



## KENAI PENINSULA BOROUGH

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MIKE NAVARRE  
BOROUGH MAYOR

### MEMORANDUM

**TO:** Dale Bagley, Assembly President  
Members, Kenai Peninsula Borough Assembly

**THRU:** Mike Navarre, Mayor 

**FROM:** Pat Malone, Road Service Area Director 

**DATE:** June 25, 2015

**SUBJECT:** Ordinance 2015-22, An Ordinance Amending KPB Chapter 14.40 Regarding the Use and Control of Borough Rights-of-Way and Enforcement of Right-of-Way Regulations

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KPB chapter 14.40, *Regulations Governing the Imposition of Size, and Weight Restrictions, And Control of Construction within Kenai Peninsula Borough Rights-of-Way*, has not undergone a comprehensive review or revision since the year 2000. Over the course of 2013 and 2014, a group consisting of the road service area director, planning director, code compliance officer, and the legal department began the process of evaluating chapter 14.40 to improve internal consistency, address issues that are not currently governed by code or those that are not adequately addressed, and to create a more efficient and successful enforcement process.

Through this process, several key areas requiring updates emerged. The existing enforcement procedures are vague, difficult to implement and rarely used. For example, under the existing scheme, the RSA director must fulfill all roles, including judgment on his own enforcement citations. And, the existing code offers little guidance regarding actual procedures for holding hearings. The proposed amendments borrow the enforcement scheme for planning related violations, codified in KPB chapter 21.50. However, a key difference between these two chapters is that 21.50 addresses violations that generally occur on private property, while 14.40 addresses violations that occur within the public right-of-way. The proposed enforcement proceedings under 14.40 are designed to balance the violator's due process rights while recognizing the need to promptly enforce the code so the borough can continue to provide safe and open access to public rights-of-way.

Another key issue that has become increasingly problematic for the road service area is encroachments within the rights-of-way. Common examples include mail or cluster boxes, well heads, and gates or retaining walls owned by adjacent property owners. The current code does not provide any method for addressing encroachments. Because of this, there is no clear process

available to the road service area or code compliance officer to regulate or remove (or otherwise enforce against) encroachments that are placed within the right-of-way. The proposed amendment creates a process by which the RSA director may permit encroachments under certain limited circumstances, and allows removal and enforcement against unpermitted encroachments.

Finally, an “omnibus” review was conducted to clear up internal inconsistencies that were likely caused by piecemeal amendments to individual code sections.

A sectional analysis of all changes accompanies this memo.