

Introduced by: Mayor
Date: 07/05/22
Hearing: 08/09/22
Action: Enacted
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2022-28**

**AN ORDINANCE PROVIDING FOR NECESSARY CODE UPDATES RELATING TO
DECLARATION OF DISASTER EMERGENCY AND THE ADMINISTRATION AND
SCOPE OF THE BOROUGH'S EMERGENCY POWERS AND DUTIES**

WHEREAS, the COVID-19 pandemic raised new issues related to the scope of the Kenai Peninsula Borough's (Borough) powers and the administration of its responsibilities during a disaster emergency; and

WHEREAS, an update to Borough code related to disaster emergencies will avoid unnecessary legal exposure, clarify the scope of the Borough's powers during a disaster emergency, and ensure effective administration of such powers during a disaster emergency;

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

SECTION 1. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new section, KPB 1.12.080, which shall read as follows:

1.12.080. - Emergency Actions of the Assembly.

- A. In the event of a disaster as defined by AS 26.23.900 or other emergency, the assembly may adopt emergency ordinances effective upon adoption. Each emergency ordinance must contain a finding by the assembly that an emergency exists and a statement of the facts upon which the finding is based. An emergency ordinance may be adopted, amended and adopted, or rejected at the meeting at which it is introduced. The governing body will print and make available copies of adopted emergency ordinances.
- B. An emergency ordinance may not be used to levy taxes, to grant, renew, or extend a franchise, or to regulate the rate charged by a public utility for its services.
- C. The affirmative vote of all members present, or the affirmative vote of three-fourths of the total membership, whichever is less, is required for adoption of an emergency ordinance, the confirmation or extension of a local disaster declaration or the ratification of emergency actions taken by the executive.

- D. An emergency ordinance, or any other action taken under this section, is effective for 60 days.

SECTION 2. That KPB 2.04.040 is hereby amended as follows:

2.04.040. – Powers and duties - Involuntary Succession – Procedure Resumption.

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 [UNABLE TO DISCHARGE THE POWERS AND DUTIES OF HIS OFFICE DUE TO SOME DISABILITY] 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 [HIS] 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.

SECTION 3. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new section, KPB 2.04.090, which shall read as follows:

2.04.090. – Declaration of Disaster Emergency.

- A. If the borough mayor finds that a disaster as defined by AS 26.23.900 has occurred or that a disaster is imminent or threatened within the borough, the borough mayor may declare a condition of local disaster emergency for the Kenai Peninsula Borough. The borough mayor may make a declaration of disaster emergency when a disaster has occurred within the borough, regardless of any declaration in another municipality or the state.
- B. If the mayor is temporarily absent or disabled, the mayor's designee pursuant to KPB 2.04.030 may declare a disaster emergency and take such actions as are authorized in this section without action of the assembly.

C. The declaration must include:

1. A statement indicating the nature of the disaster or emergency, the area threatened or affected and the conditions that have brought it about or that make possible the termination of the disaster emergency;
2. An initial statement of available resources to address the disaster emergency;
3. An initial statement identifying any borough funds to be expended to respond to the disaster or emergency and any State or other third party funds which may be requested;
4. A statement confirming whether an emergency affecting life, health or safety exists for purposes of KPB 5.28.280.

D. The declaration of local disaster emergency activates the disaster response and recovery aspects of all relevant borough emergency operations plans applicable to the area in question and constitutes authority for the borough to spend emergency or other borough funds as authorized by the assembly, and to receive and administer state, federal or other funding within the bounds of the borough's legal authority.

E. The mayor or designee's declaration of local disaster emergency shall remain in effect for seven (7) days unless extended by the assembly.

SECTION 4. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new section, KPB 2.04.100, which shall read as follows:

2.04.100. - Borough authority.

During the pendency of a disaster emergency declared by the mayor, and if sufficient resources (including personnel, facilities, equipment or any other resource necessary for the adequate exercise of the delegated authority) are determined to be available, the borough may accept and exercise authority expressly delegated by the State to the borough, as its agent, pursuant to AS 26.20.020.

SECTION 5. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new section, KPB 2.04.110, which shall read as follows:

2.04.110. – Emergency Agreements.

- A. Following the declaration of a disaster emergency by the governor pursuant to 26.23.020(c) or by the borough mayor pursuant to AS 26.23.140, the mayor may execute an emergency mutual aid agreement or other cooperative agreement with the state, the federal government, or with any other municipality in the state pursuant to AS 29.35.010(13) for the exchange of aid upon request, including the loan of personnel, equipment and materials and the administration of funds or other resources, all as permitted by law.

- B. The borough will be obligated under such mutual aid agreements to perform duties (i) which are within its legal power and (ii) subject to the availability of sufficient resources.
- C. Any mutual aid agreement promulgated hereunder shall remain in effect until the earlier of (i) the rescission of the relevant local or state emergency disaster declaration or (ii) express rescission of the mutual aid agreement by the assembly.

SECTION 6. That KPB 2.45.010 is hereby amended as follows:

2.45.010. – Established.

There is established an office of emergency management as a department in the Kenai Peninsula Borough. The Senior Manager of the Office of Emergency Management shall administer the department, shall assume primary responsibility for managing and coordinating department responsibilities during a declared disaster emergency, and shall report to the mayor or designee. The department shall be responsible for response to, and recovery from, a declared disaster emergency, for development of borough and inter-jurisdictional disaster response and recovery plans, and for coordination of disaster management between the borough, the State of Alaska, and other municipalities and response and recovery organizations.

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

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 9TH DAY OF AUGUST 2022.

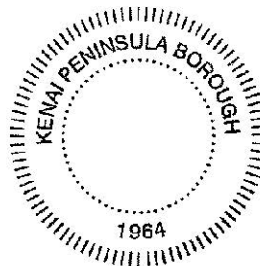
Brent Johnson

Brent Johnson, Assembly President

ATTEST:

Johni Blankenship

Johni Blankenship, MMC, Borough Clerk



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