

Introduced by:	Martin
Date:	04/01/08
Hearing:	05/06/08
Action:	Postponed until 05/20/08
Date:	05/20/08
Action:	Postponed until 06/17/08
Date:	06/17/08
Action:	Postponed until 08/05/08
Date:	08/05/08
Action:	Enacted as Amended
Vote:	7 Yes, 2 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2008-10**

**AN ORDINANCE AMENDING KPB TITLE 20 REQUIRING DOCUMENTED LEGAL
ACCESS TO SUBDIVISIONS WITHIN THE KENAI PENINSULA BOROUGH**

WHEREAS, AS 29.40.200(d) prohibits the State from failing to provide legal access to subdivisions; and

WHEREAS, KPB 20.20.200 requires each lot in a subdivision to abut a dedicated street; and

WHEREAS, there is no requirement currently within borough code that requires the subdivision itself to have documented constructible legal access; and

WHEREAS, there are a variety of ways in which legal access may be documented; and

WHEREAS, it would be in the best interest of the citizenry to be assured that subdivisions have legal access and in the best interest of subdividers to clarify how legal access requirements may be met; and

WHEREAS, the Kenai Peninsula Borough Comprehensive Plan Goal 5.3 is to establish the means by which the borough can improve the likelihood of roads being constructed to borough standards; and

WHEREAS, Goal 5.3, objective 2(C) of the 2005 comprehensive plan is to identify unconstructed section line and other existing roadway easements and rights-of-way in efforts to promote future roads be constructed to borough standards; and

WHEREAS, it is difficult to build a road to borough standards if there is no legal access, or the legal access is not constructible or the parcel being accessed is remote; and

WHEREAS, the planning commission reviewed this ordinance on April 28, 2008 and recommended enactment by majority consent;

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

SECTION 1. That KPB 20.08.065 is hereby enacted as follows:

20.08.065. Legal access.

“Legal access” means a contiguous section line easement, platted public right-of-way, or public access granted by recorded document and acceptable to the borough planning commission, all of which must be constructible from a road right-of-way maintained by a municipality or State of Alaska DOTPF to a parcel.

SECTION 2. That KPB 20.20.035 is hereby enacted as follows:

20.20.035. Legal access.

A. *Legal access required.* The applicant shall provide the platting division an access plan verifying the existence of legal access to the subdivision boundary which shall consist of the documents depicting the access, a map depicting the location of the access, and topographic information indicating that construction which meets the design requirements set forth in KPB 20.20 is practical and economical. In this title, legal access exists where an unrestricted, public right-of-way connects the subdivision to the state highway system or a regularly served public airport and one of the following is met:


1. ingress and egress will be provided over section line easements located within a surveyed section;
2. the applicant provides copies of borough-accepted recorded conveyances creating the public easement or right-of-way where the access is located;
3. that access is a State of Alaska maintained road or municipal maintained road;
4. the applicant provides documentation satisfactory to the borough demonstrating that public legal access is guaranteed through judicial decree; or
5. the right-of-way is an easement or fee interest at least 60 feet in width dedicated or irrevocably conveyed to the public and acceptable to the planning commission.

B. *Waivers.* The following situations may qualify for a waiver of the legal access requirement:

1. Upon finding that no practical means of providing road access to a proposed subdivision exists and upon presentation of credible and convincing evidence by the applicant that permanent public access by air, water, or railroad is both practical and feasible, the planning commission may waive the legal access requirements of subsection A. If access other than by road is approved, the mode of access shall be noted on the plat.
2. Where only a 30-foot dedication exists over all or a portion of the legal access to a subdivision, the provisions of subsection A may be considered met if it is reasonable to expect that the other 30 feet will be dedicated in the future.
3. Where a road is in use for physical access but there is no right-of-way document for all or part of the access road, the provisions of subsection A may be considered met if it is reasonable to expect that the right-of-way will be dedicated in the future.


SECTION 3. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 5TH DAY OF AUGUST, 2008.

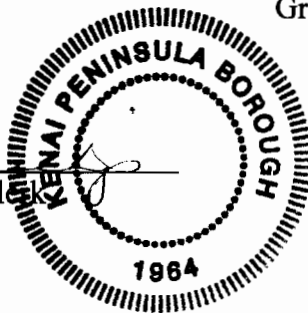


 Grace Merkes, Assembly President

ATTEST:



 Johni Blankenship, Borough Clerk



Yes: Fischer, Gilman, Long, Martin, Smith, Sprague, Superman
 No: Knopp, Merkes
 Absent: None