

**LAKE AND PENINSULA BOROUGH
ORDINANCE NO. 15-26**

AN ORDINANCE AMENDING SECTIONS OF TITLE 9 OF THE LAKE AND PENINSULA BOROUGH MUNICIPAL CODE TO REMOVE SECTIONS ENACTED BY INITIATIVE #2 FROM OCTOBER 4, 2011 GENERAL ELECTION AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Initiative #2 was passed by a vote of the citizens on October 4, 2011; therefore the Borough Code was amended to include those voter approved changes to Title 9 PLANNING POWERS; and

WHEREAS, on July 17, 2105 in Case No. S-15516 entitled *Jacko et al. v. State of Alaska et al.*, the Alaska Supreme Court issued its Opinion No. 7019 upholding the Alaska Superior Court's decision enjoining the Borough from enforcing Initiative #2; and

WHEREAS, the Borough has an interest in ensuring its Code of Ordinances contains only enforceable ordinances; and

WHEREAS, because Initiative #2 is not enforceable, it should be removed from the Borough's Code of Ordinances.

NOW, THEREFORE, BE IT ENACTED BY THE ASSEMBLY OF LAKE AND PENINSULA BOROUGH:

Section 1. Classification:

This ordinance is of a permanent nature and shall, upon enactment, become part of the Lake and Peninsula Borough Municipal Code of Ordinances.

Section 2. General Provisions:

There is enacted and adopted the following:

1) **Code Amendments**

Section 9.07.020 Definitions

~~“Anadromous Waters” means any waterway or body of water that serves as habitat, or spawning grounds to any species of salmon during any stage of the species’ life cycle as documented in the Alaska Department of Fish and Game’s “Catalog of Waters Important for the Spawning, Rearing or Migration of Anadromous Fishes” and its associated Atlas. (Initiative #2 passed 10/04/2011)~~

~~“Significant Adverse Impact” shall have the stated in Section 09.05.060 of the Lake and Peninsula Borough Peninsula Borough Municipal Code (Initiative #2 passed 10/04/2011) means a use, or an activity associated with the use, which proximately contributes to a material change or alteration in the natural or social characteristics of a part of the state's coastal area and in which~~

- (A) the use, or activity associated with it, would have a net adverse effect on the quality of the resources of the coastal area;
- (B) the use, or activity associated with it, would limit the range of alternative uses of the resources of the coastal area; or
- (C) the use would, of itself, constitute a tolerable change or alteration of the resources within the coastal area but which, cumulatively, would have an adverse effect.

(amended by Ordinance 12-02 2/21/2012)

“Working Day” means Monday through Friday exclusive of Borough holidays.

2) Code Amendments

09.07.050 Approval Criteria and Operational Conditions

The following apply to all development permits:

- A. To the extent possible, all activities shall be timed and conducted so as to avoid disturbance during critical periods in adjacent anadromous waters.
- B. All activities shall be conducted in conformance with all state and/or federal permit stipulations and conditions. All applicable state and federal permits must be obtained by the applicant before a development permit will be issued by the Borough. ~~The applicant should obtain its development permit from the Borough prior to obtaining applicable state and federal permits. (Initiative #2 passed 10/4/2011)~~
- C. All activities within the Coastal Zone shall be conducted in conformance with the Borough Coastal Management Plan. Notwithstanding this requirement, all activities within the Borough must comply with this Chapter. ~~(Initiative #2 passed 10/4/2011)~~ All activities within the Borough shall comply with this Chapter *(Ordinance 12-02 2/21/2012)*
- D. All activities shall occur harmoniously with other uses occurring or allowed in the general area, as determined by the Commission.
- E. Any site work which is hazardous to the general public shall be reasonably fenced, except where at the determination of the Commission other suitable devices may be used.
- F. ~~Where a Resource Extraction Activity could result in excavation, placement of fill, grading, removal and disturbance of the topsoil of more than 640 acres of land and will have a Significant Adverse Impact on existing anadromous waters, a development permit shall not be issued by the Commission (Initiative #2 passed 10/4/2011)~~

3) **Code Amendments**

09.07.090 Appeals

Any person aggrieved by a decision under this chapter may appeal a decision within 10 days of the decision by serving written notice of appeal on the Manager. The notice shall state the reasons why the appellant believes the decision is improper. Notice of an appeal is considered served when actually received. ~~may be filed either personally, by facsimile, electronically, or by mail. Service by mail is considered complete at the time of deposit in the mail if mailed with sufficient postage and properly addressed. (Initiative #2 passed 10/4/2011)~~

- A. Decisions of the Commission are appealed to the Lake and Peninsula Borough Assembly. The issues before the Assembly shall be limited to those raised on appeal, and the evidence shall be limited to a review of the record, although further argument may be allowed. The burden of proof shall be on the appellant to demonstrate the issues on appeal by substantial evidence. The Assembly may affirm or reverse the decision, return the matter to the Commission for further evidence, or change the conditions attached to any approval. Approved uses may not proceed during the appeal process unless specifically authorized by the Assembly. *(Initiative #2 passed 10/4/2011)*
- B. An appeal to the Assembly of the Commission's decision may be made in the same manner and according to the same requirements as set forth above for appeals to the Commission. Notice of appeal shall be served on the Manager. The Assembly's decision shall be final for the Borough. *(Chapter 9.07 added by Ordinance 93.06 3/15/94)*

Section 3. Effective Date.

This ordinance shall become effective immediately upon enactment.

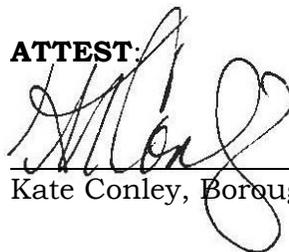
ENACTED by a duly constituted quorum of the Lake and Peninsula Borough Assembly this 24st day of September, 2015.

IT WITNESS THERETO:



Glen Alsworth Sr., Mayor

ATTEST:



Kate Conley, Borough Clerk

Introduced: August 17, 2015
Public Hearing: September 24, 2015
Enacted: September 24, 2015
Ayes: Alsworth, Anderson, Olsen, Pedersen, Ravenmoon, Salmon
Nays: none
Not Voting: none
Absent: Alvarez