

Introduced	Mayor
Date:	6/04/96
Hearing:	7/09/96
Action:	Enacted as Amended
Vote:	7 Yes, 2 No

**KENAI PENINSULA BOROUGH
ORDINANCE 96-24**

**AN ORDINANCE ADOPTING REGULATIONS ESTABLISHING PARKING, SIZE,
AND WEIGHT RESTRICTIONS AND CONTROL OF CONSTRUCTION AND
BLOCKAGE WITHIN BOROUGH RIGHTS-OF-WAY**

WHEREAS, Ordinance 95-39, codified at KPB 14.14, established authority for regulations governing and limiting activities within dedicated road rights-of-way within the Kenai Peninsula Borough; and

WHEREAS, the need for parking, size, weight, and construction regulations varies with the season, use, weather and conditions of the rights-of-way at issue and detailed regulations are necessary to accomplish the intent of the ordinance; and

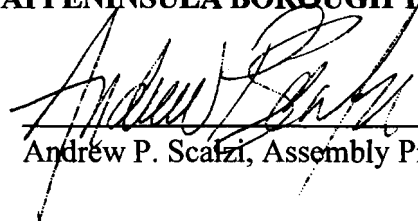
WHEREAS, Ordinance 95-39 requires the regulations to be approved by the assembly;

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

SECTION 1. That the Assembly adopt the attached regulations entitled "Kenai Peninsula Borough Regulations Governing the Imposition of Parking, Size, and Weight Restrictions, and Control of Construction and Blockage Within Rights-of-way of the Kenai Peninsula Borough," pursuant to KPB 14.14, which are incorporated by reference as if fully set forth herein.

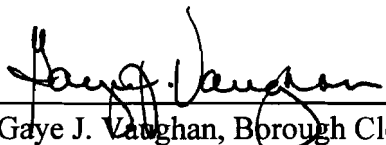
SECTION 2. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 9th DAY OF JULY, 1996.



Andrew P. Scazi, Assembly President

ATTEST:



Gaye J. Vaughan, Borough Clerk

Chapter 14.40

REGULATIONS GOVERNING THE IMPOSITION OF PARKING, SIZE, AND WEIGHT RESTRICTIONS, AND CONTROL OF CONSTRUCTION WITHIN KENAI PENINSULA BOROUGH RIGHTS-OF-WAY

14.40.010 Purpose.

These regulations shall be cited as Title 14, Chapter 40 of the Kenai Peninsula Borough Code of Ordinances. The purpose of these regulations is to protect public safety, protect the rights-of-way within Kenai Peninsula Borough, and to ensure that borough rights-of-way are used responsibly, pursuant to the authority granted by Kenai Peninsula Borough Chapter 14.14.010, *et seq.*

14.40.020 Scope.

These regulations set forth parking, size, and weight restrictions and govern construction and blockage of borough rights-of-way. These regulations authorize general restrictions applicable to multiple rights-of-way and imposition of site-specific restrictions warranted by circumstances on particular rights-of-way within the borough.

14.40.030 Administration.

Sections 14.40.050 and 14.40.060 of these regulations shall be administered by the planning director, under the direction of the mayor, unless the mayor authorizes another person or body to administer all or portions of this regulation. Sections 14.40.070 - 14.40.110 of these regulations shall be administered by the roads director, under the direction of the mayor, unless the mayor authorizes another person or body to administer all or portions of these regulations. Sections 14.14.120 - 14.40.250 shall be jointly administered by the planning and roads directors. The mayor shall report to the assembly any designation of an official other than the officials authorized to administer these regulations by this section.

14.40.040 Right-of-way use permits.

The borough shall issue two types of right-of-way use permits for borough rights-of-way as follows:

A. Right-of-way construction permits. Right-of-way construction permits are issued by the planning director for construction of roads, driveways, trails and any blockading which impedes traffic flow or lawful use of rights-of-way related to construction; and

B. Oversize and overweight permits. Vehicle oversize and overweight permits are issued by the roads director for vehicles exceeding the gross weight, height, or width set forth in 17 AAC 25, and any regulation of the flow of traffic or use of rights-of-way related to rights-of-way use by oversize and overweight vehicles.

C. Prior permits; expiration. Permits issued prior to the adoption of these regulations shall be valid for three months after the effective date of these regulations. Permits which are not fulfilled within this time frame shall expire, however, permittee may request a new permit under current regulations.

D. Permits; priority. Multiple permits may be issued for a right-of-way where the applications do not present a conflict. Permits may be issued for an upgraded or different use of a right-of-way, or section of right-of-way, which is already subject to a permit. The director has discretion to determine how to resolve conflicts over right-of-way permits in the borough's best

interest.

14.40.050 Right-of-way construction permit required.

A right-of-way construction permit is required under the circumstances set forth in this section.

A. Construction. Construction permits are required for construction of a road or driveway within a dedicated right-of-way.

B. Traffic flow; barricades. Construction permits are required to regulate the flow of traffic, to place any traffic regulatory device or sign within a dedicated right-of-way, or for placement of any barricade or blockage preventing lawful use of a constructed right-of-way, or right-of-way under construction.

14.40.060 Permit application and conditions.

The following application procedures and conditions must be met for right-of-way construction permits:

A. Application form. A right-of-way construction permit may be obtained from the Planning department by filing an application on a form provided by the borough, and shall include a drawing showing the location and design of the proposed road or driveway. The construction activity shall be conducted only in accordance with the issued permit conditions.

B. Mandatory conditions. All permits shall be subject to the following conditions:

1. The permittee has responsibility to properly locate the proposed facility within the named right-of-way and to coordinate its construction activity with utilities in the same right-of-way pursuant to KPB 14.14.030.

2. Driveways or roads crossing utility installations shall cross as nearly perpendicular as possible to the utility line.

3. The Kenai Peninsula Borough disclaims any warranty or liability regarding location or coordination with utility companies.

4. Materials or trees shall not be used or removed except to the extent necessary to construct the road or driveway.

5. The permittee must agree to comply with the terms, conditions and requirements of KPB Chapter 14.14, and any regulations adopted pursuant to this chapter.

6. Upon completion of construction the permittee shall provide an as-built drawing or centerline survey coordinates to the borough not later than a date determined by the planning director upon permit approval.

7. Upon completion, permittee shall agree not to restrict the flow of traffic, place traffic signs, or prevent use by the public unless prior approval has been received from the borough.

8. The permittee shall indemnify, defend, and hold and save the borough, its elected and appointed officers, agents and employees harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys fees. The permittee shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death, economic loss, damages, violation of statutes, ordinances, constitutions or other laws, rules or regulations, contractual claims, or any other kind of loss, tangible or intangible, sustained by any person, or property arising from applicant or applicant's agents' performance or failure to perform this permit in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations, or damages.

9. Permittee is responsible for determining the need for any other local, state, or federal permits and acquiring the same. Permittee must abide by all applicable local, state, and federal laws.

10. Violation of the permit's terms may result in its termination and/or an assessment of penalties against the permittee. The borough reserves the right to revoke the permit at any time for its convenience.

C. Water bodies. Permits will not be issued to construct any part of a road or driveway within the right-of-way where the driveway 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.

14.40.070 Oversize and overweight permits — Size and weight restrictions.

A. Regulation establishment. If it is determined by the road service area board that oversize and overweight regulations are needed within the road service area, the road service area board shall decide at a public meeting to which rights-of-way the restrictions will apply. The rights-of-way proposed for regulation shall be published in a newspaper of general circulation within the borough at least twice before the public hearing, with the first date of published notice being at least 14 days prior to the meeting. The roads director shall prepare a report on the rights-of-way proposed for regulation for the road service area board's review. Any regulation shall continue until the road service area board passes a resolution lifting the regulation. Regulations adopted for particular rights-of-way remain in place annually from April 1 to September 30 unless modified or discontinued by the road service area board. A resolution lifting a size or weight regulation may only be adopted after meeting the public notice and hearing requirements for adoption of a regulation set forth in this paragraph.

B. Permit required. An oversize and overweight permit is required for those vehicles and equipment exceeding the gross weight, width and height set forth in 17 AAC 25 for rights-of-way designated by the road service area board. Such permits are required between April 1 and September 30, unless this period is extended by resolution after public hearing by the road service area board. The permit may be obtained from the road service area administrative office by filing an application on a form provided by the borough.

14.40.080 Oversize and overweight permits — Application.

The application must provide at a minimum the information required by this section.

A. Right-of-way. The applicant shall provide the name and location of the right-of-way in which the oversize or overweight vehicle(s) or equipment will be used.

B. Vehicles. The applicant shall list the vehicle(s) or equipment which will be used.

C. Weight, size. The applicant shall provide the gross weight, width, height, and number of axles for each vehicle(s) or equipment which will be used.

D. Load classification. The applicant shall provide the classification of any material to be hauled within the right-of-way as either agricultural, forestry, fishery, or other appropriate classification, if none of the foregoing is applicable.

E. Contact. The applicant shall provide the applicant's name, mailing address, physical address, day and evening phone numbers, facsimile phone number, and secondary contact person.

F. Registration. The applicant shall provide a copy of the current vehicle registration and vehicle license plate numbers.

G. Additional information. The applicant shall provide such other additional information as the director or his/her designee deems necessary to ensure protection of the right-of-way.

14.40.090 Oversize and overweight permits — Mandatory conditions.

All oversize and overweight permits shall be subject to the conditions set forth in this section.

A. Hold harmless. The permittee shall indemnify, defend, and hold and save the borough, its elected and appointed officers, agents and employees harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys fees. The permittee shall be responsible under this clause for any and all legal actions or claims of any character resulting from injuries, death, economic loss, damages, violation of statutes, ordinances, constitutions or other laws, rules or regulations, contractual claims, or any other kind of loss, tangible or intangible, sustained by any person, or property arising from permittee or permittee's agents' performance or failure to perform this permit in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations, or damages.

B. Permit on request. The operator must be able to produce an issued permit upon request.

C. Vision restrictions. No equipment or vehicle operation in borough rights-of-way is allowed if vision is restricted to less than 1,000 feet by inclement weather. The operator must travel with lights on at all times.

D. Signage. The operator must abide by any borough-posted signage in the right-of-way.

E. Operator's route. The operator's exact route must be specified for width greater than 14 feet and for all overweight loads.

14.40.100 Oversize and overweight permits — Discretionary conditions.

In addition to the mandatory conditions set forth in KPB 14.40.090 the roads director may impose conditions related to the regulations set forth in this section.

A. Operation hours. The roads director may set conditions related to hours of operation on the right-of-way including but not limited to restrictions to daylight hours and restrictions during holidays.

B. Safety. The roads director may set additional restrictions to protect the public safety, protect the borough's right-of-way and adjacent properties and water bodies, and promote traffic management of the borough's rights-of-way.

C. Bond. The roads director may set permit conditions allowing loads in excess of size and weight restrictions upon the permittee posting a bond or providing adequate security for any damage caused and cost of repair resulting from use of vehicles in excess of size and weight restrictions.

D. Load limits. The roads director may specify load limits.

E. Vehicle numbers. The roads director may set restrictions on the number or type of oversize or overweight vehicles on rights-of-way at certain times.

14.40.110 Oversize and overweight permits — Signage.

Upon establishment of any size or weight restrictions, the road or roads shall be posted by the roads director and the restriction shall not be effective until 24 hours after the posting. The posting of the road shall include the size or weight restriction and time of posting.

14.40.120 Permit appeal — Permit review.

A. Initial permit review. Construction permit applications shall be reviewed by the planning director and size and weight permit applications shall be reviewed by the roads director before the permits are issued. The director shall have three (3) days from the date the applications are received to issue a written denial or approval of the permits requested, unless for good cause stated, the director extends the time frame for permit determinations. The director shall, by first-class mail, facsimile, or hand-delivery transmit written notice of approval or denial to the applicant at the most recent address provided to the borough in writing by the applicant.

B. Reconsideration. The applicant may request the director reviewing a permit to reconsider the director's decision within five (5) days of the director's decision. Reconsideration shall be requested on a form provided by the borough and may be based on either

1. a mistake in law or fact in the initial review of the permit;
2. clerical error in the director's decision; or
3. new evidence relevant to permit issuance.

The director shall hear the petition for reconsideration upon at least five (5) days' notice to the applicant. A written decision upon reconsideration shall be issued by the director with written findings and conclusions.

14.40.130 Permit appeal — Director's decision final — Appeal.

The applicant for a construction permit may appeal the planning director's determination to the planning commission, and ultimately to the assembly, pursuant to KP.B 21.20. The applicant for an oversize/overweight permit may appeal the road director's decision to the assembly pursuant to the procedures set forth in KP.B 21.20. The assembly's determination on either a construction permit or an oversize/overweight permit may be appealed to the superior court within 30 days of the date of issuance of the assembly's written decision. The appeal shall be filed in the Alaska Court System in Kenai, Alaska, pursuant to Part 6 of the Alaska Rules of Appellate Procedure. Nothing in this regulation shall prohibit utilization of a mutually-acceptable alternative dispute resolution procedure.

14.40.140 Permit appeal — Penalty.

Failure to obtain a permit required by this regulation, or failure to comply with the conditions of an issued permit, will cause the violator to be subject to a civil penalty up to \$250 for each violation as more specifically set forth in KP.B 14.40.260. Each day a violation continues is a separate violation.

14.40.150 Right-of-way use permits — Repair and maintenance of rights-of-way.

The permittee has an ongoing responsibility to maintain the right-of-way in a condition equal to that which existed before the permittee's operation began so long as the maintenance required can be attributed to the permittee. The permittee shall repair the right-of-way immediately after discovery of any damage or deterioration caused by the permittee's use of the right-of-way. Such repair must return the right-of-way to at least the same condition as existed before the permittee damaged the right-of-way. In the event the permittee fails to comply with this section, the borough may repair the right-of-way at the permittee's expense 24 hours after giving the permittee telephonic or facsimile notice of the need for repair or maintenance. Repair costs may be deducted from the bond posted for a size and weight permit or pursued through a personal action for right-of-way construction permits and size and weight permits. This section does not require a construction

permittee to perform right-of-way maintenance after construction is completed.

14.40.160 Right-of-way use permits — Traffic routing.

When traffic or lawful use of the right-of-way by others will be affected by the permittee's use of the right-of-way, the permittee shall so state on the permit application and shall provide signage and safeguards in accordance with the Alaska Traffic Manual and shall obtain any further permission for such routing from the appropriate entities including but not limited to the borough fire, emergency medical, police, and school bus transportation agencies.

14.40.170 Right-of-way use permits — Closing rights-of-way.

In the event the permittee may need to temporarily close a right-of-way, the permittee shall indicate on the permit application the proposed date, time and duration of the proposed closure. The director shall indicate on the permit whether the proposed closure is authorized. The director may require a date, time, or duration for right-of-way closure different from that proposed by the permittee if it is in the best interests of the borough. The permittee will be responsible for obtaining any further permission needed for an approved closure from the appropriate entities including but not limited to borough fire, emergency medical, police, and school bus transportation agencies.

14.40.180 Parking regulation — Authority.

Pursuant to KPB 14.14.040 the road service area board, under authority of the mayor, is authorized to establish parking limitations within areas of a right-of-way. To protect borough resources and the public health, safety, and welfare, the roads director may temporarily regulate parking within rights-of-way as set forth in KPB 14.40.200(D) by posting the affected right-of-way at the location to be regulated with a reasonable number of signs restricting or prohibiting parking.

14.40.190 Parking regulation — No parking.

No person or entity may park a vehicle or other equipment within a right-of-way if it has been posted as a no parking area without written permission of the roads director or his designee.

14.40.200 Parking regulation — Parking restrictions — Establishment.

A. Restrictions necessary. Parking restrictions are established on an as-needed basis depending on the circumstances applicable to a particular right-of-way, or section of a right-of-way.

B. Restrictions established. Parking restrictions may be established by the road service area board after being initiated in writing as follows:

1. by the road service area staff;
2. through a request by a property owner adjacent to the area for which the restrictions are to be considered; or
3. a person using that right-of-way.

C. Petition; notice; hearing. The written petition for parking restrictions shall be filed with the roads director who shall place the petition on the next available road service area board agenda. A summary of the proposed restriction shall appear in a newspaper of general circulation within the borough twice before the meeting, with the first publication being at least 14 days before the road service area meeting. If there is not adequate time for 14 days' notice of the proposed restrictions prior to the next road service area board meeting, the restrictions shall appear on the agenda for information and discussion purposes only, but the board must not act upon the restrictions

until a meeting which meets the 14-day notice requirement of this section. If a second road service area board meeting regarding the proposed restrictions is necessary due to the 14-day notice requirements of this section, a public hearing must be held at that meeting. At least one public hearing must be held before the road service area adopts the regulations. The roads director shall prepare a staff report regarding the proposed restrictions for the benefit of the road service area board in considering the restrictions.

D. Restrictions; immediate need. Notwithstanding the provisions of KPB 14.40.200(B), the roads director may establish temporary parking restrictions for particular rights-of-way or areas of rights-of-way for which he makes a determination of immediate need. Determinations of immediate need may be based on congestion; damage or potential damage to rights-of-way, adjacent properties and water bodies; and safety concerns. However, such restrictions must be published in a paper of general circulation in the borough once a week until the service area board holds a public hearing and determines whether to continue, modify, or rescind the road director's temporary parking restrictions. The notice requirements of KPB 14.40.200(C) shall apply to the road service area board's consideration of the road director's temporary parking restrictions based on immediate need.

E. Restrictions; resolution. The setting of particular parking restrictions shall be by action of the road service area board by resolution after determination that a need exists for restrictions. Authorized parking restrictions include, but are not limited to, limiting location of parked vehicles, duration of parking, time frames for parking, and total number of vehicles allowed in a right-of-way or section of right-of-way.

14.40.210 Parking regulation — Signage.

Parking restrictions imposed shall be posted with signs stating the restriction. If the violation of the restrictions may result in towing of a vehicle, the sign shall include a warning that vehicles in violation of the parking regulation may be towed. The sign shall include any monetary civil penalty scheduled for the violation.

14.40.220 Parking regulation — Signage notice.

Restrictions for particular rights-of-ways, or segments of rights-of-way, will not go into effect until 24 hours after placement of the signs imposing the restrictions. However, a provision for towing of a vehicle shall not go into effect until 48 hours after posting of the signs.

14.40.230 Parking regulation — Parking restrictions — Duration.

Parking restrictions shall continue until the road service area board terminates or modifies the restrictions. The road service area board may, after hearing comments or testimony from the public and reports from the road service area staff, terminate, continue, or modify the restrictions. The public notice and hearing requirements set forth in KPB 14.40.200(C) apply to termination or modification of parking restrictions.

14.40.240 Parking regulation — Violations — Civil penalties — Towing.

Vehicles or equipment parked within a right-of-way in violation of this regulation shall be towed at the owner's expense, in addition to a fine of up to \$250 for each day the parking regulation is violated as more specifically set forth in KPB 14.40.260.

14.40.250 Parking regulation — Civil penalty — Notice.

Notice of assessment of civil penalties for parking violations may be issued to the vehicle owner for parking violations, by the borough code compliance officer or such other persons as have been authorized by the mayor to issue such notices. The designated persons need not be employees of the Kenai Peninsula Borough. Issuance may be accomplished by sending the notice to the owner of the vehicle or by placing a copy of the notice on the vehicle for parking violations. It is not a defense that the owner of the automobile was not the operator at the time of the violation.

14.40.260 Civil penalties — Schedule.

In addition to other remedies afforded by law, the borough establishes the following schedule of civil fines for violation of KPB 14.14 and 14.40.

KPB 14.40.050	Unlawful Regulation of Traffic Flow; Barricading Right-of-Way	\$125.00
KPB 14.40.070(B)	Failure to Attain Right-of-way Construction or Size and Weight Permit	\$250.00
KPB 14.40.060	Violation of Permit Conditions (each condition)	\$150.00
KPB 14.40.190	Parking Violation, First Offense	\$100.00
KPB 14.40.190	Parking Violation, Second Offense — Same Owner/Same Vehicle	\$250.00
KPB 14.40.190	Parking Violation, Second Offense — Same Owner/Different Vehicle	\$250.00
KPB 14.40.270(B)	Failure to Respond to Citation/Complaint	\$ 75.00

Each day a violation occurs constitutes a separate violation.

14.40.270 Civil penalties — Citation — Answer — Hearing — Appeal.

A. Citation. A complaint or citation may be used as the charging document for violations set forth in the civil penalty schedule. The charging document shall state the fine, the ordinance or regulation section violated, that the recipient is entitled to a hearing to contest the citation, and that the recipient is allowed to testify and present evidence and witnesses. The citation shall set forth the procedures the recipient need follow in responding to the citation, and consequences of failure to respond.

B. Answer; payment. The recipient may respond to the charging document by paying the fine within 10 days of issuance of the citation or complaint or requesting a hearing on the citation form within 10 days of citation issuance. Failure to respond to a citation or complaint shall result in a fine of up to \$250, more specifically set forth in KPB 14.14.130.

C. Hearing. The hearing officer for parking and oversize/overweight permit violations shall be the roads director. The hearing officer for parking and construction permit violations is the planning director. The director shall set the hearing giving at least 15 days notice of the date, time

and place of the hearing. For good cause the director may delay the date of hearing. The director shall set the agenda for the hearing and may call witnesses and request additional evidence. The director may allow for telephonic participation in the hearing. If necessary the director may continue the hearing to gather additional evidence or take the subject matter of the hearing under advisement. Upon the presentation of the testimony, evidence, and witnesses the director shall issue a written decision with supporting findings and conclusions within five days of the hearing. The director may uphold the charge and fine, modify the charge, dismiss, or reduce the fine and issue whatever related compliance orders are necessary.

D. Appeal. The recipient may appeal the planning director's decision to the planning commission, and ultimately to the assembly, pursuant to KPB 21.20. The recipient may appeal the road director's decision to the assembly pursuant to the procedures set forth in KPB 21.20. The assembly's final decision may be appealed pursuant to Part 6 of the Alaska Rules of Appellate Procedure to the Superior Court.

E. Collection. Unpaid fines are collectible through filing actions in the trial courts of the State of Alaska and may include judgments for the fine, costs, and attorneys fees. Fines for charges appealed to superior court are subject to collection unless the appellant receives a stay pending appeal from the court. Arrangements for payment plans may be made by the director if the director determines it is in the borough's best interest.

14.40.280 Definitions.

The following definitions are applicable to these regulations.

- A. "Applicant" means the person requesting a right-of-way use permit from the borough.
- B. "Borough" means the Kenai Peninsula Borough.
- C. "Construction," "right-of-way construction," or "construction of right-of-way" means the building, erection, assembly, alteration, demolition, or repair (including, but not limited to, dredging, excavation, grading, culvert placement or replacement) of roads, streets, trails, paths, and other improvements in rights-of-way, or near rights-of-way which physically impact the rights-of-way.
- D. "Dedicated road right-of-way" or "right-of-way" means a right-of-way dedicated on a plat for road, street, or 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, excluding rights-of-way within the boundaries of an incorporated city.
- E. "Director" means the planning director or roads director of the Kenai Peninsula Borough, where neither director is specified.
- F. "Excavation" means the removal, carrying away, backfilling, tunneling, boring, bulldozing, digging out, leveling, clearing, or moving of earth or soil by manual or mechanical means.
- G. "Operator" means the person operating or driving vehicles or equipment, who may or may not be the owner of the vehicle or equipment.
- H. "Permittee" means the person granted a right-of-way use permit by the borough.
- I. "Recipient" means a person issued a citation or charging document from the Kenai Peninsula Borough.