

Introduced by: Mayor
Date: June 15, 1976
Hearing: July 20, 1976
Action: Enacted
Vote: Unanimous

KENAI PENINSULA BOROUGH

ORDINANCE 76-41

AN ORDINANCE PROVIDING AN ELECTION CODE

Section 1. The Kenai Peninsula Borough Code of Ordinances Title 4, be and the same is hereby repealed and reenacted as follows:

Chapter 4.04

GENERAL PROVISIONS

4.04.010. Definitions

(a) In this chapter, unless the context requires otherwise:

1. The masculine includes the feminine
2. CLERK means the borough clerk or any properly authorized assistant or designee
3. DAYS include weekends and holidays
4. ELECTION includes any regular, special or runoff election for local municipalities
5. PUBLICATION means newspaper of general circulation or posting in public places
6. ELECTION OFFICIALS means the borough clerk or his designee, election judges, election clerks, counters, and canvassing boards
7. OATH includes affirmation
8. PRECINCT means the territory established by the Lieutenant Governor within which resident voters may cast ballots at one polling place
9. QUALIFIED VOTER means any voter who has the qualifications required by AS 29.28.030 and is not disqualified under Article V of the State Constitution
10. PROPOSITION includes question
11. REGULAR ELECTION means a general election to fill municipal offices as required by AS 29.28.015

12. SPECIAL ELECTION means any election held at a time other than when a regular election is held
13. SWEAR includes affirm
14. VOTER means any person who presents himself for the purpose of registering to vote or voting, either in person or by absentee application or ballot

4.04.020 Sale of Intoxicating Beverages Regulated

The sale of intoxicating beverages during elections shall be governed by AS 04.15.020(c).

4.04.030. Incorporation of State and Federal Law

All provisions of the Constitution of the United States, the Constitution of the State of Alaska and any laws enacted pursuant to said Constitutions affecting municipal elections are incorporated in this chapter as if fully set out herein.

4.04.040. Severability

If any provision of this election code or its application to any person or set of circumstances is held invalid, the remainder of the code or its application to other persons or circumstances shall not be affected.

4.04.050 Rules for Determining Mark on Ballots and Write-in Votes

The election board shall canvass and count the votes according to the following rules:

1. A voter may mark his ballot only by the use of cross marks, "X" marks, checks or plus signs that are clearly spaced in the square opposite the name of the candidate the voter desires to designate.
2. A failure to properly mark a ballot as to one or more candidates does not itself invalidate the entire ballot.
3. If a voter marks fewer names than there are persons to be elected to the office, a vote shall be counted for each candidate properly marked.
4. If a voter marks more names than there are persons to be elected to the office, the votes for candidates for that office shall not be counted.

5. The mark shall be counted only if it is substantially inside the square provided, or touching the square so as to indicate clearly that the voter intended the particular square to be designated.
6. Improper marks on the ballot shall not be counted and shall not invalidate marks for candidates properly made.
7. An erasure or correction invalidates only that section of the ballot in which it appears.
8. Write-in votes are not invalidated by writing in the name of a candidate whose name is printed on the ballot unless the election board determines, on the basis of other evidence that the ballot was so marked for the purpose of identifying the ballot.
9. Stickers bearing a candidate's name may be affixed to the ballot in lieu of writing in a candidate's name if write-in votes are permitted.

CHAPTER 4.08 ELECTIONS

4.08.010 Nonpartisan Requirement

All borough elections are nonpartisan.

4.08.020 Date of Annual Election

The regular borough election shall be held annually on the first Tuesday in October.

4.08.030 Runoff Elections

(a) If no candidate for the office of borough mayor receives a majority of the votes cast for that office, a runoff election between the two candidates receiving the highest number of votes will be held on the third Tuesday following the regular election. The runoff election shall not be considered a special election within the meaning of AS 29.28.020(b).

(b) If no candidate for the office of assemblymember, school board member or service area board member receives in excess of 40% of the votes cast for his respective office, a runoff election shall be held on the third Tuesday following the regular election or within two weeks after certification of results of the election. When more than one assembly or

school board vacancy is to be filled and the seats are not designated, total votes cast for a respective office shall be determined by dividing the total number of votes cast for all candidates by the number of vacancies for the position.

4.08.040 Special Elections

The assembly by resolution may call a special election at any time.

4.08.050 Notice of Elections

(a) The clerk shall publish a notice of each regular election at least twice in one or more newspapers of general circulation in the borough, the first such publication to be accomplished at least 30 days prior to the election. The notice of election shall be posted at two public places within each precinct. For special elections, the first such publication shall be accomplished at least 20 days prior to the election. The clerk shall give such other notice to the public as may be required by the laws of the State of Alaska or by resolution of the assembly.

(b) Each notice of election shall include:

1. The type of election, regular, special or runoff;
2. The date of the election;
3. The hours the polls will be open;
4. The offices to which candidates are to be elected;
5. The subjects of propositions to be voted upon;
6. Voter qualifications and instructions for registration;
7. Instructions for application for absentee voting;
8. Precinct polling places; and
9. A reference to the Alaska Administrative Code (or regulations) for legal description of precincts.

(c) For runoff elections the notice of the locations of the precinct polling places may be included or separate from the notice of the election and publication shall be at least once no later than 5 days prior to the runoff election.

Chapter 4.12

VOTER QUALIFICATIONS

4.12.010 Qualifications of Voters

(a) Person is qualified to vote who:

1. Is a citizen of the United States;
2. Has passed his 18th birthday;
3. Has been a resident of the State and of the Borough in which he seeks to vote for at least 30 days just before the election;
4. Has registered before the election as required under AS 15.07 and is not registered to vote in another jurisdiction; and
5. Is not disqualified under Art. V of the State Constitution.

A person is qualified to vote in a service area election if he meets the above requirements and has also resided within the service area for 30 days or more prior to the election.

(b) State voter registration is prima facie evidence of a voter's qualification, but every election official shall challenge, and every watcher and other person qualified to vote in the precinct may challenge a person attempting to vote if the person is not qualified to vote. If the voter's polling place is in question, a voter shall be allowed to vote, and any election official shall consider the ballot as a questioned ballot.

A person who frivolously, maliciously or in bad faith challenges a voter or questions his ballot is guilty of a misdemeanor as provided by AS 15.15.215(b).

Chapter 4.16

CANDIDATES

4.16.010 Qualifications

(a) Candidates for borough mayor and school board member must be qualified voters of the borough.

(b) Candidates for borough assemblymember representing areas outside first class cities must be qualified voters of the borough, resident of the area outside first class cities.

(c) Candidates for service area boards must be qualified voters of the borough and residents of the service area.

4.16.020 Nomination of Candidates by Petition

(a) At least 3 days before nominations are open for each regular election, the clerk shall publish in one or more newspapers of general circulation in the borough a notice of

offices to be filled at the election and the manner for making nominations.

(b) Nominations for the filing of elective offices of mayor and school board members shall be made only by petition of 10 or more qualified voters residing within the borough. Nominations for the filing of the elective offices of assembly-members from outside cities shall be made only by petition of 10 or more qualified voters residing within the areas outside cities. Nominations for the filing of elective service area boards shall be made by petition of 10 or more qualified voters residing within the service area. Candidates for elective borough office shall file a Conflict of Interest Statement in accordance with the provisions of AS 39.50 at the time of filing a nominating petition. Each candidate shall file the name and address of the campaign treasurer with the Alaska Public Offices Commission in accordance with the provisions of AS 15.13 no later than seven days after the date of filing his nominating petition.

(c) Nominating petition forms shall be provided by the clerk and shall include provision for a statement by the candidate affirming his qualifications to fill the office to which he is nominated and his willingness to do so.

(d) Nominating petitions must be completed and filed with the clerk no earlier than 60 days nor later than 31 days before the regular election. The clerk shall record on the petition itself the name and address of the person by whom it is filed and the date of filing. All petitions which are not withdrawn pursuant to Sec. 4.16.020(f) herein shall be preserved by the clerk for one year.

Refusal or failure to file a Conflict of Interest statement at the time of filing a nominating petition shall require that the candidate's nominating petition for office be refused by the clerk. The clerk shall not place the name of a candidate on the ballot who has not complied with the requirements to file the name and address of his campaign treasurer.

(e) Within 4 days after filing of a nominating petition the clerk shall notify the candidate named in the petition whether or not the petition is in proper form and is signed by 10 qualified voters. If the petition is deficient in any way, the clerk shall immediately return it with a statement certifying wherein it is deficient. A new petition, or the same petition, if the deficiency is in the number of signatures for the same candidate, may be filed within the time for filing nominating petitions.

2120

(f) Any candidate nominated may withdraw his nomination at any time during the period for filing nominating petitions by appropriate written notice to the clerk. However, after the filing of nominating petitions has closed, no nominating petitions may be corrected, amended or withdrawn.

(g) Any petition presented shall not be changed as to term of office. If a candidate desires to file for a different seat, he shall request a new petition from the clerk.

4.20.010 Precincts and Polling Places

(a) The precincts established by the Lieutenant Governor and set forth in the Alaska Administrative Code shall be the precincts for all borough elections. A polling place shall be established for each precinct by the clerk at a place most convenient to the greatest number of voters possible. Polls shall be open for voting between the hours of 8 a.m. and 8 p.m.

(b) For runoff elections the notice of the locations of the precinct polling places may be included or separate from the notice of the election and publication shall be at least once no later than 5 days prior to the runoff election.

4.20.020 Election Officials

(a) Before each election, the clerk subject to approval by the assembly, shall appoint at least 3 judges in each precinct. The borough clerk is the election supervisor. One judge shall be designated as chairman and shall be primarily responsible for administering the election in that precinct. The clerk may appoint up to 3 election clerks or counters at any polling place where they are needed to conduct an orderly election and to relieve the election judges of undue hardship.

(b) If any appointed election official is not able or refuses to serve on election day, the clerk may appoint a replacement for that official.

(c) Each election official serving at a precinct polling place must be a qualified voter, resident within the precinct for which he is appointed.

(d) All election judges and clerks, before entering upon their duties must subscribe to the oath required of all public officers by the Constitution of the State of Alaska in the manner prescribed by the clerk.

4.20.030 Ballots - Form

(a) Ballots shall be prepared in the manner prescribed by law or by the Lieutenant Governor for state elections, insofar as such prescription is applicable to nonpartisan elections. The ballots shall be numbered in series, the number being placed in an area set off by perforations for ease of removal and on a portion of the ballot that can be seen when the manner in which the ballot is marked is concealed from view.

(b) All candidates to the same office shall be shown on one ballot. The title of each office to be filled shall be followed by the printed names of all candidates for that office, and provision shall be made for writeins equal in number to the positions to be filled. The names of candidates shall be printed as they appear upon the petitions except that any honorary or assumed title or prefix shall be omitted, but may include in the candidate's name any nickname or familiar form of a proper name of the candidate. the words "Vote for not more than _____", with the appropriate number replacing the blank, shall be placed before the lists of candidates for each office. Names of candidates shall appear on the ballot in rotated positions as prescribed in AS 15.15.030(6) for state elections.

(c) Following the offices and candidates there shall be placed on the ballot or on separate ballots as the clerk may determine all propositions or questions to be voted on. The words "YES" and "NO" shall be placed below the statement of each proposition or question.

The clerk shall determine the number of ballots to be used to present all offices, propositions and questions to the qualified voter.

(d) Each ballot shall bear the words "Official Ballot" and the date of the election.

(e) Prior to the election, the borough clerk shall cause to be posted in public places in the borough specimen ballots with instructions to voters. The specimen ballot shall be printed or typewritten on colored paper and shall be stamped "Sample". The instructions shall contain all the essential provisions of Sec. 4.12.010 and Sec. 4.08.050(b).

4.20.040 Ballots - Distribution

(a) The clerk shall have the ballots in his possession at least fifteen days before each regular election and 10 days before each special election. At that time the ballots may be inspected by any candidate whose name is on the ballot, or his

authorized agent, and any mistake discovered shall be corrected immediately. Sufficient ballots for the registered voters of each precinct shall be delivered to the election board for that precinct.

(b) The ballots shall be delivered in a separate sealed package, with the number of ballots enclosed clearly marked on the outside of the package. A receipt shall be taken from the election board member to whom each package is delivered in person or by mail; said receipt to be preserved with other records of the election for one year.

4.20.050 Election Supplies and Equipment

(a) Before the opening of the polls the clerk shall furnish to the election board of each precinct the state voter registration list for that precinct and shall equip and supply each polling place with sufficient materials for that precinct's election, including those materials required by this section.

(b) The clerk shall prepare instructions explaining to voters how to obtain ballots, how to mark them, how to obtain information from election officials and how to obtain new ballots to replace those destroyed or spoiled. These instructions shall be printed on cards in large, clear type and shall be distributed to the election boards to be prominently displayed in each polling place. The clerk shall provide booths at each polling place with appropriate supplies and conveniences to enable each voter to mark his ballot screened from observation. Ballot boxes shall be placed outside the voting booths in plain view of the election officials, voters and other persons at the polling place.

4.20.060 Voting Procedure at the Polls

(a) Before issuing any ballots, the election board must, in the presence of any persons assembled at the polling place, open and exhibit the ballot box to be used at the polling place. The ballot box then shall be closed and shall not be opened again or removed from the polling place until the polls have closed.

(b) The judges shall keep an original register in which each voter before receiving his ballot shall sign his name and give both his residence and mailing address. A record shall be kept in the registration book in space provided of the name of persons who offer to vote but who actually do not vote, and a brief statement of explanation. The signing of

the register constitutes a declaration by the voter that he is qualified to vote. If any election official present believes the voter is not qualified, he shall immediately challenge the voter according to the procedure outlined in Sec. 4.20.070. If a voter's polling place is in question a voter shall be allowed to vote, and any election official shall consider the ballot as a questioned ballot.

(c) When the voter is qualified to vote, the election judge shall give him an official ballot.

(d) Each voter shall retire alone to a booth or private area to mark his ballot. If a voter is blind or otherwise physically unable to mark his ballot alone, he may request assistance and it may be permitted pursuant to AS 15.15.240. Immediately after marking the ballot, the voter shall return it to the election judge, having concealed the manner in which it is marked. The election official shall remove the numbered tab or tabs and deposit the ballot in the ballot box.

(e) If a voter improperly marks or otherwise damages a ballot, he shall return it to the election officials, concealing the manner in which it is marked from view and shall request a new ballot. The election officials shall destroy the damaged ballot after having recorded its number and shall issue a new ballot to the voter. A voter may request replacement of a damaged ballot no more than three times.

(f) Fifteen minutes before closing the polls the time remaining before such closure shall be proclaimed. When the polls are closed for the purposes of voting, that fact shall likewise be proclaimed and thereafter no ballot shall be issued except to those voters who were present and waiting their turn to go through the voting procedure at the time prescribed for closing the polls.

4.20.070 Challenging and Questioning Procedure

(a) Every election judge and election clerk shall challenge, and every watcher and other person qualified to vote in the precinct may challenge a person attempting to vote if the challenger has good reason to suspect that the challenged person is not qualified to vote. All challenges shall be made in writing setting out the reason for the challenge. A Challenged person before voting shall subscribe to an oath and affidavit provided by the clerk attesting to the fact that in each particular the person meets all the qualifications of a voter, that he is not disqualified, and that he has not voted at the same election. He shall

also state the place from which he came immediately before living in the precinct in which he now offers to vote and the length of time of his residence in the former place. After the challenged person has taken the oath and signed the affidavit, the person may vote. If the challenged person refuses to take the oath or sign the affidavit, the person may not vote.

(b) If a voter's polling place is in question, he shall be allowed to vote, and any election official shall consider the ballot as a questioned ballot. The voter whose ballot is being questioned shall complete a statement concerning his residence on a form provided by the clerk.

4.20.080 Disposition of Challenged and Questioned Votes

A challenged voter or one who casts a questioned ballot shall vote his ballot in the same manner as prescribed for other voters. After the election judge removes the identification number from the ballot, the challenged voter shall insert the ballot into a small blank envelope, seal it and put the envelope into a larger envelope on which the oath and affidavit he previously signed is located. After the election judge removes the identification number from the ballot, the voter who casts a questioned ballot shall insert the ballot into a small blank envelope, seal it, and put the envelope into a larger envelope on which the information concerning that voter's residence is located. These larger envelopes shall be sealed and deposited in the ballot box. When the ballot box is opened, these envelopes shall be counted and compared to the voting list, segregated and delivered to the clerk for delivery to the canvass board.

4.20.090 Unused Ballots

(a) The numbers of all ballots not issued shall be recorded and then all such ballots shall be disposed of as instructed by the clerk before the ballot box is opened. The numbers of ballots damaged by voters and replaced by election officials pursuant to Sec. 4.20.060(e), shall also be recorded. The record of ballots not issued and ballots damaged and replaced shall be delivered to the clerk with other election materials and shall be preserved for one year.

4.20.100 Counting Ballots

(a) The opening of the ballot box and the counting of ballots shall be accomplished in full view of any persons present. The public may not be excluded from the area in

which ballots are counted. However, the chairman of the election board shall not permit anyone present to interfere in any way or to distract the appointed officials from their duties and no one other than appointed election officials may handle the ballots.

(b) Immediately following the closing of the polls and the disposition of unused ballots pursuant to Sec. 4.20.090, the election officials shall open the ballot box and count the number of ballots cast with necessary adjustments to account for the number of ballots required to present to each voter all of the offices and propositions on which he is entitled to vote; the number of ballots cast shall agree with the number of signatures on the precinct register. If a discrepancy exists which cannot be resolved, the election officials shall explain the discrepancy to the best of their ability in writing for delivery to the clerk.

(c) The election board shall tally the votes cast in the manner herein prescribed. When the tally of votes is completed, a Certificate of Results shall be prepared and signed by the three election judges. After completion of the Certificate of Results the counted ballots shall be sealed in an envelope provided by the clerk and shall be delivered to the clerk to be preserved unopened, unless the assembly or the court orders a recount, for one year.

4.20.110 Tally of Votes

(a) The clerk shall issue instructions and shall provide forms and supplies for the tally of votes cast by paper ballot so as to assure accuracy to expedite the process. The election board shall canvass and count the votes according to the rules for determining mark on ballots prescribed in AS 15.15.360. The election board shall canvass the ballots in a manner that allows watchers to see the ballots when opened and read. No person handling the ballot after it has been taken from the ballot box and before it is placed in the envelope for delivery to the clerk may remove a ballot from the immediate vicinity of the polls or have a marking device in hand.

4.20.120 Canvass of Returns

(a) Before each election, the clerk, subject to approval of the assembly, shall appoint at least 3 qualified voters, who shall constitute the election canvass board for that election. All members of the election canvass board, before entering upon their duties, must subscribe to the oath required of all public officers by the Constitution of the State in the manner prescribed by the clerk.

(b) On the Monday following each election, the election canvass board shall meet in public session at 9 a.m. and canvass all election returns. In full view of those present the election canvass board shall judge the applicability of absentee, challenged 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 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 in the canvass board Certificate of Election Results and reported to the assembly as having been corrected. If in the opinion of the canvass board a mistake has been made in precinct returns which is not clearly an error in the transfer of results from the tallies to the certificate of results, the canvass board may recommend to the assembly that a recount of that precinct or precinct's results be made for that portion of the returns in question.

(c) To be counted in the election an absentee ballot must be postmarked by midnight of election day and be received by the clerk before the date and hour of the canvass. Ballot envelopes received after that time shall not be opened but shall be marked "Invalid", with the date and hour of receipt noted thereon, and shall be preserved for one year with other ballots of the election.

(d) Challenged, questioned and absentee ballots shall be counted as follows: No ballot shall be counted if the voter has failed to properly execute the certificate, if the witness or the officer or other person authorized by law to administer the oath fails to affix his signature, or if the voter fails to enclose his marked ballot inside the small envelope provided. The clerk or a member of the election canvass board may challenge the name of an absentee voter when read from the voter's certificate on the back of the large envelope, if he has good reason to suspect that the voter is not qualified to vote, is disqualified, or has voted at the same election. The person making the challenge shall specify the basis of the challenge in writing. The canvassing board by majority vote may refuse to accept the challenge and count the ballot of a person properly challenged. If the ballot is refused, the clerk shall return a copy of the statement of the challenge to the voter, and shall enclose all rejected ballots in a separate envelope with statements of challenge. The envelope shall be labeled "rejected ballots" and shall be transmitted to the assembly

with the election certificates and other returns. If the ballot is not refused, the large envelope shall be opened, the smaller inner envelope shall be placed in a container and mixed with other blank absentee ballot envelopes, or in the case of counting questioned ballots, with other blank questioned ballot envelopes. The mixed smaller blank envelopes shall be drawn from the container, opened, and the ballots counted according to the rules of determining properly marked ballots.

(e) Upon completion of the canvass, the canvassing board shall prepare a 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 said results to be submitted to the assembly.

4.20.130 Certification of the Election

(a) As soon as possible after completion of the canvass but no later than the Tuesday following the election, the assembly shall meet in public session to receive the report of the canvass board. If after considering said report, the assembly determines that the election was validly held, such conclusion shall be declared and entered upon the minutes of the meeting together with the total number of votes cast for each candidate and for or against each proposition or question.

(b) If the canvass board reports a failure to comply with provisions of state law and municipal ordinance or illegal election practices occurred and that such failure is sufficient to change the outcome of the election, the assembly may exclude the votes cast in one or more precincts where such failure or illegal practices occurred from the total returns or may declare the entire election invalid and order a new election.

(c) If the canvass board reports an apparent discrepancy in the returns of one or more precincts, the assembly may order a recount of the votes cast in said precinct(s). Such recount shall be conducted immediately by the canvassing board and the results be reported to the assembly.

(d) In case of failure to elect because of a tie vote, the assembly shall immediately cause the canvass board to recount the votes. If there is still a failure to elect because of a tie vote after completion of the recount, the election shall be determined fairly, by lot, from among the candidates tying, in a meeting of the assembly and under its direction.

(e) Upon certification of a valid election the assembly shall direct the clerk to deliver to each person elected to office a "Certificate of Election" signed by the clerk and the borough mayor and authenticated by the seal of said borough.

4.20.140 Election Recounts

(a) A defeated candidate or ten qualified voters who believe there has been a mistake made by an election official or by the canvassing board in counting the votes in an election, may file an application requesting a recount with the clerk no later than 5:00 p.m. on the Monday following the election.

(b) The application shall specify in substance the basis of the belief that a mistake has been made, the particular election precinct or precincts for which the recount is to be held, the particular office, proposition or question for which the recount is to be held, and that the person making the application is a candidate or that the 10 persons making the application are qualified voters. The application for a recount shall bear the notarized signature of the candidate or the 10 qualified voters seeking the recount.

(c) Upon receiving an application in substantially required form, the assembly shall appoint a recount board of 3 or more qualified voters to, as soon as possible, conduct the recount of ballots of those precincts cited in the application for recount. The rule governing the counting of marked ballots by the election board shall be followed. Those requesting the recount, those whose election is recounted and the public shall be allowed to attend the recount proceeding.

(d) Upon completion of the recount, the recount board shall certify the results of the recount to the assembly. The assembly shall declare the final election results and direct the clerk to deliver to each person elected to office a "Certificate of Election" signed by the clerk and the borough mayor and authenticated by the seal of the borough.

(e) The applicant or applicants for the recount shall pay all costs and expenses incurred in a recount of an election demanded by the applicant or applicants if the recount fails to reverse any result of the election or if the difference between the winning and losing vote on the result requested for recount is more than two percent.

(f) A candidate or any person who requested a recount who has reason to believe an error has been made in the recount involving any question, proposition, candidate or validity of any ballot may appeal to the superior court within 10 days after the assembly has declared the election results. If no such action is commenced within the 10 day period, the election and the election results shall be conclusive, final, and valid in all respects.

4.20.150 Contest of Election

(a) A defeated candidate or any 10 qualified voters may contest the election of any person or the approval or rejection of any proposition upon one or more of the following grounds:

1. Malconduct, fraud or corruption of an election official sufficient to change the result of the election;
2. Disqualification of the person under provision of law or ordinance; or
3. Existence of a corrupt election practice as defined by the laws of the state sufficient to change the results of the election.

(b) The defeated candidate or one or more of the voters initiating a contest shall appear before the governing body at the meeting held to certify the election returns and there shall deliver a written notice of contest, or such written notice shall be filed with the clerk no later than 5:00 p.m. on the Monday following the election. The notice of contest shall specify the election being contested, shall state the grounds of the contest in detail, and shall bear the notarized signatures of the candidate or the qualified voters bringing the contest.

(c) Upon receiving a valid notice of contest, the assembly shall order such investigative action as it deems appropriate. If the contest involves voter eligibility, the election canvass board, the clerk and the borough attorney shall be ordered to investigate the allegations and report their findings to the assembly. If other illegal or irregular election practices are alleged to have occurred, the assembly shall order an investigation to be made by the election canvass board with the assistance of the clerk and the borough attorney. If the election canvass board and the clerk are both named in the contest, the assembly shall appoint an investigating board to conduct the required investigation. Those contesting the election, those whose election is contested, and the public shall be allowed to attend all investigation proceedings.

2180

(d) After considering the reports of the investigating officials and any other evidence presented, the assembly shall determine whether the grounds for contest were valid and whether any illegally cast votes could have affected the election results. If they could not have, the assembly may so declare and uphold their previous action in declaring the election validly held. If the contest involves other prohibited practices which are shown to have taken place, the assembly shall exclude the votes of the precincts where such practices occurred from the total returns. If it is determined that such exclusion could not affect the election results, the assembly shall declare the election validly held.

(e) Unless the grounds for which the contest was brought are determined to be valid, the contestant or the contestants shall be individually liable for the whole amount of the expenses incurred by the borough in its investigation and deliberation of the election contest.

(f) A defeated candidate or any 10 qualified voters who contested an election may bring an action in the superior court within 10 days after the assembly has concluded that said election was validly held and the results entered upon the minutes. Such legal action shall be upon the grounds set forth in AS 15. 20.540 for contesting state elections. The judge shall render a decision as required by AS 15.20.560 for state elections. If no such action is commenced within the 10 day period, the election and the election results shall be conclusive, final and valid in all respects.

4.20.160 Expenses

(a) The borough shall pay all necessary election expenses, including those of securing polling places and providing ballot boxes, ballots, voting booths or screens, national flags, and other supplies and any wages to election officials unless otherwise provided by this code.

The municipality shall pay each election board member and canvass board member the hourly rate provided in AS 15.15.380 for similar election officials for state elections for the time spent at their election duties.

4.20.170 Preservation of Election Ballots, Papers, and Materials

The clerk shall preserve all precinct election certificates, tallies, and registers, all voted ballots and nominating

petitions filed for one year after the election. These materials may be destroyed after their retention period has lapsed unless an application for a recount has been filed and not completed, or unless their destruction is stayed by an order of the court. Certificates of the canvass board are to be preserved as permanent records.

Chapter 4.24

ABSENTEE VOTING

4.24.010 Eligibility

Any qualified voter who expects to be absent from his election precinct or who will be unable to go to the polling place of that precinct for reasons of physical disability may cast an absentee ballot. A person who believes he will be unable to be present at the polls because of the physical inaccessibility of the polling place causing undue travel expense, hardship, or hazard to the voter may vote absentee.

4.24.020 Application for Ballot

(a) By Mail. A qualified voter may apply for an absentee ballot by mail if postmarked not more than six months nor less than seven days before any election. The application shall include the address to which the absentee ballot shall be returned and the applicant's full Alaska resident address and signature.

(b) In Person. A qualified voter may apply for an absentee ballot in person on any day after the ballots are prepared and available, but not on election day.

(c) By Personal Representative. A qualified voter may apply for an absentee ballot through a personal representative on the day of, or not more than 20 days before, the date of an election. The application shall be signed by the applicant and be accompanied by a letter from a licensed physician or a statement signed by two qualified voters stating that the applicant will be unable to go to the polling place because of physical disability.

4.24.030 Issuance of Ballot

Before delivering any ballot, the clerk shall satisfy himself of the applicant's right to vote and may require the applicant to comply with the challenged ballot procedure. Upon issuing an absentee ballot the clerk (or magistrate) shall enter on

the application the number of the ballot issued and the date of delivery or mailing. The clerk shall have available for public inspection the names and addresses of persons who voted absentee. When the canvass board meets, the clerk shall furnish to it all absentee ballot applications, bearing the aforesaid notations relative to issuance of ballots.

4.24.040 Materials for Absentee Voting

There shall be a small blank envelope and a return envelope supplied to each absentee voter. The return envelope shall have printed upon it an affidavit by which the voter shall declare his qualification to vote, followed by provision for attestation by a witnessing officer, or signature of two attesting witnesses, both of whom are at least 18 years of age. The following notice shall appear on the return envelope: "NOTICE" Return the Voted Ballot in Sealed Envelope Immediately to the Clerk, marked 'Ballot Enclosed - To be Opened by the Canvassing Board'".

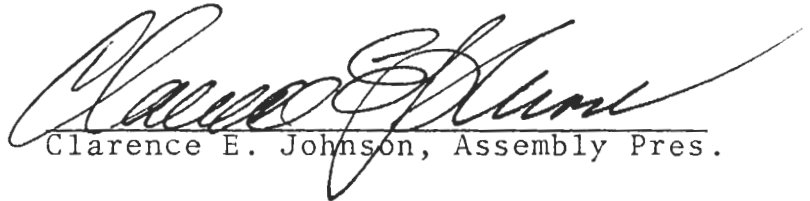
4.24.050 Casting Absentee Ballot

Upon receipt of an absentee ballot through a personal representative or by mail, the voter whether in or outside the state, in the presence of two attesting witnesses, both of whom are at least 18 years of age, or before an election judge, notary public, commissioned officer of the armed forces including the National Guard, district judge or magistrate, United States postmaster, or other person qualified to administer oaths, may proceed to mark the ballot in secret, to place the ballot in the small blank 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 the above listed official or designated persons who shall sign as attesting witnesses. The voter may then return the properly enclosed ballot by personal representative to the clerk or by the most expeditious mail service, postmarked not later than the day of the election, to the clerk, who shall retain it for delivery to the canvass board.

Upon receipt of an absentee ballot in person, the voter shall proceed to mark the ballot in secret, to place the ballot in the small blank 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 the clerk or a designated election official who shall sign as attesting witness and retain it for delivery to the canvass board.

Section 2. This ordinance shall become effective on the day of enactment.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH
THIS 20th DAY OF July, 1976.


Clarence E. Johnson, Assembly Pres.

ATTEST:


Borough Clerk