

Introduced by:	Mayor
Date:	10/13/20
Hearing:	11/10/20
Action:	Postponed to 12/01/20
Vote:	9 Yes, 0 No, 0 Absent
Date:	12/01/20
Action:	Postponed as Amended to 01/19/21
Vote:	5 Yes, 4 No, 0 Absent
Date:	01/19/21
Action:	Postponed as Amended to 03/02/21
Vote:	9 Yes, 0 No, 0 Absent
Date:	03/02/21
Action:	Enacted as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-45**

AN ORDINANCE AMENDING KPB 2.40, PLANNING COMMISSION, KPB TITLE 20, SUBDIVISIONS, REPEALING KPB 20.70 VACATION REQUIREMENTS, ENACTING A NEW VACATIONS CHAPTER KPB 20.65, AND AMENDING KPB 21.20, HEARING AND APPEALS, TO CORRECT GRAMMATICAL ERRORS, AND CLARIFY AND IMPROVE CERTAIN ADMINISTRATIVE PROCEDURES

WHEREAS, the borough’s subdivision code experienced a significant rewrite in 2014; and

WHEREAS, since that time platting staff have found a number of provisions that would benefit from clarifying language; and

WHEREAS, amendments will make Title 20 consistent with current law and statutes; and

WHEREAS, edits will clarify subdivision regulations and add a uniform notice and public hearing code section applicable to all of Title 20; and

WHEREAS, amendments will repeal KPB Chapter 20.70, Vacations Requirements, and replace it with a new vacations chapter KPB Chapter 20.65, Vacations; and

WHEREAS, work sessions were held regarding these amendments with the surveying community on February 19, 2020 at Homer City Hall and February 26, 2020 at the Kenai Peninsula Borough; and

WHEREAS, invitations were extended to review the amendments with borough staff to the cities of Homer, Kachemak, Kenai, Seldovia, Seward, and Soldotna; and

WHEREAS, the City of Homer Planning Commission held a meeting on August 5, 2020 and consented unanimously with comments requesting the borough and city clerk work together to ensure the new code is clear as to which body hears that type of appeals as well as a request to allow developers more time to construct subdivisions in cities within approved construction or subdivision development agreements in place; and

WHEREAS, the City of Kenai Planning and Zoning Commission held a work session on August 26, 2020 and discussed the ordinance; and

WHEREAS, the City of Soldotna Planning and Zoning Commission held a work session on August 5, 2020; and unanimously passed resolution PZ2020-008 recommending approval on September 2, 2020; and

WHEREAS, invitations were extended to review the amendments with borough staff to the Advisory Planning Commissions of Anchor Point, Cooper Landing, Funny River, Kalifornsky, Hope / Sunrise, Moose Pass, and Kachemak Bay; and

WHEREAS, the Cooper Landing Advisory Planning Commission held a meeting on July 8, 2020 and recommended approval with a 30-day timeframe for notification; and

WHEREAS, the Kachemak Bay Advisory Planning Commission held a meeting on July 9, 2020 and recommended approval; and

WHEREAS, the borough planning commission held a public hearing and reviewed the amended Title 20 on September 28, 2020.

WHEREAS, at its meeting of November 30, 2020, the Planning Commission reviewed this ordinance and recommended approval by unanimous consent; and

WHEREAS, the planning commission held a public work session on January 25, 2021 to consider the proposed amendments, and on February 8, 2021 the planning commission recommended approval of the six proposed amendments as described in an updated memo dated February 18, 2021;

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

SECTION 1. That KPB 2.40.080(B) is hereby amended as follows:

2.40.080. Plat committee – Powers and duties – Hearing and review procedures

The planning commission [(AND THE PLANNING COMMISSION ACTING AS THE PLATTING BOARD)] in its capacity as the platting board is authorized to delegate powers to hear and decide cases involving platting to a plat committee composed of those members of the planning commission present for such hearing

so long as there are at least 4 members of the planning commission present. The following procedures are prescribed for hearings and reviews:

- A. Cases may be decided by a majority vote of the plat committee members present.
- B. Review of a decision of the plat committee may be heard by the planning commission acting as platting board by filing written notice thereof with the borough planning director on a form provided by the borough planning department. The request for review shall be filed within [TEN] fifteen days [AFTER] of date of distribution [NOTIFICATION] of the decision of the plat committee by personal service or service by mail. A request for review may be filed by any person or agency that was sent a notice of decision. [PARTICIPATED AT THE PLAT COMMITTEE HEARING EITHER BY WRITTEN OR ORAL PRESENTATION.] [THE REQUEST MUST HAVE AN ORIGINAL SIGNATURE; FILING ELECTRONICALLY OR BY FACSIMILE IS PROHIBITED.]The request for review must briefly state the reason for the review request and applicable provisions of borough code or other law upon which the request for review is based. Notice of the review hearing will be issued by staff to the original recipients of the plat committee public hearing notice.

SECTION 2. That KPB 20.10.040 is hereby amended as follows:

20.10.040. Abbreviated plat procedure.

- A. The abbreviated plat procedure may be used where the subdivision or replat[SUBDIVISION] is of a simple nature and meets all of the requirements of this section as follows:
 - 1. The subdivision divides a single lot into not more than four lots or the subdivision moves, or eliminates, lot lines to create not more than four lots or tracts.
 - 2. The subdivision provides legal and physical access to a public highway or street for each lot created by the subdivision;
 - 3. The subdivision does not contain or require a dedication of a street, right-of-way or other area; and
 - 4. The subdivision does not require a vacation of a public dedication of land or a variance from a subdivision regulation.
- B. Submission Requirements. All of the submission requirements of KPB Chapters 20.25, 20.30 and 20.40 shall be met.

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SECTION 3. That KPB 20.10.080 is hereby amended as follows:

20.10.080. [RIGHT-OF-WAY] Vacation Plat

A. When the sole purpose of a plat is to depict [RIGHT-OF-WAY] an area approved for vacation under KPB Chapter 20.65[20.70 AS ATTACHING TO ADJOINING PARCELS IN COMPLIANCE WITH KPB 20.70.150 AND AS 29.40.150,]the following procedure shall apply:

1. Submission Requirements. All of the submission requirements of Chapter 20.25 shall be met.
2. Surveyor's Certificate. The surveyor's signature and seal on the plat certifies the surveyor is properly registered and licensed to practice land surveying in the State of Alaska, that the plat represents a survey made by the surveyor or under the surveyor's direct supervision, that the monuments shown thereon actually exist as described, and that all dimensions and other details are correct to the best of the surveyor's knowledge and belief. A written certificate is optional.
3. Statement of Plat Approval. The following form shall be printed on the final plat to be filled in after approval:

[Right-of-Way] Vacation Plat Approval

This plat was approved by the Kenai Peninsula Borough in accordance with KPB 20.10.080.

Borough Official

Date

B. Procedure. The planning director shall review the submitted preliminary vacation plat for completeness. If the preliminary plat does not conform to the requirements of KPB 20.10.080(A)(1), the planning director shall return the plat to the petitioner with a letter describing the deficiencies.

C. Action.

1. The platting authority for the [RIGHT-OF-WAY] vacation plat procedure is vested in the planning director. The planning director shall take action on the plat within twenty Borough working days of acceptance of the preliminary plat, subject to prior acquisition of all necessary outside reviews.

2. Preliminary approval of the plat may not extend beyond one year of the vacation consent in KPB 20.65[70.110]. No extensions of time may be granted.
3. All decisions of the planning director regarding the preliminary plat shall be final.

D. Final Plat.

1. The requirements of the final plat shall be in accord with KPB 20.40.020, KPB 20.65[70.130] and the applicable portions of KPB Chapter 20.60.
2. The requirements of KPB 20.60.190(A)(7) and (D) do not apply to vacation plats.
3. The vacated area shall be shown in a clearly discernible pattern, such as hatching, and shall be labeled as “area vacated by this plat”. The former lot area and current lot area shall be labeled or noted on the plat.
4. The date of the vacation approval by the planning commission, as well as the date of consent to the vacation by the assembly or appropriate city council, shall be noted on the plat.
5. When the preliminary plat has been approved by the planning director under this section, the final plat may be approved by the planning director if the final plat meets the conditions of the preliminary approval and complies with this title. The planning director's approval shall be on a notarized form. The planning director shall report final plat approvals under this section at the next regular plat committee meeting. If the final plat does not meet the conditions of preliminary approval, the planning director shall provide a written explanation describing the deficiencies to the applicant.

SECTION 4. That KPB 20.10.100 is hereby enacted as follows:

20.10.100 Notice; Public Hearing

- A. Notice of any public hearing required under this title shall be given in accordance with this section.

- B. Required forms of notice are as follows:
1. Publication in a newspaper of general circulation in the borough prior to the public hearing.
 2. Notices shall be mailed at least 14 days before the public hearing to all record owners of property within a distance of 600 feet of the exterior boundary of the property that is the subject of the application or hearing. All notices shall be mailed to the record owner at the address listed in the current property tax record of the borough assessor.
 3. Notice of the public hearing must be posted on the borough planning department's website and posted on the planning department's bulletin board located at 144 N. Binkley Street, Soldotna, Alaska.
 4. The planning director may direct that additional notice of the public hearing be given. The planning commission, at its discretion, may also direct additional notice of the public hearing be given. However, the failure to give such additional notice shall not affect the validity of any proceeding under this title.
- C. Notice required by this section shall state the date, time, and location of the public hearing, a description of the action requested, a description of the property that is the subject of the application, the name of the applicant, the name of the owner of the subject property, and the process for submitting of written comments.
- D. The failure of any person to receive any notice required under this section, where the records of the borough indicate the notice was provided in a timely and proper manner, shall not affect the validity of any proceeding under this title.
- E. Parties whose sole interest in the subdivision is as a beneficiary of a deed of trust, as shown on the certificate to plat, shall be sent certified mail notice by the planning department. If a beneficial interest holder does not respond within 30 days of the date of mailing indicating that the deed of trust either prohibits or allows the proposed platting action, or requires their signature on the plat, the plat may be approved. The owner may submit a letter of non-objection from the beneficial interest holder with the plat in lieu of the notice requirement. If the final certificate to plat shows additional beneficial interest holders, and they have not signed the plat or provided a letter of non-objection, the planning department will send them notice and give them a 30 day response time prior to approval of the final plat.

SECTION 5. That KPB 20.10.110 is hereby enacted as follows:

20.10.110. – Building setback encroachment permits.

- A. Unless otherwise regulated by city zoning ordinances of properties within its boundaries, any person desiring to construct, or cause, an encroachment within a building setback shall apply for a building setback encroachment permit to the planning department. Failure to obtain an encroachment permit is subject to remedies set forth in KPB 20.10.030.
- B. A permit fee shall be charged for building setback encroachment permit as provided in the current approved Kenai Peninsula Borough Schedule of Rates, Charges and Fees. A person who fails to apply for, and obtain, a building setback encroachment permit prior to an enforcement notice being issued pursuant to KPB 21.50.100 is subject to enforcement.
- C. All building setback encroachments, including those that pre-date the effective date of this ordinance, must apply for a building setback encroachment permit. Permits for building setback 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.
- D. When the building setback encroachment permit application is complete, it will be scheduled for the next available planning commission meeting.
- E. The following standards shall be considered for all building setback encroachment permit applications:
 - 1. The building setback encroachment may not interfere with road maintenance.
 - 2. The building setback encroachment may not interfere with sight lines or distances.
 - 3. The building setback encroachment may not create a safety hazard.
- F. The granting of a building setback encroachment permit will only be for the portion of the improvement or building that is located within the building setback and the permit will be valid for the life of the structure or for a period of time set by the Planning Commission. The granting of a building setback permit will not remove any portion of the 20 foot building setback from the parcel.

- G. The planning commission shall approve or deny a building setback encroachment permit. If approved, a resolution will be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to complete the permit. The resolution will require an exhibit drawing showing, and dimensioning, the building setback encroachment permit area. The exhibit drawing shall be prepared, signed and sealed, by a licensed land surveyor.
- H. A decision of the planning commission may be appealed to the hearing officer by a party of record, as defined by KPB 21.20.210, within 15 days of the date of notice of decision in accordance with KPB 21.20.250.

SECTION 6. That KPB 20.10.120 is hereby enacted as follows:

20.10.120. Notice of decision.

If a notice of decision is sent pursuant to this title, the notice will be sent to: (i) an affected city, if applicable; (ii) all persons who have commented in writing or in person on the item; and (iii) the property owners, or agents of the property owner, subject to the decision.

SECTION 7. That KPB 20.25.020 is hereby amended as follows:

20.25.020. Compliance with certain provisions required.

A [SUBDIVIDER] licensed surveyor shall prepare a preliminary plat of the proposed subdivision which shall comply with the requirements of KPB 20.25.070 and 20.25.080, and other applicable provisions of this chapter except as provided in KPB 20.10.050. Revisions to the submitted preliminary plat that are received subsequent to the preparation of the staff report and after notice is sent will not be considered at the scheduled public hearing. Any such revisions will be treated as a revised application under this chapter.

SECTION 8. That KPB 20.25.030 is hereby amended as follows:

20.25.030. Prints—Type and number to be submitted.

The format and number of [PRINTS]copies of the preliminary plat to be submitted shall be as determined by the planning director and noted on the Borough Plat Submittal form. Preliminary plat prints shall be folded to 8½ × 13 inches or smaller in a manner such that the subdivision name and legal description show.

SECTION 9. That KPB 20.25.050 is hereby amended as follows:

20.25.050. Subdivision or replat in a first class or home rule city submittal procedure.

- A. Pursuant to AS 29.40.010, upon city request first class and home rule cities within the borough [ARE] may be delegated [LIMITED AUTHORITY] platting powers [TO ADOPT BY ORDINANCE SUBDIVISION STANDARDS DIFFERENT FROM THOSE SET FORTH IN THIS CHAPTER].
- B. Proposed vacations, abbreviated subdivision plats, subdivision plat waivers, and preliminary plats showing a subdivision of land lying within the corporate boundary of a first class or home rule city shall be first submitted by the subdivider to the appropriate city for review prior to submittal of the plat to the borough planning department. [IN SUCH INSTANCES, THE CITY ADVISORY PLANNING COMMISSION SHALL HAVE 49 DAYS FROM THE DATE OF RECEIPT IN WHICH TO REVIEW THE PRELIMINARY PLAT AND TAKE ACTION.]
- C. The preliminary plat submitted to the city shall comply with the requirements of KPB 20.25.070 and 20.25.080.
- D. The city advisory planning commission and, if required by city code or requested by the city advisory planning commission, other appropriate municipal departments, shall review the proposed action and prepare written comments which shall be included with the submittal to the borough. The subdivider bears the responsibility for presentations to, and discussions with, the city to ensure that the vacation, subdivision, subdivision plat waiver, or subdivision abbreviated plat will conform to lawful ordinances and requirements of said city.
- E. Final plats submitted to the borough for approval will be submitted by the borough to the city for review when the design deviates from the preliminary plat by a substantial change in alignment or dedication of a right-of-way, addition of lots, or major change in lot design which has not been recommended by the city. [IN SUCH INSTANCES, THE CITY ADVISORY PLANNING COMMISSION SHALL HAVE 49 DAYS FROM THE DATE OF RECEIPT IN WHICH TO REVIEW THE FINAL PLAT AND TAKE ACTION.]
- F. [TO THE EXTENT A CITY HAS BEEN DELEGATED LIMITED PLATTING AUTHORITY, A] A final plat may not deviate from the preliminary plat unless the proposed revision has first been submitted to the city by the subdivider and has been approved by the city council or its designee.

SECTION 10. That KPB 20.25.060 is hereby amended as follows:

20.25.060. Subdivision or replat in second class city submittal procedure

- A. Preliminary subdivision plats or replats lying within the corporate boundary of a second class city shall be first submitted to the city for review prior to submittal of the plat to the borough planning department. [THE CITY SHALL HAVE 49 DAYS FROM THE DATE OF SUBMITTAL BY THE SUBDIVIDER TO THE CITY IN WHICH TO REVIEW THE PRELIMINARY PLAT AND SUBMIT COMMENTS TO THE BOROUGH.]
- B. [TO THE EXTENT LIMITED PLATTING AUTHORITY HAS BEEN DELEGATED TO A SECOND CLASS CITY, A] A preliminary plat shall not be submitted to the borough planning department for review unless the aspects of the subdivision subject to the city authority have been first approved by the city.
- C. The preliminary plat submitted to the city shall comply with the requirements of KPB 20.25.070 and 20.25.080.
- D. The city council or its designee, and, if required by city code or requested by the city council, other appropriate municipal departments, shall review the plat or replat and prepare written comments which shall be included with the submittal of the plat to the borough. The subdivider bears the responsibility for presentations to, and discussions with, the city to ensure that the final plat will conform to lawful ordinances and requirements of said city.
- E. Final plats submitted to the borough for approval will be submitted by the borough to said city for review by the city council or its designee when the design deviates from the preliminary plat as a condition of preliminary planning commission approval by a substantial change in alignment or a dedication of right-of-way, addition of lots, or major change in lot design which has not been recommended by the city council or its designee. [IN SUCH INSTANCES, THE CITY COUNCIL OR ITS DESIGNEE SHALL HAVE 49 DAYS FROM THE DATE OF RECEIPT IN WHICH TO REVIEW THE FINAL PLAT AND TAKE ACTION.]
- F. [TO THE EXTENT A CITY HAS BEEN DELEGATED LIMITED PLATTING AUTHORITY, A] A final plat may not deviate from the preliminary plat unless the proposed revision has first been submitted to the city by the subdivider and has been approved by the city council or its designee.

SECTION 11. That KPB 20.25.070 is hereby amended as follows:

20.25.070. Form and contents required.

The preliminary plat shall be drawn to scale of sufficient size to be clearly legible and shall clearly show all of the following:

- A. Within the Title Block.
1. Name of the subdivision which shall not be the same as an existing city, town, tract, or subdivision of land in the borough, of which a plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion. The parent plat's name shall be the primary name of the preliminary plat;
 2. Legal description, location, date, and total area in acres of the proposed subdivision; [AND]
 3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor. [;]
- B. North point;
- C. The location, width and name of existing or platted streets and public ways, railroad rights-of-way, and other important features such as section lines or political subdivisions or municipal corporation boundaries abutting the subdivision;
- D. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries, and prominent natural and manmade features, such as shorelines or streams;
- E. All parcels of land including those intended for private ownership and those to be dedicated for public use or reserved in the deeds for the use of all property owners in the proposed subdivision, together with the purposes, conditions, or limitations of reservations that could affect the subdivision;
- F. The [NAMES AND WIDTHS OF PUBLIC STREETS AND ALLEYS AND] location, width and name of existing and platted streets and public ways, railroad rights-of-way, easements, and travel ways existing and proposed, within the subdivision;
- G. The [S]status of adjacent lands within 100 feet of the proposed subdivision boundary or the land status across from any dedicated rights-of-way that adjoin the proposed subdivision boundary, including names of subdivisions, lot lines, block numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;

- H. Approximate locations of low wet areas, areas subject to inundation, areas subject to flooding[,] or storm water overflow, and the line of ordinary high water[, WETLANDS WHEN ADJACENT TO LAKES OR NON-TIDAL STREAMS, AND THE APPROPRIATE STUDY WHICH IDENTIFIES A FLOODPLAIN, IF APPLICABLE;]. This information may be provided on an additional sheet if showing these areas causes the preliminary plat to appear cluttered and/or difficult to read;

...

SECTION 12. That KPB 20.25.090 is hereby repealed.

[20.25.090. NOTICE.]

[A. AFFECTED PROPERTY OWNERS ARE DEFINED AS PERSONS WHO OWN PROPERTY WITHIN A PROPOSED SUBDIVISION, AND PERSONS WHO OWN PROPERTY WITHIN 600 FEET OF THE BOUNDARIES OF THE PROPOSED SUBDIVISION. THE PLANNING DIRECTOR SHALL DETERMINE WHETHER ADDITIONAL PROPERTY OWNERS ARE AFFECTED BASED ON POPULATION, DENSITY, OWNERSHIP DATA, TOPOGRAPHY AND FACILITIES IN THE AREA OF THE SUBDIVISION.]

[B. NOTICE OF PUBLIC HEARING SHALL APPEAR AT LEAST ONCE IN A NEWSPAPER OF GENERAL CIRCULATION STATING:

- A. A GENERAL DESCRIPTION OF THE SUBDIVISION OR REPLAT;
- B. WHO FILED THE SUBDIVISION PETITION;
- C. WHEN THE SUBDIVISION PETITION WAS FILED;
- D. THE TIME AND PLACE OF THE HEARING ON THE SUBDIVISION;
AND
- E. THE PROCESS AND DEADLINE FOR SUBMITTAL OF COMMENTS.
 - (1) WRITTEN COMMENTS MAY BE SUBMITTED BY MAIL, HAND-DELIVERY, EMAIL OR FACSIMILE.]

[C. THE NOTICE IN SUBSECTION B SHALL BE SENT BY REGULAR MAIL TO THE AFFECTED PROPERTY OWNERS AT LEAST 14 DAYS PRIOR TO THE PUBLIC HEARING. A CERTIFICATE OF MAILING LISTING THE NAMES, ADDRESSES AND PARCEL

INFORMATION FOR EACH NOTIFIED OWNER SHALL BE MAINTAINED IN THE SUBDIVISION FILE.]

- [D. PARTIES WHOSE SOLE INTEREST IN THE SUBDIVISION IS AS A BENEFICIARY OF A DEED OF TRUST, AS SHOWN ON THE CERTIFICATE TO PLAT, SHALL BE SENT CERTIFIED MAIL NOTICE BY THE PLANNING DEPARTMENT. IF A BENEFICIAL INTEREST HOLDER DOES NOT RESPOND WITHIN 30 DAYS OF THE DATE OF MAILING INDICATING THAT THE DEED OF TRUST EITHER PROHIBITS OR ALLOWS THE PROPOSED PLATTING ACTION, OR REQUIRES THEIR SIGNATURE ON THE PLAT, THE PLAT MAY BE APPROVED. THE OWNER MAY SUBMIT A LETTER OF NON-OBJECTION FROM THE BENEFICIAL INTEREST HOLDER WITH THE PLAT IN LIEU OF THE NOTICE REQUIREMENT. IF THE FINAL CERTIFICATE TO PLAT SHOWS ADDITIONAL BENEFICIAL INTEREST HOLDERS, AND THEY HAVE NOT SIGNED THE PLAT OR PROVIDED A LETTER OF NON-OBJECTION, THE PLANNING DEPARTMENT WILL SEND THEM NOTICE AND GIVE THEM A 30 DAY RESPONSE TIME PRIOR TO APPROVAL OF THE FINAL PLAT.]

- [E. COPIES OF THE SUBDIVISION PROPOSAL WILL BE PROVIDED TO OTHER AGENCIES AND BOROUGH DEPARTMENTS THAT MAY BE AFFECTED BY THE SUBDIVISION PROPOSAL FOR REVIEW AND COMMENT.]

SECTION 13. That KPB 20.25.110 is hereby amended as follows:

20.25.110. Approval—Scope—Expiration restriction.

- A. Approval of the preliminary plat shall not constitute approval of the final plat, but means only that the basic lot and street design is acceptable. The subdivider is on notice that it is the subdivider's responsibility to provide all the information required in this ordinance and to submit a correct final plat within two years of the date of the planning commission's conditional approval of the preliminary plat. Upon application by the subdivider prior to the two-year deadline for final plat submittal, a time extension for two years beyond the initial two-year period for submittal of the final plat may be granted by the planning director. A second [THIRD] and final two-year extension may be granted by the planning director when requested by the subdivider prior to expiration of the previous approval[, ALLOWING FOR A TOTAL APPROVAL TIME OF SIX YEARS]. When the preliminary plat is located within city limits, submittal of documentation from the city advisory planning commission indicating concurrence with the time extension request must accompany a time extension request. When a preliminary plat that has been granted a time extension is finalized, the final plat must comply with the current code. Expiration of the original plat

approval or time extensions will require the submission of, and action on, a new preliminary plat.

- B. Preliminary plats that will be finalized in phases must comply with current code at the time each phase is finalized. All dedications for streets that are required pursuant to KPB 20.30.030 must be provided in the first phase. The approval of a final plat for a portion of the phased preliminary plat shall [EXTEND] reset the [PRELIMINARY] approval date for two years from the date the subdivision phase final plat is recorded. [FOR T] The remaining land within the phased subdivision[, EXCEPT THAT THE COMMISSION] may require a new preliminary plat approval if the abutting road system changes. Phases must be filed in sequential order.
- C. Any plat that requires submittal to and approval by the State of Alaska, including but not limited to section line easement vacation plats and highway right-of-way plans, will be given an initial four-year preliminary approval. Extensions of the approval may be given by the planning director as needed for completion of the project.
- D. No more than one revision process to the same preliminary plat is allowed. Major revisions to a preliminary plat shall not be approved on the final plat without first being processed under the public notice and hearing requirements for preliminary plats. Major revisions at the time of final plat which increase density, add or substantively move rights-of-way, or otherwise increase the subdivision's impact, are not allowed and will require submittal of a new preliminary plat, application and fee.
- E. Subdivision plats approved prior to February 14, 2014 under former KPB 20.12, 20.14, 20.16, and 20.20 with approvals that are greater than 10 years in length, and with approvals that will expire, will be considered expired on the expiration date. Continuation of an expired subdivision will require the submission of, and action on, a new preliminary plat that complies with current subdivision requirements.

SECTION 14. That KPB 20.25.120 is hereby amended as follows:

20.25.120. Review and appeal.

[A PARTY OF RECORD] In accordance with KPB 2.40.080, any person, agency, or city that participated at the plat committee hearing, either by written or oral presentation, may request that a decision of the plat committee be reviewed by the planning commission by filing a written request within 15[10] days of date of distribution [NOTIFICATION] of the decision. [IN ACCORDANCE WITH KPB 2.40.080.] A decision of the planning commission may be appealed to the hearing officer by a party of record within 15 days of the date of distribution[NOTICE] of decision in accordance with KPB 21.20.250.

SECTION 15. That KPB 20.30.060 is hereby amended as follows:

20.30.060. Easements—Requirements.

- A. The planning commission may require easements it determines necessary for the benefit of the public. Such easements include, but are not limited to, lateral support (slope) easements, drainage easements for ditching or protection of a drainage, and utility easements. Required easements do not need to be for road purposes.
- B. Upon submittal of a preliminary plat, the planning department shall provide a copy to public utility companies for their comments and recommended design of utility easements. If the property is subject to existing natural gas or petroleum pipeline easements, a copy shall also be furnished to the appropriate company for comment.
- C. The subdivider bears the responsibility for coordination with the utility companies during the design and development phases. When a subdivider and the utility company cannot agree on easements, the final plat will be taken to the planning commission for determination of easements.
- D. Unless a utility company requests additional easements, the front ten feet ~~[OF THE BUILDING SETBACK]~~adjoining rights-of-way shall be designated as a utility easement, graphically or by note. Within the boundaries of an incorporated city, the width and location of utility easements will be determined by the city and affected utility providers.

SECTION 16. That KPB 20.30.110 is hereby repealed.

[20.30.110. - HALF STREETS.]

- [A. HALF STREETS SHALL GENERALLY NOT BE ALLOWED EXCEPT WHERE ONE OF THE FOLLOWING CIRCUMSTANCES APPLIES:]
 - [1. THE STREET IS IDENTIFIED ON THE BOROUGH ROAD PLAN AS AN ARTERIAL;]
 - [2. THE STREET IS A LOGICAL EXTENSION OF AN EXISTING STREET; OR]
 - [3. THE REMAINING HALF STREET CAN REASONABLY BE EXPECTED TO BE DEDICATED.]
- [B. WHEN A DESIGN CHANGE REQUIRED AS A CONDITION OF PRELIMINARY APPROVAL RESULTS IN A HALF RIGHT-OF-WAY THAT WAS NOT SHOWN ON THE ORIGINAL PRELIMINARY PLAT,

ADJOINERS TO THE NEW HALF RIGHT-OF-WAY ARE PARTIES OF RECORD AND WILL BE SENT A COPY OF THE PLAT COMMITTEE MINUTES AND A SKETCH SHOWING THE NEW HALF RIGHT-OF-WAY. PURSUANT TO KPB 2.40.080 REVIEW OF THE PLAT COMMITTEE DECISION BY THE PLANNING COMMISSION MAY BE REQUESTED BY PARTIES OF RECORD.]

SECTION 17. That KPB 20.30.120(A) is hereby amended as follows:

20.30.120. Streets Width requirements.

- A. The minimum right-of-way width of streets shall be 60 feet.
 - 1. Half streets shall generally not be allowed except to provide the logical extension of a right-of-way where the remaining half street can reasonably be expected to be dedicated in the future.
 - 2. When a design change required as a condition of preliminary approval results in a half right-of-way that was not shown on the original preliminary plat, adjoining to the new half right-of-way will be sent a copy of the plat committee minutes and a sketch showing the new half right-of-way and per KPB 2.40.080 can request a review of the plat committee decision by the full Planning Commission.

...

SECTION 18. That KPB 20.30.150(B) is hereby amended as follows:

20.30.150. Streets – Intersection requirements.

- A. Street intersections shall be as nearly at right angles as possible, and no intersection shall be at an angle of less than 60 degrees. Where acute street intersections are designed, a minimum 50-foot radius corner at the right-of-way line of the acute angle shall be provided.
- B. Offset intersections are not allowed. The distance between intersection centerlines shall be no less than 150 feet.

...

SECTION 19. That KPB 20.30.240 is hereby amended as follows:

20.30.240. Building setbacks.

- A. [THE COMMISSION SHALL REQUIRE A BUILDING SETBACK OF AT LEAST 70 FEET FROM THE CENTERLINE OF ALL FEE SIMPLE

ARTERIAL RIGHTS-OF-WAY IN A SUBDIVISION.] A minimum 20-foot building setback shall be required for dedicated [FEE SIMPLE NON-ARTERIAL] rights-of-way in subdivisions located outside incorporated cities.

B. Subdivision of land classified as agricultural conveyed subject to AS 38.05.321(a)(2)(B) may provide public access easements in lieu of fee simple dedications if necessary to comply with the minimum lot size restriction of the statute. The public access easements must meet all applicable right-of-way design criteria of Title 20 and are subject to the building setback requirements set forth in KPB 20.30.240.

C. The setback shall be noted on the plat in the following format:

Building setback - A setback of _____ feet is required from all dedicated street right-of-ways unless a lesser standard is approved by resolution of the appropriate planning commission.

D. When a subdivision is affected by a Local Option Zoning District (LOZD), as approved by the assembly, all building setbacks shall be graphically depicted and labeled on the lots. A local option zoning setback shall be noted on the plat in the following format:

Building setback - This subdivision is located within (name of LOZD) Local Option Zoning District as contained in KPB Chapters 21.44 and 21.46 and adopted by KPB Ordinance (number), recorded under (serial no. and recording district). Information regarding the zoning restrictions and copies of the ordinance are available from the KPB Planning Department.

SECTION 20. That KPB 20.30.250 is hereby amended as follows:

20.30.250. Building setbacks—Within cities.

The building setback requirements for subdivisions located within cities shall be governed by the provisions of municipal zoning districts. Building setbacks as depicted, or noted, on recorded plats shall not be carried forward on a new subdivision plat located within a municipal zoning district. Provide a plat note stating, “Per KPB 20.30.250 the building setback of record has been removed. All development must comply with the municipal zoning requirements.”

SECTION 21. That KPB 20.30.270 is hereby amended as follows:

20.30.270. Different standards in cities.

Where cities have [BEEN DELEGATED PARTIAL PLATTING POWERS BY THE BOROUGH AND HAVE] enacted by ordinance different subdivision design standards than those set forth in this chapter, the planning commission shall apply

the city standards in lieu of those set forth in this chapter. [THE APPLICATION OF THE CITY DESIGN STANDARD IS SUBJECT TO THE CITY HAVING AN ORDINANCE IN PLACE THAT SATISFIES THE NOTICE REQUIREMENTS OF KPB 20.25.090(A) THROUGH (D) AND A PROCESS TO APPEAL DECISIONS MADE BY THE CITY REGARDING APPLICATION OF ITS SUBDIVISION DESIGN STANDARDS.] Any appeal of a city design standard is subject to KPB 21.01.020(E).

SECTION 22. That KPB 20.30.280(C) is hereby amended as follows:

20.30.280. Floodplain requirements.

- A. All subdivision plats which are within areas where the floodplain has been identified by the Federal Emergency Management Agency (FEMA), and which involve 50 lots or five acres whichever is lesser, shall include the base flood elevation source.
- B. Any area of the subdivision within the floodplain, floodway or Seward Mapped Flood Data Area (SMFDA) is to be shown and labeled on the plat.
- C. All subdivisions which are wholly or partially located within flood hazard areas as defined by KPB 21.06.030 must comply [AREAS WHERE THE FLOODPLAIN HAS NOT BEEN MAPPED AND BASE FLOOD ELEVATION DATA IS NOT AVAILABLE SHALL PROVIDE THE INFORMATION IN COMPLIANCE] with KPB 21.06.050 standards for Floodplain Management.

...

SECTION 23. That KPB 20.30.290 is hereby amended as follows:

20.30.290. Anadromous waters habitat protection district.

If any portion of a subdivision or replat is located within an anadromous waters habitat protection district, the plat shall contain the following note:

ANADROMOUS WATERS HABITAT PROTECTION DISTRICT NOTE:

Portions of this subdivision are within the Kenai Peninsula Borough Anadromous Waters Habitat Protection District. See KPB Chapter 21.18, as may be amended, for restrictions that affect development in this subdivision. Width of the habitat protection district shall be in accordance with KPB 21.18.040.

SECTION 24. That KPB 20.40.020(A) is hereby amended as follows:

20.40.020. Wastewater system review not required

- A. Wastewater system review will not be required if any of the following criteria are satisfied:
1. The existing parent subdivision was approved by the Department of Environmental Conservation, current state agency, or the Kenai Peninsula Borough under this chapter and the proposed subdivision is limited to:
 - a. Vacating lot lines to create fewer lots;
 - b. Moving one or more lot lines a total distance of ten feet or less without increasing the number of lots having prior onsite wastewater approval; or
 - c. Moving one or more lot lines without increasing the number of developable lots, while maintaining a minimum of 20,000 square feet of contiguous area, as described in KPB 20.40.040(A)(4)(a), for each lot affected by the lot line movement.
 2. The plat increases lot sizes by 1,000 square feet or more of area suitable for conventional development.
 3. The sole purpose of a plat is to depict [RIGHT-OF-WAY] an area approved for vacation under KPB Chapter 20.65[70] or[AS ATTACHING TO ADJOINING PARCELS IN COMPLIANCE WITH KPB 20.70.150 AND AS 29.40.150,] under KPB 20.10.090.
 4. The sole purpose of a plat is to show a survey and delineate parcels as a condition prior to transfer of title for a municipal entitlement pursuant to AS 29.65, under KPB 20.10.100.

...

SECTION 25. That KPB 20.40.030 is hereby amended as follows:

20.40.030. Abbreviated submittal.

Lots within the proposed subdivision that will be at least 200,000 square feet [OR NOMINAL FIVE ACRES] in size [DO NOT REQUIRE A SOILS ANALYSIS AND REPORT PREPARED BY A QUALIFIED ENGINEER] must comply with KPB 20.40.100(F). Before a final plat is recorded or filed for subdivision, the following note must be placed on the plat:

WASTEWATER DISPOSAL: Lots which are at least 200,000 square feet [OR NOMINAL FIVE ACRES] in size may not be suitable for onsite wastewater

treatment and disposal. Any wastewater treatment or disposal system must meet the regulatory requirements of the Alaska Department of Environmental Conservation.

SECTION 26. That KPB 20.40.040 is hereby amended as follows:

20.40.040. Conventional onsite soil absorption systems.

A. If any lots within a subdivision will utilize conventional onsite soil absorption systems and are less than 200,000 square feet, the following requirements must be met and submitted to the planning director:

- 1. A soils analysis and report, sealed by a qualified engineer, which meets the requirements of KPB 20.40.100;
- 2. A pollution abatement report, sealed by a qualified engineer, which meets the requirements of KPB 20.40.090 if:
 - a. Lot size is less than 40,000 square feet; and
 - b. There will not be a public water system serving the subdivision lots as described in KPB 20.40.090(C);
- 3. A working map depicting:
 - a. Ground slopes greater than [20] 25 percent, or 5 percent where a bed system is proposed, and other topographic features as needed by a qualified engineer to meet the design requirements for wastewater disposal as defined in this chapter;

...

B. Before a final plat is recorded or filed for subdivision under this section, the borough will require the engineer to sign the following note on the final plat:

WASTEWATER DISPOSAL: Soil conditions, water table levels, and soil slopes in this subdivision have been found suitable for conventional onsite wastewater treatment and disposal systems serving single-family or duplex residences. [AND MEETING THE REGULATORY REQUIREMENTS OF THE KENAI PENINSULA BOROUGH.] An Engineer’s Subdivision and Soils Report is available from the Kenai Peninsula Borough. Any other type of onsite wastewater treatment and disposal system must be designed by a qualified engineer, registered to practice in Alaska, and the design must be approved by the Alaska Department of Environmental Conservation.

(Signature of) Engineer	License #	Date
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SECTION 27. That KPB 20.40.070 is hereby amended as follows:

20.40.070. Connection to an existing system.

- A. If any lots within a subdivision will be connected to an existing collector wastewater and treatment system, the following requirements must be met:
1. Proof that the owner of the collector wastewater and treatment system has agreed to allow the lots to be connected;
 2. Documentation from the municipality, ADEC or system design engineer that the receiving system is adequate to accept the additional hydraulic and organic loading; and
 3. The minimum lot size necessary to maintain the applicable separation distance [SET OUT AT] pursuant to 18 AAC 72.020 from any part of the wastewater system.
- B. Before a final plat is filed for subdivision, the qualified engineer or surveyor, as applicable, must complete the following plat note which shall be placed on the plat:

WASTEWATER DISPOSAL: Plans for wastewater disposal that meet regulatory requirements are on file at the Department of Environmental Conservation.

(Signature of) Engineer

License #

Date

- C. If all lots in the subdivision are served by a wastewater treatment and disposal system within a home rule or general law city, then signature by a licensed engineer or surveyor is not required.

SECTION 28. That KPB 20.40.100(F) is hereby amended as follows:

20.40.100. Soils analysis and report.

- F. Soil testing requirements for subdivision lots equal or greater than 200,000 square feet [NOMINAL FIVE ACRES] consist of general soils and water table description with sufficient detail to support the applicability of the proposed means of wastewater disposal; the description must be based on:
1. Existing information; or
 2. Visual analysis by, or local knowledge of, a qualified engineer.

SECTION 29. That KPB 20.50.010(A) is hereby amended as follows:

20.50.010. Exceptions to regulations—Procedure—Commission authority.

- A. Unless prohibited under this title, the commission may authorize exceptions to any of the requirements set forth in this title. [APPLICATION] A request for an exception shall be in writing and present the commission with substantial evidence, justifying the requested waiver or exception stating fully the grounds for the application and the facts relied upon. The commission shall make findings of fact meeting the following standards before granting any exception:
1. That special circumstances or conditions affecting the property have been shown [BY APPLICATION];
 2. That the exception is necessary for the preservation and enjoyment of a substantial property right and is the most practical manner of complying with the intent of this title;
 3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property in the area in which said property is situated.

SECTION 30. That KPB 20.60.025 is hereby enacted as follows:

20.60.025 Fee required

The fee established by the current Kenai Peninsula Borough Schedule of Rates, Charges and Fees shall accompany the submission of the final plat.

SECTION 31. That KPB 20.60.070 is hereby amended as follows:

20.60.070. Plat specifications.

The final subdivision plat shall be clearly and legibly drawn to a scale of 1 inch equal to 10, 20, 30, 40, 50, 60, 150 feet of a multiple of 100 feet. The drawing shall be plotted on good quality polyester film at least 3 mil in thickness. All lines, letters, figures, certifications, acknowledgements and signatures shall be clear, [AND] legible and in black ink. The minimum text size should be 10 point (0.1") font or the equivalent. Where necessary, 8 point (0.08") capitalized font or the equivalent can be used to label features. The plat shall be so made, and shall be in such condition when filed, that legible prints and negatives can be made therefrom. Colors, grayscale or shading is not acceptable as it does not show when the drawing is reproduced. Sheets shall be one of these sizes: [8½" × 14"]; 11" × 17"; 18" × 24"; and 24" or 30" × 36". When more than one sheet is required, an index map shall be provided on the first sheet showing the entire subdivision and indicating

the portion contained on each sheet. Each sheet shall show the total number (e.g. sheet 1 of 3). When more than one sheet is submitted, all sheets shall be the same size. Indelible ink or sealant shall be used to insure permanency.

SECTION 32. That KPB 20.60.110 is hereby amended as follows:

20.60.110. Dimensional data required.

- A. The bearing and length of every lot line, block line, and boundary line shall be shown. Dimensions of lots shall be given as net dimensions to the boundaries of adjoining streets and shall be shown in feet. No ditto marks shall be used. Information shall be shown for all curves, including radius, central angle, arc length, chord length and chord bearing. The initial point of survey shall be shown and labeled. All non-radial lines shall be labeled. If monumented lines were not surveyed during this platting action, show the computed data per the record plat information.
- B. The natural meanders of ordinary high water (or mean high water line as applicable) is for area computations only, the true corners being on the extension of the sidelines and the intersection with the natural meanders.
- C. Any discrepancy between the survey and the record description, and the source of all information used in making the survey shall be indicated. When an inconsistency is found including a gap or overlap, excess or deficiency, erroneously located boundary lines or monuments, or when any doubt as to the location on the ground of the true boundary or property rights exists, the nature of the inconsistency shall be clearly shown on the drawing.

SECTION 33. That KPB 20.60.130 is hereby amended as follows:

20.60.130. Boundary of subdivision.

The boundary of the subdivision shall be designated by a wider border and shall not interfere with the legibility of figures or other data. The boundary of the subdivided area shall clearly show what survey markers, or other evidence, was found or established on the ground to determine the boundary of the subdivision. Bearing and distance ties to all survey markers used to locate the subdivision boundary shall be shown.

SECTION 34. That KPB 20.60.170 is hereby amended as follows:

20.60.170. Other data required by law.

- A. The plat shall show all other data that are or may be required on the plat by statute or ordinance.

- B. Private covenants and restrictions of record in effect at the time the final plat is approved shall be referenced on the plat. The borough will not enforce private covenants, easements, or deed restrictions.
- C. The plat must adhere to the requirements of the local option zone, where applicable.

SECTION 35. That KPB 20.60.180 is hereby amended as follows:

20.60.180. Plat notes.

- A. Plat notes shall not be placed on a final plat unless required by borough code or by the planning commission in order to promote or protect the public health, safety, and welfare consistent with borough and state law.
- B. Revision of, or not carrying forward, an existing plat note from the parent plat will adhere to KPB 20.50.010. Separate advertising of the plat note removal is not required. Notification of the requested change will be sent by regular mail to all owners within the subdivision (parent plat and subsequent replats) as shown on the borough tax rolls. Upon approval by the planning commission, the revision or removal of the record plat note shall be finalized by recording a planning commission resolution or subdivision plat.

SECTION 36. That KPB 20.60.210 is hereby amended as follows:

20.60.210. Approval—Authority—Certificate issued when.

...

- E. When an application to amend a recorded plat, as defined by 11 AAC 53.900, is received, notice by regular mail of the requested amendment to the plat shall be sent to owner(s) of the affected lot or tract and, if applicable, the owners in the subdivision per borough tax rolls. Separate advertising of the proposed plat amendment is not required.
 - 1. The surveyor shall submit a copy of the plat showing the proposed new wording and/or a sketch of the proposed amendment with the application.
 - 2. The plat amendment may be scheduled as a consent agenda item unless otherwise requested by the owner(s), planning director or planning commission.

SECTION 37. That KPB Chapter 20.65, Vacations, is hereby enacted as follows:

CHAPTER 20.65 VACATIONS.

20.65.010. Authority; Legislative intent; Scope

This chapter is enacted under the authority of AS 29.40. A vacation decision is a discretionary legislative land use decision. The purpose of this chapter is to establish procedures for the vacation of a platted public right-of-way, public area, or other public easement dedicated on a borough approved plat, and to provide procedures for the alteration, including removal, of platted utility easements. This chapter does not apply to easements or property owned or held by a city or the borough in their proprietary capacity which may only be extinguished through the terms of the controlling document or applicable law. This chapter does not apply to private easements.

20.65.020. Planning commission recommendation on state easements

The planning commission serving as the platting authority has no authority to vacate public easements under the jurisdiction of the state. The planning commission will provide a recommendation on proposed vacations of state-managed easements within the borough. Applications to vacate a section line easement or other state-managed easement must comply with KPB 20.65.040 and will be considered in accordance with KPB 20.65.050. The applicant is responsible for all submittals required by the state. Final authority for approval and platting of the vacation of any public easement under the jurisdiction of the state rests with the state.

20.65.030. Vacation Criteria

Vacation of a platted public right-of-way, access, area or other easement granted for public use or public benefit must conform to the requirements of this chapter and AS 29.40.120 through AS 29.40.160 as now enacted or as amended.

20.65.040. Vacation Application

An informal pre-application conference by appointment with borough staff prior to the submittal of the application for vacation of a public right-of-way is encouraged. The application shall include the following items.

- A. A petition, provided by the borough planning department, signed by:
 - 1. The owners of the majority of the land abutting the area being vacated; or

2. An official representative of the state, the borough, an affected utility, or a city when the area to be vacated is within the city.
- B. A sketch that depicts the area to be vacated, a preliminary vacation plat, or a copy of the existing plat showing the proposed alteration or replat. The format and number of copies of the sketch submittal shall be determined by the planning director;
- C. Written recommendations, comments, or meeting minutes from the planning and zoning commission of the affected city, if the area to be vacated is within a city. The sketch or submittal provided to an affected city must be the same submittal that is provided to the borough.
- D. The appropriate fee; and
- E. Applicant statement containing the reasons in support of the vacation.

20.65.050. Action on vacation application

- A. Staff shall review the application and supporting materials for compliance. If the application is incomplete, staff will return it to the applicant with a written list of deficiencies to be satisfied for acceptance.
- B. After acceptance of the application, staff will:
 1. Send notice of the proposed vacation and the public hearing in accordance with KPB 20.10.100.
 2. Prepare a staff report that evaluates the merits of the proposed vacation. Revisions to the application submitted subsequent to the preparation of the staff report and after notice is sent will not be considered at the scheduled public hearing. Any such revisions will be treated as a revised application under this chapter.
- C. An accepted application shall be placed on the agenda of a regularly scheduled planning commission meeting. The public hearing on the vacation may not be more than 60 days after acceptance of the application, unless the applicant requests postponement.
- D. The planning commission shall consider the merits of each vacation request. A platted dedication to public use of land or interest in land may be vacated if the dedication is no longer necessary for present or future public use and in all cases the planning commission shall deem the area being vacated to be of value to the public. In evaluating the merits of the proposed vacation, the planning commission shall consider whether:

1. The right-of-way or public easement to be vacated is being used;
 2. A road is impossible or impractical to construct, and alternative access has been provided;
 3. The surrounding area is fully developed and all planned or needed rights-of-way and utilities are constructed;
 4. The vacation of a public right-of-way provides access to a lake, river, or other area with public interest or value, and if so, whether equal or superior access is provided;
 5. The proposed vacation would limit opportunities for interconnectivity with adjacent parcels, whether developed or undeveloped;
 6. Other public access, other than general road use, exist or are feasible for the right-of-way;
 7. All existing and future utility requirements are met. Rights-of-way which are utilized by a utility, or which logically would be required by a utility, shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a utility easement be granted in place of the right-of-way.
 8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.
- E. The planning commission may impose such conditions as it deems necessary to ensure compliance with the requirements and purpose of this title.
- F. The borough will consider realignment of a right-of-way by vacation and rededication where the planning commission finds that the right-of-way realignment will enhance access and the realigned right-of-way is located to provide reasonable means of ingress and egress.
- G. Where the planning commission finds that a right-of-way must be preserved, but determines there is excessive width for all intended uses within the right-of-way, the commission may approve a partial vacation of a right-of-way such that the width is reduced to the maximum necessary for the intended use. Such vacation shall conform to this title for the class of

right-of-way involved except where the right-of-way is not intended to be used for vehicular purposes.

- H. A planning commission decision to approve a vacation is not effective without the consent of the city council, if the vacated area to be vacated is within a city, or by the assembly in all other cases. The council or assembly shall have 30 days from the date of the planning commission approval to either consent to or veto the vacation. Notice of veto of the vacation shall be immediately given to the planning commission. Failure to act on the vacation within 30 days shall be considered to be consent to the vacation. This provision does not apply to alterations of utility easements under KPB 20.65.070 which do not require the consent of the assembly or city council unless city code specifically provides otherwise.
- I. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, where applicable, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent.
- J. A planning commission decision denying a vacation application is final. No reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.
- K. An appeal of the planning commission, city council or assembly vacation action under this chapter must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.

20.65.060. Title to vacated area

- A. The title to the street or other public area vacated on a plat attaches to the lot or land bordering the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area that lies on one side of the boundary line shall attach to the abutting property on that side, and the street area that lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street that lies inside the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in a city if it lies inside the city, and in the borough if it lies inside the borough but outside all cities. If the property vacated is a lot, title vests in the rightful owner.

- B. If the municipality acquired the street or other public area vacated for legal consideration or by express dedication to the municipality other than as a subdivision platting requirement, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid to the municipality on final vacation.
- C. Other provisions of this subsection notwithstanding, the planning commission may determine that a portion of the area proposed to be vacated should be reserved and if so, title to the area vacated and held for another public easement purpose remains in the borough or city, as applicable.

20.65.070. Alteration of platted utility easements

- A. Where platted utility easements are reserved for the purpose of providing utility services by an agency or utility provider and are not dedicated to the public use in the same manner as public rights-of-way, public access, or public easement granted for public use, the planning commission shall review and act upon all requests to alter, including removal, platted utility easements. For purposes of types of easements covered by this section, the KPB 20.90.010 definition for Utility Easement controls.
- B. The petitioner shall include the following items when submitting a request to alter a platted utility easement.
 - 1. A petition, provided by KPB Planning Department, signed by the owner of the land subject to the platted utility easement as shown on the borough tax rolls.
 - 2. Comments from the city advisory commission if applicable, and the jurisdictional authority of a dedicated right-of-way when the utility easement adjoins a dedicated right of way. A petition to alter a platted utility easement will not be approved if a city with jurisdictional authority objects to the alteration.
 - 3. Comments or non-objection from all appropriate utility providers. Affected utility providers must initial or comment on the same sketch or submittal that is provided to the borough.
 - 4. A sketch showing the alteration of the platted utility easement. If the alteration of the utility easement is due to an encroachment, then an as-built survey or site survey must be submitted with the petition.
 - 5. Appropriate application fee.
 - 6. Applicant statement containing the reasons for the alteration of the platted utility easement.

- C. Notice shall be sent per KPB 20.10.100.
- D. When the application is complete, the planning commission will take action on the requested alteration of the platted utility easement, either approving or denying the request.
- E. A planning commission decision under this section is final. A notice of decision shall be sent to the petitioner. No reapplication or petition concerning the same alteration to platted utility easement may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed. If the reasons for denial are resolved, the petitioner may submit a new petition for alteration of platted utility easement with documentation that the issues have been resolved, accompanied by a new fee.
- F. An appeal of the planning commission decision under this section must be filed in the superior court in accordance with the Alaska Rules of Appellate Procedure.
- G. Approval of an application under this section expires in 12 months.
- H. Upon approval, the alteration of a utility easement can be finalized by either.
 - 1. Recording of a subdivision plat which complies with Chapter 20.
 - 2. Recording of a utility easement alteration resolution. Upon approval of an alteration to a platted utility easement, not associated with the vacation of a right-of-way, not requiring transfer of title, or changing of boundary lines, a resolution may be adopted by the planning commission and recorded by the planning department within the time frame set out in the resolution to finalize the approval. The petitioner is responsible for the recording fees. The resolution will require an exhibit drawing showing, and dimensioning, the utility easement alteration area. The exhibit drawing shall be prepared, signed and sealed by a license land surveyor.

SECTION 38. That KPB Chapter 20.70 is hereby repealed.

**[CHAPTER 20.70. – VACATION REQUIREMENTS]
REPEALED**

SECTION 39. That KPB 20.80.040(B)(1) is hereby amended as follows:

- 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 20.65[70].

...

SECTION 40. That KPB 20.90.010 is hereby amended as follows:

CHAPTER 20.90. DEFINITIONS

20.90.010. Definitions generally.

...

"Architect" or "qualified architect" means a licensed architect registered to practice in Alaska under AS 08.48 and 12 AAC 36 in the branch of architecture defined by 12 AAC 36.068 applicable to the project.

...

"Date of distribution" or "distribution" means the date a notice, decision or other document is provided, manually or electronically, or is postmarked. [, TO A PARTY OF RECORD.]

...

"Monument" means a point marked on the surface of the earth for commencing or controlling a survey.

...

["NOMINAL FIVE ACRES" MEANS OF, LIKE, OR RELATING TO AN ALIQUOT FIVE-ACRE PART.]

...

["PARTIES OF RECORD" UNLESS SPECIFIED OTHERWISE MEANS THOSE PERSONS WHO HAVE COMMENTED IN A WRITTEN AND SIGNED DOCUMENT OR IN PERSON ON AN AGENDA ITEM BEFORE THE PLANNING COMMISSION OR PLAT COMMITTEE WHO OWN PROPERTY WITHIN THE NOTIFICATION RADII ESTABLISHED IN THIS CHAPTER.]

...

"Right-of-way dedication" 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 or otherwise approved by law[MEANS TRANSFER OF FEE SIMPLE UNDERLYING OWNERSHIP OF A RIGHT-OF-WAY TO THE STATE, BOROUGH, OR A MUNICIPALITY].

"Subdivision" means the division of a tract or parcel of land into two or more lots, or other divisions for the purpose of sale or building development, and includes resubdivision and relates to the process of subdividing or to the land or areas subdivided. As used in this Chapter, it also includes the elimination of lot lines and/or any change to an existing property line.

...

SECTION 41. That KPB 20.21.210 is hereby amended as follows:

21.20.210 Definitions

- A. For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:
 - 1. "Aggrieved party or person" means a party of record adversely impacted by the decision of the hearing officer who participated before the hearing officer either by written or oral presentation.
 - 2. The "appellant" is the party who pays the filing fee and initially files the notice of appeal.
 - 3. The "applicant" is the party that made application with the planning department for a permit, plat, variance or other entitlement subject to a quasi-judicial process under KPB Title 20 or 21.
 - 4. "Ex parte" means by or for one party; done for, on behalf of, or on the application of, one party only.
 - 5. "Party of record" means:
 - a. The applicant before the planning commission,
 - b. Any party or person aggrieved by the decision where the decision has or could have an adverse effect on value, use or enjoyment of real property owned by them who appeared before the planning commission with either an oral or written presentation, and who owns lands within the notification radii. A signature on a petition does not qualify the signatory as a party of record.

[(1) A SIGNATURE ON A PETITION DOES NOT QUALIFY THE SIGNATORY AS A PARTY OF RECORD WITHOUT A SEPARATE ORAL OR WRITTEN PRESENTATION TO THE PLANNING COMMISSION.]

6. "Quasi-judicial decisions" are those decisions where general law or policy are applied or affect an individual's property interests. Such decisions include but are not limited to preliminary and final plat approvals, conditional use permits, and exception and variance applications.
7. "Substantial evidence" means relevant evidence a reasonable mind might accept as adequate to support a conclusion.

SECTION 42. That KPB 21.20.230 is hereby amended as follows:

21.20.230. Jurisdiction.

- [A.] Unless a different appellate procedure is provided by this Code, the hearing officer is authorized to hear and decide appeals from quasi-judicial planning commission decisions.
- [B.] THE ASSEMBLY SHALL CONSIDER VACATION PETITIONS APPROVED BY THE PLANNING COMMISSION IN ACCORDANCE WITH THE PROCEDURES IN KPB CHAPTER 20.70.]

SECTION 43. That KPB 20.21.250 is hereby amended as follows:

21.20.250. Appeal of planning commission decision to hearing officer.

...

- E. *Entry of appearance.* The borough clerk shall mail or otherwise deliver copies of the notice of appeal to all parties of record in the proceeding appealed within 15 days of the date of filing the notice of appeal. Proof of service upon each party shall accompany the notice of appeal. Any party desiring to participate in the appeal process must file an entry of appearance containing that party's name and address and signature, or the name and address of the party and the name and address and signature of the party's representative, within 15 days of the date of mailing of the notice of appeal by the borough clerk. If borough staff is not participating in the appeal beyond providing the required staff overview, a notice of non-participation will be filed with the borough clerk. Proof of service of the entry of appearance upon each party shall be made in the manner prescribed in KPB 21.20.280(D). Any party filing an entry of appearance may file additional designations of error or other alternative requests for modification or reversal of the decision.

...

SECTION 44. That KPB 20.21.270 is hereby amended as follows:

21.20.270. Record on appeal.

- A. *Record; contents.* For the purposes of appeal, the record shall include:
1. The filed application or complaint which initiated the proceedings before the planning commission;
 2. All informational materials supplied to the commission or relied upon by the planning director or staff in making its report or recommendations to the planning commission;
 3. All informational materials which were entered into the record or minutes of the proceeding before the commission;
 4. The report of the initial investigation by the planning department, and where applicable the enforcement order or decision of the planning director;
 5. All testimony and all documents or other evidence received by the planning commission from the parties or other witnesses during the proceedings;
 6. The decision of the planning commission;
 7. The planning commission's findings of fact; and
 8. The minutes of the planning commission and a verbatim transcript of the planning commission hearing.
- B. *Record; preparation.* The planning department shall complete and file the transcript with the borough clerk within 30 days after the deadline for filing entries of appearance. The planning director shall certify the paginated and indexed record and minutes on appeal within 30 days after the deadline for filing entries of appearance. One copy of the record shall be provided to a party paying the filing fee. A copy shall also be provided to the applicant if the applicant is not the appellant. A notice of certification of record shall be provided to all parties by the borough clerk. Copies of the record may be provided to other parties or any other persons upon payment of a handling charge in the amount listed in the most current Kenai Peninsula Borough Schedule of Rates, Charges and Fees.
- C. *Appeal on the record; new evidence.* Appeals to the hearing officer shall be on the record. No new evidence, or illustrative documents or attachments to written statements, may be filed without prior approval of the hearing officer after a showing by the moving party that there exists cause for supplementing the record and that even with due diligence the new evidence could not have been provided at the public hearing before the planning

commission and a reasonable opportunity is provided for all other parties of record to submit comments on the request prior to the hearing officer's decision.

SECTION 45. That KPB 20.21.280 is hereby amended as follows:

21.20.280. Written statements.

- A. *Opening statement.* A party of record who entered an appearance in the appeal[APPELLANT, STAFF AND THE APPLICANT IF THE APPLICANT IS NOT THE APPELLANT] shall submit a written statement which shall be filed with the borough clerk within 20 days of the clerk issuing notice that a completed record and transcript have been filed. The written statement may include a statement of facts as derived from the record on appeal, a statement of the party's perception of the correctness of the planning commission decision, a list of asserted errors, and any citations to applicable statutes, ordinances, regulations or other legal authority for the position taken by the party to the appeal. Failure to timely submit the opening written statement will result in dismissal of that party from the appeal. Multiple parties may preserve their party status by filing a single written statement; however, the written statement must clearly identify all parties filing the single statement. The hearing officer may waive irregularities in the content of the notice of appeal or written statements. In appeals where staff does not enter an appearance, the staff overview may be provided in writing when opening statements are due.
- B. *Reply statement.* Each party filing an opening statement may submit a reply statement within 20 days of the filing deadline for the initial written statements. The reply shall be limited to response to matters specifically raised in the opening statement[RESPONDED TO]. A party [shall] may only file a single reply statement in response to all opening statements filed.
- C. *Extension.* The hearing officer, upon good cause shown, may grant an extension of time to any party or legal representative for the completion of any act required under this section, except for the filing of the notice of appeal, where the remaining parties will not appear to be unduly prejudiced by the delay. An extension permitted one party shall be extended to all parties by notice from the borough clerk. Motions for extensions shall comply with the provisions of KPB 21.20.280(D) and 21.20.300.
- D. *Service.* Service of written statements shall be made on all parties of record for briefs and on parties permitted to file motions and respond to motions by KPB 21.20.300. Service shall be made by the borough clerk either by mail or personal delivery within two business days of the filing deadline. Service by email or facsimile is permitted when the party to be served has affirmed in writing the acceptance of alternate forms of service.

- E. Additional written statements. Unless the hearing officer requests supplemental written statements from the parties of record or staff, no additional written statements shall be accepted.

SECTION 46. That KPB 20.21.300 is hereby amended as follows:

21.20.300. Motions.

- A. *Parties.* Motions for continuances, shortened time, or other matters may be filed by the following parties and served in the manner prescribed by KPB 21.20.280(D):

1. The appellant;
2. The applicant if that party is not the appellant;
3. A borough official if borough staff enters an appearance in the matter.

...

SECTION 47. That this ordinance shall take effect April 1, 2021.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 2ND DAY OF MARCH, 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

11/10/20 Vote on motion to postpone to 12/01/20:

Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert

No: None

Absent: None

12/01/20 Vote on motion to postpone as amended to 01/19/21:

Yes: Chesley, Cox, Dunne, Johnson, Hibbert

No: Bjorkman, Carpenter, Derkevorkian, Elam

Absent: None

01/19/21 Vote on motion to postpone as amended to 03/02/21:

Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert

No: None

Absent: None

03/02/21 Vote on motion to enact as amended:

Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert

No: None

Absent: None