

Introduced by: Borough Manager  
Requested by: Community Development  
Department  
Drafted by: Community Development  
Department  
Introduced: 09/18/2014  
Public Hearing: 10/02/2014  
Adopted: 10/02/2014

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**KODIAK ISLAND BOROUGH  
ORDINANCE NO. FY2015-06**

**AN ORDINANCE OF THE ASSEMBLY OF THE KODIAK ISLAND  
BOROUGH AMENDING TITLES 1, 6, 8, 9, AND 10 OF THE KODIAK  
ISLAND BOROUGH CODE TO IMPLEMENT THE ALASKA UNIFORM  
CITATION PROCEDURE FOR CERTAIN VIOLATIONS OF BOROUGH  
CODE**

**WHEREAS,** as a second class borough, the Kodiak Island Borough exercises certain enforcement powers, which include the ability to levy fines and penalties in accordance with the Kodiak Island Borough Code; and

**WHEREAS,** the Kodiak Island Borough Code contains references and authority to levy fines and penalties in Title 1 *General Provisions*, Title 6 *Animals*, Title 8 *Health and Safety*, Title 9 *Public Peace, Morals and Welfare*, and Title 10 *Vehicles and Traffic*; and

**WHEREAS,** KIBC Chapters 1.20, 6.04, 8.20, 8.25, 8.40, 9.10, and 10.10 each contain references to fines for violations of Borough Code; and

**WHEREAS,** fines for violations of Borough Code are currently listed in the Schedule of Fees that is adopted by resolution by the Borough Assembly, generally in conjunction with the annual budget process; and

**WHEREAS,** the aforementioned chapters also refer to issuance of citations, and there is currently no court recognized citation process available to Borough officials; and

**WHEREAS,** the Borough Code does not presently contain specific references to a "Schedule of Fines" adopted by the Borough Assembly; and

**WHEREAS,** AS 29.25.070 requires that the schedule of fines adopted by the Borough must be listed in the uniform table of minor offences maintained by the Alaska court system, and

**WHEREAS,** the Alaska State Legislature requires all citations for minor offenses be processed in accordance with AS 12.25.175, the Uniform Citation format and procedures; and

**WHEREAS,** the Borough Assembly held a work session on March 27, 2014 to discuss enforcement policy and a majority of those present supported moving forward to implement the Alaska Uniform Citation process, format, and procedures for certain

48 violations of Borough Code and to adopt a Schedule of Fines that is separate from the  
49 Borough Fee Schedule; and

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51 **WHEREAS,** the amendments to Borough Code to implement the Alaska Uniform Citation  
52 process, with references to a Schedule of Fines as adopted by the Borough Assembly, are  
53 attached as Exhibit 'A', and

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55 **WHEREAS,** the amendments to KIBC Chapters 1.20, 6.04, 8.20, 8.25, 8.40, 9.10, and  
56 10.10 as shown on attached Exhibit 'A' have been reviewed for legal sufficiency by the  
57 Borough Attorney, and

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59 **WHEREAS,** the Schedule of Fines for the Kodiak Island Borough will be adopted by a  
60 separate resolution of the Borough Assembly.

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62 **NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KODIAK ISLAND**  
63 **BOROUGH that:**

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

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68 **Section 2:** Amendments to Chapters 1.20, 6.04, 8.20, 8.25, 8.40, 9.10, and 10.10 of  
69 KIBC are reflected in the attached Exhibit A.

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71 **ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH**  
72 **THIS SECOND DAY OF OCTOBER, 2014**

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KODIAK ISLAND BOROUGH

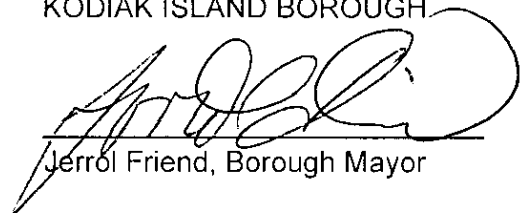
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Jerrol Friend, Borough Mayor

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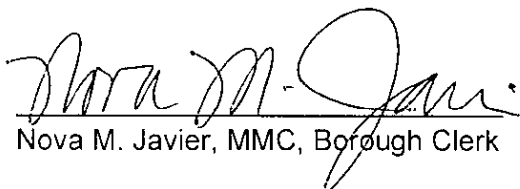
ATTEST:

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Nova M. Javier, MMC, Borough Clerk

**Exhibit "A"**

**Title 1, General Provisions**

**KIBC 1.20.010 Designated.**

A. A violation of a provision of this code is an offense punishable by a penalty not to exceed a fine of \$1,000, in addition to the surcharge required under AS 12.55.039. If another penalty is established by ordinance for the provision violated **and that penalty is listed in the schedule of fines adopted by the borough assembly**, that penalty shall apply.

B. In accordance with AS 29.25.070(a), citations for the certain offenses of KIBC may be disposed of as provided in AS 12.25.195-230, without a court appearance, upon payment of the fine amounts established in a Schedule of Fines adopted by the Borough assembly by resolution, plus the state surcharge required by AS 12.55.039 and AS 29.25.074. The Rules of Minor Offense Procedure in the Alaska Rules of Court apply to all offenses listed in the established Schedule of Fines. Citations charging these offenses must meet the requirements of Minor Offense Rule 3. 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 listed. If an offense is not listed on this schedule of fines, the defendant must appear in court to answer to the charges. These fines may not be judicially reduced.

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

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

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

E. F. Unless an ordinance authorizes use of a hearing officer, the enforcement of a civil penalty against a minor for violation of any provision of this code shall be heard in the district court in the same manner as for similar allegations brought against an adult, except that the minor's parent, guardian, or legal custodian shall be present at all proceedings unless the court excuses the parent, guardian, or legal custodian from attendance for good cause.

F. G. An action for a civil penalty filed against a minor under this section does not give rise to the right to a trial by jury or to counsel appointed at public expense. [Ord. FY2011-03 §2, 2010; Ord. 98-26 §2, 1998; Ord. 74-8-O §1, 1974; prior code Ch. 1 §11. Formerly §1.12.010].

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## Title 6, Animals

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### KIBC 6.04.270 Penalties and remedies.

A. In accordance with AS 29.25.070(a), citations for the certain offenses of KIBC may be disposed of as provided in AS 12.25.195-230, without a court appearance, upon payment of the fine amounts established in a Schedule of Fines adopted by the Borough assembly by resolution pursuant to Chapter 1.20 KIBC, plus the state surcharge required by AS 12.55.039 and AS 29.25.074. The Rules of Minor Offense Procedure in the Alaska Rules of Court apply to all offenses listed in the established schedule of fines. Citations charging these offenses must meet the requirements of Minor Offense Rule 3. ~~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 listed. If an offense is not listed on this schedule of fines, the defendant must appear in court to answer to the charges. These fines may not be judicially reduced. If a fine amount is set for an offense arising under this chapter, a person charged with that offense can dispose of the charge (by mail or in person) by paying the fine amount, in addition to the surcharge required to be imposed under AS 12.55.039, and checking the "no contest plea" box on the back of the citation.~~

**Alternatively, the person may choose to appear in court and contest the citation. 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 listed. If an offense is not listed on this Schedule of Fines, the defendant must appear in court to answer to the charges. These fines may not be judicially reduced. If a person is cited for an offense for which a scheduled fine has**

been established under this chapter and fails to pay a fine or appear in court, the citation shall be considered a summons for a misdemeanor. ~~If found guilty, the maximum sentence that may be imposed is the fine amount, in addition to the surcharge required to be imposed under AS 12.55.039. A person charged with an offense for a fine amount that has been set (whether it is an infraction or a misdemeanor) does not have a right to a jury or to a court-appointed lawyer. If no fine is set for an offense, the defendant must appear in court for arraignment.~~

B. Notwithstanding the availability of any other remedy, the borough or any aggrieved person may bring a civil action to enjoin any violation of this chapter. An action for injunction under this section may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and the finding of an existing or threatened violation, the superior court shall enjoin the violation.

C. Each act or condition violating this chapter, and each day during which the act or condition exists when the owner or keeper is known to be aware of the condition, shall be a separate and distinct violation except in circumstances where the violation is acknowledged and actively being corrected.

D. The penalties provided for violation of this chapter are in addition to and not in lieu of any other penalty provided for in state law or any civil remedy available to the borough. [Ord. 98-26 §3, 1998; Ord. 96-12 §2, 1996; Ord. 96-11 §2, 1996; Ord. 86-16-O §2, 1986. Formerly §6.04.210].

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## **Title 8, Health and Safety**

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### **KIBC 8.20.030 Penalties and remedies.**

A. In accordance with AS 29.25.070(a), citations for the certain offenses of KIBC may be disposed of as provided in AS 12.25.195-230, without a court appearance, upon payment of the fine amounts established in a Schedule of Fines adopted by the Borough assembly by resolution pursuant to Chapter 1.20 KIBC, plus the state surcharge required by AS 12.55.039 and AS 29.25.074. The Rules of Minor Offense Procedure in the Alaska Rules of Court apply to all offenses listed in the established Schedule of Fines. Citations charging these offenses must meet the requirements of Minor Offense Rule 3. Alternatively, the person may choose to appear in court and contest the citation. 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 listed. If an offense is not listed

on this schedule of fines, the defendant must appear in court to answer to the charges. These fines may not be judicially reduced. If a person is cited for an offense for which a scheduled fine has been established in the schedule of fines and fails to pay a fine or appear in court, the citation shall be considered a summons for a misdemeanor. ~~A person who violates the provisions of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$1,000, in addition to the surcharge required to be imposed under AS 12.55.039. In addition, the court may order the person to gather and dispose of litter in an area and for a length of time to be determined by the court.~~

B. Notwithstanding the availability of any other remedy, the borough or any aggrieved person may bring a civil action to enjoin any violation of this chapter or to obtain damages for any injury the plaintiff suffered as a result of the violation.

C. Each act or condition violating this chapter and each day during which the act or condition exists, continues or is repeated shall be a separate and distinct violation.

D. The penalties provided for violation of this chapter are in addition to and not in lieu of any other penalty provided for in state law or any civil remedy available to the borough. [Ord. 98-26 §4, 1998; Repealed and reenacted by Ord. 87-16-O §3, 1987; Ord. 82-49-O(A) §1, 1982. Formerly §8.12.030].

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#### **KIBC 8.25.240 Violations, enforcement actions and remedies**

##### **A. Violations.**

1. Per Failure. Each failure to comply with any provision of this chapter or any regulation promulgated under this chapter constitutes a separate violation. For example, scavenging is a separate violation for each container from which materials are scavenged.

2. Per Day. Each day a violation continues is a separate violation. For example, failure to maintain a collection vehicle in accordance with KIBC 8.25.150(B) is a separate violation for each day until the vehicle is repaired.

##### **B. Enforcement Actions and Remedies.**

1. Actual Violations. If the manager believes that someone has violated any provision of this chapter, whether that person is acting or failing to act in the capacity of a principal, agent, employee or otherwise, then the manager may institute any enforcement action and exercise any legal or equitable remedy available to the borough under law, such as the following:

- a. Civil actions seeking a penalty of up to \$250.00 per violation;
- b. Civil actions seeking injunctive relief;
- c. Civil suits seeking damages or civil penalties, including the costs of any corrective action that the manager deems necessary to mitigate consequences of violations, whether acts or omissions; or
- d. Proceedings to declare a property a public nuisance and abate the nuisance as authorized by AS 46.03.870(c).

2. Imminent Violations. If the manager believes that a person will imminently violate any provision of this chapter, whether that person is acting or failing to act in the capacity of a principal, agent, employee, or otherwise, then the manager may exercise any equitable remedy available to the borough under law, such as a temporary restraining order or injunction.

3. Enforcement Actions and Remedies Are Cumulative, Not Exclusive. Enforcement actions and remedies are cumulative, not mutually exclusive. The manager may institute any single enforcement action or exercise any single remedy or a combination of multiple enforcement actions and remedies, separately or simultaneously. The manager need not conclude any particular enforcement action or exhaust any particular remedy before instituting other enforcement action or exercising any other remedy.

4. Penalties and Remedies Are Not Limited. The penalties and remedies provided for violation of this chapter are in addition to and not in lieu of any other penalty or remedy provided for in state law or otherwise. [Ord. FY2010-07 §3, 2010].

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#### **KIBC 8.40, Motorized Watercraft**

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#### **8.40.025 Violations and penalties.**

Violations of this chapter shall be infractions, and each occurrence of a prohibited act shall constitute a separate violation.

Remedies, enforcement actions and penalties shall be consistent with KIBC 1.20.010 and the Schedule of Fines adopted by the Borough Assembly. ~~In any event this schedule shall apply: for the first offense, a \$100.00 fine shall be imposed; for the second offense, a \$200.00 fine shall be imposed; and for any subsequent offense, a \$300.00 fine shall be imposed.~~ [Ord. FY2008-07 §2, 2007. Formerly §8.35.025].

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**Title 9, Public Peace, Morals and Welfare**

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**KIBC 9.10, Fireworks Control**

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**9.10.060 Penalty.**

Penalties for violations of this chapter are as provided Chapter 1.20 KIBC. [Ord. FY2011-15 §2, 2011]. In accordance with AS 29.25.070(a), citations for the certain offenses of KIBC may be disposed of as provided in AS 12.25.195-230, without a court appearance, upon payment of the fine amounts established in a Schedule of Fines adopted by the Borough assembly by resolution pursuant to Chapter 1.20 KIBC, plus the state surcharge required by AS 12.55.039 and AS 29.25.074. The Rules of Minor Offense Procedure in the Alaska Rules of Court apply to all offenses listed in the established schedule of fines. Citations charging these offenses must meet the requirements of Minor Offense Rule 3. Alternatively, the person may choose to appear in court and contest the citation. 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 listed. If an offense is not listed on this Schedule of Fines, the defendant must appear in court to answer to the charges. These fines may not be judicially reduced. If a person is cited for an offense for which a scheduled fine has been established in the schedule of fines and fails to pay a fine or appear in court, the citation shall be considered a summons for a misdemeanor.

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**Title 10, Vehicles and Traffic**

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**KIBC 10.10.080 Penalties and remedies.**

~~A. A person who violates the provisions of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$300.00 in addition to the surcharge required to be imposed under AS 12.55.039.~~



In accordance with AS 29.25.070(a), citations for the certain offenses of KIBC may be disposed of as provided in AS 12.25.195-230, without a court appearance, upon payment of the fine amounts established in a Schedule of Fines adopted by the Borough assembly by resolution pursuant to Chapter 1.20 KIBC, plus the state surcharge required by AS 12.55.039 and AS 29.25.074. The Rules of Minor Offense Procedure in the Alaska Rules of Court apply to all offenses listed in the established schedule of fines. Citations charging these offenses must meet the requirements of Minor Offense Rule 3. Alternatively, the person may choose to appear in court and contest the citation. 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 listed. If an offense is not listed on this Schedule of Fines, the defendant must appear in court to answer to the charges. These fines may not be judicially reduced. If a person is cited for an offense for which a scheduled fine has been established in the schedule of fines and fails to pay a fine or appear in court, the citation shall be considered a summons for a misdemeanor.

B. Notwithstanding the availability of any other remedy, the borough or any aggrieved person may bring a civil action to enjoin any violation of this chapter, or to obtain damages for any injury the plaintiff suffered as a result of the violation.

C. Each act or condition violated in this chapter, and each day during which the act or condition exists, continues or is repeated shall be a separate and distinct violation.

D. The penalties provided for violation of this chapter are in addition to and not in lieu of any other penalty provided for in state law or any civil remedy available to the borough. [Ord. 98-26 §6, 1998; Ord. 83-37-O §2, 1983].

**INFORMATIONAL ONLY**

**THIS RESOLUTION IS SCHEDULED FOR ADOPTION AT THE OCTOBER 2 REGULAR MEETING**

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Introduced by: Borough Manager  
Requested by: Community Development Department  
Drafted by: Community Development Department  
Introduced on: 10/02/2014  
Adopted on:

**KODIAK ISLAND BOROUGH  
RESOLUTION NO. FY2015-10**

**A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY  
ADOPTING A SCHEDULE OF FINES FOR CERTAIN VIOLATIONS OF  
BOROUGH CODE**

**WHEREAS,** as a second class borough, the Kodiak Island Borough exercises certain enforcement powers, which include the ability to levy fines and penalties in accordance with the Kodiak Island Borough Code and AS 29.070; and

**WHEREAS,** the Kodiak Island Borough Code (KIBC) contains references and authority to levy fines and penalties in Title 1 *General Provisions*, Title 6 *Animals*, Title 8 *Health and Safety*, Title 9 *Public Peace, Morals and Welfare*, and Title 10 *Vehicles and Traffic*; and

**WHEREAS,** KIBC Chapters 1.20, 6.04, 8.20, 8.25, 8.40, 9.10, and 10.10 each contain references to fines for violations of Borough Code; and

**WHEREAS,** the Borough Code does not presently contain references to a schedule of fines adopted by the Borough Assembly, which must be listed in the uniform table of minor offences maintained by the Alaska court system, as required by AS 29.25.070.

**NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH that** the Schedule of Fines reflected in the attached Exhibit A are hereby adopted.

**ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2014**

KODIAK ISLAND BOROUGH

ATTEST:

\_\_\_\_\_  
Jerrol Friend, Borough Mayor

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Nova M. Javier, MMC, Borough Clerk

**Exhibit A**

**Kodiak Island Borough Schedule of Fines.**

<b>KIB Code Section</b>	<b>Description of Violation</b>	<b>Schedule of Fines Amount</b>	<b>Code Section Establishing Penalty for This Violation</b>
KIBC 6.04.060	Contagious Animals Prohibited (1st offense)	\$55	KIBC 6.04.270
KIBC 6.04.060	Contagious Animals Prohibited (2nd offense)	\$83	KIBC 6.04.270
KIBC 6.04.060	Contagious Animals Prohibited (3rd and subsequent offenses)	\$100	KIBC 6.04.270
KIBC 6.04.080	Annoying Animals Prohibited (1st Offense)	\$28	KIBC 6.04.270
KIBC 6.04.080	Annoying Animals Prohibited (2nd offense)	\$55	KIBC 6.04.270
KIBC 6.04.080	Annoying Animals Prohibited (3rd and subsequent offenses)	\$83	KIBC 6.04.270
KIBC 6.04.090	Tethering Of Animals Prohibited (1st offense)	\$28	KIBC 6.04.270
KIBC 6.04.090	Tethering Of Animals Prohibited (2nd offense)	\$55	KIBC 6.04.270
KIBC 6.04.090	Tethering Of Animals Prohibited (3rd offense)	\$83	KIBC 6.04.270
KIBC 6.04.100(B)&(D)	Control Of Animals (1st offense)	\$55	KIBC 6.04.270
KIBC 6.04.100(B)&(D)	Control Of Animals (2nd Offense)	\$83	KIBC 6.04.270
KIBC 6.04.100(B)&(D)	Control Of Animals (3rd and subsequent offenses)	\$110	KIBC 6.04.270

KIB Code Section	Description of Violation	Schedule of Fines Amount	Code Section Establishing Penalty for This Violation
KIBC Title 1, General Provisions	Establishes that violations of Borough Code are listed in an adopted Schedule of Fines	Incorporated by Reference	KIBC 1.20.010 (A)-(G)
KIBC 6.04.110	Animal Littering Prohibited (1st offense)	\$28	KIBC 6.04.270
KIBC 6.04.110	Animal Littering Prohibited (2nd offense)	\$55	KIBC 6.04.270
KIBC 6.04.110	Animal Littering Prohibited (3rd and subsequent offenses)	\$83	KIBC 6.04.270
KIBC 6.04.120	Animal Identification (1st offense)	\$28	KIBC 6.04.270
KIBC 6.04.120	Animal Identification (2nd offense)	\$55	KIBC 6.04.270
KIBC 6.04.120	Animal Identification (3rd and subsequent offenses)	\$83	KIBC 6.04.270
KIBC 6.04.130	Animal Tag And Collar (1st offense)	\$28	KIBC 6.04.270
KIBC 6.04.130	Animal Tag And Collar (2nd offense)	\$55	KIBC 6.04.270
KIBC 6.04.130	Animal Tag And Collar (3rd and subsequent offenses)	\$83	KIBC 6.04.270
KIBC 8.20.010	Littering - Unlawful Acts (1st offense)	\$50	KIBC 8.20.030
KIBC 8.20.010	Littering - Unlawful Acts (2nd offense)	\$200	KIBC 8.20.030
KIBC 8.20.010	Littering - Unlawful Acts (3rd offense)	\$500	KIBC 8.20.030

KIB Code Section	Description of Violation	Schedule of Fines Amount	Code Section Establishing Penalty for This Violation
KIBC 8.20.010	Littering - Unlawful Acts (4 <sup>th</sup> and subsequent offenses)	\$1,000	KIBC 8.20.030
KIBC 8.25.040	Solid Waste accumulation (1 <sup>st</sup> offense)	\$100	KIBC 8.25.240
KIBC 8.25.040	Solid Waste accumulation (2nd offense)	\$250	KIBC 8.25.240
KIBC 8.25.040	Solid Waste accumulation (3rd and subsequent offenses)	\$500	KIBC 8.25.240
KIBC 8.25.070	Solid Waste Storage and Set-Out (1st offense)	\$100	KIBC 8.25.240
KIBC 8.25.070	Solid Waste Storage and Set-Out (2nd offense)	\$250	KIBC 8.25.240
KIBC 8.25.070	Solid Waste Storage and Set-Out (3rd offense)	\$500	KIBC 8.25.240
KIBC 8.25.070	Solid Waste Storage and Set-Out (4th and subsequent offenses)	\$1000	KIBC 8.25.240
KIBC 8.25.120	Disposal of Hazardous waste (1st offense)	\$500	KIBC 8.25.240
KIBC 8.25.120	Disposal of Hazardous waste (2nd and subsequent offenses)	\$1000	KIBC 8.25.240
KIBC 8.40.015	Motorized Watercraft - Unlawful Acts. (1st offense)	\$100	KIBC 8.40.025
KIBC 8.40.015	Motorized Watercraft - Unlawful Acts. (2nd offense)	\$200	KIBC 8.40.025

KIB Code Section	Description of Violation	Schedule of Fines Amount	Code Section Establishing Penalty for This Violation
KIBC 8.40.015	Motorized Watercraft - Unlawful Acts. (3rd and subsequent offenses)	\$300	KIBC 8.40.025
KIBC 9.10.040	Fireworks - Use Prohibited (1st offense)	\$100	KIBC 9.10.060
KIBC 9.10.040	Fireworks - Use Prohibited (2nd offense)	\$200	KIBC 9.10.060
KIBC 9.10.040	Fireworks - Use Prohibited (3rd and subsequent offenses)	\$500	KIBC 9.10.060
KIBC 10.10.030	Junk Vehicles or other junk (1st offense)	\$300	KIBC 10.10.080
KIBC 10.10.030	Junk Vehicles or other junk (2nd and subsequent offenses)	\$500	KIBC 10.10.080