

Introduced by:	Mayor
Date:	06/16/20
Hearing:	08/04/20
Action:	Enacted as Amended
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-32**

**AN ORDINANCE AMENDING KPB 1.24, GENERAL PENALTY, KPB 12.04,
PARKING REGULATIONS, AND KPB 14.40 RIGHT OF WAY PERMITS, TO
REPLACE CIVIL FINES WITH CITATIONS TO IMPROVE ENFORCEMENT AND
BE CONSISTENT WITH OTHER RECENT CODE UPDATES**

- WHEREAS,** the Kenai Peninsula Borough Road Service Area (“RSA”) has the authority to regulate parking within borough rights-of-way pursuant to KPB 12.04 Parking Regulations; and
- WHEREAS,** the RSA is currently working on several updates and amendments to the borough code pertaining to roads; and
- WHEREAS,** as the borough code is updated, civil fines are being replaced with citations which are more enforceable; and
- WHEREAS,** as matters come up for review, chapters and sections pertaining to roads are reviewed and updated as necessary; and
- WHEREAS,** having recently reviewed a matter pertaining to KPB 12.04, Parking Regulations, it is apparent that the section on civil fines needs to be updated to parallel the remainder of the borough code updates; and
- WHEREAS,** as summer visitors have begun arriving on the Kenai Peninsula, the issue of recreational vehicles blocking borough rights-of-way and preventing regular maintenance has arisen; and
- WHEREAS,** while the borough has code language for these situations, that code language calls for civil fines which are impractical and would be very costly and difficult for an out of state visitor to contest; and
- WHEREAS,** removing the civil fines and substituting them with a citation format not only allows for more realistic enforcement, it also allows for significant cost savings to individuals and better opportunities to contest matters which they may feel are in error; and
- WHEREAS,** at its meeting held on May 12, 2020, the RSA Board recommended approval by the passage of RSA Resolution 2020-004;

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

SECTION 1. That KPB 1.24.090 is hereby amended as follows:

1.24.090. Minor offense penalty schedule.

<u>Section</u>	<u>Offense Title</u>	<u>Fine Amount</u>
KPB 5.12.117(B)	False Representations re: Exemptions on Property Taxes	\$500
KPB 5.12.380(B)	False Representations re: Property Taxes	\$500
KPB 5.18.620(A)	Failure to Timely File Sales Tax Returns or Remit Taxes	\$500
KPB 5.18.630	Failure to Keep Adequate Sales Tax Records	\$500
KPB 5.18.640(A)	Misuse of Resale or Exempt Card	\$500
KPB 10.18.020	Use of Fireworks within the Borough	\$500
KPB 10.18.050	Sale of Fireworks	\$500
KPB 10.20.080	Fail to Report Hazardous Materials	\$750
KPB 11.10.030	Operation of Gambling Establishment or Game of Chance	\$1,000
KPB 12.04.020	Parking in a designated No Parking Area	\$100
KPB 12.04.070	Parking in Manner that Impedes Traffic or Maintenance	\$100
KPB 12.08.020(b)	Abandoned Vehicle on Property not Designated for Vehicle Disposal	\$100
KPB 12.08.030(c)	Abandoned Vehicle on Private Property	\$100
KPB 12.08.040(a)	Junk Vehicle Placed or Remaining on Borough Property or ROW	\$100
KPB 12.40.300(A)	Encroachment without a Permit	\$100
KPB 20.10.030(F)	Sale of subdivision land prior to Final Plat	\$750

SECTION 2. That KPB 12.04.080 is hereby amended, as follows:

12.04.080. Parking regulation — [VIOLATIONS — CIVIL PENALTIES] — Towing.

Vehicles or equipment parked on a road in violation of this regulation shall be towed at the owner's expense[, IN ADDITION TO A FINE OF UP TO \$250.00 FOR EACH DAY THE PARKING REGULATION IS VIOLATED AS MORE SPECIFICALLY SET FORTH IN KPB 12.04.100].

SECTION 3. That KPB 12.04.085 is hereby enacted to read as follows:

12.04.085. Violations and penalties.

Any violation of this chapter is an infraction. The fine for offenses in this title is the fine provided in the minor offense fine schedule found in KPB 1.24.090. If no fine is listed in the fine schedule for an offense, then the defendant must appear in court and is subject to the fine provided in KPB 1.24.070.

SECTION 4. That KPB 12.04.090 Parking Regulation – Civil Penalty – Notice is hereby repealed.

SECTION 5. That KPB 12.04.100 Civil Penalties – Schedule is hereby repealed.

SECTION 6. That KPB 12.04.110 Civil Penalties – Citation – Answer – Hearing – Appeal is hereby repealed.

SECTION 7. That KPB 14.40.300 Remedies for violations – is hereby amended to add a new paragraph (A), as follows:

A. *Infractions.* Any violation of this chapter is an infraction. The fine for offenses in this title is the fine provided in the minor offense fine schedule found in KPB 1.24.090. If no fine is listed in the fine schedule for an offense, then the defendant must appear in court and is subject to the fine provided in KPB 1.24.070.

B.[A] *Court Action.* For any violation of this title the borough may bring a civil action in superior court against the violator for any one or more of the following:

1. To enjoin or abate the violation. Upon application for injunctive relief and a finding that a person is in violation or threatening a violation, the superior court shall enjoin the violation.
2. To require the restoration of any structure, vegetation, land, water body or other thing upon the land that is destroyed, damaged, altered or removed in such violation.
3. To recover damages to the borough caused by the violation.
4. To recover a civil penalty not exceeding \$1,000.00 for each violation, pursuant to AS 29.25.070(b) as now enacted or hereinafter amended.

C.[B] *Borough Enforcement Proceeding.* For any violation of this chapter, the borough may bring an administrative enforcement proceeding under KPB 14.40.320 - .340 against the violator for any one or more of the following:

1. To correct or abate the violation.
2. To recover a civil fine not exceeding \$500.00 per day for each violation in accord with the fine schedule set forth at KPB 14.40.380.

D.[C] *Cease and desist order.*

1. The RSA director may issue a cease and desist order if the director determines that any person or entity is violating the terms of a RSA permit or KPB chapter 14.40. The order may require that the person or entity immediately cease all activity within the right-of-way, even if previously permitted to conduct work, upon receiving notice of the order. Notice may be given in person, or via telephone, e-mail, or facsimile.
2. The person or entity may request an informal meeting with the RSA director to attempt to resolve the violation. The RSA director has discretion to engage in an informal review and may require remedial action, modify the terms of a permit, or establish new permit conditions at the informal meeting. Any such changes must be consistent with mandatory conditions pursuant to KPB chapter 14.40 and the original terms and intent of the permit. The cease and desist order will remain in effect until such time as the RSA director withdraws the order.
3. The RSA director may post a cease and desist order within the affected right-of-way if the person violating chapter KPB chapter 14.40 cannot be ascertained. Removal of a posted notice is subject to the fines set forth in KPB 14.40.380.
4. The person or entity subject to a cease and desist order is entitled to review of the RSA director's decision before the RSA board under KPB 14.40.130.

E.[D] *Permit revocation.*

1. If the RSA director and permittee do not resolve permit violation(s) informally under KPB 14.40.300(C)(2), or if the violations cannot be resolved informally, the RSA director may revoke any permit issued under KPB chapter 14.40. The RSA director is not required to engage in an informal resolution process before revoking a permit.
2. A permit may be revoked at the discretion of the RSA director for failure to comply with the terms of the permit or borough code, or for impacts to the exercise of borough duties, access, or public safety. The permittee is entitled to review before the RSA board regarding the revocation subject to KPB 14.40.130.
3. A permittee who continues with work under a revoked permit is subject to fines as set forth in KPB 14.40.380.

E.[E] No remedy provided in this section is exclusive, but is cumulative of all other remedies available under this chapter or at law or in equity.

SECTION 8. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 4TH DAY OF AUGUST, 2020.

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes: Bjorkman, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper

No: None

Absent: Blakeley

