

Introduced by:	Mayor
Date:	03/17/20
Hearing:	04/21/20
Action:	Enacted
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-10**

AN ORDINANCE AMENDING PROVISIONS IN KPB 1.24, KPB 5.12, KPB 5.18, KPB 10.18, KPB 10.20, KPB 11.10, KPB 12.08 AND KPB 20.10 TO REPLACE CRIMINAL PENALTIES WITH INFRACTIONS

WHEREAS, KPB 1.24 was last updated in 1998 and is outdated; and

WHEREAS, an example of its inapplicability is found in the opening section, KPB 1.24.010, which makes violation of much of the borough code a misdemeanor crime; and

WHEREAS, KPB 1.24 is actually in conflict with the rest of the code and requires updating; and

WHEREAS, numerous other sections of the code state that certain violations are misdemeanors and provide for incarceration upon conviction; and

WHEREAS, the borough lacks criminal law enforcement authority so would be required to rely on state or city law enforcement personnel and facilities to enforce such provisions, requiring the borough to pay court and incarceration costs as well as costs for public defenders; and

WHEREAS, with the repeal of KPB 14.06 and adoption of KPB 14.08 (Abandoned Vehicles) the timing is now ideal to put all of the penalties into one section and to amend these other sections of the code to replace criminal penalties with infractions in order to minimize amendments to borough code in the future; and

WHEREAS, having all of the penalties listed in only one section of the borough's code will make it easier for citizens, staff and the court system to locate information making it easier to enforce minimizing the need for future code amendments; and

WHEREAS, the amended language in KPB 1.24 has been verified to conform to the requirements of the Alaska Court System allowing anyone who violates borough code the ability to contest a fine at no cost to the borough; and

WHEREAS, having the court system hear any challenges will save the borough thousands of dollars in administrative hearing costs while still providing due process for the citizens and visitors of the borough;

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

SECTION 1. That KPB Chapter 1.24 entitled “General Penalty” is amended as follows:

CHAPTER 1.24. GENERAL PENALTY

1.24.010. [IMPOSITION AND COLLECTION OF SURCHARGE] Integration into other enactments.

This penalty provision shall be considered as an integral and organic part of every ordinance, regulation and order that does not contain a specific penalty clause.

[A. IN ADDITION TO ANY OTHER FINE OR PENALTY PRESCRIBED BY THIS CODE, ANY DEFENDANT WHO PLEADS GUILTY OR NOLO CONTENDERE TO, FORFEITS BAIL FOR, OR IS CONVICTED OF A

1. VIOLATION OF ANY BOROUGH ORDINANCE COMPARABLE TO A MISDEMEANOR OFFENSE UNDER AS 28.33.030, 28.33.031, 28.35.030, OR 28.35.032 RELATING TO OPERATION OF MOTOR VEHICLES WHILE INTOXICATED, SHALL BE ASSESSED A SURCHARGE OF \$75.00 TO THE EXTENT SUCH SURCHARGE IS REQUIRED BY STATE STATUTES;
2. MISDEMEANOR OR VIOLATION OF A MUNICIPAL ORDINANCE FOR WHICH A SENTENCE OF INCARCERATION MAY BE IMPOSED, OTHER THAN A PERSON IDENTIFIED IN 1. OF THIS SUBSECTION, SHALL BE ASSESSED A SURCHARGE OF \$50.00 TO THE EXTENT SUCH SURCHARGE IS REQUIRED BY STATE STATUTE; AND
3. A MISDEMEANOR OR VIOLATION OF A BOROUGH ORDINANCE IF A SENTENCE OF INCARCERATION MAY NOT BE IMPOSED SHALL BE ASSESSED A SURCHARGE OF \$10.00 IF THE FINE AMOUNT FOR THE OFFENSE IS \$30.00 OR MORE TO THE EXTENT SUCH SURCHARGE IS REQUIRED BY STATE STATUTE.

B. ALL SURCHARGES IMPOSED PURSUANT TO PARAGRAPH A OF THIS SECTION SHALL BE COLLECTED SIMULTANEOUSLY WITH THE COLLECTION OF THE UNDERLYING FINE, AND ALL SUCH COLLECTED SURCHARGES SHALL BE REMITTED TO THE STATE OF ALASKA, DEPARTMENT OF ADMINISTRATION AS REQUIRED BY AS 29.25.072. ANY PARTIAL PAYMENTS SHALL BE APPLIED PRO RATA TO THE SURCHARGE AND THE BOROUGH FINE.]

1.24.020. Violation of Kenai Peninsula Borough Code.

- A. A person who violates any provision of the Kenai Peninsula Borough Code (borough code) or a regulation promulgated thereunder may be guilty of an infraction and may be issued a citation.
- B. A person charged with a violation under the borough code is not entitled to a trial by jury nor representation by counsel at public expense.
- C. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense.
- D. In addition to issuing citations for violation of any portion of the borough code, the borough may bring a civil action to:
 - 1. Enjoin a violation of any portion of the borough code. On application for injunctive relief and a finding of a violation or threatened violation, the superior court shall enjoin the violation.
 - 2. Recover a civil penalty of up to one thousand dollars (\$1,000) per day for each violation of the borough code.
 - 3. Foreclose a recorded lien or judgment as provided by law.
- E. All remedies hereunder are cumulative and are in addition to those existing at law or equity.

1.24.030. Procedure.

- A. A charge for the violation of a code provision may be brought by any of the following: the mayor, the mayor's written designee, or that borough official responsible for the administration and enforcement of the code provision which has been violated.
- B. The borough shall use the most current version of the Alaska Uniform Citation form to provide notice of an infraction to anyone accused of violating any provision of this code.

1.24.040. Aiding or abetting.

The prohibition of any act in this code, and in any rule or regulation adopted in this code, shall include the causing, securing, aiding or abetting of another person to do such act.

1.24.050. - Attempted violation.

- A. It is a violation for any person to attempt to disobey any provision of this code or any rule, order or regulation issued thereunder.

- B. In a prosecution pursuant to this chapter, it is not a defense that it was factually or legally impossible to commit the violation which was the object of the attempt if the conduct engaged in by the defendant would be a violation had the circumstances been as defendant believed them to be.

1.24.060. Solicitation.

It is a violation for any person to solicit another person to engage in conduct constituting a violation.

1.24.070. General penalty.

Unless another penalty is specifically provided by this code for the violation of any particular provision, any person who violates any of the provisions or fails to comply with any of the mandatory requirements of this code, upon conviction, shall be punished by a fine not to exceed three hundred dollars (\$300) and the violation shall be treated as an infraction.

1.24.080. Minor offense penalties and remedies.

- A. Consistent with AS 29.25.070(a), citations for which a fine has been clearly identified may be disposed of as provided in AS 12.25.195 through 12.25.230, without a court appearance, upon payment of the fine amounts listed plus the state surcharge required by AS 12.55.039 and 29.25.074. Fines must be paid to the court. The Rules of Minor Offense Procedure in the Alaska Rules of Court apply to all offenses. Citations charging these offenses must meet the requirements of Minor Offense Rule 3.
- B. If an offense is not listed on a fine schedule, or has no fine amount, the defendant must appear in court to answer to the charges. Fines may not be judicially reduced.
- C. If a person charged with one of these offenses appears in court and is found guilty, the penalty imposed for the offense may not exceed the fine amount for that offense the plus surcharge.

1.24.090. Minor offense penalty schedule.

<u>Section</u>	<u>Offense Title</u>	<u>Fine Amount</u>
<u>KPB 5.12.117B</u>	<u>False Representations re: Exemptions on Property Taxes</u>	<u>\$500</u>
<u>KPB 5.12.380B</u>	<u>False Representations re: Property Taxes</u>	<u>\$500</u>
<u>KPB 5.18.620A</u>	<u>Failure to Timely File Sales Tax Returns or Remit Taxes</u>	<u>\$500</u>
<u>KPB 5.18.630</u>	<u>Failure to Keep Adequate Sales Tax Records</u>	<u>\$500</u>
<u>KPB 5.18.640A</u>	<u>Misuse of Resale or Exempt Card</u>	<u>\$500</u>
<u>KPB 10.18.020</u>	<u>Use of Fireworks within the Borough</u>	<u>\$500</u>
<u>KPB 10.18.050</u>	<u>Sale of Fireworks</u>	<u>\$500</u>
<u>KPB 10.20.080</u>	<u>Fail to Report Hazardous Materials</u>	<u>\$750</u>

KPB 11.10.030	Operation of Gambling Establishment or Game of Chance	\$1,000
KPB 12.08.020(a)	Abandoned Vehicle in Area Maintained by Borough	\$100
KPB 12.08.020(b)	Abandoned Vehicle on Property not Designated for Vehicle Disposal	\$100
KPB 12.08.030(c)	Abandoned Vehicle on Private Property	\$100
KPB 12.08.040(a)	Junk Vehicle Placed or Remaining on Borough Property or ROW	\$100
KPB 20.10.030F	Sale of subdivision land prior to Final Plat	\$750

1.24.100. Collection of fines.

- A. Fines and any other allowable costs and interest may be collected through any legal means including but not limited to:
1. Disqualification from use or receipt of borough services.
 2. Garnishment of Alaska Permanent Fund dividend payments.
 3. Civil suits.
 4. Garnishment of wages.
 5. Lien foreclosure.
- B. Actions for the collection of fines or assessments are independent of any other remedy available for resolution of violations of this code.
- C. Outstanding fines and assessments owed by the same person may be pursued in a single collection action.
- D. Interest on fines and assessments not paid within thirty days of the decision shall accrue at a rate of eight (8%) percent per year.

SECTION 2. That KPB 5.12.117 is amended as follows:

5.12.117. Real property tax—Exemptions—False representations prohibited- Penalties.

- A. No person shall file with the borough any application for exemption from real property valuation or taxation if the application contains any false representations.
- B. [A VIOLATION OF THIS SECTION IS A MISDEMEANOR PUNISHABLE BY A FINE OF NOT MORE THAN \$500.00 AND BY IMPRISONMENT NOT TO EXCEED 30 DAYS, OR BOTH.] Any violation of this chapter is an infraction. The fine for offenses in this title is the fine provided in the minor offense fine schedule found in KPB 1.24.090. If no fine is listed in the fine schedule for an offense, then the defendant must appear in court and is subject to the fine provided in KPB 1.24.070.
- C. Any exemption granted on the basis of any false representations shall be revoked, and the liability for all taxes, penalties and interest shall remain

SECTION 3. That KPB 5.12.380 is amended as follows:

5.12.380. Other taxes and tax liens—Exemption—False representations prohibited—Penalties.

- A. No person shall file with the borough an exemption from personal property valuation or taxation if the application contains any false representations.
- B. [A VIOLATION OF THIS SECTION IS A MISDEMEANOR PUNISHABLE BY A FINE OF NOT MORE THAN \$500.00, OR BY IMPRISONMENT NOT TO EXCEED 30 DAYS, OR BOTH.] Any violation of this chapter is an infraction. The fine for offenses in this title is the fine provided in the minor offense fine schedule found in KPB 1.24.090. If no fine is listed in the fine schedule for an offense, then the defendant must appear in court and is subject to the fine provided in KPB 1.24.070.
- C. Any exemption granted on the basis of any false representations shall be revoked, and the liability for all taxes, penalties and interest shall remain.

SECTION 4. That KPB 5.18.620 is amended as follows:

5.18.620. Enforcement—Failure to file returns or remit taxes—Criminal penalty—Civil penalties and interest—Injunction—Publication.

- A. Failure to file two [2] or more returns in any one [1] calendar year after notice from the borough to the seller's last registered address[; WHEN INTENTIONAL, CONSTITUTES A MISDEMEANOR AND IS PUNISHABLE BY IMPRISONMENT FOR UP TO 30 DAYS, AND BY A FINE NOT TO EXCEED \$500.00, PLUS COSTS OF PROSECUTION, IN ADDITION TO ANY CIVIL PENALTY ASSESSED] is an infraction. The fine for offenses in this section is the fine provided in the minor offense fine schedule found in KPB 1.24.090. If no fine is listed in the fine schedule for an offense, then the defendant must appear in court and is subject to the fine provided in KPB 1.24.070. Civil penalties may be assessed in addition to the infraction.

SECTION 5. That KPB 5.18.630 is amended as follows:

5.18.630. Enforcement—Failure to keep adequate records.

Each of the following acts [, WHEN INTENTIONAL,] constitutes an infraction. [A MISDEMEANOR AND IS PUNISHABLE BY IMPRISONMENT FOR UP TO 30 DAYS, AND BY A FINE NOT TO EXCEED \$500.00, PLUS COSTS OF PROSECUTION, IN ADDITION TO ANY CIVIL PENALTY ASSESSED:].

- A. Falsification or misrepresentation of any record filed with the borough hereunder or required to be kept hereby, if used to mislead borough tax authorities;

- B. Refusal of a seller to allow inspection at reasonable times of records required to be kept by this chapter.

The fine for offenses in this section is the fine provided in the minor offense fine schedule found in KPB 1.24.090. If no fine is listed in the fine schedule for an offense, then the defendant must appear in court and is subject to the fine provided in KPB 1.24.070. Civil penalties may be assessed in addition to the infraction.

SECTION 6. That KPB 5.18.640 is amended as follows:

5.18.640. Enforcement—Misuse of a resale or exempt card—Criminal penalties.

- A. Misuse of resale or exemption cards [WHEN INTENTIONAL, CONSTITUTES A MISDEMEANOR AND IS PUNISHABLE BY IMPRISONMENT FOR UP TO 30 DAYS, AND BY A FINE NOT TO EXCEED \$500.00, PLUS COSTS OF PROSECUTION, IN ADDITION TO ANY CIVIL PENALTY ASSESSED] is an infraction. The fine for offenses in this section is the fine provided in the minor offense fine schedule found in KPB 1.24.090. If no fine is listed in the fine schedule for an offense, then the defendant must appear in court and is subject to the fine provided in KPB 1.24.070. Civil penalties may be assessed in addition to the infraction.
- B. Misuse of a resale card is a violation subject to penalty.

SECTION 7. That KPB 10.18.080 is amended as follows:

10.18.080. Penalties.

[UPON CONVICTION, EACH VIOLATION OF THIS CHAPTER SHALL BE SUBJECT TO A FINE OF \$500.] Any violation of this chapter is an infraction. The fine for offenses in this title is the fine provided in the minor offense fine schedule found in KPB 1.24.090. If no fine is listed in the fine schedule for an offense, then the defendant must appear in court and is subject to the fine provided in KPB 1.24.070.

SECTION 8. That KPB 10.20.080 is amended as follows:

10.20.080. Enforcement.

A person who violates any provision of this chapter shall be subject to civil penalties, injunctive relief, or both. The owner, agent, contractor, lessee or tenant of any part of a structure or premises in which a part of a violation of this chapter shall exist, is guilty of [A MISDEMEANOR AND UPON CONVICTION THEREOF SHALL BE FINED NOT MORE THAN THE AMOUNT LISTED IN THE MOST CURRENT KENAI PENINSULA BOROUGH SCHEDULE OF RATES, CHARGES AND FEES. EACH AND EVERY DAY THAT A VIOLATION CONTINUES SHALL BE DEEMED A SEPARATE AND DISTINCT VIOLATION an infraction. The fine for offenses in this section is the fine provided in the minor offense fine schedule found in KPB 1.24.090. If no fine is listed in the fine schedule for

an offense, then the defendant must appear in court and is subject to the fine provided in KPB 1.24.070.

SECTION 9. That 11.10.030 is amended as follows:

11.10.030. Penalty.

Persons who violate this chapter shall be guilty of [A MISDEMEANOR AND UPON CONVICTION SHALL BE FINED \$1,000 FOR EACH VIOLATION] an infraction. Each and every day that activities are conducted in violation of this chapter shall be deemed a separate and distinct violation. [A CIVIL PENALTY OF \$1,000 IS IMPOSED FOR EACH VIOLATION SHOULD THE BOROUGH ELECT NOT TO PROSECUTE THE VIOLATION AS A MISDEMEANOR.] The fine for offenses in this chapter is the fine provided in the minor offense fine schedule found in KPB 1.24.090. If no fine is listed in the fine schedule for an offense, then the defendant must appear in court and is subject to the fine provided in KPB 1.24.070.

SECTION 10. That KPB 12.08.160 is amended as follows:

12.08.160. [GENERAL PENALTY FOR VIOLATION] Penalties.

[A VIOLATION OF THIS SECTION IS AN INFRACTION WITHIN THE TERMS OF AS 28.90.010 AND IS PUNISHABLE BY THE FOLLOWING FINES:

KPB 12.08.020	UNLAWFUL ABANDONED VEHICLE	\$100
KPB 12.08.040	UNLAWFUL JUNK VEHICLE	\$100]

Any violation of this chapter is an infraction. The fine for offenses in this title is the fine provided in the minor offense fine schedule found in KPB 1.24.090. If no fine is listed in the fine schedule for an offense, then the defendant must appear in court and is subject to the fine provided in KPB 1.24.070.

SECTION 11. That KPB 20.10.030 is amended as follows:

20.10.030. Violations and Remedies

- A. No person shall transfer, sell, offer to sell, or enter into a contract to sell land that must be subdivided under this ordinance until an approved final plat has been recorded. For purposes of this provision the term “transfer” means a transfer of ownership and does not include a lease, license or permit.
- B. No person shall file or record a plat or other document depicting subdivided land unless the plat or document has been approved under this ordinance.
- C. A person shall not violate a provision of AS 29.40, KPB Title 20, or a term, condition or limitation imposed by the platting authority.

- D. Pursuant to AS 29.40.190(a), the borough may request the superior court enjoin a violation or threatened violation of AS 29.40 to this title.
- E. The borough or an aggrieved person may institute a civil action against a person who violates KPB 20.10.030(A), (B), or (C). A civil penalty not to exceed \$1,000 may be imposed for each violation. Each day that an unlawful act or condition continues is a separate violation.
- F. Violation of KPB 20.10.030(A), (B), or (C) constitute [A MISDEMEANOR PUNISHABLE BY A FINE NOT TO EXCEED \$1,000 AND BY IMPRISONMENT NOT TO EXCEED 90 DAYS FOR EACH VIOLATION] an infraction. The fine for offenses in this section is the fine provided in the minor offense fine schedule found in KPB 1.24.090. If no fine is listed in the fine schedule for an offense, then the defendant must appear in court and is subject to the fine provided in KPB 1.24.070. Each transfer, sale, offer to sell, or entry into a contract to sell any land subdivided in violation of this title shall constitute a separate offense.
- G. Violation of KPB 20.10.030(A), (B) or (C) is subject to a fine not exceeding \$1,000 for every day the violation continues which shall be enforced through the applicable provisions of KPB 21.50.010-170.

SECTION 12. That this ordinance shall take effect immediately upon its enactment

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 21ST DAY OF APRIL, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper

No: None
Absent: None