

Introduced by: Borough Manager  
Drafted by: CDD Director  
Introduced on: 01/18/2018  
Public Hearing Date: 02/01/2018  
Amended: 02/01/2018  
Adopted on: 02/01/2018

**KODIAK ISLAND BOROUGH  
ORDINANCE NO. FY2018-14**

**AN ORDINANCE OF THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH AMENDING  
KIBC 17.15 GENERAL PROVISIONS AND USE REGULATIONS, KIBC 17.25 DEFINITIONS,  
KIBC 17.195 VARIANCES, KIBC 17.200 CONDITIONAL USE PERMITS, AND KIBC 17.205  
AMENDMENTS AND CHANGES MAKING CERTAIN ADMINISTRATIVE LAND USE  
PROCESSES CONSISTENT**

**WHEREAS,** as a second class borough, the Kodiak Island Borough exercises planning, platting, and land use regulations on an area wide basis pursuant to Chapter 29.40 Alaska Statutes; and

**WHEREAS,** in accordance with AS 29.40, the Kodiak Island Borough adopted the 2008 Comprehensive Plan update on December 6, 2007 (Ordinance No. FY 2008-10) to replace the 1968 Comprehensive Plan; and

**WHEREAS,** the Kodiak Island Borough has adopted KIBC Title 17 (Zoning) in accordance with AS 29.40 to implement the Kodiak Island Borough Comprehensive Plan; and

**WHEREAS,** KIBC 17.205.010 provides that “Whenever the public necessity, convenience, general welfare or good zoning practice requires, the assembly may, by ordinance and after report thereon by the commission and public hearing as required by law, amend, supplement, modify, repeal or otherwise change these regulations and the boundaries of the districts”; and

**WHEREAS,** Title 17 (Zoning) has not been comprehensively updated since the early 1980s and contains inconsistencies relating to administrative land use actions that have presented challenges for staff and the public; and

**WHEREAS,** the Community Development Department has requested modifications to the language in KIBC 17.15, KIBC 17.195, KIBC 17.200, and KIBC 17.205 to provide consistency and clarification; and

**WHEREAS,** the Planning and Zoning Commission reviewed the proposed changes at a work sessions on October 18, 2017 and November 8, 2017; and

**WHEREAS,** the Planning and Zoning Commission, following public hearings on October 25, 2017 and November 29, 2017, voted to transmit their recommendations for revisions to Title 17 to the Borough Assembly; and

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**WHEREAS,** the Borough Assembly reviewed the proposed changes at work sessions on January 11, 2017 and January 25, 2018; and

**WHEREAS,** the Borough Assembly held a public hearing on February 1, 2018.

**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:** That Chapter 17.15 General Provisions and Use Regulations, Chapter 17.25 Definitions, Chapter 17.195 Variances, Chapter 17.200 Conditional Use Permits, and Chapter 17.205 Amendments and Changes of the Kodiak Island Borough Code of Ordinances are amended to read as follows:

**Chapter 17.15  
GENERAL PROVISIONS AND USE REGULATIONS**

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**17.15.050 Approval by planning and zoning commission.**

When it is stated in this title that uses are permitted subject to approval by the commission, an application for consideration shall be submitted to the community development department with a site plan. The commission shall make its findings within ~~40 days of the date the application is submitted~~ 90 days after the date of the next available meeting agenda deadline, unless such time limit has been extended by common consent and agreement of the applicant and the commission. and notify the applicant, in writing, of the decision. If denied, the commission shall state the reasons for denial and the avenues of appeal available to the applicant.

**Chapter 17.25  
DEFINITIONS**

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**17.25.170 P definitions.**

“Parking zone” means a strip of land 25 feet in width immediately adjacent to the clear zone along the municipal airport and on that side of the clear zone which is farthest from the gravel runway. No structure may be constructed, erected, or placed within the parking zone except motor vehicles and aircraft. Motor vehicles used for storage or living or sleeping accommodations are not permitted within parking zones. “Parking zone” also means a water area 30 feet in width on Lilly Lake, measured out from the existing shoreline of the lake, within which seaplanes may be parked or stored.

“Person” means a natural person, his heirs, executors, administrators, or assigns, and also includes firm, partnership, or corporation, its or their successors or assigns, or the agent of any of the aforesaid.

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“Premises” means a lot, together with all buildings and structures thereon.

“Property owner” means the land owner shown on the latest borough tax assessment roll.

**Chapter 17.195  
VARIANCES**

Sections:

- 17.195.010 Authority and purpose.
- 17.195.020 Application and fee.
- 17.195.030 Investigation.
- 17.195.040 Public hearing and notice.
- 17.195.050 Approval or denial.
- 17.195.060 Conditions.
- 17.195.070 ~~Effective date.~~ Repealed.
- 17.195.080 Cancellation.
- 17.195.090 Appeals.
- 17.195.100 Stay pending appeal.

**17.195.010 Authority and purpose.**

The commission shall review and act upon applications for variances. Variances are provided for by this chapter for the purpose of relaxing zoning district requirements in special circumstances.

**17.195.020 Application and fee.**

A. An application for a variance may be filed by a property owner or his authorized agent. ~~The application shall be made on a form provided by the community development department and accompanied by the required fee and site plan.~~ All applications shall be available for public inspection.

B. An application for a variance shall be filed with the department on a form provided. The application for a variance shall be accompanied by the required fee and a detailed site plan.

**17.195.030 Investigation.**

An investigation of the variance request shall be made and a written report provided to the commission by the community development department. The findings required to be made by the commission shall be specifically addressed in the report.

**17.195.040 Public hearing and notice.**

A. The commission shall hold a public hearing on each properly submitted application for a variance within 90 ~~50-working~~ days after the date of the next available meeting agenda deadline. The applicant shall be notified of the date of such hearing.

138 **B.** The community development department shall send to each owner of property within ~~a~~  
139 ~~minimum distance of 300 feet of~~ a prescribed distance from the exterior boundary of the lot or  
140 parcel of land described in the application, notice of the time and place of the public hearing, a  
141 description of the property involved, its street address, and the action requested by the applicant.

142 Prescribed distances are as follows:

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144 1. Lots less than or equal to .5 acres require a notification area measured at 500 feet.

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146 2. Lots greater than .5 acres and less than or equal to 1 acre require a notification area  
147 measured at 750 feet.

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149 3. Lots greater than 1 acre and less than or equal to 2 acres require a notification area  
150 measured at 1,000 feet.

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152 4. Lots greater than two acres and less than or equal to 5 acres require a notification area  
153 measured at 1,500 feet.

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155 5. Lots greater than 5 acres require a notification area measured at 2,500 feet.

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157 C. In instances where the subject property is located within the jurisdiction of a local  
158 municipal or tribal government, the community development department shall also send  
159 notice to those government entities.

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161 D. The applicant shall provide notice of the public hearing by posting the parcel(s) subject  
162 to the application for a variance with notice that is clearly legible from each improved street  
163 adjacent to the land. The notices shall be in the standardized form provided by the  
164 community development department and shall be posted for at least 20 days prior to the  
165 date of the public hearing.

166  
167 ~~E. For the purposes of this chapter, "property owner" means that land owner shown on the latest~~  
168 ~~tax assessment roll.~~ Notice shall also be provided in accordance with state law by legal publication  
169 in local newspapers.

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171 **17.195.050 Approval or denial.**

172 ~~Within 40 days after the filing of an application~~ After the public hearing described in KIBC  
173 17.195.040, the commission shall render its decision, unless such time limit has been extended  
174 by common consent and agreement of the applicant and the commission.

175  
176 A. Approval. If it is the finding of the commission, after consideration of ~~staff's~~ the investigator's  
177 report and receipt of testimony at the public hearing, that the use proposed in the application, or  
178 under appropriate conditions or restrictions, meets all of the following, the variance shall be  
179 granted:

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181 1. That there are exceptional physical circumstances or conditions applicable to the property or  
182 to its intended use or development which do not apply generally to other properties in the same  
183 land use district;

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2. That the strict application of the provisions of this title would result in practical difficulties or unnecessary hardship;
3. That the granting of the variance will not result in material damage or prejudice to other properties in the vicinity nor be detrimental to the public's health, safety or general welfare;
4. That the granting of the variance will not be contrary to the objectives of the comprehensive plan;
5. That actions of the applicant did not cause special conditions or financial hardship or inconvenience from which relief is being sought by a variance; and
6. That granting the variance will not permit a prohibited land use in the district involved.

B. Denial. If the commission finds, after consideration of ~~staff's~~ ~~the investigator's~~ report and receipt of testimony at the public hearing, that it cannot make all of the required findings in subsection A of this section it shall deny the variance.

**17.195.060 Conditions.**

The commission, in granting the variance, may establish conditions under which a lot or parcel of land may be used or a building constructed or altered; make requirements as to architecture, height of building or structure, open spaces or parking areas; require conditions of operations of an enterprise; or make any other conditions, requirements or safeguards that it may consider necessary to prevent damage or prejudice to adjacent properties or detrimental to the borough. When necessary, the commission may require guarantees in such form as deemed proper under the circumstances to ensure that the conditions designated will be complied with.

~~17.195.070 Effective date.~~

~~The decision of the commission to approve or deny a variance shall become final and effective 10 days following such decision.~~

**17.195.080 Cancellation.**

Failure to utilize an approved variance within ~~12~~ 24 months after ~~its effective date~~ the commission's granting of the variance shall cause its cancellation.

**17.195.090 Appeals.**

An appeal of the commission's decision to grant or deny a variance may be taken by any ~~person or party aggrieved~~ entitled to appeal the decision under KIBC 17.225.030. ~~Such appeal shall be taken within 10 days of the date of the commission's decision by filing with the board of adjustment through the city or borough clerk a written notice of appeal specifying the grounds thereof.~~ Right of appeal is forfeited unless the appeal specifying the grounds thereof is filed in writing with the borough clerk within 20 days of the commission's decision.

**17.195.100 Stay pending appeal.**

229 An appeal from a decision granting a variance stays the decision appealed from until there is a  
230 final decision on the appeal.

231  
232 **Chapter 17.200**  
233 **CONDITIONAL USE PERMITS**  
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235 Sections:

236 17.200.010 Intent.

237 17.200.020 Application and fee.

238 17.200.030 Site plan.

239 17.200.040 Public hearing and notice.

240 17.200.050 ~~Standards.~~ Approval or denial.

241 17.200.060 ~~Stipulations.~~ Conditions.

242 17.200.070 ~~Action by planning and zoning commission.~~ Repealed.

243 17.200.080 ~~Appeals.~~ Cancellation.

244 17.200.090 Appeals.

245 17.200.100 Stay pending appeal.

246  
247 **17.200.010 Intent.**

248 It is recognized that there are land uses which are generally considered appropriate in certain  
249 zoning districts; provided, that controls and safeguards are applied to ensure their compatibility  
250 with permitted principal uses. The conditional use permit procedure is intended to allow  
251 consideration of the impact of the proposed conditional use on surrounding property, and the  
252 application of controls and safeguards to assure that the conditional use will be compatible with  
253 the surrounding area.

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255 **17.200.020 Application and fee.**

256 A. An application to the community development department for a conditional use or modification  
257 of an existing conditional use may be initiated by a property owner or his authorized agent.

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259 B. An application for a conditional use shall be filed with the department on a form provided. The  
260 application for a conditional use permit shall be accompanied by ~~a filing~~ the required fee;  
261 ~~established by resolution of the assembly, payable to the borough~~ and site plan.

262  
263 **17.200.030 Site plan.**

264 A detailed site plan showing the proposed location of all buildings and structures on the site,  
265 access points, drainage, vehicular and pedestrian circulation patterns, parking areas, and the  
266 specific location of the use or uses to be made of the development shall be submitted with the  
267 application, together with other information as may be required to comply with the standards for  
268 a conditional use listed in this chapter and in other pertinent sections of this chapter.

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270 **17.200.040 Public hearing and notice.**

271 The commission shall hold a public hearing on each properly submitted application for a  
272 conditional use permit within ~~90~~ 50-working days after the date of the next available meeting  
273 agenda deadline. The community development department shall give notice of the hearing ~~as~~  
274 required in the same manner prescribed for variances in KIBC 17.195.040.

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276 **17.200.050 Standards. Approval or denial.**

277 After the public hearing described in KIBC 17.200.040, the commission shall render its  
278 decision, unless such time limit has been extended by common consent and agreement of  
279 the applicant and the commission.

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281 ~~In granting a conditional use permit, the commission must make the following findings:~~

282 A. Approval. If it is the finding of the commission, after consideration of staff's report and  
283 receipt of testimony at the public hearing, that the use proposed in the application, or  
284 under appropriate conditions or restrictions, meets all of the following, the conditional use  
285 permit shall be granted:

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287 ~~A~~1. That the conditional use will preserve the value, spirit, character and integrity of the  
288 surrounding area;

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290 ~~B~~2. That the conditional use fulfills all other requirements of this chapter pertaining to the  
291 conditional use in question;

292  
293 ~~C~~3. That granting the conditional use permit will not be harmful to the public health, safety,  
294 convenience and comfort;

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296 ~~D~~4. That the sufficient setbacks, lot area, buffers or other safeguards are being provided to meet  
297 the conditions listed in subsections ~~A~~1 through ~~C~~3 of this section;

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299 ~~E~~5. If the permit is for a public use or structure, the commission must find that the proposed use  
300 or structure is located in a manner which will maximize public benefits.

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302 B. Denial. If the commission finds, after consideration of staff's report and receipt of  
303 testimony at the public hearing, that it cannot make all of the required findings in  
304 subsection A of this section it shall deny the conditional use permit.

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306 **17.200.060 Stipulations. Conditions.**

307 In recommending the granting of a conditional use, the commission shall ~~stipulate~~ condition, in  
308 writing, requirements which it finds necessary to carry out the intent of this chapter. These  
309 ~~stipulations~~ conditions may increase the required lot or yard size, control the location and  
310 number of vehicular access points to the property, require screening and landscaping where  
311 necessary to reduce noise and glare, and maintain the property in a character in keeping with the  
312 surrounding area; or may impose other conditions and safeguards designed to ensure the  
313 compatibility of the conditional use with other uses in the district.

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315 ~~17.200.070 Action by planning and zoning commission. Repealed.~~

316 ~~The commission shall render a decision on the application for conditional use permits within 30~~  
317 ~~calendar days from the date of public hearing unless the applicant consents to a postponement.~~  
318 ~~The community development department shall incorporate any conditions and requirements~~  
319 ~~stipulated by the commission in the conditional use permit. An approved conditional use must be~~  
320 ~~permitted within a two-year period to be valid.~~

321  
322 17.200.080 Cancellation.  
323 Failure to utilize an approved conditional use permit within 24 months after the  
324 commission's granting of the conditional use permit shall cause its cancellation.

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326 **17.200.0890 Appeals.**

327 The commission's action may be appealed to the assembly by any party entitled to appeal the  
328 decision under KIBC 17.225.030. Right of appeal is forfeited unless the appeal specifying the  
329 grounds thereof is filed in writing with the borough clerk within 20 ~~consecutive~~ days of the  
330 commission's decision.

331  
332 17.200.100 Stay pending appeal.

333 An appeal from a decision granting a conditional use permit stays the decision appealed  
334 from until there is a final decision on the appeal.

335  
336 **Chapter 17.205**  
337 **AMENDMENTS AND CHANGES**

338  
339 Sections:

- 340 17.205.010 Authority.  
341 17.205.020 Report from planning and zoning commission.  
342 17.205.030 Manner of initiation.  
343 17.205.040 Hearing and notice on rezones ~~boundary change~~.  
344 17.205.050 Rezones ~~Boundary change~~ may include additional property.  
345 17.205.055 Submission to assembly.  
346 17.205.060 Hearing determination.  
347 17.205.070 Hearing – Required – Notice.  
348 17.205.080 Repealed.

349  
350 **17.205.010 Authority.**

351 Whenever the public necessity, convenience, general welfare or good zoning practice requires,  
352 the assembly may, by ordinance and after report thereon by the commission and public hearing  
353 as required by law, amend, supplement, modify, repeal or otherwise change these regulations  
354 and the boundaries of the districts.

355  
356 **17.205.020 Report from planning and zoning commission.**

357 The commission shall report in writing to the assembly on any proposed change or amendment  
358 regardless of the manner in which such change is initiated and such report shall find:

- 359  
360 A. Findings as to need and justification for a change or amendments;  
361  
362 B. Findings as to the effect a change or amendment would have on the objectives of the  
363 comprehensive plan; and  
364  
365 C. Recommendations as to the approval or disapproval of the change or amendment.  
366



367 **17.205.030 Manner of initiation.**

368 Changes in this title may be initiated in the following manner:

369 A. The assembly upon its own motion;

370 B. The commission upon its own motion; and

371  
372 C. By petition of one or more owners of property within an area proposed to be rezoned. A petition  
373 shall be in the form of an application for a change in the boundary of a [zoning](#) district, shall be  
374 filed in the community development department, be accompanied by the required fee and such  
375 data and information as may be necessary to assure the fullest practicable presentation of facts  
376 and shall set forth reasons and justification for proposing such change.  
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380 **17.205.040 Hearing [and notice](#) on [rezones](#) ~~boundary change~~.**

381 ~~The commission shall hold a public hearing before considering any change in the boundaries of~~  
382 ~~a district. Notice thereof shall be given in the manner prescribed in this title for variances except~~  
383 ~~that such procedure shall specifically refer to an application for change in the boundary of a~~  
384 ~~district. Where property within an area proposed to be changed is not under the same ownership,~~  
385 ~~all owners of property within the area shall be notified of such hearing. Within 30 days after the~~  
386 ~~date of the public hearing, the commission shall report its findings to the assembly. If such change~~  
387 ~~was initiated by petition, the signers shall be notified by the community development department~~  
388 ~~of the commission's recommendation, such notice sent by registered mail not more than five days~~  
389 ~~after the commission's public hearing.~~

390  
391 The commission shall hold a public hearing on each properly submitted application for a  
392 rezone within 90 days after the date of the next available meeting agenda deadline. The  
393 community development department shall give notice of the hearing as required in the  
394 same manner prescribed for variances in KIBC 17.195.040.  
395

396 **17.205.050 [Rezones](#) ~~Boundary change~~ may include additional property.**

397 When the commission deems it necessary or expedient, it may consider other property for change  
398 or amendment in addition to the property described in an application for change in the boundary  
399 of a [zoning](#) district, and may include such additional property in the notices of public hearing and  
400 consider amendments relating to such property at the public hearing.  
401

402 **17.205.055 Submission to assembly.**

403 A. Within 30 days after the commission has acted favorably upon a proposed zoning change in  
404 accordance with the above provisions, a report with recommendations shall be submitted to the  
405 assembly together with the proposed ordinance. Such recommendations of the commission shall  
406 be advisory only and shall not be binding upon the assembly. When an ordinance has been  
407 forwarded to the assembly, the assembly shall act in accordance with this chapter, and notice  
408 shall be issued as provided in KIBC 17.205.070 by the clerk.  
409

410 B. If the commission recommends denial of any proposed amendment, its action shall be final  
411 unless the initiating party, within 20 days [of the commission's decision](#), [files an appeal](#)

412 specifying the grounds thereof in writing with the borough clerk ~~a written statement with~~  
413 ~~the clerk requesting that the commission's action be taken up by the assembly.~~

414  
415 **17.205.060 Hearing determination.**

416 The assembly shall consider an application or commission recommendation for change in the  
417 boundary of a district or any other commission recommendation proposing a change in this title,  
418 and the report of the commission at its next regular meeting after receipt of such report. If, from  
419 the facts presented and by the findings of the report of the commission, it is determined that the  
420 public necessity, convenience, general welfare and good zoning practice requires the change or  
421 amendment of any portion thereof, the assembly by ordinance shall effect such amendment,  
422 supplement, change or reclassification.

423  
424 **17.205.070 Hearing – Required – Notice.**

425 No ordinance of the assembly effecting an amendment, supplement, change or classification,  
426 repeal of regulations or restrictions, the boundaries of zoning districts or classifications of  
427 property shall become effective until after a public hearing in relation thereto at which parties in  
428 interest and citizens shall have an opportunity to be heard. At least seven days' notice of the time  
429 and place of such hearing shall be published in a paper of general circulation in the borough.  
430 When the proposed amendment covers a change in the boundaries ~~of~~ in a zoning district, notice  
431 to owners of property shall be given in the manner described in this title for variances.

432  
433 **17.205.080 Boundary change – Protest.**

434 Repealed by Ord. 93-20.

435  
436 **Effective Date:** This ordinance takes effect upon adoption.

437  
438 **ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH**  
439 **THIS FIRST DAY OF FEBRUARY, 2018.**

440  
KODIAK ISLAND BOROUGH



Daniel A. Rohrer, Mayor

ATTEST:

  
Nova M. Javier, MMC, Clerk

441  
442 **VOTES:**

443 Ayes: Skinner, Smiley, Crow, Kavanaugh, Schroeder

444 Absent: Symmons, Van Daele