

Introduced by:	Mayor
Date:	12/12/95
Hearing:	1/02/96
Action:	Defeated
Vote:	4 yes, 4 no
Reconsidered:	1/16/96
Postponed to:	2/06/96
Postponed to:	2/20/96
Action:	Enacted as Amended
Vote:	7 Yes, 2 No

## KENAI PENINSULA BOROUGH ORDINANCE 95-39

### AN ORDINANCE ESTABLISHING REGULATIONS GOVERNING AND LIMITING ACTIVITIES WITHIN DEDICATED ROAD RIGHTS-OF-WAY IN THE KENAI PENINSULA BOROUGH

- WHEREAS,** over 1800 miles of dedicated rights-of-way are located within the Kenai Peninsula Borough outside of the first- and second-class cities; and
- WHEREAS,** by ordinance, these rights-of-way were dedicated to provide road and utility access to property and to promote orderly development of land within the borough; and
- WHEREAS,** changes in population and growing use of those rights-of-way creates conflicts in use that did not exist previously or that existed at much lower levels; and
- WHEREAS,** there has been an increase in the unauthorized removal of trees and materials from rights-of-way for personal use with little ability of the borough to seek redress; and
- WHEREAS,** repetitive use of these rights-of-way by overweight vehicles can ruin or degrade the right of way so that others may not be able to use it until repaired; and
- WHEREAS,** the cost of repairing rights-of-way ruined or degraded by such overweight vehicles should be borne by the entity which caused the need for repair; and
- WHEREAS,** some users park their vehicles in rights-of-way that are too narrow to allow parking thus leaving insufficient space for other users to traverse the right of way; and
- WHEREAS,** clear rules for use help prevent misuse and abuse of the rights-of-way; and
- WHEREAS,** previously, Chapter 14.14 of the Kenai Peninsula Borough Code (enacted by Ord. 94-57), addressing use of the right of ways expired on December 31, 1995; and

**WHEREAS,** the Assembly believes a similar ordinance addressing these issues should be enacted;

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

**SECTION 1.** That a new Chapter 14.14 to the Kenai Peninsula Borough Code of Ordinances entitled "Protection of Public Roads and Road Rights-of-way" is enacted as follows:

**14.14.010. Purpose.**

The purpose of this section is to provide for the protection of public rights-of-way dedicated to the Kenai Peninsula Borough.

**14.14.020. Administration.**

This chapter shall be administered by the planning director under the direction of the mayor unless the mayor has authorized another person or body to administer all or portions of this chapter. The mayor shall report to the assembly any authorization for administration by another person or body than the planning director. All regulations adopted under this chapter require assembly approval by resolution. The mayor may delegate the task of developing these regulations to the road service area board and/or the planning department.

**14.14.030. Prohibited activities within rights-of-way.**

Except as provided in this chapter, the following activities are prohibited within dedicated rights-of-way:

A. Except as provided in this chapter, no person may extract, excavate, or remove sand, gravel, soil or trees from a dedicated right-of-way except as necessary for the maintenance of a road or driveway within the right-of-way and then only to the extent necessary for the maintenance.

B. No person shall construct a road or driveway within a dedicated right of way unless a permit has been obtained from the borough prior to construction. The construction activity shall be conducted only in accordance with the issued permit conditions. Permits shall be issued subject to the conditions set forth in this chapter and any regulations adopted pursuant to this chapter. All permits shall be subject to the following requirements:

1. the application shall be on a form prescribed by the borough and shall include a drawing showing the location and design of the proposed road or driveway,
2. construction within the portion of the right of way reserved for utilities under KPB 14.08 shall be restricted to that necessary to obtain access to adjacent properties,
3. materials and trees shall not be used or removed from the right of way except to the extent necessary to construct the road or driveway,
4. driveways or roads that cross the utility installations shall cross as nearly perpendicular to the utility line as possible.
5. the person constructing the road or drive shall be responsible for obtaining line locates and coordinating the installation with the utilities whose lines are in the right of way,
6. the permit holder shall provide an as built drawing or centerline survey coordinates to the borough upon completion of construction,
- 7.) permits will not be issued to construct any part of a road or driveway within

the right of way where the drive or road will be within 50 feet of a stream bank or shore of a lake unless necessary for access to a lot where no reasonable alternative access exists or unless the road is for access to a bridge or public facility.

C. No private person, individual, or entity may, by any manner, regulate or purport to regulate the flow of traffic, or place any traffic regulatory device or sign within a right-of-way without the express permission of the Kenai Peninsula Borough. Nor may any private person, individual, or entity prevent others lawful use of the right-of-way by constructing or erecting any barricade or other blockage.

#### **14.14.040. Parking regulation.**

A. No person may park a vehicle or other device within a dedicated road right-of-way except in a manner which allows reasonable use of the right-of-way by other persons. Parking in any manner for such periods of time that interferes with or impedes the use of the right-of-way by other persons is prohibited.

B. The mayor may establish specific parking limitations within areas of a right-of-way if the mayor determines a need exists for the limitation due to inadequate space, damage to the right-of-way of adjacent property and waters, or for the orderly use and maintenance of the right-of-way. Such limitations will be posted at that location by the borough.

#### **14.14.050. Traffic regulation.**

In accordance with any regulations adopted under this chapter the mayor may establish traffic restrictions for the purpose of limiting weight as deemed necessary for the protection of the roads, road users, and those residing near the roads. The mayor is authorized to place traffic regulatory signs or devices in the rights-of-way or to provide such other notice as is reasonably necessary for safety or the implementation of any weight or safety restrictions adopted pursuant to this section.

#### **14.14.060. Violations — Civil Penalty.**

A. The borough may impose a civil penalty of up to \$250 for each violation of this chapter or violation of any of the regulations or restrictions adopted as authorized herein. Each day a violation continues may be considered a separate violation. The mayor may adopt a civil penalty schedule that will be applicable to the various violations that may occur.

B. The borough may direct any person to cease and desist from any act that is in violation of or is prohibited by this chapter or violation of any of the regulations or restrictions adopted as authorized herein. If any person receives an order to cease such violation and fails to do so, the borough may initiate action to enjoin the continued violation as well as pursuing any other remedies and penalties available to it under this chapter or at law.

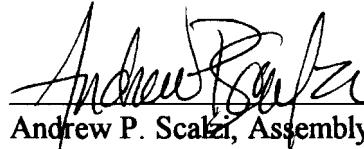
#### **14.14.070. Definitions.**

A. "Dedicated road right-of-way" or "right-of-way" means a right-of-way dedicated on a plat for road and street and utility purposes in accordance with the platting requirements of the Kenai Peninsula Borough, or such rights-of-way as have been specifically granted and dedicated to such use by the borough. It does not include such rights-of-way within the boundaries of a city within the borough.

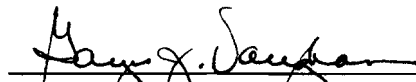
B. "Road board or service area board" shall mean the board of the Kenai Peninsula Borough road service area created under KP.B 16.41.

**SECTION 2.** That this ordinance shall take effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 20th  
DAY OF FEBRUARY, 1996.**

  
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Andrew P. Scalzi, Assembly President

**ATTEST:**

  
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Gaye J. Vaughan, Borough Clerk