

Introduced by:	Popp, Sprague
Date:	01/18/00
Hearings:	03/21/00
	04/04/00
	04/18/00
	05/02/00
	05/16/00
Action:	Amended by Substitution
Vote:	9 Yes, 0 No
Date:	03/21/00
Action:	Amended and Postponed
Date:	04/18/00
Action:	Amended and Postponed
Date:	05/02/00
Action:	Enacted as Amended
Date:	05/16/00
Vote:	6 Yes, 2 No, 1 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2000-02  
(POPP, SPRAGUE) SUBSTITUTE**

**AN ORDINANCE REPEALING KPB 21.08 "LOCAL OPTION" AND ADOPTING  
KPB 21.44 "LOCAL OPTION ZONING"**

**WHEREAS**, in 1966 the borough adopted KPB 21.08 that permits self-imposed zoning restrictions by local option choice; and

**WHEREAS**, goal 5.4 of the Borough Comprehensive Plan states that property owners should be able to maintain the ability to make decisions and control the use of their private land; and

**WHEREAS**, goal 5.5 of the Borough Comprehensive Plan encourages the reduction of conflicts arising from incompatible land uses outside of the incorporated cities; and

**WHEREAS**, goal 5.5, Objective 1, Action B of the Borough Comprehensive Plan encourages the expansion of Local Option Zoning to establish guidelines for the development and approval of local land use regulations; and

**WHEREAS**, in the past 30 years the rate and type of development within the borough has increased, and amendments to the ordinance are necessary to meet the changing demands of the public and private sectors; and

**WHEREAS**, amendments to the ordinance will create a menu of local option zoning districts, allowing greater choice and flexibility for property owners; and

**WHEREAS**, amendments to the ordinance will ease the enforcement and administrative duties of the borough; and

**WHEREAS**, the local option zoning provisions will better serve to protect property values and the public health, safety, and general welfare.

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

**SECTION 1.** That KPB 21.08 is hereby repealed.

**SECTION 2.** That KPB 21.44 is adopted as follows:

**CHAPTER 21.44 LOCAL OPTION ZONING**

**21.44.010 Purpose.**

A. The purpose of this chapter is to provide property owners in the rural district an opportunity to petition the assembly for greater restrictions on land use than otherwise provided by this title. This chapter shall:

1. control building sites, placement of structures and land uses through:
  - a. separating conflicting land uses,
  - b. regulating certain uses detrimental to residential areas,
  - c. setting minimum lot sizes, widths and setback standards,
  - d. setting standards for the number and type of structures developed on a parcel;
2. preserve open space; and
3. provide consistency with the goals and objectives of the Kenai Peninsula Borough Comprehensive Plan and Coastal Management Program.

**21.44.020 State and Federal Agencies Regulated.**

Unless specifically exempted by law, all state and federal agencies are required to comply with this ordinance and obtain all necessary permits.

**21.44.030 Initiation Procedures.**

A. The record owners of at least three-fourths of the parcels within a described area of the rural district may petition the assembly for a greater restriction on land uses and development standards than otherwise provided by this title. Each parcel is entitled to one vote regarding

formation of a district. If there are multiple record owners of a parcel, the majority vote of the record owners will determine the parcel's vote. In the event of a tie vote regarding a parcel with multiple record owners, the vote shall be counted against formation. Failure to sign the petition constitutes a no vote.

- B. Advisory planning commissions may propose local option zoning districts through a public process. The process may occur in conjunction with a land use planning process, the update of existing land use plans, or a separate process used solely for the creation of local option zoning districts. This process must include and meet the publication, notice, public hearing and all other requirements of this chapter, and must comply with the requirements of KPB 21.44.030(A).
- C. Local option zoning districts may be proposed at the time of preliminary or final plat approval. Recommendations for a specific local option zoning district must be in concurrence with the current owners of the property subject to the plat. The planning commission shall make a recommendation to the assembly regarding the formation of the local option zoning district. Plats must be of 12 contiguous lots or more, separated only by a street, alley, right-of-way, or easement. If a local option zoning district is initiated under this procedure, then the requirements of Section 21.44.040, Area and Petition Requirements, are not required.

#### **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. Three-fourths 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-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.
- C. Petition forms for local option zoning districts are available from, and shall be submitted to, the Borough Planning Department. The planning department shall process an application for a local option zoning district petition and may meet with the sponsors prior to planning department approval of the petition for circulation to the property owners within the proposed district. The citizen sponsors for a local option zoning district shall have 60 days from approval of the petition by the planning department to gather the required signatures to form a local option zoning district. The date of introduction for assembly consideration of the local option

zoning district shall be within 60 days of filing the completed petition with the planning department.

#### **21.44.050 Public Hearings and Notification Requirements.**

The planning commission shall hold at least one public hearing on local option zoning petitions. Public notice of the hearing shall comply with KPB 21.11.020. In addition, property owners within the proposed district and within 300 feet of the boundaries of the district shall receive a copy of the public notice at least seven days prior to the hearing. The planning commission shall recommend to the assembly approval, disapproval, or modifications of the proposed local option zoning district.

#### **21.44.060 Assembly Action.**

The assembly shall approve, disapprove, or modify the proposed local option zoning district. The assembly reserves the right to disapprove a local option zoning district in its legislative capacity notwithstanding the district's meeting the criteria of this chapter.

#### **21.44.070 Variances.**

Variances may be granted pursuant to the terms of KPB 21.05.

#### **21.44.080 Application.**

- A. The standards of the local option zoning district shall be effective within 30 days of approval by the assembly. The regulations set by this chapter shall apply uniformly to the district.
- B. This ordinance does not repeal, abrogate or impair any existing deed restrictions, covenants or easements. The borough will not enforce private covenants, easements, or deed restrictions.
- 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 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 in a district formed under this ordinance.
- D. The provisions of this chapter shall apply to local option zoning districts predating adoption of this chapter, except where there is a direct conflict between this chapter and the standards for the pre-existing district. In cases of conflict the terms of the pre-existing district shall apply.

#### **21.44.090 Local Option Zoning Map.**

Within 30 days of assembly approval, a map of the boundaries of the adopted local option zoning district shall be developed by the planning department and adopted as the official zoning map for the designated local option zone. The map shall be at a scale of 1:500, and show the boundaries and labels of the zones into which the parcels and districts have been designated.

#### **21.44.100 Pre-existing 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 pre-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) the application for reconstruction is not made within six months of the date of damage or
  - (2) if the application for reconstruction is approved but the structure is not reconstructed within two years of the date the damage occurred.
- C. Nothing in this section prohibits reconstruction at any time in conformity with this chapter.

#### **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 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.
- B. **Decision.** The planning director shall give notice of the application for a nonconforming use determination 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.
- C. **Discontinuance.** Any nonconforming use of land or building which has ceased by discontinuance for an uninterrupted period of 365 days shall thereafter conform to the provisions of this chapter. Lack of intent to cease use or abandon the use does not suspend the

365-day time period. If a nonconforming use of a temporary structure is discontinued, it shall not be recommenced.

- D. **Expansion Prohibited.** A nonconforming use of a building or land may not be increased, intensified, or expanded or moved to any other part of the lot, tract, or parcel it occupies after the ordinance forming the district 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, the use must meet the following standards on the date the assembly approves formation of the district:
  - 1. A use must have been legally established under prior law.
  - 2. A use must be operational in accordance with the type of use.
  - 3. 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.
- G. Conditions may be placed on nonconforming uses by the planning director to protect the safety or health of residents of the local option zoning district.

#### **21.44.120 Nonconforming Lots.**

An undeveloped lot which is nonconforming as to lot dimension or area may be used for any use permitted 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;
- B. Development complies with all other ordinance requirements.

#### **21.44.130 Home Occupations.**

- A. **Purpose.** It is the purpose of this section to promote peace, quiet, and domestic tranquillity within residential local option zoning districts, and to limit excessive noise, excessive traffic, diminished property values, fire hazard, threats to safety and health, and other possible negative effects of commercial uses conducted in residential areas.
- B. **Application.** Home occupations may be operated in R-1, R-R, 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.
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 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. 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. No sign greater than four feet square may be used to advertise a home occupation. Signs must be non-illuminated.
7. Retail sales which generate traffic of customers, deliveries, or suppliers to the parcel are not permitted 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)(1), (4), (6), (7), and (8).
8. 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.
9. The storage of toxic, explosive, or other dangerous or hazardous materials, substances, or chemicals for commercial purposes are not permitted on the premises.

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-M, and R-C districts:

1. Beauty parlor or salon/barber shop;
2. Computer programming, software instruction, web page development, and related computer services;
3. Consulting services;
4. Dressmaking, sewing, millinery and tailoring;
5. Family child care home;
6. Home cooking and preserving;
7. Home crafts, such as model making, rug weaving, lapidary work and cabinet making;
8. Painting, sculpting or writing;
9. Telephone answering, telecommuting, secretarial & administrative services;
10. Tutoring and musical instruction.

F. Permit required. All home occupations not specifically listed in KPB 21.44.130(E) require an administrative conditional use permit, unless otherwise allowed by KPB 21.44.170 and KPB

21.44.180. An applicant for a home occupation may obtain an administrative conditional use 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 director'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.

- G. Time frame/notice. The planning director may issue administrative conditional use permits, within 60 days of application, that comply with the provision of this title, and may require additional terms and conditions considered necessary to assure compliance with the standards of the applicable zone. All property owners within the local option zoning district shall be notified of home occupation permit applications, and written comments shall become part of the official record.
- H. Appeal. Decisions approving or denying a home occupation permit may be appealed to the planning commission within 30 days of a denial. A public hearing shall be held by the planning commission as part of the appeal process. A public notice of the public hearing shall be given in compliance with KPB 21.11.020. Those property owners who submitted written comments to the planning department are entitled to written notice of the appeal. Pursuant to KPB 21.20, only persons who submit written comments or testify before the planning commission may appeal the approval or denial of a home occupation permit.
- I. Renewal. Every five years a home occupation permittee shall apply for a renewal permit, or the permit will expire. If the planning director determines that the permittee continues to meet the standards set forth in KPB 21.44.130, the renewal permit shall be granted. If it appears the permittee no longer meets the standards set forth in KPB 21.44.130, the planning director may deny or place additional conditions on renewal of the permit. The planning director may conduct a site inspection and an investigation, including a hearing if necessary, on permit renewal, and shall establish procedures for any such investigation or hearing. A decision regarding permit renewal may be appealed pursuant to KPB 21.44.130(H).
- J. Change in use. Any change in the type of use or any change in the extent or volume of use, area of the dwelling unit being used, or mechanical or electrical equipment being used that differs from that allowed by the permit or this chapter must be approved by the planning director after complying with the provisions of KPB 21.44.130. Noncompliance with this provision shall subject the permittee to the enforcement, revocation, and remedy provisions of KPB 21.24.

#### **21.44.140 Rezoning.**

- A. Amendments to local option zoning districts may be initiated to repeal a zone, change the type of zone or modify the boundaries of the zoning district by:



1. Any resident of the district may request an amendment to a zoning district provided that a petition is submitted bearing signatures of more than three-fourths of the property owners within the area being rezoned;
  2. A landowner of property contiguous with the boundaries of the local option district may request an amendment to the district to include his or her property. Contiguous property owners are not required to meet the Area and Petition requirements (KPB 21.44.040) of this title.
- B. The borough planning department will provide petition forms.
- C. The rezoning process must meet the notification and public hearing requirements of KPB 21.44.
- D. The planning commission shall make a recommendation to the assembly regarding the repeal or change in zone or modification of boundaries. All rezone petitions are subject to assembly approval.

#### **21.44.150 Violations – Enforcement.**

Violations of KPB 21.44 are infractions and are subject to civil fines. Enforcement of the provisions of this chapter shall be in accordance with the remedies set forth in KPB 21.24. Each day which the violation exists shall constitute a separate offense.

#### **21.44.160 Single-family Residential District (R-1).**

- A. Permitted Principal Use. Only single-family residential (R-1) dwelling units are permitted in this district.
- B. Permitted Secondary Uses. Secondary uses allowed in the R-1 zone are parks, playgrounds, schools, community centers, libraries, churches, and home occupations.
- C. Development Standards. Development standards apply to principle and accessory structures.
1. Setbacks. Setbacks shall be 30 feet from the front yard line, 20 feet from the rear yard line, 15 feet from the side yard lines, and 50 feet from the shore.
  2. Maximum building height. Maximum building height shall be 2 ½ 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 the roadway. Dead and diseased trees 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. Dog Lots: Dog lots and kennels are prohibited.

#### **21.44.170 Rural Residential District (R-R).**

- A. Permitted Principal Use. Only single-family residential (R-1) dwelling units are permitted in this district.
- B. Permitted Secondary Uses. Permitted secondary uses allowed in the R-R zone are parks, playgrounds, schools, community centers, libraries, churches, and home occupations.
- C. Development Standards. Development standards apply to principle and accessory structures:
  1. Setbacks. Setbacks shall be 60 feet from the front yard line, 40 feet from the rear yard line, 25 feet from the side yard lines, and 50 feet from the shore.
  2. Minimum lot size. Minimum lot size shall be 100,000 square feet.
  3. Drainage ways. Existing natural drainage ways shall be retained.
  4. Buffers. To provide for screening, aesthetics, and the reduction of surface water run-off, no lot shall be clear-cut more than 50 percent of the total lot area except that trees may be selectively pruned and thinned, and dead and diseased trees which are a safety hazard or which threaten structures may be removed. Undergrowth may be removed provided that the area is promptly re-seeded or sodded. A forested buffer of at least 30 feet shall be retained between the building site and the common drive or roadway. This section does not require revegetation of a buffer area that was cleared before the formation date of the local option zoning district.
  5. 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.
- D. 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 and breakfast;
  2. Guide and guide services.

**21.44.180 Mixed Residential District (R-M).**

- A. Permitted Principal Use: Single (R-1)- and multi-family (MF) residential (no more than 4 units) dwelling units are permitted in this district.
- B. Permitted Secondary Uses: Secondary uses allowed in the R-M zone are parks, playgrounds, schools, community centers, libraries, churches, and home occupations.
- C. Development Standards. Development standards apply to principle and accessory structures:
  - 1. Setbacks. Setbacks shall be 60 feet from the front yard line for MF units, 40 feet from the front yard line for R-1 units, 40 feet from the rear yard line for MF units, 20 feet from the rear yard line for R-1 units, 25 feet from the side yard lines for MF units, 15 feet from the side yard lines for R-1 units, and 50 feet from the shore.
  - 2. Minimum lot size. Minimum lot size shall be 80,000 square feet for MF units and 40,000 square feet for R-1 units.
  - 3. Drainage Ways. Existing natural drainage ways shall be retained.
  - 4. Buffers. To provide for screening, aesthetics, and the reduction of surface water run-off, no lot shall be clear-cut more than 50 percent of the total lot area except that trees may be selectively pruned and thinned, and dead and diseased trees which are a safety hazard or which threaten structures may be removed. Undergrowth may be removed provided that the area is promptly re-seeded or sodded. A forested buffer of at least 30 feet shall be retained between the building site and the common drive or roadway. This section does not require revegetation of a buffer area that was cleared before the formation date of the local option zoning district.
  - 5. 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.
- D. 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 and breakfast;
  - 2. Guide and guide services.

**21.44.190 Mixed Use District (C-3).**

- A. Permitted Principal Uses: Commercial, business, residential, institutional and public uses are permitted in this district.

- B. Permitted Secondary Uses: Secondary uses allowed in the C-3 zone are uses permitted in R-1 and R-M districts.
- C. Development Standards. Development standards apply to principle and accessory structures.
1. Setbacks. Setbacks shall be 30 feet from the front yard line, 20 feet from the rear yard line, 15 feet from the side yard lines, and 100 feet from the shore.
  2. Minimum lot size. Minimum lot size shall be 40,000 square feet.
  3. Drainage Ways. Existing natural drainage ways shall be retained.
  4. Buffers. A forested buffer of at least 20 feet shall be retained between the building site and the roadway. This section does not require revegetation of a buffer area that was cleared before the formation date of the local option zoning district.

**21.44.195 Industrial Mixed Use District (C-4).**

- A. Permitted Principal Uses: Light and/or heavy industrial land uses, commercial, business, residential, institutional and public uses are permitted in this district.
- B. Permitted Secondary Uses: Secondary uses allowed in the C-4 zone are uses permitted in R-1 and R-M districts.
- C. Development Standards. Development standards apply to principle and accessory structures.
1. Setbacks. Setbacks shall be 30 feet from the front yard line, 20 feet from the rear yard line, 15 feet from the side yard lines, and 100 feet from the shore.
  2. Minimum lot size. Minimum lot size shall be 40,000 square feet.
  3. Drainage Ways. Existing natural drainage ways shall be retained.
  4. Buffers. A forested buffer of at least 20 feet shall be retained between the building site and the roadway. This section does not require revegetation of a buffer area that was cleared before the formation date of the local option zoning district.

**21.44.200 Industrial District (I).**

- A. Permitted Principal and Secondary Uses: Light and/or heavy industrial land uses, and utility/transportation land uses are permitted in this district.
- B. Development Standards:
1. Setbacks. Setbacks shall be 40 feet from the front yard line, 20 feet from the rear yard line, 25 feet from the side yard lines, and 100 feet from the shore.

2. Minimum lot size. Minimum lot size shall be 40,000 square feet.
3. Drainage Ways. Existing natural drainage ways shall be retained.
4. Buffers. To provide for screening, aesthetics, and the reduction of surface water run-off, no lot shall be clear-cut more than 75 percent of the total lot area except that trees may be selectively pruned and thinned, and dead and diseased trees which are a safety hazard or which threaten structures may be removed. Undergrowth may be removed provided that the area is promptly re-seeded or sodded. A forested buffer of at least 30 feet shall be retained between the building site and the common drive or roadway, and a forested buffer of at least 50 feet shall be retained between the Industrial and other local option zoning districts. This section does not require revegetation of a buffer area that was cleared before the formation date of the local option zoning district.

#### **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 equal or greater densities of development than would otherwise be allowed, and conserve wetlands, wildlife and fisheries habitat.
- B. Permitted Principal Use. Single- and multi-family (up to two units) residential dwelling units are permitted in this district.
- C. Secondary Uses. Parks, playgrounds, schools, community centers, libraries, churches, and home occupations.
- D. Development Standards. Development standards apply to principle and accessory structures:
  1. Setbacks. Setbacks shall be 30 feet from the front yard line, 10 feet from the rear yard line, 5 feet from the side yard lines, and 50 feet from the shore.
  2. Maximum building height. Maximum building height shall be 2 1/2 stories or 35 feet above average grade, whichever is less.
  3. Minimum area. Minimum area shall be 20 contiguous acres of gross project area in size.
  4. Minimum lot size: Minimum lot size shall be 10,000 square feet (provided that an ADEC approved community sewer and water system is utilized).
  5. Drainage Ways. Existing natural drainage ways shall be retained.

6. Pollution Control. The location and nature of the septic systems which will serve the homesites individually or collectively will assure that effluent from the septic systems will not reach the ground or surface waters in a condition which would contribute to health hazards, taste, odor, turbidity, fertility or impair the aesthetic character of navigable waters
7. Buffers. To provide for screening, aesthetics, and the reduction of surface water run-off, no lot shall be clear-cut more than fifty (50) percent of the total lot area except that trees may be selectively pruned and thinned, and dead and diseased trees which are a safety hazard or which threaten structures may be removed. Undergrowth may be removed provided that the area is promptly re-seeded or sodded. A forested buffer of at least 20 feet shall be retained between the building site and the common drive or roadway. This section does not require revegetation of a buffer area that was cleared before the formation date of the local option zoning district.
8. Open Space.
  - a. At least 50% of the gross project area shall be dedicated as permanent open space. Open space shall be restricted to prohibit development and may be:
    - i. dedicated to the public;
    - ii. retained by the former owner;
    - iii. held in common by the residents of the residential conservation district; or
    - iv. held as outlots by individual owners of the conservation district.
  - b. Lands dedicated to the public must be accepted by the planning commission as part of the platting process.
  - c. Open space shall be deed restricted to forestry, recreational and environmental protection uses. However, a sanitary waste disposal system may be located in the area provided no suitable site is available on the lot served by the system. Open space shall be contiguous.
9. Accessory structures. Accessory structures commonly associated with residential dwellings, i.e. garages, storage sheds, greenhouses, and workshops are allowed within the district.
10. Dog lots. Dog lots and kennels are prohibited.
11. Density: The number of platted homesites shall not exceed 150% of what would have been possible if the same land were platted in accordance with the minimum lot sizes and setbacks provided by the applicable provisions of KPB codes and ordinances. The maximum number of home sites shall be determined by dividing the gross project area of the subdivision, excluding streets, by the minimum lot size of 40,000 square feet, plus 50 percent of that number.
12. Design standards.

- a. Roadways, lots and building envelopes shall be located in areas where they will have the least effect on wetlands, rivers, streams and other environmentally sensitive areas, cropland, pasture, meadow, and historic structures, and where they will retain or enhance the visual character of the rural landscape. However, in resolving conflicts between these interests, priority shall be given to protection of waterways and their buffers, steep slopes, regulated floodplains and avoidance of a fragmented landscape.
- b. Consideration of the design of the subdivision and the open space provisions shall include the Borough Comprehensive Plan, Trails Plan and community plans, Coastal Management Plan, as well as recommendations from Alaska Department of Fish and Game and other permitting authorities.
- c. Building Sites. The following standards apply to building sites.
  - i. Building sites shall include at least 2,500 square feet of buildable area excluding sites designated for sanitary systems and all areas where construction of buildings and related infrastructure is precluded by the provisions of the Borough's ordinances.
  - ii. Buildings and roads shall be located as to minimize conflicts with uses of adjacent lands.
  - iii. Building sites shall not include wetlands or floodplains.
- d. Roadways and Infrastructure. The following standards apply to roadways and infrastructure:
  - i. Roadways and, where practicable, infrastructure shall not be located in open fields but shall be sited along forest edges and shall be designed to maximize the amount of forest in the conservation district which is contiguous with adjacent forested lands.
  - ii. Roadways shall follow existing contours to minimize the extent of cuts and fills.
  - iii. Roadways shall be located to minimize the amount of wetland fill.
  - iv. Where sites include linear features such as existing access roads, tree lines and fence rows, roadways shall, where practicable, follow these features to minimize their visual impact.
  - v. Road and utility crossings of anadromous streams shall be minimized and consolidated at a single location to minimize impacts to both individual stream channels and watersheds.
  - vi. Bridges and culverts shall be large enough to provide free passage to anadromous fish and shall be positioned to minimize changes in direction or velocity of stream flow.
  - vii. All driveways shall serve a minimum of two units.
  - viii. The maximum number of units served by a common driveway shall be four unless the applicant demonstrates that a greater number will promote the objectives of the residential conservation district.
  - ix. Maximum length of common driveways shall be 1,000 feet.
  - x. All roads must be constructed to Kenai Peninsula Borough standards, KPB 14.06, Appendix A.

- k. Site Development and Land Disturbing Activities. Existing natural vegetation shall be preserved in areas where disturbance outside the building envelope is not essential.
13. Procedure for Establishing a Residential Conservation District. The procedure for establishing a residential conservation district shall be as follows:
- a. Petition. A petition in compliance with KPB 21.44.210 shall be submitted to the planning director.
  - b. Review and Hearing. The petition shall be submitted to the planning commission, which shall give notice and hold a public hearing. The planning commission decision shall reflect the recommendations of any federal, state or local agency with which the Borough Planning Department consults.
  - c. Findings and Conditions of Approval. The planning commission shall make written findings as to the compliance or noncompliance of the proposed residential conservation district with each of the applicable requirements set forth in KPB 21.44.210. If the plat is granted in whole or part, the planning commission shall attach such written conditions to the approval as are required by and consistent with KPB 21.44.210. The conditions and approval shall in all cases establish the specific restrictions applicable with regard to minimum lot sizes, setbacks, location of septic systems and the preservation of ground cover and open space.
  - d. Planning Studies. A landowner or petitioner may at his own expense develop the facts required to establish compliance with the provision of KPB 21.44.210 or may be required to contribute funds to the borough to defray all or part of the cost of such studies being undertaken by the borough or any agency or person with whom the borough contracts for such work.

#### **21.44.220 Record notice of local option zoning district.**

A notice of local option zoning district shall be recorded in the State of Alaska district recorder's office where the parcels subject to the local option zoning district are located. The notice shall provide a legal description of the parcels within the district and the type of zone. The notice shall be in a form approved by the borough attorney's office. The petitioners for a local option zoning district or rezone shall pay the recording fees. Notice of rezones under KPB 21.44.140 shall also be recorded.

#### **21.44.230 Definitions**

"Adequate legal description" means a written description of real property by government survey, metes and bounds, or lot number of a recorded plat or by aliquot part in a conveyance document such that the parcel can be identified, located, and distinguished from other parcels. It shall include, if available, the street address, city, state and zip code of the real property.



"Accessory structure" means a structure on the same lot and of a nature customarily incidental and subordinate to the principal structure.

"Average size" means the mathematical mean of the lot sizes within the proposed local option zoning district. For a lot to qualify as average size, it must be within 50 percent, plus or minus, of the mathematical mean of all lots within the proposed local option zoning district.

"Beauty parlor or salon/barber shop" means a commercial establishment providing services such as haircuts and hair treatment, manicure, and facials.

"Bed and Breakfast" means a transient occupancy commercial establishment with no more than 12 bedrooms or guest cabins or 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 parcel 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.

"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.

"Consulting services" means professional advice given in one's field of special expertise on a commercial basis.

"Dog lot" means the keeping or raising of five or more dogs over the age of six months on a parcel.

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

"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 excluding children of the adult provider.

"Forested buffer" means the use of native and natural tree and shrub layers to sufficiently screen development from view of adjoining properties and roadways.

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

"Guide service" means commercial activities related to the hunting, catching, and processing of fish and game and providing overnight accommodation or meals for fishing and hunting clientele, and may also include, but not be limited to guided tours such as hiking, biking, skiing, sled dog tours, and snow machining.

"Habitable" means that portion of a structure that is used for actual and daily living space. It does not include basements, attics, crawl spaces, storage sheds, garages or other portions of a structure that have not been improved or meet building and sanitary codes.

"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.

"Home occupation" is that accessory use of a dwelling that shall constitute either entirely or partly the livelihood of a person living in the dwelling unit.

"Hotel" means commercial operation offering transient lodging which may provide additional services such as restaurants, meeting rooms, and recreation 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.

"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 or commonly-recognized offensive 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.

"Kennel" means a premises where a person owns or keeps five 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 accommodations or sleeping quarters.

"Motel" means a group of attached 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).

"Multi-family dwelling unit" means a building with multiple dwelling units, each with self-contained bathroom and kitchen facilities.

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

"Normal traffic, parking, sewage and water use" means the average estimated number of vehicle trips, parking spaces, and water use for a development type as proposed in the petition for a local option zoning district.

"Open Space" means land used for recreation, resource protection, amenity, and/or buffers. In no event shall any area of a lot constituting the minimum lot area nor any part of an existing or future road or right-of-way be counted as constituting open space.

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

"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.

"Retail sales" are sales made to the ultimate consumer, often in small quantities.

"Secondary use" means a use allowed in a zone without a permit which is not the principal permitted use in the zone.

"Shore setback" means the distance measured from the ordinary high water mark of a watercourse, lake, pond, flowage, or saltwater environment.

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

"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.

"Structure" means anything that is constructed or erected and located on or under the ground. For purposes of minimum setback requirements under KPB 21.44 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.

"Temporary structure" means a transportable structure for one-time use not to exceed six consecutive months.

"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.

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

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

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

Local Option Zoning	Permitted Uses	Front Yard Setback	Rear Yard Setback	Side Yard Setback	Shore Setback	Maximum Building Height	Minimum Lot Size**	Buffer Between Road & Site
<b>R-1</b>	<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'
<b>R-R</b>	<b>Rural Residential</b> Uses permitted in R-1	60'	40'	25'	50'	N/A	100,000 sq. ft.	30'
<b>R-M</b>	<b>Mixed Residential</b> Uses permitted in R-1, and multi-family dwellings (no more than 4 units per structure)	MF: 60'	40'	25'	50'	N/A	80,000 sq. ft.	30'
		SF: 40'	20'	15'	50'	N/A	40,000 sq. ft.	30'
<b>R-C</b>	<b>Residential Conservation District</b> Uses permitted 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'
<b>C-3</b>	<b>Mixed Use</b> Uses permitted in R-1, R-M, and commercial and business uses	30'	20'	15'	100'	N/A	40,000 sq. ft.	20'
<b>C-4</b>	<b>Industrial Mixed Use</b> Uses permitted in R-1, R-M, and industrial, commercial and business uses	30'	20'	15'	100'	N/A	40,000 sq. ft.	20'
<b>I</b>	<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'

\* Or 2 1/2 stories, whichever is less. \*\* Smaller lots are permitted only with an ADEC approved community water system. See KPB 21.44 for a complete description of all districts, uses, and standards.

**SECTION 3.** That KPB 21.24.030(B) and (C) shall be amended to read as follows:

B. Citation. The charging document for an infraction shall be a citation and shall be filed in the District Court of Alaska. The citation shall state the time within which the defendant must respond to the citation, that the defendant is entitled to a trial, to engage counsel, to confront and question witnesses, to testify, and to subpoena witnesses on plaintiff's behalf. The citation shall also state that a mandatory court appearance may be waived by payment of the minimum fine stated on the citation. The citation shall state that the defendant has 10 days to respond from the date of the service of the citation, and shall state where defendant must respond.

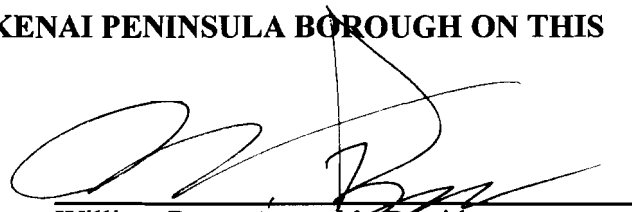
C. Fine Schedule. The following fines are the scheduled fines for violations. The scheduled fine for an offense may not be judicially reduced.

<i>Code Chapter Section Citation</i>	<i>Chapter / Section Title</i>	<i>Scheduled Fine</i>
KPB 21.06.040	Failure to obtain a development permit	\$75.00
KPB 21.09.060	Violation of nonconforming use/structure provisions	\$50.00
KPB 21.09.070	Prohibited use	\$100.00
KPB 21.09.080	Violation of development standards	\$50.00
KPB 21.09.090(A)	Violation of home occupation standards	\$100.00
KPB 21.09.090(B)	Sign size violation	\$50.00
KPB 21.09.090(C)	Prohibited home occupations	\$100.00
KPB 21.13.040	Failure to obtain land use permit	\$75.00
KPB 21.14.030	Failure to obtain a mobile home park permit	\$75.00
KPB 21.18.050(A)	Failure to obtain fuel storage/logging permit	\$75.00
KPB 21.18.060	Prohibited activity in habitat protection area	\$100.00
KPB 21.18.072	Failure to obtain commercial activity permit	\$75.00
KPB 21.18.080	Failure to obtain a conditional use permit	\$75.00
KPB 21.18.090(D)	Failure to obtain expansion/enlargement conditional use permit	\$100.00
KPB 21.24.050	Violation of or removal of an enforcement order	\$100.00
KPB 21.42.060	Violation of nonconforming use/structure provisions	\$75.00
KPB 21.42.090	Prohibited use	\$100.00
KPB 21.42.100	Violation of development standards	\$50.00
KPB 21.42.110(D)	Failure to obtain a home occupation permit	\$75.00

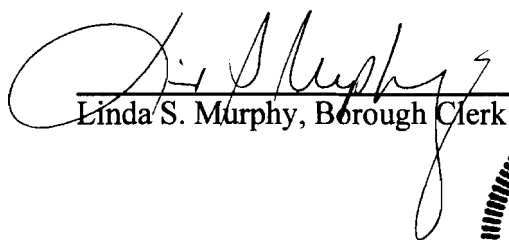
KPB 21.44.110	Violation of nonconforming use standards	\$75.00
KPB 21.44.130	Failure to obtain a home occupation permit	\$75.00
KPB 21.44.160(A)(B)	Prohibited use	\$100.00
KPB 21.44.160(C)	Violation of development standards	\$50.00
KPB 21.44.170(A)(B)	Prohibited use	\$100.00
KPB 21.44.170(C)	Violation of development standards	\$50.00
KPB 21.44.180(A)(B)	Prohibited use	\$100.00
KPB 21.44.180(C)	Violation of development standards	\$50.00
KPB 21.44.190(A)(B)	Prohibited use	\$100.00
KPB 21.44.190(C)	Violation of development standards	\$50.00
KPB 21.44.200(A)	Prohibited use	\$100.00
KPB 21.44.200(B)	Violation of development standards	\$50.00
KPB 21.44.210(B)(C)	Prohibited use	\$100.00
KPB 21.44.210(D)	Violation of development standards	\$50.00

**SECTION 4.** This ordinance shall become effective 30 days after the date of adoption.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 16TH DAY OF MAY, 2000.**

  
 \_\_\_\_\_  
 William Popp, Assembly President

ATTEST:

  
 \_\_\_\_\_  
 Linda S. Murphy, Borough Clerk

