

MEMORANDUM

TO: Kelly Cooper, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Johni Blankenship, Borough Clerk (JB)
Sean Kelley, Deputy Borough Attorney (SK)

DATE: June 2, 2020

RE: Ordinance 2020-24, Amending KPB Title 4 Regarding Borough Elections to Provide for Vote by Mail Elections, for More Time Between a Regular Election and a Run-Off Election, and to Remove Proposition Statements (Cox, Dunne, Hibbert, Smalley)

The borough assembly introduced Ordinance 2020-24 following a process that began in 2015. The following timeline of events is provided for your reference:

November 5, 2015	The Kenai Peninsula Borough (KPB) was notified by the Alaska State Human Rights Commission (hereinafter the Commission) of a complaint filed by Richard Malley against KPB alleging that the KPB discriminated against Mr. Malley on the basis of a physical disability by not providing use of ADA compliant voting equipment at a borough election.
December 2015 – conducted November 2017	KPB responded to allegations, the Commission then an investigation and completed its internal review.
October 16, 2018	The Commission issued its determination that the complainant's allegations were supported by substantial evidence. The parties then pursued conciliation to avoid further litigation.
December 19, 2018	The Commission approved the Conciliation Agreement entered into by Mr. Malley and the KPB to resolve the allegations in the complaint. Per Section III, Remedial Provision (B) & (C) of the agreement, KPB agreed to explore the "option of distributing all ballots to all voters by mail and establish vote centers with accessible voting equipment open two-weeks prior to each election."

- January 1, 2019 **ADOPTED Resolution 2019-006:** A Resolution Directing the Kenai Peninsula Borough Clerk to Establish an Election Stakeholders Group (ESG) to Explore Implementing Optional Election Models to Better Serve Kenai Peninsula Voters and Ratifying a State of Alaska Commission for Human Rights Conciliation Agreement (Ogle)
- In Compliance with Conciliation Agreement, Section III. Remedial Provision (B).*
- February - July, 2019 Election Stakeholders Group (ESG) meetings were publically noticed, held in the assembly chambers, and open to the public. The ESG held 12 meetings over the course of six months and heard presentations from State and local election officials, the public, and elected representatives. Discussion focused on improvement of borough elections and evaluation of voter engagement, cost, collaboration, and efficiencies. Ultimately, the group unanimously approved its final report containing 6 specific recommendations.
- March 26, 2019 KPB adopted "Non-Discrimination on the Basis of Disability" policy.
- In Compliance with Conciliation Agreement, Section III. Remedial Provision (A).*
- August 6, 2019 Election Stakeholders Group Chair Ostrander presented the final report of the ESG to the Assembly.
- In Compliance with Conciliation Agreement, Section III. Remedial Provisions (C) & (E).*
- September 3, 2019 **ADOPTED Resolution 2019-047:** Adopting Joint Resolution No. 2019-001 Of The Assembly of the Kenai Peninsula Borough and Councils of the Cities of Homer, Kachemak, Kenai, Seldovia, Seward and Soldotna, Recognizing The Recommendations of the Kenai Peninsula Borough's Election Stakeholders Group and Directing Staff to Explore Implementation of the Recommendations (Dunne, Fibbert)
- November 5, 2019 **FAILED TO ENACT Ordinance 2019-23:** Amending KPB Titles 2, 4 And 16 Regarding Service Areas to Provide That All Kenai Peninsula Borough Service Area Boards Are Appointed Instead of Elected (Dunne, Hibbert) *ESG Recommendation No. 5*
- December 27, 2019 Mayor authorized Sole Source Waiver for Vote by Mail Project Analysis to Resource Data, Inc.

- January 27, 2020 KPB Contracted with Resource Data, Inc. to conduct a feasibility study on vote by mail elections.
- May 5, 2020 Dennis Wheeler from Resource Data, Inc. presented the results of the feasibility study to the Assembly and the Administration during a work session.
- May 5, 2020 **INTRODUCED Ordinance 2020-24:** Amending KPB Title 4 Regarding Borough Elections to Provide for Vote by Mail Elections, for More Time Between a Regular Election and a Run-Off Election, and to Remove Proposition Statements (Cox, Dunne, Hibbert, Smalley) (set for public hearing on June 2, 2020.)
- In Compliance with Conciliation Agreement and pursuant to the ESG Recommendations No. 1, 4 and 6.*
- May 11, 2020 ADOPTED Resolution 20-044(A) A Resolution of the City Council of Homer, Alaska Recommending the Kenai Peninsula Borough Enact Ordinance 2020-24 Which Would Provide for Vote by Mail System for Elections Borough Wide (Aderhold/City Clerk)
- May 11, 2020 ADOPTED Resolution 20-27 A Resolution of the City Council of Seldovia, Alaska, Recommending the Kenai Peninsula Borough Enact Ordinance 2020-24 Which Would Provide for a Vote by Mail System for Elections Borough Wide (City Clerk)
- May 13, 2020 ADOPTED City of Soldotna Resolution 2020-022 Recommending the Kenai Peninsula Borough Assembly Enact Ordinance 2020-24 Which Would Provide for Vote by Mail Elections, More Time Between a Regular Election and Run-Off Election and to Remove Proposition Statements (L. Parker)

Outstanding Remedial Provisions of the Conciliation Agreement

- December 18, 2020 The borough shall submit a final report to the Commission describing in detail the efforts taken to adopt and implement a program allowing for the private and independent voting of visually impaired voters, the present and projected success of those efforts, and barriers to implementation

Conciliation Agreement, Section III, Remedial Provision (I)

Per Section III, Remedial Provision (K): in the event the KPB does not adopt a program allowing for the private and independent voting of visually impaired voters, the Commission may certify the failure of the conciliation under 6 AAC 30.340(E).