

Introduced by:	Mayor
Date:	08/03/99
Shortened Hearing:	08/17/99
Action:	Enacted as Amended
Vote:	7 Yes, 0 No, 2 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 99-48**

**AN ORDINANCE AMENDING KPB 14.40, IN PART, REGARDING CONSTRUCTION
WITHIN BOROUGH RIGHTS-OF-WAY**

WHEREAS, KPB 14.40 was amended in 1998 to require all rights-of-way to be constructed to borough standards as set forth in KPB 14.06; and

WHEREAS, the borough receives requests to improve rights-of-way without meeting borough standards; and

WHEREAS, road improvement projects are not undertaken because of the expense associated with meeting the requirements set forth in KPB 14.40; and

WHEREAS, it is in the borough's and citizens' interest to allow the incremental improvement of borough roads; and

WHEREAS, the burden of improving a road to borough standards should not fall on a single applicant when other borough residents benefit from the construction; and

WHEREAS, allowing contractors to obtain seasonal construction permits will expedite the permitting process while protecting the borough's rights-of-way; and

WHEREAS, the borough does not maintain roads which are not certified for borough maintenance, but residents may wish to perform maintenance on these roads for safety and access; and

WHEREAS, it is necessary to hear this matter on shortened time because the construction season is drawing to a close;

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

SECTION 1. KPB 14.40.030 is hereby amended as follows:

14.40.030. Administration.

[SECTIONS 14.40.050 AND 14.40.060 OF T]These regulations, as they pertain to borough rights-of-way that have not been certified for maintenance by the borough road service area board, 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 THROUGH 14.40.110 OF T]These regulations, as they pertain to borough roads that have been certified for maintenance by the borough road service area board, 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 THROUGH 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.

SECTION 2. KPB 14.40.040 is hereby amended as follows:

14.40.040. Right-of-way use permits.

The borough shall issue [TWO] the following 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], which include the following types of permits:

1. Driveway permits for intersections within borough rights-of-way between private drives and borough rights-of-way.
2. Seasonal permits may be issued to someone holding a State of Alaska contractor's license. Such permits shall be valid from May 1 through November 15 of each year for all projects a contractor is constructing to the typical section under KPB 14.06, Appendix A, § V(A). Projects within the right-of-way not constructed to the typical section require a project-specific permit or a driveway permit. In order for the seasonal permit to remain in effect, the contractor must hold a current contractor's license issued pursuant to title 8 of the Alaska Statutes, and must not be in arrears in any financial obligations to the borough. A contractor must provide 48 hours' written notice to the borough prior to commencing construction on each individual road subject to the seasonal permit. Facsimile notice is acceptable. The contractor shall also provide a list of roads constructed under that year's seasonal permit no later than December 31 of the year in which the permit was granted.

3. Project-specific construction permits for all construction within a borough right-of-way that is not covered by a seasonal permit or a driveway permit. Project-specific permits require improvement of a right-of-way, and may require improvement to borough standards set forth in KPB 14.06, Appendix A.
- B. Maintenance permits. Maintenance permits are issued for citizen maintenance for borough rights-of-way. All maintenance and improvements of borough-maintained roads shall be performed in accordance with the road service area policies as adopted by the mayor.
- [B].C 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].D. 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].E. 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.

SECTION 3. KPB 14.40.060(A) is hereby amended as follows:

- 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, which contains the information required by KPB 14.40.050(C). The construction activity shall be conducted only in accordance with the issued permit conditions.

SECTION 4. KPB 14.40.060(B)(11) and (C) are hereby amended as follows:

11. Construction of rights-of-way for motor vehicle use within the Kenai Peninsula Borough Road Service Area under a seasonal permit shall meet the borough road standards set forth in KPB 14.06. All other construction projects are subject to either a driveway or a project-specific permit, and may be required to meet road construction standards pursuant to guidelines established by the mayor. Construction shall not damage the right-of-way, adjacent properties, or adjacent water bodies. [RIGHTS-OF-WAY FOR MOTOR VEHICLE USE WITHIN THE KENAI PENINSULA BOROUGH ROAD SERVICE AREA SHALL MEET BOROUGH ROAD STANDARDS AS SET FORTH IN KPB 14.06, AND APPLICANTS FOR RIGHT-OF-WAY CONSTRUCTION PERMITS MUST FOLLOW THE REQUIREMENTS OF THAT CHAPTER. IF

IT APPEARS FROM THE APPLICATION THAT THERE ARE MULTIPLE PARCELS BENEFITTED BY PROPOSED CONSTRUCTION A LOCAL IMPROVEMENT DISTRICT IN ACCORD WITH THE PROVISIONS OF KPB 14.31 AND 14.32 MAY BE FORMED AT THE OPTION OF THE OWNERS OF THE BENEFITTED PARCELS.

(A) THE FOLLOWING FACTORS SHALL BE CONSIDERED BY THE PLANNING DIRECTOR IN DETERMINING WHETHER EXCEPTIONS TO THE REQUIREMENT OF CONSTRUCTING VEHICULAR ACCESS ROADS TO BOROUGH STANDARDS MAY BE GRANTED:

(I) IF THE RIGHT-OF-WAY SERVES A SINGLE PARCEL WHICH CANNOT BE FURTHER SUBDIVIDED, CONSTRUCTION TO BOROUGH MAINTENANCE STANDARDS IS GENERALLY NOT REQUIRED.

(II) IF THE RIGHT-OF-WAY IS NOT INTENDED FOR MOTOR VEHICLE USE, BUT RATHER SOLELY FOR TRAIL USE SUCH AS BY PEDESTRIANS, BIKES, HORSES, ALL-TERRAIN VEHICLES, OR SNOW MACHINES, CONSTRUCTION TO BOROUGH STANDARDS IS NOT REQUIRED. THE BOROUGH MAY REQUIRE SIGNAGE DISALLOWING VEHICULAR ACCESS ON SUCH RIGHTS-OF-WAY.]

C. Discretionary conditions. The [PLANNING] director may impose the following discretionary conditions:

1. The permit may be subject to additional conditions [ESTABLISHED BY THE PLANNING DIRECTOR] to protect and manage borough rights-of-way by preventing damage to the rights-of-way and adjacent public and private property or water bodies.
2. The posting of a bond in favor of the borough or other security may be required for permits involving right-of-way construction, except driveway construction permits. The amount of bond shall be based on the length of right-of-way subject to construction. The bond shall be released upon the receipt of the as-built survey and the borough's determination that the construction has been performed in compliance with permit requirements, within the boundaries of the right-of-way, and does not pose a threat to the right-of-way or adjacent lands and water bodies. The bond warrants the permittee will faithfully observe the terms and conditions of the permit and may be used to defray any costs for restoration and rehabilitation of the property, including without limitation environmental damage and cleanup. The bond may be in the form of a certificate of deposit ("CD") of a term specified by the [PLANNING DIRECTOR] borough appropriate to the period of time it will take to complete construction. The certificate of deposit shall be in the borough's name, deposited with a duly licensed commercial bank having a branch office in Soldotna, Alaska. Principal and interest may be applied to defray any costs incurred by the borough in rehabilitation and restoration of the right-of-way. Upon satisfactory compliance with all permit conditions and termination of the permit, any balance remaining, including any remaining accrued interest, will be returned to the permittee. The security, bond

or CD shall not be the borough's exclusive monetary remedy if the costs of restoration and cleanup exceed the amount of the CD.

3. A right-of-way construction permit may be denied if conditions cannot be placed on it to prevent damage to the rights-of-way, adjacent public or private property, or water bodies. Dedication of right-of-way alone does not mean a construction permit will be issued if issuance may damage the right-of-way, adjacent private or public property, or watercourses and water bodies.

D. 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 parallel and within 50 feet of a bank of a watercourse 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, water body or watercourse.

SECTION 5. KP14.40.065. Maintenance permits.

A. A maintenance permit is required for rights-of-way which are subject to citizen maintenance. Permits for citizen maintenance on borough rights-of-way that have not been certified for maintenance by the borough shall be issued by the planning director. Permits for citizen maintenance on roads that have been certified for maintenance by the borough shall be issued by the roads director.

B. Maintenance includes, but is not limited to, snow removal; grading; replacing lost gravel (not to exceed a depth of six inches); reshaping shoulders, slopes, and ditches; unplugging culverts and clearing ditches; filling potholes; dust control; and other similar activities consistent with the goals set forth in subsection A. Maintenance does not include such activities as relocating a road; survey and design of road; widening a road; adding lost material in excess of six inches in depth; and other such activities that would constitute road construction as opposed to road maintenance. Construction within a borough right-of-way must comply with the right-of-way construction permit provisions of KP14.40.

C. Citizens applying to perform maintenance on a borough right-of-way must file an application which shall include: the applicant's name, mailing address, physical address, and phone number; the name of the person or contractor performing the work; the name of the road and the location where the maintenance will be performed; the time frame within which the maintenance will be performed; the quantity and quality of material to be used in performing the maintenance; and the equipment to be used in performing the maintenance. A single application may be filed for several rights-of-way or for ongoing seasonal maintenance. Applicants for seasonal maintenance shall reapply each year.

D. Citizen maintenance shall limit interference with the traveling public, and shall not create a hazard to the road, the traveling public, or adjacent properties. The director may

require security in the form of a bond, certificate of deposit, or certified check or other practical means to ensure compliance with the terms of these application procedures. The citizen shall hold the borough harmless for the maintenance that is the subject of the application.

E. The director shall issue approvals or denials of applications for citizen road maintenance. If the basis for denial is that the project constitutes construction, and not maintenance, the applicant shall be advised of the right-of-way construction permit process.

F. There shall be no fee for citizen maintenance applications.

SECTION 6. KPB 14.40.150 is hereby amended as follows:

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 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.

SECTION 7. KPB 14.40.155 is hereby amended as follows:

14.40.155. Temporary road closure.

The [ROADS] director may temporarily close a road with a physical barricade and signage where damage to the right-of-way or a threat to public safety is presented by continued use of the road. The road may be reopened when the [ROADS] director determines that the condition causing the threat to public safety or damage to the right-of-way has been repaired or alleviated.

SECTION 8. KPB 14.40.260 Civil Penalties-Schedule.

<u>KPB 14.40.065</u>	<u>Failure to obtain maintenance permit; violation of permit conditions</u>	<u>\$25.00</u>
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SECTION 9. KPB 14.40.270(C) is hereby amended as follows:

- C. **Hearing.** [THE HEARING OFFICER FOR 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.

SECTION 10. KPB 14.40.280 is hereby amended as follows:

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. "Contractor" is defined as set forth in AS 08.18.171(4).
- [C]D. "Construction," "right-of-way construction," or "construction of right-of-way" means the improving, 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]E. "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]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. "Maintenance is defined as work performed on a routine basis to maintain a road in its originally constructed condition, (or subsequently improved condition), or to prevent deterioration of the road. Maintenance does not include road construction or improvement.

[G]H. "Operator" means the person operating or driving vehicles or equipment, who may or may not be the owner of the vehicle or equipment.

[H]I. "Permittee" means the person granted a right-of-way use permit by the borough.

[I]J. "Recipient" means a person issued a citation or charging document from the Kenai Peninsula Borough.


[J]K. "Road" means in this chapter a right-of-way which has undergone improvement by construction and placement of material making the surface of the right-of-way suitable for motor vehicles which may lawfully travel on state highways.

[K]L. "Watercourse" means a running stream of water fed from natural or permanent sources such as rivers, creeks, glaciers, and rivulets which flows in a particular direction, though it need not flow continuously, and may be periodically dry. It must flow in a definite channel, having a bed or banks, and usually discharge itself into another stream or water body. It must be more than mere surface drainage.

SECTION 11. This ordinance shall take effect immediately upon its adoption.

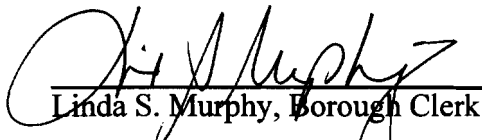
SECTION 12. The amendments to KPB 14.40.060(B) (11) adopted in this ordinance shall sunset on December 31, 2000, and the previous language as adopted in Ordinance 98-09 shall be reinstated, unless the assembly by ordinance has amended or extended that date.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 17TH DAY OF AUGUST, 1999.



Ronald Wm. Drathman, Assembly President

ATTEST:



Linda S. Murphy, Borough Clerk

