

Introduced by: Mayor
Date: 12/03/19
Hearing: 01/07/20
Action: Enacted
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-39**

**AN ORDINANCE REPEALING KPB 12.06 AND ENACTING 12.08 JUNK AND
ABANDONED VEHICLES**

WHEREAS, current borough code regarding the abatement of junk or abandoned vehicles is a mixture of code and state statutory process; and

WHEREAS, state law provides that a municipality may adopt by ordinance established procedures for the abatement and removal of junk or abandoned vehicles so long as the requirements AS 28.11.100 are met; and

WHEREAS, vehicles abandoned on public roadways or public property are public nuisances that create health and safety hazards; and

WHEREAS, it is in the best interests of the borough to have a clearly established procedure for the abatement, removal, and disposal of vehicles abandoned on public property; and

WHEREAS, the public is served by the establishment of code-driven procedures that meet the requirements of state law; and

WHEREAS, the public is further served by having procedures to follow when junk or abandoned vehicles are left on private property without the owner's consent; and

WHEREAS, due to significant changes to borough code as enacted by this ordinance KPB 12.06 is repealed in its entirety and replaced by a new chapter KPB 12.08; and

WHEREAS, at its regularly scheduled meeting held on October 29, 2019, the Kenai Peninsula Borough Road Service Area board recommended approval of this ordinance by unanimous consent;

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

SECTION 1. KPB 12.06. ABANDONED VEHICLE ABATEMENT PROCEDURE is hereby repealed.

SECTION 2. KPB 12.08. JUNK AND ABANDONED VEHICLES is hereby enacted as follows:

CHAPTER 12.08. JUNK AND ABANDONED VEHICLES

12.08.010. Purpose—Authority—Administration.

The assembly declares that abandoned and junk vehicles are a public nuisance and must be properly disposed of as solid waste in accordance with this chapter and current rules and regulations regarding solid waste disposal, including use fees. The borough may cause to be removed from public property and borough roads abandoned, junk, wrecked or inoperative vehicles following the procedures set forth in this chapter. The Road Service Area Director (“roads director”) shall administer this chapter in coordination with the solid waste director.

12.08.020. Abandoned Vehicles Prohibited.

- A. It is unlawful for a person to abandon a vehicle on a road, vehicular way, or area that is publicly dedicated to or maintained by the borough.
- B. It is unlawful for a person to abandon a vehicle on public property of the borough not set aside by ordinance as a refuse disposal open for the disposal of vehicles.
- C. It is unlawful for a person, without consent of the property owner or person in possession or control of the property, to abandon a vehicle on private property unless such property is licensed as a junkyard, is open for disposal, all necessary fees for removal and storage have been paid, and all other requirements of disposal have been met.
- D. The owner of the vehicle, as shown by the records of the State of Alaska, Department of Administration, Department of Motor Vehicles (DMV) is considered responsible for the abandonment of the vehicle and is liable for the cost of its removal and disposition unless:
 - 1. The vehicle was abandoned by a person without the permission of the owner; and
 - 2. The identity of the person abandoning the vehicle is established and the abandonment as well as the lack of consent of the owner.

State Law Reference - Similar provisions in AS 28.11.010

12.08.030. Presumption of Abandonment.

A vehicle is presumed abandoned if:

- A. The vehicle is registered or titled as required under AS 28.10 and reasonably appears to have been left unattended, standing, or parked upon or within ten (10) feet of the traveled portion of a road or vehicular way or area in excess of 48 hours; or
- B. The vehicle is registered or titled as required under AS 28.10 and reasonably appears to have been left standing or parked upon public property owned or managed by the borough for more than thirty (30) calendar days; or
- C. The vehicle is a wrecked or junk vehicle that reasonably appears to have been left unattended, standing, or parked upon or within ten (10) feet of the traveled portion of a road or vehicular way or area in excess of 48 hours; or
- D. It is a wrecked or junk vehicle that reasonably appears to have been left standing or parked on public property owned or managed by the borough, in excess of two (2) days and without the consent of the owner or the borough.
- E. Private Property.
 - 1. A vehicle that is registered or titled as required under AS 28.10 and reasonably appears to have been left unattended, standing, or parked upon private property in excess of 24 hours may be removed by the borough at the request of the private property owner. The borough shall not be responsible for the costs of removal and will assess such costs to the private property owner.
 - 2. A vehicle that is a wrecked or junk vehicle that reasonably appears to have been left standing or parked on private property in excess of 48 hours and without the consent of the owner or the property owner may be removed by the borough at the request of the private property owner. The borough shall not be responsible for the costs of removal and will assess such costs to the private property owner.

State Law Reference – AS 28.11.020

12.08.040. Junk Vehicles Prohibited.

- A. It is unlawful for the registered owner, tenant or other person with legal right to possession of or control over a junk vehicle to place or allow such vehicle to remain, for two (2) or more calendar days, in public view on any road, vehicular way or area that is publicly dedicated to or maintained by the borough.

- B. Upon observation of what appears to be a junk vehicle, the roads director, or their designee, shall give written notice as outlined in section 12.08.060 of this chapter.
- C. Notwithstanding the provisions of subsection A of this section, if the director has reasonable grounds to believe that repairs can be made to render a junk vehicle operable, that the registered owner or other person entitled to possession of the vehicle is willing to undertake or have performed such repairs, that the vehicle does not pose any health or safety hazard, and that there is no reasonable means for removing the vehicle from public view while repairs are being performed, the director may authorize a period of no more than thirty (30) calendar days for the performance of such repairs. In no case, however, may this section be construed as authorizing the operation of a junkyard or other salvage or repair business where other requirements of law, including ordinances, have not been met.

12.08.050. Abandoned and Junk Vehicles.

If a vehicle is both junk and abandoned, the borough may pursue its abatement under either the junk or abandoned vehicle provisions of this chapter or parts of both.

12.08.060. Removal of Abandoned — Junk Vehicles.

- A. A vehicle that is presumed abandoned or junked may be impounded and disposed of by the director or their designee in accordance with this chapter. Notwithstanding, the borough shall not be responsible for removal or disposal of junk or abandoned vehicles on private property. Removal and disposition of abandoned or junked vehicles on private property is the responsibility of the owner of the property.
- B. Notice to remove abandoned or junked vehicles shall be given at least 48 hours prior to removal unless the vehicle constitutes an immediate hazard to the public by reason of its condition or location, or if it impedes the regular flow of traffic or the ordinary use of the public property on which it is located. Notice shall be given by posting a copy of the notice on the vehicle stating:
1. A description of the vehicle;
 2. The grounds for removal of the vehicle;
 3. The proposed action to be taken;
 4. Contact information for the director; and

5. That the vehicle will be towed and impounded, and may be disposed of in accordance with this chapter if unclaimed.

C. A written report of removal shall be made by an employee causing a vehicle to be removed under this chapter, and the report shall be sent to the person or entity storing the removed vehicle and to the director. The written report shall contain the description of the vehicle, the date, time, grounds, and place of removal, and the place where the vehicle is impounded.

12.08.070. Waiver of Claim for Damages.

A. An owner of an abandoned or junk vehicle waives any claims they may have for damage to or loss of their vehicle which may result from actions taken pursuant to this chapter. Such damage or loss includes, but is not limited to, accidental damage or destruction occasioned by removal, transport and storage, and acts of third parties.

B. Should a vehicle purchased at auction pursuant to KPB 12.08.090 be damaged or destroyed prior to release, the purchaser's remedy is limited to a return of the purchase price.

12.08.080. Notice to Owners and Lienholders.

A. As soon as practicable, but not later than ten (10) calendar days after removal, the director, or their designee, shall issue notice of the impoundment by either certified mail, return receipt requested, or personal service to:

1. The registered owner of record and to lienholders of record, if any;
2. Persons known to be lawfully entitled to the possession of the abandoned/junk vehicle; and
3. The Department of Motor Vehicles ("DMV").

B. The giving of notice by mail is considered complete upon the return of the receipt or upon return of the notice as undeliverable, refused or unclaimed. If the vehicle is not registered in the State of Alaska or the name and address of the registered or legal owner or lienholder cannot be ascertained, notice shall be by publication at least once in a newspaper of general circulation for the borough at least twenty (20) calendar days before any final action, such as a sale is undertaken. The director, or their designee, shall use reasonable efforts to ascertain ownership, including but not limited to contacting the DMV.

- C. Notice under this section shall contain:
1. The description of the vehicle; and
 2. The date, time, grounds and place of removal; and
 3. The place where the vehicle is impounded; and
 4. An itemized statement of amounts due the borough for towing and storage (impoundment), administrative fees (DMV search, certified mail, advertising), vehicle prep fees, and stating that such fees must be paid prior to redemption of the vehicle; and
 5. A statement that unless the right to possession is established to the satisfaction of the director and the vehicle reclaimed, or unless arrangements are made for the storage of the vehicle within that time, the vehicle and its contents may be sold at public auction or, in the director's discretion, if the vehicle is determined by the director to be inoperable or worth less than One Thousand Five Hundred (\$1,500.00) Dollars, disposed of by crushing or other means of destruction; and
 6. A statement that the owner of the vehicle may, at any time within ten (10) calendar days, provide a written request for a hearing before the Road Service Area (RSA) Board, pursuant to section 12.08.130, concerning whether the vehicle was abandoned or is a junk vehicle in violation of this chapter and subject to disposal.

12.08.090. Disposition – Sale.

- A. Upon expiration of the time period to request a hearing, the director may sell abandoned or junk vehicles impounded in accordance with this chapter at a public auction.
- B. The public auction shall be preceded by at least twenty (20) calendar days' notice of public auction posted within the borough. The auction may be conducted online.
- C. The notice of public auction shall state the description of the vehicle, date, time and place of auction, the name of the owner, if known, and a statement that, subject to the provisions of subsection (E) of this section, the vehicle shall be sold to the highest bidder.

- D. A certificate of sale shall be issued for all vehicles sold at the auction. The certificate shall stipulate that the vehicle must be registered and titled with the DMV within thirty (30) calendar days and that the vehicle will not be released to the buyer until proof of same has been received by the borough. If no such showing has been made within the thirty (30) day period, one-half (1/2) of the purchase price will be forfeited and the vehicle will be returned to auction status to be disposed of pursuant to this section.
- E. The owner of the vehicle may redeem an abandoned or junk vehicle at any time prior to actual sale upon presenting satisfactory proof of ownership and upon payment of all fees and costs incurred and/or imposed by the borough.

12.08.100. Disposition – Destruction.

- A. If the director determines that an abandoned or junk vehicle impounded pursuant to this chapter has been scrapped, dismantled or destroyed beyond repair, or that because of the age and condition of the vehicle it is no longer of significant value, the director may authorize disposal by crushing, recycling, or other means of destruction upon the expiration of the fifteen (15) calendar day period required by KPB 12.08.080(c)(6).
- B. The borough may also dispose of abandoned or junk vehicles at the written request of the registered owner of the vehicle or person in lawful possession or control of the vehicle. This written request shall be on a form prescribed by the borough. Disposal by written request of the owner shall not relieve the owner of removal and disposition costs. After receipt of a written request for disposal from the owner, the director may determine, after receipt of removal and disposition costs from the owner, that it is in the best interests of the borough to waive all or part of the fine.

12.08.110. - Recovery of costs.

The costs of impounding, towing, storing, selling and/or destroying abandoned or junk vehicles may be charged or assessed by the borough against the registered owner of the vehicle, any person who has acquired legal title to the vehicle from or through the registered owner, any person who has violated sections 12.08.020 or 12.08.040, and/or any proceeds received from the sale of the vehicle pursuant to this chapter.

12.08.120. Liability for abandoned or junk vehicles.

The registered owner of an abandoned or junk vehicle, and any other person responsible for the vehicle, shall be jointly and severally liable for the costs of towing, storing and selling or otherwise disposing of the vehicle, as well as the costs of abating any safety or pollutant hazard that is caused by the vehicle.

12.08.130. Hearing.

- A. A person claiming an interest in a vehicle that is the subject of a notice under this chapter may obtain a hearing on whether the vehicle is subject to disposal by filing a written appeal to the Road Service Area (RSA) Board within ten (10) calendar days after the date of the notice.
- B. All appeals shall be in writing, signed by the person filing the appeal, and submitted to the Road Service Area Director by delivery to the borough clerk. All notices of appeal shall also contain the following information:
1. Name, address and telephone number of the person filing the appeal;
 2. A specific and detailed statement of the basis for the appeal, with reference to the specific sections of this Title which are claimed to have been violated.
 3. A statement of the relief sought.
- C. Failure to file an appeal within the time and manner provided shall be deemed a waiver of the right to any appellate review.
- D. A request for an appeal is filed on the date it is personally delivered or, if delivered to the borough by United States mail, the date of the United States Postal Service postmark stamped on the properly addressed cover in which the request is mailed.
- E. A current mailing address must be provided to the borough with the request for appeal and any change in mailing address after the request for appeal is filed must be reported in writing to the borough clerk's office.
- F. Within five (5) business days of receiving the notice of appeal, the borough clerk will give notice of the date and time for the appeal hearing. The hearing will be scheduled a minimum of 15 (fifteen) days after the date of the request for appeal has been received. The notice of the hearing will advise the parties of all deadlines for the exchange of discovery.
- G. At least seven (7) days before the hearing, the parties will provide the following to the borough clerk:
1. The names, mailing address and telephone number for all witnesses intended to be called at the hearing.

2. The name, mailing address and telephone number of the person who will speak on behalf of each party at the hearing.

Copies of all documents or exhibits intended to be used as evidence during the hearing.

Copies of all documents filed by the parties shall be served upon the remaining parties by the borough clerk, either by mail, email or personal service, within three (3) business days of the filing deadline.

12.08.135. Appeal Hearing.

- A. A matter shall proceed to hearing only on those allegations and claimed in the notice issued pursuant to Section 12.08.080. If no allegations or claims in the notice are contested, the matter shall proceed to a decision by the RSA Board without the taking of evidence or argument.
- B. The RSA Board Chair shall set the agenda for the hearing. The hearing shall be open to the public. The RSA Board may permit telephonic participation in the hearing by a party or a witness. The RSA Board may continue the hearing if necessary to obtain additional evidence.
- C. The hearing shall be conducted in an informal manner and shall not be subject to the technical rules of evidence. Any person claiming an interest in the vehicle may appear, present evidence, and cross-examine witnesses.
- D. Formality in pleadings, motions, and the introduction of evidence is not required. A writing filed as a complaint, answer or application shall be legible and brief.
- E. At the hearing, the parties may appear in person or through counsel. The parties may present evidence and testimony on their own behalf, call witnesses, and cross examine other parties' witnesses to the extent the RSA Board determines reasonably necessary to explore any matters which tend to contradict, modify, or explain testimony given on direct. The RSA Board may call witnesses, may ask questions of the witnesses and may request additional evidence.
- F. Each party shall have a maximum of thirty (30) minutes to present their case, including any opening and/or closing statements.
- G. Evidence.
 1. All testimony shall be given under oath or affirmation.

2. The RSA Board is authorized to admit or exclude evidence and to rule upon all objections regarding evidence. The RSA Board may exclude irrelevant, immaterial or unduly repetitious evidence. An erroneous ruling on the admission or exclusion of evidence shall not affect the validity of the RSA Board's decision unless the ruling is shown to have substantially prejudiced the rights of a party.

3. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule which makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be considered provided there are guarantees of its trustworthiness and that it is more probative on the point for which it is offered than any other evidence which the proponent can procure by reasonable efforts.

4. The RSA Board may take notice of judicially recognizable facts. The RSA Board shall notify the parties during the proceeding, and before the final decision, of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed.

H. The Appellant shall bear the burden of proof by clear and convincing evidence regarding whether the vehicle was abandoned or junk.

I. The hearing shall be recorded. Any party desiring a formal transcript of the hearing may order one at their own expense.

J. Within ten (10) business days after the conclusion of the hearing, the RSA Board shall prepare a written decision as to whether the vehicle is subject to disposal under this chapter, and specifying the reasons for their decision. The borough clerk shall provide a copy of the decision to each person who appeared at the hearing and claimed an interest in the vehicle and to the roads director.

K. A decision under this section is appealable to the Superior Court in the Third Judicial District at Kenai as provided by court rules for administrative appeals.

12.08.140. Preservation of certain rights regarding junk or abandoned vehicles.

A. Right to operate lawful junkyard or storage yard. Nothing in this chapter shall be construed as limiting the right of any person to operate a lawful junkyard or storage yard.

B. *Authority to abate public nuisances.* Nothing in this chapter shall be construed to limit the right of the borough, pursuant to other provisions of this title and the common law, to abate summarily a public nuisance, including but not limited to the nuisances defined elsewhere in this code.

12.08.150. Definitions.

A. *“Abandoned vehicle”* means a motor vehicle left unattended, standing, or parked upon or within ten (10’) feet of the traveled portion of a public roadway, or a public right-of-way without the consent of the owner or person reasonably in charge of the property.

B. *“Director”* means the road service area director, or their designee.

C. *“Junk vehicle”* means a vehicle that:

1. Is not currently registered, except for a vehicle used exclusively for competitive racing; or

2. Is stripped, wrecked, or otherwise inoperable due to mechanical failure; or

3. Has not been repaired because of mechanical difficulties or because the cost of repairs required to make it operable exceeds the fair market value of the vehicle; or

4. Is in a condition that exhibits more than one of the following: broken glass, missing wheels or tires, missing body panels or parts, or missing drive train parts.

D. *“Responsible Person”* means the owner of a vehicle or a person authorized to drive, store, or control a vehicle.

E. *“Vehicle”* means a device in, upon, or by which a person or property may be transported or drawn upon or immediately over a highway or vehicular way or area and that is subject to registration; “vehicle” does not include (1) devices used exclusively upon stationary rails or tracks; (2) mobile homes. A vehicle includes but is not limited to cars, trucks, motorcycles, motorbikes, three and four wheelers, and snow machines; outboard, inboard or air boats; other recreational vehicles commonly driven; and all trailers and semitrailers.

F. *“Vehicular way or area”* means a way, path, or area, other than a highway or private property, that is designated by official traffic control devices or customary usage and that is open to the public for purposes of pedestrian or

vehicular travel, and which way or area may be restricted in use to pedestrians, bicycles, or other specific types of vehicles.

G. “Wrecked vehicle” means a vehicle that is disabled and cannot be used as a vehicle without substantial repair or reconstruction.

These definitions are for the purpose of this chapter only and shall not be used as definitions for other chapters.

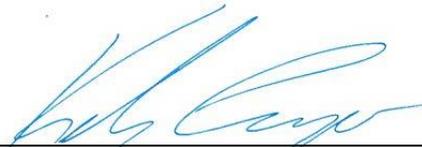
12.08.160. General Penalty for Violation.

A violation of this section is an infraction within the terms of AS 28.90.010 and is punishable by the following fines:

<u>KPB 12.08.020</u>	<u>Unlawful Abandoned vehicle</u>	<u>\$100.00</u>
<u>KPB 12.08.040</u>	<u>Unlawful Junk vehicle</u>	<u>\$100.00</u>

SECTION 3. That this ordinance shall become effective immediately upon its enactment

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 7TH DAY OF JANUARY, 2020.

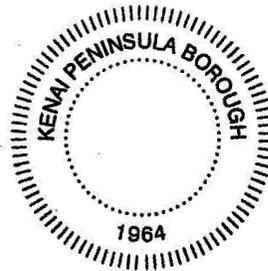


Kelly Cooper, Assembly President

ATTEST:



Johni Blankenship, MMC, Borough Clerk



Yes: Bjorkman, Blakeley, Carpenter, Cox, Dunne, Hibbert, Johnson, Smalley, Cooper
No: None
Absent: None