

Introduced by:	Cox, Chesley
Date:	10/26/21
Hearing:	12/07/21
Action:	
Vote:	

**KENAI PENINSULA BOROUGH  
ORDINANCE 2021-40**

**AN ORDINANCE AMENDING KPB 2.40.015 REGARDING PLANNING COMMISSION  
MEMBERSHIP AND APPORTIONMENT**

**WHEREAS,** Ordinance 2016-25 (Mayor) Substitute reduced the planning commission membership from 13 members to 11 members, but did not specify how city seats would be distributed; and

**WHEREAS,** AS 29.40.020(a) requires that planning commission membership be apportioned so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough; and

**WHEREAS,** based on current census information the required apportionment ratio for an 11 member planning commission would be 7 at-large seats and 4 city seats; and

**WHEREAS,** there are five incorporated first class or home rule cities within the borough; and

**WHEREAS,** current code does not identify specific city seats or how they would equitably rotate each year and term; and

**WHEREAS,** Kenai Peninsula Borough cities have voiced a preference to continue having each of their cities represented on the planning commission each year; and

**WHEREAS,** based on current census information the required apportionment ratio, for all 5 cities to have a seat on the planning commission each year, the planning commission must be composed of at least 13 members with 8 at-large seats; and

**WHEREAS,** it is in the best interest of all affected parties that this issue be resolved and defined in code by establishing the seats apportionments that work for all parties while remaining in compliance with state statute; and

**WHEREAS,** clarity of code is of the utmost importance; and

**WHEREAS,** the assembly, as the legislative branch of the borough, has the responsibility to define and clarify any portions of KPB code that may come under scrutiny due to opposing interpretations or views as to its meaning; and

**WHEREAS,** borough code is unclear as to whether or not borough residents who live outside a first class or home rule city's boundaries are eligible to serve as a planning commissioner in a city seat; and

**WHEREAS,** all members are subject to appointment by the mayor and confirmation by the assembly, provided that members serving on city seats must be selected by the mayor from a list of recommendations submitted by the city council; and

**WHEREAS,** borough code and state law are unclear as to whether or not the required list of recommendations from a city council for their respective commission seat must include more than one recommended applicant; and

**WHEREAS,** the Kenai Peninsula Borough Planning Commission at its regularly scheduled meeting of \_\_\_\_\_, 2021 recommended \_\_\_\_\_;

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

**SECTION 1.** That KPB 2.40.015 is hereby amended as follows:

**2.40.015. Membership—Apportionment.**

In accordance with AS 29.40.020(a):

- A. The planning commission shall consist of a maximum of [ELEVEN] thirteen members. Commission membership shall be apportioned so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough. No more than one member of the commission may be from any single home rule or first class city in the borough unless more are required to satisfy the statutory apportionment requirement.
- B. City Seats. A city resident [MEMBER] serving on a planning commissioner city seat shall be selected by the mayor from a list of recommendations submitted by the council. The list will consist of at least one applicant from the respective city whose city seat is vacant or expiring [OF ANY CITIES FROM WHICH NO MEMBER WILL BE ON THE COMMISSION WHEN THE VACANCY IS EFFECTIVE, UNLESS APPORTIONMENT REQUIRES MORE THAN ONE MEMBER FROM A CITY. IN THAT EVENT ALL ELIGIBLE CITY COUNCILS MAY SUBMIT A LIST OF RECOMMENDATIONS FOR THE ADDITIONAL SEAT PROVIDED THAT NO CITY MAY HAVE GREATER THAN ONE MEMBER MORE THAN ANY OTHER HOME RULE OR FIRST CLASS CITY.] Appointments shall be subject to confirmation by the assembly. The city seats are as follows:

1. Homer;
2. Kenai;
3. Seldovia;
4. Seward; and
5. Soldotna.

[B] C. At-Large Seats. Planning commissioners residing [FROM] outside of first class and home rule cities shall be appointed at-large by the mayor and confirmed by the assembly and may be as representative of the following geographic areas as practical:

1. East Peninsula;
2. Southwest Borough;
3. Anchor Point/Ninilchik[/CLAM GULCH/KASLOF];
4. Clam Gulch/Kasilof;
- 5.[4.] Kalifornsky Beach;
- 6.[5.] Ridgeway;
- 7.[6.] Sterling;
- 8.[7.] Northwest Borough.

[THE GEOGRAPHIC AREAS REFERENCED IN THIS SECTION ARE DEPICTED IN THE MAP ON FILE AT THE BOROUGH CLERK'S OFFICE BEARING THE BOROUGH SEAL AND IDENTIFIED AS THE PLANNING APPORTIONMENT MAP APPROVED IN ORDINANCE 2001-29.]

[C] D. All planning commission members shall be appointed for their expertise and knowledge of the community and shall represent the entire borough.

**SECTION 2.** This ordinance becomes effective immediately upon enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS \* DAY  
OF \* 2021.**

\_\_\_\_\_  
, Assembly President

ATTEST:

\_\_\_\_\_  
Johni Blankenship, MMC, Borough Clerk

Yes:

No:

Absent:

# Kenai Peninsula Borough Assembly

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## MEMORANDUM

**TO:** Assembly President  
Members, Kenai Peninsula Borough Assembly

**FROM:** Tysan Cox, Assembly Member *TC*  
Lane Chesley, Assembly Member *LC*

**DATE:** October 14, 2021

**SUBJECT:** Ordinance 2021-40 Amending KPB 2.40.015 Regarding Planning  
Commission Membership and Apportionment (Cox, Chesley)

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This ordinance amends KPB 2.40.015 to clarify code pertaining to planning commission membership and apportionment.

The Assembly will have three questions to contemplate:

### **How many city seats should be on the planning commission?**

The KPB currently has an eleven-member planning commission. There are four city seats which are subject to an informal rotation between five home rule/first class cities and seven at-large seats. This aligns with apportionment rules, but is difficult, if not, impossible to accomplish with five cities rotating four, 3-year term seats. It is mathematically impossible to create an equitable rotation. This is most likely why Ordinance 2016-25 did not specify how city seats would be distributed.

This ordinance would change the number of planning commissioners from eleven back to thirteen with each of the five home rule or first class cities within the borough having a seat and eight at-large seats. This change would solve the rotation dilemma the borough currently has. It would solve any argument between the cities and the borough as to which cities are to be left on the commission and which cities will be required to sit out.

### **Should cities be required to submit more than one applicant to the KPB Mayor for selection to the planning commission?**

This year the KPB Mayor and legal department have made it known that they interpret state statutes and borough code to say that the city-approved list of recommendations submitted to the mayor should be more than one person. The city of Soldotna understands the same statutes and code to allow for a list to consist of only one applicant. Over the past several years most cities have only submitted one applicant for their designated planning commission seat,

as neither borough code nor state statutes designate the specific number of applicants required to be considered a list. Several KPB Mayors have accepted lists with only one city seat applicant, including our current KPB Mayor.

This ordinance would specify that the list of recommendations given to the borough mayor as approved by the city council would consist of at least one applicant from the respective city. In this case one applicant seems the best definition for a list because we often have very few people who choose to apply to serve as a commissioner. If two or more applicants were required, a process would need to be defined to deal with the situation of a city with only one applicant willing to serve on the commission.

**Should any eligible resident of the borough be allowed to apply for planning commission city seat or should the applicant be required to be a resident of that city?**

Recently the KPB Mayor and legal department made it clear that they believe state law allows for any eligible KPB resident to apply for a planning commission city seat. The city representatives and constituents that we have spoken with do not feel the same. Many of them disagree with this interpretation of the law.

This ordinance would specify that an applicant for a city seat on the planning commission would be required to be a resident of the respective city. Defining who can be seated in a city seat on the planning commission would eliminate any argument that the apportionment to the unincorporated borough could be too high to comply with State of Alaska requirements. If city seats were to be filled with residents from outside the cities, the cities would be inequitably served on the commission.

Your consideration of this ordinance is appreciated.