

Introduced by: Mayor, Johnson, Ribbens, Cox
Date: 06/20/23
Hearing: 08/01/23
Action: Enacted as Amended
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2023-15**

**AN ORDINANCE AMENDING BOROUGH CODE TITLE 4, ELECTIONS,
REGARDING DECLARED WRITE-IN CANDIDATES, CANVASS OF ELECTION
RETURNS, PUBLIC NOTICE, AND CERTIFICATION OF ELECTION RESULTS**

WHEREAS, during the most recent Borough special mayoral election, it became apparent that a few specific provisions of Borough Code, Title 4, related to elections could be updated and clarified to improve transparency and clear processes;

WHEREAS, this ordinance updates Borough Code related to Declarations of Candidacy, and declared write-in candidates, reporting by individual of write-in votes, and the public process for the canvass board meeting, adjudicating ballot envelopes, auditing and confirming precinct results or vote totals, reporting the election results to the assembly, and election certification;

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

SECTION 1. That KPB 4.10.040 is hereby amended to read as follows:

4.10.040. Administration of election.

- A. The assembly shall prescribe the general rules for the conduct of borough elections.
- B. The borough clerk, in accordance with the provisions of this title, shall administer all borough elections.
- C. An election worker or other borough employee who knowingly violates a provision of this title or aids another in violating a provision of this title may be subject to disciplinary action or other remedies in accordance with KPB 1.24.020.

SECTION 2. That KPB 4.30.020 is hereby amended to read as follows:

4.30.020. Declaration of candidacy.

- A. A candidate for municipal office is nominated by executing a declaration of candidacy under oath and filing it with the clerk in accordance with this section.
- B. A declaration of candidacy shall be in a form provided by the clerk and shall state the following:
1. the full name of the candidate, and the manner in which [HE WISHES HIS] the candidate's name [TO]should appear on the ballot;
 2. the full residence address and mailing address[ES] of the candidate;
 3. the office for which the candidate declares;
 4. that the candidate is qualified for the office as provided by law;
 5. the dated, [AND]notarized statement of the candidate;
 6. the [CANDIDATE SHALL CERTIFY]certification by the candidate that all information contained in the declaration of candidacy is true and accurate;
 7. any other information that the clerk reasonably requires to determine whether the candidate is qualified for the office as provided by law.

[C. DECLARATIONS OF CANDIDACY SHALL BE PROVIDED BY THE CLERK.]

[D.]C. Filing for elective offices of mayor, assembly, school board and service area boards shall be made by filing a declaration of candidacy with the borough clerk from 9:00 a.m. August 1st through August 15th, 4:30 p.m. Should August 15 be a Saturday or Sunday, then candidates shall have until noon on the first Monday following to file their declaration.

[E.]D. Filing for the elective offices of assembly member shall be made in accordance with Chapter 22.30 of this code and the reapportionment plans adopted in accordance with state law.

[F.]E. Declarations of C[C]andidacy may be filed with the clerk by electronic transmission; [and] the original signed and notarized statement must be delivered to the clerk by the close of the[n] filing period. If the original is not received by the clerk at the close of the filing period, the candidate's name shall not appear on the ballot.

[G.]F. Within four days after the filing of a declaration of candidacy, the clerk shall notify the candidate named in the declaration of candidacy whether or not [IT] the declaration of candidacy or other required paperwork is in proper form. If not, the clerk shall immediately return it with a statement certifying wherein the declaration of candidacy is deficient to the candidate. A new declaration of candidacy for the same candidate may be filed within the time for filing declarations of candidacy.

G. An individual who misses the declaration of candidacy deadline under this code, or as set by the assembly for a special election, may run as a write-in

candidate. A declared write-in candidate must complete the Declaration of Candidacy Write-In Candidate form provided by the borough clerk at least [3 BUSINESS]5 days prior to the election date. In order to protect the integrity of the process and the deadlines for declared candidates and ballot printing requirements, the borough will not publish the declared write-in candidate's name on the borough website, will not publish the statement of candidate, and published election materials will not include the write-in candidate's name or other information.

SECTION 3. That KPB 4.70.050 is hereby amended to read as follows:

4.70.050. Write-in votes.

- A. Write-in votes are not invalidated by writing in the name of a candidate whose name is printed on the ballot, [UNLESS THE ELECTION BOARD DETERMINES, ON THE BASIS OF OTHER EVIDENCE, THAT THE BALLOT WAS SO MARKED FOR THE PURPOSE OF IDENTIFYING THE BALLOT.]
- B. In order to vote for a write-in candidate, the voter must write a candidate's name in the space provided and, in addition, mark the [SQUARE]oval opposite the candidate's name in accordance with KPB 4.70.040(A) Stickers may not be used. Use of stickers [CAN]will cause that portion of the ballot to be invalidated.
- C. Write-in votes will only be reported individually if the total number of write-in votes is materially significant to the outcome of the race. For the purposes of this subsection, materially significant means: (1) the total number of write-in votes exceeds that of all other candidates; or (2) the total number of write-in votes exceeds the tabulated votes for the second-highest number of votes cast for a candidate whose name is printed on the ballot and a run-off election is required between the two top-vote-getting candidates. [SHALL ONLY BE TABULATED BY PERSON IF THE TOTAL NUMBER OF WRITE-IN VOTES FOR AN OFFICE EXCEEDS THE SMALLEST NUMBER OF VOTES CAST FOR A CANDIDATE FOR THAT OFFICE WHOSE NAME IS PRINTED ON THE BALLOT.]

SECTION 4. That KPB 4.90.020 is hereby amended to read as follows:

4.90.020. Canvass of returns.

- A. At least two weeks before the election date, the borough clerk's office will post notice on the borough's website of the tentative schedule of canvass board meetings. The date of all meetings of the canvass board will be posted on the borough's website on its elections page. Rules of conduct for viewing a meeting of the canvass board will be posted on the borough website and available at the clerk's office. The canvass board's processes and procedures will be conducted in accordance with KPB Chapter 4.60.

[NO LATER THAN THE MONDAY FOLLOWING EACH ELECTION, THE ELECTION CANVASS BOARD SHALL MEET IN PUBLIC SESSION AND CANVASS ALL ELECTION RETURNS. IN FULL VIEW OF THOSE PRESENT, AND IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN KPB CHAPTER 4.60, THE ELECTION CANVASS BOARD SHALL JUDGE THE APPLICABILITY OF ABSENTEE AND QUESTIONED BALLOTS, SHALL OPEN AND TALLY THOSE ACCEPTED, AND SHALL COMPILE THE TOTAL VOTES CAST IN THE ELECTION. THE CANVASS OF THE BALLOT VOTE COUNTED BY THE PRECINCT ELECTION BOARDS SHALL BE ACCOMPLISHED BY REVIEWING THE TALLIES OF THE RECORDED VOTE TO CHECK FOR MATHEMATICAL ERROR BY COMPARING TOTALS WITH THE PRECINCT'S CERTIFICATE OF RESULTS. ALL OBVIOUS ERRORS FOUND BY THE ELECTION CANVASS IN THE TRANSFER OF TOTALS FROM THE PRECINCT TALLY SHEETS TO THE PRECINCT CERTIFICATE OF RESULTS SHALL BE CORRECTED BY THE CANVASS BOARD. A MISTAKE WHICH HAS BEEN MADE IN PRECINCT RETURNS THAT IS NOT CLEARLY AN ERROR IN THE TRANSFER OF THE RESULTS FROM THE TALLIES TO THE CERTIFICATE OF RESULTS EMPOWERS THE CANVASSING BOARD TO RECOMMEND A RECOUNT OF THE RESULTS OF THE PRECINCT OR PRECINCTS FOR THAT PORTION OF THE RETURNS IN QUESTION.]

- B. No later than seven days after absentee voting begins, the canvass board will meet in public session to begin adjudicating the suitability of absentee, special needs, and questioned ballot envelopes. The canvass board will continue to meet in public session through date of certification as needed. No votes will be tallied while the canvass board determines the suitability of absentee, special needs, and questioned ballots envelopes for further processing.
- C. On the first day following the election day, the canvass board will review the tallies of each precinct's recorded vote to check for mathematical error by comparing totals with that precinct's results tape. All obvious errors found by the canvass board in the transfer of totals between the precinct workbook and the precinct results tape will be corrected by the canvass board. A mistake or discrepancy in precinct returns that is not the result of a clear error in the transfer of the results from the tallies to the results tape constitute grounds for the canvass board to conduct a recount of the results of the precinct for the return(s) in question. If no precinct discrepancies are identified by the canvass board, the canvass board will nonetheless choose at least one precinct, at random, to recount.
- D. Ballot envelopes require certain information be provided by the voter on the envelope to be accepted by the canvass board for further processing. In an effort to ensure as many voters as possible have their ballots processed, the canvass board may institute a process in which a voter can correct deficiencies such as omissions of voter signature, witness signature, or voter identification affixed to the envelope. The process for a voter to correct deficiencies is known as a cure. Due to the fact that the cure process is only proper to correct deficiencies on the ballot envelopes, a voter cannot use

the cure process to change their vote. For purposes of this subsection the process to cure deficiencies is as follows:

1. The canvass board, with the assistance of the clerk's office, will attempt to contact voter using available information for telephone or email contact.
2. The contacting person will explain to the voter the reason for the call and offer the voter an opportunity to cure the issue.
3. To cure an issue, the voter may come into the clerk's office in person and provide information needed. Alternatively, the clerk's office can email or fax a copy of the envelope showing where it is missing information.
4. Voter may provide information on the form/paper provided and return to the clerk's office either in person, by email, or by fax. Information must be received by 5:00 p.m. on the Friday following election day.
5. Upon a voter successfully curing a ballot envelope deficiency, the ballot envelope cure will be attached to ballot envelope with deficiency. Cured envelopes will then be further processed by canvass board.
6. Failure to cure a ballot envelope will result in rejection of the envelope and ballot, and the ballot will not be counted. The envelope will be labeled "rejected ballots" and will be preserved with other voted ballots.

E. No later than the weekend prior to certification, in full view of those present, the canvass board will meet in public session, in a location that is accessible to the public, and open and cast accepted ballots, and compile the total votes cast in the election, in accordance with the procedures set forth in KPB Chapter 4.60. Canvass board meetings held for the purpose of casting votes will be noticed on the borough website, on an official borough social media account, and posted at the borough clerk's office. The canvass board meetings to open and cast accepted ballots and compile the vote total must take place in a location that is open and accessible to the public.

F.[B.] Upon completion of the canvass, the canvass[ING] board [SHALL]will prepare a final certificate of the results of votes cast by absentee, special needs, and questioned [AND CHALLENGED] ballots and of votes cast [BY REGULAR BALLOT], and [SHALL]will prepare a written report of the results to be submitted to the assembly. The report will be provided to the Assembly prior to certification in accordance with KPB 4.90.050.

G.[C.] If election materials have not been received from a precinct prior to completion of the canvass, but election results have been transmitted by telephone, telegram, radio or electronic transmission, the canvass[ING]

board [SHALL]will count the election results received. If the borough clerk has reason to believe that a missing precinct [CERTIFICATE]results tape, if received, would affect the result of the election, the clerk shall await the receipt of the [CERTIFICATE]results tape until 2:00 p.m. on the Tuesday following the election. If the [CERTIFICATE]results tape is not received by the clerk by 2:00 p.m., Tuesday, then the [CERTIFICATE]results tape shall not be counted nor included in the final certification of the canvassing board.

SECTION 5. That KPB 4.90.030 is hereby repealed:

[4.90.030. PROCEDURES FOR HANDLING QUESTIONED BALLOTS.

THE CANVASSING BOARD BY MAJORITY VOTE MAY REFUSE TO ACCEPT THE QUESTION AND COUNT THE BALLOT OF A PERSON PROPERLY QUESTIONED. IF THE BALLOT IS REFUSED, THE CLERK SHALL RETURN A COPY OF THE STATEMENT QUESTIONING THE BALLOT TO THE VOTER, AND SHALL ENCLOSE ALL REJECTED BALLOTS IN A SEPARATE ENVELOPE WITH STATEMENTS OF THE BASIS FOR THE QUESTION. THE ENVELOPE SHALL BE LABELED WITH "REJECTED BALLOTS" AND SHALL BE PRESERVED WITH OTHER VOTED BALLOTS. IF THE BALLOT IS NOT REFUSED, THE LARGE ENVELOPE SHALL BE OPENED, THE SMALLER INNER ENVELOPE SHALL BE PLACED IN A CONTAINER AND MIXED WITH OTHER ABSENTEE BALLOT ENVELOPES OR, IN THE CASE OF COUNTING QUESTIONED BALLOTS, WITH OTHER QUESTIONED BALLOT ENVELOPES. THE MIXED SMALLER ENVELOPES SHALL BE DRAWN FROM THE CONTAINER AND OPENED, AND THE BALLOTS SHALL BE COUNTED ACCORDING TO THE RULES FOR DETERMINING PROPERLY MARKED BALLOTS.]

SECTION 6. That KPB 4.90.050 is hereby amended to read as follows:

4.90.050. Certification of the election results.

- A. As soon as possible after completion of the canvass, but no later than the Tuesday following the election, the assembly shall meet in public session to receive the report of the canvass board. [FOR A RUN-OFF ELECTION WHICH IS HELD THE SAME YEAR AS A STATE ELECTION AND A SCHEDULING CONFLICT EXISTS, THE ASSEMBLY SHALL MEET IN PUBLIC SESSION TO RECEIVE THE REPORT OF THE CANVASS BOARD, NO LATER THAN THE SECOND WEDNESDAY FOLLOWING THE ELECTION.] If, after considering the report, the assembly determines that the election was validly held, the election shall be certified by resolution and entered upon the minutes of the meeting, together with the total number of votes cast for each candidate and for or against each proposition or question. If an emergency, disaster, or other event precludes the assembly from meeting and receiving the report of the canvass board on the Tuesday following the election, then the assembly shall call a special meeting within 48 hours of it being safe or practical to meet.
- B. If the canvass board reports that a failure to comply with provisions of state law and borough ordinances, or an illegal election practice has occurred, and

that such failure is sufficient to change the outcome of the election, then the assembly may exclude the votes cast in one or more precincts where such failure or illegal practices occurred from the total returns, or may declare the entire election invalid and order a new election.

- C. If the canvass board reports an apparent discrepancy in the returns of one or more precincts, the assembly may order a recount of votes cast in said precinct or precincts. Such recount shall be conducted immediately by the canvass board and the results shall be reported to the assembly. The assembly shall meet as soon as possible to certify the results of the election recount.
- D. Upon certification of a valid election, the clerk shall deliver to each person elected to office a certificate of election, signed by the clerk and authenticated by the seal of the borough.

SECTION 7. That this ordinance shall be effective immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 1ST DAY OF AUGUST, 2023.

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Acting Borough Clerk

Yes: Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Ribbens, Tupper, Johnson

No: None

Absent: None

