

Introduced by:	Sprague
Date:	02/16/10
Hearings:	04/06/10 and 04/20/10
Action:	Postponed Until 04/20/10
Date:	04/20/10
Action:	Enacted as Amended
Vote:	6 Yes, 3 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2010-10**

AN ORDINANCE ENACTING KPB CHAPTER 2.90, CODE OF ETHICS

WHEREAS, the residents of the Kenai Peninsula Borough deserve to have confidence in the integrity of the borough government; and

WHEREAS, holding public office or employment is a public trust that must be safeguarded by the ethical conduct of these officers or employees; and

WHEREAS, KPB Chapter 2.58 requires filing a notice of intent to do business before municipal officers enter a contract with the borough; and

WHEREAS, KPB Chapter 2.58 requires assembly members to recuse themselves from voting on matters in which the assembly members have a substantial interest; and

WHEREAS, KPB 22.40.140 requires assembly members to vote unless they have a conflict of interest; and

WHEREAS, there are numerous ethical concerns that are not addressed by the present borough code; and

WHEREAS, a comprehensive ethics code will assist public officials and employees by setting forth standards and expectations for the conduct of the execution of public responsibilities; and

WHEREAS, a comprehensive ethics code will clarify the process relative to determining whether there has been any ethical violation and the consequences for violating the public trust;

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

SECTION 1. That KPB Chapter 2.90 is hereby enacted as follows:

CHAPTER 2.90. CODE OF ETHICS

Article I. Public Officials.

2.90.010. Scope of chapter.

This chapter shall apply to Kenai Peninsula Borough public officials as defined in KPB 2.90.320. The individuals covered by this chapter shall not be subject to the separate code of ethics for borough employees.

2.90.020. Purpose.

The purpose of this chapter is to assist public officials in carrying out their responsibilities under their oaths of office to support and defend the Constitution of the United States, the Constitution of the State of Alaska, and the laws of the Kenai Peninsula Borough, to specify conduct that violates public expectations that they will honestly, faithfully, and impartially perform their duties as public officials of the Kenai Peninsula Borough to the best of their ability.

2.90.030. Violations.

Ethical violations are as follows:

- A. **Special Consideration.** A public official shall not grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.
- B. **Authority.** A public official shall not exceed his or her authority, or intentionally breach the law, or ask or coerce others to do so in the course of his/her official public duties.
- C. **Other Offices or Employment.** A public official shall not hold or seek other office or employment which compromises the performance of his or her elected or appointed duties without disclosure of such office or employment. A public official shall disqualify himself or herself from any particular action which might be compromised by such office or employment.
- D. **Use of Confidential Information.**
 - 1. A public official shall not use or disclose confidential information without appropriate authorization.
 - 2. A public official shall not use or disclose information gained as a public official that is not yet published in any form by the borough or is not generally made available to the public to gain, directly or indirectly, anything of value.
 - 3. This provision shall not prevent any public official from reporting violations of this chapter or other illegal acts to the proper authorities.
- E. **Solicitation of or Receipt of Anything of Value.** A public official shall not solicit or accept anything of value from any person or entity other than the borough, directly or indirectly, in consideration of some action to be taken or not to be taken in the performance of the public official's duties. Gifts may be accepted as provided in KPB 2.90.040.

- F. Disclosure of Gift. A public official shall not fail to disclose a gift as set forth in KPB 2.90.040.
- G. Holding Investments or Property. A public official shall not hold any investment that might compromise the performance of the public official's duties without disclosure of the investment and self-disqualification from any participation in and voting on any particular action that might be compromised by the investment.
- H. Representation of Others.
1. A public official shall not represent any person in dealings with the borough in consideration of anything of value except:
 - a. In a contested case which involves a party other than the borough, and the interests represented by the public official are the borough's interests, are essentially the same as the borough's interests, or are not adverse to the borough's interests;
 - b. In a matter that involves only a ministerial action by a borough department, i.e., the performance of a duty that is normally done in the course of business in which the officer is left with no choice of his/her own;
 - c. When the representation is by a public official acting within the scope of his or her official public duties;
 - d. When the representation is merely for the purpose of obtaining information on behalf of a person or business and the public official receives no compensation for the representation beyond the salary and other compensation or reimbursement to which the public official is entitled for the performance of his or her official public duties;
 2. A public official shall be disqualified from acting on any matter or proceeding coming before the assembly when the matter involves any person who is, or has been, a client, patient or other business associate of the public official within one year immediately preceding the date of the matter or proceeding and the matter or proceeding is directly related to the public official's representation of that client, patient, or other business associate of the public official; or
 3. A public official shall not, within one year immediately following conclusion of service on the assembly, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the assembly and in which the public official participated personally and substantially through the exercise of official action. For the purposes of this subsection, "matter" means a case, proceeding, application, contract, or determination but does not include the proposal, consideration, or enactment of legislation.
- I. Financial Interest. A public official or a member of the public official's immediate family shall not have a financial interest in any matter being

considered by the public official. A public official shall disclose a financial interest, if known. The public official shall be disqualified from further participation in any matter in which the public official has a financial interest.

- J. **Borough Property.** A public official shall not use borough property, fiscal, or human resources for personal convenience, political purposes, or profit, except when such property is available to the public generally, or where such property is provided by specific borough policy in the conduct of official borough business.
- K. **Giving Anything of Value.** A public official shall not give anything of value in return for votes, promises, or other consideration that is prohibited by state law.
- L. **Expenses.** A public official shall provide required documentation to support requests for expense reimbursement or advancement. Expense reimbursement and advancements shall be made in accordance with borough policy.
- M. **Donations.** Except as specifically authorized by law, a public official shall not take any official action which will benefit any person or entity other than the borough because of a donation of anything of value to the borough by the person or entity.
- N. **Official Action.** A public official shall not take any official public action that will benefit any person or entity other than the borough when the public official would not have taken the action but for the public official's family relationship, friendship, or business relationship with the person or entity.
- O. **Representation of Assembly Position.**
 - 1. A public official shall not represent himself or herself as being the official authorized spokesperson for the assembly on a given issue unless specifically authorized by the assembly.
 - 2. A public official when making a public statement or otherwise taking a public position shall state that he or she is expressing a personal opinion unless authorized to speak on behalf of the assembly.
- P. **Aiding a Violation.** A public official shall not knowingly aid another public official in the violation of this chapter.
- Q. **Employment of Elected Public Official.** An elected public official shall not accept employment with the Kenai Peninsula Borough while serving in office or within one year after conclusion of service.
- R. **Disclosure of Conflict of Interest.** A public official shall not fail to disclose a conflict of interest.
- S. **Misrepresentation of a Material Fact.** A public official shall not misrepresent a material fact in a response to a complaint filed under this chapter.

- T. Disclosure of Confidential Information. A public official shall not disclose confidential information relating to a proceeding under this chapter.
- U. Compensation for official duties. A public official shall not accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the borough.
- V. Benefited interest. A public official shall not attempt to benefit a personal or financial interest through coercion of a subordinate or require a borough employee to perform services for the private benefit of a public official.
- W. Solicitations. A public official shall not solicit any assessments, contributions, or services for any political party from any employee in the borough service during working hours.
- X. Borough assets. A public official shall not use or authorize the use of borough funds, facilities, equipment, services, or another government asset or resource to include borough letterhead or logo with the intent to differentially benefit or harm a candidate or potential candidate for elective office or a political party or group.
- Y. Political activities. Nothing in this section shall affect the right of a public official to hold membership in and voluntarily, financially, and otherwise support a political party or candidate, to vote as he chooses, to express his opinions on all political subjects and candidates, to maintain political neutrality, and to attend political meetings.
- Z. Personal use of borough resources. Nothing in this section prohibits inconsequential use of borough time, property, equipment, or other facilities for personal purposes if the use does not interfere with the performance of official duties and the cost or value related to the use is minimal.
- AA. Use of borough facility. Nothing in this section prohibits the use of a borough facility by a political organization if the facility is available to other such organizations on the same terms and conditions.

2.90.040. Improper gifts and required disclosures.

- A. A public official may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to his personal or financial interests, under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions, or judgment, or confer a benefit for past performance of official duties, actions, or judgment.
- B. For purposes of this section an occasional, unsolicited gift of \$100.00 or less is presumed not to be given under circumstances in which it could be reasonably inferred that the gift is intended to influence the performance of official duties, actions, or judgment. For purposes of the disclosure

requirements set forth in subsection (C) of this section, "gift" includes a series of gifts from the same donor within a 12-month period.

- C. Notice of the receipt by a public official of a gift valued at more than \$100.00, including the name of the giver, a description of the gift, and its approximate value, must be provided to the clerk's office for inclusion in the public record, within 30 days after the date of its receipt:
 - 1. If the public official may take or withhold official action that affects the giver;
 - 2. If the gift is connected to the public official's governmental status; or
 - 3. If reasonable doubt exists as to whether the gift is intended to influence the performance of official duties, actions, or judgment.
- D. The restrictions relating to gifts imposed by this section do not apply to a campaign contribution to a candidate for elective office if the contribution complies with laws and regulations governing elections and campaign disclosure.
- E. A public official who knows or reasonably ought to know that an immediate family member has received a gift because of the immediate family member's connection with the public official shall report the receipt of the gift by the immediate family member to the clerk's office if the gift would have to be reported under this section had it been received by the public official or if receipt of the gift by the public official would be prohibited under this section.

2.90.050. Verified complaint.

- A. Any person may file a verified complaint with the clerk alleging that a public official has violated one or more provisions of KPB 2.90.030. The complaint must:
 - 1. be a written statement of the charge setting out in ordinary and precise language the acts or omissions with which the respondent is charged, so that the respondent is able to prepare a defense;
 - 2. specify the subsection(s) of KPB 2.90.030 that the respondent is alleged to have violated.
- B. No action may be taken on any complaint which is filed later than two years after a violation of this chapter is alleged to have occurred or where the violation occurred prior to the effective date of this ordinance. A complaint alleging a violation must be filed within two years from the date the complainant(s) knew or should have known of the action alleged to be a violation, provided that in no event shall a hearing be initiated more than five years after the alleged violation occurred.

2.90.060. Form of verification.

A. The verification shall be substantially in the following form:

I, (complainant/respondent), have read the foregoing complaint/response, know the contents thereof, and the same are true to the best of my knowledge and belief.

B. The complaint/response and the verification must be signed by the complainant/ respondent and acknowledged by a notary public.

2.90.070. Confidentiality.

A. All proceedings in respect of a complaint filed under KPB 2.90.050 are confidential and may not be disclosed to any person except as required for the proper processing and handling of the complaint.

B. It is not a violation of this section for a person to contact or retain an attorney or to cooperate in a criminal investigation if one is proceeding.

C. All proceedings and records shall remain confidential unless the respondent requests a public hearing or until the hearing officer files with the assembly its findings of fact and conclusions of law concerning the complaint.

2.90.080. Initial screening.

A. Upon receipt of a complaint regarding a public official under KPB 2.90.050, the borough clerk shall screen the complaint and determine if the complaint is sufficient. If necessary, the borough clerk may consult with or request a legal opinion from the borough attorney as to the sufficiency of the complaint. The borough clerk may dismiss the complaint on any of the following grounds:

1. The complaint does not comply with KPB 2.90.050-.060.
2. The complaint does not allege facts sufficient to constitute a violation of this chapter.
3. The borough has no jurisdiction over this matter.
4. The complaint is defective in a manner that would prevent a sound determination from being made.

B. If the complaint is sufficient on its face, then the borough clerk shall make an initial determination as to whether or not there is probable cause for a hearing. Before making a probable cause determination, the borough clerk shall notify both the public official and the complainant that the complaint has been accepted and serve a copy of the complaint on the public official. The notice shall also specify that a response by the public official, which shall include any challenge to the sufficiency of the complaint, must be filed within 30 calendar days

from the date of the clerk's written notice. If the deadline falls on a weekend or full-day borough holiday, then the notice shall be due on the next business day. The notice shall also inform the public official of the right to submit affidavits or other written evidence in support of the public official's response. Misrepresentation of a material fact in a response is a violation of this chapter. Failure to timely respond shall be considered an admission of the allegations in the complaint, and the clerk shall notify the complainant and respondent the allegations of the complaint are deemed admitted.

- C. The respondent may appeal to the hearing officer any deemed admission of the allegations of the complaint, for good cause, by filing an appeal with the clerk within 15 days after the date of notice of the deemed admission. The appeal must state all facts and legal grounds for failure to respond timely.
- D. The borough clerk may make the determination as to probable cause for a hearing from the written complaint and written response from the public official alone or the clerk may also interview individuals and request documents if he or she deems necessary. The borough clerk may consult with or request a legal opinion from the borough attorney as to probable cause for a hearing.
- E. If the borough clerk determines that the complaint is insufficient, has no legal basis, or there is no probable cause for a hearing, the clerk shall make a written determination indicating the basis for this determination and shall distribute the determination to the public official and the complainant. The complainant shall have one opportunity within 10 business days of the date of mailing or hand delivery of the determination to amend the complaint and to re-file. If the clerk determines that the second complaint is insufficient, lacks legal basis or probable cause for a hearing, or if the complainant fails to file a corrected complaint within the time set forth above, the clerk's determination is final and the clerk shall reject any attempts by the complainant or any other person on behalf of the complainant to file a complaint based upon the same or essentially similar facts and circumstances. The complainant may appeal any dismissal by the clerk to the superior court in accordance with the Alaska Rules of Appellate Procedure.
- F. If the borough clerk or deputy clerk is the subject of the complaint, the complaint should be filed with the general services director who shall perform the responsibilities of the clerk for those complaints.

2.90.090. Hearing officer.

- A. If the borough clerk determines the complaint is sufficient and there is probable cause that the public official may have violated this chapter, the clerk shall send the complaint to the hearing officer selected by the borough attorney. The hearing officer shall be a private attorney or an individual trained as an administrative hearing officer. The hearing

officer shall not be an employee of the Kenai Peninsula Borough or related to the appellant.

- B. The clerk will furnish to the hearing officer the complaint and response, if any, or any appeal.
- C. The hearing officer shall conduct an investigation so as to be completed within 60 days of receipt of the complaint from the borough clerk. The hearing officer can, for good cause shown by any person, including the hearing officer, extend the time limit by 30 days.

2.90.100. Hearing officer review and determination.

- A. The hearing officer shall review and consider all complaints accepted by the clerk, and timely responses, or any appeal of the dismissal of the complaint.
- B. The hearing officer shall take any action or combination of actions which the hearing officer deems appropriate and which the hearing officer is lawfully empowered to take, including but not limited to the following:
 - 1. Consider any timely appeals filed pursuant to KPB 2.90.080(C). Upon granting of the appeal, the hearing officer shall notify the parties.
 - 2. If the respondent has admitted the allegations or failed to respond, the hearing officer may issue findings of fact and conclusions of law based on the written record.
- C. The hearing officer may, in its sole discretion, dismiss the complaint, or decide to proceed to resolution of the complaint if:
 - 1. The complainant seeks to withdraw the complaint at any time before the hearing officer takes final action; or
 - 2. The complainant, after notice, materially fails to cooperate in the hearing officer's review and consideration of the complaint.

2.90.110. Prehearing conference.

- A. Upon receipt of the response, or the time has passed and the respondent has failed to answer the allegations of the complaint, the clerk shall furnish copies of the complaint and response, if any, to the complainant, the respondent, and the hearing officer, including the notice setting the time and place for a prehearing conference.
- B. The prehearing conference shall be held no later than 30 days after receipt of the response or the time for filing a response has run.
- C. Both the complainant and the respondent may be represented by counsel at all proceedings after the filing of the complaint. An attorney representing a party shall file with the clerk an entry of

appearance, furnishing the clerk with his or her name, mailing address, telephone, and facsimile numbers and email addresses, if any.

D. At the prehearing conference, the following matters shall be considered:

1. Time and place for hearing on the complaint and response;
2. Any stipulations of fact;
3. Any motions to be filed;
4. Any simplifications of the issues;
5. Scheduling motions, briefing, and any other relevant matters;
6. Exchange of evidence which shall not be later than 20 days before the hearing; and
7. Any other matters that the hearing officer determines will provide a fair and orderly hearing.

2.90.120. Hearing notice.

- A. If the hearing officer determines that a hearing on the complaint must be held, the clerk shall serve on the complainant and the respondent a notice of hearing setting out the time and place of hearing and the schedule for any preliminary matters. This notice shall include a statement of the right to provide written evidence and oral testimony. The complainant and the respondent shall also be informed of the right to be represented at the hearing.
- B. If the respondent has failed to answer the allegations of the complaint or has admitted the allegations, the hearing officer shall prepare findings of fact and conclusions of law based on the written record.

2.90.130. Motions.

- A. All motions shall be served in the manner set forth in the Alaska Rules of Civil Procedure, and the answering party shall have seven borough business days from date of service to respond, and the moving party shall have five borough business days to reply, unless another time has been agreed upon in the prehearing conference.
- B. For good cause shown, either party may apply to the hearing officer for an extension of the time for hearing.

2.90.140. Service by mail and filing.

- A. If service by mail is used, three days will be added for response time from the date of mailing. The party must certify the date mailed on the document. If the deadline falls on a weekend or holiday, the deadline shall fall on the next borough business day.

- B. All documents shall be filed with the clerk.

2.90.150. Hearing.

- A. All hearings shall be before the hearing officer who shall preside.
- B. The hearing officer may administer oaths, hold hearings, and take testimony. The hearing officer may, on his own or in response to a motion by a party to the hearing, request the presence of witnesses and the production of records, books, and papers at the hearing.
- C. The complainant and the respondent may each present opening statements setting out the matters they intend to prove. The complainant shall proceed first with his or her evidence and the respondent shall follow, setting forth his or her evidence. The complainant and the respondent may make closing arguments.
- D. The hearing officer may obtain additional information by a request to the borough attorney to investigate the complaint and report all information to the hearing officer.
- E. The Alaska Rules of Evidence do not apply to the admission of evidence in a hearing, but the hearing officer's findings of fact must be based on reliable and relevant evidence.
- F. At the conclusion of the presentation of evidence and closing arguments, the hearing officer shall consider the allegations, the evidence supporting them, and the respondent's evidence.

2.90.160. Findings of fact and conclusions of law.

- A. The hearing officer shall enter findings of fact and conclusions of law no later than 30 days after the conclusion of the hearing. The hearing officer shall notify the parties and their attorneys if an extension is required to permit the preparation of findings of fact and conclusions of law.
- B. If the hearing officer finds that no violation has occurred, the complaint shall be dismissed. The clerk shall serve the notice of dismissal on the complainant, the respondent, and attorneys. The notice of dismissal remains confidential.
- C. If the hearing officer finds that a violation of this chapter has been committed, the hearing officer shall prepare and submit its findings of fact and conclusions of law to the assembly.
- D. The findings of fact and conclusions of law are final and conclusive.
- E. The assembly may not change, modify, or otherwise alter the findings of fact and conclusions of law as submitted.
- F. The assembly shall impose a penalty on the public official in accordance with KPB 2.90.190.

- G. If the hearing officer determines that no violation has occurred, or otherwise dismisses the complaint for substantive reasons, the assembly may, in its discretion, award full or partial attorney fees to a public official who reasonably incurred those costs defending the complaint. This award may be made only to the extent that the assembly has appropriated funds for that purpose.

2.90.170. Appeal of findings of fact and conclusions of law and penalty.

- A. If the assembly imposes a penalty with its decision, appeal of the findings of fact and conclusions of law and the penalty may be taken to the superior court in accordance with the Alaska Rules of Appellate Procedure.
- B. Notice of an appeal must be filed with the superior court within 30 days of the imposition of the penalty.
- C. No action may be taken on any complaint which is filed later than two years after a violation of this chapter is alleged to have occurred, or where the violation occurred prior to the effective date of this ordinance. A complaint alleging a violation must be filed within two years from the date the complainant(s) knew or should have known of the action alleged to be a violation; provided, that in no event shall a hearing be initiated more than five years after the alleged violation occurred.

2.90.180. Records retention.

The clerk shall provide for the storage or destruction of all records of the proceedings of the hearing in accordance with the approved borough retention schedule.

2.90.190. Remedies.

- A. The borough clerk or deputy borough clerk who violates this chapter shall be disciplined by a majority vote of the assembly. In determining an appropriate remedy, the assembly may be guided by the provisions of KPB 2.90.190(B)-(C). Depending on the violation, disciplinary action may include termination.
- B. The mayor or a member of the assembly who violates this chapter shall be subject to one or more of the following:
 - 1. Public censure by the assembly.
 - 2. A civil fine of not more than \$1,000 for each violation of any of the subsections of KPB 2.90.030-.040 and 2.90.080(B). If a public official has violated more than one subsection of KPB 2.90.030-.040 and 2.90.080(B), the civil penalty may not exceed \$10,000 in the aggregate.

- C. An assembly member who voted after the assembly president or assembly determined, after full and complete disclosure, that the assembly member did not have a financial interest shall not be subject to such penalties.
- D. A penalty imposed under this section is in addition to and not in lieu of any other penalty that may be imposed according to law. To the extent that violations under this code are punishable in a criminal action, that sanction is in addition to the civil remedies set out in this chapter.
- E. The assembly may, upon notice of a violation by a public official, take any of the following actions:
 - 1. Void any action of the assembly materially and substantially connected to a violation of this chapter.
 - a. In determining whether to void a grant, contract, or lease, the interest of third parties who may be damaged and the nature of the violation may be taken into account. The assembly shall give notice of intent to void a borough grant, contract, or lease under this section no later than 30 days after the hearing officer files its findings of facts and conclusions of law.
 - 2. Require that any loan received from the borough in violation of this chapter shall be immediately due and payable.
 - 3. Direct the borough attorney to pursue any other remedies available at law or in equity.

Article II. Borough Employees.

2.90.200. Declaration of policy.

It is declared that:

- A. High moral and ethical standards among borough employees are essential to assure the trust, respect, and confidence of the people of this borough;
- B. A code of ethics for the guidance of borough employees will:
 - 1. discourage borough employees from acting upon personal or financial interests in the performance of their public responsibilities;
 - 2. improve standards of public service; and
 - 3. promote and strengthen the faith and confidence of the people of this borough in employees;

- C. Holding borough employment is a public trust and, as one safeguard of that trust, the people require the borough employees to adhere to a code of ethics;
- D. A fair and open government requires that the borough employees conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest;
- E. In order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism;
- F. No code of conduct, however comprehensive, can anticipate all situations in which violations may occur, nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment; and
- G. Compliance with a code of ethics is an individual responsibility; thus all who serve the borough have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates.

2.90.210. Misuse of official position.

- A. A borough employee may not use, or attempt to use, his or her official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person.
- B. A borough employee may not:
 - 1. seek other employment or contracts through the use or attempted use of his or her official position;
 - 2. accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the borough;
 - 3. use borough time, property, equipment, or other facilities to benefit personal or financial interests;
 - 4. participate in an official action in which the employee has a substantial financial interest;
 - 5. attempt to benefit a personal or financial interest through coercion of a subordinate or require a borough employee to perform services for the private benefit of an employee at any time;
 - 6. solicit any assessments, contributions or services for any political party from any employee in the borough service during working hours;
 - 7. use or authorize the use of borough funds, facilities, equipment, services, or another government asset or resource to include

borough letterhead or logo with the intent to differentially benefit or harm a candidate or potential candidate for elective office or a political party or group.

- C. A borough employee who, during the employee's scheduled work hours, engages in political campaign activities shall take approved leave for the period of campaigning.
- D. Nothing in this section shall affect the right of an employee to hold membership in and voluntarily, financially, and otherwise support a political party or candidate, to vote as the employee chooses, to express opinions on all political subjects and candidates, to maintain political neutrality, and to attend political meetings.
- E. Nothing in this section prohibits inconsequential use of borough time, property, equipment, or other facilities for personal purposes if the use does not interfere with the performance of official duties and the cost or value related to the use is nominal.
- F. Nothing in this section prohibits the use of a borough facility by a political organization if the facility is available to other such organizations on the same terms and conditions.

2.90.220. Improper gifts and required disclosures.

- A. A borough employee may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to his personal or financial interests, under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions, or judgment, or confer a benefit for past performance of official duties, actions, or judgment.
- B. For purposes of this section an occasional, unsolicited gift of \$100.00 or less is presumed not to be given under circumstances in which it could be reasonably inferred that the gift is intended to influence the performance of official duties, actions, or judgment. For purposes of the disclosure requirements of subsections (C) and (D) of this section, "gift" includes a series of gifts from the same donor within a 12-month period.
- C. Notice of the receipt by a borough employee of a gift valued at more than \$100.00 must be provided to the employee's department director, or the mayor if the employee reports to the mayor, within 30 days after the date of its receipt along with the name of the giver and a description of the gift and its approximate value:
 - 1. if the employee may take or withhold official action that affects the giver;
 - 2. if the gift is connected to the employee's governmental status; or

- 3. if reasonable doubt exists as to whether the gift is intended to influence the performance of official duties, actions, or judgment.
- D. The restrictions relating to gifts imposed by this section do not apply to a campaign contribution to a candidate for elective office if the contribution complies with laws and regulations governing elections and campaign disclosure.
- E. An employee who knows or reasonably ought to know that an immediate family member has received a gift because of the immediate family member's connection with the employee's borough employment shall report the receipt of the gift by the immediate family member to the employee's director if the gift would have to be reported under this section if it had been received by the employee or if receipt of the gift by the employee would be prohibited under this section.

2.90.230. Improper use or disclosure of information.

- A. A current or former employee may not disclose or use information gained in the course of, or by reason of, his official duties that could in any way result in the receipt of any benefit for the employee or an immediate family member, if the information has not also been disseminated to the public.
- B. A current or former employee may not disclose or use, without appropriate authorization, information acquired in the course of official duties that is confidential by law.

2.90.240. Improper influence in borough grants, contracts, or leases.

- A. An employee, or an immediate family member, may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a borough grant, contract, or lease if the employee takes or withholds official action that affects the award, execution, or administration of the grant, contract, or lease.
- B. The mayor may formally waive this section after determining that it is in the best interest of the borough to do so. Any waiver of this section shall be in writing and shall set forth the reasons for the waiver. The waiver shall be forwarded to the assembly president, to be confirmed by the assembly by motion.

2.90.250. Outside employment restricted.

- A. A borough employee may not render services to benefit a personal or financial interest or engage in or accept outside employment, if the outside employment or service is incompatible or in conflict with the proper discharge of official duties.

- B. A borough employee rendering outside services for compensation, or engaging in outside employment, shall first obtain approval for such outside employment from the mayor for administrative employees, and assembly president for legislative employees. Any change in an employee's outside service or employment activity must be reported to the director as soon as reasonably possible after it occurs.

2.90.260. Aiding a violation prohibited.

It is a violation of this chapter for an employee to knowingly aid another person in a violation of this chapter.

2.90.270. Declaration of a potential violation or conflict.

- A. An employee who is or may become involved in a matter that may result in a violation of a section in this chapter shall refrain from taking any official action relating to the matter until a determination is made under this section and immediately make a full and complete disclosure, in writing, to the director of the employee's department.
- B. The director shall make a written determination whether an employee's involvement would be a violation of this chapter and shall provide a copy of the written determination to the employee and to the borough attorney and general services director. The director shall review the summaries of previous determinations as set forth in subsection (D) of this section and may request guidance from the borough attorney before making the written determination.
- C. An employee is not liable under this chapter for any action carried out in accordance with a determination made pursuant to this section if the employee fully disclosed all known relevant facts reasonably necessary to the determination.
- D. All written determinations shall be confidential and submitted to the borough attorney for review. The borough attorney shall make sufficient deletions to prevent disclosure of the employee's identity from the summary. An indexed copy of the summaries shall be maintained by the general services director for inspection by the public and employees.

2.90.280. Complaint procedure—Employee.

- A. Any person may file a complaint under this chapter concerning an employee with the general services director. The complaint may be filed with the mayor if the general services director is the subject of the complaint. A complaint shall specify the provisions of this chapter alleged to have been violated and facts alleged to constitute the violation.

- B. All complaints under this section shall be in writing and signed and sworn to under oath by the complainant in accord with KPB 2.90.050(A) and .060.
- C. All proceedings in respect of a complaint filed under this section are confidential and may not be disclosed to any person except as required for the proper processing and handling of the complaint.
- D. It is not a violation of this section for a person to contact or retain an attorney or to cooperate in a criminal investigation if one is proceeding.
- E. Upon request by the complainant, the name of the complainant shall be kept confidential and shall not be revealed unless for good cause shown.
- F. Upon receipt of the complaint, the general services director or mayor shall give the person under investigation notice of the substance of the complaint and an opportunity to present written information or oral testimony including the names of any individuals the person wishes to have interviewed.
- G. At the conclusion of an investigation, the general services director or mayor shall prepare a written report including:
 - 1. A summary of the investigation; and
 - 2. Recommendations for such administrative or legal action as deemed appropriate.
- H. The report shall be delivered to the person under investigation, the mayor, and the borough attorney.
- I. Action on complaints and investigations shall be completed within 90 days of the filing of the complaint unless good cause is shown for a 30-day extension.
- J. If an employee is found in violation of this chapter or found to have furnished false or misleading information during the investigation, the employee may be subject to reprimand, demotion, suspension, discharge, or otherwise subject to disciplinary action. This section does not prohibit the review of a disciplinary action in the manner prescribed by an applicable collective bargaining agreement or personnel statute or rule.
- K. All documents, records, testimony, final determination, and disciplinary action relating to the investigation of the complaint are confidential and shall not be released to the public, with the exception of the determination summaries required by KPB 2.90.270.
- L. An employee found in violation of this chapter may appeal the determination within 30 days of receipt of the report referenced in subsection H to the superior court in accordance with the Alaska Rules of Appellate Procedure.

2.90.290. Consequences of violations.

In addition to any disciplinary action, the mayor shall determine if any or all of the following shall be ordered:

- A. Avoidance of any grant, contract, lease or other agreement or arrangement entered into in violation of this chapter;
- B. Recovery of any fee, compensation, gift or benefit given to an employee;
- C. Pursuit of any other available legal or equitable remedy; or
- D. Pursuit of any possible criminal actions.

2.90.300. Statute of limitations.

No complaint may be filed against an employee that alleges a violation of this chapter which occurred more than two years prior to the filing date of the complaint or prior to the effective date of this ordinance.

2.90.310. Confidentiality.

- A. Complaints and subsequent investigations relating to employees shall be confidential except as necessary to carry out the powers and duties set forth in this chapter or to enable another person or department to consider and act upon the determinations or recommendations of the mayor pursuant to any other section of this chapter.
- B. Any employee who is found to have publicly disclosed any information relating to an investigation or findings under this chapter, unless such disclosure is otherwise permitted under this chapter, shall be subject to discipline up to and including dismissal from employment.
- C. Except as set forth in subsections (D) and (E) of this section, any person, whether or not an employee, shall not violate the confidentiality requirements of this chapter. In addition to the disciplinary actions set forth above, a violation of the confidentiality provisions of this chapter shall be subject to a civil fine of up to \$500.
- D. Notwithstanding subsections (A) through (C) of this section, the ~~general services director may publish summary opinions to inform borough personnel and the public about the interpretation of provisions of this chapter relating to an investigation and determination as long as such publication does not divulge any material facts which would lead to the identity of the person who was the subject of the complaint.~~
- E. A person who makes public the substance of or any portion of a confidential investigation or determination of which that person was the subject is deemed to have waived the confidentiality of that

determination and of any records obtained or prepared in connection with that determination.

Article III. Definitions.

2.90.320. Definitions.

“Anything of value” means:

1. Anything having a monetary value in excess of \$100.00; or
2. Anything, regardless of its monetary value, perceived or intended by either the one who offers it or the one to whom it is offered to be sufficient in value to influence a public official in the performance or nonperformance of an official action; or
3. Anything, regardless of its monetary value, which, under the circumstances, a reasonably prudent person in the position of the public official to whom the thing is or may be offered, would recognize as being likely to be intended to influence the public official in the performance or nonperformance of an official action; and
4. The term “anything of value” includes, but is not limited to, a valuable act, advance, award, benefit, contract, compensation, contribution, deposit, emolument, employment, favor, fee, forbearance, gift, gratuity, honorarium, loan, offer, payment, perquisite, privilege, promise, reward, remuneration, service, subscription, or the promise that any of these things will be conferred in the future.

“Benefit” means anything that is to a person’s advantage or self-interest, or from which a person profits, regardless of the financial gain, including any dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan or loan guarantee, promise to pay, grant, contract, lease, money, goods, service, privilege, exemption, patronage, advantage, advancement, or anything of value.

“Clerk” means the borough clerk, the deputy borough clerk, and any designee of the borough clerk or deputy borough clerk.

“Compensation” means any money, thing of value, or economic benefit conferred on or received by a person in return for services rendered or to be rendered by the person for another.

“Complainant” means a person filing a complaint with the clerk or general services director, as appropriate.

“Confidential information” means information gained by the borough in the course and scope of its business, including but not limited to personnel, financial and litigation information which is not generally made available to the public, or information concerning the acts of the assembly, including but not limited to executive sessions and ethics hearings not generally made available to the public.

“Conflict of interest” means a financial interest or an interest in any thing of value, as defined in this chapter, or a professional interest in a relevant matter. It may also include the filing of a complaint by a public official.

“Employee” means a permanent, probationary, seasonal, temporary, or casual employee, whether appointed, legislative, administrative, confidential, or classified, and does not include the borough mayor, borough clerk, deputy borough clerk, or assembly members.

“Entity” means a group of persons organized for any purpose including but not limited to a corporation, company, partnership, firm, association, organization, joint venture, joint stock company, foundation, institution, government, union, trust, society, church or club.

“Financial interest” means:

1. An interest held by a person or entity subject to this chapter or an immediate family member, which includes an involvement or ownership of an interest in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive anything of value; or
2. An interest held by a business in which the employee or person listed in paragraph A holds a position in business, such as an officer, director, trustee, partner, employee, or the like, or management position.

This definition, however, shall be interpreted and applied in a manner that distinguishes between minor and insubstantial conflicts that are unavoidable in a free society and those conflicts of interest that are substantial and material. Specifically, a public official shall not be disqualified from participation in matters in which the public official:

1. Has a financial interest which is insubstantial;
2. Has a financial interest that is possessed generally by the public or a large class of persons to which the public official belongs;
3. Merely performs some duty or has some influence which would have insubstantial or conjectural effect on the matter; or
4. Has an interest because it involves compensation and benefits for the performance of public official duties.

“Gain” includes actual or anticipated gain, benefit, profit, or compensation.

“Gift” means any benefit or thing or act of value which is conveyed to or performed for the benefit of a public official including any advance, award, contract contribution, deposit, employment, favor, forbearance gratuity, honorarium, loan, payment, service, subscription, or the promise that any of these things or acts of value will be conferred in the future, if such thing or act of value is conferred or performed without the lawful

exchange of consideration which is at least equal in value to the thing or act conferred or performed.

“Human resources” means persons employed by the Kenai Peninsula Borough.

“Immediate family member” means a public official’s spouse, children, spouse’s children, spouses of children, grandchildren, parents, siblings, grandparents, or a regular member of the public official’s household.

“Investments” means the acquisition of property or other assets with the expectation of gain.

“Official action” means a recommendation, decision, approval, disapproval, or other similar action, including inaction.

“Parent” includes a biological parent, an adoptive parent, and a stepparent.

“Person” means and includes a corporation, company, firm, partnership, association, society, organization or business trust, joint venture, as well as a natural person.

“Probable cause” means having more evidence that a violation of the code of ethics has occurred than not.

“Public censure” means an official rebuke, which shall be part of the public records.

“Public official” means any person serving on the assembly, the mayor, the borough clerk, or the deputy borough clerk and any individual serving in an acting capacity in any of these positions.

“Respondent” means the person against whom a complaint is filed with the clerk or general services director, as appropriate.

“Source of income” means an entity for which service is performed for compensation or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; if the person is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person, the person’s spouse or child, or a combination of them, holds a controlling interest in, the “source” is the client or customer of the proprietorship, partnership, or corporation; if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source.

“Subpoena” means a command to appear at a certain time and place to give testimony upon a certain matter. A subpoena duces tecum requires production of books, papers and other things.

“Substantial financial interest” means an interest that will result in immediate financial gain or financial gain which will occur in the reasonably foreseeable future.

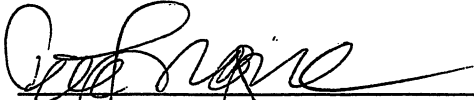
SECTION 2. That KPB 22.30.050 is hereby repealed as follows:

[22.30.050. IMPROPER CONDUCT—INVESTIGATION—ACTION.

- A. ALLEGED IMPROPER ACTIONS OF ASSEMBLY MEMBERS MAY BE REPORTED TO THE ASSEMBLY PRESIDENT WHO MAY CAUSE AN INVESTIGATION OF SUCH REPORTED IMPROPER ACTIONS AND THEN REQUEST AN EXECUTIVE SESSION TO DISCUSS THE MATTER.
- B. ANY MEMBER MAY MAKE A MOTION OF CENSURE AT AN OPEN MEETING. THE MOTION IS SUBJECT TO DEBATE. THE ASSEMBLY MEMBER WHO IS THE SUBJECT OF THE CENSURE MOTION HAS THE PRIVILEGE OF THE FLOOR AS IN ALL MATTERS BEFORE THE BODY.
- C. THE DISCUSSION AND ACTION ON THE MOTION DO NOT REQUIRE AN EVIDENTIARY HEARING, OR CONFRONTATION OF WITNESSES FOR QUESTIONING.
- D. SHOULD THE MOTION FOR CENSURE PASS, IT SHALL BE REDUCED TO WRITTEN FORM, STATING THE BASIS FOR THE MOTION AND THE CONDUCT FOR WHICH CENSURE WAS MADE. THE BOROUGH CLERK SHALL MAINTAIN THAT MOTION AMONG THE PERMANENT RECORDS OF THE ASSEMBLY.
- E. IF THE REPORTED IMPROPER CONDUCT IS THAT OF THE ASSEMBLY PRESIDENT, THE ASSEMBLY VICE-PRESIDENT MAY RECEIVE THE REPORTS OF IMPROPER CONDUCT, CONDUCT THE INVESTIGATION, AND REQUEST THE EXECUTIVE SESSION.
- F. THIS SECTION APPLIES TO ACTIONS OF CENSURE OR REPRIMAND, AND IS NOT TO BE CONSTRUED AS A LIMITATION ON THE RIGHT OF THE ASSEMBLY TO REMOVE A MEMBER FROM THE ASSEMBLY UPON GROUNDS SET FORTH BY STATUTE OR ORDINANCE.
- G. ANY MOTION, REQUEST OR ACTION THAT MAY BE MADE BY THE PRESIDENT OR VICE PRESIDENT UNDER THIS SECTION MAY BE INITIATED BY MOTION OF ANY ASSEMBLY MEMBER.]

SECTION 3. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS
20TH DAY OF APRIL, 2010.


Pete Sprague, Assembly President

ATTEST:


Johni Blankenship, Borough Clerk



Yes: Haggerty, McClure, Smalley, Smith, Superman, Sprague
No: Fischer, Knopp, Pierce
Absent: None