

Introduced by: McClure, Mayor
Date: 04/06/10
Hearing: 05/04/10
Action: Enacted as Amended
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2010-17**

AN ORDINANCE EXTENDING THE SUNSET PROVISION OF ORDINANCE 2009-09 (LONG) SUBSTITUTE, AMENDING PROVISIONS OF KPB CHAPTER 21.06 REGULATING FLOOD HAZARD AREAS IN THE SEWARD-BEAR CREEK FLOOD SERVICE AREA, AND CONFIRMING THE ADMINISTRATION'S EFFORTS TO FURTHER THE INTENT OF RESOLUTION 2009-070 TO PURSUE VARIOUS SOLUTIONS TO FACILITATE MOVING RESIDENTS VOLUNTARILY AWAY FROM FLOOD HAZARD AREAS

WHEREAS, flooding has repeatedly occurred in the Seward-Bear Creek Flood Service Area (SBCFSA); and

WHEREAS, the Kenai Peninsula Borough Floodplain Task Force (Task Force) was formed to evaluate long-term solutions to flooding and the repetitive damage flooding causes within the SBCFSA; and

WHEREAS, Ordinance 2009-09 (Substitute) provides for the creation of a flood hazard district known as the Seward Mapped Flood Data Area (SMFDA) within which additional regulations govern the construction of certain structures in order to limit damage caused by such construction; and

WHEREAS, Ordinance 2009-09 (Substitute) is scheduled to expire May 5, 2010, pursuant to Ordinance 2010-11, as it was intended to be a temporary measure to limit flood damages until the Federal Emergency Management Agency (FEMA) completes the process of preparing new Federal Insurance Rate Maps (FIRMs) which can be used to more accurately identify flood-prone areas; and

WHEREAS, the new maps are expected to be published and adopted within the next year; and

WHEREAS, at its meeting of March 16, 2010, the Task Force recommended that Ordinance 2009-09 be extended to March 4, 2011; and

WHEREAS, the borough's best interest would be served by extending Ordinance 2009-09 (Substitute) to March 4, 2011, to provide time for the FIRM maps to be completed, approved, and adopted by the assembly; and

WHEREAS, in the one year since enactment of Ordinance 2009-09 (Substitute) staff has determined that amendments are required to clarify the provisions in the ordinance; and

WHEREAS, these clarifications would be in the best interests of the public; and

WHEREAS, Resolution 2009-070 authorized the administration to pursue various solutions including land purchase, sale, and trade to facilitate moving residents out of the SBCFSA and flood hazard areas; and

WHEREAS, the administration has reviewed available maps and data to determine appropriate strategies to achieve the goals set forth in Resolution 2009-070; and

WHEREAS, the administration has assembled for assembly review a program document that notes its current and projected efforts to identify lands that are potentially suitable for development and its efforts to gather additional information to support the intent of Resolution 2009-070; and

WHEREAS, at its meeting of April 12, 2010, the Seward-Bear Creek Flood Service Area Board recommended enactment by majority consent; and

WHEREAS, at its meeting of April 26, 2010, the Planning Commission recommended enactment by majority consent;

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

SECTION 1. Ordinance 2009-09 (Substitute) shall remain in effect until March 4, 2011, at which time it shall automatically expire unless the assembly by ordinance alters or extends that date.

SECTION 2. That KPB 21.06.045 is hereby amended as follows:

21.06.045. KPB GIS mapped flood data area.

A. *Base flood elevation in the SMFDA district.* Based upon a digital elevation model provided by the borough, base flood elevation in the SMFDA district is established by a licensed professional registered land surveyor or professional civil engineer at the highest point within the lot measured downslope from the specific construction site.

B. *Exemption from application of SMFDA district.*

1. A property owner may request an exemption for application of SMFDA to his proposed development upon a showing by substantial evidence that his property was not inundated by flood waters in the 1986, 1995, or 2006 floods; adverse bank erosion has not occurred during the property owner's

ownership, erosion cannot be determined by analysis of KPB aerial photos beginning in 1986; the property is not a Corps of Engineers regulated wetland; or adjacent property owners concur there has been no adverse impact to their properties by flooding from the property of ownership making the request for SMFDA exemption. Staff shall verify whether the application for exemption meets the criteria and shall issue a written determination regarding the same. This determination may be appealed to the planning commission within 15 days of issuance.

2. Where elevation and conveyance data is not available, applications for development—permits shall be reviewed to assure that proposed development will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes the use of historical data, high water marks, photographs of past flooding, best management practices, and other available reasonably reliable data.

C. *Conditions.* Only primary structures, substantial improvements to primary structures, and development in the minimum flood corridor in the SMFDA district require a development permit. The permits in the SMFDA district are subject to the following conditions:

1. Primary structures, including the crawl space, basement, or any part of the structure other than the supports, in the SMFDA district shall be a minimum of two feet above base flood elevation. [BELOW-GRADE SUPPORTS SHALL BE AT A TWO-TO-ONE RATIO AS COMPARED TO THE SUPPORT ABOVE GRADE];
2. Foundations shall have an erosion resistant design; and
3. Where applicable, including for attached garages and similar construction, the standards for the permit is subject to the standards set forth in KPB 21.06.050; and
4. The permitted activity shall not increase the risk of flood damage to downstream or adjacent properties.

D. Currently active channels within the SMFDA district. All development in the SMFDA district in the minimum flood corridor within the Resurrection River watershed, Spruce and Sawmill Creeks, [SHALL BE SUBJECT TO THE PERMITTING REQUIREMENTS OF KPB 21.06.050(C)] shall require a permit that is based on best management practices to minimize adverse impacts to properties in the vicinity of the subject activity.


E. If review of the permit application by staff indicates that the conditions set forth in KPB 21.06.045(C) cannot be met, staff shall deny the application. The applicant may apply for a permit from the planning commission by submitting a project-specific design under the waiver provisions of KPB 21.06.045(F).

F. *Waivers.* The variance procedure in KPB 21.06.060 only applies to permitting in the FIRM area. A project-specific design prepared by a licensed professional civil engineer may be submitted for consideration to the planning commission in lieu of meeting the conditions set forth in KPB 21.06.045(C). Based upon written findings of fact, the planning commission may grant or deny the permit and place conditions on the permit it grants in order that the risk of flood damage to downstream or adjacent property or flood damage to public infrastructure will not be increased. The grant or denial of a permit may be appealed to the board of adjustment within 15 days of distribution of the planning commission's written decision.

SECTION 3. That the assembly supports the administration's continued efforts to identify and pursue appropriate lands and remedies that would aid property owners in averting flood related hazards.

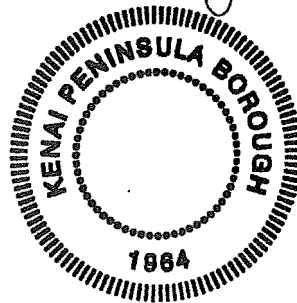
SECTION 4. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF MAY, 2010.


Pete Sprague, Assembly President

ATTEST:


Johmi Blankenship, Borough Clerk



Yes: Fischer, Haggerty, Knopp, McClure, Pierce, Smalley, Smith, Superman, Sprague
No: None
Absent: None