

Introduced by: Popp, Mayor
Date: 11/21/00
Shortened Hearing 12/12/00
Action: Enacted as Amended
Vote: 7 Yes, 0 No, 2 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2000-57**

**AN ORDINANCE AMENDING KPB 14.40 REGARDING CONTROL AND
CONSTRUCTION OF BOROUGH RIGHTS-OF-WAY**

WHEREAS, KPB 14.14 was the original enabling legislation for the regulations adopted by KPB 14.40, and KPB 14.14 is substantially reiterated in KPB 14.40; and

WHEREAS, it is confusing for persons involved in the permitting system who may not realize the pertinent ordinances are in two different chapters; and

WHEREAS, it has been confusing for the public to have both the planning department and the road service area issuing right-of-way permits; and

WHEREAS, the road service area has the experience and knowledge to issue right-of-way permits, but it would be the best use of borough resources to have permit enforcement remain with the code compliance officer in the planning department; and

WHEREAS, the RSA board recommended adoption of the changes proposed by this ordinance at its November 7, 2000, board meeting; and

WHEREAS, hearing on shortened time is necessary because certain provisions of Ordinance 99-48 are sunsetted for December 31, 2000, and the provisions of KPB 14.40.050(A)(11) will be reinstated upon sunset, and there will be less than 25 days between introduction and public hearing;

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

SECTION 1. That KPB 12.04.010 is amended as follows:

12.04.010. Parking regulation--Parking restrictions--Establishment.

[Pursuant to KPB 14.14.040, u]Under authority of the mayor, the road service area board is authorized to establish parking limitations within borough-maintained roads. To protect borough resources and the public health, safety, and welfare, the roads director may temporarily regulate parking within roads as set forth in KPB 12.04.030(D) by posting the affected road at the location to be regulated with a

reasonable number of signs restricting or prohibiting parking. The road service area board may adopt policies to implement the provisions of this chapter.

SECTION 2. That KPB 12.06.010 is amended as follows:

12.06.010. Authority—Administration.

The borough may cause to be removed from public property and borough roads abandoned, wrecked, dismantled, or inoperative vehicles following the procedures set forth in AS 28.11.010-110. The roads director or designee shall administer this chapter and be the hearing officer [FOR BOROUGH-MAINTAINED ROADS.] The planning director or designee shall administer this chapter and be the hearing officer for borough property [AND ROADS NOT CERTIFIED FOR MAINTENANCE BY THE ROAD SERVICE AREA]. Specific procedures consistent with AS 28.11 and this chapter may be adopted by road service area board or planning commission resolution as appropriate.

SECTION 3. That KPB 14.14 is repealed in its entirety.

SECTION 4. That Section 12 of Ordinance 99-48, providing that KPB 14.40.060(B)(11) shall sunset on December 31, 2000, is hereby repealed.

SECTION 5. That KPB 14.40.010 is amended as follows:

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] promote responsible use of borough rights-of-way [ARE USED RESPONSIBLY, PURSUANT TO THE AUTHORITY GRANTED BY KENAI PENINSULA BOROUGH CHAPTER 14.14.010, ET SEQ].

SECTION 6. That KPB 14.40.030 is amended as follows:

14.40.030. Administration.

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] roads director, under the direction of the mayor, unless the mayor authorizes another person or body to administer all or portions of [THIS] these regulations. [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.] Enforcement of violations shall be performed with assistance from

the planning department's code compliance staff. 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 7. That KPB 14.40.035 is enacted as follows:

14.40.035. 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 construction, improvement, or maintenance of a road or driveway within the right-of-way and then only to the extent necessary for the construction, improvement, or 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 road service area resolutions adopted consistent with this chapter.
- 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.

SECTION 8. That KPB 14.40.040(A) is amended as follows:

14.40.040. Right-of-way use permits.

The borough shall issue the following types of right-of-way use permits for borough rights-of-way:

A. *Right-of-way construction permits.* Right-of-way construction permits are issued for construction of roads, driveways, trails and any blockading which impedes traffic flow or lawful use of rights-of-way related to construction, 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] Road Construction Standards, § 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] Road Construction Standards.

SECTION 9. That KPB 14.40.060(B)(11) is 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] road service area board policies approved by the mayor. Construction shall not damage the right-of-way, adjacent properties, or adjacent water bodies.

(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 snowmachines, construction to borough standards is not required. The borough may require signage disallowing vehicular access on such rights-of-way.

SECTION 10. KPB 14.40.065(A) is amended as follows:

14.40.065. 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. A maintenance permit is not required for snow removal on roads not certified for maintenance by the road service area.

SECTION 11. That KPB 14.40.130 is amended as follows:

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

The applicant for a [CONSTRUCTION PERMIT OR OVERSIZE/OVERWEIGHT] permit may appeal the director’s determination to the superior court 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.

SECTION 12. That KPB 14.40.260 is amended as follows:

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 14.40.060	Violation of Permit Conditions (each condition)	\$150.00
KPB 14.40.065	Failure to Obtain Maintenance Permit; Violation of Permit Conditions	\$25.00
KPB 14.40.070(B)	Failure to Obtain Right-of-way Construction or Size and Weight Permit	\$250.00
KPB 14.40.175	Damage to Right-of-way	\$100.00
KPB 14.40.270(B)	Failure to Respond to Citation/Complaint	\$75.00

Each day a violation occurs constitutes a separate violation.

SECTION 13. That KPB 14.40.280 is 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).

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, 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.

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.

F. "Director" means the [PLANNING DIRECTOR OR] roads director of the Kenai Peninsula Borough, [WHERE NEITHER DIRECTOR IS] unless otherwise specified.

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.

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

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

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

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.

L. "Trail" means clearing or construction of a right-of-way for access by pedestrians, bikes, horses, all-terrain vehicles, snow machines, or other motorized vehicles which are designed primarily for off-road use.

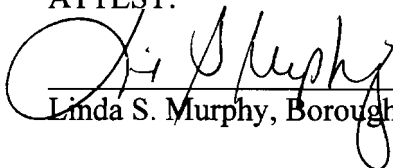
[L]M. "Watercourse" means a running stream of water fed from natural or permanent sources such as rivers, creeks, glaciers, and rivulets which flows in a particular direction, though it need not flow continuously, and may be periodically dry. It must flow in a definite channel, having a bed or banks,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

SECTION 14. This ordinance takes effect immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 12TH DAY OF DECEMBER, 2000.


Timothy Navarro, Assembly President

ATTEST:


Linda S. Murphy, Borough Clerk

