



**Kenai Planning & Zoning Commission –
Work Session**

February 23, 2022 - 5:30 PM

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

****Telephonic/Virtual Information on Page 2****

www.kenai.city

A Work Session will be held at 5:30 PM, prior to the Regular Meeting to
conduct Planning & Zoning Commission training.

Agenda

A. CALL TO ORDER

B. INTRODUCTION

1. Commission Training Presentation by City Clerk Saner, City Attorney Bloom and Planning Director Foster.
 - a. Commissioner Responsibilities..... 1 - 11
 - b. Effective Meetings..... 12 - 13
 - c. Basic Parliamentary 14
 - d. Open Meetings Act 15 - 22
 - e. Conflict of Interest 23 - 25
 - f. Quasi-Judicial Role

C. COMMISSION DISCUSSION AND QUESTION

D. PUBLIC COMMENT (*Public comment limited to three (3) minutes per speaker; thirty (30) minutes aggregated*)

E. ADJOURNMENT

The agenda and supporting documents are posted on the City’s website at www.kenai.city. Copies of resolutions and ordinances are available at the City Clerk’s Office or outside the Council Chamber prior to the meeting. For additional information, please contact the City Clerk’s Office at 907-283-8231.

Join Zoom Meeting

<https://us02web.zoom.us/j/89152784821>

Meeting ID: 891 5278 4821 **Passcode:** 547920

OR Call: (253) 215-8782 or (301) 715-8592

Meeting ID: 891 5278 4821 **Passcode:** 547920

Welcome!

On behalf of the City of Kenai, thank you for your active participation in the governing process of our community. Individuals who volunteer for boards and commissions are a large portion of the support system for our local City government.

City boards and commissions serve a critical role in the development of public policy and implementation by advising the City Council. Their decisions are critical in modeling our community by acting as the voice of our citizens. As a member of a city board or commission, your role is to help shape the future of the City of Kenai. You will be studying a variety of issues that are vital to the City's future, and then making decisions on those issues.

It takes a substantial commitment of time and hard work to be a good board or commission member. The decision you make can have a direct impact on the quality and level of services the City offers, so it is important to keep in mind the needs of all citizens during the decision-making process. As a board or commission member, you are asked to consider the perspectives of all the citizens who have a stake in any particular issue; your role is to support the democratic process by considering the broadest set of perspectives on issues.

While serving on a board or commission, you are now a City official and are bound by ethical standards, State laws and City policies. You will work closely with City staff, policymakers, citizens, other government representatives and at times members from other organizations.

It is important to understand that your personal behavior, both inside and outside public meetings, will be observed and open to criticism by others. Ethics, good judgment, and dignity are the foundation of public service and the credo of City officials.

POLICY NO. 2016-01 (Amended): Procedures for Commissions, Committees and Council on Aging

Purpose

The purpose of this policy is to establish procedures, other than those provided in KMC 1.90, for Commissions, Committees and Council on Aging.

Scope

This policy applies to all advisory bodies appointed by the City Council. The Planning and Zoning Commission is also regulated by KMC 14.05.

Policy

1. Appointment and Reappointments

- a. An application for consideration of appointment or reappointment to a Commission, Committee or Council on Aging must be submitted to the City Clerk.
- b. The Mayor nominates an applicant for appointment or reappointment and by motion, the City Council confirms.

2. Establishing Subcommittees

- a. A subcommittee of a commission or committee may be established for a specific function upon approval of Council.

3. Meeting Schedules

- a. Commission, Committee and Council on Aging meeting schedule is as follows:

Commission/ Committee/Council on Aging	Meeting Schedule	Scheduled Meeting Days
Airport Commission	Monthly	Second Thursday of the month
Beautification Committee	Meetings held January, April, May, September and October	Second Tuesday of the month
Council on Aging	Monthly	Second Thursday of the month
Harbor Commission	Meetings held February, March, April, May, June, August, September, and November	First Monday after first council meeting of the month
Library Commission (Suspended as of 2015, Ordinance No. 2815-2015)	N/A	N/A
Parks & Recreation Commission	Monthly, except for July	First Thursday of the month
Planning & Zoning Commission	Twice monthly	Second & fourth Wednesdays

- b. All regular meetings will be held in the Kenai City Hall Council Chambers with the exception of the Council on Aging who shall meet at the Senior Center, unless offsite arrangements are approved by the Clerk. Exceptions for subcommittee meetings may be made with the advance notice of the City Clerk.
- c. Regularly scheduled meetings shall begin at 7:00 p.m. unless otherwise approved by Council via motion, with the exception of the Council on Aging, which begins at 4:30 p.m.
- d. Commissions, Committees and Council on Aging may, with the City Clerk's approval and notification to Council and the City Manager, hold special meetings (for a specific purpose) on an as-needed basis.
- e. Commissions, Committees and Council on Aging meetings may be cancelled by the City Clerk, with notification to Council and the City Manager, if cancellation is warranted, i.e. lack of agenda items, pre-knowledge of lack of a quorum, etc.
- f. Any additional commissions or committees established will be set and incorporated into the meeting schedule by the City Council.

4. Minutes & Meeting Recordings

- a. With exception of the Planning & Zoning Commission, taking notes and electronically recording meetings shall be the responsibility of department liaison to the specific meeting body. The Clerk's Office shall take notes and record the meeting for the Planning and Zoning Commission.
- b. Summary minutes will be produced by the Clerk's Office from the department liaisons notes and provided to the City Council as official records of the meetings.
- c. Regularly scheduled meetings shall be electronically recorded and with the exception of Planning & Zoning Commission, shall be kept for two years.
- d. Planning & Zoning Commission meeting recordings shall be kept for 6 years.

5. Work Sessions

- a. Work sessions may not be held without the approval of the City Clerk unless they occur on the night of and at the time of a regularly scheduled advertised meeting. Notification of scheduled work session shall be provided to City Council and the City Manager. Work session may be requested by Council, the liaison or Chair of the body.
- b. During work sessions, only items on the work session agenda may be discussed and no formal actions may be taken.
- c. At a minimum, work sessions shall be posted on the Official City Bulletin Board in Kenai City Hall and on the city website at least five days prior to the meeting.

6. Basic Meeting Information

- a. All meetings shall be open to the public.
- b. At a minimum, meeting notices shall be posted on the Official City Bulletin Board in Kenai City Hall and on the city website at least five days prior to the meeting.
- c. Meeting agenda's shall be established by the Chair and the department liaison. Items requiring Committee, Commission or Council on Aging action under applicable municipal code prior to final action by the Council, as distinguished from advisory recommendations, will be referred to the respective body prior to any final Council action. The City Council, by motion, may refer any other item to be placed on an agenda seeking a recommendation from the respective Committee, Commission, or Council on Aging.
- d. The department liaison shall submit items for the agenda and supporting documentation to the Clerk's Office one week prior to a meeting, no later than 2:00 p.m. The Clerk's Office will compile meeting material and distribute. The Planning & Zoning Commission is exempt from this requirement as the Planning Department advertises, compiles meeting material and distributes for its commission.
- e. Rules of Order: Pursuant to KMC 1.15.120(b) and KMC 1.90.050(c), in all matters of parliamentary procedure, Robert's Rules of Order, as revised shall be applicable and govern all meetings, except as specified in KMC 1.15.060 (Motions), KMC 1.15.100 (Speaking), and KMC 1.15.110 (Voting).
- f. Quorum: No meeting may proceed in the absence of a quorum, i.e. a quorum is more than one-half of the board/commission (quorum of the whole).
- g. Motion: Pursuant to KMC 1.15.060(k), all motions require a second. A majority of votes is required to pass a motion.
- h. Speaking: In a meeting, members should be recognized by the Chair before speaking.
- i. When is it a Meeting: If any public business is discussed collectively by four or a majority of members of one body.

7. Council Participation

- a. Any Council Member may attend a meeting or work session of any Commission, Committee or the Council on Aging. Only the Council Liaison to the respective, Commission, Committee or Council on Aging may speak on behalf of the Council. Participation by Council Members at Commission, Committee or Council on Aging meetings should be limited to introduction of legislation by one Council Legislative Sponsor. Participation by any other Council Members, written or oral, is discouraged.
- b. Exception: Council Members may fully participate in any joint work session or other meeting with a Commission, Committee, or the Council on Aging when it has been noticed that the City Council will be in attendance, or there has been a specific delegation of authority by the Council for a member(s) to represent the Council.

Effective Date: _____

Approved by Resolution No. 2016-03
Amended by Resolution No. 2017-24
Amended by Resolution No. 2018-21
Amended by Resolution No. 2019-03

BRIAN GABRIEL SR., MAYOR

ATTEST:

Jamie Heinz, CMC, City Clerk

Chapter 1.90

STANDARD PROCEDURES FOR BOARDS, COMMISSIONS AND COMMITTEES

Sections:

- 1.90.010** **Creation.**
- 1.90.020** **Duties.**
- 1.90.030** **Qualifications.**
- 1.90.040** **Terms.**
- 1.90.050** **Proceedings.**
- 1.90.060** **Specific requirements of boards, commissions and committees.**

1.90.010 Creation.

All boards, commissions and committees created by the Council of the City of Kenai, shall consist of seven (7) members who shall be nominated by the Mayor and confirmed by the City Council from applications submitted to the City Clerk. A chair and vice-chair shall be selected annually and shall be elected from and by the appointed members. At the organizational meeting of Council, or as soon thereafter as practicable, the Mayor, after consultation with Council, shall nominate Council Members as a council liaison to any board, commission or committee. After confirmation by Council, the council liaison may attend all meetings of the board, commission or committee. A council liaison is not a member of, and shall have no voting power or any other rights of membership on, the board, commission or committee. The Mayor and other Council Members may attend meetings of boards, commissions or committees when serving as an alternate for the Council liaison, or in their capacity as elected officials. City administrative staff shall attend and supply staff support to all meetings of boards, commissions and committees. (Ords. 2735-2014, 2741-2014)

1.90.020 Duties.

- (a) Members of boards, commissions and committees shall be required to establish policies relating to their respective organization. They shall act in an advisory capacity to City Council unless otherwise specified in the City Code.
- (b) If the board, commission or committee has income stated within the City of Kenai annual budget, said board, commission or committee shall work with the City Manager to establish expenses projected for the year for approval by the City Council. (Ord. 2748-2014)

1.90.030 Qualifications.

- (a) A member of a board, commission or committee must be a resident of the City of Kenai, unless the board, commission or committee is specifically exempted by Council from this requirement. The member cannot be an officer or employee of the City of Kenai. If any member should move his or her residence from the corporate limits of the City of Kenai (if

applicable), is an officer or employee of the City of Kenai, or shall be elected or appointed as an officer or employee of the City of Kenai, the service of such member shall terminate immediately. He or she should be aware that he or she will serve without salary, but will be reimbursed for all reasonable expenses incurred in connection with this service, only after approval by Council.

(b) The Beautification Committee, and Harbor, Library, and Parks and Recreation Commissions may at the discretion of the Council have up to two (2) non-resident members each.

(c) The Planning and Zoning Commission may have up to one member that is not a resident of the City if they have a controlling ownership interest in a business physically located in the City. This provision specifically does not create a designated seat for a non-resident. (Ords. 1948-2002, 2320-2008, 2829-2015)

1.90.040 Terms.

(a) A member of a board, commission or committee shall serve for a term of three (3) years, unless the board, commission or committee is specifically exempted by Council from this requirement. At renewal date, the Mayor, with consent of the Council, can reappoint the member or recommend a replacement.

(b) The terms of the initial board, commission or committee member shall be staggered so that three (3) members will be appointed for one (1) year; two (2) members will be appointed for two (2) years; and two (2) members will be appointed for three (3) years. Terms shall commence on January 1st of each year.

1.90.050 Proceedings.

(a) All boards, commissions and committees will have regularly scheduled meetings which shall be open to the public. Exceptions to the meeting requirements shall be established by Council. Permanent records or minutes shall be kept of all proceedings and such minutes shall record the vote of each member upon every question. Every decision or finding shall immediately be filed in the office of the City Clerk and shall be a public record open to inspection by any person. All acts of boards, commissions and committees are subject to the paramount authority of the City Council.

(b) If the commission, committee or board member shall be absent, without the body excusing the absence for good cause, from more than one-half of all the meetings of his or her committee, commission or board, regular and special, held within any period of three (3) consecutive calendar months, he or she shall thereupon cease to hold the seat. A commission, committee or board member may not have more than three (3) excused absences during a twelve (12) month calendar year.

(c) In all matters of parliamentary procedure, the most current edition of Robert's Rules of Order Newly Revised shall be applicable and govern all meetings, unless as specified in KMC [1.15.060](#), motions; KMC [1.15.100](#), speaking; and KMC [1.15.110](#), voting.

(d) The responsibility of insuring that all members of boards, commissions and committees receive a copy of the Standard Procedures of Boards, Commissions and Committees lies with the City Clerk.

(Ords. 1610-94, 2017-2003, 2050-2004, 2140-2006, 2614-2012, 3202-2021)

1.90.060 Specific requirements of boards, commissions and committees.

Requirements of boards, commissions and committees as set forth in KMC [1.90](#) are general requirements and shall be followed to the extent that they do not conflict with specific requirements found in code sections specifically pertaining to individual boards, commissions and committees. (Ords. 1223, 1239)

Chapter 14.05

PLANNING AND ZONING COMMISSION

Sections:

14.05.010	Duties and powers.
14.05.015	Appointment to Planning and Zoning Commission.
14.05.020	Fees.
14.05.025	Remote electronic participation at Planning and Zoning Commission meetings.

14.05.010 Duties and powers.

- (a) The Commission shall be required to perform the following duties:
- (1) Review and act upon requests for variance permits, conditional use permits, planned unit residential development permits, and other matters requiring consideration under the Kenai Zoning Code.
 - (2) Interpret the provisions of the Kenai Zoning Code and make determinations when requested by the Administrative Official.
 - (3) Review the City of Kenai Comprehensive Plan on an annual basis and conduct a minimum of one (1) public hearing. Said recommendations shall be forwarded to the Council for consideration.
 - (4) Promote public interest and understanding of comprehensive planning, platting, zoning, land management, and other issues relating to community planning and development.
 - (5) Proposed plans for the rehabilitation or redevelopment of any area or district within the City.
 - (6) Perform historic preservation reviews and duties as set forth in KMC [14.20.105](#).
- (b) The Commission shall act in an advisory capacity to the Kenai City Council regarding the following matters:
- (1) Kenai Zoning Code and Official City of Kenai Zoning Map amendments.
 - (2) City and airport land lease or sale petitions.
 - (3) Capital Improvements Programming. The Commission shall submit annually to the Council a list of recommended capital improvements which, in the opinion of the Commission, are necessary and desirable to be constructed during the forthcoming three (3) year period. Such list shall be arranged in order of preference, with recommendations as to which projects shall be constructed in which year.
- (c) The Commission shall act in an advisory capacity to the Kenai Peninsula Borough Planning Commission regarding the following matters:

- (1) Subdivision plat proposals.
 - (2) Right-of-way and easement vacation petitions.
 - (3) City of Kenai Comprehensive Plan amendments.
- (d) Members of the Planning and Zoning Commission shall be compensated at the rate of one hundred dollars (\$100.00) per month. (KC 14-3; Ords. 155, 403, 1018, 1161, 1179, 1892-2000, 2312-2008)

14.05.015 Appointment to Planning and Zoning Commission.

(a) *Public Notice—Application.*

(1) Whenever a term of a Commission member is to expire, and whenever a vacancy on the Commission occurs, the City Clerk shall notify the Council and advertise the notice of vacancy and request for applications, along with the deadline for filing an application. The application deadline shall be the same deadline as the Council observes for timely submissions to the City Clerk for inclusion of materials in the City Council meeting packet (as set by the policies and procedures of the Council) for the meeting at which the nomination for appointment is on the Council agenda.

(2) The Clerk shall advertise the notice at least two (2) times a week for one (1) week by publication in a newspaper of general circulation, by posting on the City's website, and by posting in at least three (3) other public places in the City, one (1) of which shall be the official bulletin board of the City at City Hall. The last date of newspaper publication shall be no later than seven (7) days before nomination for appointment by the Mayor at a Council meeting.

(3) An applicant shall file with the City Clerk a completed application for appointment to the Commission on a form provided by the Clerk. All applications filed by the advertised deadline, including those previously on file, shall be placed in the Council packet for the meeting where the nomination is made.

(b) *Nomination Procedure.* Consideration shall be given to the qualifications and merits of each applicant. The Mayor shall make nominations only from the list of persons who timely submitted an application as provided in subsection [\(a\)\(3\)](#). The Council may re-open the application period.

(c) *Confirmation by Council.* The Kenai City Council shall review the Mayor's nomination no later than the next regular Council meeting following the meeting in which the Mayor made the nomination, at which time the Council shall consider whether to confirm the nomination.

(d) *Term of Office.* Members of the Planning and Zoning Commission shall be appointed for a term of three (3) years. Terms shall end on December 31st of the third year. In the event a seat has six (6) months or less remaining to the unexpired term, the Mayor may choose to nominate an applicant for appointment to the remainder of the current term as well as to the full term immediately following the expiration date of the unexpired term, and the

Council may confirm the appointment of the applicant to the remainder of the current term as well as to the full term. (Ord. 2587-2011)

14.05.020 Fees.

In order to defray the expenses connected with the consideration of applications for amendment to the Kenai Zoning Code or Official Map and with the consideration of applications for permits, the person presenting the application shall pay to the City a fee in an amount as set forth in the City's schedule of fees adopted by the City Council. Whether an application is granted or denied by the Commission, the petitioner or applicant shall not be entitled to the return of the fee paid. (KC 14-11; Ords. 403, 954, 1161, 1179, 2528-2011, 2565-2011)

14.05.025 Remote electronic participation at Planning and Zoning Commission meetings.

(a) Except as otherwise provided in subsection [\(e\)](#) of this section, if at least a quorum is physically present at a Commission meeting, other Commissioners may participate via electronic means in the Commission meeting, if the Commissioner declares that circumstances prevent physical attendance at the meeting. If the Chair chooses to participate via electronic means, the Vice-Chair shall preside.

(b) No more than the first two (2) Commissioners to contact the Clerk's office regarding remote electronic participation in a particular meeting may participate via remote electronic means at any one (1) meeting.

(c) The Commissioner shall notify the Clerk's office in writing as soon as reasonably practical, but not less than six (6) hours prior to the start of the Commission meeting that the member proposes to attend by remote electronic means. Such notification shall state whether such remote electronic participation is pursuant to subsection [\(n\)](#) or [\(o\)](#) of this section, and, if needed, shall provide the physical address of the location, the telephone number, and any available facsimile, email, or other document transmission service. Failure to provide the notification within the period of time provided herein shall result in the member's exclusion from attendance of a Commission meeting through remote electronic participation. The Clerk or designee shall notify all Commission members of the request.

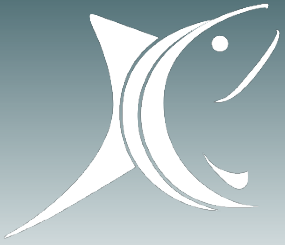
(d) At the meeting, the Clerk or designee shall establish the appropriate connection when the call to order is imminent.

(e) A Commissioner participating by remote electronic means shall be counted as present for purposes of discussion and voting except for matters and agenda items appealable to the Board of Adjustment.

(f) The Commissioner participating by remote electronic means shall make every effort to participate in the entire meeting. From time to time during the meeting, the presiding officer shall confirm the connection, if necessary.

- (g) The Commissioner participating by remote electronic means may ask to be recognized by the presiding officer to the same extent as any other member except for matters and agenda items appealable to the Board of Adjustment.
- (h) To the extent reasonably practicable, the Clerk or designee shall provide backup materials to Commissioners participating by remote electronic means.
- (i) If the remote electronic connection cannot be made or is made and then lost, the meeting shall commence or continue as scheduled and the Clerk or designee shall attempt to establish or restore the connection.
- (j) Meeting times shall be expressed in Alaska Time regardless of the time at the location of any Commissioner participating by remote electronic means.
- (k) Participation by remote electronic means shall be allowed for regular, special and work session meetings of the Commission.
- (l) Remarks by Commissioners participating by remote electronic means shall be transmitted so as to be audible by all members and the public in attendance at the meeting, provided that in executive session the remarks shall be audible only to those included in the executive session.
- (m) As used in these rules, “electronic means” means any system for synchronous two (2) or more way voice and/or virtual communication. “Chair” includes the Vice-Chair or any other Commissioner serving as chair pro tempore.
- (n) Each Commissioner may attend a maximum of two (2) meetings by remote electronic means during the twelve (12) month calendar year.
- (o) A Commissioner may attend an additional two (2) meetings by remote electronic means during the twelve (12) month calendar year if the member declares that he or she is physically unable to attend the meeting due to the need for extended medical care and treatment of the member or member’s immediate family.
- (p) In this section, “immediate family” means the spouse of the person, another person cohabitating with the person in a conjugal relationship that is not a legal marriage, a child (including a stepchild or foster child) of the person, a parent, sibling, grandparent, aunt or uncle of the person, or a parent or sibling of the person’s spouse. (Ords. 2734-2014, 3254-2021)

The Kenai Municipal Code is current through Ordinance 3260-2021, passed December 15,



7 POINTS EVERY MEETING GOER WANTS

1 The meeting is well organized.

2 My time will not be wasted.

I have received all of the relevant information before the meeting.

3

4 There is an agenda, schedule and goals.

5 My ideas and participation are valued and valuable.

I will not be personally attacked or criticized for my ideas.

6

7 The meeting will end on time.

Ground Rules for Effective Meetings

1. Show up on time and come prepared

Be prompt in arriving to the meeting and in returning from breaks.
Be prepared to contribute to achieving the meeting goals.
Come to the meeting with a positive attitude.

2. Stay mentally and physically present

Be present, and don't attend to non-meeting business.
Listen attentively to others and don't interrupt or have side conversations.
Treat all meeting participants with the same respect you would want from them.

3. Contribute to meeting goals

Participate 100% by sharing ideas, asking questions, and contributing to discussions.
Share your unique perspectives and experience, and speak honestly.
If you state a problem or disagree with a proposal, try to offer a solution.

4. Let everyone participate

Share time so that all can participate.
Be patient when listening to others speak and do not interrupt them.
Respect each other's thinking and value everyone's contributions.

5. Listen with an open mind

Value the learning from different inputs, and listen to get smarter.
Stay open to new ways of doing things, and listen for the future to emerge.
You can respect another person's point of view without agreeing with them.

6. Think before speaking

Seek first to understand, then to be understood.
Avoid using idioms, three letter acronyms, and phrases that can be misunderstood.
It's OK to disagree, respectfully and openly, and without being disagreeable.

7. Stay on point and on time

Respect the groups' time and keep comments brief and to the point.
When a topic has been discussed fully, do not bring it back up.
Do not waste everyone's time by repeating what others have said.

8. Attack the problem, not the person

Respectfully challenge the idea, not the person.
Blame or judgment will get you further from a solution, not closer.
Honest and constructive discussions are necessary to get the best results.

9. Close decisions and follow up

Make sure decisions are supported by the group, otherwise they won't be acted on.
Note pending issues and schedule follow up meetings as needed.
Identify actions based on decisions made, and follow up actions assigned to you.

10. Record outcomes and share

Record issues discussed, decisions made, and tasks assigned.
Share meeting reports with meeting participants.
Share meeting outcomes with other stakeholders that should be kept in the loop.

Audio Visual Participation

Log in on time, if using new software or device make sure they work before the meeting.
Please consider leaving your video on, you can see the other members, they should see you.
Consider your surroundings, what part of your personal life will you be presenting.
If you would not do it when attending in person, then you shouldn't do it while video/teleconferencing.
Finally, **Camera angle matters!**

Parliamentary Procedure

Basic Parliamentary

1. **Quorum:** A quorum must be present to conduct any business.

7 Members (4 of 7)

2. **Obtain the Floor Before Speaking:**

- a. Wait until the previous speaker has finished
- b. Address the chair
- c. Wait until the chair has given you the floor
- d. Make statement

3. **Making a Motion:**

- a. Motions begin with "I move"
- b. Motions should be specific, unique and concise; and always in the affirmative.
- c. "What he/she said" is not a proper motion.
- d. Wait until the motion has been seconded and placed before the body before speaking to it.

4. **Seconding a Motion:**

- a. A second is required and must be made prior to debate.
- b. If no second is received the motion dies and no further discussion of the item should occur.

5. **Debating a Motion:**

- a. Is only in order after a second and the debate is opened by the chair.
- b. The maker of the motion is allowed to speak first.

6. **Amending a Motion:**

- a. No such thing as a friendly amendment, only an amendment.
- b. Requires a second, must be resolved before returning to the main motion.
- c. Purpose: to change or affect how the main motion is handled.
- d. Is voted on before the main motion.

Misunderstood Motions

1. **Question:** (to stop debate)

- a. Properly stated "I move the previous question"
- b. not debatable and requires a two-third vote.
- c. This motion is out of order when another person is speaking.

2. **Table:**

- a. Must be seconded, is not debatable and requires a majority, it cannot be reconsidered.
- b. The purpose of this motion is to temporarily lay something to the side so that a more pressing matter/issue may be taken up.
- c. May not be used to kill or delay a motion, if used with improper intent, the Chair may clarify the motion based on the makers intent.
- d. To bring it back "I move that we take from the table motion...".
- e. Tabled items remain tabled until they are taken off or until the next regular session/meeting.

3. **Postpone:** (to a certain time)

- a. Requires a second, is debatable, is amendable and needs a majority vote.
- b. Postponement is limited to the current session/meeting and up until the close of the next regular session/meeting.

4. **Postpone Indefinitely:**

- a. Requires a second, is debatable, is not amendable and needs a majority vote.
- b. This allows the body to reject an ill-advised motion without risking embarrassment of passing or failing it.



THE STATE OF ALASKA
MIKE DUNLEAVY
GOVERNOR

Boards and Commissions

Office of the Governor

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Open Meetings Act

The State of Alaska's Open Meetings Act (AS 44.62.310-.312) requires that all meetings of a public entity's governing body be open to the public and that the body provide reasonable notice of its meetings. The Open Meetings Act (OMA) is intended to ensure that decisions made and actions taken are public knowledge and represent the will of the public that the governing body serves. In essence, the OMA protects the public's right to know.

To be able to protect the public's right to know, the OMA requires that:

- all deliberations and action taken by a public entity must be done in public view, with limited exceptions;
- the public must be provided prior knowledge of all steps occurring in the decision-making process, with limited exceptions; and that
- individual actions of an official are made known.

In order for these requirements to have full effect, meetings must occur as provided in the notice; and, with few exceptions, the public must be allowed to involve itself in the meeting. The public must also have access to materials being considered during the meeting.

In addition to laying out specific steps required for meetings and allowable exceptions, the statutes addressing open meetings speak about the state's policy regarding what authority the public has delegated to governing bodies. Following is a synopsis.

According to the 'State Policy Regarding Meetings' (AS 44.62.312):

- The government exists to aid in conducting the people's business.
- Government units should act and deliberate openly.
- The people do not yield sovereignty to government agencies that serve them.
- Public servants have not been given the right to decide what is good or not good for the people to know.
- People should remain informed so they may retain control over the government they created.
- The use of teleconferences is for the convenience of the parties, public, and government.
- The Open Meetings Act should be narrowly construed to effectuate these policies and avoid unnecessary exemptions.

What is the Open Meetings Act?

The State of Alaska's Open Meetings Act (AS 44.62.310-.312), is a law that addresses the meetings of public entities; it protects the public's right to know and their opportunity to be heard. Among other things, the Act:

- defines public meetings and public entities;
- lays out specific requirements for public notice;
- requires that all meetings of a governmental body of a public entity are open to the public;
- lays out provisions for attendance at meetings and voting methods;
- lays out provisions for distribution of meeting materials; and
- lists the few exceptions to the Act, as well as matters that may be discussed in executive session.

In order to assure that the public information/participation provisions of the Act are met, the Act requires that the public entity must provide "reasonable" notice that meets the requirements of the Act. To meet these notice requirements, the notice must:

- be provided within a reasonable amount of time prior to the meeting;
- include the date, time, and place of the meeting;
- be posted at the principal office of the public entity, in addition to any other methods and locations stated in local ordinance; and
- be done in the same way each time (consistent).

What is the definition of a meeting that would fall under the provisions of the Open Meetings Act?

AS 44.62.310(h) provides detailed definitions of "governmental body," "meeting," and "public entity" that, when combined, define what constitutes a public meeting. The Act makes a distinction between what constitutes a meeting of a policy/decision-making body and what constitutes a meeting of an advisory-only body.

A meeting of a decision- or policy-making body occurs when more than three members, or a majority of the members, whichever is less, engage collectively in discussion of a *subject that the body is authorized to act and set policy on* and is therefore subject to the Open Meetings Act. Under this definition, it doesn't matter where the meeting occurs, if it was prearranged, or who arranged it and could include unplanned casual or social contact.

A meeting of an advisory-only body is a prearranged gathering to consider a matter on which the entity is *authorized to advise and assist the decision-making body* and is subject to the provisions of the Act. The Act doesn't specify a number, so two or more members, if the gathering is prearranged for the purpose of conducting any business of the entity, could constitute a meeting.

What types of meetings might be conducted that would require notice under the Open Meetings Act?

Following are the most common types of meetings that would be subject to the Open Meetings Act:

Regular Meetings: State law requires that the governing body conduct its business at regularly scheduled meetings that are open to the public. Regular meetings must be held at least once a month and may be held more often, as required or established in local ordinance. The local code of ordinances should provide the date, time, and place of regular meetings so that everyone knows when regular meetings will take place. The public shouldn't have to wonder about the meeting time, date, and place always changing. If at times it is necessary to reschedule the regular meeting, notice must be posted informing the public that the regular meeting has been rescheduled and when it will be held.

Special Meetings: Special meetings have the same requirements as regular meetings, except that they are called for a different time than that fixed for regular meetings. For example, local ordinance may require that the governing body hold its regular meeting on the third Tuesday of each month at 7:00 PM at the municipal offices. If the governing body must meet earlier, it can call a special meeting for a different date. The special meeting does not take place instead of the regular meeting, it is in addition to the regular meeting. Special meetings should be held rarely and only to address time sensitive issues. A special meeting may be held with less than 24-hour's notice if all members are present or if absent members have waived in writing the required notice. Waiver of notice can be made before or after the special meeting is held.

Emergency Meetings: Emergency meetings are held to address situations that are so urgent that the governing body must meet right away. An emergency meeting may be held if a majority of the members are given at least 24 hours oral or written notice and reasonable efforts are made to notify all members.

Committee Meetings: Permanent ("standing") committees and temporary ("ad hoc") committees of the governing body may be formed to study particular issues in more detail. Standing committees may include the finance committee, public works committee, and/or a facilities committee. Ad hoc committees are formed to address a specific situation and are disbanded once the situation has been dealt with. Committees may be composed of all members of the governing body (referred to as a committee of the whole), or of fewer members, usually three. A committee cannot take action on behalf of the full governing body but instead makes a recommendation to the governing body for the governing body's action. Usually the committee of the whole meets to discuss items that are not ready for action but need further discussion in an informal setting. For example, the annual budget usually requires a work session before it is formally adopted.

Board of Equalization: The governing body, or its appointees, sits as the Board of Equalization in municipalities that levy a property tax. AS 29.45.200(a) states, "the governing body sits as a board of equalization for the purpose of hearing an appeal from a determination of the assessor." A property owner who believes the assessor has made a mistake in the yearly valuation of their property may appeal the assessor's decision to the board of adjustment, which meets once a year.

How much notice is required to meet the "reasonable" public notice provision of the Open Meetings Act?

How much notice is required depends on the complexity of the issue and the potential effect it will have. Proper public notice must be provided in advance of the proposed action and local ordinances should state the minimum number of days that notice is required. This number should be adjusted up if the situation warrants additional notice. Special and emergency meetings require only 24-hour notice or less. If less notice is given, absent members must waive the notice requirement. Notice requirements for work sessions and committee meetings should follow the same guidelines as those established in local ordinance for regular meetings.

There are minimum mandatory notice requirements for certain actions, such as notice of a public hearing on a proposed ordinance, or election notice. There is, however, no specific number of days spelled out in statute that defines "reasonable." The general tone of case law on the subject has essentially found that reasonable notice provides enough notice that a concerned party will have notice of a proposed action within enough time to be involved in the deliberations. This could vary anywhere from three months to three days. The notice also has to provide enough information to let the public know what subjects will be covered in the meeting. If a complete agenda isn't available at the time of posting, a summary will work until the complete agenda is available.

Local ordinances should contain all of the requirements for public notice of meetings including what to include in the notice, where the notices are posted, and how soon before the meeting the notices are posted.

Where and how does notice have to occur?

State law, AS 44.62.310(e), requires that reasonable notice include the date, time, and place of the meeting; and, if by teleconference, the location of any teleconferencing facilities. It also provides that notice may be given in print or broadcast media; that it be posted at the principal office of the public entity or, if no principle office, at a location designated by the governing body; and that it be done in the same way each time "consistent."

In addition to the locations required in statute, notice should be posted at well-used locations in the community like the post office, the store, government offices, and the community bulletin board. It may also be published in a newspaper of general circulation in the community or broadcast over a local radio station in addition to any other means and locations stated in local ordinance.

Are there exceptions to the Open Meetings Act and what subjects may be discussed in executive session?

Exceptions to the OMA are discussed in the [Executive Session](#) section of LOGON.

Is secret ballot voting allowed under the act?

Almost always, no. In addition to requiring that deliberations of a governing body be open to the public, the act also requires that the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote, including meetings conducted by teleconference. The one exception is organizational meetings of a governing body to elect members to various offices, which are exempted from the requirement that the vote of each member be made public (AS 44.62. 310(a)).

Is telephone polling considered a violation of the Open Meetings Act?

Whether a phone poll by a member or agent of the governing body would be considered a violation of the act, depends on the subject matter. If the matter involves an administrative or procedural issue that would not warrant public discussion, a phone poll may be conducted. If, however, the phone poll touches on an issue that should be discussed in an open meeting or can have the effect of swaying opinion on a public issue, it could be considered a violation of the act.

Who enforces the Open Meetings Act?

It is the responsibility of the administration and governing body to assure that the provisions of the Open Meetings Act are enforced. Any individual may contest an action administratively through local channels that they think was done in violation of the Open Meetings Act and ultimately may, within 180 days, file a court action if the issue isn't remedied locally AS 44.62.310(f).

There are several court cases that have ruled in favor of the Open Meetings Act. When deciding these cases, the court doesn't just consider whether a violation has occurred, but also considers whether the action has interfered with the public process that the act was intended to protect.

What is the cure for a violation of the Open Meetings Act?

Actions taken at meetings that are found to be in violation of the Open Meetings Act may be voided. Failing to provide proper notice can cost a great deal of money to defend in addition to the wasted time and effort involved. The governing body can attempt an informal cure by holding another meeting in compliance with the Open Meetings Act and conducting a substantial and public reconsideration of the matters.

If a lawsuit is filed, the court may void any action taken by the governing body if the court finds that, considering all of the circumstances, the public interest in compliance with the law outweighs the harm that would be caused by voiding the action AS 44.62.310(f).

In deciding whether to void an action, the court must consider:

- (1) the expense that may be incurred if the action is voided;
- (2) the disruption that may be caused if the action is voided;
- (3) the possibility of additional litigation if the action is voided;
- (4) the extent to which the subject has previously been considered in compliance with the act;
- (5) the amount of time that has passed since the action was taken;
- (6) the degree to which the action has come to be relied on;
- (7) whether and to what extent the governmental body has, before or after the lawsuit was filed, engaged in or attempted to engage in public reconsideration of the matter;
- (8) the degree to which the violations were willful, flagrant, or obvious;
- (9) the degree to which the governing body failed to adhere to the policy under AS 44.62.312 (a).

This does not apply to an advisory only body that that has no authority to establish policies and make decisions for the public entity (AS 44.62.310(g)).

What effect does attorney client privilege have in dealings between a public entity and its attorney?

Executive session procedure requires that the reason for calling the executive session is clearly stated. The attorney-client privilege exemption to the Open Meetings Act is limited to matters where public interest may be injured. This might include how to avoid legal liability, litigation strategies and candid discussion of facts, a proposed settlement conference, and a conference on a decision to appeal.

In addition to the rights protected under the Open Meetings Act, what rights can the public expect under state law?

In addition to the rights protected under the Open Meetings Act, Title 29 reiterates the requirement that all meetings be open to the public and provides that the public will have the right to be heard at regular and special meetings AS 29.20.020.

AS 29.20.160 lays out the procedures that a governing body must follow in conducting its meetings. These procedures include:

- Provision for identification of the presiding and deputy-presiding officers;
- The requirement that the governing body hold at least one regular monthly meeting, unless otherwise provided by ordinance;
- The requirement that the governing body shall provide at least 24-hour notice for special meetings or absent members must waive the notice requirement;
- Clarification on how actions of the governing body are adopted and what constitutes a quorum;
- The requirement that all members present shall vote on every question, unless required to abstain; and

The requirement that a governing body maintain a journal of its proceedings that is available to the public.

- AS 29.20.380 assigns certain meeting duties and responsibilities to the municipal clerk. These include:
 - Attendance at public meetings;
 - Keeping the journal;
 - Assuring that notice and other requirements for public meetings are complied with;
 - Assuring that public records are available for public inspection;
 - Managing and maintaining public records; and

- Preparing agendas and agenda packets.

-

Who enforces the local rules under which a municipality conducts its meetings?

Governing bodies must have procedures in place and follow them for their meetings. Some of these procedures are in Title 29 and other statutes. Others are in the local ordinances, which are usually more specific and detailed than Title 29, or in rules of procedure adopted by the governing body.

Essentially, the presiding officer enforces the rules by following them when conducting a meeting and, when there is a question of procedure, the clerk, acting as parliamentary advisor, researches the question and proposes an answer, which the presiding officer then rules on. Members of the public also enforce the rules by questioning whenever something occurs that doesn't seem to follow the rules. The last resort for enforcement is a lawsuit.

Additional Resources

[Alaska's Open Meetings Law](#) by Gordon J Tans

[Open Meetings Act](#) AS 44.62.310-.312

Sec. 44.62.310. Government meetings public.

(a) All meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law. Attendance and participation at meetings by members of the public or by members of a governmental body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at teleconference locations if practicable. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any votes required to be taken to organize a governmental body described in this subsection.

(b) If permitted subjects are to be discussed at a meeting in executive session, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that are listed in (c) of this section shall be determined by a majority vote of the governmental body. The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private. Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Action may not be taken at an executive session, except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations.

(c) The following subjects may be considered in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential;

(4) matters involving consideration of government records that by law are not subject to public disclosure.

(d) This section does not apply to

(1) a governmental body performing a judicial or quasi-judicial function when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff;

(5) meetings of the governmental body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges, or discipline;

(6) staff meetings or other gatherings of the employees of a public entity, including meetings of an employee group established by policy of the Board of Regents of the University of Alaska or held while acting in an advisory capacity to the Board of Regents;

(7) meetings held for the purpose of participating in or attending a gathering of a national, state, or regional organization of which the public entity, governmental body, or member of the governmental body is a member, but only if no action is taken and no business of the governmental body is conducted at the meetings; or

(8) meetings of municipal service area boards established under AS 29.35.450 — 29.35.490 when meeting solely to act on matters that are administrative or managerial in nature.

(e) Reasonable public notice shall be given for all meetings required to be open under this section. The notice must include the date, time, and place of the meeting and if, the meeting is by teleconference, the location of any teleconferencing facilities that will be used. Subject to posting notice of a meeting on the Alaska Online Public Notice

System as required by AS 44.62.175(a), the notice may be given using print or broadcast media. The notice shall be posted at the principal office of the public entity or, if the public entity has no principal office, at a place designated by the governmental body. The governmental body shall provide notice in a consistent fashion for all its meetings.

(f) Action taken contrary to this section is voidable. A lawsuit to void an action taken in violation of this section must be filed in superior court within 180 days after the date of the action. A member of a governmental body may not be named in an action to enforce this section in the member's personal capacity. A governmental body that violates or is alleged to have violated this section may cure the violation or alleged violation by holding another meeting in compliance with notice and other requirements of this section and conducting a substantial and public reconsideration of the matters considered at the original meeting. If the court finds that an action is void, the governmental body may discuss and act on the matter at another meeting held in compliance with this section. A court may hold that an action taken at a meeting held in violation of this section is void only if the court finds that, considering all of the circumstances, the public interest in compliance with this section outweighs the harm that would be caused to the public interest and to the public entity by voiding the action. In making this determination, the court shall consider at least the following:

(1) the expense that may be incurred by the public entity, other governmental bodies, and individuals if the action is voided;

(2) the disruption that may be caused to the affairs of the public entity, other governmental bodies, and individuals if the action is voided;

(3) the degree to which the public entity, other governmental bodies, and individuals may be exposed to additional litigation if the action is voided;

(4) the extent to which the governing body, in meetings held in compliance with this section, has previously considered the subject;

(5) the amount of time that has passed since the action was taken;

(6) the degree to which the public entity, other governmental bodies, or individuals have come to rely on the action;

(7) whether and to what extent the governmental body has, before or after the lawsuit was filed to void the action, engaged in or attempted to engage in the public reconsideration of matters originally considered in violation of this section;

(8) the degree to which violations of this section were wilful, flagrant, or obvious;

(9) the degree to which the governing body failed to adhere to the policy under AS 44.62.312(a).

(g) Subsection (f) of this section does not apply to a governmental body that has only authority to advise or make recommendations to a public entity and has no authority to establish policies or make decisions for the public entity.

(h) In this section,

(1) "governmental body" means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity; "governmental body" includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members;

(2) "meeting" means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) more than three members or a majority of the members, whichever is less, are present, the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act, and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to

establish policies or make decisions for the public entity;

(3) “public entity” means an entity of the state or of a political subdivision of the state including an agency, a board or commission, the University of Alaska, a public authority or corporation, a municipality, a school district, and other governmental units of the state or a political subdivision of the state; it does not include the court system or the legislative branch of state government.

Sec. 44.62.312. State policy regarding meetings.

(a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people’s business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies that serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people’s right to remain informed shall be protected so that they may retain control over the instruments they have created;

(6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.

(b) AS 44.62.310(c) and (d) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and to avoid exemptions from open meeting requirements and unnecessary executive sessions.

1.85.060 Conflicts of interest prohibited.

(a) A municipal officer, appointed commission member, or employee of the City of Kenai may not solicit or receive money for advice or assistance given in the course of their official duties for the City of Kenai.

(b) A municipal officer, appointed commission member, or employee of the City of Kenai may not represent a client before the City Council for a fee. However, a commission member may represent a client before a commission or the City Council for a fee if it does not involve a matter that is/was before the member’s commission.

(c) A municipal officer, appointed commission member, or employee of the City of Kenai may not accept a gift, loan, gratuity, or other valuable consideration, or a promise of any of them, with the understanding or agreement, expressed or implied, that he or she will cast a vote or given an opinion, decision, or judgment in a particular manner, in a matter, question, cause, or proceeding which then is or may by law come or be brought before him or her, or with the understanding or agreement that the officer or employee will, in his or her official capacity, act in a particular manner to produce or prevent a particular result.

(d) No Council or commission member may vote on any question in which he or she has a substantial direct or indirect financial interest. Direct or indirect financial interests shall be disclosed to the presiding officer prior to a vote on the question and the presiding officer shall determine whether the financial interest exists and whether the prohibition from voting is applicable. A decision by the presiding officer may be overridden by a unanimous vote of the members present, exclusive, of the member presenting the possible conflict.

(1) Whether the direct or indirect financial interest is substantial shall be determined by the presiding officer on a case-by-case basis, with evaluation of these factors:

- (i) Whether the financial interest is a substantial part of the consideration;
- (ii) Whether the financial interest directly and substantially varies with the outcome of the official action;
- (iii) Whether the financial interest is immediate and known or conjectural and dependent on factors beyond the official action;

- (iv) Whether the financial or private interest is significant monetarily;
 - (v) Other factors deemed appropriate by the presiding officer under the specifics of the disclosure and the nature of the action taken before the council or commission.
- (e) A municipal officer, commission member or employee of the City of Kenai may not use, or permit others to use, any property owned by the City for profit or personal use or benefit, except:
- (1) When available to the public generally, or to a class of residents, on the same terms and conditions;
 - (2) When permitted by written personnel policies approved by the City of Kenai;
 - (3) When, in the conduct of official business, used in a relatively minor way for personal convenience.
- (f) A municipal officer, commissioner or employee of the City of Kenai shall not take or participate in official action on matters, other than minor or routine issues, affecting a former employer for a period one (1) year from the date of termination of the prior employment.
- (g) A City employee may not participate in an official action in which he or she, or a member of his or her household, has a substantial financial interest.
- (h) A municipal officer, commissioner or employee of the City of Kenai who leaves municipal service may not for one (1) year after leaving municipal service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the City if the person participated personally and substantially in the matter through the exercise of official action. This restriction on employment after leaving municipal service does not prohibit the City from contracting with a former City employee, commissioner or municipal officer on a matter on behalf of the City. The City Council may waive application of this restriction by motion upon determination that a proposed action is not adverse to the public interest.
- (i) A municipal officer or employee of the City of Kenai is prohibited from bidding upon or otherwise obtaining any property which is unneeded or surplus by the City.

(j) A current or former municipal officer, commissioner or employee may not disclose or use information gained in the course of, or by reason of, the person's official duties that could reasonably result in the receipt of any substantial personal or substantial financial benefit for the person or his or her immediate family member unless the information has also been disseminated to the public.

(k) A current or former municipal officer, commissioner or employee may not use or disclose without appropriate authorization, information acquired in the course of official duties that is confidential.

(l) If any section or provision of this ordinance is held to be contrary to law by a court of competent jurisdiction, that section or provision shall be deemed invalid. All other sections and provisions of this chapter shall continue in full force and effect.

(m) The City Clerk shall cause a copy of this section to be distributed to every municipal officer, commissioner and employee of the City of Kenai within thirty (30) days after its enactment. Each municipal officer, commissioner and employee elected, appointed or engaged thereafter shall be furnished a copy before entering into the duties of his or her office or employment.

(Ords. 359, 2319-2008)

The Kenai Municipal Code is current through Ordinance 3260-2021, passed December 15, 2021.

Disclaimer: The City Clerk has the official version of the Kenai Municipal Code. Users should contact the City Clerk for ordinances passed subsequent to the ordinance cited above.

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[City Website: www.kenai.city](http://www.kenai.city)

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14.20.050 Nonconforming lots, structures, and uses.

(a) *Explanation.* When a lot, structure, or use legally exists prior to the adoption of the ordinance codified in this section but does not meet the requirements of this chapter, it shall be permitted to continue within the limits set forth in this section. Under such circumstances it is said to have “nonconforming” status. There are three (3) types of nonconforming status:

(1) *Nonconforming Lots.* The lot, width, or acreage is smaller than the minimum permitted in the zone in which it is located;

(2) *Nonconforming Structures.* The structure is designed to accommodate a nonconforming use or fails to meet yard, coverage, height, or other development requirements established for the zone in which it is located;

(3) *Nonconforming Uses of Land and/or Structures.* The use to which land and/or structures is being put is not a principal, accessory, or conditional use permitted in the zone in which it is located, and is not otherwise permitted in this chapter.

(b) *Intent.* There are lots, structures, and uses that exist and were lawful prior to the adoption of the ordinance codified in this section which would be prohibited under the terms of this chapter or future amendments. It is the intent of this chapter to permit these nonconformities to continue until they are removed. Such uses are declared by this chapter to be incompatible with permitted uses in the zones involved. It is further the intent of this chapter that nonconformities shall not be enlarged upon, expanded, nor extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same zone.

(c) *Nonconforming Lots of Record.* In any zone in which single-family dwellings are permitted, notwithstanding limitations imposed by other provisions of this chapter, a single-family dwelling and accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of the ordinance codified in this section. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, if the lot conforms to the regulation for the zone in

which such lot is located. Exception to development requirements shall be obtained only through the variance procedures established in this chapter.

(d) *Nonconforming Structures.* Where a lawful structure exists at the effective date of adoption or amendment of the ordinance codified in this section that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

(1) No such structure may be enlarged or altered in a way which increases its nonconformity;

(2) Should such structure be partially or wholly destroyed by any means to an extent of more than fifty percent (50%) of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this chapter and the remaining structure must be removed within twelve (12) months of the date of destruction;

(3) Should such structure be partially destroyed by any means to an extent of fifty percent (50%) or less of its replacement cost at the time of destruction, a building permit may be issued to rebuild, restore, or repair the nonconforming structure within twelve (12) months of the date of damage. If a permit is not issued within that time period, the remaining structure must be removed within twelve (12) months of the date of destruction; provided however, that if reconstruction is delayed through litigation or other cause beyond the control of the owner, then the time of such delay shall not be considered when computing the twelve (12) month period for obtaining the building permit;

(4) Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zone in which it is located after it is moved.

(e) *Nonconforming Uses of Structures.* If a lawful use of a structure, or of structure and premises in combination, exists at the effective date of adoption or amendment of the ordinance codified in this section, said use may be continued so long as it remains otherwise lawful, subject to the following provisions:

(1) No existing structures devoted to a use not permitted by this chapter in the zone in which it is located shall be enlarged, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the zone in which it is located;

(2) Any nonconforming use may be extended throughout any part of a building which was arranged or designed for such use at the time of adoption or amendment of the ordinance codified in this section, but no such use shall be extended to occupy any land outside such building where such land was not so used at the effective date of adoption of the ordinance codified in this section;

(3) If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may be changed to another nonconforming use provided that the Commission shall find that the proposed use is equally appropriate or more appropriate to the zone than the existing nonconforming use. In permitting such change, the Commission may require appropriate conditions and safeguards in accord with the provisions of this chapter;

(4) Any structure, or structure and land in combination, in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations for the zone in which such structure is located, and the nonconforming use may not thereafter be resumed;

(5) When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for twelve (12) consecutive months or for eighteen (18) months during any three (3) year period, the structure, or structure and premises in combination, shall not thereafter be used except in conformance with the regulations of the zone in which it is located;

(6) Where nonconforming use status applies to a structure and premises in combination, removal, or destruction of the structure shall eliminate the nonconforming status of the land.

(f) *Nonconforming Uses of Land.* Where, at the effective date of adoption or amendment of the ordinance codified in this section, lawful use of land exists that is made no longer permissible under the terms of the ordinance as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

(1) No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of the ordinance codified in this section;

(2) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of the ordinance codified in this section;

(3) If any such nonconforming use of land ceases for any reason for a period of more than three hundred sixty-five (365) days, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located.

(g) *General Provisions.*

(1) *Signs and Display Devices.* A nonconforming use of a structure, nonconforming use of land, or a nonconforming use of a structure and land, shall not be extended or enlarged after passage of the ordinance codified in this section by attachment of additional signs to a building, or the placement of additional signs or display devices on the land outside of the building, or by the addition of other uses, if such additions are of a nature which would be prohibited generally in the zone involved except that this provision shall not be deemed to prohibit the replacement of one (1) sign with another of like size.

(2) *Construction Begun Prior to Passage of the Ordinance Codified Herein.* To avoid undue hardship, nothing in this chapter shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of the ordinance codified in this section and upon which actual building construction has been diligently carried on. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner, and demolition, elimination, and removal of an existing structure in connection with such construction, provided that actual construction work shall be diligently carried on until the completion of the building involved.

(3) *Repairs and Maintenance.* On any nonconforming structure or on any building devoted in whole or in part to any nonconforming use, work may be done in any

period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of nonbearing walls, fixtures, wiring, or plumbing, to an extent not exceeding ten percent (10%) of the current replacement value of the building, provided that the cubical content of the building as it existed at the time of passage or amendment of the ordinance codified in this section shall not be increased.

(h) *Exception(s) to this Section.*

(1) *Outside Storage of Junk.* Notwithstanding the provisions of this section, no junked vehicle or junk shall be stored outside and no unenclosed junk or wrecking yard shall be maintained in a location which is visible from a City or State road in any zone. However, the Commission may grant a conditional use permit under the procedure specified in this chapter allowing said use to continue for a specified period of time if an eight-foot (8') high sight-obscuring fence of good appearance has been provided around said use.

(2) The Planning and Zoning Commission may grant a conditional use permit allowing a nonconforming use to expand, enlarge, or increase in intensity provided that:

(A) The use may not expand beyond the site, lot, or parcel as defined by the legal description on the certificate of occupancy for a nonconforming use, or owned or leased by the nonconforming use as of the date it became nonconforming in the event there is no certificate of occupancy.

(B) Uses which are nonconforming due to the number of residential units may not add additional units.

(C) The proposed modification will not result in further infringement of the provisions of this subsection; modifications shall comply with all regulations (other than use restrictions) including, but not limited to, lot coverage, yard, height, open space, density provisions, or parking requirements unless waived by the Commission through a variance as provided in this chapter.

(D) The nonconforming use must have been a permitted use in the prior zone at the time it became a nonconforming use.

(Ords. 925, 1155, 1862-2000, 2422-2009, 2507-2010)

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14.20.150 Conditional use 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 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 resubmitted 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.

(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 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.

(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.

(e) *Review Criteria.* Prior to granting a conditional use permit, it shall be established that the use satisfies all the following 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 noneconomic 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. 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 (6) 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 (6) 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.

(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.

(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.

(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 shall send any notice of compliance or notice of violation to the Commission and the permit holder in a timely manner.

(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:

- (i) When changed conditions cause the conditional use to no longer conform to the standards for its approval;
- (ii) 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.

(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 [\(1\)\(1\)](#) of this section or that the permit has expired under subsection [\(1\)\(2\)](#) of this section 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 [\(1\)\(3\)](#) of this section, 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](#).

(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.

(Ords. 925, 1460-91, 1504-92, 1549-93, 1779-98, 1797-98, 1916-2001, 2173-2006, 2565-2011, 2611-2012, 3243-2021)

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14.20.151 Application for conditional use permit for surface extraction of natural resources.

An application for a Conditional Use Permit to engage in the surface extraction of natural resources shall be in writing on a form supplied by the City of Kenai and shall be filed with the City Planner, along with the appropriate fee as set forth in the City's schedule of fees adopted by the City Council. All applications shall be accompanied by the following documents and information:

(a) A site plan, drawn to scale and prepared by the appropriate professional discipline registered or licensed as such by the State of Alaska under Alaska Statutes Title [8](#), containing the following:

- (1) Graphic (and legal) description of the proposed area, including dimensions in feet and number of acres or square feet;
- (2) Existing topographical contours with not less than ten-foot (10') contour intervals;
- (3) Proposed finished topographical contours (when extraction is completed) with not less than ten-foot (10') contour intervals;
- (4) Existing and proposed buildings and structures on the site;
- (5) Principal access points which will be used by trucks and equipment, including ingress and egress points and internal circulation, especially the haul road from the public road to the proposed site of the pit;
- (6) Indication of the existing landscape features, including cleared areas, wooded areas, streams, lakes, marsh areas, and so forth;
- (7) Verification that the proposed surface extraction is outside of the one percent (1%) annual chance flood zone (one hundred (100) year floodplain), one-fifth percent (0.2%) annual chance flood zone (five hundred (500) year floodplain), and high-hazard coastal areas as indicated by:
 - (i) The most current locally approved Federal Emergency Management Agency Flood Insurance Rate (FEMA FIRM) map panels; or

- (ii) Survey data from a surveyor registered or licensed in the State of Alaska showing the proposed site is outside of the one percent (1%) annual chance flood zone, one-fifth percent (0.2%) annual chance flood zone, and high-hazard coastal areas.
 - (8) Location and nature of other operations, if any, which are proposed to take place on the site.
- (b) A narrative statement containing the following information:
- (1) Soil surveys with reference to the average year-round water table throughout the entire acreage. Piezometers may be used to determine an average water depth;
 - (2) Estimated amount of material to be removed from the site over the entire period of operation;
 - (3) Estimated length of time to complete the operation, or, if the pit is to be operated on a continuing basis, a statement to that effect;
 - (4) Proposed hours of operation;
 - (5) Method of fencing or barricading the petition area to prevent casual access;
 - (6) Amount and location of natural screening provided by trees and vegetation, if any, between the property lines and the proposed site of the pit;
 - (7) Plans, if any, to construct artificial screening;
 - (8) Description of operations or processing which will take place on the site during and after the time the material is extracted;
 - (9) Plan or program for regrading and shaping the land for future use;
 - (10) Method of backfilling and/or replacing topsoil;
 - (11) Proposed future use of the land after resources are extracted, including a proposed development plan showing location of houses, parks, lakes, etc.;
 - (12) Other information which may pertain to the particular site.

(c) Proof that the applicant has obtained or is eligible to obtain the necessary licenses required by state or federal agencies.

(d) Proof that the applicant is the owner of the subject property.

(Ords. 925, 2565-2011, 2977-2017, 3039-2018, 3042-2018)

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14.20.154 Issuance of permit for surface extraction of natural resources.

(a) On the basis of the application with accompanying information, any supplemental information filed, and such information as may be presented at the public hearing provided for in this chapter, the Commission shall make a determination as to whether each of the following requirements has been met:

- (1) The application is in substantial compliance with the requirements of this chapter;
- (2) The boundaries of the proposed excavation at its greatest dimensions, including backslopes, are at least two hundred feet (200') from any road or public right-of-way and at least one hundred fifty feet (150') from other surrounding property lines, except that adjoining permitted surface extraction of natural resources sites is not required to maintain the above one hundred fifty feet (150') excavation between sites;
- (3) The buffer strips between the excavation site and roadways and property lines contain sufficient natural screening to obscure the entire excavation from sight of roadways and inhabited areas. If there is not sufficient natural screening, the site plan must provide for artificial screening;
- (4) The surface extraction is outside of the one percent (1%) annual chance flood zone (one hundred (100) year floodplain), one-fifth percent (0.2%) annual chance flood zone (five hundred (500) year floodplain), and high-hazard coastal areas;
- (5) The site plan provides that backslopes be a minimum of a two-to-one (2:1) slope, except for the contiguous working face;
- (6) The site plan does not provide for excavation below the water table except where a reasonable method of drainage is available at the particular site or where the proposed future development plan provides for a lake on the site of the excavation;
- (7) If the excavation is to be below the water table and the site is likely to endanger the public safety, the site plan shall provide for fencing of the work area;
- (8) The proposed use of land after extraction is completed is feasible and realistic and is a use permitted in the zone in which the property is located;

- (9) The extraction does not destroy the land for the purposes for which it is zoned;
- (10) The need for the particular natural resource within the City of Kenai outweighs any detrimental effects the operation may have on surrounding property owners;
- (11) The applicant is the owner of the subject property;
- (12) Clearing limits shall be delineated on the site plan as well as clearly visible on site and shall be inspected by the City Planner or designee prior to the application being deemed complete.

(b) If the Commission determines that all requirements have been met, the Commission shall direct the City Planner to issue a conditional use permit to the applicant. The permit shall be issued for an indefinite period and shall be subject to the provisions of this chapter, and shall so state.

(c) The permit may be expressly conditioned by the Commission upon the erection of artificial screening. If the permit is so conditioned, the Commission shall specify the type of screening to be erected. Such screening shall obscure the entire extraction operation from view from any public roadway or inhabited area and shall be compatible with the general character of the neighborhood. No extraction of resources can take place until the artificial screening provided for has been erected and approved by the Commission.

(d) Appeals from decisions of the Commission under this section shall be made in accordance with the provisions of this chapter.

(Ords. 925, 1957-2002, 2977-2017, 3039-2018, 3042-2018)

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14.20.180 Variance permits.

- (a) *Intent.* A variance means the relaxation of the development requirements of this chapter to provide relief when the literal enforcement would deprive a property owner of the reasonable use of his real property.
- (b) *Permit Application.* An application for a variance permit shall be filed in writing with the administrative official and signed by the owner of the property concerned.
- (1) The application shall contain the following:
 - (A) A legal description of the property involved;
 - (B) Plans showing the location of all existing and proposed buildings or alterations, elevations of such buildings or alterations, and such data as may be required.
 - (C) A nonrefundable deposit/advertising fee as set forth in the City's schedule of fees adopted by the City Council.
- (c) *Review Criteria.* The Commission shall establish a finding that all of the conditions have been found to exist as a prerequisite to issuance of a variance permit.
- (1) Special conditions or circumstances are present which are peculiar to the land or structures involved which are not applicable to other lands or structures in the same land use or zoning district.
 - (2) The special conditions or circumstances have not been caused by actions of the applicant and such conditions and circumstances do not merely constitute pecuniary hardship or inconvenience.
 - (3) The granting of the variance shall not authorize a use that is not a permitted principal use in the zoning district in which the property is located.
 - (4) The granting of a variance shall be the minimum variance that will provide for the reasonable use of the land and/or structure.
 - (5) The granting of a variance shall not be based upon other nonconforming land uses or structures within the same land use or zoning district.

(d) *Public Hearing.* The public hearing and notification procedure for a variance application shall be accomplished in accordance with the requirements of this chapter. The applicant shall pay a nonrefundable 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.

(e) *Permit Expiration and Extension.* An approved variance permit shall lapse twelve (12) months from the date of approval if the variance for which the permit was issued has not been implemented. The Commission may grant a time extension not to exceed six (6) months upon a finding that circumstances have not changed sufficiently since the date of initial permit approval. A request for extension must be submitted prior to expiration of the permit. A public hearing shall not be required as a condition to granting the extension.

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

(Ords. 925, 987, 1033, 1155, 1459-91, 2349-2008, 2528-2011)

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14.20.185 Encroachment permits.

(a) *Definitions.* “Encroachment” means any object or structure above or below ground and constructed or located in a manner other than set forth in the Development Requirements Table.

(b) *Intent.* An encroachment permit is the relaxation of the development requirements of this chapter to remedy encroachments which do not fall under KMC [14.20.050](#), nonconforming uses and which satisfy the requirements of financial institutions.

(c) *Permit Application.* An application for an encroachment permit shall be filed in writing with the City Planning Department and signed by the owner of the property concerned or representative of the owner. A nonrefundable fee as set forth in the City’s schedule of fees adopted by the City Council shall be paid to the City of Kenai at the time the permit application is filed.

(1) The application shall contain the following:

(A) A legal description of the property involved;

(B) Plans showing the location of all existing buildings, rights-of-way or easements, setbacks, elevations, and any data pertinent to the application.

(d) *Review Criteria.* The Planning Department shall submit the application to the Planning Commission for review and public hearing. The Planning Commission shall establish a finding that all of the conditions set forth in subsections [\(d\)\(1\)](#) through [\(d\)\(4\)](#) of this section have been found to exist before issuing an encroachment permit.

(1) An encroachment as defined in subsection [\(a\)](#) exists.

(2) The encroachment does not encroach upon a Federal, State or City right-of-way or utility easement.

(3) The issuance of the encroachment permit will not authorize a use which is not a principal permitted use in the zoning district in which the property is located.

(4) The encroachment is not located across a platted lot line.

(e) *Public Hearing.* The public hearing and notification procedure for an encroachment permit application shall be accomplished in accordance with the requirements of this chapter.

(f) *Unauthorized Encroachments.* Unauthorized encroachments shall be immediately removed by the owner upon being given notice by the City. Notice shall consist of a written letter, sent by certified mail return receipt requested, or by personal service, explaining the violation and allowing twenty (20) days to remove the encroachment.

(g) *Expiration of Permit.* Permits shall expire automatically upon termination or interruption of the use; damage to the building, structure, or object which makes it uneconomic to repair the building, structure, or object; or, the expiration of the useful life of the building, structure, or object, whichever comes first.

(h) *Administrative Exemption.* The Administrative Official may grant an encroachment permit without a public hearing if the total encroachment, inclusive of all front, rear and side setbacks, does not exceed twelve inches (12"); and provided that:

(1) The allowed encroachment on any one (1) front, rear or side setback may not exceed ten percent (10%) of the setback as contained in the Development Requirements Table, or twelve inches (12"), whichever is less; and

(2) The Administrative Official finds that the review criteria in subsection (d) are met.

(Ords. 1188, 1817-99, 2565-2011)

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