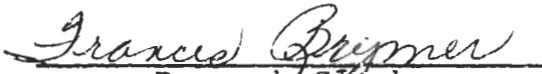


ORDINANCE CERTIFICATION

I certify that upon final enactment of Ordinance No. 81-80 of the Kenai Peninsula borough, this certification of the actions taken by me conforms with the rules and regulations governing ordinances.

1. Publication: Publication has been made by causing a summary of this ordinance to be inserted one time in a newspaper of general circulation in the borough. One copy of this ordinance as set for hearing, together with Notice of Hearing has been mailed to the city clerks of each first class city in the borough and to each postoffice in the borough with a request for posting on the City Hall and Post Office bulletin boards for 10 days immediately following receipt.
2. After adoption of this ordinance, one copy will be mailed to the city clerk of each first class city in the borough.

This ordinance was ENACTED by the assembly of the Kenai Peninsula Borough on the 18 day of August, 1981 and will become effective immediately.


Borough Clerk

Date: 8-18-81

Introduced by: Mayor, for Borough Clerk
Date: July 21, 1981
Hearing: August 18, 1981
Vote: 15 Yes, 1 No
Action: Enacted

KENAI PENINSULA BOROUGH

ORDINANCE 81-80

AMENDING TITLE 4 OF THE BOROUGH CODE RELATING TO THE CONDUCT OF ELECTIONS WITHIN THE KENAI PENINSULA BOROUGH

WHEREAS, the Borough Clerk is responsible for the conduct of regular and special elections; and

WHEREAS, the conduct of these elections is governed by Title 15 of Alaska Statutes, which was significantly revised during the 1980 Legislative session by Chapter 100 SLA 1980; and

WHEREAS, certain provisions of the Borough Code relating to election should be modified in order to conform to the revised requirements of the Alaska Statutes Title 15; and

WHEREAS, certain sections of the Borough Code are redundant in that they repeat provisions of mandatory state statutes regarding the conduct of elections and such repetitious material need not be incorporated also into the Borough Code;

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

Section 1. That Title 4 of the Borough Code is repealed and is reenacted to read:

Chapter 4.04

General Provisions

Section 4.04.010 Incorporation of State Election Statutes. The provisions of Alaska Statutes Title 15 relating to the conduct of municipal elections are incorporated into this chapter as if fully set out. Procedures for the conduct of state elections shall also govern Borough Elections to the extent that they are applicable.

Section 4.04.020 Severability. Should any provision of this election code, or its application to any person or set of circumstances, be held invalid, the remainder of its provisions, or of its application to any other persons or circumstances, shall not be affected.

Section 4.04.030 Sale of Intoxicating Beverages Permitted. The sale of intoxicating beverages is not unlawful during elections held within the borough and the provisions of AS 04.15.020(c) shall not apply, except within the boundaries of the City of Seldovia. Within the boundaries of the City of Seldovia, the sale of intoxicating beverages shall be prohibited on election day until after the polls have closed.

Section 4.04.040 Prohibition on Use of Public Monies to Promote Passage of Ballot Propositions. A. The use of public monies, or facilities, equipment or supplies purchased with public monies, and services of public employees in kind, to promote the passage of ballot propositions including public expenditures, appropriations or bond issues is prohibited.

B. The term "promote" is defined as an attempt to influence, whether affirmatively or negatively, the vote of the people upon ballot propositions or bond issues. The term "promote" does not encompass the following and similar activities: (1) The publication, circulation or mailing of informational items or legal notices pertaining to proposed bond issues or ballot propositions, so long as any such literature distributed to the public, or to news media, fairly and fully presents information needed by the public to make an informed vote upon any ballot propositions, or bond issue (2) The participation by borough general government or school district personnel in public discussions, or interviews with news media, relating to proposed ballot propositions or bond issues.

C. Borough owned schools, buildings and other facilities may be utilized for public meetings, discussions, and other assemblies by private groups supporting or opposing any ballot proposition or bond issue. General government and school district employees may arrange for public meetings and assemblies where the advantages and disadvantages of a proposed ballot proposition or bond issue are

fairly presented by opponents and proponents of the item.

D. No posters, fliers or other printed material advocating or opposing a ballot proposition or bond issue may be displayed in any borough owned or controlled building or facility except in a single area of general public access designated by the building supervisor. Both proponents and opponents of the ballot item shall be accorded equal access to the space.

E. The constitutional rights of public employees to express their personal views on proposed bond issues and ballot propositions during public meetings or in interviews with news media shall not be abridged by this ordinance. However, any employee expressing his or her personal views shall clearly state that the statements reflect personal or professional beliefs only and do not represent the position of the borough or the school district.

Section 4.04.050 Nonpartisan Requirement. All borough elections are nonpartisan.

Section 4.04.060 Date of Annual Election. The regular borough election shall be held annually on the first Tuesday in October.

Section 4.04.070 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 percent of the votes cast for his respective office, then a runoff election shall be held on the third Tuesday following the regular election or within two weeks after certification of the results of the regular 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.

Section 4.04.080 Special Elections. The assembly by resolution may call a special election at any time upon at least 20 days notice.

Section 4.04.090 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 publication shall be accomplished at least 15 days prior to the election and the notice shall be posted at two public places within each precinct.

B. Each notice of election shall include:

1. The type of election, whether 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.

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 made at least once, no later than 5 days prior to the runoff elections. The notice of election shall be posted at two places within each precinct.

Section 4.04.100. Expenses. A. The borough shall pay all necessary expenses relating to the conduct of each Borough election, including those of securing polling places and shall provide ballot boxes, ballots, voting booths or screens, national flags,

and other supplies and any wages to election officials unless otherwise provided by this code.

B. The borough shall pay each election board member and canvass board member an hourly rate for time spent at his election duties, including the receiving of instructions and posting of notices. The clerk shall set the hourly compensation to be paid for time spent by election officials at a rate comparable to that paid by the state for state elections. The clerk shall retain a record for auditing and payment of election expenses, including the cost of giving notice, renting polling places, paying election officials, securing ballot boxes, booths and other election necessities.

Chapter 4.08

Candidates

Section 4.08.010 Qualifications. A. Candidates for borough mayor and school board must be qualified voters of the borough.

B. Candidates for borough assemblymember must be qualified voters of the borough and a resident of the district in which he or she runs.

C. Candidates for service area boards must be qualified voters of the borough and residents of the service area.

Section 4.08.020 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 of making nominations.

B. Nominations for the filing of elective offices of mayor and school board members shall be made by petition of at least 10 qualified voters residing within the borough.

C. Nominations for the filing of the elective offices of assemblymembers shall be made in accordance with Chapter 2.12 of the Borough Code and

the reapportionment order of June 20, 1980 issued by the Department of Community and Regional Affairs.

D. Nominations for the filing of elective service area boards shall be made by petition of at least 10 qualified voters residing within the service area.

E. Candidates for elective borough office and declared write-in candidates shall file a conflict of interest statement with the borough clerk in accordance with the provisions of AS 39.50 at the time of filing a nominating petition or at the time of filing a declaration of candidacy as a write-in candidate. Each candidate also shall file the name and address of the campaign treasurer with the Alaska Public Offices Commission no later than 7 days after the date of filing his nominating petition. The name of the candidate shall be placed on the ballot by the borough clerk only after the candidate has complied with these requirements. At the time for filing a declaration of candidacy as a write-in candidate, each person so filing shall also file the name and address of the campaign treasurer with the Alaska Public Offices Commission no later than 7 days after the date of filing his declaration of candidacy. Refusal or failure of a candidate to comply with these requirements shall prohibit the Clerk from accepting the petition or placing a name upon the ballot.

F. Nomination 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.

G. Nomination 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 Section 4.08.030 shall be preserved by the clerk for 4 years.

Section 4.08.030 Certification and Withdrawal of Nomination Petitions. A. Within 5 days after the filing of a nomination 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 the deficiency. 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 nomination petitions.

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

C. 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. Petitions submitted following the closing time for the receipt of petitions as published in newspapers of general circulation and noted on the petition, shall not be accepted by the clerk.

Chapter 4.12

Supplemental Election Procedures

Section 4.12.010. 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 borough clerk may appoint clerks and 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, clerks and counters 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.

Section 4.12.020. Ballots -- Form. A. Ballots shall be prepared in the manner prescribed for state elections, insofar as such requirements are applicable to non-partisan 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 for 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 the provisions shall be made for write-ins equal in number to the positions to be filled except there shall be no provision made for write-ins on a runoff election ballot. 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 sample ballots with instructions to voters printed on the back of the sample ballot. The sample ballot shall be printed or typewritten on colored paper and shall bear the words "Sample Ballot". The instructions shall contain all the essential information as to polling places and qualifications of voters.

Section 4.12.030. Ballots -- Distribution. A. The clerk shall have the ballots in his possession at least 15 days before each regular election and 10 days before each special and runoff election. At that time, the ballots may be inspected by any candidate whose name is on the ballot, or by his authorized agent, and any discovered mistake 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. The receipt shall be preserved for 1 year.

Section 4.12.040. Ballot Procedure. 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 or registers 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 a space provided, of the names 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. If a voter's polling place is in question, the voter shall be allowed to vote, and

any election official shall consider the ballot as a questioned ballot.

Section 4.12.050. Unused ballots. 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 shall also be recorded. The record of ballots not issued and ballots damaged and replaced shall be preserved for one year.

Chapter 4.16
Canvass of Returns and Election
Certification

Section 4.16.010. Canvass of Returns. A. Before each election, the clerk, subject to approval of the assembly shall appoint 3 or more 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 of Alaska in the manner prescribed by the clerk.

B. 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, 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 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.

C. To be counted in the election, an absentee ballot must be postmarked on or before election day and be received by the clerk no later than the Monday following the election. Absentee ballot envelopes received after the canvass board has completed absentee ballot counting 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. Absentee ballot envelopes shall be examined by the canvass board who shall determine whether the absentee voter is qualified to vote at the election and whether the absentee voter is qualified to vote at the election and whether the ballot has been properly cast.

Section 4.16.020. Challenged, Questioned and Absentee Ballots. A. Challenged, questioned and absentee ballots shall be counted as follows: No ballot shall be counted if the voter has failed to properly execute the absentee certificate, if the witnesses 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 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 challenge to the voter, and shall enclose all rejected ballots in a separate envelope with statements of challenge. The envelope shall be labeled with "rejected ballots" and shall be preserved for one year with other voted ballots. 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 and opened, and the ballots shall be counted according to the rules for determining properly marked ballots.

B. 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 or radio, 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 4 o'clock in the afternoon on the Tuesday following the election. If the certificate is not received by the clerk by 4 p.m., Tuesday, then the certificate shall not be counted nor included in the final certification of the canvassing board.

C. 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 said results to be submitted to the assembly.

Section 4.16.030. Certification of the Election Results. 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, the election shall be certified by resolution 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 that a failure to comply with provisions of state law and borough ordinances, or an illegal election practice has occurred, and that such failure is sufficient to change the outcome of the election, then the assembly may exclude the votes cast in one or more precinct 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 votes cast in said precinct or precincts. Such recount shall be conducted immediately by the canvass board and the

results shall be reported to the assembly. The assembly shall meet as soon as possible to certify the results of the election recount.

D. If two or more candidates tie in having the highest number of votes for the same office for which there is to be elected only one candidate, the clerk shall so notify the candidates who are tied. The clerk shall immediately proceed with the recount of votes in the manner provided by AS 15.20.430-530. 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 clerk shall 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.

Section 4.16.040. Election Recounts. A. A defeated candidate, or 10 qualified voters who believe there has been a mistake made by an election official or by the canvass board in counting the votes in an election, may file an application with the clerk within 3 days following completion of the canvas, requesting a recount of the votes from any particular precinct and for any particular office.

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 an affected candidate or that the 10 persons making the application are qualified voters. The candidate or persons making the application shall designate by full name and mailing address two persons who shall represent the applicant and be present to assist during the recount. Any person may be named representative, including the candidate himself or any person signing the application, and the representatives shall be paid in the same amount and manner as election judges. Applications by 10 qualified voters shall also include the designation of one of the number as chairman. The candidate or

persons making the application shall sign the application and shall print or type their full name and mailing address.

C. Upon receiving the application in substantially the required form, the clerk shall appoint a recount board of 3 or more qualified voters to conduct the recount of ballots of those precincts cited in the application for recount. The recount shall take place within 3 days following receipt of the application. The rules governing the counting of hand marked ballots as set forth in AS 15.15.360 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, which shall meet as soon as possible to certify the results of the recount and declare the final election results. The clerk shall deliver to each person elected to office a certificate of election signed by the clerk and the mayor and authenticated by the borough seal.

E. The applicant or applicants requesting a 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 2 percent.

F. A candidate or any person who requested a recount and 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 5 days after the assembly has declared the election results. If no such action is commended within 5 days, the election and the election results shall be conclusive, final and valid in all respects.

Section 4.16.050. Contest of Election. A. A defeated candidate or 10 qualified voters may contest the nomination or election of any person or the approval or rejection of any question or proposition upon one or more of the following grounds: (1) malconduct, fraud, or corruption on the part of an

election official sufficient to change the result of the election; (2) when the person certified as elected or nominated is not qualified as required by law; (3) any corrupt practice as defined by law 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 assembly at a meeting held to certify the election results, and there shall deliver a written notice of contest, or such written notice shall be filed with the clerk no later than 4:30 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 be made by the election canvass board with the assistance of the borough clerk and borough attorney. If the 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.

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 entire amount of expenses incurred by the borough in its investigation and deliberation of the election contest.

F. A defeated candidate or any 10 qualified voters who have 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 KPC 4.16.050 and AS 15.20.540. After the court has rendered a decision as to which candidate was elected or nominated and whether a question or proposition was accepted or rejected, the clerk shall issue a new election certificate to correctly reflect the judgment of the court. If the court decides that the election resulted in a tie vote, the assembly shall immediately proceed to determine the election by lot as is provided in this code.

Section 2. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH
THIS 18th DAY OF August, 1981.

Paul A. Fischer
Paul A. Fischer, Assembly Pres.

Attest:

Francis Bremer
Borough Clerk