

Introduced by: Bjorkman, Elam
Date: 04/20/21
Hearing: 05/18/21
Action: Postponed as Amended
to 06/15/21
Vote: 8Yes, 1 No, 0 Absent
Date: 06/01/21
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2021-18**

**AN ORDINANCE AMENDING TITLE 4 REGARDING BOROUGH ELECTIONS AND
ENACTING A NEW CHAPTER OF CODE, KPB 4.60, ELECTION SECURITY AND
INTEGRITY, TO ENSURE BOROUGH ELECTIONS ARE ACCESSIBLE, RELIABLE
AND SECURE**

WHEREAS, the peoples' confidence in the integrity of election results is reliant on their confidence in the security of the election equipment, election workers, and infrastructure that make elections possible; and

WHEREAS, free and fair elections play a vital and integral role in a democratic society; and

WHEREAS, all election equipment must be publicly tested, secure, and accountable in order to prove its reliability; and

WHEREAS, poll watchers must be able to closely observe elections; and

WHEREAS, voters must show proper identification to an election official before voting; and

WHEREAS, any absentee by-mail ballots must be witnessed and the voter's identity verified; and

WHEREAS, any reasonable suspicion of election fraud should be forwarded to the Alaska Attorney General; and

WHEREAS, this ordinance enacts a new chapter in borough code to establish election security and publicity procedures to protect the integrity of local elections;

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

SECTION 1. That KPB 4.50.110 is hereby amended as follows:

4.50.110. Closing of the polls.

- A. Fifteen minutes before the closing of the polls, and at the time of closing the polls, an election official shall announce both the designated closing time and the actual time at which the announcement is made. Failure to make the announcement at 15 minutes before closing time shall not in any way invalidate the election or extend the time for closing of the polls. After closing, no person will be allowed to enter the polling place for purposes of voting. Every qualified voter present and in line at the time prescribed for closing the polls may vote.
- B. When the polls are closed and the last vote has been cast, the election board shall account for all ballots by completing a ballot statement containing, in a manner prescribed by the clerk, the number of official ballots supplied.
- C. The election board shall count the number of questioned ballots and shall compare that number to the number of questioned voters in the register. Discrepancies shall be noted on the ballot statement.
- D. The election board shall announce the total vote tally and sign the final results tape. No less than two members of the election board shall transport the election tabulator and election materials to the election supervisor in accordance with KPB 4.60.050.

SECTION 2. That KPB Chapter 4.60. Election Integrity and Security is enacted as follows:

4.60.010. Purpose; Scope.

The purpose of this chapter is to ensure borough elections are secure and reliable, and to provide added public trust in the integrity of borough election results. This chapter only applies to local elections administered by the borough.

4.60.020. - Elections security.

- A. A ballot printer who prepares ballots for use at a borough election will be provided a certificate to sign indicating that any overruns have been destroyed and that all official ballots ordered by the borough have been delivered to the election supervisor. Upon receipt of the official ballots from the printer, the election supervisor shall secure the ballots. A locked room with access limited to election personnel will be provided wherever possible.
- B. When voted absentee ballots begin to arrive in the election supervisor's office, the ballots will be secured and access limited to personnel of the Clerk's Office and the Canvass Board. The absentee ballots will be bundled, date stamped by bundle, and processed according to the date stamped for

the bundle. The information contained on the affidavit envelope will be compared to the master list of registered voters. The register may be reviewed by interested persons at any time during the election process at the election supervisor's offices.

- C. The security of the polling place and electronic voting equipment must be maintained by the Election Board during the hours when election equipment is present at the polling place. The Election Board shall inspect the tamper-evident seal on electronic voting equipment upon receipt and before the polls open on the day of the election and shall immediately report any evidence of tampering to the election supervisor.
- D. After the counting of voted ballots has been completed in a precinct, the Election Board shall seal the ballots in the envelopes provided and place their initials across the seal.
- E. The central ballot counting center is located in Soldotna at the Borough Administration Building in the Clerk's Office. Access into the central ballot counting center is restricted to those persons approved by the election supervisor. The election supervisor will prepare the listing of persons who will have access to the restricted area and provide those persons with the appropriate identification.
- F. Following the counting of absentee and questioned ballots at the central ballot counting center, the ballot containers must be sealed. The election supervisor shall prepare a receipt indicating the number of containers of ballots. When the count is completed, the ballots must be transported to the arranged secured storage areas previously determined by the election supervisor.

4.60.030. Ballot tabulator tests and security.

- A. The automatic tabulating equipment used for counting ballots (tabulator) at voting places shall be tested publically two times for each election: before the election, and before the counting of ballots. After the counting of ballots a post-election audit shall be performed.
- B. Before an election, the tabulator must be tested as follows:
 - 1. The election coordinator board is responsible for performing and certifying the initial logic and accuracy test of the ballot counting program and memory cards;
 - 2. The election review board is responsible for performing a second logic and accuracy test of the ballot counting program memory cards and preparing the memory cards for election use.

- C. Before the opening of the polls on election day at locations where there is a tabulator, the Election Board is responsible for certifying that the precinct tabulator prints a zero totals report. In addition, before counting absentee or questioned ballots, the Canvass Board will verify that a zero totals report is printed before each memory card is used; if the same memory card is used in a subsequent count, the board will print a totals report before resuming count, and verify that it matches the totals report from the subsequent count.
- D. Upon completion of the automatic count, a post-election audit shall be performed, and if the audit confirms the automatic count and does not present any discrepancies the automatic count is valid for the purpose of certifying the election returns. If discrepancies are identified a recount shall take place for that precinct prior to certification.
- E. A test is successful if a perfect count of the test ballots is obtained and the tabulator otherwise functions properly during the counting of the test ballots. The testing authorities shall determine whether a test is successful.
- F. Tabulator tests are open to the public. The borough clerk shall provide public notice of the election and testing calendar as follows:
 - 1. By publication in a newspaper of general circulation at least one week prior to the scheduled election;
 - 2. By posting on the borough's website; and
 - 3. By physically posting at the borough administration building in Soldotna.
- G. In addition to the public notice required under subsection F, the borough clerk shall provide notice, via e-mail if known and if not known by U.S. mail delivery, to all candidates and interested parties. For the purposes of this subsection the term "interested parties" shall mean any initiative or referendum sponsors.

4.60.040. Security of Test Materials.

- A. On completing each test, the testing authority shall place the test ballots and other test materials in a container provided for that purpose and seal the container so it cannot be opened without breaking the seal. The election supervisor, election coordinators, and not more than two watchers, if one or more watchers are present, shall sign the seal. The watchers must be of opposing interests if such watchers are present.
- B. The test materials shall remain sealed for the period for preserving the precinct election records, per the Kenai Peninsula Borough's Assembly

approved retention schedule.

- C. The container may not be unsealed unless the contents are necessary to conduct a test under this subchapter, a criminal investigation, election contest, or other official proceeding under this code. If the container is unsealed, the authority in charge of the proceeding shall reseal the contents when not in use.

4.60.050. Transportation and receipt of ballots.

- A. In locations where an automatic tabulating equipment used for counting ballots (tabulator) is used, the voted ballots counted by the tabulator must be transported on election night to a secured storage area prearranged by the election supervisor.
- B. On the day following the election the ballots described in (a) of this section that were not transported to the central ballot counting center will be transported by ground by an election official, if transported by air the container must be secured with tamper proof seal. The ballots must be accompanied from the secured storage area to the airport of departure, and from the airport of destination to a designated secured storage area by an election official.
- C. A chain of custody document will accompany each ballot shipment. Access to the secured area will be limited to election personnel.
- D. On each day after the election designated by the clerk for the counting of absentee and questioned ballots and after the completion of the counting by Canvass Board, the counted absentee and questioned ballots will be secured in a locked room as determined by the election supervisor.

4.60.060. Questioned and absentee facsimile ballots.

- A. The procedures in this section apply to a voted questioned or absentee ballot that has been received at central office for a determination as to whether the ballot is eligible for counting. Board members shall temporarily set aside a questioned ballot, and therefore not immediately count the questioned ballot, for a eligibility determination if:
1. The voted ballot cannot be counted by the tabulator because
 - (A) the voter marked the ballot in a manner that causes the tabulator to reject the ballot; or
 - (B) the ballot is otherwise damaged; and

2. The board members determined that the ballot contains clear and convincing evidence of the voter's intent.

B. The board members shall make an exact copy of a voted ballot described in subsection A above, for substitution as a facsimile ballot.

C. The original of a voted ballot for which a facsimile ballot is prepared under this section must be clearly labeled "original." A facsimile ballot prepared under this section must be clearly labeled "facsimile." After completion of the counting process, the original and the facsimile of a voted ballot must be placed in envelopes and the envelopes must be sealed.

D. In this section, "board members" means members of the Canvass Board, designated by the election supervisor and confirmed by the assembly to perform the functions described in this section.

4.60.070. Uncounted ballots at tabulator precincts.

A. The procedures set out in this section apply to a voted ballot that was unable to be counted by the automatic tabulating equipment used for counting ballots (tabulator) and subsequently reviewed by the Canvass Board for a determination as to whether the ballot is eligible for counting.

B. The Canvass Board shall instruct voters to place the voter's ballot in the emergency compartment of the tabulator ballot box if the voted ballot cannot be counted in the tabulator because:

1. The tabulator is unable to accept ballots due to a malfunction or power loss;

2. The voter marked the ballot in a manner that causes the tabulator to reject the ballot and the voter does not wish to correct the ballot; or

3. The tabulator rejects the ballot for an unknown reason.

C. When the polls have closed and all eligible voters have voted, the Election Board shall remove all ballots from the emergency compartment and feed the ballots through the tabulator. If there are any ballots that are unable to be counted by the tabulator, the Election Board shall place those ballots in an envelope labeled "uncounted ballot envelope" and seal the envelope in a manner that the envelope cannot be opened without breaking the seal and the seal must be signed by two members of the Election Board. The envelope will then be placed inside the precinct register.

- D. The Canvass Board will conduct its review and count ballots that have been sent in the uncounted ballot envelope, described in subsection B above, using the rules specified in KPB 4.90.030 or KPB Chapter 4.70

4.60.080. Poll Watcher.

- A. Each candidate and interested parties may appoint a poll watcher for each voting place. For the purposes of this subsection, the term “interested parties” shall mean any initiative or referendum sponsors and parties that timely submitted statements supporting or opposing initiative or referendum.
- B. A poll watcher shall have the right to
1. Observe the conduct of the election.
 2. Monitor the preliminaries of opening the polls.
 3. Remain at the polling place through the election until the results of the election have been posted and the voting machines sealed, as provided by law.
 4. Observe the ballots as they are counted.
 5. Observe absentee ballots when they are called during the count.
 6. See, at a distance of normal reading ability, all oaths administered and signed, the record of assisted voters, the list of qualified voters, the poll list, and any and all records made in connection with the election.
- C. Each poll watcher shall be sworn to faithfully observe the rule of law prescribed for the conduct of elections. Poll watchers may be present to be sworn in with the precinct election officials, or as time allows, but so as not to interfere with the election. Each poll watcher shall be a resident and qualified voter of the State of Alaska and the Kenai Peninsula Borough. Election officials, including returning officers, may not serve as poll watchers. Poll watchers are not permitted to take pictures or make copies of any ballot, list, or record provided in accordance with subsection B above.
- D. A poll watcher shall not disturb voters, attempt to influence voters, campaign at the polling place, nor display or wear any campaign material or buttons while inside any polling place.

SECTION 3. That KPB 4.80.070 is amended as follows:

4.80.070. Absentee voting—By mail.

- A. A qualified voter may apply for an absentee ballot by mail if postmarked not earlier than the first of the year in which the election is to be held nor less than seven days before an election. A voter may request [HIS]their name be placed on permanent absentee by mail status. The application shall include the address to which the absentee ballot is to be returned, the applicant's full Alaska residence address, and the applicant's signature.
- B. After receipt of an application by mail, the borough clerk shall send the absentee ballot and other absentee voting material to the applicant by first class mail. The materials shall be sent as soon as they are ready for distribution. The return envelope sent with the materials shall be addressed to the borough clerk.
- C. Upon receipt of an absentee ballot by mail, the voter[, IN THE PRESENCE OF A NOTARY PUBLIC, COMMISSIONED OFFICER OF THE ARMED FORCES INCLUDING THE NATIONAL GUARD, DISTRICT JUDGE OR MAGISTRATE, UNITED STATES POSTAL OFFICIAL, OR OTHER PERSON QUALIFIED TO ADMINISTER OATHS,] may proceed to mark the ballot in secret, to place the ballot in the small envelope, to place the small envelope in the larger envelope, and to sign the voter's certificate on the back of the larger envelope in the presence of an official[LISTED IN THIS SUBSECTION] who shall sign as attesting official and shall date [HIS]their signature. Officials recognized to attest to the veracity of signatures listed in this subsection are: a notary public, a commissioned officer of the armed forces including the National Guard, state court judge, United States postal official, or other person qualified to administer oaths. If none of the officials listed in this subsection are reasonably accessible, an absentee voter shall have the ballot witnessed by a person over the age of 18 years.
- D. An absentee ballot must be marked and attested on or before the date of the election. If the voter returns the ballot by mail, he shall use the most expeditious mail service and mail the ballot not later than the day of the election to the borough clerk. It must be postmarked on or before midnight of election day and received by the clerk no later than the Tuesday following the election. Ballot envelopes received after that time shall not be opened but shall be marked "invalid", with the date of receipt noted thereon, and shall be preserved with other ballots of the election.
- E. The clerk [MAY]shall require a voter casting an absentee ballot by mail to provide proof of identification, including one of three unique pieces of personal identification data which shall include the voter's date of birth, last

four digits of the voter's social security number, or the voter's voter identification number[, OR OTHER INFORMATION]to aid in the establishment of [HIS]the voter's identity. These unique identifiers shall be provided by the voter on the ballot package and sworn to be the voter's signature and the signature of an official as described in subsection C above.

- F. The clerk shall maintain a record of the name of each voter to whom an absentee ballot is sent by mail. The record must list the date on which the ballot is mailed and the date on which the ballot is received by the borough clerk and the dates on which the ballot was executed and postmarked.
- G. Upon reasonable suspicion of fraud, misconduct, or plural voting by a registered voter, the clerk shall notify the attorney general and request that the matter be prosecuted to the fullest extent of the law.

SECTION 4. That KPB 4.90.020(A) is amended as follows:

4.90.020. Canvass of returns.

- A. No later than the Monday following each election, the election canvass board shall meet in public session and canvass all election returns. In full view of those present, and in accordance with the procedures set forth in KPB Chapter 4.60, the election canvass board shall judge the applicability of absentee and questioned ballots, shall open and tally those accepted, and shall compile the total votes cast in the election. The canvass of the ballot vote counted by the precinct election boards shall be accomplished by reviewing the tallies of the recorded vote to check for mathematical error by comparing totals with the precinct's certificate of results. All obvious errors found by the election canvass in the transfer of totals from the precinct tally sheets to the precinct certificate of results shall be corrected by the canvass board. A mistake which has been made in precinct returns that is not clearly an error in the transfer of the results from the tallies to the certificate of results empowers the canvassing board to recommend a recount of the results of the precinct or precincts for that portion of the returns in question.
- B. Upon completion of the canvass, the canvassing board shall prepare a final certificate of the results of votes cast by absentee, questioned and challenged ballots and of votes cast by regular ballot, and shall prepare a written report of the results to be submitted to the assembly.
- C. If election materials have not been received from a precinct prior to completion of the canvass, but election results have been transmitted by telephone, telegram, radio or electronic transmission, the canvassing board shall count the election results received. If the borough clerk has reason to believe that a missing precinct certificate, if received, would affect the result of the election, the clerk shall await the receipt of the certificate until

2:00 p.m. on the Tuesday following the election. If the certificate is not received by the clerk by 2:00 p.m., Tuesday, then the certificate shall not be counted nor included in the final certification of the canvassing board.

SECTION 5. That this ordinance is effective immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2021.

Brent Hibbert, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

04/18/21 Motion to Postpone as amended to 06/15/21:

Yes: Carpenter, Chesley, Cox, Derkevorkian, Dunne, Elam, Johnson, Hibbert

No: Bjorkman

Absent: None

Yes:

No:

Absent: