



KENAI PENINSULA BOROUGH

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MIKE NAVARRE
BOROUGH MAYOR

MEMORANDUM

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

FROM: Mike Navarre, Mayor *mn*
Blaine Gilman, Assembly Member *(V/M) for: BG*

DATE: December 23, 2014

SUBJECT: Amendment to Ordinance 2014-37, An Ordinance Amending KPB 2.54.060 to Refer Public Record Requests to the Borough Attorney to Determine Whether the Records are Subject to Disclosure

During the December 9, 2014 committee meeting in which the assembly considered introduction of this ordinance, assembly member Gilman expressed concern that the attorney typically makes legal recommendations while the client renders the final decision regarding actions. After discussion it was determined the Borough Clerk would be the appropriate position for rendering the final decision as to whether a record should be released after consulting with the borough attorney. The following three amendments reflects that change:

- Amend the ordinance title as shown in bold below:

AN ORDINANCE AMENDING KPB 2.54.060 TO REFER PUBLIC RECORD REQUESTS TO THE BOROUGH **CLERK** [ATTORNEY] TO DETERMINE WHETHER THE RECORDS ARE SUBJECT TO DISCLOSURE

- Amend the final whereas clause as follows:

WHEREAS, it is most appropriate for the borough clerk [LEGAL DEPARTMENT] to make these determinations as the clerk is required by Alaska Statute 29.20.380(a)(3) to assure that public records are available for public inspection as required by law [TO ENSURE THAT THE BOROUGH IS COMPLYING WITH STATE AND LOCAL LAW REGARDING PUBLIC RECORD REQUESTS];

- Amend Section 1 as shown in ***bold italics*** as follows:

SECTION 1. That KPB 2.54.060(B) is hereby amended as follows:

2.54.060. Response to requests for access to public records.

...

B. Request for Records Exempt From Disclosure.

1. Where there is a question as to whether the information or records requested are exempt from disclosure, privileged or confidential, the request shall be referred to the [MAYOR] borough attorney or designee for a ***legal recommendation [DETERMINATION]*** as to whether the material is subject to disclosure. ***The Borough Clerk shall make the final determination regarding disclosure after considering the advice of the borough attorney or designee.***
2. If the information requested is determined to be exempt from disclosure, the person requesting the information shall be advised in ***[A]*** writing, stating the applicable law or rule of exemption, within 3 working days of receiving the request; such writing shall be signed by the ***Borough Clerk or designee. [DEPARTMENT OR DIVISION HEAD OR DELEGATE, OR THE MAYOR OR ADMINISTRATIVE OFFICER, IF APPLICABLE.]***