

Introduced by:	Sprague
Date:	08/17/10
Hearing:	09/21/10
Action:	Postponed Until 10/12/10
Date:	10/12/10
Action:	Enacted as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2010-32**

**AN ORDINANCE AMENDING KPB 5.28.320 REGARDING APPEALS FROM
CONTRACT AWARDS**

WHEREAS, in 2003 the assembly enacted ordinance 2003-10, establishing procedures for appealing the award of contracts following invitations to bid and requests for proposal; and

WHEREAS, the use of these procedures as well as a recent court decision have highlighted some needed amendments to clarify the process;

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

SECTION 1. That KPB 5.28.320(G) is hereby amended as follows:

G. *Appeal to assembly.* The mayor's decision may be appealed to the assembly by filing a notice of appeal to the assembly and requesting the mayor to forward the written appeal and the mayor's response to the assembly. The assembly shall conduct a de novo review of the issue appealed. The request to appeal to the assembly must be submitted in writing or by facsimile copy of a writing to the borough clerk within 3 business days of the mayor's decision. Any appeal not timely filed shall be rejected by the clerk and the appeal forever barred. Appeals to the assembly will be heard at the date and time established by the assembly president, not less than 12 nor more than 35 days after receipt of the appeal. For good cause the assembly president may shorten or extend the hearing date.

SECTION 2. That KPB 5.28.320(H) is hereby amended as follows:

H. *Notice and record on appeal.*

1. The clerk shall provide all interested parties as defined in paragraph A. above including the appellant, the borough administration, and any other parties who submitted or bid or proposal who may be adversely affected by a decision of the assembly, notice of the appeal and scheduled hearing date within 3 business days of receipt of the notice of appeal. Such notice shall also advise the parties of their right to appear and be heard at the

appeal, and shall also set forth a schedule for written statements and submission of evidence.

2. The purchasing officer shall submit to the clerk the record of the bid or proposal process including the invitation to bid or request for proposal, any amendments thereto, all correspondence to or from all parties, the appeal filed to the mayor and supporting documentation, and the decision issued by the mayor. The clerk shall prepare the record on appeal, to include written statements and all evidence submitted, and provide copies to interested parties upon payment of appropriate copying fees. Prior to the scheduled hearing the clerk shall distribute copies of the record to all assembly members, the purchasing officer and the mayor.

SECTION 3. That KPB 5.28.320(K) is hereby amended as follows:

- K. *Hearing.* The following procedures shall be followed by the assembly for conduct of the hearing:

1. No new evidence. Evidence not submitted to the clerk 5 business days prior to the hearing, may not be considered by the assembly unless good cause is shown. Good cause may include, but is not limited to, evidence that was not available to the party presenting the evidence at the time it was due to the clerk. Any objection to new evidence by any party shall be made at the time of the hearing before the assembly. [THE HEARING SHALL CONSIST OF ORAL ARGUMENT BY THE PARTIES. TESTIMONY SHALL NOT BE TAKEN UNLESS SPECIFICALLY REQUESTED BY THE ASSEMBLY.]
2. The following order and time limitations shall be followed for the hearing, unless for good cause shown the assembly permits a change:
 - a. Appellant's Opening Presentation [CALL TO ORDER AND ROLL CALL];
 - b. Administration's Opening Presentation [APPELLANT, 15 MINUTES (IF MORE THAN ONE APPELLANT, EACH IS ALLOWED 15 MINUTES)];
 - c. Opening Presentation by any other Party [BOROUGH, 15 MINUTES];
 - d. Rebuttal by the Appellant [SUCCESSFUL BIDDER OR PROPONENT, 15 MINUTES];
 - e. Rebuttal and closing by the Administration [TESTIMONY, IF ANY ALLOWED, SUBJECT TO TIME LIMITS SET AT THE ASSEMBLY'S DISCRETION]; [AND]

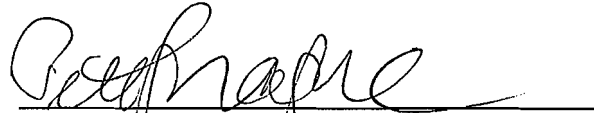
f. Rebuttal by any other interested party; and [IF TESTIMONY IS ALLOWED, CLOSING STATEMENTS BY EACH PARTY IN THE SAME ORDER AS ARGUMENTS WERE PRESENTED.]

g. Sur-Rebuttal and closing by the Appellant.

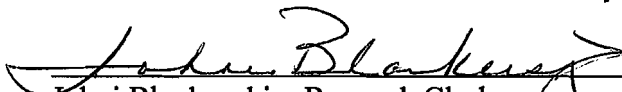
3. If the appellant or representative is not present when called, the assembly shall consider any written presentation, evidence, and documents presented to it pursuant to an thereafter proceed according to the remaining applicable provisions of this chapter. [THE ASSEMBLY SHALL DELIBERATE AND ISSUE A DECISION UPON CLOSING THE HEARING. THE ASSEMBLY MAY, WITH PROPER NOTICE, CONTINUE THE PROCEEDINGS TO A TIME CERTAIN AS IS CONVENIENT AND EXPEDITIOUS FOR THE ASSEMBLY AND PARTIES. EVERY EFFORT SHALL BE MADE TO CONCLUDE THE PROCEEDINGS IN AN EFFICIENT MANNER, WHILE PROVIDING A COMPLETE AND IMPARTIAL REVIEW OF THE ARGUMENTS, EVIDENCE, BRIEFING, AND TESTIMONY.]
4. All persons presenting evidence shall do so under oath, administered by the borough clerk.
5. The hearing shall be conducted informally with respect to the introduction of evidence. Irrelevant evidence may be excluded by the presiding officer. Each interested party shall have a total of no more than 30 minutes to present their case. Each party shall be responsible for dividing their 30 minutes between oral presentation, argument, testimony (including witness testimony), and rebuttal. The board may expand or limit the length of the hearing depending on its complexity, or take other action to expedite the proceedings. Cross-examination will not be permitted during presentation of the case. If a witness testifies during presentation of either the appellant's or any other parties' case, unless excused by the board with the concurrence of the appellant and all other parties, the witness must remain available in the assembly room to be called to testify during rebuttal by the appellant and the administration or other interested party. Assembly questions and parties' responses shall not be included in the time limitation.

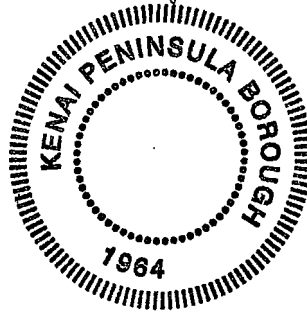
SECTION 4. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS
12TH DAY OF OCTOBER, 2010.


Pete Sprague, Assembly President

ATTEST:


John Blankenship, Borough Clerk



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