

**JANUARY 20, 2021  
CITY COUNCIL MEETING  
ADDITIONAL MATERIAL/REVISIONS**

**REQUESTED REVISIONS TO THE AGENDA/PACKET:**

<b><u>ACTION</u></b>	<b><u>ITEM</u></b>	<b><u>REQUESTED BY</u></b>
Add to item D.1.	<b>Ordinance No. 3177-2021</b> <ul style="list-style-type: none"><li>• Memo for Substitute Ordinance 3177-2021</li><li>• Public Comments</li><li>• Letter from Representative Ron Gillham</li><li>• Letter from Assembly Member Derkevorkian</li></ul>	City Clerk
Add to item D.5.	<b>Resolution No. 2021-03</b> <ul style="list-style-type: none"><li>• Kenai Peninsula Borough Memos</li></ul>	City Attorney



# 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:** Teea Winger, Council Member  
**DATE:** January 20, 2021  
**SUBJECT:** **3177-2021 (Substitute) Million reasons to Shop in Kenai**

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Substitute Ordinance 3177-2021 increases the contract amount with the Chamber from \$15,000 to up to \$40,000. While KMC 7.15.060- Procurement of Professional Services, generally requires a competitive process for contracts over \$35,000, KMC 7.15.070 -Innovative Procurements and Other Exceptions, allows for a sole source contract when the contractual services can only be provided a by a single source. For this program, the Chamber is uniquely situated to provide the services sought by the City given its existing role in the local business community. The following amendments to Substitute Ordinance 3177-2021 are required:

Amend the end last Whereas Clause as follows:

WHEREAS, the success of the City is dependent upon the success of the local economy and its businesses and a program to reward local shopping, promote Kenai businesses, and continue the community's recovery from the COVID-19 Public Health Emergency is in the best interest of the City and its residents-: and.

Add a new final Whereas clause to read:

WHEREAS, the Kenai Chamber of Commerce is the only entity that can reasonably provide the unique services sought by the City, and can be awarded the contract without a competitive process pursuant to KMC 7.15.070(b)(1).

Amend Section 2 to read:

**Section 2.** That the City Manager is authorized to execute a professional service agreement with the Kenai Chamber of Commerce for administration of the program without competition

pursuant to KMC 7.15.070(b)(1) for a total cost not to exceed \$40,000 including up to \$10,000 to promote the program and up to \$30,000 for program administration and support.

Your consideration is appreciated.



**From:** [Paul Ostrander](#)  
**To:** [Meghan Thibodeau](#)  
**Subject:** FW: Substitute Ordinance 3177-2021  
**Date:** Tuesday, January 19, 2021 9:42:48 AM

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-----Original Message-----

From: Christine Brandt

Sent: Saturday, January 16, 2021 9:51 AM

To: Teea Winger <[twinger@kenai.city](mailto:twinger@kenai.city)>; Paul Ostrander <[postrander@kenai.city](mailto:postrander@kenai.city)>; Brian G. Gabriel, Sr. <[bgabriel@kenai.city](mailto:bgabriel@kenai.city)>; Bob Molloy <[bmolloy@kenai.city](mailto:bmolloy@kenai.city)>; Henry Knackstedt <[hknackstedt@kenai.city](mailto:hknackstedt@kenai.city)>; Glenese Pettey <[gpettey@kenai.city](mailto:gpettey@kenai.city)>; Victoria Askin <[vaskin@kenai.city](mailto:vaskin@kenai.city)>; Jim Glendening <[jglendening@kenai.city](mailto:jglendening@kenai.city)>  
Subject: Substitute Ordinance 3177-2021

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

Thank you for purposing this ordinance. I fully support Substitute Ordinance 3177-2021. I believe in supporting local businesses. I would also like to thank you for the relief opportunity that you have given to the residents of Kenai it is deeply appreciated.

Respectfully,  
Christine Brandt

Sent from my iPhone

**From:** [Paul Ostrander](#)  
**To:** [Meghan Thibodeau](#)  
**Subject:** FW: Substitute Ordinance 3177 Kenai Shop Local Program  
**Date:** Tuesday, January 19, 2021 9:42:03 AM

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**From:** Krista Schooley  
**Sent:** Monday, January 18, 2021 7:02 PM  
**To:** Brian G. Gabriel, Sr. <[bgabriel@kenai.city](mailto:bgabriel@kenai.city)>; Bob Molloy <[bmolloy@kenai.city](mailto:bmolloy@kenai.city)>; Glenese Pettey <[gpettey@kenai.city](mailto:gpettey@kenai.city)>; Henry Knackstedt <[hknackstedt@kenai.city](mailto:hknackstedt@kenai.city)>; Jim Glendening <[jglendening@kenai.city](mailto:jglendening@kenai.city)>; Paul Ostrander <[postrander@kenai.city](mailto:postrander@kenai.city)>; Teea Winger <[twinger@kenai.city](mailto:twinger@kenai.city)>; Victoria Askin <[vaskin@kenai.city](mailto:vaskin@kenai.city)>  
**Subject:** Substitute Ordinance 3177 Kenai Shop Local Program

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

Dear City of Kenai Council Members,

I fully support substitute ordinance 3177 Kenai Shop Local Program.

Krista Schooley

# Representative Ron Gillham

## Alaska State Legislature

SESSION ADDRESS:  
Alaska State Capitol  
Juneau, AK 99801  
Office: (907) 465-2693  
Cell: (907) 252-3878



INTERIM ADDRESS:  
145 Main Street, #211  
Kenai, AK 99611  
Office: (907) 283-2690

### House District 30

January 19, 2021

Kenai City Council Members:  
The Honorable Victoria Askin  
The Honorable Brian Gabriel  
The Honorable Jim Glendening  
The Honorable Henry Knackstedt  
The Honorable Bob Molloy  
The Honorable Glenese Pettey  
The Honorable Teea Winger  
City Clerk's Office  
210 Fidalgo Avenue  
Kenai, AK 99611

Honorable Kenai City Council Members:

I write this letter in support of Substitute Ordinance 3177-2021, the Shop Local Economic Stimulus Program to Benefit Kenai Small Business. I appreciate the City Council's consideration of Ordinance 3177-2021 at the January 6th meeting, which is aimed at providing economic support to Kenai businesses in response to the COVID-19 pandemic. However, I believe the parameters of that proposal are too limited in scope and economic impact to our community. It simply does not go far enough.

I am in full support of the provisions in the proposed substitute ordinance by Council Member Teea Winger, the "Million Reasons to Shop in Kenai" program. Increasing program funding from \$100,000 to \$1,040,000, lengthening the duration of the program from one month to four months, and broadening the qualifying purchases to include groceries and other items, will provide a much larger influx of money into our local economy over a longer period of time during the off-season. These components of the substitute program will not only help provide

Kenai City Council Members

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January 19, 2021

our community members with greater food security, but will provide our local businesses with much needed economic relief to rehire laid-off employees and bring on seasonal workers sooner.

More than ever our small business community needs the support of our local government to provide economic relief. I strongly encourage the City Council to approve the substitute ordinance and allocate \$1,040,000 from the federal CARES Act funds to the "Million Reasons to Shop in Kenai" program.

Best Regards,

A handwritten signature in black ink, appearing to read "Ron Gillham". The signature is written in a cursive style with a large initial "R" and a long, sweeping underline.

Representative Ron Gillham  
House District 30

**Meghan Thibodeau**

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**Subject:** FW: Substitute ordinance 3177

**From:** Richard Derkevorkian <[derkevrs@gmail.com](mailto:derkevrs@gmail.com)>

**Sent:** Wednesday, January 20, 2021 2:35 PM

**To:** City\_Council <[City\\_Council@kenai.city](mailto:City_Council@kenai.city)>

**Subject:** Substitute ordinance 3177

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

Please forward to the City council, Mayor, and city Manager.

I am writing you today asking that you support Teea's version of 3177 that provides up to 1,000,000\$ back into small businesses around Kenai. I used Soldotna's program when they had it last year and I believe it was a great way to infuse money back into the community and encourage spending at some struggling businesses. While not a business owner myself I know I would use the funds at some of my favorite Kenai restaurants that have been hit hard by the loss of business the pandemic and state mandated lockdowns has caused. The City can fall back on savings, many of these small businesses in town do not have that luxury after so many months of a struggling economy. We should cherish the small businesses that have had a successful enough business model to survive through this unprecedented time and you have a duty as the council to try and help the community.

Thank you,



# Kenai Peninsula Borough

## Legal Department

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### MEMORANDUM

**TO:** Robert Ruffner, Chair  
Members, Anadromous Waters Habitat Protection Work Group

**THRU:** Melanie Aeschliman, Planning Director *MA*  
Samantha Lopez, Acting River Center Manager *SL*

**FROM:** Sean Kelley, Deputy Borough Attorney *SK*

**COPY:** Paul Ostrander, City of Kenai Manager

**DATE:** January 21, 2021

**RE:** **UPDATED** Commercial Activities Re-Write – KPB 21.18.072 – to Improve the Permitting Code Related to Commercial Activities

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This proposed amendment was drafted in collaboration with City of Kenai Administration pursuant to Chair Ruffner's request.

KPB 21.18.072 (Limited commercial activity within the habitat protection area) is the only section of code within KPB 21.18 specific to commercial or business activities, uses or structures with the HPD. The current wording of this section permitting commercial activities is difficult to interpret, often open to debate, and has proven to have little useful, practical application. For example, in the past 5 years, it appears that no permits have been issued under this section of code.

It has been requested that this group consider a commercial activities permit with the industrialized area of the Kenai River below the Bridge Access Road Bridge (Ames Bridge) to a line at approximately river mile 1, as described. This re-write would provide for necessary flexibility, including development or re-development, for growth within the City of Kenai while at the same time continuing to protect important fish habitat.

The proposed amendment essentially repeals current KPB 21.18.072 and replaces it with a standard-driven permitting process specific to commercial activities. The opening paragraph establishes a permit process for commercial activities within the area described. Subsection A provides for activities that do not require a permit pursuant to KPB 21.18.065. Subsection B provides 4 categories of allowed commercial activities with the HPD. Subsection C provides the general standards applicable to a permit application under this section. Subsection D sets out the general conditions. Subsection E provides that commercial activities not permitted under this section are prohibited, unless the use or structure otherwise qualifies for prior existing status under KPB 21.18.090. This proposed amendment

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January 21, 2021

To: Anadromous Waters Habitat Protection Work Group

RE: UPDATED Commercial Activities (KPB 21.18.072) Repeal & Replace

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also provides the planning commission authority to impose permit conditions necessary to meet the general standards. The proposed amendments will require mitigation when the proposed activity seeks to expand the applicant's surface footprint within the HPD.

Code additions are underlined in this version. Update additions since this was introduced on January 14, 2021 are shown in **bold** underline and deletions from the original amendments that were introduced are show in ~~striketrough~~. Current code that would be deleted through enactment of this amendment is shown in [CAPS], bracketed. The updated description is shown on the attached map labeled, Attachment 1 to KPB 21.18.072 Repeal & Replace memo.

21.18.072. - Limited commercial activity within habitat protection district [AREA].

Within the habitat protection district and subject to the requirements of this chapter, the planning commission may issue a permit for commercial activities to be conducted **within the east 1/16<sup>th</sup> aliquot division line of Section 5, R5 N. R11W, Seward Meridian (approximately near river mile 1) to north 1/16<sup>th</sup> aliquot division line of Section 17, T5N, R11W, Seward Meridian (approximately near river mile 3.5).** the municipal district as defined in KPB 21.04.010. Commercial activities are operations, uses, structures or other activities implemented for a private business purpose. Public parks, docks, and other public infrastructure are not considered commercial activities for purposes of this section.

- A. Activities not requiring permit. Commercial activities of the same nature as those allowed under KPB 21.18.065 do not require a permit under this section.
- B. ~~Allowed~~ Activities. The following commercial activities, uses or structures may be permitted under this section:
  1. Dock and boat launch.
  2. Stairs and pedestrian use boardwalks.
  3. Gas, electric, water or other utility connections, lines, or poles.
  4. Other activities, uses, or structures that either do not expand the applicant's surface area footprint within the habitat protection district or are necessary to the operation of the applicant's business and cannot be located outside of the habitat protection district due to conditions specific to the property. The burden is on the applicant, through a registered professional engineer, to show that conditions specific to the property exist.
- C. General standards. The following standards apply to permits issued under this section:

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January 21, 2021

To: Anadromous Waters Habitat Protection Work Group

RE: UPDATED Commercial Activities (KPB 21.18.072) Repeal & Replace

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1. The use or structure will not damage the riparian ecosystem or riparian wetlands. If substantial evidence supports a finding that the use or structure will damage the riparian ecosystem or riparian wetlands, then mitigation shall be required.
  2. Granting of the permit shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough code, and other applicable planning documents adopted by the borough;
  3. The development of the use or structure shall not physically damage the adjoining property;
  4. The proposed use or structure is water-dependent or does not expand the surface area footprint of the structure or use in the habitat protection district.
  5. Applicant or owner's compliance with other borough permits and ordinance requirements.
  6. If the use or structure expands the applicant's surface area footprint within the habitat protection district, then **appropriate** mitigation shall be required in order to offset impacts to the habitat protection district.
- D. General Conditions. The planning commission may impose permit conditions that it finds are necessary to meet the standards under this section and establish such conditions on the commercial activity, use or structure, for which the permit is granted as it determines necessary to prevent erosion, sedimentation, ground or surface water pollution, or damage to the habitat protection district, riparian wetlands, or riparian ecosystems. The planning commission may require the performance of **appropriate** mitigation activities to offset impacts that the planning commission finds may occur as a result of the proposed project or activity.
- E. Prohibited activity. A commercial activity, use or structure, that is not ~~permitted~~ **allowed** under this section and does not qualify for prior existing status under KPB 21.18.090 is prohibited.
- F. Application procedure. A person seeking a permit under this section must complete the application and pay any applicable filing fee(s) to the river center on a form provided by the river center and receive planning commission approval prior to commencement of the project. An applicant's failure to abide by the terms and conditions of the planning commission's resolution approving the permit is grounds for

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January 21, 2021

To: Anadromous Waters Habitat Protection Work Group

RE: UPDATED Commercial Activities (KPB 21.18.072) Repeal & Replace

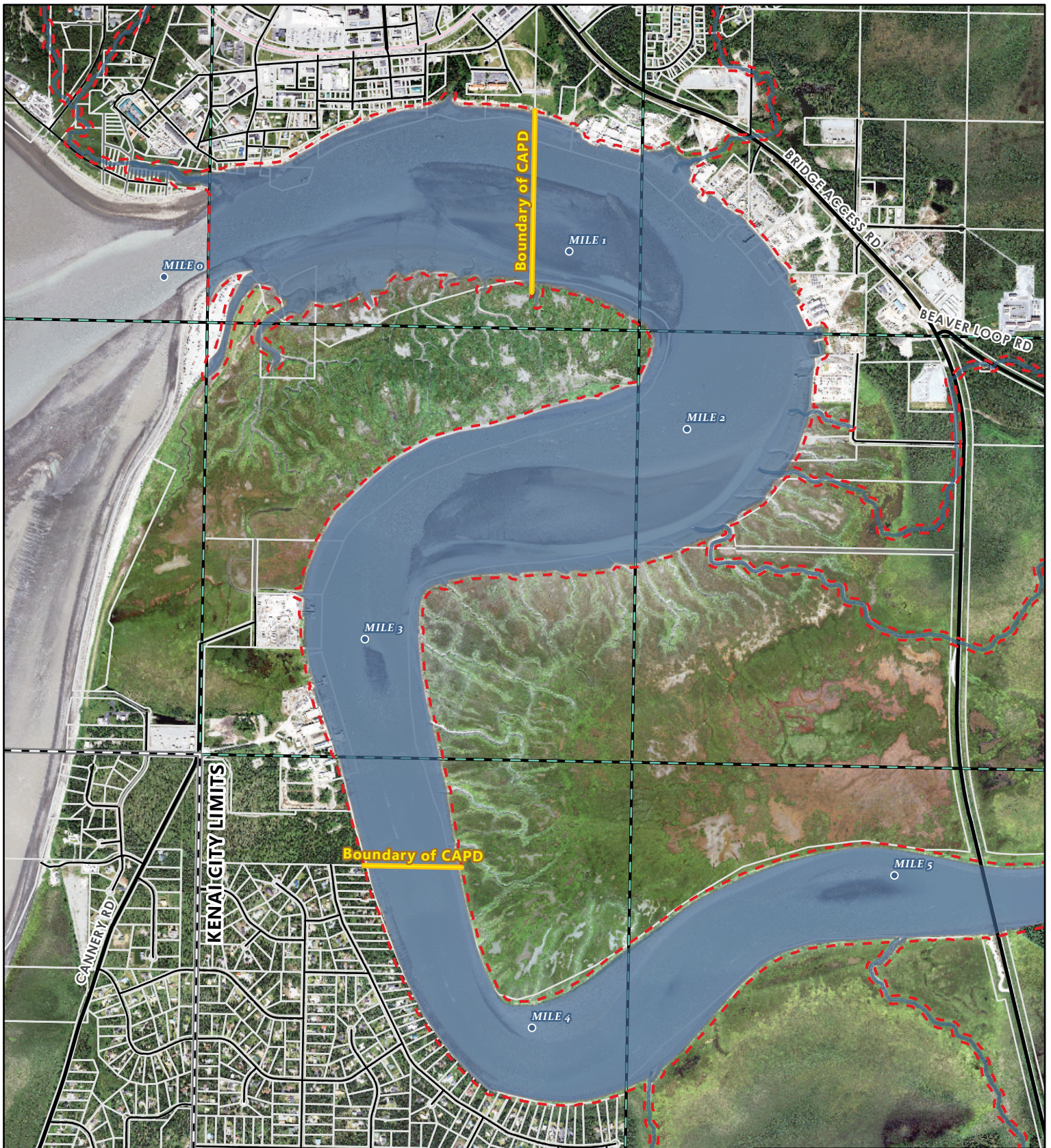
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revocation of the permit and removal of all non-compliant uses or structures.

[THE PLANNING COMMISSION MAY ISSUE A PERMIT FOR ACTIVITIES TO BE CONDUCTED WITHIN OR USING THE HABITAT PROTECTION AREA AS PROVIDED IN THIS SECTION. PERMITS ARE REQUIRED FOR COMMERCIAL ACTIVITIES OF THE SAME NATURE AS THOSE ALLOWED UNDER KPB 21.18.065 FOR PRIVATE NON-COMMERCIAL USE UPON CONDITIONS THAT THE ACTIVITY IS LIMITED TO PEDESTRIAN USE OVER BOARDWALKS, STAIR AND DOCKS NECESSARY TO ALLEVIATE THE INCREASED LEVELS OF ACTIVITY ATTENDANT TO THE COMMERCIAL ACTIVITY. A PERMIT MAY NOT BE ISSUED UNLESS THE PLANNING COMMISSION DETERMINES THE ACTIVITY WILL BE CONDUCTED IN A MANNER THAT DOES NOT RESULT IN SIGNIFICANT EROSION, SEDIMENTATION, DAMAGE TO THE HABITAT PROTECTION DISTRICT, AN INCREASE IN GROUND OR SURFACE WATER POLLUTION, AND DAMAGE TO RIPARIAN WETLANDS AND RIPARIAN ECOSYSTEMS. IN GRANTING A PERMIT, THE PLANNING COMMISSION MAY ESTABLISH SUCH CONDITIONS ON THE DEVELOPMENT, USE OR OPERATION OF THE ACTIVITY OR FACILITY FOR WHICH THE CONDITIONAL USE PERMIT IS GRANTED AS IT DETERMINES NECESSARY TO PREVENT SIGNIFICANT EROSION, SEDIMENTATION, DAMAGE TO THE HABITAT PROTECTION DISTRICT, AN INCREASE IN GROUND OR SURFACE WATER POLLUTION, AND DAMAGE TO RIPARIAN WETLANDS AND RIPARIAN ECOSYSTEMS. THE ACTIVITY MUST BE CONDUCTED ON A PORTION OF PROPERTY ADJACENT TO THE PROPERTY WITHIN THE HABITAT PROTECTION AREA FOR WHICH THE PERMIT IS SOUGHT.]

Justification: This updated version is provided to address questions about scope of this permit and mitigation. The word "appropriate" is added in front of mitigation to coincide with a definition for mitigation that is proposed on a separate amendment memo. To address scope questions, this permit will be limited in scope to commercial applicants for activities conducted within the industrialized area near the mouth of the Kenai River.

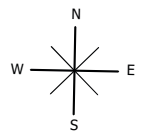




## Proposed Commercial Activity Permit District (CAPD)

- Boundary Of CAPD
- Approximate River Mile
- 21.18 Anadromous Streams
- - - Approximate Boundary of 21.18 Habitat Protection District

- City Limits
- Section Lines
- Tax Parcels



0 0.5 Miles



# Kenai Peninsula Borough

## Planning Department – River Center

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### MEMORANDUM

**TO:** Robert Ruffner, Chair  
Members, Anadromous Waters Habitat Protection Work Group

**THRU:** Melanie Aeschliman, Planning Director *MA*  
Samantha Lopez, Acting River Center Manager *SL*

**FROM:** Sean Kelley, Deputy Borough Attorney *SK*

**DATE:** January 21, 2021

**RE:** Private Boat Launches, Prior Existing Uses or Structures, and Definitions Amendments

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The following amendments are provided following discussion at the group's meeting on January 14, 2021. Ms. Vadla requested language in KPB 21.18.075 specific to the private boat launch issue raised during public comment. In adding specific language to KPB 21.18.075 concerning private boat launches it became apparent that such an amendment to KPB 21.18.075 should coincide with amendment to KPB 21.18.090 concerning prior existing uses or structures. In addition, two additional definitions are provided for this group's consideration following discussions about "elevated light penetrating structures" and "mitigation" under KPB 21.18.

#### KPB 21.18.075 Amendment: Private Boat Launches

21.18.075. - Prohibited uses and structures.

Change to KPB 21.18.075: adds "KPB" in front of 21.18.081 and adds specific reference to private boat launches.

Current Code: Any use or structure not permitted in KPB 21.18.065, KPB 21.18.071 or 21.18.081 is prohibited.

Code amendment  
Recommended by this group: Any use or structure within the habitat protection district that is not permitted or allowed under KPB 21.18.065, KPB

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January 21, 2021

To: Anadromous Waters Habitat Protection Work Group

RE: Private Boat Launch, Prior Existing Uses, Definitions Amendments

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21.18.071, KPB 21.18.072, or 21.18.081 is prohibited.

This amendment:

Any use or structure within the habitat protection district that is not permitted or allowed under[IN] KPB 21.18.065, KPB 21.18.071, KPB 21.18.072, or **KPB 21.18.081** is prohibited. **A private boat launch that does not meet the criteria for a conditional use permit under KPB 21.18.081 is prohibited.**

Justification: This group asked to review a potential amendment to KPB 21.18.075 that explicitly addresses the issue of private boat launches. There are situations where private boat launches are allowed and permitted under KPB 21.18.081 (conditional use permits). See, KPB 21.18.081(B)(9)(private boat launches that serve the public) and KPB 21.18.081(B)(12)(private boat launches on anadromous lakes). This proposed amendment would provide that a private boat launch is prohibited if it does not otherwise fall under a specified conditional use permit and the criteria therein.

KPB 21.18.090 Amendment: Prior Existing Status for Private Boat Launches

This proposed amendment would address the concern that KPB 21.18.090(E) could be read to exclude private boat launches from prior existing use status.

Code Change:

...

- E. 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 planning department may require removal of these materials. **For the purposes of this subsection, the term "impervious materials" does not include a private boat launch established prior to July 2, 2013, that otherwise meets the criteria for prior existing uses under KPB 21.18.090(D).**

Justification: The term impervious materials would seemingly include a permanent private boat launch. Therefore, current code can be interpreted to say that that private boat launches are both prohibited and may not be granted prior existing use status. If KPB 21.18.075 is amended to specifically prohibit private boat launches that do not meet the criteria of KPB 21.18.075, then the group should consider addressing the prior existing use issue in KPB 21.18.090.

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January 21, 2021

To: Anadromous Waters Habitat Protection Work Group

RE: Private Boat Launch, Prior Existing Uses, Definitions Amendments

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Additional Definition Amendments – KPB 21.18.140

21.18.140. - Definitions.

...

**“Elevated light penetrating structures” mean structures, including walkways, that are off the ground, allow for sunlight ingress, and constructed in such a manner that allow vegetation to grow up to prevent vegetation trampling and increased sedimentation caused by recreational use activities within the habitat protection district**

...

**“Mitigation” means the reduction of adverse effects of a proposed project by considering:**

- 1. Avoiding the impact altogether by not taking a certain action or parts of an action;**
- 2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;**
- 3. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;**
- 4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and**
- 5. Compensating for the impact by replacing or providing a comparable substitute.**

*Justification:* The group requested to review a definition for “elevated light penetrating structures” which is provided above. In addition, a definition for “mitigation” is required in response to questions about the extent of mitigation that may be imposed by the planning commission. This definition comes from Oregon City, Oregon in relation to its regulations of activities on the Willamette River.