

## **KENAI PENINSULA BOROUGH**

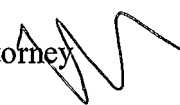
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**DAVID R. CAREY  
BOROUGH MAYOR**

### **MEMORANDUM**

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

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

**FROM:** John Mohorcich, River Center Director  
✓ Max Best, Planning Director  
Holly Montague, Deputy Borough Attorney 

**DATE:** September 29, 2011

**SUBJECT:** Ordinance 2011-34, repealing KPB Chapter 21.24 and enacting KPB Chapter 21.50 establishing enforcement provisions for violations of Title 21

At the introduction of ordinance 2011-34 several questions were raised regarding the fine schedule associated with the ordinance. This memo addresses those questions.

One of the main questions was the origin of the \$300 per day civil fine. The \$300 per day civil fine is part of the current enforcement ordinance. KPB 21.24.070. This is the fine amount and process currently used for enforcement actions. However, KPB 21.24.070 doesn't explain when fines start and stop; nor does it detail the hearing process, or explain the benefits of early voluntary compliance for the violator. The current civil fine process is more cumbersome than the proposed KPB 21.50 because it does not detail the process for either staff or the public causing borough staff to figure out each case as it proceeds. Even though almost all fines are \$300 per day a schedule is set forth in KPB 21.50.050 so the public is specifically aware of what code sections can be violated, and to aid staff using the proper citation to the code section in issuing enforcement notices.<sup>1</sup>

Proposed KPB 21.50 allows several opportunities for voluntary compliance before a fine would be initiated. There will generally be a written warning to a violator which will have no legal consequences for the violator but lets the violator know the borough is aware of the

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<sup>1</sup> The infraction process set forth in current KPB 21.24 was designed for the code compliance officer to handle land use violations before a magistrate similar to traffic court. It was adopted without prior enforcement experience for the borough since the adoption of the material site and anadromous stream ordinance in 1996 were the main impetus for adoption of the enforcement code in KPB 21.24 in 1997. All the court proceeding can result in is fines, not compliance, because magistrates do not have jurisdiction to order equitable relief such as a compliance order. Therefore, the infraction process should be repealed in its entirety as it is confused with the process the borough has actually used for the past and is an inadequate tool to gain compliance.

violation and it gives the violator the opportunity to cure the violation without the matter going further. (This would also allow the violator to show borough staff that there is not a violation without an official enforcement action being initiated.) Once an enforcement notice is issued with a date for a hearing the violator still will have an opportunity to cure by a date certain before fines are initiated. If the violator does not cure before the fines are initiated the fines will not continue to accrue after the date of compliance. Further, the hearing officer has the flexibility to reduce the fines to the equivalent of one day's fine. While concerns have been raised that \$300 per day is excessive given the opportunities for voluntary compliance once the borough discovers the violation, it is believed that it will be rare that we will need to assess cumulative fines.

AS 29.40.190 allows for a civil fine of up to \$1,000 per day per violation. KPB 21.50's proposed \$300 per day fine for the majority of violations is conservative in light of what the law allows. Violation of an enforcement notice or enforcement order is subject to a \$500 per day fine. Where the enforcement action involves failure to apply for and obtain a necessary permit a double permit fee is also assessed. While this will not defray the extra costs to the borough in additional inspections and paperwork required by the enforcement action it will serve as an incentive for early compliance. Staff is not interested in punishing violators as much as it is interested in gaining compliance as soon as possible in the process which will not only save borough resources it will further the goals of the underlying codes being enforced.

Staff believes from experience in the field that insignificant fines will not serve the compliance process. If a property owner will make enough profit from a violation or be able to enjoy the benefits of a violation enough that the fine is not troublesome the property owner will chose to continue the violation which will require expensive and time-consuming enforcement and legal actions to gain compliance.