



KENAI PENINSULA BOROUGH

PLANNING DEPARTMENT

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DAVID R. CAREY
BOROUGH MAYOR

MEMORANDUM

TO: Gary Knopp, Assembly President
Kenai Peninsula Borough Assembly Members

THRU: *DR Carey* David R. Carey, Borough Mayor

FROM: *MB* Max J. Best, Planning Director
MA John Mohorcich, Donald E. Gilman River Center Director

DATE: August 10, 2011

SUBJECT: Ordinance 2011-34, An ordinance repealing KPB 21.24, Administration and Penalty and enacting KPB 21.50 Establishing an Enforcement Process for Violations of Title 21.

The material site (currently KPB 21.29) and anadromous stream protection (KPB 21.18) ordinances were first adopted in 1996. The borough substantially amended the code enforcement chapter, KPB 21.24, to address violations of land use regulations in 1997. While the enforcement ordinance is applicable to all land use regulation chapters in Title 21, material site and habitat protection generate the most enforcement issues. The chapter has had a rather uneven amount of workability for staff. While the borough enjoys a high level of voluntary compliance the code presents the following challenges: resolving issues with recalcitrant respondents, minimal fines that encourage noncompliance, having the planning commission sit as the hearing tribunal for violations, and lack of clarity in the underlying codes being enforced. The varying fine schedule for infractions handled through the minor infraction process in court and the separate daily civil fine of \$300.00, both contained in the current code, has lead to some confusion as well over which process is applicable.

The lack of clarity in underlying codes has been or continues to be addressed through an omnibus rewrite of the material site code in 2006 and with a partially complete rewrite of KPB 21.18. These rewrites however do not resolve the other challenges the current enforcement code presents. The assembly accepted grant funding in 2010 from the federal Coastal Impact Assistance Program for the Habitat Protection Education and Code Revision project in part to evaluate and make recommendations regarding the borough's code enforcement of land use regulations. A committee was formed consisting of representatives from the planning department, the River Center, and the legal department. The committee researched how other municipalities handled enforcement of land use regulations. The committee continued to meet regularly discussing various enforcement scenarios and how best they could be resolved. The

committee is recommending replacement of the process where the planning commission determines violations and hears fines in favor of an independent hearing officer. The committee created a draft ordinance which was reviewed by outside counsel who also answered specific legal questions with regard to land use regulation enforcement. The committee interviewed the Chief of Code Compliance for the Municipality of Anchorage as well as the Municipality of Anchorage's Hearing Officer. These representatives from the Municipality of Anchorage reported favorably on the hearing officer process.

In summary the enforcement process proposed would generally start with a warning from the department administering the chapter of the code being violated. A stipulation may also be entered by the borough and property owner or occupant to bring the property into compliance and pay a lesser fine than if the case were fully adjudicated before the hearing officer. If the warning does not result in voluntary compliance, an enforcement notice would be issued. The enforcement notice would provide a hearing date before the hearing officer. If the respondent corrects the violation the enforcement notice could be dismissed prior to hearing. The hearing officer has the ability to require corrective work to cure a violation, assess the payment of fines, and revoke a permit. An appeal of the hearing officer's decision may be taken to superior court.

If a respondent continues the violation after the hearing officer issues an order, depending on the circumstances, the borough could request a supplemental order from the hearing officer or proceed to court to collect fines and/or seek a statutory injunction pursuant to AS 29.40.190 to gain compliance. The borough may also seek a court order to have the respondent abate a violation or request the ability for the borough to abate the violation at the respondent's cost. At this time, staff is recommending a daily fine not to exceed the amount in accord with the fine schedule contained in 21.50.050 of the ordinance.

It is the Administration's recommendation that only a part time contract hearing officer would be needed to assist in the resolution of violations of Title 21 of the KPB code of ordinances. It is recommended that hearing officers have an appropriate background in land use regulation and quasi-judicial experience.