

Introduced by:	Mayor
Date:	09/04/12
Hearing:	10/09/12
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2012-37**

**AN ORDINANCE AMENDING THE BOROUGH CODE TO REINCORPORATE THE  
RIVER CENTER DEPARTMENT INTO THE PLANNING DEPARTMENT AND MAKE  
OTHER ASSOCIATED AMENDMENTS**

**WHEREAS,** KPB Chapter 2.36 of the Kenai Peninsula Borough Code establishes the Department of Planning and sets forth the powers and duties of that department; and

**WHEREAS,** since its inception in the mid-1990's until 2010 the river center was a part of the Planning Department; and

**WHEREAS,** in Ordinance 2010-20 the assembly enacted KPB Chapter 2.38 which established several new borough departments and director positions including the river center department and the river center director position; and

**WHEREAS,** the river center functions include managing the floodplain management provisions, the anadromous streams habitat protection; the habitat protection tax credit program, and the borough coastal management plan, all of which are considered planning activities; and

**WHEREAS,** ordinances such as the subdivision ordinance and material site ordinances, which are currently managed by the planning department, are impacted or interact with the floodplain and habitat protection ordinances, and placing the staff implementing these under one director would enhance coordination between the ordinances and staff implementing them; and

**WHEREAS,** returning the river center to the planning department will improve continuity in notice, hearing procedures, and appeal rights for planning commission proceedings; and

**WHEREAS,** code compliance is a function of the planning department but the ordinances currently administered by the river center also use the code compliance officer, and including both functions in the planning department would promote consistency in the process and assist in prioritizing compliance; and

**WHEREAS,** to provide the clearest information from all planning perspectives there should be one director with authority over all planning and land use staff when advising the planning commission regarding all planning functions; and

**WHEREAS,** including the river center in the planning department will help to reduce borough costs by eliminating one director position; and

**WHEREAS,** amendments to the borough code are necessary to accomplish this change;

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

**SECTION 1.** That KPB Chapter 2.38, establishing the River Center Department, is hereby repealed.

**SECTION 2.** That KPB 5.14.020(A), (B), and (C) are hereby amended as follows:

**5.14.020. Administration.**

- A. This chapter shall be administered by the [RIVER CENTER] director of planning and the director of assessing under the direction of the mayor.
- B. Prior to beginning construction of a project for which one wishes to receive a tax credit, the property owner must submit an application for prequalification of the project to the [RIVER CENTER] planning department on a form provided by the [RIVER CENTER] director of planning. This application must be accompanied by all necessary federal, state, and local permits or approvals for the project. Within 30 business days of application, the [RIVER CENTER] director of planning shall mail notice to the applicant as to whether the proposed project has pre-qualified. If this notice is not mailed as provided herein, prequalification is deemed denied.
- C. Upon completion, the applicant must schedule an inspection of the project with the [RIVER CENTER] planning department. If the applicant does not schedule an inspection the borough may enter the property to conduct the inspection. Inspections must be scheduled no later than January 15 of the year for which the tax credit is sought. Within 30 business days of this inspection, the [RIVER CENTER] planning department shall mail notice to the applicant whether the project as completed qualifies for the tax credit. The notice shall contain a determination of the costs being allowed. A copy shall be sent to the assessor. If this notice is not mailed as provided herein, the tax credit is deemed denied.

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**SECTION 3.** That KPB 5.14.050 is hereby amended as follows:

**5.14.050. [RIVER CENTER] Planning department review.**

The [RIVER CENTER] director of planning shall prepare an annual report on the number of applications received under this chapter and the action taken on them. This report shall be submitted by April 1 of each year. The report shall also

contain any recommendations the [RIVER CENTER] planning department may have for changes in the activities eligible for the credit consistent with the purposes of this chapter. Reports or recommendations for changes may be submitted more frequently at the discretion of the mayor.

**SECTION 4.** That KPB 21.18.030(A) is hereby amended as follows:

**21.18.030. Periodic review.**

- A. To assist in the assessment of the effectiveness of KPB Chapter 21.18, the planning department [RIVER CENTER] shall provide an annual permit and activity report to the planning commission. This report shall include a statistical analysis of permit activity and trends, commentary on river and land use issues and trends, and any other information that may assist in furthering the management of borough water resources and riparian habitat.

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**SECTION 5.** That KPB 21.18.071 is hereby amended as follows:

**21.18.071. Staff permits.**

- A. An application for a permit shall be made and a permit issued before commencement of certain activities, uses, and structures set forth in this section if they do not result in erosion, damage within the habitat protection district, or an increase in ground or water pollution. An application for a permit shall be made to the Kenai Peninsula Borough planning department central office or at the river center. Upon determination that the submitted information of record supporting the permit application meets the requirements of this section, staff shall issue a permit for the following activities, uses, and structures in the habitat protection district:
1. Minor vegetation management (trimming, pruning, or removal of hazardous trees).
  2. Elevated light penetrating structures. These structures include structures that are not ancillary to another use but are constructed solely for purposes of accessing the river and may include but are not limited to boardwalks, gratewalks, stairs, ramps, platforms, and gangplanks. Elevated light penetrating structures must be constructed of wood, plastic, fiberglass, aluminum, steel, or other nontoxic material. If the wood is treated, it must be certified as nontoxic to plants and animals by an independent laboratory or other appropriate agency. The topography of the bank and habitat protection district may not be altered to provide for the installation of these structures.

- a. Elevated light penetrating structures with less than 60 percent but a minimum of 25 percent light penetration must not exceed six feet in width and must be constructed so that no part, other than the supporting posts, are less than 18 inches from the ground.
  - b. Elevated light penetrating structures with at least 60 percent light penetration must not exceed eight feet in width and must be constructed so that no part, other than the supporting posts, is closer than four inches from the ground. To ensure safety or to aid access, one side or edge of the elevated light penetrating structure may be lowered, provided that the frame on the riverward edge of the structure, is not less than four inches from the ground. Lowering of the surface shall not result in erosion or damage to the bank or vegetation, and the remainder of the structure must still meet the requirements of this chapter.
  - c. For elevated light penetrating structures under KPB 21.18.071 (a) and (b), the total length of all elevated light penetrating structures that run along or parallel to the banks of the streams shall be limited in length to no more than one-third of the total lineal river frontage of the parcel on which it is constructed.
  - d. For all elevated light penetrating structures under KPB 21.18.071(a) and (b), the open space must be uniformly distributed throughout the structure surface.
  - e. Elevated light penetrating structures constructed prior to the effective date of this section may be brought into compliance with the standards of this section without obtaining a permit.
3. A single fish-cleaning station may be constructed, provided it has no enclosed sides or roof and that any shelf below the fish-cleaning surface must be at least 60 percent light penetrating and be elevated at least eight inches from the ground. Fish-cleaning stations shall not exceed 25 square feet, excluding the chute and drain pipes, if any.
  4. Bank restoration and protection projects.
- B. Applicants for a [RIVER CENTER] permit issued pursuant to this chapter are responsible for abiding by all other federal, state, and local laws, regulations, and permitting requirements applicable to the project.

**SECTION 6.** That KPB 21.18.081(H) is hereby amended as follows:

**21.18.081. Conditional use permit.**

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- H. The construction or installation phase of a use requiring a conditional use permit must be completed within one calendar year from the date of the permit's issuance, or the conditional use permit shall expire unless the planning commission finds that more time is necessary to effectuate the purposes of this chapter, in which case the commission may extend the deadline for a maximum of six years from the date of issuance. The planning commission shall adopt findings consistent with the purposes of this chapter to support the issuance of a permit, or an extension thereof, totaling more than two years from the date of issuance. Prior to its expiration date, a conditional use permit issued for up to one year may be extended for up to twelve (12) months by the [RIVER CENTER] director of planning upon written request.

**SECTION 7.** That KPB 21.18.082 is hereby amended as follows:

**21.18.082. Permit revocation.**

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

**SECTION 8.** That KPB 21.18.090 is hereby amended as follows:

**21.18.090. Prior existing uses and structures.**

- A. Intent. There are uses which were conducted, and structures which were under construction, or exist and were in use before the enactment of this ordinance which would be prohibited or restricted under the terms of this ordinance or future amendments. It is the intent of this section to permit these prior existing uses or structures to continue but not be increased, expanded, or intensified. Any prior existing uses or structures must still comply with other applicable laws.

- B. The burden of proof is on the applicant to show that a prior existing use or structure existed, when the use or structure was established, and the size, location, and level of use.
  
- C. Structures. Structures which were under construction or in use before the effective date of any provision of this chapter, but that would be prohibited or restricted under the terms of this chapter, shall be allowed to continue, provided that a structure under construction must have been substantially completed by April 16, 1998 for the Kenai River and May 16, 2002, for the anadromous streams set forth in KPB 21.18.025 (A)(1)(a) through (A)(15).
  - 1. Upon application and approval of a prior-existing structure/use permit by planning department [RIVER CENTER] staff principal structures may be replaced, repaired or reconstructed within two years after accidental damage or destruction by fire, explosion, natural disaster, flood, or other casualty, force of nature, or other force or act beyond the owner's control and not intentionally caused by the owner. If a principal structure is not substantially damaged and only a portion of the structure has been damaged or destroyed, only that portion may be repaired or replaced. The height of an original principal structure and area encompassed by the original footprint cannot be increased. The structure must be similar in size and use to the structure being repaired or replaced. Repair, replacement, or reconstruction may only encompass the same square footage that the structure occupied prior to damage or destruction, and the structure must be more compliant with this chapter which shall be determined by application of mitigation measures set forth in KPB 21.18.091 to the maximum extent practicable. Staff will determine the mitigation measures to be used consistent with the following conditions:
    - a. The structure will not cause significant erosion, sedimentation, damage within the habitat protection district, or an increase in ground or surface water pollution;
    - b. Permitting repair, reconstruction, or replacement shall be consistent with the purposes of this chapter as set forth in KPB 21.18.020, the borough comprehensive plan, another applicable chapters of the borough code, and other applicable planning documents adopted by the borough;
    - c. The reconstruction, replacement, or repair will not physically damage the adjoining property;
    - d. Removal of materials or debris remaining from the damage or destruction; and

- e. Owner's compliance with other borough permits and ordinance requirements.
2. The right to reconstruct in nonconformity with the chapter is forever lost if
- a. the application for reconstruction or repair is not made within six months of the date of damage, or
  - b. the application is approved but the structure is not substantially reconstructed within 24 months of the date of the approval of the application for reconstruction.
    - (i) For reasonable and sufficient cause shown for the delay, the [RIVER CENTER] director of planning may authorize an extension not to exceed 12 months to complete reconstruction.
    - (ii) To obtain an extension of time an applicant shall submit a written request for an extension to the planning department [RIVER CENTER] prior to the expiration of the 24 month reconstruction period. The applicant must show reasonable and sufficient cause for the extension.
3. Nothing in this section prohibits reconstruction at any time in compliance with this chapter.
4. The provisions applicable to principal prior existing structures set forth in KP.B 21.18.090(C)(1)(2)(3) also apply to the replacement, repair or reconstruction of accessory structures within the habitat protection district. In addition to those provisions the following rules apply to accessory structures:
- a. Accessory structures may be replaced or reconstructed outside of the habitat protection district without a KP.B 21.18 permit.
  - b. Notwithstanding subsection a. above, accessory structures may not be replaced or reconstructed in KP.B 21.06 mapped floodplains or floodways.
  - c. The applicant must document the specific circumstances that would prevent the accessory structure from being located outside of the habitat protection district in order to be permitted to repair, replace, or reconstruct the accessory structure within the habitat protection district.

- D. Uses. This chapter shall not prohibit or restrict uses which were legally conducted before the effective date of this section, provided that, after the effective date, such uses are conducted in the same location and are not enlarged to include a greater number of participants or to occupy a greater area of land. Upon application and approval of a prior existing structure/use permit by planning department [RIVER CENTER] staff a change to the prior existing use may be allowed. No change shall be granted unless the change reduces the noncompliance, by use of mitigation procedures set forth in KPB 21.18.091, to the maximum extent practicable. Staff will determine the mitigation measures to be used consistent with the following conditions:
- [A] 1. The use will not cause significant erosion, sedimentation, damage within the habitat protection district, or an increase in ground or surface water pollution;
  - [B] 2. Permitting the use shall be consistent with the purposes of this chapter as set forth in KPB 21.18.020, the borough comprehensive plan, another applicable chapters of the borough code, and other applicable planning documents adopted by the borough;
  - [C] 3. The use will not physically damage the adjoining property;
  - [D] 4. Removal of materials or debris resulting from the prior-existing use; and
  - [E] 5. Owner's compliance with other borough permits and ordinance requirements.
- E. Other provisions.
- 1. Any prior existing use or structure which is abandoned for two years or more shall thereafter not be conducted, used or occupied except in conformity with the provisions of this chapter.
  - 2. The deliberate destruction of a prior existing structure by the owner terminates the prior existing status.
  - 3. The planning department [RIVER CENTER] may require removal or cessation of abandoned uses or structures.
  - 4. Nothing in this chapter shall prevent any change of tenancy, ownership or management of any prior existing structure.
- F. Impervious materials placed in the habitat protection district which are not structures are not allowed as either prior existing uses or prior existing



structures. The [RIVER CENTER] planning department may require removal of these materials.

- G. Planning department [RIVER CENTER] determinations regarding prior existing structures and prior existing uses may be appealed to the planning commission.

**SECTION 9.** That KPB 21.18.091 is hereby amended as follows:

**21.18.091. Mitigation measures.**

Mitigation measures may be required by planning department [RIVER CENTER] staff to address impacts to the habitat protection district from a proposed, ongoing, or completed project. These measures may include, but are not limited to:

- A. Standard erosion and storm water runoff control measures;
- B. Restoration and maintenance of native vegetation and water quality protection functions;
- C. Restoration and maintenance of native vegetation and water quality protection functions along areas that immediately abut the habitat protection district;
- D. Removal of non-conforming accessory structures from the habitat protection district;
- E. Other measures as agreed upon by the planning department [RIVER CENTER] and applicant. Examples include removal of seawalls, riprap, jetties, and other structures that may be detrimental to fish habitat; installation of approved bank protection measures; professional evaluation of privately owned waste water treatment system; removal of materials, structures and other items that may be present in the habitat protection district or along the shore.

**SECTION 10.** That KPB 21.18.135 is hereby amended as follows:

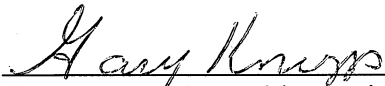
**21.18.135. Exemption for emergency situations.**

- A. In an emergency, the [RIVER CENTER] planning department, through its authorized representative, may issue temporary oral permits to protect life and property from imminent danger or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by the emergency.

- B. An emergency permit shall only authorize the minimum amount of work required to mitigate the emergency situation. An emergency permit is not intended to provide for any work beyond that necessary to provide for a safe environment. Any additional work shall follow applicable permitting procedures set forth in this chapter. Work shall be conducted using best management practices to ensure that any adverse effect on the habitat protection district and anadromous waters is minimized.
- C. Conditions may be attached to emergency permits to comply with the purposes of this chapter. A final report that includes the plans and specifications for the work that was completed must be submitted to the planning department [RIVER CENTER] within 60 days of the date of the emergency. The borough may require mitigation to repair damage to the habitat protection district.
- D. Emergency permits shall be valid until the date of expiration stated on the permit.
- E. This section is intended to provide for the immediate response to emergency situations for life and safety issues when time is not adequate to process permits in accordance with the other applicable permitting provisions of this chapter.

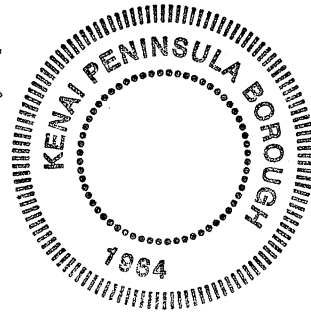
**SECTION 11.** That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 9TH DAY OF OCTOBER, 2012.**

  
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 Gary Knopp, Assembly President

ATTEST:

  
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 Johni Blankenship, MMC, Borough Clerk



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