

Introduced by:	Mayor
Date:	07/07/15
Hearing:	08/18/15
Action:	Enacted as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2015-22**

**AN ORDINANCE AMENDING KPB CHAPTER 14.40 REGARDING THE USE AND
CONTROL OF BOROUGH RIGHTS-OF-WAY AND ENFORCEMENT OF RIGHT-OF-
WAY REGULATIONS**

WHEREAS, Kenai Peninsula Borough Code, Title 14 Chapter 40 regulates the use of rights-of-way within the borough but outside of city limits; and

WHEREAS, KPB Chapter 14.40 has not undergone a comprehensive revision since the year 2000; and

WHEREAS, a comprehensive review of KPB Chapter 14.40 was undertaken by the administration beginning in 2013 to ensure that the code is up to date, practical to administer, and meeting the needs of the road service area; and

WHEREAS, several significant areas of concern were identified for substantive revision; and

WHEREAS, in particular, right-of-way encroachments have become a significant issue for the road service area, and the current version of code does not regulate encroachments; and

WHEREAS, the enforcement procedures set forth in KPB chapter 14.40 are vague and difficult to implement in their current form; and

WHEREAS, clarification of certain right-of-way violations would assist the public as well as road service area and code compliance staff; and

WHEREAS, KPB Chapter 14.40 has further been revised to improve the internal consistency of this chapter; and

WHEREAS, updating KPB Chapter 14.40 supports the goals of the borough's 2005 Comprehensive Plan; and

WHEREAS, the Road Service Area board reviewed this ordinance at its August 11, 2015, meeting and recommended approval; and

WHEREAS, the Planning Commission reviewed this ordinance at its August 10, 2015, meeting and recommended approval by unanimous consent;

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

SECTION 1. That KPB Chapter 14.40 is hereby amended as follows:

CHAPTER 14.40. REGULATIONS GOVERNING THE IMPOSITION OF 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 promote responsible use of [B]orough rights-of-way.

14.40.020. Scope.

These regulations set forth size and weight restrictions and govern construction, [AND] blockage, and use of [B]orough 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 [B]orough.

14.40.030. Administration.

These regulations shall be administered by the [ROADS] road service area (“RSA”) 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.

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 in the road service area:

- A. [EXCEPT AS PROVIDED IN THIS CHAPTER, N] 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 [B]orough 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.
- D. No person shall construct, install or place objects in a right-of-way without an encroachment permit. Permits shall only be issued subject to the conditions set forth in this chapter and any road service area resolutions adopted consistent with this chapter.

14.40.040. Right-of-way use permits.

The [B]orough 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] related blockages which impede[s] 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 [B]orough rights-of-way between private drives and [B]orough rights-of-way.
 Project-specific construction permits for all construction within a [B]orough right-of-way that is not covered by a driveway permit. Project-specific permits require improvement of a right-of-way, and may require improvement to [B]orough standards set forth in KPB 14.06, Road Construction Standards.
- B. *Maintenance permits.* Maintenance permits are issued for citizen maintenance for [B]orough rights-of-way. All citizen maintenance [AND IMPROVEMENTS] of [B]orough-maintained roads shall be performed in accordance with the road service area code requirements and policies as adopted by the [MAYOR] RSA board.
- C. *Oversize and overweight permits.* Vehicle oversize and overweight permits are issued by the [ROADS] RSA 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.

- D. Encroachment permits. Encroachment permits are issued by the RSA director for objects existing or to be constructed, installed or placed within a borough right-of-way by a private party or other non-borough entity.
- E[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.
- E[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 RSA director has discretion to determine how to resolve conflicts over right-of-way permits in the [B]orough's best interest.

14.40.050. [RIGHT-OF-WAY C] 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 which impedes lawful use of a constructed right-of-way, or right-of-way under construction. Where the regulation of the flow of traffic, barricade, or blockage is not related to a planned or ongoing construction project, an encroachment permit is required.
- C. *Information required.* The following information shall be required for all applications to construct, improve, or alter a borough right-of-way:
1. A statement of the length and width of right-of-way to be constructed, the proposed uses after construction, and a drawing on the plat of the location and proposed design and method of the construction;

Approximate locations of flood plain, floodways, wetlands, streams, lakes, or other water bodies adjacent to or within 50 feet of the outer boundaries of the right-of-way;
 3. Approximate grades of the natural terrain and final grade of the proposed road;
 4. Soil conditions of the area subject to construction;
 5. Identification of all properties to be served or accessed by the proposed construction;

6. Amount, type and placement of materials used in construction; and
7. Where information provided by existing topographic maps, aerial photography, and photographs is inadequate to accurately reflect conditions of the right-of-way or potential problems created or exacerbated by construction, additional information, surveys, or engineering analysis may be required prior to issuance of a permit.

14.40.060. Construction [P]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 by filing a[N] complete 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.
- B. *Mandatory conditions.* All construction 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.

Driveways or roads crossing utility installations shall cross as nearly perpendicular as possible to the utility line. The line locator phone number shall be included on the permit form by the borough.
 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 and provide adequate snow storage areas. Gravel may not be mined from any borough right-of-way unless the permittee has specific prior written approval by [RSA STAFF] the RSA director.
 5. The permittee must agree to comply with the terms, conditions and requirements of KPB Chapter 14.40, and any regulations adopted pursuant to this chapter.
 6. All permits shall contain an expiration date determined by the [ROADS] RSA director.
 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 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, except for acts or omissions solely attributable to the borough.

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. Per KPB 14.40.300, [V]violation of the permit's terms may result in its revocation [TERMINATION AND/] or other administrative or court action [AN ASSESSMENT OF PENALTIES] against the permittee. The borough reserves the right to revoke the permit at any time for its convenience.
11. [CONSTRUCTION PROJECTS ARE SUBJECT TO EITHER A DRIVEWAY OR A PROJECT-SPECIFIC PERMIT, AND MAY BE REQUIRED TO MEET ROAD CONSTRUCTION STANDARDS PURSUANT TO ROAD SERVICE AREA BOARD POLICIES APPROVED BY THE MAYOR.] Construction shall not damage the right-of-way, adjacent properties, or adjacent water bodies.

C. *Discretionary conditions.* The RSA director may impose the following discretionary conditions:

1. The permit may be subject to additional conditions 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.

The posting of a [BOND] security 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] the security 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] security 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] security may be in the form of a certificate of deposit

("CD"), [OF A TERM SPECIFIED BY THE 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.] bond or certified check.

a. [UPON SATISFACTORY COMPLIANCE WITH ALL PERMIT CONDITIONS AND] After a period of one year from the date of termination of the permit, the security shall be released and any balance remaining, including any remaining accrued interest, will be returned to the permittee, as long as the borough determines the construction was performed in compliance with the permit conditions, within the boundaries of the right-of-way, does not pose a threat to the right-of-way or adjacent land and water bodies, remains in reasonably good condition, and continues to meet all applicable road standards and/or approved plans or agreements.

b. 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] security.

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.

4. Upon completion of construction, the permittee shall provide an as-built drawing prepared by a professional land surveyor registered to practice in Alaska under AS 8.48, if deemed necessary by the [ROADS] RSA director.

D. [*Reserved.*]

14.40.061. Additional requirements for waterbody access and crossing permits.

A. *Stream crossing permit conditions.*

1. A project-specific permit issued pursuant to KPB 14.40.040—14.40.060 is required for waterbody crossings where a dedication crosses a waterbody catalogued as important to the protection of anadromous fish under [AS 41.14.870(A), WHICH SHALL BE RENUMBERED AS] AS 16.05.871 [EFFECTIVE JULY 1, 2008,] as now enacted or hereinafter amended.

- [2. PROJECT-SPECIFIC PERMITS FOR CROSSING AN ANADROMOUS WATERBODY WITHIN A DEDICATED RIGHT-OF-WAY WILL ONLY BE ISSUED UPON RECEIPT BY THE RSA OF AN APPLICANT'S COMPLETED APPLICATIONS FOR PROJECT PERMITS TO THE UNITED STATES ARMY CORPS OF ENGINEERS AND ALASKA DEPARTMENT OF NATURAL RESOURCES OFFICE OF HABITAT MANAGEMENT AND PERMITTING, CHANGED AFTER JULY 1, 2008 TO THE ALASKA DEPARTMENT OF FISH AND GAME DIVISION OF HABITAT. IT SHALL BE THE SOLE RESPONSIBILITY OF ALL APPLICANTS FOR PROJECT-SPECIFIC PERMITS TO ENSURE COMPLIANCE WITH ALL APPLICABLE STATE AND FEDERAL LAW, INCLUDING PERMITTING REQUIREMENTS.]

Project specific construction permits for crossing an anadromous waterbody within a dedicated right-of-way will only be issued upon receipt by the RSA director of applicant's written certification that s/he has obtained all other applicable permits for the project, including but not limited to permits issued by the Army Corps of Engineers, Kenai Peninsula Borough, Alaska Department of Fish & Game, Alaska State Parks, and the U.S. Fish & Wildlife Service. It shall be the sole responsibility of all applicants for project-specific construction permits to ensure compliance with all applicable state and federal law, including permitting requirements.

3. Anadromous waterbody crossings and approaches shall be designed to withstand a 100-year flood event as defined by [KPB 21.06.020(K)] KPB 21.06.070. The crossing shall be designed by a licensed professional civil engineer. The design shall be presented to the RSA board for review and approval prior to construction. The engineer shall certify that the crossing and approaches are constructed to withstand a 100-year flood event.
4. Project specific permits issued pursuant to KPB 14.40.060 that permit work within a right-of-way within 250 feet of the ordinary high water mark on both sides of a dedicated crossing of an anadromous waterbody catalogued under [AS 41.14.870(A), RENUMBERED AS] AS 16.05.871 [EFFECTIVE JULY 1, 2008,] shall require a crossing to be constructed within the dedicated right-of-way as a permit condition.

- B. *Waterbodies.* Right-of-way construction permits pursuant to KPB 14.40.040—14.40.060 will not be issued to construct any part of a road or driveway or other development within the right-of-way where the construction or development will be parallel and within 100 feet of the ordinary high water mark of a watercourse or 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, waterbody, or watercourse.

- C. *Development conditions for rights-of-way accessing water bodies.* No development within 100 feet of the high water mark of a waterbody within a right-of-way providing access to the waterbody may occur without a permit. All permits issued under this section shall be submitted to the RSA board for its consideration. A written RSA staff report shall be provided to the RSA board with every permit application. The staff report shall include comments from the planning department. The RSA board shall make written findings to support denial or issuance of the permit. There must be facts which support the following standards in order to issue a waterbody public access permit.
1. Any development in the right-of-way will not be detrimental to the waterbody, or any potential detriment is mitigated by conditions placed on the permit;

Any development in the right-of-way will not be detrimental to adjacent public or private property; and
 3. The public benefit of development in the right-of-way outweighs the potential detriment to the public interest caused by the development. Any detriment to the public interest must be mitigated through permit conditions to the maximum extent reasonably possible.

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 shall be issued by the [ROADS] RSA director. A maintenance permit is not required for snow removal on roads not certified for maintenance by the road service area.
- 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 KPB 14.40.060.
- 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, email address if applicable, 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 RSA 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] permit procedures. The citizen shall hold the borough harmless for the maintenance that is the subject of the [APPLICATION] permit.
- E. The RSA 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.

14.40.070. Oversize and overweight permits—Size and weight restrictions.

- A. *Regulation establishment.* If it is determined by the [ROAD SERVICE AREA] RSA director that oversize and overweight regulations are needed within the road service area, the [ROAD SERVICE AREA] RSA director shall decide 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 once before imposition, with the first date of published notice being at least seven days prior to imposition. The notice shall be published two additional times in a newspaper or newspapers of general circulation within the road service area while the restrictions are in place. The [ROADS] RSA director shall provide a report of the restrictions to the service area board prior to or at the next meeting of the road serviced area board. The [ROAD SERVICE AREA] RSA board may modify the restrictions. Restrictions for particular rights-of-way remain in place unless modified or discontinued by the [ROAD SERVICE AREA] RSA director through publication of a notice in a newspaper of general circulation within the road service area.
- 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. The permit may be obtained from the [ROAD SERVICE AREA] RSA 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, email address if applicable, 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 RSA 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, except for acts or omissions solely attributable to the borough.

- B. *Permit on request.* The operator must be able to produce an issued permit upon request.
- C. *Vision restrictions.* Regardless of permit, [N]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] RSA director may impose conditions related to the regulations set forth in this section.

- A. *Operation hours.* The [ROADS] RSA 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] RSA 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] RSA 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] RSA director may specify load limits.
- E. *Vehicle numbers.* The [ROADS] RSA 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.

The [ROADS] RSA director may post individual roads with load limits based on the condition of the road and traffic. Posting does not negate the requirement for published notice set forth in KPB 14.40.070(A).

14.40.115. Encroachment permits.

- A. Any person desiring to construct or cause an encroachment on a borough right-of-way shall apply for an encroachment permit to the RSA director.

Failure to obtain an encroachment permit is subject to the remedies set forth in KPB 14.40.115(E) and KPB 14.40.300.

- B. A public utility or person who is issued a permit for utility facilities under KPB chapter 14.08 is not required to apply for an encroachment permit.
- C. No encroachment permit is required for construction in accordance with an approved right-of-way construction permit issued pursuant to KPB 14.40.050 as long as the work is consistent with the terms of the construction permit.
- D. A permit fee shall be charged for encroachment permits as provided in the current approved Kenai Peninsula Borough Schedule of Rates, Charges and Fees. A person who fails to apply for and obtain an encroachment permit prior to an enforcement notice being issued pursuant to KPB 14.40.330(A) shall pay a double permit fee.
- E. Unauthorized encroachments shall be subject to removal by the owner upon being given notice by the borough. Notice shall consist of a tag placed on the property allowing 48 hours to remove the encroachment. If the owner does not remove the encroachment after being given such notice, the borough shall remove the encroachment and the person encroaching shall be fined pursuant to KPB 14.40.380 and pay all costs incurred by the borough related to removal of the encroachment. However, the borough may immediately remove any unauthorized encroachment that impedes traffic or maintenance, or which causes a public safety hazard, with no notice to the owner at the discretion of the RSA director.
- F. All encroachments, including those that pre-date the effective date of this ordinance, must apply for an encroachment permit. Permits for encroachments that existed prior to the effective date of this ordinance shall pay the same permit fee as applies to permits received prior to placement or construction of the encroachment.
- G. Any encroachment without a permit may be removed in accordance with KPB 14.40.115(E) or may be granted a permit allowing such encroachment to remain if such encroachment meets the approval of the RSA director or designee.
- H. The RSA director has discretion to grant or deny any encroachment permit. The following standards shall be considered for all encroachment permit applications:
 - 1. The encroachment may not interfere with road maintenance.
 - _____ The encroachment may not block access to normal travel along the right-of-way.
 - 3. The encroachment may not interfere with sight lines or distance.
 - 4. The encroachment may not create a safety hazard.

5. The encroachment may not be a permanent structure, meaning any structure of a permanent nature that requires footings, foundations or pilings.
- I. A person may not be denied a reasonable means of access to the their property solely by the requirements of this chapter. An encroachment permit shall not grant the permittee exclusive right to use the area encroached upon.
- J. A permit for construction of an encroachment (not covered by KPB 14.40.060) shall have an expiration date at which time the installation or construction of the encroachment must be complete. The permittee shall file a written notice of completion with the RSA director within ten days after completion of construction. No work shall be performed after the expiration date unless an extension is approved. If an extension is not approved, the borough may require the removal of the encroachment in accordance with KPB 14.40.115(E).
- K. 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, 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, except for acts or omissions solely attributable to the borough.
- L. Any damages to a public right-of-way, dedication, easement or borough land which is caused by an encroachment, authorized or unauthorized, are subject to immediate repair by the borough, at the owner's expense. The borough may require the owner to repair the damage within a timeframe specified by the RSA director if notice is given to the owner. The owner shall be subject to a fine as set forth in KPB 14.40.380 and liable for all costs incurred by the borough from the repair, including overhead costs.
- M. The RSA director may revoke an encroachment permit or require removal of a permitted encroachment if at any time the encroachment impacts borough duties such as road construction, improvements or maintenance, or otherwise impairs or impedes public safety or access to the right-of-way. Removal of an encroachment due to revocation of an encroachment permit shall comply with the requirements of KPB 14.40.115(E). Issuance of an encroachment permit does not create a property right in the continuing encroachment.

14.40.120. Permit applications-- [APPEAL—PERMIT] Initial review—Decision.

[A.] [*INITIAL PERMIT REVIEW.*] The RSA director shall have seven days from the date [THE] a complete right-of-way use permit application[S] [ARE] is received to issue a written denial or approval of the permit[S] requested, unless for good cause stated, the RSA director extends the time frame for permit determinations or refers the permit to the RSA board for initial review. The RSA director shall, by first-class mail, facsimile, electronic mail (“email”), 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.

14.40.130. Permit appeal—Decision final—Appeal.

[WHEN THE] The RSA director’s [PROVIDES THE] initial permit review under KPB 14.40.120[, HIS DECISION] is appealable to the RSA board. [WITHIN SEVEN DAYS] An appeal to the RSA board must be filed within 10 days of the distribution date of the RSA director's written decision. The appeal shall be in writing on a form provided by the RSA and shall state the reasons the appellant believes the RSA director's decision to be in error. [AND SHALL INCLUDE] including references to code sections violated by the RSA director's decision. The permittee may request review by the RSA board following the procedures and deadlines under this provision when the RSA director issues a cease and desist order under KPB 14.40.300(C) or revokes a permit under KPB 14.40.300(D). Whether the RSA board reviews a permit on appeal or provides the initial permit review, the applicant for a permit may appeal the RSA board'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.

14.40.135. Permit Compliance.

A permit may not be issued under this title if the permit applicant is subject to any enforcement orders regarding outstanding violations under chapter KPB 14.40.

[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 \$250.00 FOR EACH VIOLATION AS MORE SPECIFICALLY SET FORTH IN KPB 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.

For any permit issued under KPB 14.40.060, 14.40.065, or 14.40.115, [T]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] as 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, electronic, hand-delivered or facsimile notice of the need for repair or maintenance. Repair costs may be deducted from the [BOND] security posted [OR PURSUED THROUGH A PERSONAL ACTION], and permittee may be subject to any other remedies available under this chapter or at law or in equity. This section does not require a construction permittee to perform right-of-way maintenance after construction is completed.

14.40.155. [TEMPORARY] Road closure.

The RSA 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 RSA director determines that the condition causing the threat to public safety or damage to the right-of-way has been repaired or alleviated. All road closures shall be reported to the RSA board at the subsequent meeting.

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 most current edition of the Alaska Traffic Manual. [AND] The permittee shall be responsible for obtaining any further permission for such routing from the appropriate entities including but not limited to the [BOROUGH] applicable 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 RSA director shall indicate on the permit whether the proposed closure is authorized. The RSA 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] shall be

responsible for obtaining any further permission needed for an approved closure from the appropriate entities including but not limited to [BOROUGH] applicable fire, emergency medical, police, and school bus transportation agencies.

14.40.175. Damage to right-of-way.

Persons or entities [USING OR WORKING IN THE RIGHT-OF-WAY IN A MANNER] causing damage to a right-of-way are liable to the borough for the cost of repair, and may be subject to any other remedy available under this chapter or at law or in equity. [SUBJECT TO A FINE SET FORTH IN KPB 14.40.260. PURSUANT TO AS 29.25.070, ON APPLICATION FOR INJUNCTIVE RELIEF AND A FINDING OF A VIOLATION OR THREATENED VIOLATION, THE SUPERIOR COURT SHALL GRANT AN INJUNCTION TO STOP OR PREVENT DAMAGE TO A RIGHT-OF-WAY. THE DIRECTOR SHALL ISSUE FINES UNDER THIS SECTION IN ACCORDANCE WITH KPB 14.40.260—270].

[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 14.40.

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.]

[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 \$250.00, MORE SPECIFICALLY SET FORTH IN KPB 14.40.260
- C. HEARING. 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 DIRECTOR'S DECISION PURSUANT TO PART 6 OF THE ALASKA RULES OF APPELLATE PROCEDURE TO THE SUPERIOR COURT IN KENAI, ALASKA.
- 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.]

14.40.290. Investigation – Warning.

- A. Upon receiving information indicating the occurrence of a violation of KPB chapter 14.40, the RSA director or designee may investigate the

violation to the extent, and within the timeframe, that the RSA director or designee finds to be appropriate to the circumstances.

- B. The borough may issue a written warning notice to an alleged violator. The warning notice shall describe the violation, the provisions of this title that have been violated, and the remedies that the borough may seek if the violation is not corrected voluntarily. If the RSA director or designee issues a warning notice the notice shall state clearly that it does not initiate an enforcement proceeding, but that the borough may initiate an enforcement proceeding if the violation is not corrected or abated within a specified time.

14.40.300. Remedies for violations.

- A. *Court Action.* For any violation of this chapter 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.

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.

- 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.

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.

- 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.

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 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.

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. 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.

14.40.310. Stipulated agreement.

- A. In lieu of, or in addition to a written warning notice as described in KPB 14.40.290, the borough may enter into a stipulated agreement with a person for violations of KPB chapter 14.40.
- B. A stipulated agreement between the road service area and a person committing violations shall constitute an admission and acknowledgement by the person of the alleged code violation and an agreement to remedy the violation and pay civil fines as described within the stipulation and within the timeframe agreed upon. The stipulated fine shall be one-half the

fine for a one day violation. Where there is more than one violation associated with the stipulation the stipulated fine shall be one-half of the highest one day fine.

- C. If a person does not fully comply with a stipulated agreement, an enforcement notice may be issued as provided in KPB 14.40.330(A). Failure to comply with the stipulated agreement may subject violator to additional fines under KPB 14.40.380.
- D. Nothing in this section prevents the borough and the violator from entering into a stipulation after an enforcement notice has been issued. The limitation of fines set forth in KPB 14.40.340(G)(2) shall not apply to such a stipulated agreement. The fine may be negotiated subject to the RSA board's approval.

14.40.320. Enforcement Hearing – Jurisdiction.

- A. The RSA board will conduct adjudicative proceedings under this chapter. Alternatively, the chair of the RSA board may appoint a panel of no fewer than 3 RSA board members to hear an appeal regarding enforcement of KPB chapter 14.40, on a case-by-case basis. The body that conducts adjudicative proceedings under this chapter is referred to as the “RSA panel.”
- B. The RSA board shall have jurisdiction of the following matters:
 - 1. Civil fines included on the schedule set forth in KPB 14.40.380;
 - 2. Enforcement of permit conditions pursuant to this chapter;
 - 3. Abatement or correction of violations pursuant to this chapter, including but not limited to failure to obtain a necessary permit; and
 - 4. Claims of damage to borough rights-of-way.
- C. The RSA board may assess civil fines pursuant to KPB 14.40.380 and costs pursuant to KPB 14.40.115(L), 14.40.150 and 14.40.175, but may not assess attorney's fees. The RSA board may make other orders in connection with violations within its jurisdiction pursuant to KPB 14.40.320(B).
- D. The jurisdiction of the RSA board to hear and decide matters alleging violations of this title shall not be exclusive, but shall be concurrent with that of the state courts.

14.40.330 Enforcement Hearing—Enforcement Notice.

- A. The RSA director commences an administrative enforcement hearing under this chapter by serving an enforcement notice on each alleged violator, copied to the RSA chair, that contains the following:

1. The names and last known addresses of all alleged violators;
The name of the right-of-way, or description by location if the right-of-way is unnamed, on which the alleged violations are located;
3. A citation to each provision of this title that is alleged to have been violated, and a statement of the facts that constitute each alleged violation in sufficient detail to provide the recipient with a reasonable opportunity to respond to the allegations;
4. A description of the action, if any, that is required to correct or abate the alleged violation, and the time within which the correction or abatement must occur;
5. The remedies that borough will seek for the alleged violation; and
6. The address, telephone, facsimile number and email address for contacting the borough regarding the violation.

B. An enforcement notice may be served upon a person by:

1. Delivery to the person or the person's authorized agent;
Certified mail, return receipt requested, restricted delivery, to the person or the person's authorized agent;
3. Any other method of delivery where the person acknowledges receipt of the enforcement notice in writing; or
4. Posting at the site of the violation if the RSA director cannot ascertain a good mailing address or achieve personal service; or
5. Publication notice as provided in Rule 4(e)(2) of the Alaska Rules of Civil Procedure, but only if reasonable attempts to utilize the methods prescribed by subparagraphs (1) through (4) above are not successful.

14.40.340 Enforcement Hearing—Procedure.

- A. Within 5 days of receiving a copy of the enforcement notice, the RSA chair will give notice of the date of the hearing to the parties and the board. The chair will notify the parties regarding the members of the panel that will hear the enforcement proceeding. The hearing will be scheduled not less than 15 days from the date of the notice. For good cause the RSA chair may reschedule the date of the hearing. The notice will inform the respondent of the requirement to file a response to the enforcement notice pursuant to KPB 14.40.340(C).
- B. Not less than seven (7) days before the hearing, the borough shall provide to the RSA panel and the respondent the RSA's complete file regarding the permit, violation, and enforcement or fines at issue, except for the redaction of confidential material. The file shall include at a minimum and

as relevant to the subject of the hearing; the enforcement notice; any cease and desist order or revocation notice; any complaints concerning the violations alleged in the notice; all investigative reports regarding each alleged violation; and all correspondence to or from the borough regarding each allegation.

C. Not less than seven (7) days before the hearing the respondent shall provide to the RSA panel and the RSA director evidence relevant to the subject of the hearing and shall submit a written response ("answer") on a form provided by the road service area to the allegations. The respondent's answer shall include:

1. The full name, mailing and physical address and daytime telephone number of the respondent, and of the person's attorney, if any.

A statement that the person admits, denies, or has insufficient information to respond regarding each allegation in the enforcement notice. A statement of insufficient information has the effect of a denial. Any allegation that is not denied shall be deemed admitted.

3. Signature of the respondent.

D. Once the RSA director issues an enforcement notice, unless it is withdrawn, the RSA panel shall conduct an enforcement proceeding and follow all of the procedures set forth in KPB 14.40.340 regardless of whether the respondent submits an answer to the enforcement notice as required in KPB 14.40.340(C).

E. The RSA panel shall set the agenda for the hearing and may call witnesses and request additional evidence. The hearing shall be open to the public. Parties may appear at the hearing in person or through counsel. The RSA panel may permit telephonic participation in the hearing by parties, their counsel or witnesses. The RSA panel may continue the hearing if necessary to obtain additional evidence. An electronic recording shall be made of the hearing by the RSA.

F. At the hearing the parties may present evidence and testimony on their own behalf, call witnesses, and cross examine other parties' witnesses to the extent the RSA panel determines to be reasonably necessary to explore any matters which tend to contradict, modify, or explain testimony given on direct. All testimony shall be given under oath or affirmation.

G. Within 10 days after the hearing, the RSA panel shall issue a written decision on all matters at issue at the hearing. The RSA chair shall distribute the decision to each party by personal delivery, certified mail, or by facsimile or email to a party who has consented to service by facsimile or email. The decision shall include a concise disposition statement either prescribing the fine imposed and the remedy for each violation, dismissing the enforcement notice, or declaring such other specific relief ordered by the RSA panel within the RSA board's jurisdiction as defined by KPB

14.40.320. A decision shall also identify the violator or violators to whom the remedy applies and indicate that it is appealable and set forth the method and timing for such appeal. The remedies may include:

1. An order to a violator to correct or abate the violation within a specified time.

An order to a violator to pay to the borough a fine pursuant to KPB 14.40.380. The fine shall not exceed \$500 for each day of each such violation. Fines shall accrue from the date the enforcement notice is issued to the date the enforcement is initially set for hearing. Accumulated fines for each violation may not be reduced by the RSA panel to less than the equivalent of one day's fine. The RSA panel may suspend a portion of a fine for a violation as a condition of compliance with other portions of the decision. If a suspension of fine is ordered the respondent must pay not less than the equivalent of a one day fine. The fine shall be paid at the borough administrative building or the borough RSA building. Upon receiving notice that the fine has been paid, the RSA director shall inform the RSA chair that the respondent has complied with the order.

3. An order revoking a permit issued pursuant to this title.

H. In the case of an order under subsection KPB 14.40.340(G)(1), the RSA board retains jurisdiction of the matter, unless appealed, and the RSA director may apply to the RSA board for additional relief to enforce compliance with the order. Such an application is not exclusive of any other remedy that is available to the borough under this chapter or at law or in equity.

I. Violation of an enforcement order requiring actions set forth in KPB 14.40.340(G)(1) is a separate violation of this chapter.

J. Unpaid fines are collectible through filing an action in the trial courts of the State of Alaska and may include a judgment for fines, costs, and attorneys fees. Fines for charges appealed to the 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 RSA director if the RSA director determines it is in the borough's best interest.

K. The RSA director or designee who issued the enforcement notice may dismiss the enforcement notice before the hearing by written notice to the RSA chair and each person entitled to service of the underlying notice, if the RSA director or designee finds:

1. The enforcement notice was issued in error; or

All violations that were alleged in the enforcement notice have been corrected or abated, and the borough does not seek any further remedies or penalties under the notice.

14.40.350. Enforcement Hearing -- Appeal.

An appeal from a RSA panel decision under KPB 14.40.340 may be filed in the superior court within 30 days after the date of distribution of the RSA panel's decision to the parties, and is governed by Part 6 of the Alaska Rules of Appellate Procedure. The RSA panel's decision remains in effect while an appeal is pending unless stayed by the superior court.

14.40.360. Enforcement Hearing -- Ex Parte contacts prohibited.

A RSA panel member may not communicate directly or indirectly regarding a proceeding under KPB 14.40.340 with a party or a member of the public while the proceeding is under consideration, without notice and opportunity for all parties to participate in the communication. At the first opportunity after receiving such a communication the RSA panel member shall place on the record of the proceeding the content of the communication, any response to the communication, and the identity of the person from whom the RSA panel member received the communication. A prompt request by a party to the proceeding for an opportunity to rebut the communication must be granted.

14.40.370. Abatement of violation.

- A. Any use, activity, condition, property, or structure identified as a violation in an enforcement notice that continues after the RSA panel has issued an order finding the use, activity, condition, property, or structure to be in violation may be abated as provided in this section.
- B. Before a civil action is filed to abate a violation, a final warning notice shall be served personally or by certified mail with return receipt requested to the violator. The borough may request the court to order the violator(s) to abate the violation. If the violator has failed or is unwilling or unable to abate the violation, the court may order the violator(s) to pay the costs of the borough's abatement of the violation.
- C. The persons found in violation of an enforcement order by the RSA panel are liable to the borough for the entire cost of the abatement, including incidental expenses. "Costs of abatement" include removal, repair, relocation, and any other costs, including incidental costs, which are or would reasonably and necessarily be incurred to remedy or remove the violation or comply with the order of the RSA panel. For purposes of this section, the term "incidental expenses" shall include but not be limited to the actual expenses and costs to the borough in the preparation of the notices, specifications and contracts, work inspection, attorney's fees, consultant fees and interest from the date of completion at the rate of ten percent per annum. The borough will cause an invoice for collection to be sent to the violator specifying the nature and costs of the work performed.

14.40.380. Civil fines—Schedule.

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

<u>KPB 14.40.035(A)</u>	<u>Unauthorized Extraction, Excavation or Removal of Material from Right-of-way</u>	<u>\$300.00</u>
<u>KPB 14.40.035(B)</u> <u>KPB 14.40.035(C)</u> <u>KPB 14.40.050</u>	<u>Unlawful Regulation of Traffic Flow; Barricading Right-of-Way; Failure to Obtain ROW Construction Permit</u>	<u>\$300.00</u>
<u>KPB 14.40.060</u> <u>KPB 14.40.061</u>	<u>Violation of Construction Permit Conditions (each condition)</u>	<u>\$300.00</u>
<u>KPB 14.40.065</u>	<u>Failure to Obtain Maintenance Permit; Violation of Permit Conditions</u>	<u>\$150.00</u>
<u>KPB 14.40.070(B)</u> <u>KPB 14.40.090</u> <u>KPB 14.40.100</u>	<u>Failure to Obtain Right-of-way Size and Weight Permit; Violation of Size and Weight Permit Conditions</u>	<u>\$300.00</u>
<u>KPB 14.40.035(D)</u> <u>KPB 14.40.115</u>	<u>Failure to Obtain Encroachment Permit (Encroachment Without a Permit); Violation of Encroachment Permit Conditions</u>	<u>\$300.00</u>
<u>KPB 14.40.115(L)</u> <u>KPB 14.40.150</u> <u>KPB 14.40.175</u>	<u>Damage to Right-of-way</u>	<u>\$300.00</u>
<u>KPB 14.40.290</u>	<u>Failure to Comply with Warning Notice</u>	<u>\$300.00</u>
<u>KPB 14.40.300(C)</u>	<u>Violation of Cease and Desist Order</u>	<u>\$300.00</u>
<u>KPB 14.40.300(C)</u>	<u>Removal of Posted Notice</u>	<u>\$300.00</u>
<u>KPB 14.40.300(D)</u>	<u>Continuing Work in Violation of Permit Revocation</u>	<u>\$300.00</u>
<u>KPB 14.40.330</u>	<u>Violation of Stipulated Agreement</u>	<u>\$300.00</u>
<u>KPB 14.40.340(G)</u>	<u>Violation of Enforcement Order</u>	<u>\$500.00</u>

Violations begin to accrue the date the enforcement notice is issued and continue to the date the enforcement is initially set for hearing. Each day a violation occurs constitutes a separate violation.

14.40.~~390~~[280]. Definitions.

The following definitions are applicable to [THESE REGULATIONS] KPB chapter 14.40.

- [A.] "Applicant" means the person requesting a right-of-way use permit from the borough.
- [B.] "Borough" means the Kenai Peninsula Borough.
- [C.] "Anadromous waterbody" means any waterbody catalogued pursuant to [AS 29.45.870 AND AFTER JULY 1, 2008,] AS 16.05.871[,] as important to the spawning, rearing or migration of anadromous fish.
- [D.] "Contractor" is defined as set forth in AS 08.18.171(4).
- [E.] "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.
- [F.] "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 by easement or dedicated by statute, excluding rights-of-way within the boundaries of an incorporated city.
- [G.] "Development" means any human-caused change to improved or unimproved right-of-way, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, storage of materials or use of the right-of-way.
- [H.] "Director" means the [ROADS DIRECTOR] road service area ("RSA") director of the Kenai Peninsula Borough or the RSA director's designee, unless otherwise specified.
"Encroachments" means a structure, object, operation or material placed in, on, under or over a right-of-way.
- [I.] "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.
- [J.] "Operator" means the person operating or driving vehicles or equipment, who may or may not be the owner of the vehicle or equipment.

- [K.] "Ordinary high water mark" means the line on the shore or bank established by the fluctuation of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.
- [L.] "Permittee" means the person granted a right-of-way use permit by the borough.
- [M.] ["RECIPIENT"] "Respondent" means a person issued [A CITATION OR CHARGING DOCUMENT] an enforcement notice from the Kenai Peninsula Borough.
- [N.] "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.]
- "Road" means a right-of-way that is used for travel by motor vehicles which may lawfully travel on state highways.
- [O.] "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.
- [P.] "Waterbody" means any permanent body of water, including any creek, canal, river, lake or bay, or any other body of water, natural or artificial.
- [Q.] "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 2. That this ordinance takes effect immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS
18TH DAY OF AUGUST, 2015.**

Dale Bagley, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes: Cooper, Haggerty, Gilman, Johnson, McClure, Ogle, Welles, Wolf, Bagley

No: None

Absent: None