- B. All development complies with all other ordinance requirements.

**SECTION 7.** That KPB 21.44.130(B) through (E) is hereby amended as follows:

**21.44.130. Home occupations.**

- B. *Application.* Home occupations may be operated in R-1, R-R, R-W, R-M, and R-C zones subject to the provisions of this section without a permit:
- C. *Standards.*
  - 1. [THERE SHALL BE NO CHANGES IN THE OUTSIDE APPEARANCE OF A BUILDING OR PARCEL OR OTHER VISIBLE EVIDENCE OF THE CONDUCT OF THE HOME OCCUPATION.] The outside appearance of a building or parcel shall be consistent with a residential local option zone district.
  - 2. The home occupation shall not generate traffic, parking, sewage or water use in excess of what is normal in a residential subdivision. Not more than [FIFTEEN] ten round vehicle trips per day [ON AVERAGE] may be drawn to the parcel as a result of the home occupation.

3. The home occupation shall not create a hazard to person or property.
- [4. THE HOME OCCUPATION SHALL NOT RESULT IN OUTSIDE STORAGE OR DISPLAY OF ANYTHING RELATED TO THE HOME OCCUPATION.]
- [5.]4. The home occupation shall not result in noise, vibration, glare, fumes, heat, odors, smoke, or commercial electrical interference detectable to the normal senses off the parcel. No equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the parcel.
- [6.]5. [No] One permanent sign no greater than [FOUR FEET SQUARE] 16 square feet may be used to advertise a home occupation. Signs must not be [NON-]illuminated.
- [7.]6. Retail sales which generate traffic of customers, deliveries, or suppliers to the parcel are not [PERMITTED] allowed on the parcel, except as allowed by an administrative conditional use permit or as incidental to home occupations operated in accordance with these standards under KPB 21.44.130(E)(2), (6), (9), and (12) [(1), (4), (6), (7), AND (8)].
- [8.]7. The use of a dwelling unit for home occupations shall be conducted solely within the confines of the main dwelling and accessory buildings, shall be clearly incidental and within the main dwelling subordinate to its residential use, and shall not exceed more than 30 percent of the floor area, with the exception of bed and breakfast operations, where the use shall not exceed more than 60 percent of the floor area.
- [9.]8. The storage of toxic, explosive, or other dangerous or hazardous materials, substances, or chemicals for commercial purposes are not [permitted] allowed on the premises[.] , except for bulk fuel storage containers of no more than one 55-gallon tank for use in guide service related activities.
- D. *Conditions.* The standards set forth in KPB 21.44.130 must be met on a continuing basis and are mandatory conditions of the administrative conditional use permit. The planning director may impose additional conditions consistent with the provisions of KPB 21.44.130(A) and (C) and the applicable zone.
- E. The following are allowed home occupations in the R-1, R-R, R-W, R-M, and R-C districts:

1. Accountant/Bookkeeping Services;

- [1] 2. Beauty parlor or salon/barber shop;

3. Catering Services;

- [2] 4. Computer programming, software instruction, web page development, and related computer services;
- [3] 5. Consulting services;
- [4] 6. Dressmaking, sewing, millinery and tailoring;
- 7. Event Planning Services;
- [5] 8. [FAMILY CHILD CARE HOME] In-home adult or child care, or preschool, without regard to floor space restrictions in 21.44.130(7);
- [6] 9. Home cooking and preserving;
- [7]10. Home crafts, such as model making, rug weaving, lapidary work and cabinet making;
- 11. Photography Studio;
- [8]12. Painting, sculpting, [OR] writing or other fine arts related crafts;
- [9]13. Telephone answering, telecommuting, secretarial and administrative services;
- [10]14. Tutoring and musical instruction.

**SECTION 8.** That KPB 21.44.160(A) and (B) are hereby amended as follows:

**21.44.160 Single-family residential district (R-1).**

- A. *[PERMITTED] Allowed Principal Use.* Only single-family residential (R-1) dwelling units are [permitted] allowed in this district.
- B. *[PERMITTED] Allowed Secondary Uses.* Secondary uses allowed in the R-1 zone are parks, playgrounds, schools, community centers, libraries, churches, and home occupations.

**SECTION 9.** That KPB 21.44.170(A) and (B) are hereby amended as follows:

**21.44.170. Rural residential district (R-R).**

- A. *[PERMITTED] Allowed Principal Use.* Only single-family residential (R-1) dwelling units are [PERMITTED] allowed in this district.

- B. *[PERMITTED] Allowed Secondary Uses.* *[PERMITTED] Secondary* uses allowed in the R-R zone are parks, playgrounds, schools, community centers, libraries, churches, and home occupations.

**SECTION 10.** That KPB 21.44.180(A) and (B) are hereby amended as follows:

**21.44.180. Mixed residential district (R-M).**

- A. *[PERMITTED] Allowed Principal Use:* Single (R-1)- and multi-family (MF) residential (no more than 4 units) dwelling units are *[PERMITTED] allowed* in this district.
- B. *[PERMITTED] Allowed Secondary Uses:* Secondary uses allowed in the R-M zone are parks, playgrounds, schools, community centers, libraries, churches, and home occupations.

**SECTION 11.** That KPB 21.44.190(A) and (B) are hereby amended as follows:

**21.44.190. Mixed use district (C-3).**

- A. *[PERMITTED] Allowed Principal Uses:* Commercial, business, residential, institutional and public uses are *[PERMITTED] allowed* in this district.
- B. *[PERMITTED] Allowed Secondary Uses:* Secondary uses allowed in the C-3 zone are uses *[PERMITTED] allowed* in R-1 and R-M districts.

**SECTION 12.** That KPB 21.44.200(A) is hereby amended as follows:

**21.44.200. Industrial district (I).**

- A. *[PERMITTED] Allowed Principal and Secondary Uses:* Light and/or heavy industrial land uses, and utility/transportation land uses are *[PERMITTED] allowed* in this district.

**SECTION 13.** That KPB 21.44.210(A) and (B) are hereby amended as follows:

**21.44.210. Residential conservation district (R-C).**

- A. *Purpose.* The purpose of this district is to retain community rural character, reduce development costs, allow greater flexibility and variety in the creation of residential subdivisions, conserve environmentally sensitive lands, and to increase the tax base. This is accomplished by clustering residential units on areas of a project site that are best suited for development, and by protecting the remaining land as open space. This may *[PERMIT] allow* equal or greater densities of development than would otherwise be allowed, and conserve wetlands, wildlife and fisheries habitat.



B. *[PERMITTED] Allowed Principal Use.* Single- and multi-family (up to two units) residential dwelling units are *[PERMITTED] allowed* in this district.

**SECTION 14.** That KPB 21.44.230 is hereby amended to add the following definitions in alphabetical order:

**21.44.230. Definitions.**

*Average grade* means the average grade calculated from the grade elevations at the four points where an imaginary line parallel to the front and rear yard setback lines and touching the (proposed) structure intersects the required side yard setback lines.

*Domestic farm animals* means cattle, calves, horses, llamas, mules, swine, sheep, goats, fowl, or other similar birds and animals commonly associated with farms. Types of fowl include, but are not limited to, chickens, ducks, geese, pheasants, quails, and turkeys.

*Duplex* means a structure on a single lot containing two dwelling units, each of which is totally separated from the other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except that a common exterior stairwell may serve both dwelling units.

*Outhouse* means a detached enclosed structure having one or more holes in a seat built over a pit and serving as an outdoor toilet.

*Substantially complete* means essentially completed and available for the owner's beneficial use for the purpose and in the manner intended for the structure.

**SECTION 15.** That the following definition in KPB 21.44.230 is hereby amended as follows:

*Secondary use* means a use allowed in a zone without a permit which is not the principal *[PERMITTED] allowed* use in the zone.

**SECTION 16.** That KPB 21.44.240 is hereby amended as follows:

**21.44.240. Table 1. Local Option Zoning Districts.**

LOCAL OPTION ZONING DISTRICTS  
LOZ Districts, Uses and Standards (KPB 21.44)

<i>Local Option Zoning</i>	<i>[Permitted] <u>Allowed</u> Uses</i>	<i>Front Yard Setback</i>	<i>Rear Yard Setback</i>	<i>Side Yard Setback</i>	<i>Shore Setback</i>	<i>Maximum Building Height</i>	<i>Minimum Lot Size**</i>	<i>Buffer Between [Road] <u>ROW</u> and Site</i>
R-1	<b>Single-family Residential Dwellings</b> Parks, playgrounds, schools, community centers, libraries, churches, home occupations	30'	20'	15'	50'	35'*	40,000 sq. ft.	20'
R-R	<b>Rural Residential Uses</b> [Permitted]allowed in R-1	60'	40'	25'	50'	N/A	100,000 sq. ft.	30'
<u>R-W</u>	<b><u>Waterfront Residential Uses</u></b> <u>allowed</u>	<u>30'</u>	<u>20'</u>	<u>15'</u>	<u>50'</u>	<u>35'*</u>	<u>40,000 sq. ft.</u>	<u>20'</u>
R-M	<b>Mixed Residential Uses</b> [Permitted] <u>allowed</u> in R-1, and multi-family dwellings (no more than 4 units per structure)	MF: 60' SF: 40"	40' 20'	25' 15'	50' 50'	N/A N/A	80,000 sq. ft. 40,000 sq. ft.	30' 30'
R-C	<b>Residential Conservation District</b> Uses [Permitted] <u>allowed</u> in R-1, and multi-family dwellings (no more than 2 units per structure)	30'	10'	5'	50'	35'	10,000 sq. ft. (with an ADEC approved community water system)	20'
C-3	<b>Mixed Use</b> Uses [Permitted] <u>allowed</u> in R-1, R-M, and commercial and business uses	30'	20'	15'	100'	N/A	40,000 sq. ft.	20'

I	<b>Industrial</b> Light, heavy or industrial park land uses, and utility/transportation land uses	40'	20'	25'	100'	N/A	40,000 sq. ft.	30'
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\* Or 2 1/2 stories, whichever is less.

\*\*Smaller lots are [PERMITTED] allowed only with an ADEC approved community water system.

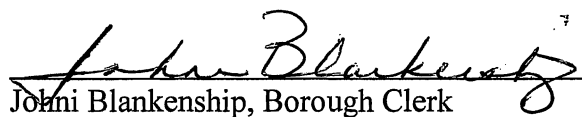
See KPB 21.44 for a complete description of all districts, uses, and standards.

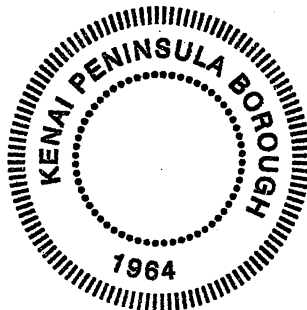
**SECTION 17.** That this ordinance takes effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS  
22ND DAY OF JUNE, 2010.**

  
Pete Sprague, Assembly President

ATTEST:

  
Johni Blankenship, Borough Clerk



Yes:

No:

Absent: