

Introduced by: Mayor  
Date: 09/03/19  
Hearing: 10/08/19  
Action: Postponed to 12/03/19  
Vote: 9 Yes, 0 No, 0 Absent  
Date: 12/03/19  
Action: Amended by Substitute  
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2019-24**

**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 6.5 of the 2005 Comprehensive Plan is to maintain the freedom of property owners in the rural areas of the borough to make decisions and control use of their private land; 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 August 13, 2019, recommended unanimous approval of this ordinance; and

**WHEREAS,** the Kenai Peninsula Borough Planning Commission at its meeting held on August 26, 2019, recommended \_\_\_\_\_;

**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:

**20.80.010. Purpose.**

This chapter provides standards and requirements for the establishment of private streets in subdivisions in the borough. A subdivision with private streets and gated access may be created at the time of subdivision by the owner of the parcel being subdivided or, where streets have been previously dedicated to the public which access lots in different ownerships, by the owners of those parcels in accordance with the provisions of this chapter.

**20.80.020. Requirements.**

Private streets in subdivisions shall meet the following requirements:

- A. The general provisions of KPB Title 14 and 20 as they relate to development, streets and utilities shall apply, except as otherwise provided for in this chapter.
- B. Private streets shall conform to the same standards regulating the design and construction of streets, street naming and street addressing in KPB 14.06, 14.10, 14.20 and KPB 20.30.
- 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 without having to backup.
- D. A homeowners' association (HOA) is required for approval of private streets within a subdivision. All property to be served by the private streets must be members in or part of the HOA. The HOA shall own and be responsible for the maintenance of the private streets and appurtenances.
- E. Private streets shall be contained within a separate lot owned by the HOA.
- F. The borough shall not pay for or contribute to any cost to construct, improve, or maintain a private street.
- G. The subdivision final plat and HOA documents shall note that borough maintenance shall not be provided on any private streets.
- H. Gated subdivisions and private streets may be approved, provided they meet the following criteria:
  - 1. Internal streets shall conform to the requirements of KPB 20.30, Subdivision Design Requirements, except as otherwise allowed in this section;
  - 2. Emergency services shall be provided access to deliver services within the private subdivision. 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;

3. The requirements of KPB title 20 are met because alternate legal access to adjoining properties is available and that access is constructible in accordance with KPB 20.30, Subdivision Design Requirements and KPB 14.06, Road Standards;
4. There shall be a note on the plat that the streets are not public and are subject to private construction and maintenance;
5. The HOA shall execute a defense and indemnification agreement in favor of the borough in the following form: The HOA shall indemnify, defend, and hold and save the borough, its elected and appointed officers and officials, agents and employees, hereinafter collectively referred to as “agents,” harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys’ fees. The HOA shall be responsible under this clause for any and all legal actions or claims of any character arising from the HOA or the HOA’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. The HOA and all of the HOA’s subcontractors, if any, shall be responsible for the purchase and maintenance of all insurance required by law and any other insurance the HOA deems necessary or appropriate.

### **20.80.030. Gates**

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

- A. Each gate must be approved prior to installation by the fire and emergency services provider that serves the proposed gated subdivision. The entrances to all private streets shall be marked with a sign stating that it is a private street.
- B. Gates, approach and departure areas shall be designed by a licensed professional civil engineer.
- C. In order to allow access for the provision of emergency services, each security gate designed and installed shall be equipped so that access is by a radio operated controller or keypad. The fire and emergency services provider serving the gated subdivision, borough assessing department,

borough planning department, and law enforcement shall be provided either radio controlled or keypad access to the subdivision.

- D. 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.
- E. After installation, all emergency access systems must be approved by the fire and emergency services providers serving the gated subdivision. The HOA 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. A proper power supply shall be provided and maintained to all electrical components at all times. Each electrical vehicular gate must be provided with a fail-open device to open during power failures and be equipped for emergency access.
- F. A public vehicular turn around shall be provided to allow vehicles that have been denied entry the ability to exit without having to backup.
- G. No part of the gate system shall be placed in a public right-of-way.
- H. The HOA is responsible for the gate, its signage and its costs, and shall be responsible for any violations of this section.

**20.80.040. Converting to gated subdivision.**

- A. A subdivision HOA may seek to convert a subdivision to a gated community with private street(s) and restrict public access by filing a replat and vacation petition with the planning director, which shall be considered a request to vacate public street(s) and/or right-of-way(s), as well as replat the subdivision. The request shall comply with the applicable replat and vacation requirements and procedures in this title, except as provided otherwise in this chapter.
- B. Upon determination by the planning director that the replat application is complete, the request shall be subject to review and approval by the borough planning commission regarding whether the gated subdivision requirements and procedures have been met, as set out in this chapter. The borough planning commission decision is subject to appeal to the hearing officer pursuant to KPB 21.20.
- C. 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 or distribute an

unacceptable amount of traffic through an existing neighborhood than would otherwise result if public streets were used. Converted private streets may not unduly impair access to public facilities, including schools, parks and libraries. Utilities proposed for vacation must not provide service to customers outside the proposed gated subdivision boundary.

3. The proposed gated subdivision must not cause discontinuity in the existing or proposed road system to any property owner in the proposed gated subdivision with frontage on the public right-of-way that is to be vacated.
4. Prior to recording the final plat the property owners abutting the vacated public street shall file with the borough fully executed deeds conveying their interest in the vacated street to the HOA.
5. Prior to recording the HOA 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 HOA’s ownership, maintenance and control of the converted street.
6. HOA shall execute a defense and indemnification agreement in favor of the borough in the following form: The HOA 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 and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys’ fees. The HOA shall be responsible under this clause for any and all legal actions or claims of any character arising from the HOA or the HOA’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.

**20.80.050. Converting private streets to public streets in gated subdivision.**

- A. The owners of a private street may petition to dedicate the private street through the platting process. The street must meet the design criteria set forth in KPB 20.30 and KPB 14.06.
- B. A civil engineer at the HOA’s expense shall 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.

- C. The borough may also require, at the HOA'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 21.050.

**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 five (5) or more 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 limited to gates, security personnel, fences or walls. This definition does not include gates or other barriers limiting access to an individual parcel or lot.

...

"Private street" is defined as a vehicular access way shared by and serving two or more lots, which is not publicly maintained, but maintained by a homeowners' association. The term "private street" shall be inclusive of alleys. The term "street" also includes the term "street" as used in KPB title 14.

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

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \* DAY OF \*, 2019.**

\_\_\_\_\_  
Kelly Cooper, Assembly President

ATTEST:

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Johni Blankenship, MMC, Borough Clerk

10/08/19 Vote on motion to postpone to 12/03/19:

Yes: Bagley, Blakeley, Carpenter, Cooper, Dunne, Fischer, Hibbert, Smalley, Ogle

No: None

Absent: None

12/03/19 Vote on motion to amend by substitute:

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

No: None

Absent: None