

Introduced by: Mayor  
Date: Jan. 17, 1989  
Hearing: Feb. 21, 1989  
Vote: Unanimous  
Action: Enacted

KENAI PENINSULA BOROUGH

ORDINANCE 89-9

ESTABLISHING A DIVISION OF RISK MANAGEMENT, A SELF-INSURED RETENTION AND DEDUCTIBLE FUND, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Kenai Peninsula Borough and Kenai Peninsula Borough School District have a combined insurance program; and

WHEREAS, this program consists of a combination of insurance policies and self-insurance; and

WHEREAS, the insurance program has expanded to include aspects of safety and loss prevention as a means of risk management; and

WHEREAS, a comprehensive approach to risk management has been developed and should be codified to establish the authority of those administering the program to manage the program and handle claims; and

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

Section 1. That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding a new chapter entitled "Risk Management" to be numbered KPB 2.34, which shall read as follows:

CHAPTER 2.34

RISK MANAGEMENT DIVISION

2.34.010 Risk Management Division established administrator. There is in the office of the Borough Finance Department the division of Risk Management. The division of Risk Management shall be administered by the Risk Manager and a Risk Management Committee consisting of the Kenai Peninsula Borough Attorney, the Kenai Peninsula Borough Finance Officer and the Kenai Peninsula Borough School District Executive Director of Business Management. The members of the Risk Management Committee may each designate a person to act as a committee member in the event of absence of that committee member.

2.34.020 Borough, school district and employee defined. Within this chapter, unless the context or other provisions of law indicate the contrary, the words "Borough"

and/or "School District" in accordance with AS 14.12.115 and/or "Employee" shall be all inclusive for the Kenai Peninsula Borough, the Kenai Peninsula Borough School District and all Political Subdivisions or Organizations of the Kenai Peninsula Borough and Kenai Peninsula Borough School District as may now or hereafter be constituted, and the Officers, Assemblies, Boards and Committees of each or any of these governmental entities.

2.34.030 Objectives. The Kenai Peninsula Borough policy with respect to the management of all risks of accidental losses and/or claims shall have as its objectives:

A. The protection of Kenai Peninsula Borough assets against the financial consequences of accidental losses and/or claims which are catastrophic in nature, and preserve the Borough public service capabilities from loss, destruction or depletion;

B. The reduction and minimizing of long-term cost to the Kenai Peninsula Borough through activities that will identify, control and prevent accidental losses and/or claims and their consequences;

C. Through structured internal procedures, provide a constant reassessment of fluctuating exposure to losses and claims and the loss and claim bearing capacity of the Borough as it relates to other financial resources such as insurance;

D. Prorate and allocate the cost of retained losses and claims and the cost of insurance programs as determined from exposure units;

E. Establish, to the extent possible, an exposure free work place and service environment for Borough personnel and the user public, whereby safety and security may be enjoyed in the course of their daily pursuits.

2.34.040 Risk Manager-authority and duties. The Risk Manager shall have authority, responsibility and duties for:

A. Identification and prevention, to the extent possible, of all risks of accidental losses and/or claims;

B. Selection of the appropriate risk management techniques, subject to approval of the Risk Management Committee, for offsetting exposures to losses and/or claims through:

1. Risk reduction
2. Risk transfer

3. Risk retention
4. Risk assumption
5. Other appropriate methods, including the purchase of insurance.

C. Further development and maintaining of an information system, in coordination with existing systems, for timely and accurate recording of losses and claims, insurance premiums and other risk related costs and information;

D. Allocation of loss and claim payments and related costs within the deductible and self-insured retention levels, and all other risk management related costs and insurance premiums to the various budgetary units of the Kenai Peninsula Borough and School District;

E. Continue the appropriate development and administration of the Kenai Peninsula Borough and School District safety program leading to the further reduction of accidental losses and claims;

F. Prepare the agenda and chair the monthly meeting of the Risk Management Committee.

2.34.050 Self-insurance Program and Risk Retention. With regard to risk of accidental losses and/or claims, it shall be the policy of the Kenai Peninsula Borough and School District to self-insure, to an appropriate level, all losses and claims;

A. Which occur with predictable frequency.

B. Which will not have a significant adverse impact on the Borough's financial position.

As a general guideline, the Kenai Peninsula Borough and School District will continue to self-insure progressively to greater retention levels on a per occurrence or claims made policy of insurance as our internal claims handling and risk management capabilities are more fully developed and demonstrated. Assembly approval will be obtained for increases in our self-insured retention levels as program studies justify their merit. Certain exceptions to this guideline will be allowed;

C. Whenever necessary insurance coverages and/or services can be obtained only by the purchase of insurance policies.

D. When the Kenai Peninsula Borough and School District are obligated by law or contract to purchase insurance coverage and no alternative methods are acceptable.

E. When market conditions dictate that a lesser retention level would be more prudent and financially responsible.

2.34.060 Self-insurance Program and Risk Retention Funding. The Director of Finance of the Kenai Peninsula Borough is authorized to establish an appropriate internal service fund or funds for insurance, insurance-related contracts and/or services, litigation defense costs and risk management.

A. The Kenai Peninsula Borough shall use monies in the fund on behalf of the Kenai Peninsula Borough and School District, for the following purposes only;

1. Premiums for primary, excess and umbrella insurance coverages to insure the exposures of the Kenai Peninsula Borough and School District.

2. Premiums for fiduciary bonds and bonds required by the State of Alaska as a prerequisite for self-insuring.

3. Payment for risk management and insurance related contracts and/or services, including loss adjustment expenses and legal fees for defense of civil suits filed by plaintiff against the Kenai Peninsula Borough and School District.

4. Insured losses and/or claims, up to the stated limits of deductibles or self-insured retention levels, as defined by following forms of insurance policies in effect at the time of the loss or claim.

5. Self-insured losses and/or claims in excess of the limits of any policies of insurance that apply to the loss or claim, and/or self-insured losses and/or claims that are not covered by specific policies of insurance, but which have been determined to be a covered item by the Risk Management Committee in accordance with this ordinance, its program requirements and the appropriations and transfers to the fund.

6. Reimbursement of legal expense arising out of the defense of litigation brought against the Kenai Peninsula Borough and School District, for insured, self-insured and uninsured losses and/or claims.

7. Judgments and/or awards for exemplary and/or punitive damages are specifically excluded from coverage by this fund.

2.34.070 Reserving and investing of the Self-Insurance Fund. A. The Risk Manager with the concurrence of the Risk Management Committee shall determine the amount of monies the Kenai Peninsula Borough requires to fund adequate reserves for present known losses and/or claims, estimated reserves for

incurred but not reported losses and/or claims, estimated reserves for legal fees for defense of self-insured and un-insured losses and/or claims, estimated costs for purchase of required insurance and bonds and estimated costs for other Risk Management and insurance related contracts and services.

B. The fund shall be invested by the Director of Finance in a manner consistent with Kenai Peninsula Borough policy.

C. Earnings on investments of the Self-Insurance Fund shall be retained in the fund and used for fund purposes only.

2.34.080 Long-term judgment and/or award fund. The Director of Finance, when required by Court Order or when prudent financial responsibility dictates, may establish a fund for the payment of long-term judgements and/or awards. The Director of Finance may delegate the management of the fund to a financial institution authorized to act as a trustee.

2.34.090 Self-insurance funds--Receipts--Disbursements. The Director of Finance shall deposit all monies appropriated by the Assembly, and other receipts from the following sources in the Self-Insurance Fund;

A. Recoveries of loss or claim payments, physical property salvage value recoveries and legal expenses made within the limits of the deductibles, self-insured retention and uninsured program.

B. Return premiums, audit premiums, interest and other returns upon investments of the fund.

C. No monies shall be dispersed from the Self-Insurance Fund except for the purposes described in Section 2.34.050.

2.34.100 Payment of self-insured losses and/or claims. Approval of the Self-Insurance Program and Risk Retention per Section 2.34.050 shall constitute authority for the Risk Manager with the concurrence of the Risk Management Committee, and where prudent, the Kenai Peninsula Borough Mayor and/or the Superintendent of the Kenai Peninsula Borough School District, to negotiate and settle or approve and authorize settlements of losses and/or claims within the limits of the deductibles, the self-insured retention level and for those losses and/or claims that are uninsured.

2.34.110 Procurement of insurance and services. The procurement of all insurance and insurance related services and/or contracts for the Kenai Peninsula Borough and School District will be coordinated through the Risk Manager and the Risk Management Committee. Insurance with limits equal to the maximum foreseeable losses and/or claims shall be purchased;

A. When the potential loss and/or claim exposure exceeds the justifiable retention level as set forth in 2.34.040

B. When such insurance is available on a fiscally sound basis.

C. Insurance will be purchased only through reliable sources that will best serve the interests of the Kenai Peninsula Borough and School District. The objective will be to obtain all required insurance and/or services at the lowest cost to the Kenai Peninsula Borough and School District which is consistent with the desired levels of coverages and/or services, with Insurance Companies of proven financial status as set forth in Best's Key Rating Guide.

D. The method utilized to procure insurance and/or insurance related services shall be in accordance with the Kenai Peninsula Borough Purchasing Code. The Risk Manager and Risk Management Committee shall be responsible for the purchase and maintaining of insurance and insurance related services as best meets the needs, and cost within funding of the Kenai Peninsula Borough and School District, through methods including but not limited to, open competitive bidding, request for proposals, negotiation with Brokers and/or Companies, or designation of a Broker-of-record to purchase necessary coverages and/or services. Contracts for general broker services of a year or longer are subject to approval of the assembly; however, assembly approval is not required for broker selection or designation where the selection or designation is to access specific markets or coverage directly through an exclusive broker for that particular insurance market or coverage or direct writer of the insurance sought.

E. The maximum term of insurance policies and/or insurance related services, subject to the normal rights of cancellation, shall be:

1. Three years for property and casualty insurance.
2. Continuous for fidelity bonds.
3. Continuous for employee benefit plans.

2.34.120 Liabilities for which employee shall be indemnified. Indemnification rights of Kenai Peninsula Borough School District Employee's shall be in accordance with Section 14.12.115 of Alaska Statutes and restrictive language, if any, in this Section 2.34.120 shall not be applicable.

Kenai Peninsula Borough and School District Employee's shall be entitled to indemnity under this chapter and the Kenai Peninsula Borough and School District shall indemnify the Employee;

A. Subject to Section 2.34.130, the Kenai Peninsula Borough and School District shall indemnify an Employee against losses and/or claims arising out of and in the scope and course of their employment by the Kenai Peninsula Borough and School District where the Employee has defended the loss and/or claim successfully.

B. Any reasonable amounts, substantiated by appropriate documentation, that the Employee pays on behalf of the Kenai Peninsula Borough and School District to settle losses and/or claims, satisfy Judgements and/or Court Orders.

C. Reasonable costs and Attorney fees incurred by the Employee in defending losses and/or claims on behalf of the Kenai Peninsula Borough and School District which are not paid by a benefit program to which the Kenai Peninsula Borough and School District contribute.

2.34.130 Liabilities for which employee may be indemnified.  
Indemnification rights of Kenai Peninsula Borough School District Employee's shall be in accordance with Section 14.12.115 of Alaska Statutes and restrictive language, if any, in this Section 2.34.130 shall not be applicable.

Kenai Peninsula Borough and School District Employee's may be indemnified against losses and/or claims, subject to Section 2.34.130, arising out of and in the scope and course of employment by the Kenai Peninsula Borough and School Board where the Employee does not defend the loss and/or claim successfully, but only if there is an independent determination in favor of the Employee on each of the following issues A through D.

The independent determination shall be the finding of a court of competent jurisdiction in a proceeding to which the Employee is a party. In the absence of such a finding, the independent determination shall be made by independent legal counsel appointed by the Kenai Peninsula Borough and School District for that purpose.

A. The Employee acted in a matter related to their employment in which the Kenai Peninsula Borough and School District had an interest.

B. The Employee acted in discharging a duty authorized or imposed by law.

C. The Employee acted in good faith.

D. In the case of a criminal action against the Employee, the Employee had no reasonable cause to believe their conduct was unlawful.

2.34.140 Limits on employee's right to indemnity. Indemnification rights of Kenai Peninsula Borough School District Employee's shall be in accordance with Section 14.12.115 of Alaska Statutes and restrictive language, if any, in this Section 2.34.140 shall not be applicable.

Notwithstanding Sections 2.34.110 and 2.34.120, the Kenai Peninsula Borough and School District shall not indemnify an Employee:

A. For costs and Attorney fees incurred in defending a loss and/or claim where the Kenai Peninsula Borough and School District Attorney or Kenai Peninsula Borough and School District policies of insurance could defend the Employee without a conflict of interest.

B. For a loss and/or claim for which Kenai Peninsula Borough and School District policies of insurance would indemnify the Employee without granting the Kenai Peninsula Borough and School District any right of Subrogation against the Employee.

C. Where the Kenai Peninsula Borough and School District brings the claim or proceeding against the Employee.

D. For punitive and/or exemplary damages.

E. For the cost of independent counsel retained by the Employee when the Kenai Peninsula Borough and School District have accepted tender of defense.

2.34.150 Employee's right to independent counsel. Where an employee is entitled to indemnity under this chapter, the Kenai Peninsula Borough and School District shall provide the employee with independent legal counsel when;

A. The employee requests legal counsel; and

B. The Kenai Peninsula Borough Mayor or Borough Attorney determines;

1. There may be a conflict of interest between the Kenai Peninsula Borough and School District and the employee, or

2. The liability of the employee involves claims or defenses not reasonably related to the claims or defenses of the Kenai Peninsula Borough and School District.

2.34.160 Employee's duties in event of a loss and/or claim. As soon as practicable, the employee in the event of a loss and/or claim which would entitle the employee to indemnity



and/or reimbursement by the Kenai Peninsula Borough and School District under this chapter, shall furnish or cause to be furnished written notice and/or oral information containing particulars sufficient to identify the exposure of the Kenai Peninsula Borough and School District. The information furnished should include;

A. All reasonable obtainable information with respect to the time, place and circumstances thereof, the names and addresses of persons suffering damage to property and/or personal injury, and the names and addresses of available witnesses.

B. If claim is made or notice of suit is served upon the employee, the employee shall immediately notify and forward to the Kenai Peninsula Borough Attorney and/or Risk Manager every demand, notice, summons or other process received by or served upon him/her or his/her representative.

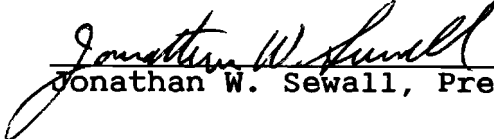
C. The employee shall upon request cooperate with and assist the Kenai Peninsula Borough and School District in making settlements, in the conduct of litigation and enforcement of any right of contribution or indemnity against any person and/or organization who may be liable to the Kenai Peninsula Borough and School District and/or the employee because of damage to property and/or personal injury. The employee shall at the request of the Kenai Peninsula Borough and School District, attend all hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The employee shall not, except at their own cost, voluntarily make any payment, assume any liability or obligation or incur any expense other than for the first aid to others at the time of an accident.

2.34.170 Public official's and employee dishonesty bonds. The Risk Manager shall be responsible for maintaining appropriate bonds for the Kenai Peninsula Borough Finance Officer and other designated check signors, for the benefit of the Kenai Peninsula Borough, in the amount of One Hundred Thousand Dollars (\$100,000.00) for each of the bonds required.


2.34.180 Employee safety program and safety engineering. The Risk Manager shall assist the Kenai Peninsula Borough and School District departmental directors and managers in developing, initiating and administering a cooperative employee safety program. The Risk Manager shall be responsible for coordinating efforts to reduce, to the greatest degree possible, the hazards existing in the work place that pose an undue risk to the employees and the user public.

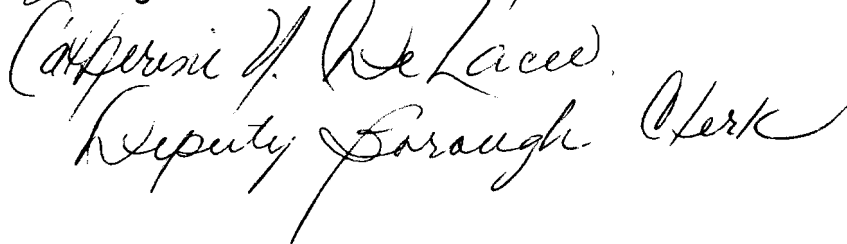
Section 2. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON  
THIS 21 DAY OF February, 1989.

  
Jonathan W. Sewall, President

ATTEST:

  
Dianne Brindley, <sup>14</sup>  
Borough Clerk

  
Catherine M. DeLace,  
Deputy Borough Clerk