

# **Kenai Peninsula Borough**

*144 North Binkley Street*

*Soldotna, AK 99669*



## **Meeting Agenda**

**Tuesday, February 16, 2021**

**12:30 PM**

**Work Session - Role of the Administration and Assembly (Continued from  
01/19/21)**

**Betty J. Glick Assembly Chambers**

**Committee of the Whole**

**ITEMS NOT APPEARING ON THE REGULAR MEETING AGENDA**

[KPB-2947](#)      Role of the Administration and Assembly

*Attachments:*      [Presentation](#)

# Kenai Peninsula Borough Assembly & Mayor

Authority &  
Responsibility



# Broad Basics

- ▶ Legislative and Executive Powers.
  - ▶ The Assembly is vested with legislative power per AS 29.20.050.
    - ▶ This is generally the authority to enact laws but not to enforce them or to appoint the parties charged with enforcement duties.
  - ▶ The Mayor is vested with executive power per AS 29.20.220(a).
    - ▶ Generally, the executive power includes the power to enforce or execute a law already in existence.

# Overview of Assembly Roles & Responsibilities

- Procedural responsibilities and roles.
- When is an ordinance required?
- Assembly's Roles in Borough Personnel Matters
- Assembly's Authority & Roles in Borough Finances
- Assembly's Duties Re School District
- Assembly Authority re Planning Commission
- Miscellaneous Assembly Authority
- Vacancy in Office of Mayor



# Assembly's Procedural Responsibilities and Roles

- ▶ Elect a presiding officer and a deputy presiding officer to serve at the pleasure of its members. AS 29.20.160(a).
- ▶ Hold at least one regular meeting each month unless otherwise provided by ordinance. AS 29.20.160(b).
- ▶ Provide reasonable opportunity for the public to be heard at its regular and special meetings. AS 29.20.020.
- ▶ Comply with the Open Meetings Act. AS 29.20.020.
- ▶ Adopt an ordinance governing assembly members' conflicts of interest satisfying the requirements of AS 29.20.010. See KPB 22.40.140 and KPB Chapter 2.90 (Code of Ethics).
- ▶ Provide for the assembly's composition and the form of its representation no later than the first election after adoption of a final state redistricting plan. See AS 29.20.070 - 29.20.120 (e.g. reapportionment.)

# More Assembly Procedural Authority & Responsibilities

- ▶ Maintain a journal of its official proceedings - shall be a public record. AS 29.20.160(e). (e.g. *the minutes.*)
- ▶ Determine its own rules of procedure and order of business by ordinance to the extent otherwise allowed by law. AS 29.20.160(f).
- ▶ Provide by ordinance how a vacancy occurs in any elected office except the office of mayor or school board member. AS 29.20.170. Provided in KPB 22.30.040. (e.g. service area boards,
- ▶ Fill an assembly vacancy within 30 days unless otherwise provided by ordinance (AS 29.20.180.) KPB 22.30.060 states: Vacancy is filled by majority of remaining assembly members no later than 2<sup>nd</sup> meeting after resignation is accepted unless there are 45 days or less remaining until the next regular election.
- ▶ May by ordinance establish advisory, administrative, technical, or quasi-judicial boards and commissions, the members of which are appointed by the mayor and confirmed by the assembly. AS 29.20.320.
- ▶ May initiate the adoption of a manager plan of government for submission of the question to the voters. AS 29.20.460 - .490. If such plan is approved by the voters, the governing body shall appoint a manager by majority vote as provided in AS 29.20.490.



# More Procedural Actions in Assembly Purview

- ▶ Follow the procedure for adopting ordinances and emergency ordinances in AS 29.25.020 and AS 29.25.030. See KPB 1.12.010 for details.
- ▶ The assembly may enact emergency appropriations to meet public emergencies affecting life, health, welfare or property, by ordinance, without notice of public hearing. The emergency shall be clearly stated in the preamble and is effective upon adoption, unless the ordinance sets a different effective date. It must be approved by  $\frac{3}{4}$  of members present and expires after 60 days. Cannot be used to levy taxes, and other purposes in AS 29.25.030(b). KPB 5.04.080
- ▶ Provide for the maintenance of a permanent file of resolutions that have been adopted. AS 29.25.060. (These are maintained by the Clerk's office and available on-line.)
- ▶ Prescribe the rules for conducting an election and appoint an election board for each precinct. AS 29.26.010.
- ▶ Establish a procedure by ordinance for acquiring and disposing of land and interests in land by the borough. AS 29.35.090. See KPB Chapter 17.10.



# Sample disasters supporting emergency ordinances



# When is an ordinance required?

- ▶ Ordinances tend to be more permanent in effect than Resolutions.
- ▶ An Ordinance is Required by Alaska Statutes to:
  - ▶ make appropriations;
  - ▶ adopt the power to assess, levy, and collect a property tax. AS 29.45.240.  
*Note: the property tax levy amount is set by resolution.*
  - ▶ authorize a sales tax rate, but an increase to the voter-approved rate, must first be approved by the voters.
  - ▶ adopt, modify, or repeal the comprehensive plan, land use and subdivision regulations, building and housing codes, and the official map;
  - ▶ provide for a fine or other penalty;
  - ▶ provide for the retention or sale of tax-foreclosed property;
  - ▶ grant, renew, or extend a franchise;
  - ▶ approve the transfer of the power to the borough from a city;
  - ▶ designate the borough's seat;
  - ▶ exempt contractors from payment and performance bond requirements.

AS 29.25.010

Budget must be by enacted by ordinance





# Assembly's Roles in Borough Personnel

- ▶ Statutes require the assembly to confirm the appointment of the municipal clerk, attorney, treasurer, and police chief unless otherwise provided by ordinance. AS 29.20.360.
- ▶ KPB requires confirmation of appointment of all directors at KPB 2.20.030 within 90 days of appointment to office.
- ▶ May establish municipal departments and distribute functions among them by ordinance. AS 29.20.400; AS 29.25.010(a)(1).
- ▶ May provide for a personnel system and classified service, and, by ordinance, may designate confidential or managerial positions that are wholly or partially exempt from the classified service. See Title 3 of the code. A person serving in a wholly or partially exempt position serves at the pleasure of the appointing authority. AS 29.20.410(b).
- ▶ By ordinance shall provide a method for determining salaries of elected officials. AS 29.20.620.
- ▶ Assembly may hear certain appeals from certain non-union employees per the code.
- ▶ Assembly authority does not include managing departments.

# Assembly Financial Roles & Authority

- Establish the manner for preparation and submission of the budget and capital program.
- May approve the budget after a public hearing with or without amendments and shall appropriate the money required for the approved budget. AS 29.35.100.
- Shall provide for an annual independent audit of the accounts and financial transactions of the borough. AS 29.35.120.
- May levy a property tax and, if levied, the tax must be assessed, levied, and collected as provided in AS 29.45.010 - .500.
- May levy and collect a sales tax on sales, rents, and services provided in the borough and a use tax on the storage, use, or consumption of tangible personal property in the borough, subject to voter ratification as provided in AS 29.45.650 - .680.
- Prescribe by ordinance the procedures for creating special assessment districts, making local improvements, levying and collecting assessments, and financing improvements as provided in AS 29.46.010 - .140.
- May provide for the issuance of debt in the manner established in AS 29.47.010 - 470. This generally includes revenue anticipation notes, bond anticipation notes, general obligation bonds, revenue bonds, and refunding bonds.

# Assembly & School District







# Assembly Duties Re School District

- The Assembly shall determine the total amount of money to be made available from local sources for school purposes within 30 days after receipt of the school budget. If the assembly fails to do this, then the amount requested in the budget is automatically approved. Also, the assembly shall appropriate the amount to be made available from local sources by June 30 except as otherwise provided by ordinance. AS 29.35.160(a) and AS 14.14.060(c).
- Shall determine the location of school buildings after considering school board recommendations. AS 14.14.060(d).
- Approve the selection by the school board of appropriate professional personnel to develop designs for school buildings. AS 14.14.060(e).
- Through the borough mayor, shall provide for all major rehabilitation, construction, and major repair of school buildings after considering the recommendations of the school board. AS 14.14.060(f).





# Assembly Authority re Planning Commission

- Establish a planning commission and confirm members appointed by the mayor. AS 29.40.020.
- Shall adopt comprehensive plan by ordinance and, after receiving planning commission recommendations, periodically undertake a review of the comprehensive plan and update it as necessary. AS 29.40.030.



- Adopt or amend provisions governing the use and occupancy of land by ordinance as provided by AS 29.40.040.
- Provide for an appeal from an administrative decision of a municipal employee, board, or commission regarding the enforcement, administration, or application of a land use regulation. AS 29.40.050. (See Title 21.20 Appeals.)
- Either consent to or veto the vacation of a street. AS 29.40.140.



# Miscellaneous Assembly Authority

- May establish a local historical district commission pursuant to AS 29.55.010 - .020.
- May consent to the continuation beyond seven days of a declaration of disaster as provided in AS 26.23.140.
- May establish, operate, alter, or abolish, by ordinance, a service area, subject to voter approval of the exercise of the power and certain other restrictions as set out in AS 29.35.450.
- May establish a program for reporting hazardous chemicals, materials, and waste in accordance with the provisions of AS 29.35.500 - .590.
- May create by ordinance a port authority as a public corporation of the municipality subject to approval by the voters of the borough as provided in AS 29.35.600 - .730.
- Shall cause a protest to be filed with the State Alcohol Beverage Control Board for certain applications for a new license or renewal of a license for the sale of alcoholic beverages. KPB 7.10.010.



# Vacancy in Office of Mayor

- By two-thirds concurring vote, the assembly shall declare the office of mayor vacant only when the person elected:
  - (1) fails to qualify or take office within 30 days after election or appointment;
  - (2) unless excused by the governing body, is physically absent for 90 consecutive days;
  - (3) resigns and the resignation is accepted;
  - (4) is physically or mentally unable to perform the duties of office;
  - (5) is convicted of a felony or of an offense involving a violation of the oath of office;
  - (6) is convicted of a felony or misdemeanor described in AS 15.56;
  - (7) is convicted of a violation of AS 15.13; or
  - (8) no longer physically resides in the municipality

Authority: AS 29.20.280.

# Overview of Borough Mayor Roles & Responsibilities

- ▶ Chief Administrator of the Borough
- ▶ Mayor's Financial Duties & Authority
- ▶ Mayor's Authority & Duties Regarding Taxation Collection
- ▶ Service Areas – Mayor Roles & Authority
- ▶ Lands – Mayor Roles & Authority
- ▶ Veto Authority of Mayor
- ▶ Mayor's General Responsibilities





# Mayor's General Authority & Responsibilities

- ▶ The mayor is vested with the executive power of the borough which is essentially the power to enforce or execute laws already in existence.
- ▶ Specifically, the mayor:
  - ▶ Is the Chief Administrator of the borough.
  - ▶ Executes official documents on authorization of the governing body.
  - ▶ Serves as the ceremonial head of the government.
  - ▶ Supervises the enforcement of municipal law and carries out the directives of the governing body. AS 29.20.500(2).
  - ▶ May introduce an ordinance or resolution. AS 29.25.020(b)(1) and KPB 22.40.050.
  - ▶ Is responsible for other duties prescribed in Title 29 and the borough code of ordinances. AS 29.20.220.
  - ▶ May veto an ordinance, resolution, motion, or other action of the assembly, and may strike or reduce appropriation items as provided in AS 29.20.270.



# Chief Administrator Authority & Duties

- The mayor is the Chief Administrator of the borough. The mayor oversees the departments, service areas, and boards to implement applicable programs, policies and requirements enacted by the assembly.
- The mayor may hire certain necessary administrative assistants and authorize an administrative official to appoint, suspend, or remove subordinates. AS 29.20.500.
- Appoint, suspend or remove municipal employees and administrative officials except as otherwise provided by law and restricted by AS 14.14.065 (relating to school district employees.) See *Title 3.04 of the code*.
- May adopt personnel policies consistent with applicable local, state and federal law regarding employee rights and responsibilities.

# Mayor - Finance Duties & Authority

- Prepare and submit an annual budget and capital improvement program to the assembly and execute the budget and capital improvement program adopted. AS 29.20.500(3).
- May transfer unencumbered budget balances between line items within major classifications or departments without assembly approval. KPB 5.04.100.
- May transfer surplus balances from completed capital improvement projects to other projects previously authorized by the assembly and shall report such transfers to the next regular or special meeting of the assembly subject to the restrictions in KPB 5.04.100(B).
- May incur obligations and make expenditures on behalf of the borough within the limits of the approved budget. KPB 5.08.030.
- Shall establish and initiate procedures to maintain control of and accountability of expenditures. KPB 5.08.040.
- Shall make a monthly report of receipts, expenditures, and fund balances to the assembly. KPB 5.08.050.
- May approve purchases made on behalf of the borough in accordance with KPB Chapter 5.28.
- Hears appeals by bidders from purchasing decisions made by staff as provided in KPB 5.28.320.



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# Mayor's Authority & Duties Regarding Taxation Collection

- May approve tax adjustment requests for real property taxes as provided in KPB 5.12.119.
- Oversees enforcing the sales tax registration reporting and collection requirements as provided in KPB Chapter 5.18.
- Shall hear any appeal to the mayor of a decision of a borough official regarding the application of the sales tax code.
- May forgive the payment of uncollected sales taxes, interest, and penalty only in extremely limited circumstances as provided in KPB 5.18.270.



# Service Areas – Mayor Roles & Authority

- Before a service area is formed, prepares a report as described in KPB 16.04.030 regarding a proposed service area.
- Oversees service area board functions once formed. KPB 16.04.001.
- Once a service area is formed, oversees and coordinates with service area administrators and boards, as appropriate, regarding operational, financial, capital and other issues that may arise.

# Lands – Mayor Roles & Authority

- ▶ Exercises custody over all real and personal property of the borough, except property of the school district. AS 29.20.500(5).
- ▶ Authorized to adopt land management plans and procedures regarding borough lands and resources and subject to the procedures and requirements of KPB Chapter 17.10.
- ▶ Authorized to enter contracts regarding the salvage or harvest of dead and mature timber in accordance with the procedures in KPB 17.08.010 - .020.
- ▶ The mayor or his designee publishes a timber management report every year as provided in KPB 17.50.010 and is authorized in that chapter to dispose of forest resources in accordance with the procedures of KPB Chapter 17.50 and AS 29.20.500(7).



Borough Administrative Building – one example of borough lands.



# Veto Authority of Mayor

- May veto an ordinance, resolution, motion, or other action of the assembly, and may strike or reduce appropriation items except items listed in AS 29.20.270(c) and an ordinance adopted under AS 04.11.501 (relating to the prohibition of possessing alcoholic beverages following election by the voters):
  - AS 29.20.270(c): The veto does not extend to
    - (1) appropriation items in a school budget ordinance;
    - (2) actions of the governing body sitting as the board of equalization or the board of adjustment;
    - (3) adoption or repeal of a manager plan of government.

# Other Miscellaneous Roles & Authority of Mayor

- ▶ The mayor is authorized to participate in the discussion of a matter before the assembly. AS 29.20.250(a).
- ▶ May declare a local disaster emergency for the borough for a maximum of seven days as provided in AS 26.23.140.
- ▶ Prepares reports as required for assembly consideration of special assessment districts. See, e.g., KPB 5.35.110.
- ▶ Perform other duties required by law or by the governing body. AS 26.20.500(6).



Thank you!