

# **Kenai Peninsula Borough**

*144 North Binkley Street  
Soldotna, AK 99669*



## **Meeting Agenda**

**Tuesday, March 2, 2021**

**3:00 PM**

**Betty J. Glick Assembly Chambers**

### **Policies and Procedures Committee**

*Jesse Bjorkman, Chair  
Willy Dunne, Vice Chair  
Kenn Carpenter*

**ITEMS NOT APPEARING ON THE REGULAR MEETING AGENDA**

1. [KPB-3007](#) Annual Records Report to the Assembly

Attachments: [Annual Records Report to the Assembly](#)

**PUBLIC HEARINGS ON ORDINANCES**

8. [2020-45](#) An Ordinance Amending KPB 2.40, Planning Commission, KPB Title 20, Subdivisions, and KPB 21.20, Hearing and Appeals, to Correct Grammatical Errors, and Clarify and Improve Certain Administrative Procedures (Mayor)

Attachments: [Ordinance 2020-45](#)  
[Amendment Memo 030221](#)  
[Amendment Memo #2 120120 \(Motion on the floor 12/01/20 mtg\)](#)  
[Memo](#)  
[Sectional Analysis](#)  
[Public Comments 120120](#)  
[Public Comment 111020](#)  
[eComments 120120](#)  
[Planning Commission Request for Postponement 011921 \(Dealt with 011921\)](#)  
[Amendment Memo #1 102920 \(Dealt with on 12/01/20\)](#)  
[Planning Commission Recommendation 111020 \(Dealt with on 12/01/20\)](#)

9. [2021-06](#) Amending KPB 16.04 - Establishment of Service Areas to Establish Residency Requirements for Appointed Service Area Board Members (Mayor)

Attachments: [Ordinance 2021-06](#)  
[Memo](#)

**NEW BUSINESS**

1. Resolutions

- \*a. [2021-019](#) A Resolution Extending the Disaster Emergency Declaration for the Kenai Peninsula Borough Issued Due to the Current and Expected Imminent Impacts of the COVID-19 Pandemic to June 30, 2021 (Cox)

Attachments: [Resolution 2021-019](#)  
[Memo](#)  
[LAYDOWN Public Comment 030221](#)

3. Other

- \*b. [KPB-3010](#) Confirming an Appointment to the Kachemak Emergency Service Area Board

Jeffrey Serio, Seat B, Term Expires October, 2021

Attachments: [Appointment](#)

- \*c. [KPB-3003](#) Confirming the Appointments to the Kenai Peninsula Borough Advisory Planning Commissions

Anchor Point APC, Sonshine D. Konovalov; Seat A; Term Expires September 30, 2023

Kalifornsky APC, Kathryn A. Medcoff; Seat A; Term Expires September 30, 2023

Kalifornsky APC, Krista Schooley; Seat C; Term Expires September 30, 2023

Attachments: [Appointments](#)

## MAYOR'S REPORT

[KPB-2996](#) Mayor's Report Cover Memo

Attachments: [Cover Memo](#)

1. Assembly Requests/Responses- None.
2. Agreements and Contracts

- a. [KPB-2997](#) Authorization to Award a Contract for ITB21-018 Gravel Road Project - Escape Route N2 Region to Foster Construction, LLC., Soldotna, AK

Attachments: [Authorization to Award Contract for ITB21-018](#)

3. Other

- a. [KPB-2998](#) Revenue - Expenditure Report - January 2021

Attachments: [Revenue - Expenditure Report - January 2021](#)

- b. [KPB-2999](#) Budget Revisions - January 2021

Attachments: [Budget Revisions - January 2021](#)

Kenai Peninsula Borough  
Office of the Borough Clerk  
Records Management Division

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**MEMORANDUM**

**TO:** Brent Hibbert, Assembly President  
Kenai Peninsula Borough Assembly Members

**THRU:** Johni Blankenship, Borough Clerk (JB)

**FROM:** Michele Turner, Deputy Clerk / Records Manager (MT)

**DATE:** March 2, 2021

**RE:** Annual Records Report to Assembly

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Pursuant to KPB 2.52.030(G), this serves to provide the assembly with our annual report from the Records Management Division.

In 2020 there were a total of 4,159 files (222 boxes) that were removed from active departmental files and archived at the records center. A detailed description by records series is attached for your reference.

Annual destruction of obsolete physical records was not conducted in 2020 due to the ongoing implementation of the new records management software.

Records that were transferred from paper to an electronic or microfilm media type were destroyed and shredded in 2020. Those items are recapped below.

Paper records transferred to electronic/microfilm:

Assessing	69 Boxes	
Finance	170 Boxes	
Mayor	3 Boxes	
Maintenance	1 Box	
Office of Emergency Mgmt.	6 Boxes	
Human Resources	12 Boxes	
Information Technology	1 Box	
Service Areas	7 Boxes	
School District	5 Boxes	
Other (i.e. River Center, Dispatch, etc.)	12 Boxes	
Total Boxes transferred to electronic/microfilm	286 Boxes	2,423 lbs.

Other Paper Records Shredded:

Transitory/Intermediary (not subject to retention)	88 Boxes	(plus 2 shred bins) 2,200 lbs.
<b>TOTAL PAPER RECORDS SHREDDED 2020</b>	<b>374 Boxes</b>	<b>4,623 lbs.</b>

# PHYSICAL RECORDS ARCHIVED AT THE RECORDS CENTER

January 1, 2020 thru December 31, 2020

CLASSIFICATION	CLASSIFICATION TITLE	2020 FILES	DEPT. TOTAL FILES	DEPT. TOTAL BOXES
ASG.ADM.03	Notices of Assessment	62		
ASG.ADM.06	Real & Personal Propoerty Correspondence	88		
ASG.ADM.12	Property Owner Address Changes	74		
ASG.ADM.17	Personal Property Statements	198		
ASG.ADM.35	Board of Equalization	309		
ASG.ADM.37	Special Assessment Districts - Approved	1		
ASG.ADM.38	Special Assessment Districts - Failed	1		
TOTAL FILES ARCHIVED - ASSESSING			733	35
CLK.ADM.01	Meeting Minutes	5		
CLK.ADM.03	Meeting Packets	93		
CLK.ADM.04	Assembly/Mayor Administration	2		
CLK.ADM.05	Boards/Commissions/SABs/Committees	6		
CLK.ADM.08	Public Records Requests - NonConfidential	2		
CLK.ADM.12	Legislative Priorities	6		
CLK.ADM.13	Budget	6		
CLK.ADM.18	Revenue & Taxation Programs	7		
CLK.ADM.19	Financial Audits	1		
CLK.ADM.20	Assessment Districts (USAD & RIAD)	3		
CLK.ADM.23	Disaster / Emergency Planning	1		
CLK.ADM.26	Vacations & Easements, Street Names	3		
CLK.ADM.28	Comprehensive Plan / Land Use	4		
CLK.ADM.39	Resolutions & Ordinances	278		
CLK.ADM.40	Contracts	18		
CLK.ADM.53	Borough Code & Updates	8		
CLK.ADM.55	Settlements	3		
CLK.ELE.29	Elections - Undeliverable Mail	1		
CLK.ELE.30	Elections - Undeliverable Mail	2		
CLK.ELE.33	Elections - Voted Ballots	22		
CLK.ELE.36	Elections - Registers	8		
CLK.REC.06	Records - Destruction of Obsolete Records	2		
TOTAL ARCHIVED - CLERK'S OFFICE			481	57
FIN.CSH.07	Cash Receipt Book	23		
FIN.CSH.08	Back Office Book	36		
FIN.CSH.10	Misc. Money Receipt Book	12		
FIN.CSH.17	Tax Bills - Real & Personal Property Over the Counter	215		
FIN.CSH.25	Judgment - Adjustment & Payments	583		
FIN.CSH.26	Special Assessment Districts	123		
FIN.DEL.02	Tax Files - Collection Agency	7		
FIN.DEL.04	Real Property Tax Foreclosure - Paid Files	2		
FIN.DEL.05	Repurchase of Tax Foreclosed Real Property	114		
FIN.DEL.07	Personal Property / Sales Tax Judgment	24		
FIN.DEL.08	Sales Tax files - Closed Accounts	7		

# PHYSICAL RECORDS ARCHIVED AT THE RECORDS CENTER

January 1, 2020 thru December 31, 2020

CLASSIFICATION	CLASSIFICATION TITLE	2020 FILES	DEPT. TOTAL FILES	DEPT. TOTAL BOXES
FIN.DEL.09	Property Tax Files - Closed Accounts	2		
FIN.DEL.13	Sales Tax & Personal Property - Unenforceable	80		
FIN.DEL.18	Bankruptcy Administration	10		
FIN.PAY.04	Employment Security Division - Reports	1		
FIN.PAY.05	Payroll Reports	4		
FIN.PAY.08	PERS Contribution Report	4		
FIN.PAY.11	Payroll Final Processing Documents	59		
TOTAL FILES ARCHIVED - FINANCE			1306	29
LGL.ADM.02	Legal Opinions, Interpretations, Settlements	16		
LGL.ADM.03	Court Litigation Case Files	15		
TOTAL FILES ARCHIVED - LEGAL			31	6
PER.ADM.01	Employee Files / Personnel Files	133		
PER.ADM.02	Employee Medical Records	130		
PER.ADM.09	Recruitment and Selection	65		
TOTAL FILES ARCHIVED - HUMAN RESOURCES			328	15
PLN.ADM.17	Commission and Committee Records	25		
PLN.ADM.18	Subdivision / Platting Files	216		
PLN.ADM.20	Land Use Regulation / LOZ / Permits	171		
TOTAL FILES ARCHIVED - PLANNING			412	45
RDS.IMP.01	Road Improvement Project Files	138		
RDS.MTN.01	Road Maintenance Project Files	38		
RDS.MTN.03	Road Service Area Board Records	1		
RDS.IMP.06	Road System Standards / Admittance	6		
TOTAL FILES ARCHIVED - ROADS			183	53
<b>2020 PHYSICAL RECORDS ARCHIVED AT THE RECORDS CENTER</b>			<b>3474</b>	<b>240</b>

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:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2020-45**

**AN ORDINANCE AMENDING KPB 2.40, PLANNING COMMISSION, KPB TITLE 20,  
SUBDIVISIONS, AND 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;

**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.

...

**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.

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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

**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 depicted 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 easements within the borough. Applications to vacate a section line easement or other public easements of the state 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.

- E. 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.
- F. The planning commission shall consider the merits of each vacation request and in all cases the planning commission shall deem the area being vacated to be of value to the public. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial 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.

- G. The planning commission may impose such conditions as it deems necessary to ensure compliance with the requirements and purpose of this title.
- H. 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.
- I. 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.
- J. 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.
- K. 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.
- L. 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.

- M. 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 all or a portion of a vacated area should be dedicated to another purpose, and if so, title to the area vacated and held for another public 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 is effective January 1, 2021.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \* DAY  
OF \*, 2020.**

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Brent Hibbert, Assembly President

ATTEST:

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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

Yes:

No:

Absent:

# Kenai Peninsula Borough

## Legal Department

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### MEMORANDUM

**TO:** Brent Hibbert, Assembly President  
Members, Kenai Peninsula Borough Assembly

**THRU:** Charlie Pierce, Mayor *CP*  
Melanie Aeschliman, Planning Director *MA*

**FROM:** Sean Kelley, Deputy Borough Attorney *SK*  
Scott Huff, Platting Manager *SHA*

**DATE:** February 18, 2021

**SUBJECT: UPDATED** Amendment to Ordinance 2020-45, Amending KPB 2.40, Planning Commission, KPB Title 20, Subdivisions, and KPB 21.20, Hearing and Appeals, to Correct Grammatical Errors, and Clarify and Improve Certain Administrative Procedures (Mayor)

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There are seven proposed amendments to Ordinance 2020-45.

At the assembly's meeting on December 1, 2020, the first four amendments below were moved, seconded, and then action on the amendments was postponed by the assembly to allow time for the planning commission to provide a recommendation on the four amendments. Thus, the first four amendments remain "on the floor".

Proposed Amendments #5 and #6 are recommended amendments passed by the planning commission.

Proposed amendment #7 adds a whereas clause to identify the procedural history where Ordinance 2020-45 (O2020-45) went back to the planning commission after its initial recommendation on this ordinance.

[Please note the bold underlined language is new with deletions crossed out.]

#### *1. Proposed Amendment #1 to Section 37*

- Amend 20.65.010 as follows:

#### **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

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**Updated** Amendment to O2020-45

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area, or other public easement ~~dedicated depicted~~ 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.

*Explanation:* This amendment is proposed to clarify that the borough's vacation authority under this chapter is limited to platted dedicated public easements shown on a borough approved plat.

## 2. Proposed Amendment #2 to Section 37

➤ Amend 20.65.020 as follows:

20.65.020. – Planning commission recommendation on state-**managed** 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 ~~public state-managed easements of the state~~ 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.

*Explanation:* This addresses a concern that the term "state easements" is too broad and expansive. Under the proposed change the scope of planning commission recommendations on state easements would be limited to state-managed easements within the borough. Molloy Schmidt also requested that the language "must comply with KPB 20.65.040 and will be considered in accordance with KPB 20.65.050" be struck because a recommendation should not have to follow the same requirements as a final decision to approve or deny a vacation. Molloy Schmidt requested a new section be added providing a different procedure for consideration of state-managed easements. The planning commission chose not to move forward with recommending adding a new section or amending the requirement that recommendations be considered in accordance with KPB 20.65.050.

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**Updated** Amendment to O2020-45

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3. Proposed Amendment #3 to Section 37

- Amend 20.65.050 as follows:

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. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial 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;

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**Updated** Amendment to O2020-45

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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; and
8. **Any other factors that are relevant to the vacation application or the area proposed to be vacated.**

...

The remaining subsections should be re-lettered accordingly.

*Explanation:* This proposed change addresses a concern that deeming the area being vacated to be "of value" could be problematic and hard to define. Upon further review, the public's interests in the area vacated are protected by language added regarding present or future use and the 1-8 criteria provided. The proposed change adds a new number 8 to the criteria to provide for a catch-all for other factors the planning commission deems relevant to the vacation application

#### 4. Proposed Amendment #4 to Section 37

- Amend 20.65.060 as follows:

#### **20.65.060. Title to vacated area**

....

- C.** Other provisions of this subsection notwithstanding, the planning commission may determine that ~~all or~~ a portion of **the area proposed to be**

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**Updated** Amendment to O2020-45

~~vacated should be reserved a vacated area should be dedicated, for another public easement purpose,~~ and if so, title to the area **vacated reserved** and held for another public **easement** purpose remains in the borough or city, as applicable."

*Explanation:* A concern was raised that the language indicated the planning commission could re-dedicate the area vacated without the landowner's consent. While the current language tracks code language used by other second class boroughs and is comparable to state statutory language, this proposed change attempts to clarify the intent of this section. The intent is that the planning commission, in deciding whether or not to vacate an area, may determine that the best option is to vacate a portion of the easement while retaining or reserving a portion for other public easement purposes, such as a utility easement or pedestrian access easement. This section would provide for partial vacations to avoid the scenario of "all or nothing" vacations. A partial vacation and/or reserving a smaller public easement within the public easement being vacated is not a taking. For example, the planning commission, while evaluating the merits of vacating a 60-foot wide dedicated right-of-way, may determine it is appropriate to retain 10 feet of the 60-foot wide right-of-way for pedestrian or utility purposes and vacate the remaining 50 feet of the right-of-way. This would be a permissible partial vacation.

#### 5. Proposed Amendment #5 to Section 47

- Amend Section 47 as follows:

Section 47. That this ordinance [~~is effective January 1, 2021~~] **shall take effect April 1, 2021.**

*Explanation:* The original effective date of January 1, 2021 has passed.

#### 6. Proposed Amendment #6 to the title of the ordinance

- Amend the ordinance title as follows (added language shown in bold):

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, HEARINGS AND APPEALS, TO CORRECT GRAMMATICAL ERRORS, AND CLARIFY AND IMPROVE ADMINISTRATIVE PROCEDURES

February 18, 2021

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**Updated** Amendment to O2020-45

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*Explanation:* Changing the title provides a more descriptive summary of the ordinance being considered.

7. Proposed Amendment #7 adding a whereas clause

Add a 16<sup>th</sup> Whereas clause that reads:

**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.**

*Explanation:* The addition of this whereas clause provides additional context and procedural history for the proposed amendments and O2020-45

#### Planning Commission Action

December 1, 2020 – At public hearing on O2020-45, the assembly postponed action on the ordinance to allow time for the planning commission to review the proposed amendments

January 11, 2021 – The planning commission considered the assembly's request at its regularly scheduled meeting on January 11 and requested the assembly postpone action on O2020-45 until the Assembly's first meeting in March so that the planning commission could hold a work session on the O2020-45 amendments. (at its meeting on January 19, 2021, the Assembly postponed action on O2020-45.)

January 25, 2021 – The planning commission held a work session and discussed the proposed amendments.

February 8, 2021 – At its regularly scheduled meeting, the planning commission voted to recommend approval of proposed amendments #1-6 by a vote of 8-1.

Your consideration of these proposed amendments is appreciated.

# Kenai Peninsula Borough

## Planning Department

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### MEMORANDUM

**TO:** Brent Hibbert, Assembly President  
Members, Kenai Peninsula Borough Assembly

**THRU:** Charlie Pierce, Mayor *CP*  
Melanie Aeschliman, Planning Director *MA*

**FROM:** Scott Huff, Planning Manager *SH*  
Sean Kelley, Deputy Borough Attorney *SK*

**DATE:** November 19, 2020

**SUBJECT:** Second Amendment to Ordinance 2020-45, Amending KPB 2.40, Planning Commission, KPB Title 20, Subdivisions, and KPB 21.20, Hearing and Appeals, to Correct Grammatical Errors, and Clarify and Improve Certain Administrative Procedures (Mayor)

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In response to comments received from the law firm Molloy Schmidt, the administration, planning, and legal staff met with Mr. Molloy and Ms. Schmidt to discuss and fully consider their concerns. Following that discussion, some wording changes to this amendment are proposed herein. All of the proposed changes are contained within Section 37 of Ordinance 2020-45.

[Please note the bold underlined language is new with deletions crossed out.]

#### *1. Proposed Amendment #1 to Section 37*

- Amend 20.65.010 as follows:

#### **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 depicted** 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.

Explanation: This amendment is proposed to clarify that the borough's vacation authority under this chapter is limited to platted dedicated public easements shown on a borough approved plat.

November 19, 2020  
 Page -2-  
 Second Amendment to O2020-45

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## *2. Proposed Amendment #2 to Section 37*

- Amend 20.65.020 as follows:

### **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 ~~public state-managed easements of the state~~ 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.

Explanation: This addresses a concern that the term “state easements” is too broad and expansive. The proposed change limits the planning commission’s recommendation oversight to state-managed easements within the borough. The commenters also requested that the language “must comply with KPB 20.65.040 and will be considered in accordance with KPB 20.65.050” be struck because a recommendation should not have to follow the same requirements as a final decision to approve or deny a vacation. This amendment however does not propose striking that language at this time because the public may have some interest in retaining the state-managed public easement and to reach a well-informed recommendation it is prudent for the platting authority’s review to follow a standardized process.

## *3. Proposed Amendment #3 to Section 37*

- Amend 20.65.050 as follows:

### **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.

November 19, 2020  
 Page -3-  
 Second Amendment to O2020-45

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- 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. It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial 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; and
  8. Any other factors that are relevant to the vacation application or the area proposed to be vacated.

...

November 19, 2020  
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The remaining subsections should be re-lettered accordingly.

Explanation: This proposed change addresses a concern that deeming the area being vacated to be “of value” could be problematic and hard to define. Upon further review, the public’s interests in the area vacated are protected by language added regarding present or future use and the 1-8 criteria provided. The proposed change adds a new number 8 to the criteria to provide for a catch-all for other factors the planning commission deems relevant to the vacation application

#### *4. Proposed Amendment #4 to Section 37*

- Amend 20.65.060 as follows:

##### **20.65.060. Title to vacated area**

....

- C. Other provisions of this subsection notwithstanding, the planning commission may determine that ~~all or~~ a portion of the area proposed to be vacated should be reserved a vacated area should be dedicated, for another public easement purpose, and if so, title to the area ~~vacated reserved~~ and held for another public easement purpose remains in the borough or city, as applicable.”**

Explanation: A concern was raised that the language indicated the planning commission could re-dedicate the area vacated without the landowner’s consent. While the current language tracks code language used by other second class boroughs and is comparable to state statutory language, this proposed change attempts to clarify the intent of this section. The intent is that the planning commission, in deciding whether or not to vacate an area, may determine that the best option is to vacate a portion of the easement while retaining or reserving a portion for other public easement purposes, such as a utility easement or pedestrian access easement. This section would provide for partial vacations to avoid the scenario of “all or nothing” vacations. A partial vacation and/or reserving a smaller public easement within the public easement being vacated is not a taking. For example, the planning commission, while evaluating the merits of vacating a 60-foot wide dedicated right-of-way, may determine it is appropriate to retain 10 feet of the 60-foot wide right-of-way for pedestrian or utility purposes and vacate the remaining 50 feet of the right-of-way. This would be a permissible partial vacation.

Your consideration of these proposed amendments is appreciated.

# Kenai Peninsula Borough

## Legal Department

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### MEMORANDUM

**TO:** Kelly Cooper, Assembly President  
Members, Kenai Peninsula Borough Assembly

**THRU:** Charlie Pierce, Mayor *JCB*

**FROM:** Marcus Mueller, Acting Planning Director *[Signature]*  
Scott Huff, Platting Manager *SA*  
Sean Kelley, Deputy Borough Attorney *SK*

**DATE:** October 1, 2020

**SUBJECT:** Ordinance 2020-45, Amending KPB 2.40, Planning Commission, KPB Title 20, Subdivisions, and KPB 21.20, Hearing and Appeals, to Correct Grammatical Errors, and Clarify and Improve Certain Administrative Procedures (Mayor)

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Since the last significant rewrite to the borough's subdivision code in 2014, platting staff have found a number of provisions that would benefit from clarifying language. The amendments to KPB Title 20 (Title 20) and KPB 2.40 will improve the platting process and procedure and make Title 20 consistent with current law. Among technical changes to borough subdivision regulations, the amendments will add a new uniform notice section that will be applicable to all of Title 20.

The amendments will repeal KPB 20.70, Vacation Requirements, and replace that chapter with a new vacations chapter, KPB 20.65, Vacations. The new vacation chapter will clarify that only platted public easements may be vacated by the planning commission subject to consent or veto by the borough or a city, if the easement to be vacated is within a city. The new vacation chapter will include a utility easement alteration or removal section to improve the procedure for alteration of utility easements.

The amendments to KPB 21.20 seek to improve definitions and to clarify that hearing officer appeals are on the record appeals. The amendments also provide for a process of non-participation by the borough and to remove requirements for providing statements and motions even when the borough is not a participating party.

A sectional analysis of all the changes included in this ordinance is attached.

Your consideration of this ordinance is appreciated.

# Kenai Peninsula Borough

## Legal Department

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### MEMORANDUM

**TO:** Kelly Cooper, Assembly President  
Members, Kenai Peninsula Borough Assembly  
Blair Martin, Planning Commission Chair  
Members, Kenai Peninsula Borough Planning Commission

**FROM:** Sean Kelley, Deputy Borough Attorney  
Scott Huff, Platting Manager  
Marcus Mueller, Acting Planning Director

**CC:** Charlie Pierce, Mayor

**DATE:** October 1, 2020

**SUBJECT:** Ordinance 2020-45, Subdivisions, Hearings and Appeals Amendment  
Ordinance **Sectional Analysis**

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The following provides a sectional analysis of the amendments to the subdivision regulations and KPB Chapter 21.20, Hearings and Appeals.

**Section 1** amends KPB 2.40.080 to clarify that the planning commission's delegation of powers to the plat committee is done in its capacity as the platting board, to change the time to file a request for review from ten days to fifteen days, and to establish that any person or agency sent a notice of decision may request review by the full planning commission.

**Section 2** amends KPB 20.10.040 clarifying when an abbreviated plat procedure may be used and adds a cross reference to KPB 20.40.

**Section 3** conforms KPB 20.10.080, related to vacation plats, to recognize that there may be vacation plats that are not right-of-way vacation plats and to cross reference the new vacations chapter KPB 20.65.

**Section 4** adds a new section KPB 20.10.100 to provide a uniform notice section for public hearings under Title 20.

**Section 5** adds a new section KPB 20.10.110 to establish a building setback encroachment application and permit process. Currently an exception is granted to allow a building to remain within a building setback on all recorded plats. Platting exceptions are allowed only at time of preliminary plat approval. This will allow a process to review and grant (or deny) permission for a building to remain within a building setback within already platted subdivisions.

**Section 6** adds a new section KPB 20.10.120 to provide for a notice of decision section to include the persons or agencies that will be sent a notice of decision.

**Section 7** amends KPB 20.25.020 to clarify that the submission of a preliminary plat is the responsibility of a licensed land surveyor.

**Section 8** amends KPB 20.25.030 to clarify that the planning director will determine the number of copies and format for preliminary plat submissions and this number will be noted on the submittal application.

**Section 9** amends KPB 20.25.050(A) to recognize that platting powers have not been delegated but that such powers may be delegated to the cities upon request, amends KPB 20.25.050(B) & (E) to eliminate 49-day deadline for city advisory planning commission review of preliminary plat, and amends KPB 20.25.050(F) to state that a final plat may not deviate from a preliminary plat unless the city has approved the revision.

**Section 10** amends KPB 20.25.060, applicable to second class cities, the changes are similar to section 9 by removing the 49-day deadline for city review of a preliminary plat and removing reference to delegation of limited platting authority.

**Section 11** amends KPB 20.25.070 to require that the parent plat name be carried forward on the preliminary plat, to clarify that the preliminary plat must identify existing travel ways, to require the plat show the status of neighboring parcels within 100 feet to assist within planning for street intersections and future development, and to show low wet or swampy areas to assist owners plans for prudent placement of structures, wells, septic systems, and rights-of-way.

**Section 12** repeals KPB 20.25.090 due to new uniform notice section KPB 20.10.100 proposed in this ordinance.

**Section 13** amends KPB 20.25.110 to clarify the approval time frame of the preliminary plats, the expiration of preliminary plat, the number of extensions that may be granted, and to put the subdivider on notice when a preliminary plat is granted a time extension the final plat must comply with current subdivision code.

**Section 14** conforms KPB 20.25.120 to the KPB 2.40.080 amendments regarding deadline for filing a request for review of a plat committee decision. A section is being added to codify that preliminary plats approved prior to February 14, 2014 (prior code which contained no time expiration) will now have ten years from

date of approval to record the plat, update to current code, or have the approval expire after 10 years.

**Section 15** amends KPB 20.30.060(D) clarifies the placement of a ten-foot utility easement within borough rights-of-way and states that within the boundaries of a city the city and applicable utility providers will determine location, and/or width of utility easements.

**Section 16** repeals KPB 20.30.110, half streets, in recognition that applicable half street language is moved to KPB 20.30.120.

**Section 17** amends KPB 20.30.120(A) to move the half street requirements to fall within the street width requirements of code and to change the notice to adjoining property owners to be consistent with KPB 2.40.080.

**Section 18** amends KPB 20.30.150(B) to add requirement that distance between street centerlines shall be no less than 150 feet.

**Section 19** amends KPB 20.30.240(A) to clarify that the building setback requirement applies to all dedicated rights-of-ways and to add a plat note when a subdivision is affected by a local option zoning district.

**Section 20** amends KPB 20.30.250 to allow completion of new plats without requiring an exception to KPB 20.30.240 when the recorded plat shows a building set back. This will remove the requirement for an exception request to not carry forward a plat note that no longer applies. Currently this often affects simple replats within cities with zoning powers. The change will help simplify the platting process.

**Section 21** amends KPB 20.30.270 to clarify that the different design standards in cities may be applied by the planning commission even if platting powers haven't been delegated to that specific city.

**Section 22** amends KPB 20.30.280(C) to clarify the applicable provision of floodplain management code that must be followed for subdivision plats.

**Section 23** amends KPB 20.30.290 to conform to KPB 21.18 by adding the word "waters" to provide the correct title and description for the applicable plat note.

**Section 24** amends KPB 20.40.020(A)(3) to clarify that a vacation is not limited to dedicated right-of-way vacations and to correct cross reference to new KPB 20.65.

**Section 25** amends KPB 20.40.030 to remove the nominal five acre description from the abbreviated submittal for the wastewater review to eliminate confusion and adds a cross reference to KPB 20.40.100(F).

**Section 26** amends KPB 20.40.040 to remove reference to borough regulatory requirements because the borough does not regulate the installation of septic systems and adding a plat note so that owners are aware that a soils analysis report is on file with the borough which is beneficial when planning for the installation of a septic system.

**Section 27** amends KPB 20.40.070 by adding a new paragraph C to clarify that a licensed engineer or surveyor does not have to sign the wastewater disposal note for subdivisions served by city septic systems.

**Section 28** amends KPB 20.40.100 to align with changes to 20.40.030 by removing reference to nominal five acres and replacing it with 200,000 square feet.

**Section 29** amends KPB 20.50.010(A) to clarify that an exception may be requested without a formal application process.

**Section 30** adds a new section KPB 20.60.025 requirement that the final plat filing fee must accompany the submission of the final plat.

**Section 31** amends KPB 20.60.070 to conform with State of Alaska (DNR) platting recommendations and to clarify drawing standards to be followed (colors should not be used, appropriate drawing scales, and the appropriate font size) so that recorded plats are legible and can be reproduced in the future.

**Section 32** amends KPB 20.60.110 to provide that non-radial lot lines must be labeled to provide useful information to owners and subsequent surveyors, to label computed data where lines were not measured, and to add clarification to situations where a discrepancy is found between survey markers and/or to show how new survey marker locations were established.

**Section 33** amends KPB 20.60.130 to define that the boundary of the subdivision must be established and clearly shown on the drawing.

**Section 34** amends KPB 20.60.170 to clarify that private covenants, easements, or deed restrictions will be shown on plat when known but that they are not enforced or regulated by the borough, and to add a requirement that subdivision plats must confirm to applicable local option zone requirements.

**Section 35** amends KPB 20.60.180 to add a new paragraph B regarding plat note revision or removal.

**Section 36** amends KPB 20.60.210 to add a new paragraph E to require notification to the owner(s) of the affected lot and/or owners in the subdivision when a request to amend a record plat is received.

**Section 37** adds a new chapter KPB 20.65, Vacations, to borough code.

- **KPB 20.65.010** provides authority, legislative intent, scope and purpose of the chapter to clarify that the chapter only applies to platted public easements or areas. The chapter does not apply to private easements or easements created by contract, deed, or Alaska Statute.
- **KPB 20.65.020** provides for a planning commission recommendation on the vacation of state easements.
- **KPB 20.65.030** provides that vacations must conform to requirements of KPB 20.65 and AS 29.40.120 through AS 29.40.160.
- **KPB 20.65.040** provides for an informal pre-application conference with borough staff and provides the requirements for a complete application.
- **KPB 20.65.050** provides the procedure to be followed, the criteria for evaluating the merits of a vacation application, that approval of a vacation is not final without the consent of city council or assembly, as applicable, that a planning commission denial is final and that as a legislative act appeals of a vacation decision must be filed in Alaska Superior Court.
- **KPB 20.65.060** addresses title to the vacated area.
- **KPB 20.65.070** concerns process and procedure for alteration, including removal, of platted utility easements.

**Section 38** repeals KPB 20.70, Vacation Requirements, as this chapter is replaced by new vacations chapter KPB 20.65.

**Section 39** amends KPB 20.80.040 to conform cross reference to KPB 20.65.

**Section 40** amends KPB 20.90.010 definitions.

**Section 41** amends KPB 21.20.210 definitions to clarify that a party must own property within the notification radii to appeal a planning commission decision to a hearing officer.

**Section 42** amends KPB 21.20.230(B) to remove confusion regarding assembly consideration of vacation approvals as that is covered in full by new KPB 20.65.050.

**Section 43** amends KPB 21.20.250 to provide for a process of non-participation by the borough when only private interests are being litigated.

**Section 44** amends KPB 21.20.270 to clarify that KPB 21.20 appeals are appeals on the record and new evidence will not be admitted without cause.

**Section 45** amends KPB 21.20.280 for clarification regarding who must submit an opening statement and to clarify when additional written statements are allowed.

**Section 46** amends KPB 21.20.300 to clarify that the borough may only file motions if it enters an appearance in the matter.

**Section 47** sets the effective date of this ordinance.

Borough Assembly Members  
c/o Johni Blankenship, Borough Clerk  
Kenai Peninsula Borough  
144 N. Binkley St.  
Soldonta, AK 99669

RECEIVED  
NOV 23 2020  
Borough Clerk's Office  
Kenai Peninsula Borough

RE: Ordinance 2020-45

Dear Assembly members,

Rita and I would like to offer our input in regards to the proposed changes being made to KPB 20.25.070.

In regards to para. F and section 11, as they pertain to "travel ways":

- 1) Travel ways typically have not been surveyed, thus, their placement on the plat is a guess or estimate. This would apply to their actual width/dimensions as well as any ditching (if any).
- 2) The legal status of existing travel ways is often unknown and it is the courts, not the borough, who has the final say on determining the legality of a travel ways status.

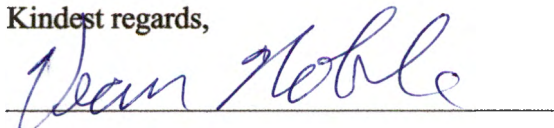
For these two reasons, we believe the borough is going in the wrong direction with this particular requirement.

Our feelings are that the platting process, both with preliminary and final, should be to create a plat that is unambiguous and only reflects what are known legal ROW's.  
I.E., ...platted roads/row's or recorded easements with appropriate legal descriptions.

This is valuable, in that it helps the general public avoid buying a property that may have a questionable, or illegal access situation.

Finally, if the assembly decides that these travel ways with unknown legal and location status should be placed on the plat, we ask that you consider requiring plat note language with the disclaimer that the travel way has not been surveyed and it's legal status is unknown.

Kindest regards,



11-19-20  
Veane Noble



Rita Rothgeb

# MOLLOY SCHMIDT LLC

ATTORNEYS AT LAW

110 South Willow Street, Suite 101  
Kenai, Alaska 99611  
(907) 283-7373 • (907) 283-2835 (Fax)

## MEMORANDUM

**TO:** Borough Mayor Pierce  
cc: Planning Department, Legal Department

**FROM:** Robert J. Molloy • Kristine A. Schmidt

**DATE:** November 23, 2020

**SUBJECT:** Ordinance 2020-45 and Vacation of State Easements

Current Ordinance:	Ord. 2020-45, Sec. 37, new KPB 20.65.020
<ul style="list-style-type: none"><li>• There is no current ordinance on vacating <i>all</i> “public easements of the state;” just:</li><li>• <b>KPB 20.70.010, Section line easement vacations:</b> “... the petition must be reviewed and approved by the planning commission but final authority for approval and platting authority rests with DNR.”</li></ul>	<b>20.65.020. Planning commission recommendation on state easements.</b> 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 easements within the borough. Applications to vacate a section line easement or other <b>public easements of the state</b> must comply with KPB 20.65.040 and <b>will be considered in accordance with KPB 20.65.050.</b> 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.

### Requested Amendment:

#### **20.65.020. Planning commission recommendation on state easements.**

The planning commission serving as the platting authority has no authority to vacate state-owned public easements under the jurisdiction of the state. The planning commission may will provide a recommendation on proposed vacations of state-owned public easements within the borough; but may also decline to provide a recommendation on the ground that the easement is not platted or is an RS 2477 right-of-way. Applications to vacate a section line easement or other state-owned public easements of the state 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 state-owned public easement under the jurisdiction of the state rests with the state.

- KPB 20.65.020 creates *new barriers* to vacating an easement, and *increases Borough jurisdiction and regulation* of those easements, which will increase the expense of a vacation petition, and prevent private development of land in the Borough.
- KPB 20.65.020 *expands current Borough regulation* over public easements owned by the State of Alaska – from current KPB 20.70.010 (section line easements), to all “Public easement under the jurisdiction of the state,” which is not defined. State regulation 11 AAC 51.065(a) (attached) uses the term “state-owned public easement.”
- KPB 20.65.020 *expands Borough jurisdiction* from KPB 20.65.010 (only easements “on borough approved plats”) to all “public easements under the jurisdiction of the state,” whether “on a borough approved plat” or not; *with no explanation*.
- State regulation 11 AAC 51.065(c) gives the Borough platting authority the option to *decline to comment* on easements which are not platted or are RS 2477 easements; KPB 20.65.020 has no exceptions, but should give the planning commission this option.
- KPB 20.65.020 incorporates KPB 20.65.050 -- KPB 20.65.050 creates *new “one size fits all” requirements* for vacations that will increase expense and prevent private development. State regulation 11 AAC 51.065(a) contains a list of many different types of State-owned easements. The Borough should use planning department policies to determine what interest it may have in a particular type of State-owned easement.

§ 11 AAC 51.065. Vacation of easements.

**Alaska Administrative Code**

**Title 11. Natural Resources**

**Part 6. Lands**

**Chapter 51. Public Easements**

**Article 2. Identification, Reservation, and Modification of Public Easements**

*Current through October 30, 2020*

**§ 11 AAC 51.065. Vacation of easements**

- (a) An affected person or a municipal assembly or city council may petition the department to vacate, modify, or relocate,
  - (1) in accordance with AS 19.30.410, an R.S. 2477 right-of-way, including a section-line easement under AS 19.10.010 that the department manages under AS 19.30.400 and AS 38;
  - (2) in accordance with AS 38.05.127(d), an access easement reserved under AS 38.05.127 and 11 AAC 51.045 ;
  - (3) In accordance with AS 40.15.300 - 40.15.380, a platted easement dedicated to public use and managed by the department under AS 38;
  - (4) on land that the state currently owns or formerly owned, a public easement reserved along a section line under AS 19.10.010 ; or
  - (5) another state-owned public easement managed by the department.
- (b) A petition to the department under (a) of this section must also be submitted to the platting authority for consideration, including public notice and a public hearing, in accordance with the procedures set out in
  - (1) AS 29.40.120 - 29.40.150, if the platting authority is established under AS 29.40.080 by a municipality described in AS 40.15.070(a) ; or
  - (2) AS 40.15.305 and 11 AAC 53.250, as applicable, if the platting authority is the department in accordance with AS 40.15.070(b).
- (c) If a municipal platting authority declines to consider the petition in accordance with the procedures set out in AS 29.40.120 - 29.40.150, on the grounds that the public easement is unplatted or is an R.S. 2477 right-of-way, the department will give notice of the petition in a newspaper of general circulation in the vicinity of the public easement and provide a comment period of at least 30 days. The petitioner shall reimburse the department for the costs of notice.
- (d) In addition to a notice, comment opportunity, or hearing provided under (b) - (c) of this section by a municipal platting authority or the department, the department will give notice of a petition under (a) of this section and provide a comment period of at least 30 days by

# MOLLOY SCHMIDT LLC

ATTORNEYS AT LAW

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Kenai, Alaska 99611  
(907) 283-7373 • (907) 283-2835 (Fax)

## MEMORANDUM

**TO:** Borough Mayor Pierce  
Kenai Peninsula Borough Assembly Members

**FROM:** Robert J. Molloy • Kristine A. Schmidt

**DATE:** November 23, 2020

**SUBJECT:** Ordinance 2020-45 and Title to Vacated Area

Current Ordinance:	Ord. 2020-45, Sec. 37, new KPB 20.65.060(C)
• The current ordinance, KPB 20.70.150, <b>Title to Vacated Area</b> , does not contain this language.	<b>Title to vacated area.</b> C. Other provisions of this subsection notwithstanding, the planning commission may determine all or a portion of a vacated area <i>should be dedicated to another purpose</i> , and if so, title to the area vacated and held for another public purpose remains in the borough or city, as applicable.

### ***Requested Amendment: strike KPB 20.65.060(C).***

- As written, new paragraph (C) appears to ***apply to all vacations***: so if a private property owner had an easement for one purpose (for example, a roadway), the Planning Commission could approve vacating that easement, but then turn around and ***dedicate*** the vacated easement area to another purpose – ***which would be an unconstitutional taking***.
- The current Borough Subdivision Code does not give the Planning Commission authority to dedicate an area proposed to be vacated to another public purpose; so paragraph (C) ***grants a new power to the Planning Commission, without any explanation***.
- New paragraph (C) ***appears to conflict with State statute***, and could subject to legal attack. AS 29.160a) states that when an easement is vacated, the interest in the easement (“title”) reverts to the underlying private property owner, not the municipality (Borough). AS 29.40.160(c) states that 29.40.160(a) applies “to home rule and general law municipalities” such as the Borough. AS 29.40.160 does not allow for an exception by ordinance, as in new paragraph (C). See attached.
- If Paragraph C is enacted, professionals will need to advise private property owners of the risk that Paragraph C poses to their development plans. Paragraph C is an ***unnecessary barrier to private property development***, and, as written, a ***violation of private property rights***.

## NOTES TO DECISIONS

**Applicability.** — Borough's platting board provided adequate notice by publication of a site visit, which was a meeting as defined in AS 44.62.310(h)(2)(A); the board was not required to mail notices to property owners. Moreover, a subsequent

public hearing at which the public could comment cured any defect. *Gold Country Estates Pres. Group, Inc. v. Fairbanks North Star Borough*, 270 P.3d 787 (Alaska 2012).

**Sec. 29.40.140. Hearing and determination.** (a) The platting authority shall consider the alteration or replat petition at a hearing and make its decision on the merits of the proposal.

(b) Vacation of a city street may not be made without the consent of the council. Vacation of a street in the borough area outside all cities may not be made without the consent of the assembly. The governing body shall have 30 days from the decision of the platting authority in which to veto a vacation of a street. If no veto is received by the platting authority within the 30-day period, consent is considered to have been given to the vacation. (§ 11 ch 74 SLA 1985)

## NOTES TO DECISIONS

**Applicability.** — Borough's platting board provided adequate notice by publication of a site visit, which was a meeting as defined in AS 44.62.310(h)(2)(A); the board was not required to mail notices to property owners. Moreover, a subsequent

public hearing at which the public could comment cured any defect. *Gold Country Estates Pres. Group, Inc. v. Fairbanks North Star Borough*, 270 P.3d 787 (Alaska 2012).

**Sec. 29.40.150. Recording.** If the alteration or replat is approved, the revised plat shall be acknowledged, filed, and recorded in accordance with AS 40.15.010 — 40.15.020. (§ 11 ch 74 SLA 1985; am § 5 ch 161 SLA 1988)

**Sec. 29.40.160. 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) The provisions of (a) and (b) of this section apply to home rule and general law municipalities.

(d) The council of a second class city located outside a borough may vacate streets, alleys, crossings, sidewalks, or other public ways that may have been previously dedicated or established when the council finds that the streets, alleys, crossings, sidewalks, or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for another public purpose does not vest as provided in (a) of this section but remains in the city. (§ 11 ch 74 SLA 1985)

Dear President Hibbert, Policies and Lands Chairs, & Assembly Members, through the Borough Clerk:

**RE: Ordinance 2020-45**

We did appreciate the Assembly postponing action on Ordinance 2020-45 to the 12/01/20 meeting, and also appreciated the opportunity provided by Mayor Pierce to meet with him and his staff for further dialogue on issues and concerns about the major changes proposed to be made in this ordinance. We also appreciate the fact that amendments addressing some of our concerns are proposed in Legal Department's most recent amendment memo.

However, the Deputy Borough Attorney was out on leave 11/20/20 through 11/27/20, and we were unable to continue this productive dialogue.

Given demands of other business and the Thanksgiving holiday, we have been unable to comment further, except for the two memos that we sent. Both memos propose some amendments which are different from the Legal Department's memo.

**Memo 1:** We continue to recommend that vacation of state-managed easement should be an easier process, and there is no reason to require the Planning Commission to consider the same factors under proposed 20.65.050 that this Ordinance would have the Commission consider for Borough platted easements.

**Memo 2:** We continue to recommend that paragraph (C) of proposed KPB 20.65.060 be deleted.

We did not have time to submit suggestions for changes to proposed KPB 20.65.050 on factors to be considered by the Planning Commission when the Commission considers the merits. Based on past experience, we know that the present amended proposal will still cause more difficult and expensive process for applicants.

We ask that the Assembly either table or postpone action for an additional time period, or make the effective date July 1, 2021, or vote this ordinance down, so that there still will be opportunity for additional dialogue about other amendments before the proposed new code is effective

Thank you for your consideration.

Bob Molloy & Kristine Schmidt

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110 S. Willow Street Suite 101  
Kenai, Alaska 99611  
(907) 283-7373 • (907) 283-2835 fax  
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# MOLLOY SCHMIDT LLC

ATTORNEYS AT LAW

110 South Willow Street, Suite 101  
Kenai, Alaska 99611  
(907) 283-7373 • (907) 283-2835 (Fax)

## MEMORANDUM

**TO:** Borough Assembly Members

**FROM:** Bob Molloy • Molloy Schmidt LLC 

**CC:** Borough Mayor Pierce

**Through:** Borough Clerk Blankenship

**DATE:** 11/09/20

**SUBJECT:** Ordinance 2020-45, Amending Code on Borough Planning  
Commission and Subdivisions, and Repealing and Replacing Code on  
Procedures for Vacations

The proposal made in Ordinance 2020-45 includes a repeal of existing Chapter 20.70 VACATION REQUIREMENTS and its replacement with Chapter 20.65 VACATIONS. The Assembly should take its time in reviewing this complete repeal and replacement, and enact amendments, if the Assembly moves forward with repeal and replace.

I have been a partner in law firms for nearly 40 years, and have represented real property developers and owners in many types of administrative agency matters or proceedings, including both applicants for, and opponents of, right-of-way and easement vacations. The cumulative changes to administrative procedures in replacement Chapter 20.65 VACATIONS, as currently presented, when considered as a whole, unduly limit the discretion of the Planning Commission, increase the burden on affected private property owners and remove the Assembly from any oversight role at all.

These comments do not strictly follow the linear page order.

### Comments on Section 37 Enactment of KPB 20.65 as Repeal and Replacement of 20.70

20.65.050(F), pp. 26-27	"The planning commission shall consider the merits of each vacation request ... "
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-- In general, Subsection (F) has some subsections that will lead to many disputes. And Subsection (F) also does not provide the Planning Commission with sufficient flexibility for its task of reasonable regulation of land use.

20.65.050(F), pp. 26	".. <i>and in all cases the planning commission shall deem the area being vacated to be of value to the public.</i> " (Emphasis supplied)
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-- The phrase "*and in all cases the planning commission shall deem the area to be vacated to be of value to the public*" in the first sentence, quoted above, establishes an awkward and vague presumption, a presumptive finding and conclusion by the Planning Commission, which the applicant must rebut in the applicant's presentation to the Planning Commission.

-- Rights-of-way and easements have many different origins, the property history may be complex, and some easements, such as Small Tract Act patent easements, (which are not dedicated ROWs), may have no real value to the general public, as distinguished from the government (for roads and utilities) and property owners (also for roads and utilities to their properties). As an example, there are many Small Tract Act patent ROWs reserved in many private property lots in the Borough, and the Borough has indicated no interest in developing many of these patent ROWs as roads.

-- What is the spectrum or range of values for "*of value to the public*," especially if the easement, which is not a dedicated ROW, is not developed or constructed and is not being used by the general public, or if the Borough has no plan to develop the easement?

-- If an opponent appeals a Commission decision granting a petition to vacate, the applicant-petitioner will have to show that this Code presumption has been rebutted under applicable law and the evidence presented at the hearing.

20.65.050(F), pp. 26-27	"It shall be incumbent upon the applicant to show that the area proposed for vacation is no longer practical for the uses or purposes authorized, or that other provisions have been made which are more beneficial to the public.
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-- The second sentence also establishes a burden of proof on the applicant, but limits the applicant to showing (1) that the area proposed for vacation is not longer practical for the uses or purposes authorized, or (2) that other provisions have been made that are more beneficial to the public. The flexibility of other factors should be allowed, such as; (3) and/or that the area is not developed or constructed, or is not used by the public, or is of little or no value to the public; (4) and/or that neither the Borough or any other governmental agency has shown any interest in developing the easement for the public; (5) and/or any other reason supporting the proposed vacation.

20.65.050(F), pp. 26-27	"In evaluating the merits of the proposed vacation, the planning commission shall consider whether: ..." factors (1) -- (7)
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-- Subsection (F) also limits the discretion of the Planning Commission by limiting the factors that the Commission "**shall consider**" to subparagraphs (1) through (7). The Commission also should be able to consider, as an example: "(8) any other factors that are relevant to the vacation application or the area proposed to be vacated."

20.65.010, p. 25	Defining a "vacation decision" to be a "discretionary legislative land use decision"
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-- This is a significant change that has major effects on affected private property owners.

-- Some municipalities do define a Planning Commission's decision to be a "legislative" decision, but to my knowledge, there has not been an appeal of those ordinances decided by the Alaska Supreme Court. Under Alaska law, the test for when a governmental body is acting as an administrative agency is functional. The Alaska Supreme Court has held that the **Kenai Peninsula Borough Assembly**, in its role as the Borough's legislative body, may classify its municipal land, and that the Assembly's classification of its municipal land is a legislative act, because the Assembly is not applying general policy to particular persons in their private capacities when classifying its municipal land. *Cabana v. Kenai Peninsula Borough*, 21 P.3d 833, 835-36 (Alaska 2001).

-- In contrast, when the Planning Commission makes a vacation decision, the Commission is tasked with hearing and deciding issues of law and fact in terms of specific parties and specific transactions, which is functionally acting in a quasi-judicial capacity.

-- If an affected private property owner is in a dispute with the petitioner - applicant and Planning Department staff over whether the affected private property owner has a property interest in the easement proposed to be vacated, the elimination of all appeal procedure at the Borough level (before appeal to superior court) harms the affected private property owner, who is also a taxpayer.

- Such disputes may be infrequent, because in most cases, the petitioner and affected property owners agree that the ROW or easement is a public ROW or public easement.

- Whenever affected private property owner(s) claim(s) a private interest in the easement proposed to be vacated, the Borough must provide a public hearing with due process safeguards for the petitioner - applicant and the affected private property owner(s), even if the Assembly adopts the major change to "discretionary legislative land use decision." For due process, the Borough must provide an impartial decision-maker, notice and the opportunity to be heard, some of the procedures consistent with the essentials of a fair trial, and a reviewable record. *Nash v. Matanuska-Susitna Borough*, 239 P.3d 692, 699 (Alaska 2010).

#### ADDITIONAL PROCEDURE AT PLANNING COMMISSISON LEVEL:

-- For the infrequent case where competing private property rights are disputed, the Assembly can add a Code section, per AS 29.40.170, that authorizes the Planning Commission to delegate powers to hear and decide such cases to a hearing officer. Complex cases may be infrequent, but this procedure would give the Planning Commission the discretion to delegate complex cases to a hearing officer, and allow both the petitioner - applicant and the affected private property owner(s) to make a detailed, reviewable record in case of a further appeal, either to an appellate hearing officer or to the superior court.

## PROCEDURE FOR APPEAL FROM DECISION AT PLANNING COMMISSION LEVEL:

-- Under the replacement code, (KPB 20.65.050(M) at p. 28), an affected private property owner no longer has any right to appeal an adverse Planning Commission decision within the Borough, either to a hearing officer or to the Assembly. There would be no appeal at the Borough level; this repeal harms affected property owners, who are also taxpayers.

-- Because of the short timeline between the date when the meeting packet with staff report is distributed and the date of the Planning Commission hearing, affected private property owners have very little time within which to make a record before the Planning Commission, especially if they claim private property rights in the easement. Then the appeal to the superior court is on the record before the Planning Commission (it is very rare for the superior court to grant a request for a de novo hearing).

-- The Assembly could provide for an appeal of a vacation decision to a hearing officer, before appeal to the superior court, as the Assembly does for other appeals, if the Assembly does not want to provide for an appeal to the Assembly as a Board of Adjustment (as it had provided for a Board of Adjustment procedure in Code in the past).

20.65.040, p. 25	Vacation application, first sentence: " 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."
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-- This encouragement of an "informal pre-application conference" is an optional procedure that will benefit applicants and staff. But why limit this option to applications "for vacation of a public right-of-way"?

20.65.050(B), p. 26	After acceptance of the application
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-- Similar to an "informal pre-application conference," there should be the opportunity for the applicant and staff to have a pre-staff report conference regarding issues which staff have identified before the staff report is finalized. This optional procedure could save applicants significant expense.

20.65.050(E), p. 26	Placement on Agenda and postponement requests
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-- The second sentence -- "The public hearing on the vacation may not be more than 60 days after acceptance of the application, unless the applicant requests postponement" -- unduly restricts the discretion of the Planning Commission.

-- In *South Anchorage Concerned Coalition, Inc. v. Municipality of Anchorage Board of Adjustment*, 172 P.3d 778, 773 (Alaska 2007), the Supreme Court of Alaska ruled that it is always within the discretion of the municipal administrative body to relax or modify its procedural rules adopted for the orderly transaction of business before it on appeal in a given case when the procedural rules are discretionary and the ends of justice require it. This Code change eliminates the Planning Commission's discretion. While the Supreme Court was

specifically addressing administrative appeals, this concept also applies to the Planning Commission as a decision-making body.

-- This Code change restricts the Planning Commission to considering only the applicant's request for postponement. The Planning Commission may not consider any other factors, such as a request by an affected private property owner who has not received a mailed notice of the hearing or who claims a private interest in the easement proposed to be vacated; and the Planning Commission may not consider its own business calendar or availability of Borough staff.

20.065.060 (A), pp. 28-29	Title to vacated area
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-- Paragraph A is confusing; may submit comments later.

20.065.060 (C), p. 29	Title to vacated area
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-- Paragraph C invites arbitrary action by the Planning Commission and has the potential to discourage property development plans that involve vacations.

-- Applicants often incur significant expenses for professional fees for surveyors, and sometimes for engineers and attorneys. But Paragraph C allows the Planning Commission, at the hearing, without any prior notice, "to determine all or a portion of a vacated area should be dedicated to another purpose," and deny the petition.

-- The use of the word "title" in this context also presents issues for the property owners, because not all ROWs and easements are the same. Most easements are encumbrances on the property owner's title (the "servient estate"), and the easement does not give title to the user ("the dominant estate").

20.065.070, pp. 29-30	Alteration of platted easements
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-- The last sentence of Paragraph (A), p.29, states: "For purposes of types of easements covered by this section, the KPB 20.90.010 definition for Utility Easement control."

---- This restriction will lead to disputes over whether an easement platted solely as a drainage easement, and intended to be a drainage easement, is a utility easement.

-- May have other comments, but have run out of time.

### **Other Comments**

<b>Sec. 11, 25.20.070(F), p.</b>	Delete "travel ways."
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-- -- Do not require "travel ways" to be shown on preliminary plats. "Travel ways" are roads or rights-of-way that are private, not public. Because of the certification text required on plats by Code, the depiction of private "travel ways" on plats has led to expensive law suits where the landowner has had to litigate against a claim that the "travel way" was dedicated to the public by plat due to the certification text, even though there was never a dedication or grant to the public.

The Assembly's consideration of these comments is appreciated. Thank you.

# MOLLOY SCHMIDT LLC

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## ROBERT J. MOLLOY

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## KRISTINE A. SCHMIDT

ADMITTED IN ALASKA, CALIFORNIA AND WASHINGTON

[kristine@molloysschmidt.com](mailto:kristine@molloysschmidt.com)

November 9, 2020

Charlie Pierce, Mayor, Kenai Peninsula Borough  
Kenai Peninsula Borough Assembly Members  
144 N. Binkley St.  
Soldotna, Alaska 99669

**Re: ORDINANCE 2020-45**

Dear Mayor Pierce and Borough Assembly Members:

I request that you table Ordinance 2020-45 for the time being, especially as the Assembly has 3 new members, there is a new Planning Department director, and there are many problems with the ordinance as written. I request (and hope) that you will hold some additional meetings about this ordinance, with real estate professionals and communities, as the Borough did for the 2014 Planning Code rewrite (but not for this 2020 rewrite).

Our law firm has represented private property owners/developers, on all sides, for 40 years. I also worked for the Borough 1984-1994 as Deputy Borough Attorney; and, while there, worked on many real estate matters for the Borough. Our firm has been involved with many lawsuits over real property disputes. Many of the lawsuits were caused by or complicated by Borough planning department practices and ordinances of the past.

Ordinance 2020-45 is a major rewrite; it is not just "housekeeping." **There are major policy changes in this ordinance that will make it more expensive and burdensome for private property owners/developers.** Below are some examples. There are many other problem sections, that I can bring to your attention if the Assembly postpones action. That is why I am requesting that you table this ordinance for further review.

**1. Vacations Will Be Harder And More Expensive for Property Owners, Developers and Others. Section 37, pp. 25-32 of the ordinance.**

This is a complete rewrite of the current vacation ordinance, and will cause more expense and difficulty for both applicants for vacation, and opponents of vacation.

First, Sec. 20.65.050(E), page 26, requires the planning commission to "deem the area being vacated to be of value to the public." This is a *new* requirement. This "one size fits all" approach does not take into account the many different kinds of easements and rights of way under federal and State laws that are all over the Borough.

These federal and State easements and rights of way are not platted rights of way in Borough subdivision plats; and the easement rights involved differ greatly. Some of these easements and rights of way may have public value; but others may not.

Many rights of way are very old, and were put in place by the federal government or State of Alaska for reasons that no longer exist. For example, there are many section line easements; some have no utility at all, because the land is too steep, isolated, swampy, and so forth. Some federal rights of way may actually be terminated, but you won't know that unless you do a lot of research in the historical records.

Second, Sec. 20.65.050(E), items (1) through (7), page 27, are very vague and subjective; such as "being used" -- for what? Or "public interest or value" -- how is that determined at the application stage? A property owner trying to prove these requirements will need to hire expensive experts such as lawyers and contractors to submit proof with the application. In addition, it may not be possible for a property owner to provide "equal or superior access" for a right of way to a lake or river. Are they stuck with an unnecessary right of way forever?

Third, Sec. 20.65.060(C), page 29, contains very broad language that allows that Planning Commission to rededicate a vacated area "to another purpose." The language is confusing, but it appears to mean that a property owner/developer could go all the way through the vacation process, only to have the Planning Commission arbitrarily deny the vacation and substitute another purpose for the area requested to be vacated. No property owner or developer is going to take the risk of having this happen; so this requirement restricts development.

**2. Requiring Preliminary Subdivision Plats to Include "Travel Ways" Will Only Lead to Property Disputes; the Borough Should Not Take Sides. Section 11, pp. 10-11 of the ordinance.**

Section 11 adds a new requirement to KPB 20.25.070: that preliminary plats include "travel ways." This is a mistake. I been involved in at least two lawsuits where these "travel ways" were on both the preliminary plat and final plat, and the people claiming use rights in another person's private property tried to use the showing of a travel way -- even on a preliminary plat -- against the property owner. The claimants will argue that showing a travel way on a plat, especially since it is required by Borough ordinance, is an official Borough action that supports their claim that they have the right to use the travel way.

By requiring travel ways to be shown at all, the Borough is taking sides in a private property dispute. It is not necessary to show existing travel ways that are not public. At a minimum, if there is some critical need for this requirement (not obvious), the ordinance should contain a disclaimer that showing the travel way does not infer a right to use it.

**3. New Building Setback "Encroachment" Permits Add Bureaucracy and Expense. Section 5, pp. 6-7 of the ordinance.**

This new section, 20.10.110, is a major change that will add a unnecessary layer of bureaucracy and expense to private property ownership and development. It is a complete 180 degree turn from past Borough practice, where a "building setback encroachment" was only an issue when the building interfered with a Borough road right of way that was being maintained; or perhaps interfered with fire trucks or ambulances. That is, the Borough administration did not care how you developed your own property, as long as it did not interfere with Borough services. This ordinance is not even clear that it applies to rights of way.

The section also retroactive: it appears to apply to all buildings that were built within a building setback, back to Borough incorporation in 1965. And these permits have to be approved by the planning commission; which will involve more expense and resources. This permit system seems like complete overkill.

**4. The Assembly Has Always Been the Reviewing Body of Planning Commission Decisions on Vacations; Ordinance 2020-45 Removes That Right.**

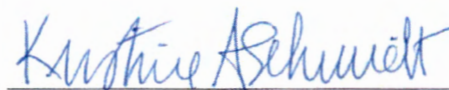
KPB 21.20.230(B) requires the Assembly to hear appeals from Planning Commission vacation decisions, which has always been the case. However, Ordinance 2020-45, in Section 37, 20.65.050(M), page 28, removes the Assembly's right to hear these kind of appeals, and a landowner or interest holder's right to appeal to the assembly -- without any logical explanation. Instead, the new requirement is that vacation appeals have to go directly to superior court.

This new requirement is clearly directed towards people who oppose vacations that have been approved by the Planning Commission. This new requirement is unfair because there is no chance to develop a case at the Planning Commission level, when the opponent to a vacation only has three minutes to speak, and limited ability to present documents in opposition. So the superior court has no real evidence to review. Every other kind of appeal of a planning commission decision goes to a hearing officer. That is why this new requirement, just for vacations, makes no sense.

This effort to remove these rights seems to be arbitrary and punitive. Please remove this language.

Thank you for considering my comments.

Sincerely,



KRISTINE A. SCHMIDT

eComments  
Ordinance 2020-45

**DiAnna Leaders**

Location:

Submitted At: 8:32pm 11-30-20

Dear Mayor Pierce and Borough Assembly Members,

As a life-long resident and land owner on the Kenai, I ask that you table proposed Ordinance 2020-45 to allow for greater public consideration and comment. I believe that the proposed ordinance creates unnecessary burdens and costs for landowners who seek to vacate unused and unneeded right of ways on their land. I have reviewed letters drafted by attorneys Kristine Schmidt and Bob Malloy, and I join in the concerns and issues they have raised in those letters to you.

Respectfully,

DiAnna Leaders

Kenai Peninsula Borough Land Owner

**Jeannette Ducker**

Location:

Submitted At: 8:30pm 11-30-20

Dear Mayor Pierce and Borough Assembly Members,

As a long-time resident and land owner on the Kenai, I ask that you table proposed Ordinance 2020-45 to allow for greater public consideration and comment. I believe that the proposed ordinance creates unnecessary burdens and costs for landowners who seek to vacate unused and unneeded right of ways on their land. I have reviewed letters drafted by attorneys Christine Schmidt and Bob Malloy, and I join in the concerns and issues they have raised in those letters to you.

Respectfully,

Jeannette Ducker

Kenai Peninsula Borough Land Owner

**Scot Leaders**

Location:

Submitted At: 8:10pm 11-27-20

Dear Mayor Pierce and Borough Assembly Members,

As a long-time resident and land owner on the Kenai, I ask that you table proposed Ordinance 2020-45 to allow for greater public consideration and comment. I believe that the proposed ordinance creates unnecessary burdens and costs for landowners who seek to vacate unused and unneeded right of ways on their land. I have reviewed letters drafted by attorneys Christine Schmidt and Bob Malloy, and I join in the concerns and issues they have raised in those letters to you.

Respectfully,

Scot H. Leaders

Kenai Peninsula Borough Land Owner


# Kenai Peninsula Borough


## Planning Department

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### MEMORANDUM

TO: Brent Hibbert, Assembly President  
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Borough Mayor 

FROM: Melanie Aeschliman, Planning Director 

DATE: January 13, 2021

**RE:** Second Amendment to Ordinance 2020-45: An ordinance amending Kenai Peninsula Borough Code of Ordinances including Chapter 2.40-Planning Commission, Title 20-Subdivisions, Chapter 21.20-Hearing & Appeals to correct grammatical errors, clarify and improve certain administrative procedures.

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The Kenai Peninsula Borough Planning Commission reviewed the amendments to subject ordinance during their regularly scheduled January 11, 2021 meeting.

A motion passed by majority vote (8 Yes, 2 No) to request postponement of Ordinance 2020-45 by the Assembly so that the Planning commission has time to hold a work session.

Attached are the unapproved minutes of the subject portion of the meeting.

defined channel.

14. The proposed plat has a plat note that addresses the city code and the setback requirements.
15. There is not a drainage easement that connects drainage C and drainage E to drainage D.
16. A drainage easement to provide a connection from drainage C and E to drainage D can be granted on the Lillian Walli Estate 2020 Replat.

#### STAFF RECOMMENDATION:

Based on the means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and findings 1, 2, 3, 7, 10, 13, 16, **Staff recommends** approval of the drainage easements labeled A, B and F on the Water Resources Map KPB, and the denial of the drainage easements labeled C, D and E on the Water Resources Map KPB, subject to:

1. The granting of a 15 foot drainage easement to provide a connection from drainages C and E to drainage D with the location of the easement being defined on the Lillian Walli Estate 2020 Replat.
2. Finalize the approved vacations by submitting a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).
3. Any drainage easements that are retained may require additional drainage easement dedications within the vacated portion of Cheryl Lane that are approved by the City of Homer Public Works Department.

#### NOTE: Action after denial of vacation (KPB 20.70.120)

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.
- B. Upon denial by the planning commission, 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.

#### END OF STAFF REPORT

Chair Martin open the item for public comment. Seeing and hearing no one from the public wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

**MOTION:** Commissioner Venuti moved, seconded by Commissioner Bentz to approve the vacation of drainage easements labeled A, B & F as shown on the Water Resources Map KPB in the meeting packet, based on the means of evaluating public necessity established by KPB 20.70, and findings 1, 2, 3, 7, 10, 13 & 16.

Seeing and hearing no objection or discussion, the motion was carried by the following vote:

#### MOTION PASSED BY UNANIMOUS VOTE:

Yes	10	No	0	Absent	1
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Ruffner Venuti				
No	None				
Absent	Morgan				

#### AGENDA ITEM E. NEW BUSINESS

3. Second Amendment to Ordinance 2020-45: An ordinance amending Kenai Peninsula Borough Code of Ordinances including Chapter 2.40-Planning Commission, Title 20-Subdivisions, Chapter 21.20-Hearing & Appeals to correct grammatical errors, clarify and improve certain administrative procedures.

Staff report given by Scott Huff (from the December 16, 2020 memo to the Planning Commission)

The following is a timeline of events regarding Ordinance 2020-45

September 14 – Ordinance 2020-45 was introduced to the Planning Commission so that they had time to review the ordinance before the next meeting. Public comment was not available as this item was only up for introduction.

September 28 - Ordinance 2020-45 was presented to the Planning Commission. The commission opened up the item for public comment and no public comment was given. Staff provided a sectional analysis of the ordinance. The commissioners discussed the ordinance and had several questions for staff. The ordinance was postponed to allow staff time to edit the ordinance and provide answers to the commissioner's questions.

October 12 – Staff presented the ordinance with several edits that were brought about from the previous meeting. The commission opened up the item for public comment and no public comment was given. The Planning Commission unanimously approved to recommend the adoption of Ordinance 2020-45, including a revision to Section 37, to the Kenai Peninsula Borough Assembly.

October 13 – Ordinance 2020-45 was introduced to the Kenai Peninsula Borough Assembly and set for public hearing.

November 10 - The Assembly reviewed Ordinance 2020-45, listened to public testimony from Mr. Bob Molloy and Ms. Kristine Schmidt, and reviewed public comments that were submitted. The Assembly postponed the item to December 1 to allow time for additional review and time to meet with testifiers.

November 18 – A meeting was held with Mr. Molloy and Ms. Schmidt. Attending the meeting was the Planning Director, Platting Manager, Deputy Borough Attorney, Borough Chief of Staff, and Mayor Pierce.

Legal Staff and Platting Staff reviewed the comments and testimony provided by Mr. Molloy and Ms. Schmidt. Four amendments were proposed to clarify items within Section 37 of Ordinance 2020-45. The November 19, 2020 memo was sent to the KPB assembly.

December 1 – The Assembly met and discussed Ordinance 2020-45, listened to public testimony from Mr. Molloy and Ms. Schmidt, and reviewed public comments that were submitted. The Assembly approved an amendment to update the 'Where As' statement and also approved an amendment to correct Section 37 where a clerical error accidentally removed a sentence that was approved by the Planning Commission.

By a 5 to 4 vote, the Assembly postponed action on Ordinance 2020-45 to the January 19, 2021 meeting to allow time for the Planning Commission to review the memo dated November 19, 2020, and provide a recommendation to the Assembly.

**Staff recommends** the Planning Commission review the four proposed amendments from the memo dated November 19, 2020 and provide a separate recommendation to the Assembly for each Proposed Amendment outlined in the memo.

**Staff recommends** the Planning Commission also review Proposed Amendment #5 as outlined below and provide a recommendation to the Assembly.

*Proposed Amendment #5 to Section 47*

➤ *Amend Section 47 as follows:*

**Section 47.** That this ordinance [is effective January 1, 2021] shall take effect immediately upon its enactment.

Explanation: This amendment is proposed to clarify when the effective date will be. As Ordinance 2020-45 has been postponed by the Assembly it will not be approved before January 1, 2021 as Staff had originally planned. This amendment will allow the ordinance to become effective as soon as the ordinance is approved by the Assembly.

Mr. Huff then referred to the commission to the comparison table, prepared by Mr. Kelly, in the desk packet, which laid out the comparisons between the proposed ordinance approved by the commission at the October 12, 2020 meeting and proposed amendments from the November 1, 2020 meeting with Molloy and Schmidt. He believed the comparison table laid out clearly the changes in language of the proposed amendments. He then referred to comments from several APCs that were also located in the desk packet. He noted the Cooper Landing APC (CLAPC) did not provide a recommendation because four of their members felt they had insufficient time to fully consider the ordinance. The CLAPC wanted it noted they received information on this ordinance eight day before their scheduled meeting. The Kachemak Bay APC unanimously approved the recommend amendments to Ordinance 2020-45.

#### END OF STAFF REPORT

Chair Martin open the item for public comment.

Bob Molloy; Molloy, Schmidt LLC, 110 S. Willow St., #101, Kenai, AK 99611: Mr. Molloy wanted the commission to know that he is not receiving any compensation for the work he has put into this ordinance. He would request the commission recommend to the Assembly that action on this ordinance to be postponed to allow more time to work on this complex rewrite of code. He does not believe this ordinance is time sensitive and would like to see more time to allow for public input. He noted the time he is allowed for public comment at meetings is short and does not allow for any in depth discussion. With his allotted time, he would like to speak to two of the amendments. First, he would speak to the proposed amendment to 20.65.020 on page 57 of the meeting packet. He would ask the commission to consider his amendment language on this section of code, which can be found on page 109 of the packet. He believes the borough should have the option of declining to provide a recommendation on a state managed easements, especially those that are not section line easements or those that are not platted such as RS2477 right-of-ways. This is allowed by state regulation. There should be an easier process allowed. The second item is the amendment to 20.65.050 point D, which is on page 58 of the packet. The amendment lists eight factors the commission shall consider when considering the merits of a vacation. He believe this limits the commission discretion and he believes the commission should have a lot of discretion when considering vacations. He believed that mandating that these eight factors be to be taken into consideration in every case would place a heavy burden on the applicant. Especially with the public hearing practice of only allowing the applicant, ten minutes to present his/her case. He also believes other items not included in this rewrite need to be consider such as 20.60.160 –easements, which states that private easements may not be granted on a plat, however there is no language stating that private easement should not be shown on a plat either. He believes since the Planning Commission and Assembly are considering significant revisions to the subdivision code more time would be warranted to consider some of these issues.

Kristine Schmidt; Molloy, Schmidt LLC, 110 S. Willow St., #101, Kenai, AK 99611: Ms. Schmidt stated she agreed with Mr. Molloy's request for postponement to allowing additional time to work on the ordinance. She and Mr. Molloy appreciated the meeting they had with borough staff which allowed them to address some of their issues. She feels the amendments are a good start but she believes this is a much more complex issue than what is being billed. She then addressed concerns she had regarding the vacation factors listed on page 87 of the meeting packet. These factors address the most complicated ones that they have seen of any second-class boroughs. They believe they are unnecessarily complicated and there are easier factors from other municipalities that should be taken into consideration. These factors are too strict and do not allow for flexibility. For example, factor #2 – *A road is impossible or impractical to construct, and alternative access has been provided* – this language does not take into consideration that alternative access may not be required as there are existing accesses already in place. The petitioner should not always have to be the one to provide an alternative access when one is already in existence. This is just one of the problems they see with these factors as they are written. Since this rewrite is not time sensitive she believes a recommendation to postpone would be appropriate. Especially since the borough has a new Planning Director, Planner and Commissioners who have had little chance to review this rewrite and weigh-in on it, she believes postponement would be better in the long run.

Seeing and hearing no one else from the public wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

**MOTION:** Commissioner Chesser moved, seconded by Commissioner Carluccio to recommend to the Assembly postponing action on this ordinance until after the April 12, 2021 Planning Commission meeting.

Commissioner Chesser stated he believes Mr. Molloy and Ms. Schmidt have brought up some very good points. He also noted this is a lot of information to digest, he would like more time to review the information, and have his concerns answered. He believes the commission should take the time to get this rewrite done right. He then asked staff what was the urgency in getting this ordinance passed. Mr. Huff replied there was no urgency but this ordinance has already gone through the review process. Work sessions have been done with surveyors and engineers over a year ago. He had also reviewed the ordinance with all the advisory planning commissions. They have met with all the cities. They have also brought this to the commission for review, it was introduced at one meeting and had two other meetings where the ordinance was discussed. Additional work sessions were offered to the commission at that time and none were requested. The commission reviewed the ordinance and made a recommendation to the assembly to approve it. The Assembly has reviewed it, and now is asking the Commission to review and make a recommendation on the five amendments before you tonight. Commissioner Chesser replied it seemed to him the rewrite is taking a simple process and making it more complex. As a new commissioner, he was not here for the beginning of this process. After reviewing Molloy and Schmidt's memo and listening to their testimony tonight, he has more questions and does not feel comfortable recommending approval of this ordinance yet.

Commissioner Ecklund stated she knows the commission has looked at this a couple of times and she thinks this is a very detailed ordinance and does not believe that is reflected in the title of the ordinance. She believes this ordinance is doing more than correcting grammatical errors and clarifying and improving certain administrative procedures. For example, the section on vacations is more complex than what is stated in the ordinance title. She also expressed concerns should the Assembly approve the ordinance it will go into effect immediately. She usually likes to see a little lag time between approval and the effective date. Since there is no rush to approve this ordinance, she too has noticed other small things she would like to see addressed. She would be happy to sit on a working group with Commissioner Chesser. She knows staff has put a lot of work into this rewrite but there is no rush to approve the ordinance and she would be happy to see a little more work go into it.

Commissioner Ruffner stated he was leaning toward recommending postponement but had a question for staff. His question was regarding Amendment #3 where it speaks to KPB 20.65.050(d). There is a changed language, which at first glance, appears to remove the mandate to consider the value of an easement. It also appears to remove from the applicant the burden of having to prove the easement should be vacated. He did not recall this being discussed in their previous reviews and this appears to be a significant shift. This new amendment language appears to be going in a new direction and he was curious how this fits into what they have already approved. Mr. Huff replied they removed the language "of value" to that section of code. He stated it is still on the applicant to show what is being petitioned to be vacated, why they do not want it, believe it is not necessary, and where other access is available. The burden is still on the applicant to provide a complete submittal. There was concern the term "of value" might be confusing, inferring the borough might be paying for it or reimbursing someone for it. Mr. Huff also noted what was before the commission tonight were these five amendments, and that the rest of Ordinance 2020-45 had already been approved by them and is currently before the Assembly. Commissioner Ruffner then replied he understood the counter testimony from the public on this amendment. While amendment might shift the burden from the applicant a bit making it a little easier to get through the vacation process, it becomes more prescriptive with the eight criteria that have to be met. He wanted clarification on whether this amendment made the vacation process less or more burdensome. Mr. Huff replied he believed the process would be similar to what it currently is. The eight guidelines would give the commission something to use to judge a vacation request. Currently code does not have any standards or criteria to judge a vacation. Mr. Huff believes that passing this ordinance will be good, as it will give the commission standards by which to judge vacation requests.

Commissioner Ecklund had a question for borough attorney Mr. Kelly. Can the commission request the Assembly postpone action on this ordinance or can they only make a recommendation on the amendments before them tonight? Mr. Kelly replied the commission could make a recommendation to the Assembly to postpone action on the ordinance, he cannot guarantee the Assembly will table or postpone it to a date certain. Commissioner Ecklund followed up with another question and asked if this ordinance was already scheduled for an Assembly meeting. Mr. Kelly replied he believed it was postpone to a date certain of January 19, to give the commission a chance to review the proposed five amendments. Commissioner Ecklund then stated that this had not gone before the Seward Planning & Zoning Commission. She did not

know if it had been sent to the city and the Community Development Director chose not to bring it forward. She then asked if the commission had ever had a work session on the ordinance that had not a part of a public meeting. Mr. Huff replied this was sent to the City of Seward and does not know what happen to it after that. He also stated there was not a separate work session for the commission; the ordinance was just discussed during regular meetings.

Commissioner Carluccio stated she does not recall this ordinance being addressed by the Seldovia Planning & Zoning Commission. Again, staff may have sent it to the city but it did not make it to the Commission. It might have gotten lost during the city's process of hiring a new city manager.

Commissioner Bentz asked staff if they voted to recommend postponement would they lose the opportunity to have any discussion on the amendments before them tonight. Would postponement halt their discussion tonight and allow it to be taken up at later date? Mr. Huff said it was up to the commission to decide. They could recommend postponement. The commission could also motion to set up a work group as was discussed tonight. Commissioner Bentz then asked if they postponed making any recommendations on the amendments, could the Assembly decide to move forward to approve the ordinance without the Commission's recommendations. Thus, forfeiting the opportunity to make recommendation on the five amendment before them tonight? Mr. Huff replied that yes that could happen.

Commissioner Carluccio stated while she is in favor of postponement she does not believe it needs to be postponed until April. She does not support a postponement until April.

Commissioner Chesser stated that he would be fine postponing to a sooner date. He would just like to have more time to form a work group.

**AMENDMENT MOTION:** Commissioner Ecklund motion, seconded by Commissioner Carluccio to recommend the Assembly postpone action on this item until after the Planning Commission's first meeting in March to allow the Planning Commission to form a workgroup with staff to go over the ordinance in more detail.

Mr. Kelly suggested the term work group can have a more technical or formal meaning. If the commission wishes to recommend the establishment of a workgroup to the Assembly, the commission might want to consider how the workgroup will be formed. Will it have members appointed from the Planning Commission as well as members from the public? Perhaps the commission might want to have something less formal.

Commissioner Ecklund stated her vision was the workgroup would be made up of Planning Commission member and staff. Mr. Kelly then recommend that perhaps the motion should be to recommend postponement until the first meeting in March, leaving the workgroup part of it out of the motion. The commission could then just schedule a work session for the commission outside of a regular meeting. Commissioner Ecklund then asked Mr. Kelly for additional clarification on what the motion should be. Mr. Kelly replied the motion could to request postponement by the Assembly so the Planning Commission has time to hold a work session. Commissioner Ecklund agreed with this language.

Chair Martin then asked Commissioner Ecklund as the maker of motion and Commissioner Carluccio who was the second, did they agreed to change the motion language to "to request postponement by the Assembly so that the Planning Commission has time to hold a work session." Both Commissioner Ecklund as the maker of the motion and Commissioner Carluccio as the second consent to the change in language.

**REVISED AMENDMENT MOTION:** Commissioner Ecklund moved, seconded by Commissioner Carluccio to request postponement by the Assembly so that the Planning Commission has time to hold a work session.

Seeing and hearing no objection or further discussion, the revised amendment motion was carried by the following vote:

**REVISED AMENDMENT MOTION PASSED BY MAJORITY VOTE:**

Yes	8	No	2	Absent	1
Yes	Bentz, Carluccio, Chesser, Ecklund, Gillham, Martin, Ruffner Venuti				
No	Brantley, Fikes				
Absent	Morgan				

Seeing and hearing no objection or further discussion, the amended main motion was carried by the following vote:

**MAIN MOTION AS AMENDED PASSED BY MAJORITY VOTE:**

Yes	8	No	2	Absent	1
Yes	Bentz, Carluccio, Chesser, Ecklund, Gillham, Martin, Ruffner Venuti				
No	Brantley, Fikes				
Absent	Morgan				

**AGENDA ITEM E. NEW BUSINESS****4. Consideration of Kachemak Bay Advisory Planning Commission Recommendation**

Staff report given by Bryan Taylor.

Mr. Taylor stated that he is forwarding the recommendation below on behalf of the Kachemak Bay Advisory Planning Commission. At their December 10, 2020 meeting a proposal was passed unanimously to amend the platting code at KPB 20.25.070, Forms and Contents Required. The amendment would require that provisions for wastewater disposal review would be applicable at the preliminary platting phase of approval, rather than only during the final plat review period.

**Recommendation:**

We propose changing the timing of the submittal of wastewater disposal reports so that they are submitted with the proposed rather than the final plat. Specifically, we'd like to add the following to the KPB planning code.

**20.25.070. - Form and contents required.**

P. An accompanying submittal of a wastewater review which complies with KPB 20.40 – wastewater review.

Mr. Taylor stated that the APC felt that having the information wastewater review information would be helpful when reviewing preliminary plats and would result in a more informed recommendation. The APC wondered if this request could be considered under the Ordinance 2020-45 code rewrite.

Mr. Taylor then asked the commission for direction on how they would like to see recommendations like these to come before them. Would they like them as an item under New Business on the agenda or submitted as informational items.

**END OF STAFF REPORT**

Chair Martin asked Mr. Huff for his input on the recommendation. Mr. Huff replied he had attended a meeting with the Kachemak Bay APC back in August where a preliminary plat with lots that were less than 40,000 square feet, was reviewed. He noted borough codes does allow for this if a soils analysis report shows that it can have onsite well and septic. The question posed by the APC was how can they recommend approval of the preliminary plat without the soils report showing this is possible. Mr. Huff informed the APC the soils report is not due until the final plat review and it is not a requirement for the preliminary plat. The APC wanted to see a change to code that would make the soils report a requirement for the preliminary plat application. Mr. Huff stated if the commission would like to move forward with the recommendation; it would follow the same path as Ordinance 2020-45 that was before them tonight. A factor to consider would be the cost of wastewater review. You have to pay an engineer to complete a wastewater review. Making that a requirement for a preliminary plat that may, may not be approved, or


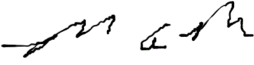
# Kenai Peninsula Borough


## Planning Department

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### MEMORANDUM

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

**THRU:** Charlie Pierce, Mayor   
Marcus Mueller, Acting Planning Director 

**FROM:** Scott Huff, Planning Manager 

**DATE:** October 29, 2020

**SUBJECT:** Amendment to Ordinance 2020-45, Amending KPB 2.40, Planning Commission, KPB Title 20, Subdivisions, and KPB 21.20, Hearing and Appeals, to Correct Grammatical Errors, and Clarify and Improve Certain Administrative Procedures (Mayor)

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At its meeting on October 12, 2020, the borough's planning commission unanimously voted to recommend the following amendment to Section 37 of Ordinance 2020-45. The amendment fixes a clerical error by adding text that was inadvertently omitted from the ordinance.

[Please note the bold underlined language is new.]

➤ Amend Section 37, as follows:

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

CHAPTER 20.65 – VACATIONS.

...

20.65.070. Alteration of platted utility easements

...

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

October 29, 2020

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Amendment to O2020-45

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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 licensed land surveyor.**

Your consideration of this amendment is appreciated.

# Kenai Peninsula Borough


## Planning Department

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### MEMORANDUM

TO: Assembly President  
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Borough Mayor

FROM: Marcus A. Mueller, Acting Planning Director 

DATE: October 14, 2020

RE: Ordinance 2020-45: An ordinance amending Kenai Peninsula Borough Code of Ordinances including Chapter 2.40-Planning Commission, Title 20-Subdivisions, Chapter 21.20-Hearing & Appeals to correct grammatical errors, clarify and improve certain administrative procedures.

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The Kenai Peninsula Borough Planning Commission reviewed the subject ordinance during their regularly scheduled October 12, 2020 meeting.

A motion passed by unanimous vote (8 Yes, 0 No, 2 Absent) to recommend the adoption of Ordinance 2020-45.

In addition the KPB Planning Commission made a motion passed by unanimous vote (8 Yes, 0 No, 2 Absent) to recommend additional language be added to KPB 20.65.07(H) of the ordinance; which staff will present in a separate amendment memo.

In the ordinance, please amend the last WHEREAS statement:

WHEREAS, at its meeting of October 12, 2020, the Planning Commission reviewed this ordinance and recommended approval by unanimous vote.

Attached are the unapproved minutes of the subject portion of the meeting.

- \*4. Plats Granted Final Approval (20.10.040) – None
- \*5. Plat Amendment Requests – None
- \*6. Commissioner Excused Absences
- \*7. Minutes
  - a. September 28, 2020 Planning Commission Meeting

Vice Chair Ruffner asked if anyone present wanted to speak or had concerns about any of the items on the consent or regular agendas.

Hearing no one else wishing to comment, Vice Chair Ruffner returned the discussion to the Commission.

**MOTION:** Commissioner Carluccio moved, seconded by Commissioner Brantley to approve the consent agenda and the regular agenda.

**MOTION PASSED:** Seeing and hearing no discussion or objection, the motion passed by unanimous consent.

Yes		10	No	0	Absent	0
Yes		Bentz, Brantley, Carluccio, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No		None				
Absent		None				

#### AGENDA ITEM D. OLD BUSINESS

1. Ordinance 2020-45, Amending KPB 2.40, Planning Commission, KPB Title 20, Subdivisions, and KPB 21.20, Hearing and Appeals, to Correct Grammatical Errors, and Clarify and Improve Certain Administrative Procedures

Staff report given by Scott Huff.

PC Meeting: October 12, 2020

Since the last significant rewrite to the borough's subdivision code in 2014, platting staff have found a number of provisions that would benefit from clarifying language. The amendments to KPB Title 20 (Title 20) and KPB 2.40 will improve the platting process and procedure and make Title 20 consistent with current law. Among technical changes to borough subdivision regulations, the amendments will add a new uniform notice section that will be applicable to all of Title 20.

The amendments will repeal KPB 20.70, Vacation Requirements, and replace that chapter with a new vacations chapter, KPB 20.65, Vacations. The new vacation chapter will clarify that only platted public easements may be vacated by the planning commission subject to consent or veto by the borough or a city, if the easement to be vacated is within a city. The new vacation chapter will include a utility easement alteration or removal section to improve the procedure for alteration of utility easements.

The amendments to KPB 21.20 seek to improve definitions and to clarify that hearing officer appeals are on the record appeals. The amendments also provide for a process of non-participation by the borough and to remove requirements for providing statements and motions even when the borough is not a participating party.

The KPB Planning Commission reviewed Ordinance 2020-\_\_\_\_, Subdivisions, Hearings and Appeals Amendment Ordinance at the meeting of September 28, 2020. After the meeting KPB Platting staff and KPB Legal staff revised the ordinance as outlined below.

- Updated the title to add the word 'AND'.
- Updated and completed the **WHEREAS** statements,
- Revise **SECTION 1** by removing AFTER NOTIFICATION and replacing with of date of distribution.

- Revise **SECTION 4** by adding a sentence to paragraph C so that the process to submit written comments is included on the notice that is sent to neighboring land owners.
- Revise **SECTION 4** by adding paragraph E. This section states that notice of any platting action must be sent by certified mail to any beneficial interest holder that is identified in the certificate to plat (title report).

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.

- Revise **SECTION 5** as follows

20.10.100(F) to read, '... the permit will be valid for the life of the structure, or for a period of time set by the Planning Commission.'

20.10.100(G) to read, '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.'

20.10.100(H) to correct the reference of code for party of record from 20.90 to 21.20.210.

- Revise **SECTION 11** by adding 'all of' in the first sentence so that all listed requirements must be shown and revising paragraph G to read smoother.
- Revise **SECTION 17 and SECTION 18** to identify the specific paragraphs that are being edited.
- Revise **SECTION 21** by leaving in the word 'shall' and not replacing the word with 'may'. This change is per the request of the City of Soldotna. This change will require the KPB Planning Commission to apply city subdivision standards. Any issue with a city design standard will need to be worked out between the applicant and city. Any appeal of a city design standard will follow KPB 21.01.020(E) which reads, *The borough will not be responsible to defend against any claims for damages, or other liability arising from the exercise of any power by the city, the city advisory planning commission, or any administrative officer of the city.*
- Revise **SECTION 22 and SECTION 24** to identify the specific paragraphs that are being edited.
- Revise **SECTION 27** specifically
  - o 20.40.070(A)(3) to read, '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.'
  - o 20.40.070(C) to read, '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.'

- Revise **SECTION 29** to state that the request for an exception shall be in writing.
  - Revise **SECTION 37**,
    - o Add 'CHAPTER' to the title.
    - o Edit 20.65.070(H) to require an exhibit drawing, prepared by a licensed engineer, to be recorded along with a resolution when an alteration or removal of a utility easement has been approved by the KPB Planning Commission.
- 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 licensed land surveyor.

Mr. Huff noted that the "edit" language in the second bullet point under Section 37 was not included in the ordinance before them tonight and would request that the commission amend their motion to include this language.

#### END OF STAFF REPORT

Vice Chair Ruffner opened the meeting for public comment.

Hearing no one wishing to comment Vice Chair Ruffner closed public comment and discussion was opened amount the commission.

Vice Chair Ruffner noted that there was a motion on the floor from the 9/28/20 meeting but he would entertain an amendment motion to add the additional language recommended by Mr. Huff.

**MOTION:** Commissioner Morgan motioned, seconded by Commissioner Ecklund to recommend to the Assembly the approval of Ordinance 2020-45 (from 9/28/20).

**AMENDMENT MOTION:** Commissioner Bentz motioned, seconded by Commissioner Venuti to recommend the following language be added to the ordinance: 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 licensed land surveyor.

**AMENDMENT MOTION PASSED:** Seeing and hearing no discussion or objection, the motion passed by unanimous vote.

Yes	8	No	0	Absent	2
Yes	Bentz, Brantley, Carluccio, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No	None				
Absent	Ecklund, Martin				

**MOTION PASSED:** Seeing and hearing no discussion or objection, the motion passed by unanimous vote.

Yes	8	No	0	Absent	2
Yes	Bentz, Brantley, Carluccio, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No	None				
Absent	Ecklund, Martin				

Introduced by:	Mayor
Date:	02/02/21
Hearing:	03/02/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-06**

**AN ORDINANCE AMENDING KPB 16.04 – ESTABLISHMENT OF SERVICE AREAS  
TO ESTABLISH RESIDENCY REQUIREMENTS FOR APPOINTED SERVICE AREA  
BOARD MEMBERS**

**WHEREAS,** several provisions of KPB 4.30 place residency requirements on elected officials;  
and

**WHEREAS,** specifically, KPB 4.30.010(A) places a one-year Kenai Peninsula Borough  
residency requirement before a person is qualified to become a candidate for mayor;  
and

**WHEREAS,** KPB 4.30.010(B) places a one-year residency requirement in the district from which  
the candidate seeks election for borough assembly candidates; and

**WHEREAS,** KPB 4.30.010(D) places a one-year residency requirement for those service area  
board members who are elected into office; and

**WHEREAS,** there is no similar residency requirement for service area board members who are  
appointed; and

**WHEREAS,** the duties and responsibilities of service area board members are important to the  
borough and the importance of one service area board over another does not change  
simply because one was elected or appointed; and

**WHEREAS,** amending KPB 16.04 would make residency a requirement for both elected and  
appointed service area board members, emphasizing that both types of boards are  
valued by the borough and that neither method is preferable, but are instead  
reflections of local community preferences; and

**WHEREAS,** by having the language that allows for exception to the residency requirement,  
boards such as the Eastern Peninsula Highway Emergency Service Area which  
includes no residents, can be created with the criteria for board members outlined so  
as to reflect the purpose and need for the advisory board;

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

**SECTION 1.** That KPB 16.04, Establishment of Service Areas, is hereby amended by enacting KPB 16.04.064 and KPB 16.04.068 as follows:

**16.04.064. Appointment of Board Members.**

- A.     All service areas shall have a service area board, composed of either elected or appointed board members, as provided in the code provisions applicable to each service area board.
- B.     Members of appointed boards shall be appointed by the mayor and confirmed by the assembly.
- C.     Members of elected boards shall be elected in accordance with KPB 16.04.065 and the procedures set out in Title 4 of the Kenai Peninsula Borough Code of Ordinances.

**16.04.068 Residency Requirement.**

Unless otherwise stated, all candidates, whether elected or appointed, for a service area board position must be:

- 1.     A qualified voter of the State of Alaska; and
- 2.     A resident of the Kenai Peninsula Borough; and
- 3.     A resident of the service area for a minimum of one (1) year immediately preceding filing.

**SECTION 2** That this ordinance shall become effective immediately upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \* DAY OF \*, 2021.**

\_\_\_\_\_  
Brent Hibbert, Assembly President

ATTEST:

\_\_\_\_\_  
Johni Blankenship, MMC, Borough Clerk

Yes:

No:



Absent:


Kenai Peninsula Borough  
Legal Department

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**MEMORANDUM**

**TO:** Brent Hibbert, Assembly President  
Members, Kenai Peninsula Borough Assembly

**THRU:** Charlie Pierce, Mayor   
Colette Thompson, Borough Attorney 

**FROM:** Patty Burley, Deputy Borough Attorney 

**DATE:** January 21, 2021

**RE:** Ordinance 2021- 06, Amending KPB 16.04 - Establishment of Service Areas to Establish Residency Requirements for Appointed Service Area Board Members (Mayor)

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Several provisions in Chapter 4.30 of the Kenai Peninsula Borough Code of Ordinances (Borough Code) place a residency requirement on elected officials; candidates for mayor; candidates for School District Board seats; and candidates for those service area board positions which are elected. However, there is no residency requirement for appointed service area board positions.

While the newer Western Emergency Service Area section of Borough Code places a requirement that two service area members be from the Anchor Point Area and two from the Ninilchik area, there is no length of residence requirement as there is with elected service area board positions.

In order to provide consistency and uniformity throughout the Borough Code and among processes at the borough, amendments to KPB 16.04, Establishment of Service Areas are being proposed which would make the requirements for all positions the same, regardless of whether they are elected or appointed while still allowing flexibility when needed.

Your consideration is appreciated.

Introduced by:

Cox

Date:

03/02/21

Action:

Vote:

**KENAI PENINSULA BOROUGH  
RESOLUTION 2021-019**

**A RESOLUTION EXTENDING THE DISASTER EMERGENCY DECLARATION FOR  
THE KENAI PENINSULA BOROUGH ISSUED DUE TO THE CURRENT AND  
EXPECTED IMMINENT IMPACTS OF THE COVID-19 PANDEMIC TO JUNE 30, 2021**

**WHEREAS,** the borough mayor issued a Disaster Emergency Declaration on March 16, 2020, due to the current and expected imminent impacts of the COVID-19 pandemic in the areas of the Kenai Peninsula Borough outside of the cities; and

**WHEREAS,** the assembly extended the Disaster Emergency Declaration at its March 17, 2020, June 2, 2020, September 1, 2020, and its December 15, 2020 meetings and it will expire March 31, 2021 if not extended again; and

**WHEREAS,** the declaration activated the borough's emergency response plan, requested disaster assistance from the State of Alaska by making available resources as needed for the ongoing response and recovery from the current and potential impacts, and enabled the Office of Emergency Management to coordinate a variety of efforts to respond to the pandemic; and

**WHEREAS,** the borough continues to incur significant expenses directly related to the pandemic primarily including planning and coordinating the acquisition, storage, distribution and administration of vaccinations at various locations throughout the borough, the ongoing dissemination of information to the public about the pandemic and vaccinations, personal protective equipment to maintain the safety of first responders, and payroll costs for quarantine and overtime backfill; and

**WHEREAS,** the borough is utilizing emergency response personnel from borough emergency service areas to coordinate the dissemination and administration of the vaccinations throughout the borough outside their service areas, which could not be accomplished without the disaster declaration as service area funds may not be used for such purposes outside their service area, but CARES Act funds are available for these purposes; and

**WHEREAS,** two temporary employees who are funded by CARES Act funds are also playing a direct role in vaccine-related actions by manning the OEM call center, disseminating public information, helping to coordinate the vaccination programs and related efforts; and

**WHEREAS,** in order to successfully continue OEM’s role in planning and coordination of COVID vaccinations throughout the borough, processing resource requests, and other responses to the COVID pandemic as the needs arise, it is important to extend the disaster declaration until June 30, 2021 as the borough is continuing to provide daily responses for COVID-19 through its emergency medical service areas, Office of Emergency Management and numerous other departments;

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

**SECTION 1.** That the declaration of local disaster emergency issued by the borough mayor on March 16, 2020, is hereby extended to June 30, 2021, to allow for a more complete response. A copy of the declaration of disaster emergency extended by this resolution is attached and incorporated herein by reference.

**SECTION 2.** That this resolution takes effect immediately upon its adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 2ND DAY MARCH, 2020.**

ATTEST:

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Brent Hibbert, Assembly President

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Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

# Kenai Peninsula Borough

## Office of Emergency Management

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### MEMORANDUM

**TO:** Brent Hibbert, Assembly President  
Members, Kenai Peninsula Borough Assembly

**THRU:** Tyson Cox, Assembly Member *TC*

**FROM:** Dan Nelson, Senior Manager – OEM *DN*

**DATE:** February 18, 2021

**RE:** Resolution 2021-019, Extending the Disaster Emergency Declaration for the Kenai Peninsula Borough Issued Due to the Current and Expected Imminent Impacts of the COVID-19 Pandemic to June 30, 2021 (Cox)

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The COVID-19 pandemic is continuing to impact the borough, especially as vaccines became available within the Borough and the logistical needs that accompany its efficient distribution. The borough Office of Emergency Management ("OEM") continues to incur significant expenses for planning, coordination, vaccination distribution and coordinating a variety of efforts responding to the pandemic.

Most recently the OEM has devoted significant efforts towards planning and coordinating vaccination acquisition, training, storage, distribution, and the administration of shots. These activities have required additional temporary personnel and other expenses to be incurred. As the remaining CARES funding is spent, the borough may transition to FEMA reimbursement of expenses or any other funding streams that may become available for all of these expenses related to the response.

A pre-requisite for FEMA public assistance is a local disaster declaration being in effect when claimed costs are incurred. Because of the high costs still being incurred due to the ongoing COVID-19 pandemic, this extension of the disaster declaration for an additional three months is to ensure that all avenues of reimbursement and assistance are available to the borough, reducing the burden on local taxpayers.

Your consideration is appreciated.

**Broyles, Randi**

R2021-019

**From:** Blankenship, Johni  
**Sent:** Wednesday, February 24, 2021 11:13 AM  
**To:** Broyles, Randi  
**Subject:** FW: <EXTERNAL-SENDER>Attention all Assembly Members and Mayor Pierce

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**From:** Mo Sanders <mosanderszz@outlook.com>  
**Sent:** Wednesday, February 24, 2021 10:40 AM  
**To:** G\_Notify\_AssemblyClerk <G\_Notify\_AssemblyClerk@kpb.us>  
**Subject:** <EXTERNAL-SENDER>Attention all Assembly Members and Mayor Pierce

CAUTION:This email originated from outside of the KPB system. Please use caution when responding or providing information. Do not click on links or open attachments unless you recognize the sender, know the content is safe and were expecting the communication.

I urge you to extend the Emergency Disaster Declaration 2021-019. We need to take every opportunity to be as free of COVID-19 as possible. Weekend vaccination clinics are an essential part of this effort.

Thank you for taking this positive action to protect our community.


Mo Sanders  
369 Ridgewood Dr.  
Soldotna

Kenai Peninsula Borough  
Office of the Borough Mayor

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**MEMORANDUM**

**TO:** Brent Hibbert, Assembly President  
Members, of the Kenai Peninsula Borough Assembly

**FROM:** Charlie Pierce, Kenai Peninsula Borough Mayor 

**DATE:** March 2, 2021

**RE:** Appointment Kachemak Emergency Service Area Board

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Pursuant to KPB 16.20.080, I hereby submit my recommendation for confirmation by the Assembly, of the following appointment to the Kachemak Emergency Service Area Board, seat B. The applicant is a registered voter and resides within the service area to be represented. Attached for your review is the request for appointment.

<b><u>Applicant</u></b>	<b><u>Board Seat</u></b>	<b><u>Term Expires</u></b>
Jeffrey Serio	Seat – B	October, 2021

Attachments: Request for Appointment Application

# Kenai Peninsula Borough

## Office of the Borough Clerk

Service Area Board Application Submitted 2021-02-04 20:52:02

Service Area: Kachemak Emergency Service Area Board, Seat B (Term Expires 10/2021)


<b>Applicant Name</b> Jeffrey Serio	<b>Daytime Phone</b> 907-738-1188
<b>Email</b> jserio84@gmail.com	<b>Date of Birth</b> [REDACTED]
<b>Physical Residence Address</b> 34668 Lusky Rd Homer, AK 99603	<b>Mailing Address</b> ,
<b>SS #</b>	<b>Voter #</b>
<b>I have been a Resident of the Kenai Peninsula Borough for:</b> 7 years, 9 months	<b>I have been a Resident of the selected Service Area for:</b> 7 years, 9 months

Kenai Peninsula Borough  
Office of the Borough Mayor

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**MEMORANDUM**

**TO:** Brent Hibbert, Assembly President  
Members of the Kenai Peninsula Borough Assembly

**FROM:** Charlie Pierce, Kenai Peninsula Borough Mayor 

**DATE:** March 2, 2021

**RE:** Appointments to the KPB Advisory Planning Commission

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In accordance with KPB 21.02, appointments to Kenai Peninsula Borough Advisory Planning Commissions are recommended by the Borough Mayor, subject to confirmation by the Borough Assembly. All applicants meet the residency and registered voter qualifications. I hereby submit to the Assembly my recommendation for confirmation of the following appointments to the KPB Advisory Planning Commission:

**Anchor Point APC**

Sonshine D. Konovalov

**Seat**

A

**Expires**

September 30, 2023

**Kalifornsky APC**

Kathryn A. Medcoff  
Krista Schooley

A  
C

September 30, 2023  
September 30, 2023

**Cc:** Melanie Aeschliman, Planning Director  
Sandra Fletcher, Planning Senior Clerk  
Bryan Taylor, Land Management  
Clerk's Office

# Kenai Peninsula Borough

## Planning Department

Advisory Planning Commission Application Submitted 2021-02-08 16:37:48

APC/Seat: Anchor Point – Seat A (Term Expires 09/30/2023)

<b>Name</b>	<b>Mobile Phone</b>
Sonshine D Konovalov	
<b>Home Phone</b>	<b>Work Phone</b>
907 738 4410	907 738 4410
<b>Email</b>	<b>Date of Birth</b>
sonshinek@yahooo.com	[REDACTED]
<b>SSN</b>	<b>Voter #</b>
[REDACTED]	[REDACTED]
<b>Residence Address</b>	<b>Mailing Address</b>
70619 Peggy Dr Anchor Point, AK 99556	P.O Box 3462 Homer , AK 99603
<b>How long have you lived in the area served by this Advisory Planning Commission?</b>	<b>What knowledge, experience, or expertise will you bring to this board?</b>
Almost a year	I have worked with the Public for 10 plus years throughout Kenai Peninsula. Hardworker, Honest, Responsible, Outgoing, Fun, Teamplayer, Meets Deadlines, Good computer skills, Trustworthy. Have worked for University of Southeast Alaska. Have worked for State of Alaska, Good employment history. Have been a Manager for Landlords and collected rent and advised them about decisions. This would be a great opportunity to give back to the community and to meet new people. I would learn alot of new things and be a valuable asset to Alaska and the people.

## Sonshine D. Konovalov

P.O Box 3462  
Homer, AK 99603  
(907)738-4410

### Objective

Office administrative position

### Employment History

01/12/2012 -	PCA	
Present	Consumer Direct	Homer , AK
	Provided routine individualized healthcare such as changing bandages and dressing wounds, and applying topical medications to the elderly, convalescents, or persons with disabilities at the patient's home or in a care facility. Monitored and report changes in health status. Provided personal care such as bathing, dressing, and grooming of patient.	
08/01/2013 -	PCA	
2020	Rescare	Homer , AK
	Currently providing personal care services for two clients.	
09/01/2013 -	PCA	
01/01/2014	Immediate Care	Homer, AK
	Taking care of clients, filling out paper work, cleaning house, dusting, medical appointments, providing transportation to the client to the grocery store, pay bills.	
02/15/2008 -	Waitress	
01/12/2010	Elks Lodge	Sitka, AK
	Took orders, got drink orders, greeted customers, bussed tables, filled salt shaker, sugars, peppers made coffee, put reservations on tables, seated customers.	
01/01/2005 -	Janitor	
01/02/2006	Sitka Counseling	Sitka, AK
	Cleaned bathrooms, offices and other office common areas. Responsible for cleaning services in facilities.	
01/06/2001 -	Administrative Clerk	
01/05/2002	State of Alaska	Juneau, AK
	Picked up mail and paychecks and distributed to staff, helped staff with projects, copying pamphlets, making phone calls, answered multi-line phone and forwarded calls to appropriate staff, set up travel arrangements for staff. Emailed memos, to staff, picked up pay checks for employees.	

10/1/01-12/1/01 Associated Credit Agency

Answered phones, transferred calls, called customers to make payments on their accounts. Collected money in person for account collection. Mailed bills to customers and sealed envelopes. Answered multi-phone lines.

6/1/01-8/1/01 Keybank  
Teller Position

Counted deposits in Atm machine, Responsible for large amounts of cash that was deposited to the bank. Verifying transactions into bank accounts. Customer service, Sales, Making deposits.

## Education

High School Diploma or Equivalent

Homer High School  
AK

UAA Southeast University 30 Credits away from a AA Degree

Sitka AK

## Additional Information


- Extensive Customer Service experience, 2 plus years client service. Proficient with Word and familiarity with Excel most computer programs. Took college classes in computer programs and got A. 30 Credits from a AA degree. Have worked for the University Southeast while going to college full-time. Prior experience working with the elderly and disabled. 7 years working with the public. Able to make quick decisions and maintain confidential information on clients. Able to travel anywhere to meet with clients and follow up on caseload. Honest, Teamplayer, Dependable, Hardworker. Have experience answering phones, fax machine, emails, responsible. Have worked for many different companys involving healthcare throughout Alaska.

# Kenai Peninsula Borough

## Planning Department

**Advisory Planning Commission Application Submitted 2021-01-25 13:11:34**

**APC/Seat: Kalifornsky – Seat A (Term Expires 09/30/2023)**

<b>Name</b>	<b>Mobile Phone</b>
Kathryn A Medcoff	9072525217
<b>Home Phone</b>	<b>Work Phone</b>
9072622535	na
<b>Email</b>	<b>Date of Birth</b>
kpmilepost@gmail.com	
<b>SSN</b>	<b>Voter #</b>
	
<b>Residence Address</b>	<b>Mailing Address</b>
,	36026 Meandering Road Soldotna, AK 99669
<b>How long have you lived in the area served by this Advisory Planning Commission?</b>	<b>What knowledge, experience, or expertise will you bring to this board?</b>
March 2011	communicate with consumers that require education, additional knowledge particularly with regard to commission services

Kathy A. Medcoff  
36026 Meandering Road  
Soldotna, AK  
907/262-2535  
907/252-5217

**EDUCATION:**

Maple Valley High School graduate  
Nashville, Michigan

**MISSION STATEMENT:**

To continue to learn about how government works in my  
community; and  
Be part of any changes that are planned

**EMPLOYMENT:**

MilePost Travel Magazine, Cheri Brewer, sales, 2011-2013;

Buckets Sports Grill, Fran Jones, server, kitchen prep – 2005-2012;

KSRM, Cheri Brewer, sales, created and produced ads, 1994-1996;

Mary Kay Sale Rep, self employed, sales, marketing, customer  
relations, 1980-1990;

Video Rental Store Ownership, self employed with spouse, sales,  
contract maintenance, 1984-1997

**VOLUNTEER:**

Kenai Christian Church Adult Women Leader - 1999- 2019

# Kenai Peninsula Borough

## Planning Department

Advisory Planning Commission Application Submitted 2021-01-22 09:56:36

APC/Seat: Kalifornsky – Seat C (Term Expires 09/30/2023)

<b>Name</b> Krista Schooley	<b>Mobile Phone</b> 
<b>Home Phone</b> 	<b>Work Phone</b> 9072522081
<b>Email</b> kristaschooley@gmail.com	<b>Date of Birth</b> [REDACTED]
<b>SSN</b> [REDACTED]	<b>Voter #</b> 
<b>Residence Address</b> 	<b>Mailing Address</b> 49090 Charlie Brown Drive Soldotna, AK 99669
<b>How long have you lived in the area served by this Advisory Planning Commission?</b> 22 years	<b>What knowledge, experience, or expertise will you bring to this board?</b> See resume.

Krista Anne Schooley  
49090 Charlie Brown Drive  
Soldotna Alaska 99669  
(907) 252-2081

## EDUCATION HISTORY

GED, Kenai Peninsula College, 1994

BEREAN SCHOOL OF MINISTRY - Pastoral Degree, Online, 2000-2002

WELLSPRING HEALING AND DELIVERANCE TRAINING, Abundant Life Church/Online, Certificates, 2004 - 2006

APOSTOLIC COUNSELING TRAINING SCHOOL - Healing and Deliverance Degree, Online, 2020 - Current

REV SCHOOL OF MINISTRY, 5 - Fold Apostolic School Training, Online - 2020 - Current

## VOLUNTEER HISTORY

KAREN STREET PARK, SOLDOTNA ALASKA 2010 - 2016

- Adopted Karen Street Park from the city of Soldotna.
- My efforts caused the city of Soldotna to not get any disturbance calls during the summer about the park for the first time in 10 years.
- THE TRIBE: A group we started for the kids at the skatepark.
  - Mentored kids. Taught them about ownership of the park, to make it 'theirs' instead of the drug dealers.
  - BBQ's twice a month.
- THE UNDERGROUND: grassroots non-profit I started for at-risk, homeless 13-25 year olds.
  - Opened a Day Center with resources for clients.

BIKE, SKATE, SCOOT CHALLENGE WITH PETER MICCICHE – Karen Street Park Skatepark  
Soldotna, Alaska, 2010 - 2015

KENAI PENINSULA PROJECT HOMELESS CONNECT - 2010 - 2015

- Helped birth it.
- Clothing & Accessories Chair.

PEOPLE PROMOTING WELLNESS THROUGH COMMUNITY ACTION - 2010 -2015

- Member.

FUNNY RIVER HOMETOWN HEROES BBQ - 2018

- Coordinated a BBQ for First Responders and Hometown Heroes that helped with the fire.

COMMUNITY FIRST RESPONDERS APPRECIATION BBQ WITH SENATOR PETER MICCICHE - 2018 & 2019

- Coordinated the efforts of community donating desserts for the BBQ's.

## REFERENCES:

Senator Peter Michicche - (907) 398-6759

Andrew Carmichael - City of Soldotna Parks and Recreation Director - (907) 262-3151


# Kenai Peninsula Borough

## Office of the Borough Mayor

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### MAYOR'S REPORT TO THE ASSEMBLY

**TO:** Brent Hibbert, Assembly President  
Members, Kenai Peninsula Borough Assembly

**FROM:** Charlie Pierce, Kenai Peninsula Borough Mayor 

**DATE:** March 2, 2021

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#### Assembly Request / Response

None

#### Agreements and Contracts

- a. Authorization to Award a Contract for ITB21-018 Gravel Road Project – Escape Route N2 Region to Foster Construction, LLC., Soldotna AK.

#### Other

- a. Revenue – Expenditure Report – January 2021
- b. Budget Revisions – January 2021

# Kenai Peninsula Borough

## Purchasing & Contracting Department

### MEMORANDUM

**TO:** Charlie Pierce, Mayor

**THRU:** John Hedges, Purchasing & Contracting Director *JH*

**FROM:** Dil Uhlin, Road Service Area Director *DU*

**DATE:** February 5, 2021

**RE:** Authorization to Award a Contract for ITB21-018 Gravel Road Project – Escape Route N2 Region

The Purchasing and Contracting Office formally solicited and received bids for the ITB21-018 Gravel Road Project – Escape Route N2 Region. Bid packets were released on January 14, 2021 and the Invitation to Bid was advertised in the Peninsula Clarion on January 14, 2021.

The project consists of furnishing all labor, materials and equipment to place 3,200 cubic yards of KPB Type II gravel on the Escape Route Road in the North 2 Region.

On the due date of January 28, 2021, six (6) bids were received and reviewed to ensure that all the specifications and delivery schedules were met. The low bid of \$71,470 was submitted by Foster Construction, LLC, Soldotna, Alaska.

Your approval for this bid award is hereby requested. Funding for this project is in account number 434.33950.20GRV.43011 and 434.33950.21GRV.43011.

*Charlie Pierce*

Charlie Pierce, Mayor

2/8/2021

Date

FINANCE DEPARTMENT FUNDS VERIFIED	
Acct. No.	<u>434.33950.20GRV.43011 - \$3,437.55</u>
	<u>434.33950.21GRV.43011 - \$68,032.45</u>
By: <i>PP</i> - <i>BA</i>	Date: <u>2/5/2021</u>
NOTES: .	

**KENAI PENINSULA BOROUGH  
PURCHASING & CONTRACTING****BID TAB FOR: ITB21-018 Gravel Road Projects FY2021 - N2 Region - Escape Route**

CONTRACTOR	LOCATION	BASE BID
Foster Construction, LLC	Soldotna, AK	\$71,470.00
Commercial Automovite Repair & Equipment Services, Inc.	Kenai, AK	\$74,627.00
Great Northern Construction & Management	Soldotna, AK	\$76,760.00
Chumley's Inc.	Nikiski, AK	\$78,400.00
Peninsula Construction, Inc.	Kenai, AK	\$85,900.00
D & L Construction Co., Inc.	Cooper Landing, AK	\$96,000.00

**DUE DATE: January 28, 2021****KPB OFFICIAL:**  
John Hedges, Purchasing & Contracting Director

# Kenai Peninsula Borough

## Finance Department

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### MEMORANDUM

**TO:** Brent Hibbert, Assembly President  
Members of the Kenai Peninsula Borough Assembly

**THRU:** Charlie Pierce, Borough Mayor *chi*

**THRU:** Brandi Harbaugh, Finance Director *BO*

**FROM:** Sarah Hostetter, Payroll Accountant *SH*

**DATE:** February 8, 2021

**RE:** Revenue-Expenditure Report – January 2021

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Attached is the Revenue-Expenditure Report of the General Fund for the month of January 2021. Please note that 58.33% of the year has elapsed, 78.80% of budgeted revenues have been collected, and 56.15% of budgeted expenditures have been made.

KENAI PENINSULA BOROUGH  
Revenue Report  
For the Period  
January 1 through January 31, 2021

ACCOUNT NUMBER	DESCRIPTION	ESTIMATED REVENUE	YEAR TO DATE RECEIPTS	MONTH TO DATE RECEIPTS	VARIANCE	% COLLECTED
31100	Real Property Tax	\$ 28,825,613	\$ 30,249,718	\$ 236,265	\$ 1,424,105	104.94%
31200	Personal Property Tax	1,814,997	2,118,155	15,028	303,158	116.70%
31300	Oil Tax	6,668,160	7,025,200	-	357,040	105.35%
31400	Motor Vehicle Tax	676,400	236,019	59,935	(440,381)	34.89%
31510	Property Tax Penalty & Interest	590,931	369,446	56,856	(221,485)	62.52%
31610	Sales Tax	27,431,594	16,037,797	2,544,260	(11,393,797)	58.46%
33110	In Lieu Property Tax	3,600,000	-	-	(3,600,000)	0.00%
33117	Other Federal Revenue	160,000	31,521	-	(128,479)	19.70%
34221	Electricity & Phone Revenue	155,000	-	-	(155,000)	0.00%
34222	Fish Tax Revenue Sharing	500,000	(51,838)	-	(551,838)	-10.37%
34210	Revenue Sharing	300,000	-	-	(300,000)	0.00%
37350	Interest on Investments	352,913	365,039	35,462	12,126	103.44%
39000	Other Local Revenue	275,000	150,676	7,097	(124,324)	54.79%
290	Solid Waste	802,000	324,611	1,208	(477,389)	40.48%
Total Revenues		\$ 72,152,608	\$ 56,856,343	\$ 2,956,112	\$ (15,296,265)	78.80%

KENAI PENINSULA BOROUGH  
Expenditure Report  
For the Period  
January 1 through January 31, 2021

DESCRIPTION	REVISED BUDGET	YEAR TO DATE EXPENDED	MONTH TO DATE EXPENDED	AMOUNT ENCUMBERED	AVAILABLE BALANCE	% EXPENDED
Assembly:						
Administration	\$ 484,528	\$ 305,843	\$ 15,140	\$ 16,795	\$ 161,889	63.12%
Clerk	579,316	293,554	41,483	16,399	269,363	50.67%
Elections	182,920	113,841	212	18,402	50,676	62.24%
Records Management	327,678	170,474	20,267	13,282	143,922	52.02%
Mayor Administration	792,424	377,761	48,251	612	414,051	47.67%
Purch/Contracting/Cap Proj	648,943	299,311	40,067	15,836	333,797	46.12%
Human Resources:						
Administration	700,918	371,292	53,513	5,074	324,551	52.97%
Print/Mail	204,789	81,156	11,222	26,599	97,034	39.63%
Custodial Maintenance	94,976	61,716	9,134	177	33,083	64.98%
Information Technology	2,095,903	1,029,215	106,970	14,342	1,052,346	49.11%
Emergency Management	933,183	566,874	78,192	65,841	300,469	60.75%
Legal Administration	1,120,116	475,482	62,136	148,124	496,510	42.45%
Finance:						
Administration	505,711	277,427	45,187	2,316	225,968	54.86%
Services	1,072,179	563,087	72,655	598	508,494	52.52%
Property Tax	1,141,576	523,877	56,965	77,194	540,505	45.89%
Sales Tax	901,144	520,005	59,581	4,232	376,907	57.70%
Assessing:						
Administration	1,350,530	702,241	75,808	32,678	615,611	52.00%
Appraisal	1,993,482	892,670	119,864	7,559	1,093,253	44.78%
Resource Planning:						
Administration	1,261,643	494,462	82,576	21,870	745,311	39.19%
GIS	499,590	292,662	26,464	370	206,557	58.58%
River Center	675,967	323,183	35,211	21,327	331,457	47.81%
Senior Citizens Grant Program	719,494	409,085	123,129	310,409	-	56.86%
School District Operations	55,004,255	33,821,515	4,547,267	-	21,182,740	61.49%
Solid Waste Operations	9,102,389	3,249,778	404,031	1,600,034	4,252,577	35.70%
Economic Development	360,000	131,250	89,289	180,214	48,536	36.46%
Non-Departmental	3,503,109	2,083,803	12,436	-	1,419,306	59.48%
Total Expenditures	\$ 86,256,763	\$ 48,431,564	\$ 6,237,049	\$ 2,600,284	\$ 35,224,915	56.15%

# Kenai Peninsula Borough

## Finance Department

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### MEMORANDUM

**TO:** Brent Hibbert, Assembly President  
Members of the Kenai Peninsula Borough Assembly

**THRU:** Charlie Pierce, Borough Mayor *CP*

**THRU:** Brandi Harbaugh, Finance Director *BR*

**FROM:** Sarah Hostetter, Payroll Accountant *SH*

**DATE:** February 8, 2021

**RE:** Budget Revisions – January 2021

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Attached is a budget revision listing for January 2021. The attached list contains budget revisions between major expenditure categories (i.e., maintenance & operations and capital outlay). Other minor transfers were processed between object codes within major expenditure categories.

**JANUARY 2021****INCREASE****DECREASE****ANCHOR POINT EMERGENCY SERVICES**

Moving funds to cover initial purchase of Crew Force Software.

209-51410-00000-43019 (Software Licensing)		\$4,500.00
209-51410-00000-42120 (Computer Software)	\$4,500.00	

**CLERK'S OFFICE - ASSEMBLY**

To purchase telephones for Assembly Chambers after CAR10 expired.

100-11110-00000-43215 (Travel Out of State)		\$1,650.00
100-11110-00000-48710 (Minor Office Equipment)	\$1,650.00	

**HUMAN RESOURCES - PRINT SHOP**

To partially cover the cost of a new hand truck.

100-11233-00000-48710 (Minor Office Equipment)		\$25.00
100-11233-00000-42410 (Small Tools & Equipment)	\$25.00	

**KACHEMAK EMERGENCY SERVICES**

Transferring funds for Crew Force Software and to cover emergency station repairs.

212-51810-00000-48720 (Minor Office Furniture)		\$5,240.00
212-51810-00000-43011 (Contract Services)	\$3,540.00	
212-51810-00000-43019 (Software Licensing)	\$1,700.00	

**OFFICE OF EMERGENCY MANAGEMENT**

Moving funds to cover a janitorial services contract, services were previously performed by Borough custodians.

100-11250-00000-40120 (Temporary Wages)		\$2,702.00
100-11250-00000-60000 (Charges (to) from Other Departments)		\$1,498.00
100-11250-00000-43011 (Contract Services)	\$4,200.00	

**SELDOVIA RECREATION**

To purchase operating supplies and write off petty cash.

227-61210-00000-43960 (Recreational Program Expenses)		\$300.00
227-61210-00000-42210 (Operating supplies)	\$300.00	