

Introduced by:	Mayor
Substitute	
Introduced:	12/03/19
O2019-24 (Mayor)	See Original Ordinance for Prior History
Hearing:	12/03/19
Action:	Postponed to 02/25/20
Vote:	9 Yes, 0 No, 0 Absent
Date:	02/25/20
Action:	Postponed to 03/17/20
Vote:	9 Yes, 0 No, 0 Absent
Date:	03/17/20
Action:	Postponed as Amended to 04/21/20
Vote:	9 Yes, 0 No, 0 Absent
Date:	04/21/20
Action:	Enacted as Amended
Vote:	5 Yes, 4 No, 0 Absent
Date:	04/21/20
Action:	Dunne gave notice of reconsideration
Date:	05/05/20
Action:	Reconsidered and Enacted as Amended
Vote:	6 Yes, 3 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-24
(MAYOR) SUBSTITUTE**

**AN ORDINANCE ADOPTING KPB 20.80, SUBDIVISION PRIVATE STREETS
AND GATED SUBDIVISIONS**

WHEREAS, privacy, security, and public safety concerns expressed by residents may be addressed by private streets in subdivisions; and

WHEREAS, Goal 2, Focus Area: Land Use and Changing Environment, Objective A of the 2019 Comprehensive Plan is to establish policies that better guide land use to minimize land use conflicts, maintain property values, protect natural systems and support individual land use freedoms; and

WHEREAS, private streets can only be approved through the KPB 20.50 exception process and there are currently no designated standards and requirements, nor established procedures to create subdivisions with private streets and gated access; and

WHEREAS, there is a need for designated standards and requirements and establishment of procedures for creating gated communities; and

WHEREAS, designating standards, requirements and procedures for establishing private streets within subdivisions with gated access will address residents as well as the public’s privacy, security, and access concerns; and

WHEREAS, the Kenai Peninsula Borough Road Service Area board at its meeting held on November 19, 2019, recommended unanimous approval of this ordinance; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its meeting held on November 12, 2019 recommended approval by majority vote;

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

SECTION 1. That KPB Chapter 20.80, entitled “Private Streets and Gated Communities” is enacted as follows:

20.80.005. Application.

This chapter applies to all subdivisions within the Kenai Peninsula Borough boundaries except for those within an incorporated city within the borough.

20.80.010. Purpose.

This chapter provides standards and requirements for the establishment of private streets in subdivisions in the borough. In accordance with the requirements of this chapter, a subdivision with private streets and gated access may be created either at the time of subdivision by the owner of the parcel being subdivided or by the owners of the parcels along public street(s).

20.80.020. Requirements.

Private streets in subdivisions shall meet the following requirements:

- A. Provisions of KPB Title 20, excluding 20.30.210 and 20.50, apply and must be met.
- B. All private streets shall comply with street naming and street addressing per KPB 14.10 and 14.20.
- C. A public vehicular turn around shall be provided to allow vehicles that have been denied entry to the private streets the ability to exit. An unrestricted turn around, located within the private street, shall be provided to allow vehicles that have been denied entry to the private streets the ability to exit. If borough maintenance of a turnaround is requested, then the turnaround must: (1) remain a public right-of-way; (2) be constructed with a minimum radius of 30 feet with a grade of 4 percent or less per KPB 14.06.160(D); and (3) be accepted into the borough’s road maintenance program. The

owner(s) of an approved gated subdivision shall be responsible for providing maintenance to all private streets and unmaintained turnarounds.

- D. Private streets shall be contained within a separate lot which meets the right of way requirements of Chapter 20. The entrances to all private streets will be marked with a sign stating that it is a private street in compliance with KPB 14.06.200.
- E. The borough shall not pay for or contribute to any cost to construct, improve, or maintain a private street.
- F. The following notes are required on the subdivision final plat
1. Borough maintenance shall not be provided on any private streets.
 2. Private streets are not public and are subject to private construction and maintenance.
 3. To convert private streets back to a public right of way, the requirements of KPB 14.06 – Road Standards, must be met.
- G. Gated subdivisions and private streets may be approved, so long as emergency services are provided access within the private subdivision. Written approval by the fire and emergency services provider, with jurisdiction in the area of the gated subdivision, is required. The fire and emergency services provider must be satisfied that fire and emergency services providers will have safe access into and within the gated subdivision.

20.80.030. Gates

If a gate is installed to prevent public access to a subdivision with private streets the gate must conform to the following requirements:

- A. The fire and emergency services provider that serves the proposed gated subdivision must approve the fire and emergency services access plan for each gate prior to installation. The fire and emergency services provider should consider access for emergency vehicles into, and within, the private streets and gated subdivision.
- B. The approach and departure areas for the gate(s) must be designed by a licensed professional civil engineer.
- C. Approach and departure areas on both sides of a gated entrance must provide adequate setbacks and proper alignment to allow free and unimpeded passage of emergency vehicles through the entrance area.

- D. After installation, all emergency access systems must be approved by the fire and emergency services providers serving the gated subdivision. The owner(s) of the private street parcel must maintain all components of the gate system in a normal operating condition and have them serviced on a regular basis, as needed, to ensure proper gate operation.
- E. No part of the gate system may be placed in a public right-of-way.

20.80.040. – Converting to gated subdivision.

- A. To convert a publicly dedicated street to a private street, the dedicated street must be vacated. A dedicated public right-of-way may only be vacated upon petition by resolution of the governing body from a municipality in which the property is located or upon petition by the owner(s) of the majority of land fronting or abutting the right of way to be vacated. The request shall comply with the applicable replat and vacation requirements and procedures in this title, except as provided otherwise in this chapter.
- B. Converting public street to private street – standards.
1. Vacation of the public right-of-way shall be in accordance with the criteria set forth in KPB 20.70.
 2. The proposed gated subdivision shall not cause discontinuity in the existing or proposed public street system for adjoining lands.
 3. The proposed gated subdivision must not cause discontinuity in the existing or proposed road system to any property owner within the proposed gated subdivision that fronts on the public right-of-way that is to be vacated.
 4. Prior to recording, the private tract owner(s) shall accept the road “as-is” in its present condition and shall agree to indemnify, hold harmless, and defend the borough against any claims arising from the private ownership, maintenance and control of the converted street.
 5. The private tract owner(s) shall execute a defense and indemnification agreement in favor of the borough in the following form: Except to the extent limited by law, the private tract owner(s) shall indemnify, defend, and hold and save the borough, its elected and appointed officers, officials, agents and employees, hereinafter collectively referred to as “agents”, harmless from any claim of, or liability for, the independent negligent acts, errors, and omissions or willful misconduct, including costs, expenses, and attorneys’ fees, in connection with or relating to the private tract owner(s) construction, improvement, maintenance, regulation, or use of any gates or private streets. The private tract owner(s) shall be responsible under this clause for any and all legal

actions or claims of any character arising from the private tract owner(s) acts or omissions related to its private streets and gates 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.

6. Unanimous consent of property owners within a 600-foot radius of the boundary of the street to be vacated is required.

C. A public street constructed or improved with borough funds, either through a Capital Improvement Project (CIP) or Road Improvement Assessment District (RIAD), cannot be converted to a private street within ten (10) years of the CIP or RIAD completion date for that street.

20.80.050. Converting private streets to public right-of-way in gated subdivision.

A. The owner(s) of a private street may petition to dedicate the private street through the platting process. The plat must comply with KPB Chapter 20.

B. The private street to be dedicated to a public right of way must meet the design criteria set forth in KPB 20.30 and KPB 14.06.

C. At the expense of the private street tract owner(s), a civil engineer will determine whether the private streets meet KPB Title 14 and Title 20 standards for street design and construction. If the streets do not meet borough standards the dedication shall be denied.

D. The borough may also require, at the private street tract owner's expense, the removal of any improvements, access control devices, gates, landscaping or other aesthetic amenities associated with the private street.

20.80.060. Enforcement.

Violations of this chapter shall be in accordance with KPB 20.10.030 and KPB 21.50.

SECTION 2. That KPB Chapter 20.90, entitled "Definitions" is amended as follows:

20.90.010. Definitions generally.

In this title, unless otherwise provided, or the context otherwise requires, the following definitions shall apply:

...

“Gated subdivision” means a residential subdivision consisting of multiple parcels of land where vehicular and/or pedestrian access by the general public from a public street and street(s) within the gated community and/or public right-of-way(s) is restricted as a result of a barrier that may include, but is not limited to gates, security personnel, fences or walls.

...
“Private street” means a vehicular access way serving two or more lots that was not dedicated or conveyed to the public.


SECTION 3. That this ordinance shall become effective 180 days after its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 5TH DAY OF MAY, 2020.

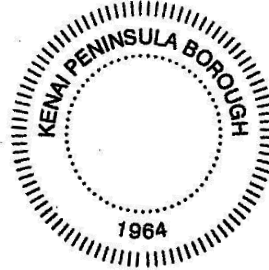


Kelly Cooper, Assembly President

ATTEST:



Johni Blankenship, MMC, Borough Clerk



12/03/19 vote on motion to postpone to 02/25/20:

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

02/25/19 vote on motion to postpone as amended to 03/17/20:

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

04/21/20 vote on motion to enact as amended:

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

05/05/20 vote on motion to reconsider:

Yes: Bjorkman, Dunne, Johnson, Smalley, Cooper

No: Blakeley, Carpenter, Cox, Hibbert

Absent: None

05/05/20 vote on motion to enact as amended:

Yes: Bjorkman, Blakeley, Carpenter, Cox, Hibbert, Johnson

No: Dunne, Smalley, Cooper

Absent: None