



## **KENAI PENINSULA BOROUGH**

144 North Binkley Street • Soldotna, Alaska 99669-7520

Toll-free within the Borough: 1-800-478-4441

PHONE: (907) 262-4441 • FAX: (907) 262-1892

www.kpb.us

**MIKE NAVARRE**  
**BOROUGH MAYOR**

### **MEMORANDUM**

**TO:** Blaine Gilman, Assembly President

**FROM:** Colette Thompson, Borough Attorney  
Johni Blankenship, Borough Clerk *(B)*

**DATE:** April 18, 2016

**SUBJECT:** Withdrawal of motion to introduce ordinance

This memorandum responds to your question as to whether you can remove the introduction of ordinance 2016-10 from the assembly agenda. The short answer is that, although you cannot remove it from the agenda, you can withdraw your motion to introduce the ordinance.

#### Discussion

During the April 5, 2016 assembly meeting, after passing the gavel to Vice-President Brent Johnson, you moved to introduce ordinance 2016 and set it for hearing. Assembly member Gary Knopp gave the committee report and deferred to you to speak to the ordinance. You briefly described it, and after Mr. Johnson returned the gavel you invited the public to speak to the ordinance. Public comment on the motion continued until midnight<sup>1</sup> at which time the meeting was adjourned, and the matter automatically carried over to the next meeting of April 19, 2016 in accordance with KPB 22.40.200. You have asked if this can now be removed from the agenda.

KPB 22.40.050(B) allows the sponsor of an ordinance for introduction or resolution to remove an item from the agenda before the agenda is approved, unless the item has been carried over or postponed from a previous agenda. Because this ordinance will be carried over from the April 5, 2016 meeting to the April 19, 2016 meeting this provision does not authorized you to withdraw it from that agenda.

KPB 22.40.055 provides for the withdrawal from the agenda an ordinance or resolution that has been introduced and set for hearing before public hearing. As ordinance 2016-10 has not yet been introduced and set for hearing that provision does not apply to withdrawing it at this time.

However, under Mason's Manual of Legislative Procedure, which governs the rules of procedure for the assembly per KPB 22.40.030, the mover of a motion may withdraw a motion without

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<sup>1</sup> The assembly had previously approved a motion to extend the meeting to midnight per KPB 22.40.200(a).

asking consent of the body until the motion is stated by the presiding officer to the body as a question for its determination. During the April 5, 2016 meeting you made the motion to introduce. However, neither of the presiding officers stated it as a question for determination by the body. Instead public hearing on the motion was commenced. Until the motion is stated by the presiding officer to the body for its action, according to Mason's the motion is not yet in possession of the body for its action.<sup>2</sup>

Accordingly, it appears that the person who moved for the introduction and setting for hearing of this ordinance may still withdraw it. I have found nothing to suggest that holding the hearing means the body had impliedly taken possession of the motion. If there is any doubt on this point, an option is available for the original mover to request consent of the body to withdraw the motion.<sup>3</sup>

Finally, it should be noted that the rules do not prevent another assembly member from moving to introduce this ordinance if the motion is withdrawn by the original maker of the motion. However, any such motion would have to be made before the body moves to the next item on the agenda as a motion must be proposed at the appropriate time.<sup>4</sup>

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<sup>2</sup> Mason's Manual of Legislative Procedure, §272-3 (Nat'l Conf. of State 2010 ed.). Although the motion was made by the president, he had passed the gavel and was not the presiding officer when he made the motion.

<sup>3</sup> Mason's, §273.

<sup>4</sup> Mason's, §§155 and 156.