

Introduced by: Borough Assembly
Requested by: Borough Assembly
Drafted by: Borough Clerk
Introduced: 07/15/2010
Public Hearing: 08/05/2010
Amended: 08/05/2010
Adopted: 08/05/2010

**KODIAK ISLAND BOROUGH
ORDINANCE NO. FY2011-03**

**AN ORDINANCE OF THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
AMENDING THE KODIAK ISLAND BOROUGH CODE OF ORDINANCES
TITLE 1 GENERAL PROVISIONS**

WHEREAS, the Kodiak Island Borough Assembly recognizes that some sections of the Kodiak Island Borough code are outdated; and

WHEREAS, the Kodiak Island Borough Assembly wishes to correct deficiencies, conflicts, or obsolete provisions and citations; and

WHEREAS, the Kodiak Island Borough Assembly wishes to update different sections to bring them into compliance with existing laws and regulations; and

WHEREAS, staff research and proposal considered Alaska Statutes, codes from other municipalities, and consultation with Borough staff; and

WHEREAS, this ordinance has been reviewed by the Borough Attorney for compliance.

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH THAT:

Section 1: This ordinance is of a general and permanent nature and shall become a part of the Kodiak Island Borough Code of Ordinances.

Section 2: The Kodiak Island Borough Code of Ordinances Title 1 *General Provisions* is hereby amended as follows:

**Title 1
GENERAL PROVISIONS**

- Chapters:**
- 1.01 Code Adoption**
 - 1.05 Supplemental Codification**
 - 1.10 General Provisions**
 - 1.15 Borough Seal**
 - 1.20 General Penalty**

**Chapter 1.01
CODE ADOPTION**

- Sections:**
- 1.01.010 Adoption.
 - 1.01.020 Title – Citation – Reference.

- 48 1.01.030 Codification authority.
49 1.01.040 Ordinances passed prior to adoption of the code.
50 1.01.050 Reference applies to all amendments.
51 1.01.060 Title, chapter, and section headings.
52 1.01.070 Reference to specific ordinances.
53 1.01.080 Effective date.
54 1.01.090 Constitutionality.
55 1.01.100 Severability.
56 1.01.110 Effect of repeals or amendments.
57 1.01.120 Provisions self-executing.
58 * For statutory provisions requiring municipalities to codify each ordinance after adoption,
59 see AS 29.25.050.

60 **1.01.010 Adoption.**

61 As authorized by AS ~~29.48.180~~29.25.050, there is adopted the "Kodiak Island Borough
62 Code," as compiled, edited, and published by Book Publishing Company of Seattle,
63 Washington in 1974. The "Kodiak Island Borough Code" was republished by the Code
64 Publishing Company of Seattle, Washington in 2008.

65 **1.01.020 Title – Citation – Reference.**

66 This code shall be known as the "Kodiak Island Borough Code," and it is sufficient to
67 refer to the code as the "Kodiak Island Borough Code" in any prosecution for the violation of
68 any provision thereof or in any proceeding at law or equity. It shall be sufficient to designate
69 any ordinance adding to, amending, correcting, or repealing all or any part or portion thereof
70 as an addition to, amendment to, correction, or repeal of the Kodiak Island Borough Code.
71 Further reference may be had to the titles, chapters, sections, and subsections of the Kodiak
72 Island Borough Code and such references shall apply to that numbered title, chapter,
73 section, or subsection as it appears in the code.

74 **1.01.030 Codification authority.**

75 This code consists of all the regulatory and penal ordinances and certain of the
76 administrative ordinances of the Kodiak Island Borough, Alaska, codified pursuant to the
77 provisions of AS ~~29.48.180~~29.25.050.

78 **1.01.040 Ordinances passed prior to adoption of the code.**

79 The last ordinance included in the initial code published by Book Publishing Company is
80 Ordinance 74-13-O, passed April 4, 1974. ~~The following ordinances, passed subsequent to~~
81 ~~Ordinance 74-13-O, but prior to the adoption of this code, are adopted and made a part of~~
82 ~~this code: Ordinance 74-42-O.~~ During original codification, the ordinances were compiled,
83 edited, and indexed by the editorial staff of Book Publishing Company. Since January 1987,
84 the Borough Clerk's Office has been responsible for keeping the code current up to
85 Ordinance No. FY2007-16. On December 1, 2008, the code was republished by Code
86 Publishing Company which included Ordinance No. FY2008-17 passed March 20, 2008.
87 Code Publishing Company is responsible for subsequent supplements.

88 **1.01.050 Reference applies to all amendments.**

89 Whenever a reference is made to this code as the "Kodiak Island Borough Code" or to
90 any portion thereof, or to any ordinance of the Kodiak Island Borough, Alaska, the reference
91 shall apply to all amendments, corrections, and additions heretofore, now or hereafter made.

92 **1.01.060 Title, chapter, and section headings.**

93 Title, chapter, and section headings contained in this code shall not be deemed to
94 govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions
95 of any title, chapter, or section of this code.

96 **1.01.070 Reference to specific ordinances.**

97 The provisions of this code shall not in any manner affect matters of record which refer
98 to, or are otherwise connected with, ordinances which are therein specifically designated by
99 number or otherwise and which are included within the code, but such reference shall be
100 construed to apply to the corresponding provisions contained within this code.

101 **1.01.080 Effective date.**

102 This code shall become effective on the date the ordinance adopting this code as the
103 "Kodiak Island Borough" becomes effective.

104 **1.01.090 Constitutionality.**

105 If any section, subsection, sentence, clause, or phrase of this code is for any reason
106 held to be invalid or unconstitutional, such decision shall not affect the validity of the
107 remaining portions of this code. The assembly declares that it would have passed this code,
108 and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact
109 that any one or more sections, subsections, sentences, clauses, or phrases had been
110 declared invalid or unconstitutional, and if for any reason this code should be declared
111 invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and
112 effect.

113 **1.01.100 Severability.**

114 Every title and chapter of this code and every ordinance or resolution heretofore or
115 hereafter enacted by the assembly which lacks a severability clause shall be construed as
116 though it contained the clause in the following language:

117 If any provision of this ordinance or resolution or application thereof to
118 any person or circumstance is held invalid, the remainder of this
119 ordinance or resolution and the application to other persons or
120 circumstances shall not be affected thereby.

121 **1.01.110 Effect of repeals or amendments.**

122 A. The repeal or amendment of any ordinance or resolution does not release or
123 extinguish any penalty, forfeiture, liability incurred, or right accruing or accrued under such
124 law, unless the repealing or amending act so provides expressly. The law shall be treated as
125 remaining in force for the purpose of sustaining any proper action or prosecution for the
126 enforcement of the right, penalty, forfeiture, or liability.

127 B. The expiration of a temporary law does not release or extinguish any penalty,
128 forfeiture, or liability incurred or right accruing or accrued under such law unless the
129 temporary law so provides expressly and such law shall be treated as still remaining in force
130 for the purpose of sustaining any proper action or prosecution for the enforcement of such
131 penalty, forfeiture, or liability, or right accruing or accrued.

132 C. When any ordinance repealing a former ordinance, section, or provision is itself
133 repealed, the repeal does not revive the former ordinance, section, or provision, unless it is
134 expressly so provided.

135 **1.01.120 Provisions self-executing.**

136 The provisions of this code shall be construed to be self-executing whenever possible.

137 **Chapter 1.05**

138 **SUPPLEMENTAL CODIFICATION**

139 Sections:

140 1.05.010 Codification procedure generally.

141 **1.05.010 Codification procedure generally.**

142 A. Subject to the general policies which may be promulgated by the assembly for the
143 preparation and publication of the cumulative supplements to the code of ordinances of the
144 Kodiak Island Borough, the clerk shall revise for consolidation into the code of ordinances of
145 the Kodiak Island Borough all ordinances of a general and permanent nature enacted by the
146 assembly.

147 B. The clerk shall edit and revise the ordinances for consolidation without changing the
148 meaning of any ordinance in the following manner:

149 1. Number or renumber sections, parts of sections, articles, chapters, and titles;

150 2. Change the wording of section or subsection titles, or delete subsection titles, and
151 change or provide new titles for articles, chapters, and titles;

152 3. Change capitalization for purpose of uniformity;

153 4. Substitute the proper calendar date for "effective date of this ordinance," "date of
154 passage of this ordinance," and other phrases of similar import;

155 5. Substitute the proper designation for the terms "the preceding section," "this
156 ordinance," and like terms;

157 6. Strike out figures if they are merely a repetition of written words or vice versa for
158 the purpose of uniformity;

159 7. Correct manifest errors which are clerical, typographical, errors in spelling, or
160 errors by way of additions or omissions;

161 8. Correct manifest errors in reference to ordinances;

162 9. Rearrange sections, combine sections or parts of sections with other sections or
163 parts of sections, divide a long section into two or more sections, and rearrange the order of
164 sections to conform to a logical arrangement of subject matter as may most generally be
165 followed in the code of ordinances;

166 10. Change all sections, when possible, to read in the present tense, indicative
167 mood, active voice, third person, and singular number, or any other necessary grammatical
168 change in the manner generally followed in the code of ordinances;

169 11. Delete or change sections or parts of sections if a deletion or change is
170 necessary because of other ordinance amendments which did not specifically amend or
171 repeal them; and

172 12. Omit all temporary ordinances, all titles to ordinances, all enacting and repealing
173 clauses, all declarations of emergency and all purpose, validity, and construction clauses
174 unless, from their nature, it may be necessary to retain some of them to preserve the full
175 meaning and intent of the ordinance.

176 C. The clerk shall edit and revise the laws as they are enacted by the assembly, without
177 changing the meaning of any law, so as to avoid the use of pronouns denoting masculine or
178 feminine gender.

179 D. The clerk shall make recommendations to the assembly concerning deficiencies,
180 conflicts, or obsolete provisions in the code and at the direction of the assembly, the clerk
181 shall draft ordinances for consideration by the assembly to correct and remove deficiencies,
182 conflicts, or obsolete provisions in ordinances of the borough.

183 **Chapter 1.10**
184 **GENERAL PROVISIONS**

185 Sections:

- 186 1.10.010 Grammatical interpretation.
187 1.10.020 Tense, number, and gender.
188 1.10.030 Definitions.
189 1.10.040 Effective dates of ordinances, resolutions, and other actions of the
190 assembly – Time.

191 **1.10.010 Grammatical interpretation.**

192 Words and phrases shall be construed according to the rules of grammar and according
193 to the common and approved usage. Technical words and phrases, and those which have
194 acquired a peculiar and appropriate meaning whether by legislative definition or otherwise,
195 shall be construed according to the peculiar and appropriate meaning.

196 **1.10.020 Tense, number, and gender.**

197 A. Words in the present tense include the past and future tenses, and words in the future
198 tense include the present tense.

199 B. Words in the singular number include the plural and words in the plural number
200 include the singular.

201 C. As much as possible pronouns denoting masculine or feminine gender should be
202 avoided. If there are words of the masculine gender, they include the feminine and neuter
203 and when the sense so indicates, words of the neuter may refer to any gender.

204 **1.10.030 Definitions.**

205 As used in the ordinances and resolutions of the Kodiak Island Borough, unless the
206 context otherwise requires:

207 "Administrative official" means the individual designated by assembly resolution to act as
208 manager during the manager's absence or disability;

209 "Assembly" means the elected governing body of the Kodiak Island Borough;

210 "Attorney" means the legal advisor of the governing body and other officials of the
211 borough;

212 "Borough" means the Kodiak Island Borough;

213 "Clerk" means the borough clerk duly appointed by the assembly;

214 "Code" means the code of ordinances of the borough;

215 "Deputy presiding officer" means the deputy presiding officer of the assembly appointed
216 by the assembly;

217 "Law" includes ordinances of the borough;

218 "Manager" means the chief administrator of the borough;

219 "Mayor" means the elected mayor of the borough and presiding officer to the assembly;

220 "Oath" means an oath or an affirmation in all cases where by law an affirmation may be
221 submitted for an oath and in such case the words "swear" and "sworn" shall be equivalent to
222 the words "affirm" and "affirmed";

223 "Owner," as applied to building or land, means an owner, part owner, tenant in common,
224 or tenant by the entirety of the whole or part of the land or building;

225 "Person" means a corporation, partnership, firm, association, organization, business,
226 trust, or society as well as a natural person;

227 "Registered mail" means registered or certified mail;

228 "School board" means those persons elected to the Kodiak Island Borough School
229 Board of Education; and

230 "Seal" means the corporate seal of the borough.

231 **1.10.040 Effective dates of ordinances, resolutions, and other actions of the assembly**
232 **- Time.**

233 An ordinance, resolution, or other action takes effect at midnight on the day of adoption
234 unless the ordinance, resolution, or other action provides that it shall take effect at a
235 specified time, in which case the ordinance, resolution, or other action takes effect at the
236 time specified. If the ordinance, resolution, or other action specifies that it shall become
237 effective on a given day, but does not specify a time, the ordinance, resolution, or other
238 action shall become effective at midnight on the day specified.
239

240 **Chapter 1.15**
241 **BOROUGH SEAL**

242 Sections:

243 **1.15.010 Adopted - Description.**

244 The following is adopted as the official corporate seal of the Kodiak Island Borough: A
245 two-inch circle circumscribed around a one and one-quarter-inch circle with the words
246 "Kodiak Island Borough" on the upper half of the seal between the larger and smaller
247 inscribed circles, and the word "Alaska" and the date "1963" placed between the larger and
248 smaller circles on the bottom half of the seal between the larger and smaller inscribed
249 circles, with a star centered between them, and the borough logo inscribed within the
250 smaller circle.

251 **Chapter 1.20**
252 **GENERAL PENALTY**

253 Sections:

254 1.20.010 Designated.

255 1.20.020 Scope of prohibitions.

256
257
258 **1.20.010 Designated.**

259 ~~A violation of a provision of this code is an offense punishable upon conviction by a fine~~
260 ~~of not more than \$500.001,000 or by imprisonment not to exceed 300 days, or both, in~~
261 ~~addition to the surcharge required to be imposed under AS 12.55.039. If another penalty is~~
262 ~~established by ordinance for the provision violated, that penalty shall apply. Each day during~~
263 ~~which a continuing violation exists or is repeated shall be a separate and distinct violation.~~

264 A. A violation of a provision of this code is an offense punishable by a penalty not to
265 exceed a fine of \$1,000, in addition to the surcharge required under AS 12.55.039. If
266 another penalty is established by ordinance for the provision violated, that penalty shall
267 apply.

268 B. The borough or an aggrieved person may institute a civil action against a person,
269 including a minor as provided in this subsection, who violates any provision of this code. In
270 addition to injunctive and compensatory relief, a civil penalty not to exceed \$1,000 may be
271 imposed for each violation. An action to enjoin a violation may be brought notwithstanding
272 the availability of any other remedy. On application for injunctive relief and a finding of a
273 violation or a threatened violation, the superior court shall grant the injunction. Each day that
274 a violation of an ordinance continues constitutes a separate violation.

275 C. The borough shall provide written notice to the commissioner of health and social
276 services or to the commissioner's designee of the commencement of a civil enforcement
277 action for the violation of an ordinance under (b) of this section against a minor. Unless the
278 commissioner and the borough have negotiated an agreement making other arrangements
279 for the borough to provide the notice required by this subsection, the borough shall provide
280 the notice by mailing a copy of the citation or other document setting out the notice of the
281 commencement of the civil enforcement action.

282 D. In this section, "minor" means a person under 18 years of age.

283 E. Unless an ordinance authorizes use of a hearing officer, the enforcement of a civil
284 penalty against a minor for violation of any provision of this code shall be heard in the district

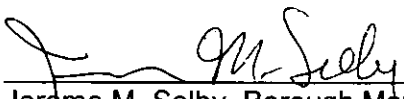
285 court in the same manner as for similar allegations brought against an adult, except that the
286 minor's parent, guardian, or legal custodian shall be present at all proceedings unless the
287 court excuses the parent, guardian, or legal custodian from attendance for good cause.
288 F. An action for a civil penalty filed against a minor under this section does not give rise
289 to the right to a trial by jury or to counsel appointed at public expense.

290 **1.20.020 Scope of prohibitions.**


291 When an ordinance of the borough prohibits an act or an omission, it shall be construed
292 to prohibit causing, aiding, abetting, or concealing the fact of the act or omission.

293
294 **ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH**
295 **THIS FIFTH DAY OF AUGUST, 2010**

296
297 KODIAK ISLAND BOROUGH

298
299 
300 Jerome M. Selby, Borough Mayor

301 ATTEST:

302 
303 Nova M. Javier, MMC, Borough Clerk
304
305