

Kenai Peninsula Borough

Clerk's Office

MEMORANDUM

TO: Members, Kenai Peninsula Borough Assembly

THRU: Peter A. Micciche, Mayor *PM*
Brent Johnson, Assembly President *BJ*

FROM: Michele Turner, Acting Borough Clerk *(MT)*
Sean Kelley, Borough Attorney *SK*

DATE: June 8, 2023

RE: Ordinance 2023- *15*, Amending Borough Code Title 4, Elections, Regarding Declared Write-In Candidates, Canvass of Election Returns, Public Notice, and Certification of Election Results (Mayor, Johnson)

Note from Mayor Micciche and Elections/Legal Staff: A primary responsibility of the Kenai Peninsula Borough is transparent elections and the processes that lead to such. Following the special mayoral election, staff, Mayor Micciche, Assembly members, election workers, and constituents, identified sections of the Borough's election code that should be improved and clarified in order to ensure that each key step is documented within Borough elections, executed accordingly, and demonstrated to the public.

At the outset, it is important to recognize that Borough elections are secure and transparent. There is not an election integrity issue in the Kenai Peninsula Borough. The recent special election did, however, present several unique scenarios related to public awareness of Canvass Board meetings, the availability of an adequate meeting space for the public to view canvassing operations and the counting of write-in candidate vote results by individuals. While the Borough Clerk's Office acknowledged that the language in Borough code required the write-in votes by individual in this unique case per Borough Code, it was also clear to canvass board that a candidate surpassed the required 50% +1 vote threshold to be certified the winner of the election, and a run-off election would not be necessary. Nonetheless, the Borough must be transparent and identify code language regarding write-in candidates, the public Canvass Board process, and reporting of write-in votes by individual that should be clarified to avoid a similar future situation.

This Ordinance brings forward input from constituents and election workers aimed to improve and further fortify Borough election code. The amendments clarify what it means to be a "declared write-in candidate" and the vote thresholds that trigger the reporting of write-in votes individually. The proposed amendments set forth the Canvass Board process chronologically, and emphasize that the process must be open to the public. The proposed amendments include additional public notice and posting requirements for Canvass Board meetings so that the public is fully aware of the board's tentative and actual meeting schedule. The Ordinance also provides that rules will be developed for observing the Canvass Board, because to protect the integrity of the process we must also protect the election workers who work long, methodical, hours to safeguard the integrity and accuracy of the results.

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The below breakdown provides additional details regarding these proposed changes. This Ordinance is brought forward to clarify and improve current code, not re-write Borough elections code. Borough elections have been and will continue to be safe, secure, transparent, and accurate. Statements to the contrary tend to center on concerns with recent State or Federal elections, which the Borough does not administer.

Thank you – Mayor Micciche, Elections Staff and Legal

Details of amendments in the Ordinance:

Amendments to KPB 4.30.020

- Subsection B – Clerical edits
- Subsection C – Repealed. It is redundant and already stated under Subsection B.
- Remaining Subsections are re-ordered.
- Subsection G – New subsection that sets forth the process for a declared write-in candidate and the fact that a write-in candidate's name or information will not be published on the borough website or in published election materials (due to missing the Declaration of Candidacy deadline to be a candidate on the ballot.)

Amendments to KPB 4.70.050

- Subsection A – Removes some canvass board discretion or subjectivity.
- Subsection B – clerical edits.
- Subsection C – Contains substantive to clarify when write-in votes need to be reported individually. Write-in votes will be reported individually when the total number of write-in votes is "materially significant" to the outcome of the race. Materially significant means: (1) the total number of write-in votes exceeds that of all other candidates; or (2) the total number of write-in votes exceeds the tabulated votes for the second-highest number of votes cast for a candidate whose name is printed on the ballot and a run-off election is required between the two top-vote-getting candidates.
 - o In sum, if the total number of write-in votes is greater than the number of votes for all other candidates than necessarily write-in votes must be reported by individual. In addition, write-in votes will be reported individually if the total number of write-in votes is greater than the second place vote getter AND a run-off is required because the candidate receiving the most votes did not receive a sufficient number of votes to be certified as the winner.

Amendments to KPB 4.90.020

- With substantial input from the chair of the canvass board, this section was edited and reordered to set forth the canvass board process in chronological order.
- The amendments set forth following chronological process:
 - o Subsection A – At least 2 weeks prior to the election date, the borough clerk's office will post the tentative schedule of the canvass board on the borough website. Rules of conduct for viewing a meeting of the canvass board will be posted and available at the clerk's office.

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- Subsection B – Within a week of the start of absentee voting, the canvass board will meet in public session to adjudicate the suitability of absentee, special needs and question ballot envelopes. “Adjudicating the suitability” is discussed in more detail in subsection D which is really limited to deficiencies on the face of the ballot envelope. The canvass board will not tally votes during this process and will not open the ballot envelope until the adjudication of their suitability has been completed.
- Subsection C – On the first day following the election day, the canvass board will ensure the precinct’s recorded vote total matches the precinct’s results tape. Discrepancies between the two will trigger a recount for that precinct. If there are no discrepancies identified in any of the precinct’s results then the canvass board will nonetheless choose at least one precinct at random to recount.
- Subsection D – Details the ballot envelope cure process available to an absentee voter. The cure process may not be used to change a vote. This subsection also provides that the failure to cure will result in rejection of the envelope and ballot and the ballot will not be counted.
- Subsection E – No later than the weekend prior to certification the canvass board will open and cast accepted ballots and compile the vote total. This process, as always, is open to the public will be noticed on the borough website, the borough’s official social media pages, and posted at the borough clerk’s office. The process will occur in a place that is open and accessible to the public.
- Subsection G – Retains the deadline in code for the receipt of a precinct’s results tap in order for a precinct’s results to be included in

Repeal of KPB 4.90.030

- This section is repealed because it is duplicative to the new KPB 4.90.020(D)(6) which describes rejection of ballots when the ballot envelope is not cured.

Amendments to KPB 4.90.050

- Subsection A – Incorporates flexibility for when the Assembly must meet in public session to receive the report of the canvass board.
- Subsection B – unchanged.
- Current Subsection C – repealed due to the fact that this process is already addressed under KPB 4.90.020 and is duplicative. The canvass board will recount any apparent discrepancies in the returns of one or more precincts.
- Subsection D – Adds a clerical edit.

Your consideration is appreciated.