

Kenai Peninsula Borough

Legal Department

MEMORANDUM

TO: Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Sean Kelley, Borough Attorney

DATE: August 30, 2022

SUBJECT: Vacancy in the Office of Mayor – Transition and Succession Process

The below provides a brief analysis, followed by recommendations, concerning the potential process and succession timeline when there is a vacancy in the office of mayor for the Kenai Peninsula Borough (“KPB” or “borough”).

Background

On August 26, 2022, Mayor Charlie Pierce resigned his position as KPB Mayor. The effective date of the resignation is close-of-business on September 30, 2022.¹

Declaring a Vacancy and Calling a Special Election

This is a unique situation. On several of the issues discussed below there is either no controlling law or ambiguity in the law and reasonable minds may disagree on how to proceed.

During the September 6, 2022, regularly scheduled Assembly meeting, the KPB Assembly (“Assembly”) will need to accept the resignation of Mayor Pierce, and by two-thirds concurring vote, declare the office of mayor vacant.²

Alaska Statutes (AS) 29.20.280(b) provides:

A vacancy in the office of mayor occurring six months before a regular election shall be filled by the governing body. The person appointed serves until the next regular election when a successor is elected to serve the balance of the term. If a member of the governing body is appointed mayor, the member shall resign the seat on the governing body. If a vacancy occurs more than six months before a regular election, the governing body shall call a special election to fill the unexpired term.

¹ See, Attachment 1, Mayor Pierce’s resignation letter.

² See, AS 29.20.280 (Attachment 2)

While the vacancy will likely occur within six months of the regular local borough election on October 4, 2022, it would not be feasible to include the office of mayor in the upcoming local election.³ The next regular election for Borough Mayor is October 2023.

Should the Assembly reasonably interpret the phrase “the next regular election” in AS 29.20.280(b) to mean the next regular election that complies with fixed candidacy filing periods and in a manner that allows for mayoral candidates to be included on the regular election ballot, then the vacancy will occur more than six months before the next regular election.

Accordingly, the KPB Legal Department recommends that the Assembly call an areawide special election wherein the registered voters of the borough will elect a mayor to fill the unexpired term of the office of mayor. The qualifications for the mayor elected by special election are the same as for a mayor who runs as a candidate in a full-term general election. The candidate must be: (1) a qualified voter of the State of Alaska; and (2) a resident of the Kenai Peninsula Borough for one year immediately preceding filing for office.

Per KPB 4.120.010, the special election may be conducted by mail.

Interim Mayor – Assembly Appointment

Neither State law nor Borough code provide overt direction on who should serve as mayor during the interim period between a resignation and a special election. Assuming a vacancy is declared, a reasonable interpretation of AS 29.20.280 is that the Assembly should appoint a mayor to serve until the mayor elected by special election takes office (The appointed mayor is referred to herein as the “Interim Mayor” for convenience only).

Despite some arguable ambiguity in applicable State law and Borough Code, it would be reasonable for the Assembly to decide to appoint an Interim Mayor until a special election can be held. It would also be reasonable for the Assembly to read AS 29.20.260 (Executive Absence), AS 29.20.280 (Vacancy in the office of mayor) and KPB Chapter 2.04 together, and approve the designated administrative officer to serve in as the temporary chief executive until a special election is held and the elected mayor takes office to fill the unexpired term. Functionally, either route leads to a similar result in that if the will of the Assembly is for the designated administrative officer to serve in the role of “Interim Mayor” then that can be accomplished via Assembly appointment (assuming the individual accepts the appointment).

³ Mayor Pierce's term expires October 2023. Candidacy filing periods have closed and ballots are currently printed for the upcoming October 4, 2022 election.

Appointment

The Assembly may appoint one of its members, but the member would need to accept the appointment and resign her/his assembly seat.⁴ If a borough employee is appointed to temporarily serve as Interim Mayor, the employee would not need to resign her/his employment position. Neither State law nor Borough code prohibits such dual service. In fact, AS 29.20.400(b) expressly provides that a mayor, with consent of the governing body, may serve as the head of one or more departments.

The appointee should have the qualifications to serve as borough mayor under state law and borough code. Beyond qualifications to serve (registered voter, borough resident), neither state law nor borough code provide additional mayoral appointment criteria or requirements. Borough code does not outline any additional appointment procedures beyond what is set forth under AS 29.20.280.⁵

The appointment of an Interim Mayor is a discretionary decision of the governing body. Applicable law does not provide a set time frame or deadline for the appointment decision. Applicable law does not mandate that there be application period prior to appointment. Applicable law does not set forth any requirements for how the appointment decision must be made. Finally, applicable law does not establish any limitations on the powers of the appointed mayor.

Designated Administrative Officer

In the event the Assembly has not appointed an Interim Mayor by September 30, 2022, and pursuant to the Designation of Administrative Officer approved by the Assembly on August 3, 2021, it is currently anticipated that the KPB Finance Director, Brandi Harbaugh, would serve as the alternate designated administrative officer.⁶

⁴ See, AS 29.20.280(b).

⁵ See, KPB 2.04.080.

⁶ See, KPB Legislative File #3356 (Attachment 3). In August 2021, the Assembly approved Chief of Staff Aaron Rhoades as the designated administrative official with KPB Finance Director, Brandi Harbaugh, as the approved alternative. This approval will need to be updated moving forward.

KPB Chief Executive: now through the October 3, 2023 regular election*

Anticipated Timeline

August 26 through September 30, 2022:

Mayor Pierce will continue to serve as the KPB's chief executive. Per Mayor Pierce's resignation letter the resignation is effective close-of-business on September 30th. It is further anticipated that Chief of Staff Rhoades will serve through Mayor Pierce's last day in office.

September 30, 2022 through special election date

Assembly appointed "Interim Mayor" serves temporarily in role as chief executive for the Kenai Peninsula Borough until a new mayor takes office following an areawide special election.

Special election certification through October 3, 2023 regular election:

Mayor elected during special election will fill the unexpired term of the office of Borough mayor.

October 3, 2023 regular election:

A mayor will be elected during the regular election to serve a full three-year term.

Recommendations

The Assembly should:

- 1. Accept Mayor Pierce's resignation and, by two-thirds vote, declare a vacancy in the office of mayor and call a special election to fill the unexpired term. The declared vacancy would be effective close-of-business September 30, 2022.**
- 2. Appoint an "Interim Mayor" to serve until the mayor elected during the special election takes office.**
 - a. The effective date of the appointment should coincide with the effective date of the resignation/vacancy.**
 - b. Deliberations concerning individuals and qualifications for appointment may be discussed in executive session so long as the appointment decision is made publicly.**



Office of the Mayor

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2130 • (907) 714-2396 Fax

Charlie Pierce
Borough Mayor

August 26, 2022

Brent Johnson
Assembly President
Kenai Peninsula Borough
144 N. Binkley Street
Soldotna, Alaska 99669

Re: *Letter of Resignation*

Dear Mr. Johnson:

I am writing to tender my resignation as Mayor of the Kenai Peninsula Borough. This letter is not intended to become effective until 5:00 PM on Friday September 30, 2022.

As you know, I am currently in the midst of a gubernatorial campaign. Given the results of the primary election, it is clear that I cannot simultaneously discharge the duties of this office and run a competitive campaign for Governor. So, I have decided to resign in order to campaign full time.

It has been an honor and a privilege to serve as Mayor, and I look forward to hopefully continuing that service as Alaska's next Governor.

Sincerely,

Mayor Charlie Pierce
Kenai Peninsula Borough

Cc: Johni Blankenship, Borough Clerk
Sean Kelley, Borough Attorney

Attachment 1 to KPB Legal Department
Memorandum to KPB Assembly
dated 8/30/22

AS § 29.20.280

Sec. 29.20.280. Vacancy in the office of mayor.

(a) The governing body shall, by two-thirds concurring vote, declare the office of mayor vacant only when the person elected

(1) fails to qualify or take office within 30 days after election or appointment;

(2) unless excused by the governing body, is physically absent for 90 consecutive days;

(3) resigns and the resignation is accepted;

(4) is physically or mentally unable to perform the duties of office;

(5) is convicted of a felony or of an offense involving a violation of the oath of office;

(6) is convicted of a felony or misdemeanor described in AS 15.56;

(7) is convicted of a violation of AS 15.13;

(8) no longer physically resides in the municipality; or

(9) if a member of the governing body in a second class city, misses three consecutive regular meetings and is not excused.

(b) A vacancy in the office of mayor occurring six months before a regular election shall be filled by the governing body. The person appointed serves until the next regular election when a successor is elected to serve the balance of the term. If a member of the governing body is appointed mayor, the member shall resign the seat on the governing body. If a vacancy occurs more than six months before a regular election, the governing body shall call a special election to fill the unexpired term.

(c) Notwithstanding (b) of this section, a vacancy in the office of mayor of a second class city shall be filled by and from the council. A mayor appointed under this subsection serves the balance of the term to which appointed, except the mayor may serve only while a member of the council.

Kenai Peninsula Borough
Office of the Borough Mayor

MEMORANDUM

TO: Brent Hibbert, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Kenai Peninsula Borough Mayor

DATE: August 3, 2021

RE: Designation of Administrative Officer

Pursuant to AS 29.20.260 and KPB 2.04.030, I am designating Aaron Rhoades, Chief of Staff, as the administrative officer to exercise the powers and duties of the Borough Mayor at such times as I may be absent or incapacitated and unable to discharge the duties of my office.

Brandi Harbaugh, Director of Finance, will continue be the alternate administrative officer to exercise the powers and duties of the Borough Mayor at such times when both Aaron Rhoades and I are absent or incapacitated and unable to discharge the duties of my office.

These designations are submitted for approval by the Assembly.

Thank you

