

Introduced by: Mayor  
Date: 09/06/11  
Hearing: 10/11/11  
Action: Enacted  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
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**

**WHEREAS**, KPB 21.24 was amended in 1997 to address recently adopted land use regulations; and

**WHEREAS**, the enforcement provisions have not been updated since they were adopted; however the primary land use regulations subject to enforcement have been or are the subject of thorough rewrites; and

**WHEREAS**, a hearing officer will assist in the fair and effective enforcement of borough land use regulations; and

**WHEREAS**, the planning commission considered this ordinance at its August 22, 2011, meeting and recommended enactment by unanimous consent;

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

**SECTION 1.** That KPB Chapter 21.24, Administration and Penalty, is hereby repealed.

**SECTION 2.** That the KPB Code of Ordinances is hereby amended by adding a new chapter to be numbered 21.50, which shall read as follows:

**CHAPTER 21.50. VIOLATIONS AND ENFORCEMENT.**

**21.50.010. Purpose.**

The purpose of this chapter is to promote compliance with borough ordinances and promote consistency in enforcement of borough land use regulations.

**21.50.020. Administrative officials.**

A borough employee who administers provisions of this title is authorized to act as an administrative official under this chapter with regard to those provisions. The mayor may appoint in writing additional persons, including persons who are not borough employees, to act as administrative officials under this chapter.

**21.50.030. Violations.**

A. Each of the following is a violation of this title:

1. A use or occupancy of land or a structure that conflicts with a provision of this title, or a permit, entitlement or enforcement order issued under this title.
2. The construction, alteration, repairing or moving of a structure or part thereof that conflicts with a provision of this title, or a permit issued under this title.
3. The violation of the terms of an enforcement notice issued under this chapter.
4. The development, occupancy or use of any land or structure for which this title requires a permit without first obtaining the permit, or after the required permit has been suspended or revoked.
5. Acting in any manner that this title declares to be prohibited, unlawful, a violation, or an offense.
6. To cause or permit another to commit a violation of this title.
7. Failure to obtain a permit required by this title is a violation. An application for a permit, permit modification, or variance may not be processed once an enforcement notice has been issued until the enforcement notice is resolved.
8. Ownership, control or the right to control land or a structure where the land or structure is used, occupied, maintained, kept, altered, constructed or established in violation of a provision of this title, or a permit issued under this title.

B. Each act or condition is a violation of this title, and every day upon which the act or condition occurs, is a separate violation.

**21.50.040. Remedies for violations.**

A. For any violation of this title that presents an immediate threat to life, health, safety, or the environment, the borough may bring a civil action against the violator for any one or more of the following:

1. To enjoin or abate the violation. Upon application for injunctive relief and a finding that a person is in violation or threatening a violation, the superior court shall enjoin the violation.

2. To require the restoration of any structure, vegetation, land, water body or other thing upon the land that is destroyed, damaged, altered or removed in such violation.
  3. To recover damages to the borough caused by the violation.
  4. To recover a civil penalty not exceeding \$1,000.00 for each violation.
- B. For any violation of this title, the borough may bring an administrative enforcement proceeding under this chapter against the violator for any one or more of the following:
1. To correct or abate the violation.
  2. To recover a civil penalty not exceeding \$500.00 per day for each violation in accord with the fine schedule set forth at KPB 21.50.050.
- C. Permit Revocation.
1. A permit may be revoked for failure to comply with the terms of the permit or with applicable provision of Title 21. Staff shall issue an enforcement notice pursuant to KPB 21.50.080 and make a request for a revocation hearing and a written recommendation to the hearing officer by filing the same with the borough clerk. The clerk shall issue notice to the permittee of the revocation hearing at least 20 but not more than 30 days prior to the hearing. The permittee and staff shall file all evidence relevant to the permit revocation with the borough clerk 7 days prior to the hearing. If the noncompliance which lead to the request for revocation is satisfactorily resolved the administrative official may dismiss the revocation proceeding.
  2. Pursuant to the Alaska rules of appellate procedure an appeal from the hearing officer's decision on revocation may be taken to the superior court in Kenai within 30 days of the date of distribution.
- D. No remedy provided in this section is exclusive, but is cumulative of all other remedies available under this chapter or at law or in equity.

**21.50.050. Fines.**

- A. Following are the fines for violations of this title. Each day a violation occurs is a separate violation. The fine for a violation may not be reduced by the hearing officer to less than the equivalent of one day's fine for each type of violation.

CODE CHAPTER & SECTION	VIOLATION DESCRIPTION	DAILY FINE
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KPB 21.05.040(C)	Violation of variance conditions	\$300.00
KPB 21.06.040	Failure to obtain a Development Permit/Floodplain Management	\$300.00
KPB 21.06.045	Failure to obtain a SMFDA Development Permit/Floodplain Management	\$300.00
KPB 21.06.055	Failure to obtain floodplain logging or fuel storage permit/Violation of permit conditions/Floodplain Management	\$300.00
KPB 21.09.060	Prohibited nonconforming structure/College Heights Zoning District	\$300.00
KPB 21.09.070	Prohibited Use/College Heights Zoning District	\$300.00
KPB 21.09.090(A)	Violation of Home Occupation Standards/College Heights Zoning District	\$300.00
KPB 21.09.090(B)	Violation of sign standards/College Heights Zoning District	\$300.00
KPB 21.09.090(D)	Prohibited home occupation/College Heights Zoning District	\$300.00
KPB 21.09.090(E)	Failure to obtain a permit/College Heights Zoning District	\$300.00
KPB 21.18.071	Failure to obtain staff permit/ Violation of staff permit/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.072	Failure to obtain limited commercial activity permit/Violation of permit conditions/ Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.075	Prohibited use or structure/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.081	Failure to obtain Conditional Use Permit/Violation of Conditional Use Permit Condition/Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.090	Failure to obtain prior existing use/structure permit/Violation of permit conditions/ Anadromous Streams Habitat Protection	\$300.00
KPB 21.18.135(C)	Violation of emergency permit conditions/anadromous stream habitat protection	\$300.00
KPB 21.25.040	Failure to Obtain a Permit/Material Site/Correctional community residential center/Concentrated Animal Feeding Operation	\$300.00
KPB 21.28.030	Violation of permit conditions/Concentrated Animal Feeding Operations	\$300.00
KPB 21.29.020	Failure to Obtain a counter permit/Material Site Permits	\$300.00
KPB 21.29.050	Violation of Conditional Land Use Permit Conditions/Material Site Permits	\$300.00
KPB 21.29.060	Violation of Reclamation Plan/Material Site Permits	\$300.00
KPB 21.40.060	Violation of nonconforming structure conditions/North Fork One Zoning District	\$300.00
KPB 21.40.070	Violation of nonconforming use conditions/North Fork One Zoning District	\$300.00
KPB 21.40.080	Violation of Principal Permitted Uses/North Fork One Zoning District	\$300.00
KPB 21.40.100	Failure to obtain a Home Occupation Permit/Violation of Home Occupation Permit Conditions/North Fork One Zoning District	\$300.00

KPB 21.42.060	Violation of nonconforming uses/structures/Keystone Estates Subdivision Zoning District	\$300.00
KPB 21.42.070	Violation of Principal Permitted Uses/ Keystone Estates Subdivision Zoning District	\$300.00
KPB 21.42.080	Violation of Accessory uses/structures/Keystone Estates Subdivision Zoning District	\$300.00
KPB 21.42.090	Prohibited Use/ Keystone Estates Subdivision Zoning District	\$300.00
KPB 21.42.100	Violation of Development Standards/ Keystone Estates Subdivision Zoning District	\$300.00
KPB 21.42.110(A)	Violation of Home Occupation Standards/ Keystone Estates Subdivision Zoning District	\$300.00
KPB 21.42.110(C)	Prohibited Home Occupation/ Keystone Estates Subdivision Zoning District	\$300.00
KPB 21.42.110(D)	Failure to Obtain Home Occupation Permit/ Keystone Estates Subdivision Zoning District	\$300.00
KPB 21.44.100	Violation of Pre-existing structures/ Local Option Zoning	\$300.00
KPB 21.44.110(D)	Prohibited expansion of nonconforming use/ Local Option Zoning	\$300.00
KPB 21.44.110(E)	Prohibited Change in Use/ Local Option Zoning	\$300.00
KPB 21.44.110(G)	Violation of Conditions on Nonconforming Use/ Local Option Zoning	\$300.00
KPB 21.44.130(C)(D)	Violation of Home Occupation Conditions/ Local Option Zoning	\$300.00
KPB 21.44.130(F)	Failure to obtain a Home Occupation Permit/ Local Option Zoning	\$300.00
KPB 21.44.130(J)	Prohibited Change in Use/ Local Option Zoning	\$300.00
KPB 21.44.160(A)	Prohibited principal use/ Single Family Residential District/ Local Option Zoning	\$300.00
KPB 21.44.160(B)	Prohibited Secondary Use/ Single Family Residential District/ Local Option Zoning	\$300.00
KPB 21.44.160(C)	Violation of Development Standards/ Single Family Zoning/ Local Option Zoning	\$300.00
KPB 21.44.170(A)	Prohibited principal us/ Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.170(B)	Prohibited secondary use/ Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.170(C)	Violation of Development Standards/ Rural Residential District/Local Option Zoning	\$300.00
KPB 21.44.170(D)	Violation of Home Occupation Standards/ Rural residential District/Local Option Zoning	\$300.00
KPB 21.44.175(B)	Prohibited Principal Use/ Residential Waterfront	\$300.00
KPB 21.44.175(C)	Prohibited Secondary Use/ Residential Waterfront	\$300.00
KPB 21.44.175(D)	Violation of Development Standards/ Residential Waterfront	\$300.00
KPB 21.44.175(E)	Violation of Home Occupation Conditions/ Residential Waterfront	\$300.00
KPB 21.44.180(A)	Prohibited Principal Use/ Mixed Residential District/Local Option Zoning	\$300.00
KPB 21.44.180(B)	Prohibited Secondary Use/ Mixed Residential District/Local Option Zoning	\$300.00
KPB 21.44.180(C)	Violation of Development Standards/ Mixed Residential District/Local Option Zoning	\$300.00

KPB 21.44.190(A)	Prohibited Principal Use/ Mixed Use District/Local Option Zoning	\$300.00
KPB 21.44.190(B)	Prohibited Secondary Use/ Mixed Use District/Local Option Zoning	\$300.00
KPB 21.44.190(C)	Violation of Development Standards/ Mixed Use District/Local Option Zoning	\$300.00
KPB 21.44.200(A)	Prohibited Principal or Secondary use/ Industrial District/Local Option Zoning	\$300.00
KPB 21.44.200(B)	Violation of development standards/ Industrial District/Local Option Zoning	\$300.00
KPB 21.44.210(B)	Prohibited Principal Use/ Residential Conservation District/Local Option Zoning	\$300.00
KPB 21.44.210(C)	Prohibited Secondary Use/ Residential Conservation District/ Local Option Zoning	\$300.00
KPB 21.44.210	Violation of Development Standards/ Residential Conservation District/Local Option Zoning	\$300.00
KPB 21.46.030(b)	Failure to maintain bear-resistant garbage cans/Local option zone/Birch and Grove Ridge subdivisions Rural Residential District	\$300.00
KPB 21.50.100(F)	Removal of posted enforcement notice	\$300.00
KPB 21.50.100(G)	Violation of enforcement notice/stop work order	\$500.00
KPB 21.50.130(I)	Violation of an enforcement order	\$500.00

- B. For enforcement notices involving a failure to obtain a permit, if a permit is subsequently granted by staff or the planning commission, the permit fee shall be doubled. This section is applicable to violations of KPB 21.06.040, 21.06.045, 21.06.055, 21.09.090(E), 21.18.071, 21.18.072, 21.18.081, 21.18.090, 21.18.090, 21.29.020, 21.40.100, 21.42.110(D), 21.44.0130(F).

**21.50.060. Permit compliance.**

A permit may not be issued under this title if:

- A. Either the permit applicant or the owner of the parcel that is the subject of the application has any enforcement orders regarding outstanding violations of the chapter under which the permit is being sought; or
- B. Either the parcel that is the subject of the permit application or any adjacent parcel in the same ownership has any outstanding violations of this title.

**21.50.070. Inspections; Right of entry.**

- A. At any reasonable time, and upon presentation of borough identification, an administrative official may enter upon any land or building to:
  - a. Inspect the land or building where the official has reasonable cause to believe there is a violation of this title, or
  - b. Perform any other duty under this title.

- B. When consent to entry or inspection under subsection (A) of this section is refused or otherwise unobtainable, an administrative official may obtain an administrative search warrant from the state trial court with jurisdiction and exhibit the warrant to the person in charge of the property before entering and inspecting the property. The application for an administrative search warrant shall state the names of the owner and occupant and the address of the property to be inspected, the authority to conduct the inspection, the nature and extent of the inspection and the facts and circumstances justifying the inspection. A warrant issued under this section shall be returned within 10 days after issuance.

**21.50.080. Investigation; Warning.**

- A. Upon receiving information indicating the occurrence of a violation described in KPB 21.50.030, an administrative official may investigate the violation to the extent, and within the time, that the borough finds to be appropriate to the circumstances.
- B. The borough may issue a written warning notice to an owner or occupant of property for violation(s) on the property. The warning notice shall describe the violation, the provisions of this title that have been violated, and the remedies that the borough may seek if the violation is not corrected voluntarily. If the borough issues a warning notice the notice shall state clearly that it does not initiate an enforcement proceeding, but that the borough may initiate an enforcement proceeding if the violation is not corrected or abated within a specified time.

**21.50.090. Stipulated agreement**

- A. In lieu of, or in addition to a written warning notice as described in 21.50.080 (B), the borough may enter into a stipulated agreement with an owner or occupant of property for violations on the property.
- B. A stipulated agreement between the borough and a property owner or occupant shall constitute an admission and acknowledgement by the property owner or occupant of the alleged code violation and an agreement to remedy the violation and pay civil fines as described within the stipulation and within the timeframe agreed upon. The stipulated fine shall be one-half the fine for a one day violation. Where there is more than one violation associated with the stipulation the stipulated fine shall be one-half of the highest one day fine.
- C. If a property owner or occupant does not fully comply with a stipulated agreement an enforcement notice may be issued as provided in KPB 21.50.100 below.

**21.50.100. Enforcement proceeding.**

- A. The borough commences an administrative enforcement proceeding under this chapter by serving an enforcement notice that contains the following:
1. The names and addresses of all persons to be served with the notice under KPB 21.50.100(B);
  2. A legal description and street address or similar description of each property on which an alleged violations is located;
  3. A citation to each provision of this title that is alleged to have been violated, and a statement of the facts that constitute each alleged violation in sufficient detail to provide the recipient with a reasonable opportunity to respond to the allegations;
  4. A description of the action, if any, that is required to correct or abate the alleged violation, including without limitation any one or more of the following, and the time within which the correction or abatement must occur:
    - a. The discontinuation of a use of land, a structure, or a permitted activity;
    - b. The abatement or removal of a condition or use of land, a structure, or a vehicle or other personal property;
    - c. The discontinuation of activity preparatory to the use or occupancy of land or a structure; and
    - d. Obtaining a permit.
  5. The remedies that borough will seek for the alleged violation, including but not limited to the suspension or revocation of a permit issued under this title;
  6. The date, time, and place of the hearing required by KPB 21.50.130, which shall be at least 20 but not more than 30 days from the first service of the enforcement notice;
  7. Notification of the right to respond to the allegations in writing before the date of the hearing and the time within which to do so, and of the right to appear and present evidence at the hearing, and to be represented by legal counsel in the enforcement proceeding; and
  8. The address, telephone, facsimile number and email address for contacting the borough regarding the violation.



- B. The borough shall serve an enforcement notice on each alleged violator, and each record owner of the real property that is the location of the alleged violation according to the records of the borough assessing department. An enforcement notice may be served upon a person by:
1. Delivery to the person or the person's authorized agent;
  2. Certified mail, return receipt requested, restricted delivery, to the person or the person's authorized agent;
  3. Any other method of delivery where the person acknowledges receipt of the enforcement notice in writing; or
  4. Publication notice as provided in Rule 4(e)(2) of the Alaska Rules of Civil Procedure, but only if reasonable attempts to utilize the methods prescribed by subparagraphs (1) through (3) above are not successful.
- C. Where practical the borough may post a copy of an enforcement notice at the real property that is the location of the alleged violation where it is likely to be observed by one or more violators or the owner of the property. The borough also may post a summary of the enforcement notice at or near the location of the alleged violation where it will inform the public of the enforcement action. The failure to post a notice under this subsection shall have no effect on the enforcement proceeding.
- D. The person who serves or posts an enforcement notice shall file an affidavit in the enforcement proceeding stating the date, time and method of service and the person served, or the date, time and place of posting. Once served the enforcement notice shall be filed with the borough clerk by the end of the next business day.
- E. The issuance of an enforcement notice regarding a violation does not stay or preclude any other action at law or in equity related to the violation.
- F. Removing a posted enforcement notice or violating an enforcement notice is a separate violation of this title.
- G. Continuing work when an enforcement order includes a stop work order is a separate violation of this chapter.

**21.50.110. Hearing officers.**

- A. The borough shall retain one or more hearing officers to conduct adjudicative proceedings under this chapter. A hearing officer shall have experience in quasi-judicial proceedings and the administration of land use regulations. A person may not act as hearing officer while serving on the planning commission or board of adjustment of the borough or a city located within the

borough.

- B. Hearing officers shall have jurisdiction over all matters submitted to the officer on an enforcement notice signed by an administrative official in accordance with the procedures set forth in this title including the following:
  - 1. civil fines included on the schedule set forth in KPB 21.50.050.
  - 2. requests for revocation of permits granted pursuant to this title.
  - 3. requests for correction of a violation as defined in KPB 21.50.130(G)(1).
- C. The hearing officer may assess civil fines and costs assessable pursuant to KPB 21.50.050 and 21.50.130(G) but may not assess attorney's fees, and make other orders in connection with violations within his jurisdiction pursuant to subsection B of this section.
- D. The jurisdiction of hearing officers to hear and decide matters alleging violations of this title shall not be exclusive, but shall be concurrent with that of the state courts.
- E. A hearing officer may not hear or decide a case:
  - 1. In which the hearing officer:
    - a. Has a direct or indirect financial interest in the property that is the subject of the case, or that is located within 500 feet of property that is the subject of the case;
    - b. Is related by blood, adoption, or marriage to any party to the case or to an owner of property that is the subject of the case, or who resides at or owns property within 500 feet of property that is the subject of the case.
  - 2. In which either:
    - a. A party demonstrates that, due to factors external to the case, the ability of the hearing officer to make an impartial decision is actually impaired, or
    - b. Reasonable persons would conclude the ability of the hearing officer to make an impartial decision is impaired due to circumstances of the proceeding, including without limitation instances in which the hearing officer or an immediate family member is a party, material witness or represents a party.

### **21.50.120. Prehearing procedure.**

- A. The borough clerk shall maintain a list of persons who have been retained as hearing officers. Hearing officers shall be assigned cases in the sequence in which they appear on the list. Within three (3) business days after receiving an enforcement notice the borough clerk shall transmit the enforcement notice to the qualified and available hearing officer who is next in rotation on the list. The clerk shall provide written notice to the parties of which hearing officer has been assigned to the proceeding within three (3) business days of submitting the enforcement notice to the hearing officer.
- B. Subject to approval by the hearing officer, the parties may agree to extend or reduce the time for a hearing. The borough clerk shall mail notice of the date and time of the hearing to each party. The notice shall identify the proceeding and the hearing officer, and describe the hearing procedure and the right of a party to the proceeding to review the administrative file regarding the enforcement notice. The failure of any person to receive actual notice of the hearing shall not invalidate any order or decision of the hearing officer.
- C. A party to the proceeding may submit to the borough clerk a written request for the assignment of the proceeding to a different hearing officer accompanied by a detailed statement supporting grounds for disqualification of the hearing officer under KPB 21.50.110(E) within three (3) business days from issuance of the notice of hearing officer. The hearing officer shall respond to such a request in writing within five days after its submission.
- D. Upon a motion by any party and a finding of good cause, the hearing officer may change the date or time of the hearing. Good cause is limited to a fact or circumstance that would significantly prejudice a party in the presentation of its case at the date or time scheduled for the hearing. Reassignment of a hearing officer may be a valid reason for changing the date and time of the proceeding.
- E. Not less than seven (7) days before the hearing, the administrative official shall make available for inspection and copying by each respondent the administrative official's complete file regarding the enforcement notice, except for the redaction of privileged material. The file shall include at a minimum the enforcement notice, complaints concerning the violations alleged in the enforcement notice, all investigative reports regarding each alleged violation, and all correspondence to or from the administrative official regarding each alleged violation.
- F. Not less than seven (7) days before the hearing the respondent shall file evidence relevant to the alleged violation and shall submit a written response to the allegations with the borough clerk which shall include:

1. The full name, mailing and physical address and daytime telephone number of the respondent, and of the person's attorney, if any; and
  2. A statement that the person admits, denies, or has insufficient information to respond regarding each allegation in the enforcement notice. A statement of insufficient information has the effect of a denial. Any allegation that is not denied shall be deemed admitted.
  3. Signature of the respondent.
- G. The administrative official that issued an enforcement notice may dismiss the enforcement notice before the hearing by written notice to the hearing officer, each person entitled to service of the enforcement notice and each other person who submitted a request for hearing, if the administrative official finds:
1. The enforcement notice was issued in error; or
  2. All violations that were alleged in the enforcement notice have been corrected or abated, and the borough does not seek any further remedies or penalties under the enforcement notice.

**21.50.130. Hearing.**

- A. A matter shall proceed to hearing only on those allegations and claims in the enforcement notice that a respondent has contested. A respondent contests an allegation or claim in an enforcement notice issued pursuant to KPBJ 21.50.100(A) by denying the allegation or claim in the respondent's written response to the enforcement notice. If an allegation or claim is not contested by any respondent, that allegation or claim shall be treated as resolved in favor of the borough, and the hearing shall not include the taking of evidence or argument regarding that allegation or claim. If no allegations or claims in the enforcement notice are contested, the matter shall proceed to a decision by the hearing officer without the taking of evidence or argument.
- B. The hearing officer shall set the agenda for the hearing and may call witnesses and request additional evidence. The hearing shall be open to the public. The hearing officer may permit telephonic participation in the hearing by a party or witness. The hearing officer may continue the hearing if necessary to obtain additional evidence. An electronic recording shall be made of the hearing.
- C. At the hearing parties may appear in person or through counsel, present evidence and testimony on their own behalf, call witnesses, and cross examine other parties' witnesses to the extent the hearing officer determines to be reasonably necessary to explore any matters which tend to contradict, modify, or explain testimony given on direct.

D. Evidence.

1. All testimony shall be given under oath or affirmation.
2. The hearing officer is authorized to admit or exclude evidence and to rule upon all objections regarding evidence. The hearing officer may exclude irrelevant, immaterial or unduly repetitious evidence. The hearing officer shall give effect to the rules of privilege recognized by the Alaska Rules of Evidence. An erroneous ruling on the admission or exclusion of evidence shall not affect the validity of the hearing officer's decision unless the ruling is shown to have substantially prejudiced the rights of a party.
3. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule which makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be considered provided there are guarantees of its trustworthiness and that it is more probative on the point for which it is offered than any other evidence which the proponent can procure by reasonable efforts.
4. The hearing officer may take notice of judicially recognizable facts. The hearing officer shall notify the parties during the proceeding, and before the final decision, of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed.

E. The borough bears the burden of proof by preponderance of the evidence regarding the existence of a violation, the identity of the violator, and appropriateness of the relief or penalty requested for the violation.

F. The hearing officer may interpret and apply any provision of this title, applicable planning documents, policies, regulations and the local comprehensive plan that is at issue at the hearing. The hearing officer is not authorized to consider arguments that a provision of this title or the local comprehensive plan is invalid or unconstitutional, which shall be reserved for appeal to the superior court. The hearing officer is not authorized to grant variances from the provisions of this title.

G. Within 10 days after completion of the presentation of evidence, and any closing argument that the hearing officer may permit, the hearing officer shall issue a written decision on all matters at issue under the enforcement notice, with supporting findings of fact and conclusions of law. The borough clerk shall distribute the decision to each party by personal delivery or certified mail, or by facsimile or email to a party who has consented in writing to service by facsimile or email. The decision shall include a concise disposition statement either prescribing the fine imposed and the remedy for each violation, dismissing the enforcement notice, or declaring such other specific

relief ordered by the hearing officer within the hearing officer's jurisdiction as defined by KPB 21.50.110(B) A decision shall also identify the violator or violators to whom the remedy applies and indicate that it is appealable and set forth the method and timing for such appeal. The remedies may include:

1. An order to a violator to correct or abate the violation within a specified time, including without limitation any of the following:
    - a. To discontinue a use of land or a structure;
    - b. To abate or remove a condition or use of land, a structure, or a vehicle or other personal property
    - c. To repair, restore, modify or improve land or a structure;
    - d. To install any equipment necessary to correct or abate the violation;
    - e. To provide a certification by a licensed professional, including without limitation an engineer, surveyor, hydrologist or biologist, that a violation has been corrected or abated to the administrative official designated in the enforcement order.
  2. An order to a violator to pay to the borough a fine. The fine shall not exceed \$500 for each day of each such violation. Fines shall accrue from the date of the enforcement notice to the date the matter is initially set for hearing. Accumulated fines for each violation may not be reduced by the hearing officer to less than the equivalent of one day's fine. The hearing officer may suspend a portion of a fine for a violation as a condition of compliance with other portions of the decision. The suspended portion of a fine may not exceed the equivalent of one day's fine for the violation. The hearing officer may not reduce or waive the double permit fee required by KPB 21.50.050(B). The fine shall be paid to the borough clerk who shall notify the administration of compliance with the order.
  3. An order revoking a permit issued pursuant to this title.
- H. In the case of an order under subsection G.1 the hearing officer retains jurisdiction of the matter, unless appealed, and the borough may apply to the hearing officer for additional relief to enforce compliance with the order. Such an application shall be processed in the same manner as an enforcement notice under KPB 21.50.100 through 21.50.130. Such an application is not exclusive of any other remedy that is available to the borough under this chapter or at law or in equity.
- I. Violation of an enforcement order requiring actions set forth in KPB 21.50.130(G)(1) is a separate violation of this chapter.

#### **21.50.140. Reconsideration and appeal.**

- A. Within 14 days of issuance of the written decision a party that participated in the hearing may request reconsideration of a hearing officer's decision based

only on the following criteria:

1. The hearing officer overlooked, misapplied, or failed to consider a code provision directly controlling;
  2. The hearing officer overlooked or misconceived a material fact;
  3. The hearing officer overlooked or misconceived a material question in the case; or
  4. Fraud or misrepresentation by a party.
- B. Motions for reconsideration are prohibited more than fourteen (14) days after the hearing officer's written decision is issued.
- C. The hearing officer shall rule on a motion for reconsideration or request the other party to respond within ten days after the date of filing the motion with the borough clerk. If ten days pass without the hearing officer issuing a decision on the motion, the motion is considered denied. The motion for reconsideration shall not be granted without giving the parties not filing the motion an opportunity to respond to the motion. Where an opposition to the motion for reconsideration has been requested by the hearing officer and filed with the borough clerk by the respondent, the hearing officer shall issue a written decision on the matter.
- D. The filing of a motion for reconsideration suspends the time in which an appeal must be taken to superior court. The time period in which to file an appeal shall begin when the hearing officer issues the decision on reconsideration or ten days after the motion for reconsideration is filed if the hearing officer does not issue a decision on the motion.
- E. An appeal from a hearing officer decision under this section may be filed in the superior court within 30 days after the date of distribution of the hearing officer decision to the parties, and is governed by Part 6 of the Alaska Rules of Appellate Procedure. A hearing officer decision remains in effect while an appeal is pending unless stayed by the superior court.

**21.50.150. Ex Parte contacts prohibited.**

A hearing officer may not communicate directly or indirectly regarding a proceeding under this chapter with a party or a member of the public while the proceeding is under consideration or subject to reconsideration, without notice and opportunity for all parties to participate in the communication. At the first opportunity after receiving such a communication the hearing officer shall place on the record of the proceeding the content of the communication, any response to the communication, and the identity of the person from whom the hearing officer

received the communication. A prompt request by a party to the proceeding for an opportunity to rebut the communication must be granted.

**21.50.160. Abatement of violation.**

- A. Any use, activity, condition, property, or structure identified as a violation in an enforcement notice that continues after the hearing officer has issued an order finding the use, activity, condition, property, or structure to be in violation may be abated as provided in this section.
  
- B. Before a civil action is filed to abate a violation, a final warning notice shall be posted on the property and served personally or by certified mail with return receipt requested to the violator and the owner of record of the property. The borough may request the court to order the violator(s) to abate the violation, or allow the borough to enter upon the property subject of the violation and abate the violation if the violator has failed or is unwilling or unable to abate the violation. The court may order the violator(s) to pay the costs of the borough's abatement of the violation.
  
- C. The persons found in violation by the hearing officer are liable to the borough for the entire cost of the abatement, including incidental expenses. "Costs of abatement" include removal, repair and relocation and any other costs, including incidental costs, which are or would reasonably and necessarily be incurred to remedy or remove the violation or comply with the order of the hearing officer. The borough will cause an invoice for collection to be sent to the violator and owner of record of the property specifying the nature and costs of the work performed. For purposes of this section, the term "incidental expenses" shall include but not be limited to the actual expenses and costs to the borough in the preparation of the notices, specifications and contracts, work inspection, attorney's fees, consultant fees and interest from the date of completion at the rate of ten percent per annum.

**21.50.170. Definitions.**

In this chapter the following terms shall have the meanings respectively ascribed to them in this section.

"Administrative official" means any person described in KPB 21.50.020 who are staff of the Kenai Peninsula Borough planning department or river center or a code compliance officer.

"Hearing officer" means a person retained as a hearing officer under KPB 21.50.110.

"Party" means, with regard to an enforcement notice, an administrative official as defined in this section and each respondent to the enforcement notice.



“Preponderance of the evidence” means evidence which as a whole shows the fact sought to be proved is more probable than not.

“Respondent” means, with regard to an enforcement notice, each person entitled to service of the enforcement notice.

“Violation” means a noncriminal offense subject by a fine which is remedial in nature, but not by imprisonment.

**SECTION 3.** That KPB 21.06.030(D) shall be amended as follows:

**21.06.030. General provisions.**

...

D. *Noncompliance—Enforcement.* No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. [VIOLATIONS OF THIS CHAPTER ARE INFRACTIONS, AND ARE SUBJECT TO CIVIL FINES.] Violation of the provisions of this chapter by failure to comply with any of its requirements shall be enforced by the remedies set forth in [PURSUANT TO THE PROVISIONS OF] KPB 21.50 [21.24]. Each day a violation continues is a separate violation.

**SECTION 4.** That KPB 21.09.120 shall be amended as follows:

**21.09.120. Violations—Enforcement.**

Violations of [KPB 21.09.060, 21.09.070; 21.09.080; 21.09.090(A), (B), AND (E); ARE INFRACTIONS AND ARE SUBJECT TO CIVIL FINES. ENFORCEMENT OF] the provisions of this chapter by failure to comply with any of its requirements shall be subject to enforcement by [SHALL BE DONE IN ACCORDANCE WITH] the remedies set forth in KPB 21.50 [21.24]. Each day a violation continues is a separate violation.

**SECTION 5.** That KPB 21.18.082 shall be amended as follows:

**21.18.082. Permit revocation.**

A conditional use permit issued pursuant to this chapter may be revoked pursuant to KPB 21.50 [BY THE PLANNING COMMISSION] if the permittee [APPLICANT] fails to comply with the provisions of this chapter or the terms of a permit issued under this chapter. [RIVER CENTER STAFF] The borough clerk shall provide at least 15 [30] days written notice to the permittee of a revocation hearing before the hearing officer [PLANNING COMMISSION]. The notice shall provide specific grounds for the proposed revocation. If the permittee provides written evidence to the river center staff demonstrating reasonable compliance with this chapter and the terms of his permit within the 15 [30] day period then the revocation hearing may be canceled at the discretion of the river center director.

**SECTION 6.** That KPB 21.18.110 shall be amended as follows:

**21.18.110. Violations—Enforcement.**

Violations of this chapter [ARE INFRACTIONS AND] are subject to the [CIVIL FINES. E]enforcement of [THE PROVISIONS OF THIS CHAPTER SHALL BE DONE IN ACCORDANCE WITH THE] remedies set forth in KPB 21.50 [21.24]. Each day a violation continues is a separate violation.

**SECTION 7.** That KPB 21.25.080 shall be amended as follows:

**21.25.080. Permit revocation.**

A permit issued pursuant to this chapter may be revoked pursuant to KPB 21.50 [BY THE PLANNING COMMISSION] if the permittee [APPLICANT] fails to comply with the provisions of this chapter. The borough clerk [PLANNING DIRECTOR] shall provide at least fifteen (15) [THIRTY (30)] days written notice to the permittee of a revocation hearing before the hearing officer [PLANNING COMMISSION]. The notice shall provide specific grounds for the proposed revocation. If the permittee [APPLICANT] provides written evidence to the planning director demonstrating reasonable compliance with this chapter within the thirty day period then the revocation hearing may be canceled, at the discretion of the planning director.

**SECTION 8.** That KPB 21.25.090 shall be amended as follows:

**21.25.090. Penalty for violation.**

Violations of this chapter and other CLUP provisions adopted in accordance with this chapter [ARE INFRACTIONS AND] are subject to [CIVIL FINES.] the enforcement of [THE PROVISIONS OF THIS CHAPTER SHALL BE DONE IN ACCORDANCE WITH] the remedies set forth in KPB 21.50 [21.24]. Each day a violation continues is a separate violation.

**SECTION 9.** That KPB 21.28.060 shall be amended as follows:

**21.28.060. Permit revocation and renewal.**

A. A permit issued pursuant to this chapter may be revoked by the hearing officer pursuant to KPB 21.50 [MAYOR] if the permittee [APPLICANT] fails to comply with the provisions of this chapter. The borough clerk [MAYOR] shall provide at least 15 [30] days' written notice to the permittee of a revocation hearing. [THE MAYOR IN HIS DISCRETION MAY REESTABLISH THE TASK FORCE TO INVESTIGATE AND MAKE RECOMMENDATIONS TO THE MAYOR REGARDING THE REVOCATION. THE REVOCATION HEARING SHALL BE HELD BY THE TASK FORCE ON 30 DAYS' NOTICE TO THE PERMITTEE IF THE REVOCATION IS REFERRED TO THE TASK FORCE BY THE MAYOR.] The notice shall provide specific grounds for the proposed revocation. If the permittee [APPLICANT] provides written

evidence to the planning director [MAYOR] demonstrating reasonable compliance with this chapter within the [30]15-day period, then the revocation hearing may be canceled, at the discretion of the planning director [MAYOR].

B. CAFO operators must apply for permit renewal every five years after the resolution originally granting the permit is recorded. Failure to apply for renewal subjects the operator to permit revocation proceedings. The mayor may reestablish a task force to review the renewal. An appeal of the denial may be taken to the planning commission within 15 days of distribution of the written notice of denial. A renewal application shall be processed pursuant to KPB 21.28.010-030 with public notice given as provided by KPB 21.25.060 when operators.[:

- 1.]request modification of their permit conditions based on changes in operations set forth in the renewal application[.],
- [2.ARE CURRENTLY OUT OF COMPLIANCE WITH THEIR PERMIT, OR
- 3.HAVE HAD PERMIT VIOLATIONS WITHIN THE LAST TWO YEARS.]

**SECTION 10.** That KPB 21.29.070(G) shall be amended as follows:

**21.29.070. Permit extension and revocation.**

...

G. Permits may be revoked pursuant to KPB 21.50 [25.080].

**SECTION 11.** That KPB 21.29.110(A) and (B) shall be amended as follows:

**21.29.110. Violations.**

- A. Violations of this chapter shall be governed by KPB 21.50 [21.24].
- B. In addition[AL] to the remedies provided in KPB 21.50 [21.24], the planning director may require bonding in a form and amount adequate to protect the borough's interests for an owner or operator who has been cited for three violations of KPB 21.50 [21.24], 21.25, and 21.29 within a three-year period. The violations need not be committed at the same material site. Failure to provide requested bonding may result in permit revocation proceedings.

**SECTION 12.** That KPB 21.40.140 shall be amended as follows:

**21.40.140. Enforcement.**

This chapter may be enforced by all remedies made available by KPB 21.50 [21.24]. Each day a violation continues is a separate violation.

**SECTION 13.** That KPB 21.42.150 shall be amended as follows:

**21.42.150. Violations—Enforcement.**

Persons violating the provisions of this chapter are [KPB 21.42.060; 21.42.090; 21.42.100; 21.42.110(A)(C) and (D) are GUILTY OF INFRACTIONS.] subject to the e[E]nforcement of [THE PROVISIONS OF THIS CHAPTER SHALL BE IN ACCORDANCE WITH] the remedies set forth in KPB 21.50 [21.24]. Each day a violation continues is a separate violation.

**SECTION 14.** That KPB 21.44.130(J) shall be amended as follows:

**21.44.130. Home occupations.**

...  
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 21.50 [21.24]. Each day a violation continues is a separate violation.

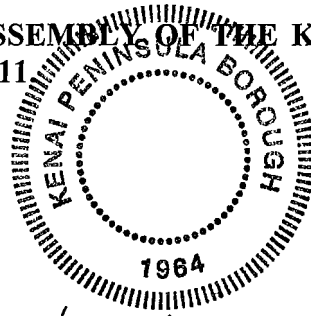
**SECTION 15.** That KPB 21.44.150 shall be amended as follows:

**21.44.150. Violations [B] - enforcement.**

Violations of KPB 21.44 [ARE INFRACTIONS AND] are subject to [CIVIL FINES. E]nforcement by the remedies [OF THE PROVISIONS OF THIS CHAPTER SHALL BE IN ACCORDANCE WITH THE REMEDIES] set forth in KPB 21.50 [21.24]. Each day which the violation exists shall constitute a separate offense.

**SECTION 16.** That this ordinance takes effect January 1, 2012.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 11 DAY OF OCTOBER, 2011**



*Gary Knopp*  
\_\_\_\_\_  
Gary Knopp, Assembly President

ATTEST:

*Johni Blankenship*  
\_\_\_\_\_  
Johni Blankenship, Borough Clerk

- Yes: Haggerty, Johnson, McClure, Pierce, Smalley, Smith, Tauriainen, Knopp
- No: None
- Absent: None