

Introduced by: Cooper, Smalley
Date: 01/22/19
Hearing: 02/19/19
Action: Enacted as Amended
Vote: 8 Yes, 1 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-02**

**AN ORDINANCE AMENDING KPB TITLE 3 TO ENACT LOCAL PROVISIONS
FOR PROTECTION OF WHISTLEBLOWERS**

WHEREAS, Alaska Statutes 39.90.100-.150 provide protection for whistleblowers and include an exemption for municipalities that adopt an ordinance that provides protections for its employees and other personnel that are substantially similar to the statutory protections; and

WHEREAS, including whistleblower protections in the borough code would help to ensure the borough is held to the highest standards in transparency and ethical behavior; and

WHEREAS, protection of whistleblowers and clarifying these procedures will help to ensure that borough employees and management have the ability to report matters of public concern without fear of retribution;

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

SECTION 1. That KPB 3.04.307 is hereby enacted as follows:

3.04.307 Protection for whistleblowers.

A. Persons Protected.

1. The borough may not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:
 - a. The employee, or a person acting on behalf of the employee, reports to a public body or is about to report to a public body a matter of public concern; or
 - b. The employee participates in a court action, an investigation, a hearing, or an inquiry held by a public body on a matter of public concern.

2. The borough may not disqualify an employee or other person who reports a matter of public concern or participates in a proceeding connected with a matter of public concern before a public body or court, because of the report or participation, from eligibility to bid on contracts with the borough, receive land under a borough ordinance, or receive another right, privilege, or benefit.
3. The provisions of this section do not:
 - a. Require the borough to compensate an employee for participation in a court action or in an investigation, hearing, or inquiry by a public body;
 - b. Prohibit the borough from compensating an employee for participation in a court action or in an investigation, hearing, or inquiry by a public body;
 - c. Authorize the disclosure of information that is legally required to be kept confidential; or
 - d. Diminish or impair the rights of an employee under a collective bargaining agreement.

B. Limitation to Protections.

1. A person is not entitled to the protections under this section unless the person reasonably believes that the information reported is or is about to become a matter of public concern and reports the information in good faith.
2. A person is entitled to the protections under this section only if the matter of public concern is not the result of conduct by the person seeking protection or is the result of conduct by the person that was required by the person's employer.
3. Before an employee initiates a report to a public body on a matter of public concern under this section, the employee shall submit a written report concerning the matter to the borough *mayor*. However, the employee is not required to submit a written report if the employee believes with reasonable certainty that the activity, policy, or practice is already known to the *mayor* or that an emergency is involved. The protections of subsection (A) of this section apply to reports made to the borough *mayor* under this section.

C. Relief and Penalties.

1. A person who alleges a violation of this section may bring a civil action and the court may grant appropriate relief.
2. A person who violates or attempts to violate this section is also liable for a civil fine of not more than \$10,000.

D. Definitions. In this section:

“Employee” or *“public employee”* means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, for the borough;

“Matter of public concern” means:

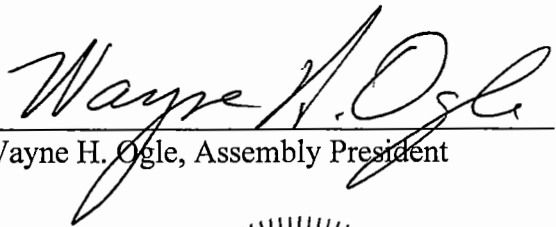
1. A violation of a state, federal, or municipal law, regulation, or ordinance;
2. A danger to public health or safety; or
3. Gross mismanagement, a substantial waste of funds, or a clear abuse of authority;

“Public body” includes an officer or agency of:


1. The federal government;
2. The state;
3. A political subdivision of the state including the Kenai Peninsula Borough, another municipality or a school district;
4. A public or quasi-public corporation or authority established by state law including the Alaska Railroad Corporation; and
5. The University of Alaska.

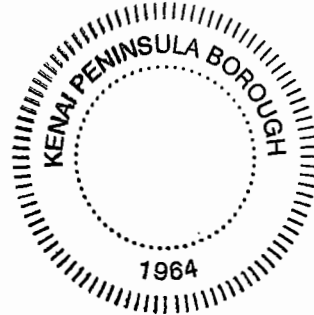
SECTION 2. That this ordinance shall become effective upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 19TH DAY OF FEBRUARY, 2019.


Wayne H. Ogle, Assembly President

ATTEST:


Johni Blankenship, MMC, Borough Clerk



Yes: Bagley, Carpenter, Cooper, Dunne, Fischer, Hibbert, Smalley, Ogle
No: Blakeley
Absent: None