

Introduced by:	Johnson, Cox
Date:	01/07/20
Hearing:	02/04/20
Action:	
Vote:	

**KENAI PENINSULA BOROUGH
ORDINANCE 2020-01**

**AN ORDINANCE AMENDING KPB 4.30.010 AND KPB 4.30.050 REGARDING
CANDIDATE QUALIFICATION AND REVIEW OF CANDIDATE QUALIFICATIONS
FOR BOROUGH ELECTIONS**

WHEREAS, state statutes provide that the local governing body establish the procedures governing local elections and qualifications of candidates; and

WHEREAS, in most state and municipal elections, candidates for public office must meet a durational residency requirement as part of the qualifications to run for office; and

WHEREAS, the requirements are necessary to permit exposure of the candidate to his or her prospective constituents; and

WHEREAS, the requirements are also needed to ensure that candidates are familiar with the issues and diverse character of the area the candidate desires to serve; and

WHEREAS, one-year residency requirements afford greater voter knowledge of candidates and greater candidate knowledge of the needs of the consistency while also protecting constitutional rights of both the voter and the candidate; and

WHEREAS, a one-year residency requirement will also serve to prevent individuals from another area moving to a locale for personal gain immediately prior to filing for public office; and

WHEREAS, current Alaska case law indicates a one-year durational residency requirement is permissible; and

WHEREAS, it is generally appropriate for a durational residency requirement for a candidate to be longer than residency requirements for voters; and

WHEREAS, borough code is currently silent on defining residency and should also be updated to clarify the procedure followed by the borough clerk in the event of a pre-election challenge to a candidate's qualifications;

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

SECTION 1. That KPB 4.30.010 is hereby amended as follows:

4.30.010. Candidate qualifications.

- A. A candidate for borough mayor must be a qualified voter of the State of Alaska and a resident of the Kenai Peninsula Borough for [180 DAYS] one year immediately preceding filing for office. A person who has served as mayor for two consecutive full terms may not be reelected to that office until 180 days has intervened.
- B. A candidate for borough assembly must be a qualified voter of the State of Alaska and a resident of the district from which the candidate seeks election for [AT LEAST 180 DAYS] one year immediately preceding filing for office. As provided in KPB 22.30.030(A), a person who has served on the assembly for two consecutive full terms may not be reelected to that office until 180 days have intervened. A full term of office means the regular term of office for assembly and, except as provided in KPB 22.30.030(B), does not include portions of a term served by appointment or election to the remainder of an unexpired term vacated by another person or to a less than 3-year term resulting from assembly redistricting.
- C. A candidate for school board must be a qualified voter of the State of Alaska and a resident of the district from which the candidate seeks election for [180 DAYS] one year immediately preceding filing for office.
- D. A candidate for a service area board must be a qualified voter of the State of Alaska and a resident of the service area for [AT LEAST 180 DAYS] one year immediately preceding filing for office.
- E. A candidate for any of the above offices shall declare in writing all absences from the State of Alaska of over 45 days during the 12 months prior to filing for office along with the reason for the absence.

SECTION 2. That KPB 4.30.050 is hereby amended as follows:

4.30.050. Review of candidate qualifications.

[THE CLERK SHALL DETERMINE WHETHER EACH CANDIDATE FOR BOROUGH OFFICE IS QUALIFIED AS PROVIDED BY LAW. AT ANY TIME BEFORE THE ELECTION THE CLERK MAY DISQUALIFY ANY CANDIDATE WHOM THE CLERK FINDS IS NOT QUALIFIED AND IMMEDIATELY NOTIFY THAT CANDIDATE BY CERTIFIED MAIL. A

CANDIDATE WHO IS DISQUALIFIED MAY REQUEST A HEARING BEFORE THE CLERK WITHIN FIVE DAYS OF RECEIVING THE NOTICE. THE HEARING SHALL BE HELD NO LATER THAN FIVE DAYS AFTER THE REQUEST UNLESS THE CANDIDATE AGREES IN WRITING TO A LATER DATE.]

A. In determining residence within the borough, district, or service area for the purposes of this chapter, the clerk shall apply the following rules:

1. A person establishes residence within the borough, district or service area by:

(A) actual physical presence at a specific location within the district or service area; and

(B) maintaining a habitation at the specific location;

2. A person may maintain a place of residence at a specific location within the borough, district or service area while away from the location for purposes of employment, education, military service, medical treatment or vacation if the person does not establish residency at another location; and

3. A qualified voter loses residence by voting in another district or service area or in another state's election.

B. The clerk shall determine whether each candidate is qualified as provided by law. At any time before the election the clerk may disqualify any candidate whom the clerk finds is not qualified. A candidate who is disqualified may request a hearing before the clerk. The hearing shall be held no later than 5 business days after the request unless the candidate agrees in writing to a later date.

C. Any person may question the eligibility of a candidate who has filed a declaration of candidacy by filing a complaint with the clerk. A complaint regarding the eligibility of a candidate must be received by the clerk not later than the close of business on the 10th calendar day after the filing deadline for the office for which the candidate seeks election.

D. The complaint must be in writing and include the name, mailing address, contact phone number, and signature of the person making the complaint, and a statement in 200 words or less specifying the grounds for the complaint, described

in particular, on which the candidate's eligibility is being questioned.

E. The clerk will review only those issues cited in the complaint related to candidate qualifications established by this chapter.

F. Upon receipt of a complaint, the clerk will review any evidence relevant to the issues identified in the complaint which is in the custody of the municipal clerk's office including evidence provided with the complaint, the candidate's registration record, declaration of candidacy, and, in the discretion of the clerk, any other public record. Following review of all relevant evidence in the case, and within 20 days of receiving the complaint, the clerk will determine whether a preponderance of evidence supports or does not support the eligibility of the candidate. The process for issuing a final determination will be as follows:

1. The clerk will send notification in writing to the candidate whose eligibility is being questioned that a complaint has been received. The notification will include a copy of the complaint, supporting relevant evidence, a statement as to whether a preponderance of evidence reviewed as of that notice supports or does not support the eligibility of the candidate, and a request that the candidate provide a sworn response statement along with any relevant supporting evidence.

2. The clerk must also notify the challenger that all relevant evidence must be submitted within 7 calendar days of the date of the clerk's notice to the candidate that a complaint has been filed. If the clerk receives additional evidence during this 7-day period, such evidence must be provided to the candidate with an opportunity to respond. Absent extraordinary circumstances, the clerk shall not consider evidence received after the challenger's deadline to submit evidence.

3. The candidate's response statement and any supporting evidence must be received within 10 calendar days of the date of the clerk's notice to the candidate that a complaint has been filed. Absent extraordinary circumstances, the clerk shall not

consider evidence received after the candidate's deadline to submit evidence.

4. For purposes of this section, "extraordinary circumstances" must be specified in writing, documenting a serious circumstance or event beyond the control of the individual providing the late evidence.
5. Following review of all relevant evidence in the case, and within 20 days of receiving the complaint, the clerk will issue a final determination based on a preponderance of evidence standard for review
6. A final determination must be issued in writing within 20 days of the clerk receiving the complaint.

G. The clerk must send the final written decision to the person making the complaint and to the candidate. The clerk's decision shall be sent by certified mail and by electronic mail (email), if an email address is known. The determination of the borough clerk constitutes a final administrative decision. An appeal of the clerk's decision shall be filed with the State of Alaska Superior Court at Kenai, Alaska in conformance with the Rules of Appellate Procedure of the State of Alaska, Part VI.

SECTION 3. That KPB 22.30.030(A) is hereby amended as follows:

22.30.030. Terms of office.

- A. The full term of office for assembly members is 3 years. Consistent with KPB 4.30.010(B), no person who has completed two full terms on the assembly in a continuous period of service may serve another term or portion of a term until a period of 180 days has passed since the end of his second full term of office. A full term of office means the regular term of office for assembly and, except as provided in paragraph B of this section, does not include portions of a term served by appointment or election to the remainder of an unexpired term vacated by another person or to a less than 3-year term resulting from assembly redistricting.

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

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY
OF *, 2020.**

Kelly Cooper, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent: