

**OCTOBER 6, 2021  
CITY COUNCIL SPECIAL MEETING  
ADDITIONAL MATERIAL/REVISIONS**

**REQUESTED ADDITIONS TO THE PACKET:**

<b><u>ACTION</u></b>	<b><u>ITEM</u></b>	<b><u>REQUESTED BY</u></b>
Add to item G.4.	<b>Ordinance No. 3248-2021</b> <ul style="list-style-type: none"><li>• Public Comments</li></ul>	City Clerk
Add to item G.7.	<b>Reconsideration of Ordinance No. 3243-2021</b> <ul style="list-style-type: none"><li>• Enacted Ordinance No. 3243-2021</li><li>• Public Comments</li></ul>	City Clerk

**From:** [Dave Peck](#)  
**To:** [City Council](#)  
**Subject:** Proposed ordinance ORDINANCE NO. 3248-2021 RE: Library equity grant to purchase health care resources  
**Date:** Wednesday, October 6, 2021 12:29:41 PM

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Kenai City Council members:

Reading through tonight's agenda I noticed this proposed ordinance authorizing the library to receive a grant of \$1,500 to purchase health care related materials to help under-represented people in the community attain equity in health care information or words to that effect. I believe the source of the money is a government entity as far as I can tell.

I believe in libraries. I think they should be open to all & they should be free to stock whatever books or other materials covering a broad range of topics representing as many views as possible, even if they are offensive to some people. In addition libraries are community centers where people should be able to meet to discuss an array of issues including political topics of the day.

My problem with this ordinance is the use of the term "equity" to justify it and the reason to authorize it. As we know, words mean something. And equity is a word that has a lot of meaning these days. It is politically charged, like it or not, for good reason.

What is equity? I think the way it is used today describes a state where we are all required to be equal. The ideal starts small with good intentions but can slowly grow into all aspects of our lives. But, in the end, this is an impossible state to attain. History tells us the attempts lead to destruction, violence & death.

I live in a small home in town. Someone else may live in a more valuable home on the Kenai River. I have to come to terms with the fact I may never have a waterfront home on the river because I cannot afford it. I may want to, but it is out of my reach financially. This is not anyone's fault. It is the result of an array of complicated personal choices I made along the way as to my priorities & desires. Is this equity? No. Equity says I too deserve a home on the Kenai River. In fact, it might dictate if I can't afford a home on the River, nobody will. Or the state will take that home on the river & my home as well and use those resources to somehow create an environment where everybody has a home provided free by the state like the huge apartment complexes we see in China or the previous Soviet satellite states like Ukraine.

My concerns here have gone far beyond a simple \$1,500 grant to the library to purchase materials here. Some might say too far. But it's not the grant. It's the term equity. If, for some reason, the City Council must accept the money as a grant to enhance "equity" I urge a no vote on the ordinance. The City should not accept the money. On the other hand, if equity has nothing to do with it, it would be fine.

I would attend tonight to say this in person but we have other commitments.

Thank you  
Dave Peck

705 Sycamore St  
Kenai, Ak 99611  
907-953-3248



Sponsored by: Vice Mayor Molloy

**CITY OF KENAI**

**ORDINANCE NO. 3243-2021**

AN ORDINANCE OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, AMENDING KENAI MUNICIPAL CODE 14.20.150-CONDITIONAL USE PERMITS, TO CLARIFY ROLES AND RESPONSIBILITIES OF APPLICANTS, THE PLANNING DIRECTOR, AND THE PLANNING COMMISSION IN THE CONDITIONAL USE PROCESS AND MAKE HOUSEKEEPING CHANGES.

WHEREAS, Kenai Municipal Code 14.20.150 describes the process for application and review of conditional use permits; and,

WHEREAS, the conditional use permit process is intended to recognize that some uses that are not permitted by the Land Use Table in certain zones may be conditionally allowed if certain conditions are met; and,

WHEREAS, the amendments below clarify that the grant or denial of a conditional use permit is a discretionary act by the Commission and the applicant has the burden of proof to show that a conditional use permit should be granted; and,

WHEREAS, the amendments also require a pre-application meeting with the Planning Director or designee prior to submittal of an application for public hearing to assist the applicant in preparing for the public hearing and providing the Commission with relevant information to make a decision; and,

WHEREAS, the amendments require the applicant to be present or available during the public hearing to present information to the Commission about the application; and,

WHEREAS, the amendments require the Commission to make findings specific to the six criteria that must be met to approve a conditional use permit and provide that the Commission may consider all relevant information in making its decision; and,

WHEREAS, the amendments describe the role of the Planning Director or designee in providing a staff report during public hearings and that the recommendations of the Planner may be considered but are not accorded deference by the Commission; and,

WHEREAS, on September 8, 2021 the Planning and Zoning Commission met and recommended the City Council enact this Ordinance with amendments.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, as follows:

**Section 1.** Amendment of Section of the Kenai Municipal Code 14.20.150: That Kenai Municipal Code, Section 14.20.150 – Conditional Use Permits, is hereby amended as follows:

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New Text Underlined: [DELETED TEXT BRACKETED]

**14.20.150 Conditional ~~[U]~~Use ~~[P]~~Permits.**

(a) *Intent.* It is recognized that there are some uses that may be compatible with designated principal uses in specific zoning districts provided certain conditions are met. The conditional use permit procedure is intended to allow flexibility in the consideration of the impact of the proposed use on surrounding property and the application of controls and safeguards to assure that the proposed use will be compatible with the surroundings. The Commission may permit this type of use if the conditions and requirements listed in this chapter are met. The ~~[ALLOWED]~~ conditional uses are listed in the Land Use Table. Before a conditional use permit may be granted, the procedures specified in this chapter must be followed. The grant, denial, modification, or revocation of a conditional use permit is discretionary.

(b) *Pre-Application Meeting.* Every conditional use permit applicant must contact the Planning Director for a pre-application meeting with the Planning Director or designee before the application is submitted to the Commission in order to ensure applications are complete and the applicant is familiar with the conditional use permit public hearing process. If an application is determined to be incomplete by the Planning Director, the application may be re-submitted to the Planning Director with changes or new information as many times as necessary, or the applicant may request a review with the City Manager whose determination shall be final. The review by the Planning Director is to determine that sufficient information is presented to allow the Commission a meaningful review, and has no bearing on whether an application should be granted or denied by the Commission.

~~([B]c)~~ *Applications.* Applications for a conditional use permit shall be filed in writing with the Planning Department. The application shall include, but is not limited to, the following:

- (1) Name and address of the applicant and name and address of the property owner if not the applicant;
- (2) Verification by the owner of the property concerned if other than the applicant;
- (3) The street address and [A] a legal description of the property involved;
- (4) A description of the proposed use and how the use satisfies the review criteria;
- (5) Dimensioned plot plans showing the location of all existing and proposed buildings or alteration, conceptual drawing and such data as may be required; and
- (6) The appropriate fee as set forth in the City's schedule of fees adopted by the City Council.

The application and its plans shall be posted to the City's website at time of publication of Commission packet.

([C]d) *Public Hearing.* If the application is in order, a public hearing shall be scheduled in accordance with the requirements of KMC [14.20.280](#). An applicant or representative of the applicant must be present in person or by remote device for the application to be considered at the public hearing. If the applicant or representative is not present at the scheduled public hearing and has not provided reasonable timely notice of unavailability to the Planning Department or Commission, the application will be dismissed by the Commission without a public hearing and the applicant may reapply at any time after paying a new application fee.

([D]e) *Review Criteria.* Prior to granting a conditional use permit, it shall be established that the use satisfies all the following [CONDITIONS] criteria:

- (1) The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district;
- (2) The economic and non-economic value of the adjoining property and neighborhood will not be significantly impaired;
- (3) The proposed use is in harmony with the Comprehensive Plan;
- (4) Public services and facilities are adequate to serve the proposed use;
- (5) The proposed use will not be harmful to the public safety, health or welfare; and
- (6) Any and all specific conditions deemed necessary by the Commission to fulfill the above-mentioned conditions [SHOULD BE MET BY THE APPLICANT]. These may include, but are not limited to, measures relative to access, screening, site development, building design, operation of the use and other similar aspects related to the proposed use.

The Commission may approve, approve with conditions, dismiss, or deny the application. The Commission must make specific findings in its decision addressing all six of the required criteria stated above. Any relevant evidence may be considered by the Commission in its decision.

(f) *Burden of Proof.* The applicant for a conditional use permit has the burden to show by substantial evidence that the six criteria above are satisfied. Substantial evidence is such relevant evidence a reasonable mind might accept as adequate to support a conclusion.

(g) *Staff Report.* The Planning Director or designee will provide a staff report on the application to the Commission at the public hearing. The staff report may contain any information deemed

*pertinent by the Planning Director or designee, and may include a recommendation and proposed findings on whether the requirements of this Chapter have been met and whether any additional specific conditions are recommended. The Commission may consider the recommendations of the Planning Director or designee, but shall accord it no deference. The staff report does not relieve the applicant's burden of proof.*

([E]h) *Issuance of the Permit.* Following approval by the Commission, the administrative official shall not issue the permit until the expiration of the fifteen (15) day appeal period contained in KMC [14.20.290](#). After approval by the Commission and before the issuance of the permit, the administrative official must determine that the applicant is current on all obligations (e.g., sales tax, property tax, lease payments, utility payments) to the City or has entered into an approved payment plan with the City on any obligations owed and the applicant is in compliance with the payment plan and (if the permit is for a use required to collect sales tax) must show a valid borough sales tax account. If a timely appeal is filed pursuant to KMC [14.20.290](#), the permit shall not be issued unless authorized by the Board of Adjustment.

([F]i) *Yearly Reports.* The permit holder shall submit a yearly report between October 1st and December 31st to the administrative official. Such report shall include a summary of the on-site activity.

([G]j) *Revocation for Noncompliance/Compliance Notices.* If the Commission determines, based on the yearly review or any other investigation undertaken by the official, that the conduct of the operation(s) is not in compliance with: (1) the terms and conditions of the permit; (2) the provisions of the Kenai Zoning Code; (3) or that the permit holder is not current on any obligations (e.g., sales tax, property tax, utility payments, lease payments) to the City unless the applicant has entered into an approved payment with the City on any obligations owed and the applicant is in compliance with the payment plan, the Commission may revoke the permit. The Commission shall not revoke the permit until the permit holder has been notified and given reasonable opportunity to correct the deficiency(s) or to provide information relating to or rebutting the alleged deficiency(s). Appeals from decisions under this section shall be made in accordance with the provisions of KMC [14.20.290](#). If the administrative official determines the permit holder is in compliance with the conditions in this subsection, or notifies the permit holder of a potential violation in writing, the administrative official [IT] shall send any notice of compliance or notice of violation to the Commission and the permit holder in a timely manner.

([H]k) *Modification of Final Approval.*

(1) An approved conditional use permit may, upon application by the permittee, be modified by the Planning and Zoning Commission:

(a) When changed conditions cause the conditional use to no longer conform to the standards for its approval,

(b) To implement a different development plan conforming to the standards for its approval;

(2) The modification application shall be subject to a public hearing and the appropriate fee as set forth in the City's schedule of fees adopted by the City Council in order to help cover the costs of the public hearing notice.

~~(1)]~~ *Expiration—Extensions—Transferability.*

(1) An approved conditional use permit lapses twelve (12) months after approval if no building permit is procured or if the allowed use is not initiated.

(2) A conditional use permit shall automatically expire if for any reason the conditioned use ceases for a period of one (1) year or longer.

(3) The Commission may grant time extensions to stay the lapse or the expiration of a permit for periods not to exceed one (1) year each upon a finding that circumstances have not changed sufficiently to warrant reconsideration of the approval of the conditional use permit or that good cause exists to grant the time extension. A permittee must request a time extension in writing, and submit any supporting materials, within ninety (90) days of the date of the administrative official's written notice to the permittee that either the permit has lapsed under subsection [\(1\)](#) or that the permit has expired under subsection [\(2\)](#) by a date certain. If the administrative official does not issue a written notice concerning lapse or expiration, the permittee may request a time extension at any time within two (2) years of the date the permit was issued or the use ceased, whichever is later. A permittee may be granted time extensions not to exceed a total of two (2) years from the date of the Commission's grant of the first time extension. The Commission may, but is not required to, hold a public hearing prior to issuing a decision under this subsection.

(4) A permittee who disputes the administrative official's determination that the conditioned use has not been timely initiated or has ceased for a period of one (1) year or longer may appeal the official's determination to the Board of Adjustment in accordance with KMC [14.20.290](#). If the permittee has requested a stay under subsection [\(3\)](#), above, the time for appeal of the administrative official's determination of lapse or



expiration shall not run until such time as the Commission has made a final decision on the request for a stay.

(5) A conditional use permit is not transferable from one (1) parcel of land to another. Conditional use permits may be transferred from one (1) owner to another for the same use, but if there is a change in use on the property, a new permit must be obtained.


(6) Appeals from decisions of the Commission under this section shall be made in accordance with the provisions of KMC 14.20.290.

(J)m) A proposed conditional use permit shall not be considered if a substantially similar conditional use permit has been considered and denied within the nine (9) months immediately preceding.

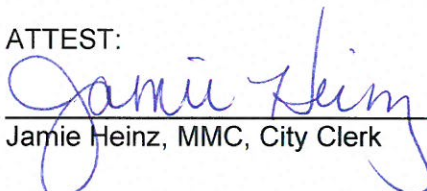
**Section 2. Severability:** That if any part or provision of this ordinance or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which this judgment shall have been rendered, and shall not affect or impair the validity of the remainder of this title or application thereof to other persons or circumstances. The City Council hereby declares that it would have enacted the remainder of this ordinance even without such part, provision, or application.

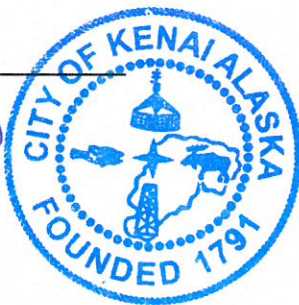
**Section 3. Effective Date:** That pursuant to KMC 1.15.070(f), this ordinance shall take effect 30 days after enactment.

ENACTED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 15 day of September, 2021.

  
BRIAN GABRIEL SR., MAYOR

ATTEST:

  
Jamie Heinz, MMC, City Clerk



Introduced: September 1, 2021  
Enacted: September 15, 2021  
Effective: October 15, 2021



# KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council

**FROM:** Vice-Mayor Bob Molloy

**DATE:** August 26, 2021

**SUBJECT:** **Ordinance 3243-2021 – An ordinance amending KMC 14.20.150-Conditional Use Permits to clarify roles and responsibilities in the conditional use permit process and to make housekeeping changes**

**- Memo #1 - Introduction, Postponement and Referral**

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The Planning & Zoning Commission, the City Council, the Board of Adjustment, and public comments have identified issues in **KMC 14.20.150 Conditional use permits** that should be addressed regarding roles and responsibilities. **Ordinance 3243-2021** proposes to amend **KMC 14.20.150 Conditional use permits** to address some of these issues by clarifying the roles and responsibilities of applicants, the Planning Director, and the Planning and Zoning Commission in the conditional use permit process.

The sponsor verbally presented the highlights of the proposed amendments to the Planning & Zoning Commission during Additional Public Comment at the Commission's 8/25/21 meeting. The Commissioners were very interested in and asked pertinent questions during the discussion of the highlights of the proposed amendments. It's the sponsor's understanding that the Commission has no other item at present for its 9/08/21 meeting.

At introduction, a request will be made for Council to postpone this ordinance to and for a public hearing at the Council's 9/15/21 meeting, and to refer this ordinance to the Planning & Zoning Commission for a public hearing at its 9/08/21 meeting, and for the Commission to make recommendations. If the Commission requests more time, then on 9/15/18 Council could refer the ordinance again to the Commission for its 9/22/21 meeting, and postpone to Council's 10/6/21 meeting for public hearing. There is some time; it's the sponsor's understanding that this ordinance later would fall off of the Council's agenda if no vote is taken at Council's 10/21/21 meeting.

Council's support of introduction and this referral request is respectfully requested.



# KENAI

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## MEMORANDUM

**TO:** Mayor Brian Gabriel and Kenai City Council

**FROM:** Vice-Mayor Bob Molloy

**DATE:** August 26, 2021

**SUBJECT: Ordinance 3243-2021 – An ordinance amending KMC 14.20.150-Conditional Use Permits to clarify roles and responsibilities in the conditional use permit process and to make housekeeping changes**

**- Memo #2 - Supporting**

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The Planning & Zoning Commission, the City Council, the Board of Adjustment, and public comments have identified issues in **KMC 14.20.150 Conditional use permits** that should be addressed regarding roles and responsibilities. **Ordinance 3243-2021** addresses some of these issues.

Ordinance 3243-2021 proposes to amend **KMC 14.20.150 Conditional use permits** by clarifying the roles and responsibilities of applicants, the Planning Director, and the Planning and Zoning Commission in the conditional use permit process and to make some housekeeping changes. The proposed amendments include the following:

1. Add final sentence to paragraph **(a) Intent** to clarify and state that the Commission has discretion to grant, deny, modify or revoke a Conditional Use Permit (“CUP”).
2. Add a new paragraph **(b) Pre-application meeting** requiring the applicant to have a pre-application meeting with the Planning Director or designee. The purpose is to ensure the application is complete and the applicant is familiar with the conditional use permit public hearing process. The review by the Planning Director is to determine that sufficient information is presented with the application to allow the Planning Commission a meaningful review, and has no bearing on whether an application should be granted or denied by the Commission.
3. Make minor changes to the paragraph on **Applications** regarding the contents of the application, to be consistent with the online form for the application and the practice that there be some kind of conceptual drawings for landscape and site plans and the dimensional plot plans.
4. Add a sentence to the paragraph on **Applications** that the application and plans will be posted to the City’s website when the meeting packet is posted to the website. The City

Clerk and Administration would create a page to list public hearings coming up on applications with a link to the applications and plans.

5. Add to the paragraph on **Public Hearings** the requirement that the applicant or representative must be present in person or by remote electronic device to present the application and the applicant's case.
6. Clarify the second condition or criteria of the **Review Criteria** to provide that the value is the economic and non-economic value, so the second criteria is that the economic and non-economic value of the adjoining property and neighborhood will not be significantly impaired.
7. Add a paragraph to the **Review Criteria** which further clarifies the Commission's discretion to the effect that: The Commission may approve, approve with conditions, or deny the application. The Commission will make findings on the six criteria in its decision. Any other relevant evidence may be considered by the Commission in its decision.
8. Add a new paragraph on **Burden of Proof**, clarifying and stating that the applicant has the burden of proof to show that the six review conditions or criteria are satisfied.
9. Add a new paragraph on **Staff report**, clarifying and stating that the Planning Director or designee will provide a staff report. The staff may include a recommendation and proposed findings on whether the requirements of this Code have been satisfied and whether any additional specific conditions are recommended. The Commission may consider the recommendations of the Planning Director or designee, but does not have to defer to the staff's recommendation. The staff report does not relieve the applicant from the applicant's burden of proof.

Council's consideration and support of Ordinance 3243-2021 is respectfully requested.





# KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

## MEMORANDUM

**TO:** Mayor Gabriel and Council Members  
**FROM:** Scott Bloom, City Attorney  
**DATE:** September 9, 2021  
**SUBJECT:** Ordinance 3243-2021- KMC 14.20.150- Conditional Use Permits

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The Planning and Zoning Commission met on September 8, 2021 to consider Ordinance 3243-2021 and recommended Council enact the Ordinance with two amendments.

I request Council move to amend Ordinance 3243-2021 by amending the last Whereas Clause to read:

“WHEREAS, on September 8, 2021 the Planning and Zoning Commission met and recommended the City Council enact this Ordinance with amendments.”

The Commission moved to amend the new section (d) of KMC 14.20.150 to read as follows (new language in red):

([C]d) *Public Hearing.* If the application is in order, a public hearing shall be scheduled in accordance with the requirements of KMC [14.20.280](#). An applicant or representative of the applicant must be present in person or by remote device for the application to be considered at the public hearing. **If the applicant or representative is not present at the scheduled public hearing and has not provided reasonable timely notice of unavailability to the Planning Department or Commission, the application will be dismissed by the Commission without a public hearing and the applicant may reapply at any time after paying a new application fee.**

This amendment will require a further modification in subsection (e) as provided below:

([D]e) *Review Criteria.* Prior to granting a conditional use permit, it shall be established that the use satisfies all the following [CONDITIONS] criteria:

- (1) The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district;

- (2) The economic and non-economic value of the adjoining property and neighborhood will not be significantly impaired;
- (3) The proposed use is in harmony with the Comprehensive Plan;
- (4) Public services and facilities are adequate to serve the proposed use;
- (5) The proposed use will not be harmful to the public safety, health or welfare; and
- (6) Any and all specific conditions deemed necessary by the Commission to fulfill the above-mentioned conditions [SHOULD BE MET BY THE APPLICANT]. These may include, but are not limited to, measures relative to access, screening, site development, building design, operation of the use and other similar aspects related to the proposed use.

The Commission may approve, approve with conditions, dismiss or deny the application. The Commission must make specific findings in its decision addressing all six of the required criteria stated above. Any relevant evidence may be considered by the Commission in its decision.

The Commission recommended this change to provide direction and clarity for the process if an applicant or representative is not present for the hearing. Reasonable timely notice depends on the circumstances, allowing for flexibility in emergency or exigent circumstances. The application fee for a conditional use permit is \$250 as provided in the City's Fee Schedule.

The Commission also expressed a desire to be notified of any written notices of violations provided to conditional use permit holders.

The Commission moved to amend the new section (j) of KMC 14.20.150 to read as follows (new language in red):

*([G]j) Revocation for Noncompliance/Compliance Notices.* If the Commission determines, based on the yearly review or any other investigation undertaken by the official, that the conduct of the operation(s) is not in compliance with: (1) the terms and conditions of the permit; (2) the provisions of the Kenai Zoning Code; (3) or that the permit holder is not current on any obligations (e.g., sales tax, property tax, utility payments, lease payments) to the City unless the applicant has entered into an approved payment with the City on any obligations owed and the applicant is in compliance with the payment plan, the Commission may revoke the permit. The Commission shall not revoke the permit until the permit holder has been notified and given reasonable opportunity to correct the deficiency(s) or to provide information relating to or rebutting the alleged deficiency(s). Appeals from decisions under this section shall be made in accordance with the provisions of KMC [14.20.290](#). If the administrative



official determines the permit holder is in compliance with the conditions in this subsection, or notifies the permit holder of a potential violation in writing, the administrative official [IT] shall send any notice of compliance or notice of violation to the Commission and the permit holder in a timely manner.





**CITY OF KENAI  
PLANNING AND ZONING COMMISSION  
RESOLUTION NO. 2021-34**

A RESOLUTION OF THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI **RECOMMENDING** THE COUNCIL OF THE CITY OF KENAI AMEND KENAI MUNICIPAL CODE 14.20.150-CONDITIONAL USE PERMITS, TO CLARIFY ROLES AND RESPONSIBILITIES OF APPLICANTS, THE PLANNING DIRECTOR, AND THE PLANNING COMMISSION IN THE CONDITIONAL USE PROCESS AND MAKE HOUSEKEEPING CHANGES.

WHEREAS, Kenai Municipal Code 14.20.150 describes the process for application and review of conditional use permits; and,

WHEREAS, the conditional use permit process is intended to recognize that some uses that are not permitted by the Land Use Table in certain zones may be conditionally allowed if certain conditions are met; and,

WHEREAS, the amendments below clarify that the grant or denial of a conditional use permit is a discretionary act by the Commission and the applicant has the burden of proof to show that a conditional use permit should be granted; and,

WHEREAS, the amendments also require a pre-application meeting with the Planning Director or designee prior to submittal of an application for public hearing to assist the applicant in preparing for the public hearing and providing the Commission with relevant information to make a decision; and,

WHEREAS, the amendments require the applicant to be present or available during the public hearing to present information to the Commission about the application; and,

WHEREAS, the amendments require the Commission to make findings specific to the six criteria that must be met to approve a conditional use permit and provide that the Commission may consider all relevant information in making its decision; and,

WHEREAS, the amendments describe the role of the Planning Director or designee in providing a staff report during public hearings and that the recommendations of the Planner may be considered, but are not accorded deference by the Commission.

NOW, THEREFORE, BE IT RECOMMENDED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA:

**Section 1.** Amendment of Section of the Kenai Municipal Code 14.20.150: That Kenai Municipal Code, Section 14.20.150 – Conditional Use Permits, is hereby amended as follows:



**14.20.150 Conditional [U]Use [P]Permits.**

(a) *Intent.* It is recognized that there are some uses that may be compatible with designated principal uses in specific zoning districts provided certain conditions are met. The conditional use permit procedure is intended to allow flexibility in the consideration of the impact of the proposed use on surrounding property and the application of controls and safeguards to assure that the proposed use will be compatible with the surroundings. The Commission may permit this type of use if the conditions and requirements listed in this chapter are met. The [ALLOWED] conditional uses are listed in the Land Use Table. Before a conditional use permit may be granted, the procedures specified in this chapter must be followed. The grant, denial, modification, or revocation of a conditional use permit is discretionary.

(b) *Pre-Application Meeting.* Every conditional use permit applicant must contact the Planning Director for a pre-application meeting with the Planning Director or designee before the application is submitted to the Commission in order to ensure applications are complete and the applicant is familiar with the conditional use permit public hearing process. If an application is determined to be incomplete by the Planning Director, the application may be re-submitted to the Planning Director with changes or new information as many times as necessary, or the applicant may request a review with the City Manager whose determination shall be final. The review by the Planning Director is to determine that sufficient information is presented to allow the Commission a meaningful review, and has no bearing on whether an application should be granted or denied by the Commission.

~~(B)c~~ *Applications.* Applications for a conditional use permit shall be filed in writing with the Planning Department. The application shall include, but is not limited to, the following:

- (1) Name and address of the applicant and name and address of the property owner if not the applicant;
- (2) Verification by the owner of the property concerned if other than the applicant;
- (3) The street address and [A] a legal description of the property involved;
- (4) A description of the proposed use and how the use satisfies the review criteria;
- (5) Dimensioned plot plans showing the location of all existing and proposed buildings or alteration, conceptual drawing and such data as may be required; and
- (6) The appropriate fee as set forth in the City's schedule of fees adopted by the City Council.

The application and its plans shall be posted to the City's website at time of publication of Commission packet.

([C]d) *Public Hearing.* If the application is in order, a public hearing shall be scheduled in accordance with the requirements of KMC [14.20.280](#). An applicant or representative of the applicant must be present in person or by remote device for the application to be considered at the public hearing. If the applicant or representative is not present at the scheduled public hearing and has not provided reasonable timely notice of unavailability to the Planning Department or Commission, the application will be dismissed by the Commission without a public hearing and the applicant may reapply at any time after paying a new application fee.

([D]e) *Review Criteria.* Prior to granting a conditional use permit, it shall be established that the use satisfies all the following [CONDITIONS] criteria:

- 1) The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district;
- 2) The economic and non-economic value of the adjoining property and neighborhood will not be significantly impaired;
- 3) The proposed use is in harmony with the Comprehensive Plan;
- 4) Public services and facilities are adequate to serve the proposed use;
- 5) The proposed use will not be harmful to the public safety, health or welfare; and
- 6) Any and all specific conditions deemed necessary by the Commission to fulfill the above-mentioned conditions [SHOULD BE MET BY THE APPLICANT]. These may include, but are not limited to, measures relative to access, screening, site development, building design, operation of the use and other similar aspects related to the proposed use.

The Commission may approve, approve with conditions, dismiss, or deny the application. The Commission must make specific findings in its decision addressing all six of the required criteria stated above. Any relevant evidence may be considered by the Commission in its decision.

(f) Burden of Proof. The applicant for a conditional use permit has the burden to show by substantial evidence that the six criteria above are satisfied. Substantial evidence is such relevant evidence a reasonable mind might accept as adequate to support a conclusion.

(g) Staff Report. The Planning Director or designee will provide a staff report on the application to the Commission at the public hearing. The staff report may contain any information deemed pertinent by the Planning Director or designee, and may include a recommendation and proposed findings on whether the requirements of this Chapter have been met and whether any additional specific conditions are recommended. The Commission may consider the recommendations of the Planning Director or designee, but shall accord it no deference. The staff report does not relieve the applicant's burden of proof.

([E]h) Issuance of the Permit. Following approval by the Commission, the administrative official shall not issue the permit until the expiration of the fifteen (15) day appeal period contained in KMC [14.20.290](#). After approval by the Commission and before the issuance of the permit, the administrative official must determine that the applicant is current on all obligations (e.g., sales tax, property tax, lease payments, utility payments) to the City or has entered into an approved payment plan with the City on any obligations owed and the applicant is in compliance with the payment plan and (if the permit is for a use required to collect sales tax) must show a valid borough sales tax account. If a timely appeal is filed pursuant to KMC [14.20.290](#), the permit shall not be issued unless authorized by the Board of Adjustment.

([F]i) Yearly Reports. The permit holder shall submit a yearly report between October 1st and December 31st to the administrative official. Such report shall include a summary of the on-site activity.

([G]j) Revocation for Noncompliance/Compliance Notices. If the Commission determines, based on the yearly review or any other investigation undertaken by the official, that the conduct of the operation(s) is not in compliance with: (1) the terms and conditions of the permit; (2) the provisions of the Kenai Zoning Code; (3) or that the permit holder is not current on any obligations (e.g., sales tax, property tax, utility payments, lease payments) to the City unless the applicant has entered into an approved payment with the City on any obligations owed and the applicant is in compliance with the payment plan, the Commission may revoke the permit. The Commission shall not revoke the permit until the permit holder has been notified and given reasonable opportunity to correct the deficiency(s) or to provide information relating to or rebutting the alleged deficiency(s). Appeals from decisions under this section shall be made in accordance with the provisions of KMC [14.20.290](#). If the administrative official determines the permit holder is in compliance with

New Text Underlined; [DELETED TEXT BRACKETED]

the conditions in this subsection, or notifies the permit holder of a potential violation in writing, the administrative official [IT] shall send any notice of compliance or notice of violation to the Commission and the permit holder in a timely manner.

*([H]k) Modification of Final Approval.*

- 1) An approved conditional use permit may, upon application by the permittee, be modified by the Planning and Zoning Commission:
  - a) When changed conditions cause the conditional use to no longer conform to the standards for its approval,
  - b) To implement a different development plan conforming to the standards for its approval;
- (2) The modification application shall be subject to a public hearing and the appropriate fee as set forth in the City's schedule of fees adopted by the City Council in order to help cover the costs of the public hearing notice.

*([I]l) Expiration—Extensions—Transferability.*

- 1) An approved conditional use permit lapses twelve (12) months after approval if no building permit is procured or if the allowed use is not initiated.
- 2) A conditional use permit shall automatically expire if for any reason the conditioned use ceases for a period of one (1) year or longer.
- 3) The Commission may grant time extensions to stay the lapse or the expiration of a permit for periods not to exceed one (1) year each upon a finding that circumstances have not changed sufficiently to warrant reconsideration of the approval of the conditional use permit or that good cause exists to grant the time extension. A permittee must request a time extension in writing, and submit any supporting materials, within ninety (90) days of the date of the administrative official's written notice to the permittee that either the permit has lapsed under subsection (1) or that the permit has expired under subsection (2) by a date certain. If the administrative official does not issue a written notice concerning lapse or expiration, the permittee may request a time extension at any time within two (2) years of the date the permit was issued or the use ceased, whichever is later. A permittee may be granted time extensions not to exceed a total of two (2) years from the date of the Commission's grant of the first time extension. The Commission may, but is not required to, hold a public hearing prior to issuing a decision under this subsection.

- 4) A permittee who disputes the administrative official's determination that the conditioned use has not been timely initiated or has ceased for a period of one (1) year or longer may appeal the official's determination to the Board of Adjustment in accordance with KMC [14.20.290](#). If the permittee has requested a stay under subsection [\(3\)](#), above, the time for appeal of the administrative official's determination of lapse or expiration shall not run until such time as the Commission has made a final decision on the request for a stay.
- 5) A conditional use permit is not transferable from one (1) parcel of land to another. Conditional use permits may be transferred from one (1) owner to another for the same use, but if there is a change in use on the property, a new permit must be obtained.
- 6) Appeals from decisions of the Commission under this section shall be made in accordance with the provisions of KMC [14.20.290](#).

(J)m A proposed conditional use permit shall not be considered if a substantially similar conditional use permit has been considered and denied within the nine (9) months immediately preceding.

**Section 2.** That a copy of Resolution PZ2021-34 be forwarded to the Kenai City Council.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA,  
this 8th day of September, 2021.



JEFF TWAIT, CHAIRPERSON

ATTEST:

  
JAMIE HEINZ, CITY CLERK

**From:** [Barbara Baldwin](#)  
**To:** [Jamie Heinz](#)  
**Subject:** Letter to the Mayor and Council, Ordinance 3243-2021 for 10/6/2021  
**Date:** Wednesday, October 6, 2021 8:43:24 AM

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Mayor Gabriel and Council Members,

We supported the passage of Ordinance 3243-2021 that strengthened the Conditional Use Permit process. We are aware that you will consider a motion for reconsideration of that ordinance at tonight's council meeting. We understand that there will be no public testimony on the motion for reconsideration.

We oppose reconsideration and support the ordinance as passed. Please consider the support by numerous residents as evidenced by their attendance at the public hearing on the ordinance.

Thank you for your continued service to the citizens of Kenai.

Sincerely,  
Bobbie and Rick Baldwin  
3080 Kim-N-Ang Court  
Kenai

**From:** [rusty huf](#)  
**To:** [City Clerk](#)  
**Subject:** Ordinance # 3243-2021  
**Date:** Wednesday, October 6, 2021 10:29:50 AM

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

To the members of the Kenai City Counsel, I am sending you this email to oppose and reject any reconsideration of ordinance #3243-2021 brought forward by council member Glendening. I believe this is a back door attempt to subvert the will of the people who came out and supported the changes to the CUP process, this ordinance should stand as written.

Sent from my iPhone

**From:** [Mack Padgett](#)  
**To:** [City Clerk](#)  
**Subject:** Ordinance # 3243-2021  
**Date:** Wednesday, October 6, 2021 10:44:07 AM

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

To the members of the Kenai City Council, we are sending you this email to oppose and reject any reconsideration of ordinance #3243-2021 brought forward by Council Member Glendening.

Although we do not live on Angler Drive, we live on and are frequent recreational users of Beaver Creek. This ordinance will have a negative impact on Beaver Creek and the Kenai River.

The proposed changes to the Conditional Use Permit have already been reviewed and decided. Council Member Glendening is revisiting a closed issue. It seems like this new ordinance is an attempt to subvert the will of the people who came out and supported the changes to the Conditional Use Permit process.

This ordinance should stand as written.

Sincerely,

Mack & Carol Padgett



**From:** [mjron@acsalaska.net](mailto:mjron@acsalaska.net)  
**To:** [City Clerk](#)  
**Subject:** ordinance #3243-2021  
**Date:** Wednesday, October 6, 2021 11:30:36 AM

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

To the members of the Kenai City Counsel,

I am sending you this email to oppose and reject any reconsideration of ordinance #3243-2021 brought forward by counsel member Glendening. I believe this is a back door attempt to subvert the will of the people who came out and supported the changes to the CUP process, this ordinance should stand as written.

Respectfully

Ron Rogalsky  
945 Ames Rd/1003 Angler Dr.  
Kenai

**From:** [jason.hobart](#)  
**To:** [City Clerk](#)  
**Subject:** Ordinance 3243-2021  
**Date:** Tuesday, October 5, 2021 7:13:50 PM

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

To: Jamie Heinz, City of Kenai City Clerk

From: Jason Hobart, City of Kenai resident

Hi Jamie,

I'm writing to let you know that I'm opposed to the reconsideration of Ordinance 3243-2021. The conditional use permit reconsideration will jeopardize the latest ruling. What has made Kenai such a great place to live all these years has been the sense of community that is evident throughout this All American City. Reconsideration threatens what makes this a great place to raise families which is the true foundation of this great place to live.

Thank you for your time, Jason

Jason Hobart  
3060 Kim N Ang Ct  
Kenai, Alaska 99611

**From:** [S Jurek](#)  
**To:** [City Clerk; jheinz@kenacity.com](mailto:jheinz@kenacity.com)  
**Subject:** Ordinance 3243-2021  
**Date:** Wednesday, October 6, 2021 11:18:44 AM

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello,

We oppose the reconsideration of Ordinance 3243-2021.

We support the ordinance as it was passed. It is a good start to much needed improvements to the Conditional Use Permit process. The amendments help make the Conditional Use Permit process more transparent and more equitable for the involved parties.

We moved to Kenai specifically for the quality of life and the quiet and peaceful neighborhoods, and this should be preserved for future generations. This ordinance and a more transparent process for the Conditional Use Permit will help ensure this.

Thank you,

Frances and Mark Jurek  
3065 Kim N Ang Court  
Kenai, AK 99611

**From:** [Pete Coots](#)  
**To:** [City Clerk](#)  
**Subject:** Reconsideration of Ordinance 3243-2021  
**Date:** Wednesday, October 6, 2021 10:18:10 AM

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Mayor Gabriel and City Council- We oppose Councilman's Glendening call for reconsideration of Ordinance [3243-2021](#).

Although this motion for reconsideration may be allowed in the rules of order, this is classic political maneuvering which creates distrust with elected public officials.

Many citizens spoke in support of revamping the CUP process both at the P&Z Committee level and in front of the Council and took time out of their schedules to make their voices heard.

We believe this ordinance is a good first step in addressing the inconsistencies in the administration of zoning with in the City.

After the frustration of having to fight to maintain the quality of life in our neighborhood due to CUP applications being submitted in direct violation of the subdivision's covenants, having a more defined review process is definitely a move in the right direction.

Council members suggested re-zoning our neighborhood to a R-1 or R-2, but I reviewed the Land Use Table still allows for commercial activities via the CUP process.

Please do not vote for reconsideration of this ordinance.

Sincerely,  
Pete and Charlotte Coots  
385 Dolchok Ln.  
Kenai, AK

**From:** [Deirdre Cheek](#)  
**To:** [City Clerk](#)  
**Subject:** Reconsideration of Ordinance No. 3243-2021  
**Date:** Wednesday, October 6, 2021 11:12:37 AM

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Reconsideration of the amendments to the Kenai Municipal Code 14.20.150 - Conditional Use Permits would be a step backwards. These amendments are the **first step** in improving the process for issuance of future permits and to monitor the use of such permits. As discussed, in recent meetings, this amendment provides much needed clarification and clarifies the process for not only for the applicant, but the Planning and Zoning Commission.

Thank you,  
Deirdre Cheek  
455 Cub Court  
Kenai Alaska 99611

**From:** [Kristine Schmidt](#)  
**To:** [Victoria Askin](#); [Brian G. Gabriel, Sr.](#); [Jim Glendening](#); [Henry Knackstedt](#); [Bob Molloy](#); [Glense Pettey](#); [Teea Winger](#)  
**Cc:** [City Clerk](#)  
**Subject:** Reconsideration of Ordinance No. 3243-2021  
**Date:** Tuesday, October 5, 2021 5:30:09 PM

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Kenai City Council members:

Please vote "no" on reconsideration of Ordinance 3243-2021, relating to Conditional Use Permits. There was wide public support for this ordinance at the two public meetings I attended, where I testified in support of the ordinance. This ordinance was badly needed to clarify and strengthen the existing ordinance, and is a good start to improve the CUP process. I am opposed to any effort to weaken Ordinance 3243-2021, including efforts to shift decision making authority from the Planning & Zoning Commission to the City Planner.

Thank you for your consideration of my comments.

Kristine Schmidt  
513 Ash Avenue  
Kenai, Alaska 99611  
[kristine@kenaialaska.us](mailto:kristine@kenaialaska.us)

**From:** [MJ Loveland](#)  
**To:** [City Clerk](#)  
**Subject:** Reject any reconsideration of ordinance #3243-2021  
**Date:** Wednesday, October 6, 2021 11:04:59 AM

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CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

To the members of the Kenai City Counsel,

I am sending you this email to oppose and reject any reconsideration of ordinance #3243-2021 brought forward by my council member Glendening. I believe this is a back door attempt to subvert the will of the people who came out and supported the changes to the CUP process. This ordinance should stand as written and the council should continue to work through the desperately needed overhaul of the CUP process as promised during the last city council meeting.

Regards

Mary Jean Loveland  
945 Ames Rd  
Kenai, AK