

Introduced by: Borough Manager
Drafted by: CDD Director
Introduced on: 03/22/2018
Public Hearing Date: 04/05/2018
Adopted on: 04/05/2018

**KODIAK ISLAND BOROUGH
ORDINANCE NO. FY2018-19**

AN ORDINANCE OF THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH AMENDING KIBC 17.15 GENERAL PROVISIONS AND USE REGULATIONS, KIBC 17.215 REVIEW OF PLANNING AND ZONING COMMISSION DECISION, KIBC 17.220 APPEALS TO THE PLANNING AND ZONING COMMISSION, AND KIBC 17.225 APPEALS TO THE BOARD OF ADJUSTMENT, MAKING THE APPEAL PERIODS FOR LAND USE DECISIONS AND THE REMOVAL OF EFFECTIVE DATE PROVISIONS FOR VARIANCES CONSISTENT WITH ORDINANCE NO. FY2018-14.

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 and appeals that have presented challenges for staff and the public; and

WHEREAS, the Borough Assembly adopted Ordinance No. FY2018-14 on February 1, 2018, which amended the appeal periods identified in KIBC 17.195 (Variances), KIBC 17.200 (Conditional Use Permits), and KIBC 17.205 (Amendments and Changes) to 20 days and removed the effective date provision for variances; and

WHEREAS, the Community Development Department wishes to reflect these changes in KIBC 17.15 (General Provisions and Use Regulations), KIBC 17.215 (Review of Planning and Zoning

45 Commission Decision), KIBC 17.220 (Appeals to the Planning and Zoning Commission), and
46 KIBC 17.225 (Appeals to the Board of Adjustment) to provide consistency; and
47

48 **WHEREAS,** the Borough Assembly reviewed the proposed changes at work sessions on March
49 8, 2018 and March 29, 2018; and
50

51 **WHEREAS,** the Borough Assembly held a public hearing on April 5, 2018.
52

53 **NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KODIAK ISLAND**
54 **BOROUGH THAT:**
55

56 **Section 1:** This ordinance is of a general and permanent nature and shall become a part of the
57 Kodiak Island Borough Code of Ordinances.
58

59 **Section 2:** That Chapter 17.15 General Provisions and Use Regulations, Chapter 17.215 Review
60 of Planning and Zoning Commission Decision, Chapter 17.220 Appeals to the Planning and
61 Zoning Commission, and Chapter 17.225 Appeals to the Board of Adjustment of the Kodiak Island
62 Borough Code of Ordinances are amended to read as follows:
63

64 **Chapter 17.15**
65 **GENERAL PROVISIONS AND USE REGULATIONS**

66 Sections:

- 67 17.15.010 Application of provisions.
- 68 17.15.020 Conformity with regulations required.
- 69 17.15.030 Alteration or erection of structures.
- 70 17.15.040 Yard or open space limitation.
- 71 17.15.050 Approval by planning and zoning commission.
- 72 17.15.060 Zoning compliance.
- 73 17.15.070 Building permit and conformity to zoning.
- 74 17.15.080 Uses prohibited unless authorized.
- 75 17.15.090 Similar uses may be permitted.
- 76 17.15.100 Airport regulations.
- 77 17.15.110 Bed and breakfasts, lodges, motels, hotels and vacation homes.
- 78 17.15.120 Buffers for marijuana businesses.

79 ...
80

81 **17.15.060 Zoning compliance.**

82 **A.** Zoning compliance is required for site grading (excavation and fill), erection, construction,
83 establishment, moving, alteration, enlargement, repair, or conversion of any building or structure
84 in any district established by this title, subject to the following:
85

86 **1A.** An application for zoning compliance will be filed with the community development department
87 on a form provided by the department. If the application meets the requirements of this title, as
88 verified in the department, and other applicable regulations, a permit will be issued. An as-built of
89 the property may be required to ensure that applicable requirements can be met, when existing

90 structures are located on the property. Any zoning compliance permit issued is subject to the
91 same expiration, suspension, and revocation provisions as a building permit issued for the same
92 construction project (See Uniform Building Code Section 303(d) and (e), as currently adopted
93 under KIBC 15.05.020).

94
95 ~~B. In all cases where the commission or the board of adjustment has granted a variance to this~~
96 ~~title, the department will issue zoning compliance to allow the building work to be done in~~
97 ~~accordance with the decision, except that no permit will be issued following the granting of a~~
98 ~~variance until the time for filing an appeal has expired and it is verified that no appeal has been~~
99 ~~filed.~~

100
101 **2C.** No building permit shall be issued by a building official until the community development
102 department has verified from the application for zoning compliance for a proposed building that it
103 conforms and will be occupied for a use in conformity with the provisions and regulations of this
104 title, except that this provision shall not apply to building permits for residential structures when
105 no yard or height changes are involved. Any building permit issued in conflict with this title is null
106 and void.

107 **Chapter 17.215**
108 **REVIEW OF PLANNING AND ZONING COMMISSION DECISION**

109
110 Sections:

111 17.215.010 Reconsideration.

112 17.215.020 Commencement of appeal – Stay.

113
114 **17.215.010 Reconsideration.**

115 A. The commission may reconsider its decision upon petition of any person entitled to appeal the
116 decision under KIBC 17.225.030, filed with the community development department within **20 40**
117 **working** days after the decision.

118 ...

119
120 **17.215.020 Commencement of appeal – Stay.**

121 A. A decision of the commission is final unless an appeal of the decision is made within **20 40**
122 **working** days after the decision by the commission to the board of adjustment.

123
124 B. An appeal is commenced by filing with the clerk a written notice of appeal, specifically stating
125 the reasons for the appeal and the relief sought, and payment of the appropriate fee. Upon
126 commencement of an appeal, the decision appealed from is stayed until the decision on appeal
127 becomes final.

128
129 C. The running of the time for filing an appeal from a decision of the commission is terminated by
130 a timely petition for reconsideration, filed in accordance with **this chapter KIBC-17.225.010**. The
131 full time for an appeal begins to run again on the date of the decision of the commission on
132 reconsideration.

133 ...

134 **Chapter 17.220**

135 **APPEALS TO THE PLANNING AND ZONING COMMISSION**

136
137 Sections:

- 138 17.220.010 Persons who may appeal.
139 17.220.020 Commencement of appeal – Stay.
140 17.220.030 Appeal hearing – Notice, preparation of record.
141 17.220.040 Appeal hearing.
142 17.220.050 Decision.

143 ...

144
145 **17.220.020 Commencement of appeal – Stay.**

146 A. A decision of the community development department director is final unless appealed to the
147 commission within **20** ~~10-working~~ days of receipt of notification of the decision.

148
149 B. An appeal is commenced by filing with the community development department a written notice
150 of appeal, specifically stating the reason for the appeal and the relief sought, and payment of the
151 appropriate fee. Upon commencement of an appeal, the decision appealed from is stayed until
152 the decision on appeal becomes final.

153 ...

154 **Chapter 17.225**

155 **APPEALS TO THE BOARD OF ADJUSTMENT**

156
157 Sections:

- 158 17.225.010 Organization.
159 17.225.020 Powers of the board.
160 17.225.030 Persons who may appeal.
161 17.225.040 New evidence – Changed circumstances.
162 17.225.050 Appeal hearing – Notice, preparation of record.
163 17.225.060 Argument on appeal.
164 17.225.070 Appeal hearing.
165 17.225.080 Decision.
166 17.225.090 Hearing examiner.
167 17.225.100 Judicial review.

168 ...

169 **17.225.050 Appeal hearing – Notice, preparation of record.**

170 **A. A decision of the commission is final unless an appeal of the decision is made within**
171 **20 days after the decision by the commission to the board of adjustment.**

172
173 **B. An appeal is commenced by filing with the clerk a written notice of appeal, specifically**
174 **stating the reasons for the appeal and the relief sought, and payment of the appropriate**
175 **fee. Upon commencement of an appeal, the decision appealed from is stayed until the**
176 **decision on appeal becomes final.**

177

178 **CA.** Upon timely commencement of an appeal, the clerk shall schedule the appeal hearing, mail
179 notice of the appeal, request the community development department director to prepare the
180 appeal record, and notify the commission of the appeal.

181
182 **DB.** The clerk shall mail notice of the appeal to each person who was entitled to notice of the
183 original commission proceeding. The notice shall include the appellant's notice of appeal,
184 describe the decision appealed from, state the date of the appeal hearing and time within which
185 written argument supporting or opposing the appeal may be submitted, and contain the substance
186 of subsections C and E of this section regarding the obtaining of a verbatim transcript and the
187 availability of the appeal record.

188 **EC.** The appeal record shall be completed within 10 working days of filing of an appeal. The
189 appeal record shall include the draft minutes of the proceedings before the commission, the
190 commission's written decision, and any written documents considered by the commission.

191
192 Any party to an appeal from a commission decision may cause the appeal record to include a
193 verbatim transcript of the proceedings before the commission by filing a request therefor,
194 accompanied by a cash deposit in the amount of the estimated cost of preparing the transcript.
195 Within 10 working days of notice of completion of the transcript the person requesting it shall pay
196 the actual cost thereof, or the deposit shall be forfeited to the borough. A request by the borough
197 for a transcript is not subject to the deposit or refund provisions of this subsection. The borough
198 shall bear the cost of preparing the remainder of the record.

199
200 **FD.** Following completion of the record, the clerk shall, by certified mail, serve a copy of the appeal
201 record on the appellant, the applicant, and on any party who paid for the preparation of a verbatim
202 transcript as part of the record. The clerk shall deliver a copy of the appeal record to the borough
203 staff assigned responsibility for the appeal.

204
205 **GE.** A copy of the appeal record shall be available for public inspection at the clerk's office. Any
206 person may obtain a copy of the record upon payment of the appropriate fee.

207

208 **Effective Date:** This ordinance takes effect upon adoption.

209

210 **ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH**

211 **THIS FIFTH DAY OF APRIL, 2018.**

212

KODIAK ISLAND BOROUGH



Daniel A. Rohrer, Mayor

ATTEST:


Nova M. Javier, MMC, Clerk

213

214 **VOTES:**

215 Ayes: Kavanaugh, Schroeder, Skinner, Smiley, and Symmons.

216 Absent: Crow and Van Daele

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