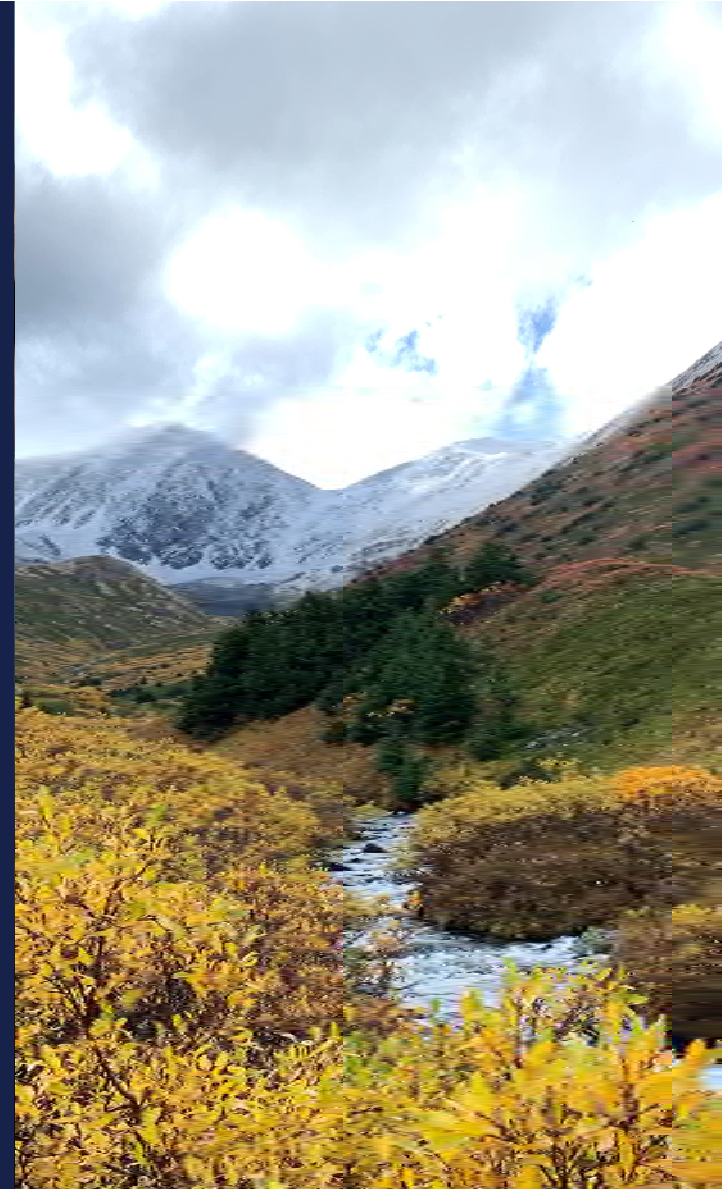
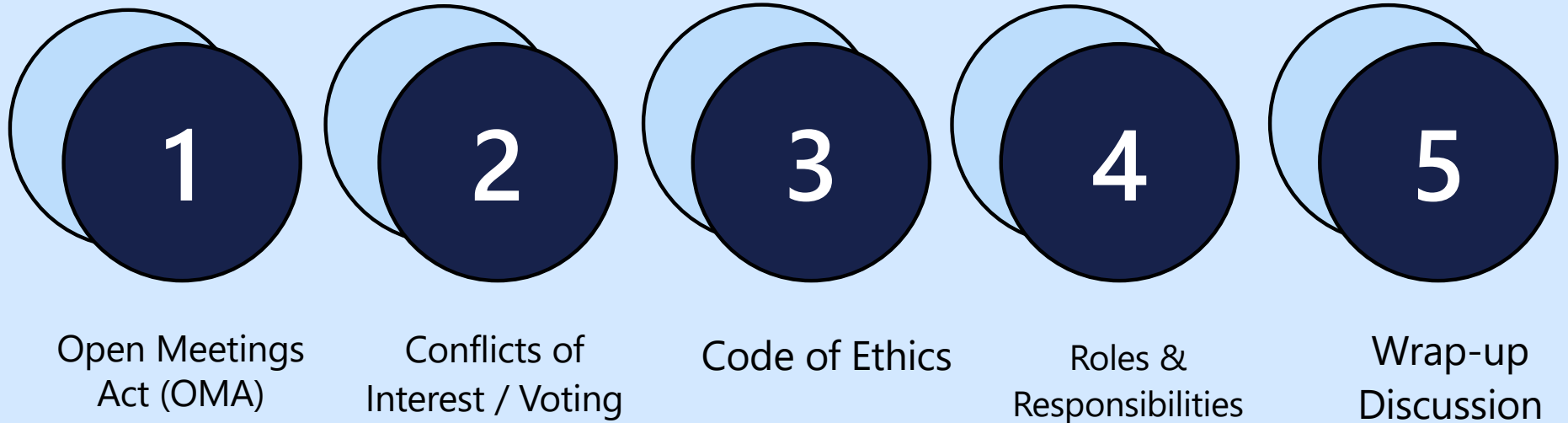


October 2025 Assembly Work Session

Session II



Session II - Agenda



OMA

- Open Meetings Act (“OMA”) AS 44.62.310-.312.
- Mandates that:
 - All meetings
 - Of a governmental body of a public entity of the state
 - Are open to the public
- “*Governmental body*” is an umbrella term including both local and state-level decision making *and* advisory bodies (although different rules apply to these types of bodies). This includes:
 - Assemblies
 - local councils
 - Boards
 - Commissions
 - Committees
 - And all other similar bodies of a public entity.
- Does *not* include staff meetings and does not apply to “a governmental body performing a judicial or quasi-judicial function when holding a meeting solely to make a decision in an adjudicatory proceeding.”

OMA: Simple in concept, layered application



- **There are layers to the OMA basics, including:**
 - Actual Notice cures defects in formal notice *Ramsey v. City of Sand Point*, 936 P.2d 126 (Alaska 1997)
 - A member of a body accused of the OMA can't be sued in their "personal capacity" AS 44.62.310(f); but removal ...
 - Only have 180 days to sue under the OMA AS 44.62.310(f)

Requires reasonable public notice

- **Also does not apply to:**
 - Administrative or managerial meetings of a service area board
 - Alaska legislature or Alaska court system

What is a meeting?

Decision- or Policy-Making Body	Advisory-Only Body
• More than 3 members, or a majority of members (whichever is less) • Prearranged or spontaneous • Engage collectively in discussion • Authority to establish policies or make decisions for the public entity	• Same. • Prearranged gathering • To consider a matter • On which the entity is authorized to advise or make recommendations to the decision-making body

It doesn't matter where the meeting occurs or who arranged it. Meetings can include "social" or "casual" events.

"meeting" means a gathering of members of a governmental body when more than three members or a majority of the members, whichever is less, are present, **a matter** upon which the governmental body is empowered to act **is considered** by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity

Is it a meeting?



Teleconference meetings

- OMA expressly permits meetings via teleconference
- Both members of the public and the entity may attend remotely where permitted

Serial communications

- If other criteria are satisfied, emails, telephone calls, or series of such communications can constitute “meetings” for purposes of OMA.
- Avoid “important decision making and substantive discussion” outside of the public eye. *Hickel v. Southeast Conference*, 868 P.2d 919 (1994)(Redistricting Board had 1 on 1 conversations and no substantive discussion on the record, court found violation but didn’t remedy it)

Social media

- Conversations among members of a governmental entity on social media can be subject to OMA, even where these conversations are public.

OMA: Procedural Requirements

- Meetings held by governmental bodies must be **open to the public** and **properly noticed**.
 - **Reasonable public notice**
 - **Time frame:** Amount of notice is influenced by “complexity and importance of issues involved.” Less notice for emergencies, more for matters of public concern.
 - **Content:** The notice must include the date, time, and place of the meeting. The notice should be posted at the meeting place and distributed in print or broadcast media.
 - Emphasis is on whether the governmental body follows its own notice procedures and practices.
 - **Teleconferencing option**
 - Teleconference sites must be identified in notice.
 - Any materials used or discussed at meeting must be present at teleconference site.
 - **Public participation:**
 - Not expressly required by OMA.
 - However, Title 29 requires that governmental bodies provide a “reasonable opportunity” to be heard at regular and special meetings. *See AS 29.20.020*
 - Local rules may provide conduct and decorum guidelines.



When is OMA *not* applicable?



- Meetings relating to staff/employee issues
- National, state, or regional membership organization meetings
- Executive Sessions (an exception within OMA)
- Quasi-Judicial deliberations/decision making (OMA does not apply).

Key inquiry– is the business of the body being discussed and otherwise meet the criteria?

Executive Session

- **Executive sessions = closed session (private), confidential discussion of an issue**
 - **Meeting must first be convened in accordance with the OMA.**
 - **Member of the body must make a Motion to Convene Executive Session**
 - **Motion must clearly and specifically describe the subject of the proposed executive session *without defeating the purpose of addressing the subject in private.***
- ** Note: executive sessions and the enumerated purpose for going into executive session is an exception to the requirements of OMA; OMA does *not* apply to adjudicative session or deliberating to make a decision in an adjudicatory proceeding. Exception vs not applicable.**

Executive Session

Subjects that may be considered



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Only the following may be discussed in executive session:

- **Finances:** Matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity;
- **Character:** Subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
- **Confidential Matters:** Matters which by law, municipal charter, or ordinance are required to be confidential;
- **Non-Public Records:** Matters involving consideration of government records that by law are not subject to public disclosure.
- **Attorney-Client Privilege:** A governmental body should not convene an executive session to obtain general legal advice or simply to meet with its attorney. However, an executive session may be called to discuss: (1) discussions regarding the facts of a case and potential litigation strategies, (2) to determine whether or not to appeal, to settle, or to avoid an action against a body.

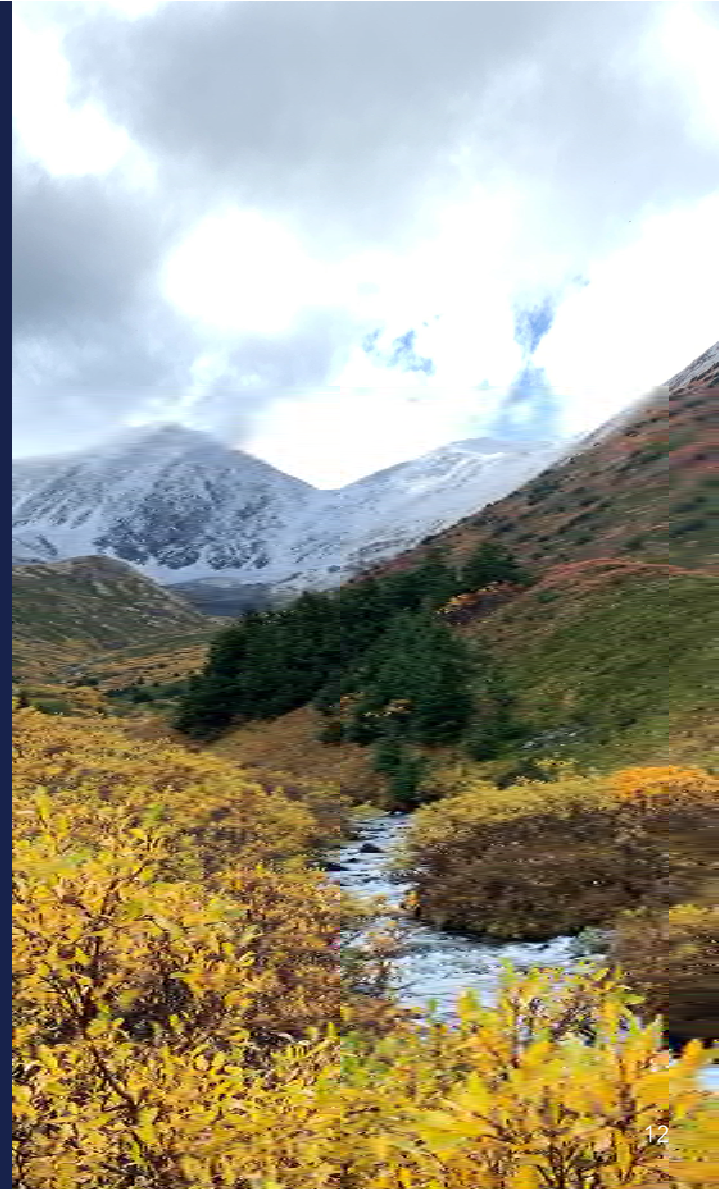
Remedies

- Where a policy/decision-making entity is involved, the unlawful action is *voidable*-- meaning a court *may* undo any actions or decisions as are necessary to correct the OMA violation.
- Individuals or entities can sue within 180 days of the action to void the governmental body's decision.
- Voidability provision does *not* apply to advisory bodies.
- No personal liability but possible accountability (recall or removal, e.g.)
 - Not worth risk, if there is a doubt ask legal counsel
 - Remember, that generally an OMA violation is not going to be covered by insurance but if the related matter is and the governing body fails to follow legal counsel's guidance it may prevent coverage for fees
 - When the court applies the balancing test to determine if the action should be void, everything should establish good faith, fairness, propriety, and transparency.
- The solution? CURE the fault (do over). The OMA expressly states that a body may cure a violation by holding another meeting with notice. AS 44.62.310(f).

Conflicts of Interest

Prevention is better
than cure

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General Principles



- Prohibits “divided loyalties”
- Contracts between an official and the entity they represent are void, even if the official took no part in the vote on awarding the contract.
- Public officials held to high standard as trustees of people. Appearance of impropriety must be avoided.
- Focus is on the relationship between the public official’s financial interest and the possible result of the official’s action, regardless of the official’s intent.

KPB Code AK Statutes

- AS 29.20.010 prohibits participation in official action where official has a “substantial financial interest.” AK Statutes do not define “substantial financial interest.”
- KPB Code prohibits any contract between the borough and any of its officers, employees or service area board members where the person would have a substantial interest in the contract (other than his or her position with the borough or service area) unless they have complied with Chapter 2.58 of the code.
- A “substantial financial interest is a pecuniary or material benefit accruing as a result of a private, business or professional transaction with the borough or service area.” Cannot enter into a contract with the borough or service area unless you:
- File a notice of intent to do business form. (KPB 2.58.050)
 - Fully disclose during the meeting the conflict and the nature of the proposed business relationship.
 - Do not participate in discussion or vote on a matter in which you (or your spouse, company, etc.) have a substantial direct or indirect financial interest.



Disclosure – Request to be excused – Prohibition



- Publicly disclose the issue if you think you might have, or be perceived to have, a conflict of interest regarding any matter coming before the Assembly.
- KPB 22.40.140 requires all members present at a meeting to vote on each question unless excused or prohibited.
- Requesting to abstain from vote versus prohibited from voting.

KPB 22.40.140

- No member may vote on a question in which the member has a substantial direct or indirect financial interest (i.e. anything over \$100 is a good starting point).
- A member may not be compelled to vote on matters where there is a reasonable likelihood of a breach of privilege or confidence protected by law or where participation would create a serious appearance of impropriety.
- A member may be excused by the body from voting for “other good cause”.
- Notice the slight differences. Voting when there is a conflict of interest is a prohibition. The other two items under KPB 22.40.140(A) allow a member to request to abstain from voting, not prohibitions, at discretion of member.

KPB 22.40.140 (Voting) Procedure



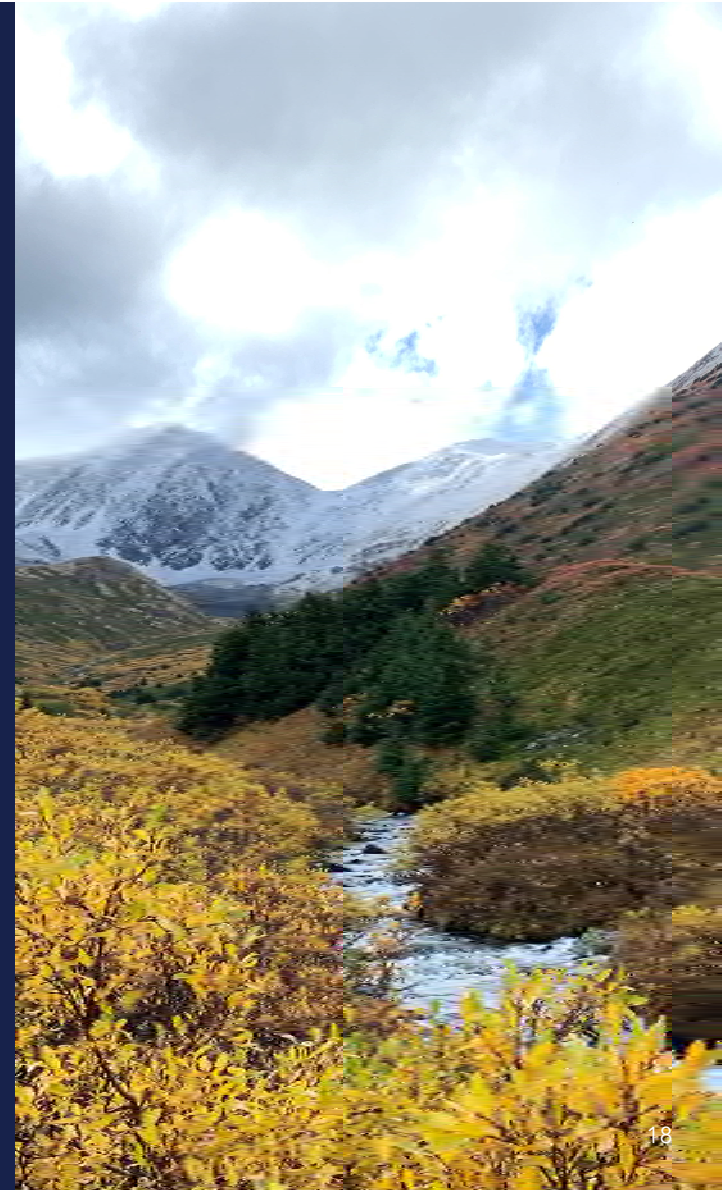
- Member first declares conflict and asks to be excused from a vote (and discussion) on the matter
 - If there it's a financial conflict of interest → cannot participate in the committee discussion OR the debate. It's not just about voting
- Presiding officer rules on request
- Decision of presiding officer may be overridden by motion and majority vote of body.

Code of Ethics

Promotes honest and
faithful execution of
official duties



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KPB 2.90.010 - .190: Code of Ethics Applicable to Public Officials



- Purpose: "To assist public officials in carrying out their responsibilities under their oaths of office to support and defend the Constitution of the United States, the Constitution of the State of Alaska, and the laws of the Kenai Peninsula Borough, to specify conduct that violates public expectations that they will honestly, faithfully, and impartially perform their duties as public officials of the Kenai Peninsula Borough to the best of their ability."

Violations

- Special consideration, treatment, advantage to an individual or entity
- Exceeding scope of authority
- Holding an office that compromises performance of elected duties
- Use/disclosure of confidential information
- Solicitation or receipt of anything of value “in consideration of some action to be taken or not to be taken in the performance of the public official’s duties”
- Investments or property holdings that compromise performance of duties
- Representation of others in dealings with the KPB
 - Exceptions apply, including advocating for a constituent in a manner that is within scope of duties
- Failure to disclose a conflict
- Use of KPB Assets or Facilities for personal gain
- Representing that you are official spokesperson of the Assembly or authorized to take action on behalf of body
- Not exhaustive list – KPB 2.90.030 goes A to Z and back to AA.



Procedure for handling alleged violations

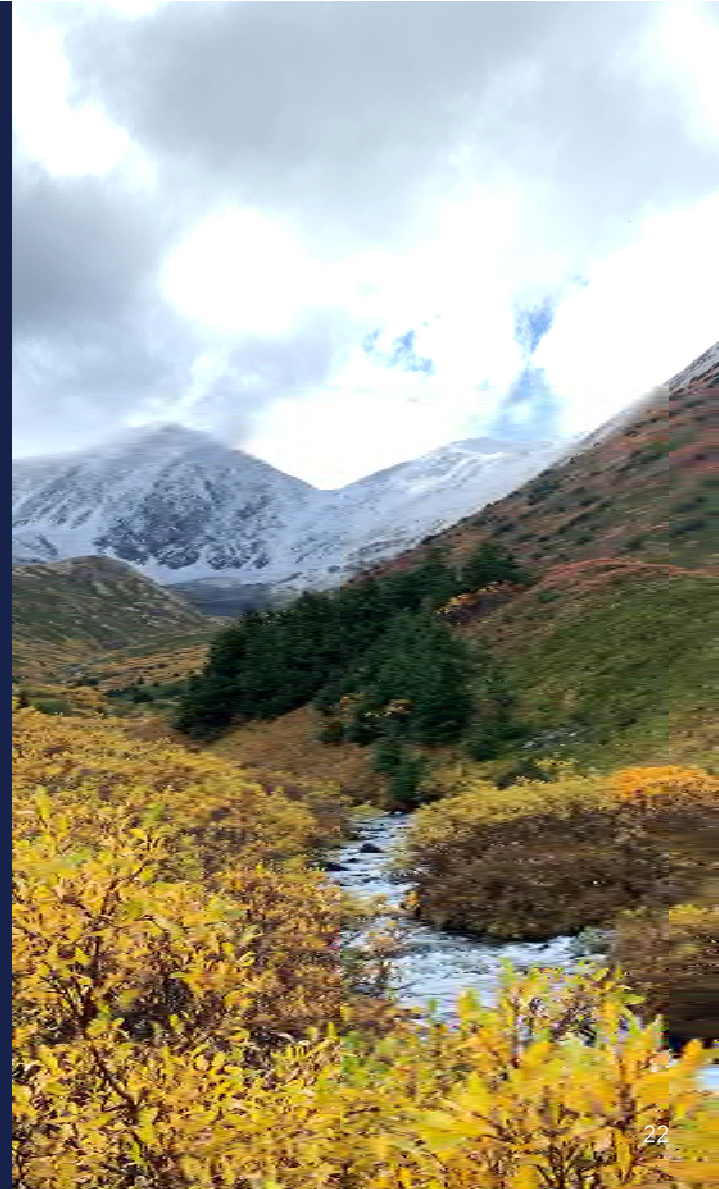


- If there is an alleged violation a person may file a verified complaint:
 - Must be filed within 2 years of the violation
 - Confidential investigation and proceeding
 - Opportunity to respond, have private counsel
 - Hearing administered by a hearing officer who is not a KPB employee or public official

Roles & Responsibilities

Assembly & Mayor

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Legislative and Executive Powers.

- The Assembly is vested with legislative power - AS 29.20.050. "Makes law"
- The Mayor is vested with executive power - AS 29.20.220(a). "Executes law"
- Capital projects example
- Resolution 2009-088

Municipal Government: Legislative and Executive Functions



- **Separation of powers doctrine:** a prohibition against conferring on any one branch of government powers that clearly belong , under the law, to one of the other two branches. It limits the authority of each branch to interfere in the powers that have been delegated to the other branches. The separation of powers lines can be difficult, at times, to distinguish at the local level when compared to the federal level.
- **KPB Mayor has powers and duties of elected mayor (chief executive; AS 29.20.220-.280) and powers of manager (chief administrator; AS 29.20.500) under Alaska Statutes.**
- **Chief Administrator of the Borough, roles & responsibilities include:**
 - Personnel oversight
 - Fiduciary oversight
 - KPB lands and property oversight
 - Supervision over enforcement of municipal law
- **Chief executive, role & responsibilities include:**
 - 'head of state' role
 - Executes official documents upon authorization of governing body
 - Administers KPB Code and other duties required by law

Assembly Authority and Procedural Responsibilities

- Elect a presiding officer and a deputy presiding officer to serve at the pleasure of its members - AS 29.20.160(a).
- Hold at least one regular meeting each month unless otherwise provided by ordinance - AS 29.20.160(b).
- Provide reasonable opportunity for the public to be heard at its regular and special meetings - AS 29.20.020.
- Comply with the Open Meetings Act - AS 29.20.020.
- Adopt an ordinance governing assembly members' conflicts of interest satisfying the requirements of AS 29.20.010 - KPB 22.40.140 and KPB Chapter 2.90 (Code of Ethics).
- Provide for the assembly's composition and the form of its representation no later than the first election after adoption of a final state redistricting plan - AS 29.20.070 - 29.20.120 (e.g. reapportionment).

Assembly Authority and Procedural Responsibilities

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- Maintain a public record journal of its official proceedings - AS 29.20.160(e). (*e.g. the minutes.*)
- Determine its own rules of procedure and order of business by ordinance to the extent otherwise allowed by law - AS 29.20.160(f).
- Provide by ordinance how a vacancy occurs in any elected office except the office of mayor or school board member - AS 29.20.170; *See*, KPB 22.30.040.
- Fill an assembly vacancy within 30 days unless otherwise provided by ordinance (AS 29.20.180.) KPB 22.30.060 states: Vacancy is filled by majority of remaining assembly members no later than 2nd meeting after resignation is accepted unless there are 45 days or less remaining until the next regular election.
- May by ordinance establish advisory, administrative, technical, or quasi-judicial boards and commissions, the members of which are appointed by the mayor and confirmed by the assembly - AS 29.20.320.
- May initiate the adoption of a manager plan of government for submission of the question to the voters - AS 29.20.460 - .490. If such plan is approved by the voters, the governing body shall appoint a manager by majority vote - AS 29.20.490.

Procedural Actions in Assembly Purview

- Follow the procedure for adopting ordinances and emergency ordinances in AS 29.25.020 and AS 29.25.030 – *See*, KPB 1.12.010.
- The assembly may enact emergency appropriations to meet public emergencies affecting life, health, welfare or property, by ordinance, without notice of public hearing. The emergency shall be clearly stated in the preamble and is effective upon adoption, unless the ordinance sets a different effective date. It must be approved by $\frac{3}{4}$ of members present and expires after 60 days. Cannot be used to levy taxes, and other purposes in AS 29.25.030(b) – *See*, KPB 5.04.080
- Provide for the maintenance of a permanent file of resolutions that have been adopted - AS 29.25.060. (These are maintained by the Clerk's office and available on-line.)
- Prescribe the rules for conducting an election and appoint an election board for each precinct - AS 29.26.010.
- Establish a procedure by ordinance for acquiring and disposing of land and interests in land by the borough - AS 29.35.090. (*See*, KPB Chapter 17.10)

Assembly & School District

- Determine the total amount of money to be made available from local sources for school purposes within 30 days after receipt of the school budget. If the assembly fails to do this, then the amount requested in the budget is automatically approved. Also, the assembly shall appropriate the amount to be made available from local sources by June 30 except as otherwise provided by ordinance - AS 29.35.160(a) and AS 14.14.060(c).
- Determine the location of school buildings after considering school board recommendations - AS 14.14.060(d).
- Approve the selection by the school board of appropriate professional personnel to develop designs for school buildings - AS 14.14.060(e).
- Through the Mayor, provide for all major rehabilitation, construction, and major repair of school buildings after considering the recommendations of the school board – AS 14.14.060(f).

Assembly & Planning Commission

- Establish a planning commission and confirm members appointed by the mayor - AS 29.40.020.
- Shall adopt comprehensive plan by ordinance and, after receiving planning commission recommendations, periodically undertake a review of the comprehensive plan and update it as necessary - AS 29.40.030.
- Adopt or amend provisions governing the use and occupancy of land by ordinance - AS 29.40.040.
- Provide for an appeal from an administrative decision of a municipal employee, board, or commission regarding the enforcement, administration, or application of a land use regulation - AS 29.40.050. (See, Title 21.20 Appeals.)
- Either consent to or veto the vacation of a street - AS 29.40.140.

Assembly & Service Area Boards

- Service area boards play a vital role in informing and advising the Mayor and Assembly on matters of import and concern to the service area.
- The Assembly's code-based responsibilities regarding service area boards is to consider board recommendations on matters within powers & duties of the service area board.
- Some service area boards are also vested with decision-making authority on permits and certain other requests.
- KPB has both elected and appointed service area boards.
- Total service areas = 14 (Central Emergency Service Area and Central Peninsula Medical Service Area operate as a single service area).



Assembly's R&R re Personnel



- Confirm the appointment of the certain municipal officials. (Ordinance; AS 29.20.360) (note: KPB requires confirmation of appointment of all directors at KPB 2.20.030 within 90 days of appointment to office.)
- Establish municipal departments and distribute functions among them. (Ordinance; AS 29.20.400; AS 29.25.010(a)(1))
- Provide for a personnel system and classified service, includes ability to designate confidential or managerial positions that are wholly or partially exempt from the classified service. (Ordinance; see generally, KPB Title 3).
- Provide a method for determining salaries of elected officials. (Ordinance; AS 29.20.620).
- Per code, the Assembly may hear certain personnel-action appeals from certain, non-union, KPB employees.
- Assembly authority does not include managing departments or directing the operations of the departments.



Assembly R&R re Finances



- Establish the manner for preparation and submission of the budget and capital program.
- Enact budget - after a public hearing – and with or without amendments, and appropriate the money required for the approved budget.
- Provide for an annual independent audit of the accounts and financial transactions of the borough.
- May levy a property tax and, if levied, the tax must be assessed, levied, and collected as provided in AS 29.45.010 - .500.
- May levy and collect a sales and use tax on sales, rents, and services provided in the borough and a use tax on the storage, use, or consumption of tangible personal property in the borough, subject to voter ratification as provided in AS 29.45.650 - .680. (Ordinance)
- May levy an excise tax.
- Establish the procedures for creating special assessment districts, making local improvements, levying and collecting assessments, and financing improvements as provided in AS 29.46.010 - .140.
- May provide for the issuance of debt in the manner established in AS 29.47.010 - 470. This generally includes revenue anticipation notes, bond anticipation notes, general obligation bonds, revenue bonds, and refunding bonds.

Other Assembly Authority

- May establish a local historical district commission - AS 29.55.010 - .020.
- May consent to the continuation beyond seven days of a declaration of disaster - AS 26.23.140.
- May establish, operate, alter, or abolish, by ordinance, a service area, subject to voter approval of the exercise of the power and certain other restrictions - AS 29.35.450.
- May establish a program for reporting hazardous chemicals, materials, and waste in accordance with - AS 29.35.500 - .590.
- May create by ordinance a port authority as a public corporation of the municipality subject to approval by the voters of the borough - AS 29.35.600 - .730.
- May cause a protest to be filed with the State Alcohol Beverage Control Board for certain applications for a new license or renewal of a license for the sale of alcoholic beverages - KPB 7.10.010.

General Authority & Responsibilities of Mayor

- The mayor is vested with the executive power of the borough which is essentially the power to enforce or execute laws already in existence.
- Specifically, the mayor:
 - Is the Chief Administrator of the borough.
 - Executes official documents on authorization of the governing body.
 - Serves as the ceremonial head of the government.
 - Supervises the enforcement of municipal law and carries out the directives of the governing body. AS 29.20.500(2).
 - May introduce an ordinance or resolution. AS 29.25.020(b)(1) and KPB 22.40.050.
 - Is responsible for other duties prescribed in Title 29 and the borough code of ordinances. AS 29.20.220.
 - May veto an ordinance, resolution, motion, or other action of the assembly, and may strike or reduce appropriation items as provided in AS 29.20.270.

Mayor as Chief Administrator

- Oversees the departments, service areas, and boards to implement applicable programs, policies and requirements enacted by the assembly.
- Hires certain and necessary administrative assistants and authorize an administrative official to appoint, suspend, or remove subordinates. AS 29.20.500.
- Appoints, suspend or remove municipal employees and administrative officials except as otherwise provided by law and restricted by AS 14.14.065 (relating to school district employees.) *See Title 3.04 of the code.*
- May adopt personnel policies consistent with applicable local, state and federal law regarding employee rights and responsibilities.

KPB Mayor Roles & Responsibilities – Entity Finances



- Prepare and submit an annual budget and capital improvement program to the assembly and execute the budget and capital improvement program adopted - AS 29.20.500(3).
- Transfer unencumbered budget balances between line items within major classifications or departments without assembly approval - KPB 5.04.100.
- Incur obligations and make expenditures on behalf of the borough within the limits of the approved budget - KPB 5.08.030.
- Establish and initiate procedures to maintain control of and accountability of expenditures - KPB 5.08.040.
- Make a monthly report of receipts, expenditures, and fund balances to the assembly - KPB 5.08.050.
- Approve purchases made on behalf of the borough in accordance with KPB Chapter 5.28.
- Consider certain tax forgiveness requests and appeals by bidders from purchasing decisions made by staff as provided in KPB 5.28.320.

Mayoral Authority Re: KPB Lands

- Exercises custody over all real and personal property of the borough, except property of the school district - AS 29.20.500(5)).
- Authorized to adopt land management plans and procedures regarding borough lands and resources and subject to the procedures and requirements of KPB Chapter 17.10.
- Authorized to enter contracts regarding the salvage or harvest of dead and mature timber in accordance with the procedures in KPB 17.08.010 - .020.
- The mayor or his designee publishes a timber management report every year as provided in KPB 17.50.010 and is authorized in that chapter to dispose of forest resources in accordance with the procedures of KPB Chapter 17.50 and AS 29.20.500(7).

Miscellaneous Mayoral Authority

- May introduce legislation and participate in Assembly discussion (non-voting member) -AS 29.20.250(a).
- May approve tax adjustment requests for real property taxes - KPB 5.12.119.
- Oversees enforcing the sales tax registration reporting and collection requirements as provided in KPB Chapter 5.18.
- Hear appeals to Mayor as provide for in KPB Code.
- Declare a local disaster emergency for the borough for a maximum of seven days - AS 26.23.140.
- Prepares reports as required for assembly consideration of special assessment districts. (See, e.g., KPB 5.35.110).
- Perform other duties required by law or by the governing body - AS 26.20.500(6).



Mayor & Service Areas



- Per KPB 16.04.001: “The boards of directors of the service areas in the borough are advisory to the mayor and the assembly, and they may not contravene the authority of the mayor and the assembly with respect to any of the statutory or ordinance powers and duties prescribed by law to the mayor and to the assembly. The boards of directors are subject to the sphere of authority of the mayor and the assembly as established in the statutes of Alaska or the ordinances of the borough.”
- Collaborate during budget process, service area capital projects, and other matters within the duties, authority, and purview of the service area.
- Service area heads or directors are appointed by the Mayor and subject to removal by the Mayor. Per code, Mayor must seek concurrence of service area board - ultimately final authority rests with Mayor.

Veto Authority

- Mayor may veto an ordinance, resolution, motion, or other action of the assembly, and may strike or reduce appropriation items except items listed in AS 29.20.270(c) and an ordinance adopted under AS 04.11.501 (relating to the prohibition of possessing alcoholic beverages following election by the voters):

Per AS 29.20.270(c), veto powers do not extend to:

- (1) appropriation items in a school budget ordinance;
- (2) actions of the governing body sitting as the board of equalization or the board of adjustment;
- (3) adoption or repeal of a manager plan of government.

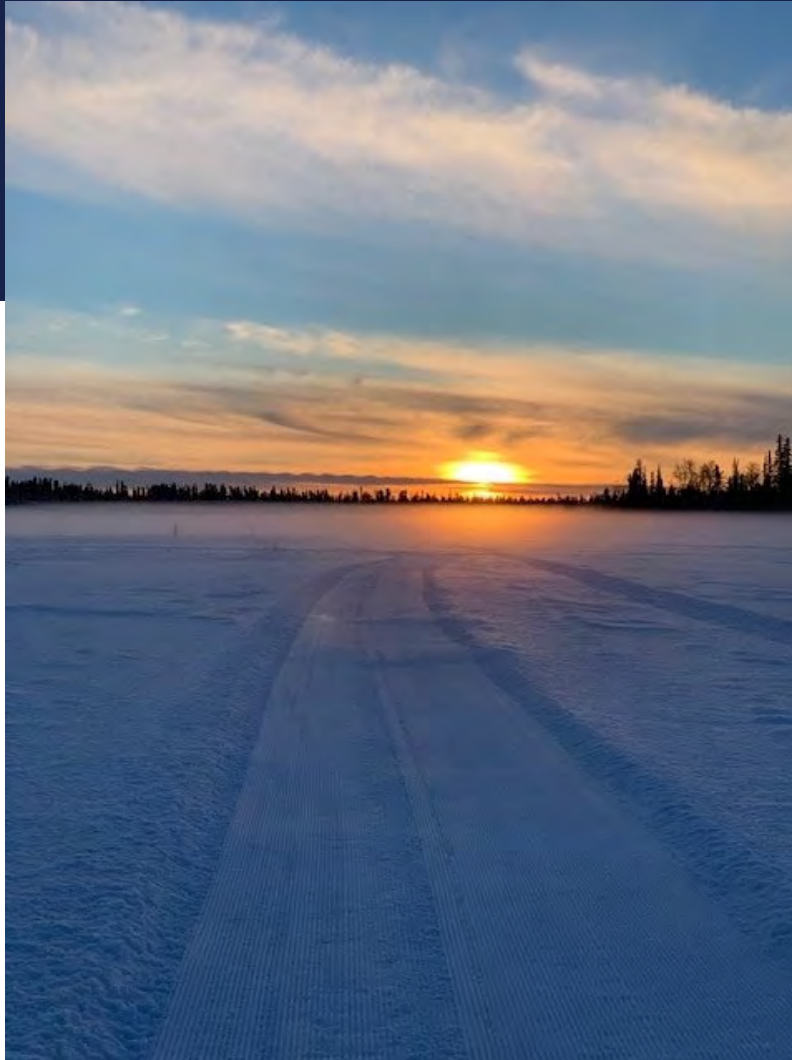
- Veto procedure: “A veto must be exercised before the next regular meeting of the governing body and must be accompanied by a written explanation of the reasons for the veto. A veto may be overridden by vote of two-thirds of the authorized membership of the governing body within 21 days following exercise of the veto, or at the next regular meeting, whichever is later.” (AS 29.20.270(b)).

Vacancy

- AS 29.20.280: By two-thirds concurring vote, the assembly shall declare the office of mayor vacant only when the person elected:
 - (1) fails to qualify or take office within 30 days after election or appointment;
 - (2) unless excused by the governing body, is physically absent for 90 consecutive days;
 - (3) resigns and the resignation is accepted;
 - (4) is physically or mentally unable to perform the duties of office;
 - (5) is convicted of a felony or of an offense involving a violation of the oath of office;
 - (6) is convicted of a felony or misdemeanor described in AS 15.56;
 - (7) is convicted of a violation of AS 15.13; or
 - (8) no longer physically resides in the municipality
- Absence or disability – KPB 2.04.040 – “Whenever the assembly president and two thirds of the members of the assembly file a written document with the borough clerk, or in the case of a disaster as defined in AS 26.23.900, if the assembly president issues a good faith declaration, showing good and sufficient cause that the borough mayor is temporarily absent or disabled, then the administrative officer designated by the mayor under KPB 2.04.030 will exercise the powers and duties of borough mayor until such time as the borough mayor is able to resume office. The administrative officer acting for the mayor shall have the qualifications for the position of mayor, but shall not have veto power. The actions of the administrative officer in exercising the powers and duties of the borough mayor shall be subject to the review of the assembly president. No administrative staff shall be dismissed or replaced during the mayor's absence except with the concurrence of a majority of the assembly. If the determination of the mayor's absence or disability is made by the assembly president alone, then the authority of the designated administrative officer will expire after seven (7) days unless ratified by the assembly. AS 29.20.280
- Per AS 29.20.280(b): “A vacancy in the office of mayor occurring six months before a regular election shall be filled by the governing body. The person appointed serves until the next regular election when a successor is elected to serve the balance of the term. If a member of the governing body is appointed mayor, the member shall resign the seat on the governing body. If a vacancy occurs more than six months before a regular election, the governing body shall call a special election to fill the unexpired term.”



**The Legal
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information**



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