


KENAI PENINSULA BOROUGH

Kenai Peninsula Borough Assembly

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Pete Sprague, Assembly President
Hal Smalley, Vice President

MEMORANDUM

To: Kenai Peninsula Borough Assembly Members
From: Assembly President Pete Sprague 
Date: February 16, 2010
Re: Ordinance 2010- 10, Ordinance enacting a Code of Ethics

The issue of ethics and ethical behavior of those in public service continues to be at the forefront of discussions at the local, state, and federal levels. After many conversations with constituents and officials from other municipalities in Alaska, I have worked with the Legal Department to draft a comprehensive ethics ordinance for elected officials and employees of the Kenai Peninsula Borough. Key points are listed below:

- KPB 2.90 is a proposed comprehensive ethics ordinance. KPB 2.90 is applicable to the assembly, mayor, clerk and municipal employees. It defines unethical conduct through a list of prohibited acts. It also provides procedures for determining whether a violation of the ethics code has occurred, and sets forth remedies.
- This code is supplemental to KPB 2.58. KPB 2.58 merely requires a notice to do business be filed by municipal official who will be contracting with the borough. The ethics code specifically disallows participation by an employee, assembly person, or clerk's office in a contract from which they could personally benefit and a penalty may be imposed for so doing. However, the ethics code does not include the service area board and planning commission, whereas KPB 2.58 does.
- The process set forth in KPB 22.30.050 allows the assembly to censure a member of the assembly who engages in "improper conduct" which is not defined. Title 2.90 sets forth a specific list of ethical violations, a due process proceeding for determining whether a violation has occurred, and a list of remedies for the violation. As such KPB 2.90 encompasses and expands upon KPB 22.30.050 which should be repealed as part of this ordinance being adopted.
- The procedure for the assembly, mayor, and clerk is initiated by a filing of a complaint. The clerk determines the sufficiency of the complaint (the human resource director will fulfill this responsibility if the clerk is the subject of the complaint.) If the complaint is sufficient

it is referred to an independent hearing officer who must either be a lawyer or be a person with a back ground in quasi-judicial proceedings. A pre-hearing conference is held with parties and a briefing and hearing schedule is established. The parties may present evidence and witnesses, but formal rules of evidence and discovery procedures do not apply. The hearing officer makes written findings and conclusions which are submitted to assembly. The assembly then may take action in the form of several remedies provided in the code which include a public censure and a fine not exceeding \$10,000.00 in aggregate in the event there are several violations. (The penalty for the clerk may include termination.) The proceedings are confidential; however, the hearing officer's findings and conclusions are public.

The complaint for an alleged employee violation is filed with the human resources director. The mayor or human resources director investigates the complaint. The employee is given notice of the complaint and an opportunity to present either written or oral evidence including names of persons the employee would like interviewed. A written report of the investigation results are delivered to the employee, borough attorney, and mayor. All proceedings are confidential. However, summaries of each determination with non-identifying information shall be maintained for the benefit of addressing future violations. These summaries will be available to the public as well. The remedies for an employee violation include demotion, suspension, and discharge.

The proposed ordinance is rather detailed, and I am asking for two public hearings to enable all interested parties to have ample time to review and comment. Your consideration of this ordinance is appreciated.