

Introduced by:	Cox, Hibbert, Ecklund
Date:	01/17/23
Hearing:	02/21/23
Action:	Enacted as Amended
Vote:	7 Yes, 3 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2023-03**

**AN ORDINANCE AMENDING KPB 22.30 AND KPB 22.40 REGARDING ASSEMBLY
COMMITTEES, EXCUSED ABSENCES AND REMOTE PARTICIPATION OF
ASSEMBLY MEMBERS**

WHEREAS, due to the Kenai Peninsula Borough ("Borough") Assembly moving to a hybrid format for its meetings, which provide for greater public and member participation through both internet videoconferencing and in-person participation, it is appropriate to update code provisions regarding Assembly committees, excused absences, and participation via teleconferencing, also known as remote participation; and

WHEREAS, the current code section regarding Assembly committees, KPB 22.30.090, was last updated in 1990;

WHEREAS, the current code section regarding excused absences for Assembly members, KPB 22.40.025, was last updated in 1990 and does not provide a procedure or guidelines for when a member requests an excused absence;

WHEREAS, KPB 22.40.170 through KPB 22.40.175 contain three sections regarding teleconference participation by Assembly members during meetings that could be stated in a more concise way through one section of code that would eliminate unnecessary repetitive wording and cross-references; and

WHEREAS, it is appropriate to identify standing committees of the Assembly to clarify that all assembly members are members of the standing committees; and

WHEREAS, it is appropriate to establish a clear procedure for an Assembly member to request an excused absence along with limitations on when excused absences may be granted; and

WHEREAS, it is appropriate to adjust to changes in technology by recognizing that members may occasionally need to participate remotely via teleconferencing while also emphasizing the importance of in-person participation by Assembly members;

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

SECTION 1. That KPB 22.30.090 is hereby amended to read as follows:

22.30.090. Assembly committees.

[A. THE ASSEMBLY PRESIDENT IS AUTHORIZED TO ESTABLISH SUCH COMMITTEES, STANDING OR TEMPORARY, AS THE PRESIDENT DEEMS NECESSARY FOR THE CONDUCT OF ASSEMBLY BUSINESS; PROVIDED, HOWEVER, THAT THE ASSEMBLY MAY BY MOTION CREATE, ABOLISH OR COMBINE ANY COMMITTEE IT DEEMS APPROPRIATE AND SUCH ACTION SHALL TAKE PRECEDENCE OVER ANY PREVIOUS ACTION OF THE PRESIDENT.]

A. The assembly has established the following standing committees:

Finance

Lands

Policies and Procedures

Legislative

Committee of the Whole

All assembly members are members of the standing committees. The assembly president will appoint the chairperson and vice-chairperson for each committee. The assembly president and vice president will serve as the chairperson and vice-chairperson of the Committee of the Whole. The president may remove or change the presiding committee members as he or she deems appropriate.

[B. THE ASSEMBLY PRESIDENT SHALL APPOINT A CHAIRPERSON AND MEMBERS OF EACH COMMITTEE. THE PRESIDENT MAY REMOVE OR CHANGE COMMITTEE ASSIGNMENTS AS HE OR SHE DEEMS APPROPRIATE.]

B. The assembly president is authorized to establish all other such committees, standing or temporary, as the president deems necessary to conduct assembly business. The assembly president will appoint a chairperson and members of any committee established by the president. The president may remove or change committee assignments as he or she deems appropriate. The assembly may by motion create, abolish or combine any committee it deems appropriate and such action will take precedence over any previous action of the president.

- C. An assembly committee [SHALL] will carry out the duties assigned it by the assembly president or the assembly and [SHALL] will regularly review matters before the assembly that deal with subjects within the scope of its duties.
- D. The time and place of all committee meetings [SHALL] will be communicated to the clerk who [SHALL] will keep a committee meeting list [OF SUCH] available to the public. Regularly scheduled meeting times and locations [SHALL] will be listed in the assembly meeting packet.
- E. All committee meetings [SHALL] will be open to the public unless the committee has moved to go into an executive session in accordance with the provisions of the Alaska open meetings law. [ANY A] Assembly members present [MAY] must attend an executive session of a committee unless that member has a conflict of interest or is participating by teleconferencing.
- F. Receipt of testimony from the public at committee meetings on matters before it [SHALL BE] is at the discretion of the committee unless the assembly or the president has directed the committee to conduct a public hearing to receive public testimony. If the committee has been directed to conduct a hearing to receive testimony the committee chair [SHALL] will arrange with the clerk for minutes of the hearing to be taken or for the hearing to be recorded and minutes prepared.
- G. A member that expects to be absent from a committee meeting must notify the borough clerk prior to the meeting. An assembly member may participate in an assembly committee meeting via teleconferencing by notifying the borough clerk prior to the meeting. The borough clerk will note in the minutes of the committee meeting the attendance of the members and whether a member is participating via teleconferencing.

SECTION 2. That KPB 22.40.025 is hereby amended to read as follows:

22.40.025. Excused absences.

[A MEMBER WILL BE GRANTED AN EXCUSED ABSENCE FROM A REGULAR ASSEMBLY MEETING IF THE ABSENCE IS DUE TO THE CONDUCT OF BOROUGH BUSINESS AUTHORIZED BY THE ASSEMBLY OR THE PRESIDENT. AN EXCUSED ABSENCE MAY BE GRANTED BY THE ASSEMBLY OR ASSEMBLY PRESIDENT FOR PERSONAL REASONS.]

- A. In order for an absence to be excused, an assembly member must contact the borough clerk in writing prior to the meeting and state the reason for their inability to attend the meeting.
- B. The borough clerk will inform the assembly president of the request for an excused absence prior to the meeting and the assembly president will rule whether the absence is excused or unexcused. The assembly president's

ruling may be overruled by a majority of members present. The motion is a motion to excuse the absent member and the motion is non-debatable.

C. During the roll call for the meeting, the borough clerk will indicate whether a member's absence was ruled excused or unexcused and make an appropriate notation in the minutes.

D. A member will not be granted an excused absence if the member:

1. failed to request an excused absence in writing; or

2. has missed more than 25 percent of the regular and special meetings held by the assembly during any past consecutive twelve-month period;

3. will not be able to attend at least 75 percent of the regular meetings of the assembly during any future consecutive twelve-month period;
or

4. has missed three consecutive regular meetings.

The assembly president may relax the foregoing limitations in the event of a health or family emergency, or inclement weather.

SECTION 3. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by repealing and reenacting KPB Chapter 22.40.170, Teleconferencing, which shall read as follows:

22.40.170. – Teleconferencing.

A. Assembly meetings must have reasonable technical capabilities to allow participation by teleconference whenever possible, to include being able to hear and engage in discussion and being audible to all persons participating in the meeting.

B. A member of the assembly may participate in and vote at a regular meeting or special meeting, or work session of the assembly by teleconference (e.g., telephone, videoconferencing, or similar technology) under the following circumstances:

1. When a local, state, or federal disaster declaration is in effect for the borough; or

2. When a member cannot physically attend the meeting, subject to the following limitation: the member's physical absence may not exceed a total of three consecutive regular assembly meetings or a total of 12 regular meetings in a 12-month period commencing November 1 each year. Notwithstanding, the assembly president may relax the foregoing limitation in the event of extenuating circumstances, a health or family emergency, or inclement weather.

C. Assembly members may not use teleconferencing as a regular form of participating in meetings.

D. No more than the first three members to contact the Clerk's office requesting participation by teleconference at a particular meeting may participate remotely except during a declared disaster. Notwithstanding

other provisions herein, all members may participate by teleconference in a special meeting called to consider an emergency action.

- E. Assembly members may not participate in an executive session proceeding by teleconference except during a declared disaster.
- F. An assembly member may not preside over or chair a meeting in which they are participating by teleconference except during a declared disaster.
- G. For purposes of KPB 22.40.170 and KPB 22.30.090, the term “teleconferencing” means a method used for remote or electronic participation by an assembly member for a meeting of the assembly by use of telephone, videoconference, or similar technology that allows for clear and fully functional participation in that meeting by the member.

[22.40.170. TELEPHONIC PARTICIPATION IN REGULAR ASSEMBLY MEETINGS.

- A. KPB 22.40.170 THROUGH KPB 22.40.175 GOVERNS THE TELEPHONIC PARTICIPATION OF ASSEMBLY MEMBERS AT ALL REGULAR ASSEMBLY MEETINGS.
- B. THE PREFERRED PROCEDURE FOR ASSEMBLY MEETINGS IS THAT ALL ASSEMBLY MEMBERS SHOULD BE PHYSICALLY PRESENT AT THE DESIGNATED TIME AND LOCATION FOR EACH MEETING. HOWEVER, PHYSICAL PRESENCE MAY BE WAIVED AND ANY MEMBER(S) MAY PARTICIPATE IN AN ASSEMBLY MEETING BY TELECONFERENCE, SUBJECT TO THE PROCEDURES AND LIMITATIONS PROVIDED IN THIS SECTION THROUGH KPB 22.40.175.
- C. AN ASSEMBLY MEMBER PARTICIPATING BY TELECONFERENCE SHALL, WHILE ACTUALLY ON THE TELECONFERENCE, BE DEEMED TO BE PRESENT AT THE MEETING FOR ALL PURPOSES. THE ASSEMBLY MEMBER SHALL MAKE EVERY EFFORT TO PARTICIPATE IN THE ENTIRE MEETING.
- D. IF THE ASSEMBLY PRESIDENT PARTICIPATES TELEPHONICALLY, THE ASSEMBLY VICE-PRESIDENT, OR THE PRESIDENT *PRO TEM*, IN THE ASSEMBLY VICE-PRESIDENT'S ABSENCE, SHALL PRESIDE OVER AND PERFORM ALL OTHER FUNCTIONS OF THE ASSEMBLY PRESIDENT AT THE MEETING.
- E. "TELECONFERENCING," FOR PURPOSES OF KPB 22.40.170 THROUGH .175, MEANS A METHOD USED FOR REMOTE PARTICIPATION BY AN ASSEMBLY MEMBER FOR A MEETING OF THE ASSEMBLY WHICH MUST ENABLE THE REMOTE MEMBER, FOR THE DURATION OF THE MEETING, TO CLEARLY HEAR ALL ASSEMBLY MEMBERS, THE MAYOR, THE BOROUGH CLERK, THE ATTORNEY, AND PUBLIC TESTIMONY, AND TO BE CLEARLY HEARD BY ALL ASSEMBLY MEMBERS, THE MAYOR,

THE BOROUGH CLERK, THE ATTORNEY, AND THE PUBLIC IN ATTENDANCE.]

SECTION 4. That KPB 22.40.173 is hereby repealed.

[22.40.173. TELECONFERENCE—PROCEDURES.

- A. AN ASSEMBLY MEMBER WHO CANNOT BE PHYSICALLY PRESENT FOR A REGULARLY SCHEDULED ASSEMBLY MEETING SHALL NOTIFY THE BOROUGH CLERK AT LEAST FIVE DAYS PRIOR TO THE SCHEDULED TIME FOR THE MEETING OF HIS OR HER REQUEST TO PARTICIPATE IN THE MEETING BY TELEPHONIC MEANS OF COMMUNICATION.
- B. AT LEAST THREE DAYS PRIOR TO THE SCHEDULED TIME FOR THE ASSEMBLY MEETING, THE BOROUGH CLERK SHALL NOTIFY THE ASSEMBLY OF THE PERSON'S REQUEST TO PARTICIPATE BY TELECONFERENCE.
- C. AT THE COMMENCEMENT OF THE ASSEMBLY MEETING A TELEPHONIC CONNECTION WILL BE ESTABLISHED WITH THE PERSON OR PERSONS INTENDING TO PARTICIPATE TELEPHONICALLY. IF THE ASSEMBLY MEMBER HAS ATTENDED AT LEAST THREE REGULAR ASSEMBLY MEETINGS BY TELEPHONE SINCE THE MOST RECENT NOVEMBER 1, AFTER A TELEPHONIC CONNECTION IS ESTABLISHED THE ASSEMBLY PRESIDENT SHALL CALL FOR A VOTE OF THE ASSEMBLY ON WHETHER THE PERSON(S) MAY OR MAY NOT PARTICIPATE BY TELEPHONE. PRIOR TO THE VOTE, THE ASSEMBLY MEMBERS MAY MAKE SUCH INQUIRIES AS NECESSARY TO MAKE A DECISION. ONLY THE ASSEMBLY MEMBERS PHYSICALLY PRESENT MAY VOTE ON THE QUESTION. THE ASSEMBLY'S DETERMINATION IS FINAL AND NOT SUBJECT TO APPEAL. IF A PERSON PARTICIPATES IN THE MEETING TELEPHONICALLY WITHOUT A RULING FROM THE ASSEMBLY, IT SHALL BE DEEMED TO BE WITH THE APPROVAL OF SUCH PARTICIPATION BY THE ASSEMBLY, AND ALL ACTIONS TAKEN BY THE ASSEMBLY WITH THE PARTICIPATION OF ALL SUCH PERSONS ARE VALID.
- D. SUBSECTIONS A, B AND C OF THIS SECTION DO NOT APPLY TO SPECIAL MEETINGS OF THE ASSEMBLY. AN ASSEMBLY MEMBER WHO REQUESTS TO PARTICIPATE TELEPHONICALLY IN A SPECIAL MEETING OF THE ASSEMBLY MUST NOTIFY THE BOROUGH CLERK BEFORE THE TIME SCHEDULED FOR THE START OF THE MEETING. THE BOROUGH CLERK WILL NOTIFY THE ASSEMBLY NO LATER THAN THE COMMENCEMENT OF THE

MEETING. AFTER A TELEPHONIC CONNECTION IS ESTABLISHED THE MEMBER SHALL BE ALLOWED TO PARTICIPATE TELEPHONICALLY.

- E. SUBSECTIONS A, B AND C OF THIS SECTION ALSO DO NOT APPLY TO MEETINGS HELD WHILE AN EMERGENCY DISASTER DECLARATION IS IN EFFECT AND THE NATURE OF THE DISASTER SIGNIFICANTLY IMPACTS AN ASSEMBLY MEMBER'S ABILITY TO ATTEND AN ASSEMBLY MEETING OTHER THAN BY TELECONFERENCE OR OTHER TECHNOLOGICAL MEANS.
- F. THE MEANS USED FOR A TELECONFERENCE MEETING OF THE ASSEMBLY MUST ENABLE EACH MEMBER APPEARING TELEPHONICALLY TO CLEARLY HEAR ALL OTHER ASSEMBLY MEMBERS, THE MAYOR, THE BOROUGH CLERK, THE ATTORNEY, AND PUBLIC TESTIMONY AT THE MEETING AS WELL AS BE CLEARLY HEARD BY ALL OTHER ASSEMBLY MEMBERS, THE MAYOR, THE BOROUGH CLERK, THE ATTORNEY, AND MEMBERS OF THE PUBLIC IN ATTENDANCE.
- G. THE BOROUGH CLERK SHALL NOTE IN THE MINUTES OF THE ASSEMBLY MEETING ALL MEMBERS APPEARING TELEPHONICALLY.
- H. TO THE EXTENT PRACTICABLE, MATERIALS TO BE CONSIDERED BY THE ASSEMBLY SHALL BE MADE AVAILABLE TO THOSE MEMBERS ATTENDING BY TELECONFERENCE.]

SECTION 5. That KPB 22.40.175 is hereby repealed.

[22.40.175. TELECONFERENCE—LIMITATIONS.

- A. ALL ASSEMBLY MEMBERS SHOULD MAKE ALL REASONABLE EFFORT TO BE PHYSICALLY PRESENT FOR EVERY MEETING. TELECONFERENCE PROCEDURES MAY NOT BE USED AS A REGULAR MEANS OF ATTENDANCE AT MEETINGS EXCEPT TEMPORARILY DURING EVENTS DESCRIBED IN SUBPARAGRAPH E OF THIS SECTION.
- B. PARTICIPATION BY TELECONFERENCE MAY BE DENIED WHENEVER THE PHYSICAL PRESENCE OF THE INDIVIDUAL IS CONSIDERED ESSENTIAL TO EFFECTIVE PARTICIPATION IN THE MEETING OR TO THE PROPER CONDUCT OF THE BUSINESS TO BE ADDRESSED AT THE MEETING AND THE MEMBER IS NOT PREVENTED BY ATTENDING DUE TO CIRCUMSTANCES BEYOND THEIR CONTROL.
- C. IF TELECONFERCING IS DENIED THE ASSEMBLY MEMBER WILL BE LISTED AS ABSENT.

- D. EACH ASSEMBLY MEMBER MAY ATTEND A MAXIMUM OF THREE REGULAR ASSEMBLY MEETINGS BY TELECONFERENCE DURING THE 12-MONTH PERIOD COMMENCING NOVEMBER 1ST EACH YEAR.
- E. SUBSECTIONS B, C, D, F AND G OF THIS SECTION DO NOT APPLY TO MEETINGS HELD WHILE AN EMERGENCY DISASTER DECLARATION IS IN EFFECT AND THE NATURE OF THE DISASTER SIGNIFICANTLY IMPACTS AN ASSEMBLY MEMBER'S ABILITY TO ATTEND AN ASSEMBLY MEETING OTHER THAN BY TELECONFERENCE OR OTHER TECHNOLOGICAL MEANS.]
- F. EACH ASSEMBLY MEMBER MAY ATTEND ADDITIONAL TELECONFERENCES AS A SPECIAL EXCEPTION IF EXPRESSLY APPROVED FOR GOOD CAUSE IN EACH INSTANCE BY A VOTE OF THE ASSEMBLY. GOOD CAUSE MAY INCLUDE, BUT IS NOT LIMITED TO, ABSENCE REQUIRED FOR EXTENDED MEDICAL CARE NEEDED FOR THE INDIVIDUAL OR A MEMBER OF THE INDIVIDUAL'S IMMEDIATE FAMILY.
- G. NO ASSEMBLY MEMBER SHALL ATTEND AN EXECUTIVE SESSION BY TELEPHONIC MEANS.]

SECTION 6. That this ordinance is effective immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH 21ST DAY OF FEBRUARY, 2023.

Brent Johnson

 Brent Johnson, Assembly President

ATTEST:

Michele Turner

 Michele Turner, CMC, Acting Borough Clerk



Yes: Chesley, Cox, Ecklund, Hibbert, Tupper, Johnson
 No: Derkevorkian, Elam, Ribbens
 Absent: None