

Introduced by: Long, Mayor
Date: 07/08/03
Hearing: 08/06/03
Action: Enacted as Amended
Vote: 9 Yes, 0 No

**KENAI PENINSULA BOROUGH
ORDINANCE 2003-30**

**AN ORDINANCE ESTABLISHING THE SEWARD-BEAR CREEK FLOOD
SERVICE AREA**

WHEREAS, the Seward-Bear Creek area has experienced at least five major floods since 1986; and

WHEREAS, on November 20, 2002, a community meeting was conducted in Seward to identify problems and potential solutions concerning the flooding issues in the Seward area; and

WHEREAS, a general theme emerging from that meeting was that the entire watershed should be examined as a whole and a plan developed for projects to reduce the risk of damage to private and public property from future flooding; and

WHEREAS, on March 21, 2003, the borough clerk certified a petition to establish a service area in the Seward-Bear Creek area to provide flood protection, response, and recovery services; and

WHEREAS, on June 16, 2003, the assembly conducted a public meeting in the city of Seward to receive public comments regarding formation of a Seward-Bear Creek flood service area; and

WHEREAS, the meeting was well attended, and seventeen persons testified with 17 supporting and 0 opposing formation of the service area; and

WHEREAS, due to the size and population of the proposed area, the lack of need for city government and certain character, resource, population, and boundary standards for annexation to cities as described in 3 AAC 110.090-.140, such services cannot be provided by an existing service area, by annexation to a city, or by incorporation as a city;

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

SECTION 1. Title 16 of the Kenai Peninsula Borough Code of Ordinances is amended by adding a new chapter 16.50, which shall read as follows:

CHAPTER 16.50. SEWARD-BEAR CREEK FLOOD SERVICE AREA

16.50.010. Boundaries.

There is established a service area within the borough designated as the "Seward-Bear Creek Flood Service Area" in that portion of the borough described as all the following referenced to the Seward Meridian, Alaska:

Beginning at the southwest corner of Section 30, Township 01 South, Range 01 West, thence north along the range line common to Ranges 01 West and 02 West to the Northwest corner of Section 6, Township 01, North, Range 01 West. Thence east along the township line common to Townships 01 North and 02 North to the northeast corner of Section 5, Township 01, North Range 01 East. Thence south along the section line to the southeast corner of Section 32, Township 01, North Range 01 East. Thence west along the township line common to Townships 01 North and 01 South to the northeast corner of Section 5, Township 01 South, Range 01 East. Thence south along the section line to the southeast corner of Section 29, Township 01 South, Range 01 East. Thence west along the section line to the point of beginning.

16.50.020. Mill levy.

No mill levy in excess of 0.5 mills shall be levied on behalf of the service area unless an increase is approved during the budgetary process.

16.50.030. Board of directors.

There is established a board of directors for oversight of the operations of the Seward-Bear Creek Flood Service Area composed of seven members who shall be elected by the qualified voters of the service area in the manner provided in the borough election code and KPB 16.04.065 as now enacted or may be hereinafter amended. Board seats to be filled at the first election of board members shall be staggered as follows: Seats A and D for one year; seats B and E for two years; and seats C, F, and G for three years. Seats A, B, C, and F shall be filled by residents of the City of Seward, and Seats D, E, and G shall be filled by residents of the area outside the city limits of the City of Seward and inside the service area boundaries. Notwithstanding provisions of KPB 16.04.060, the first board shall be appointed by the Mayor and confirmed by the Assembly for one year terms.

16.50.040. Board—Meetings—Quorum.

The board shall meet periodically at a regularly scheduled time and place designated by the board. Special meetings of the board may be called by the chair of the board or by any two members upon one day's notice thereof published in a newspaper or via radio having general distribution within the service area. The notice shall set forth the time and place of the meeting and shall be mailed or telephoned to each board member. All meetings shall be open to the public as provided by law. Four board members shall constitute a quorum; however, an action shall require the affirmative vote of four board members.

16.50.050. Board—Election of officers.

At the first regular meeting following certification of the election by the assembly, and annually thereafter, the board shall elect by majority vote of the board members, and from the board members, a chairman and such other officers as the board shall determine to be desirable who shall hold office until successors are elected.

16.50.060. Board—Terms of office.

Each member of the board of directors shall be elected for a term of three years and shall serve thereafter until his or her successor has been elected, qualified and sworn to assume the duties of the office, except that the first board shall contain members elected for lesser periods as designated in the documents setting up the election to provide for staggered terms and as provided in KPB 16.50.030.

16.50.070. Board—Vacancies—Created when.

Vacancies on the board are created upon declaration of vacancy by the board if a member:

- A Fails to qualify or take office within 30 days after his or her election or appointment;
- B. Is physically absent from the service area for a 90-day period, unless excused by the board;
- C. Changes his or her residency for a period longer than 60 days to a location outside of the jurisdiction from which the board is elected;
- D. Resigns and his or her resignation is accepted;
- E. Is physically or mentally unable to perform the duties of his or her office;
- F. Misses three consecutive regular meetings unless excused; or
- G. Is convicted of a felony or of an offense involving a violation of his or her oath of office.
- H. Is removed from office pursuant to a recall election.

16.50.080. Board—Vacancies—Filling.

Vacancies on the board shall be filled by majority vote of the remaining board until the next general election of the borough at which time a new member shall be elected to fill the unexpired term or for a three-year term if no unexpired term remains.

16.50.090. Board—Powers and duties.

Pursuant to the provisions of AS 29.35.460 the board of directors of the service area, subject to KPB 16.04.001, assembly approval and appropriation of funds, shall have the power to provide flood protection, planning and mitigation services. Additionally, subject to assembly approval, the board shall be responsible for developing,

implementing, and updating a development plan for furnishing flood protection services, and for determining the level of such services to be provided by the service area. Services shall only be provided that primarily address service area flood issues and that reflect fair use of the tax levy for watershed-wide benefit. Nothing in this ordinance shall be constructed to usurp or otherwise affect the City of Seward's authority regarding any stormwater or surface water projects that primarily impact the City of Seward, and existing flood control projects or contracts with the U.S. Corps of Engineers or other agencies. The board shall develop criteria for determining service area involvement in future flood control projects, and shall coordinate with the City of Seward to ensure there is no duplication or contradiction in flood control projects or services provided. The board shall promptly provide accurate and complete copies of minutes of all board meetings, all board resolutions or other actions taken by the board to the mayor and assembly.

16.50.100. Personnel system—Rules and regulations.

Unless specifically provided otherwise, the borough personnel system and Title 3 of the Kenai Peninsula Borough Code of Ordinances apply to personnel employed by the Seward-Bear Creek Flood Service Area.

16.50.110. Employee conduct requirements.

Employees of the Seward-Bear Creek Flood Service Area are employees of the borough, and as such, are required at all times to conduct themselves in an exemplary manner befitting the public service in which they are employed.

16.50.120. Budget and fiscal control.

The formulation of a budget and fiscal control of expenditures of public monies of the Seward-Bear Creek Flood Service Area are under the supervision and direction of the mayor and the assembly. The finance director of the borough shall provide the board with the rules and regulations governing the appropriation of funds, the budgeting of funds, the authorization of expenditures, and any and all rules and regulations of the borough fiscal policy to which the service area is subject. The board shall arrange for the preparation of a budget and capital program, which shall be submitted to the mayor for approval. The budget and capital expenditure proposals shall be subject to the procedures for adopting the borough budget and capital expenditures program and its consideration by the assembly. Such public hearings as are necessary shall be a part of the budgetary procedures before the board and the assembly.

16.50.130. Officers—Appointment, qualifications, and removal.

The mayor, after considering the recommendation of the board, may appoint such administrative officers as the mayor deems necessary. These officers shall be subject to removal by the mayor as provided for administrative personnel in KPB 3.04.070. To the extent feasible, the mayor shall consider the recommendation of the service area board prior to such removal. The administrative officers shall administer policy as set by the board with the concurrence of the mayor.

16.50.140. Chief administrative officers—Accountability.

Administrative officers of the service area shall be held accountable to the mayor and the board only, and they shall make written and verbal reports to the mayor and the board as required by the mayor and the board. All other service area employees below the staff level shall be accountable to such administrative officers as are designated by the mayor and the board.

16.50.150. Policies—Formulation and authority—Approval required.

The board, or its designee, shall formulate policies to govern the operation of the service area departments, and shall be responsible to the mayor for the personnel, morale, and general efficiency of the department. Prior to implementation, such policies shall be approved by the assembly by resolution.

16.50.160. Annual reports required.

The board shall make a complete annual report to the mayor within one month after the close of the fiscal year, such report to include the information specified by the rules and regulations of the borough, together with comparative data for previous years and recommendations for improving the service to the service area.

16.50.170. Procedure—Conduct of affairs—Meetings.

The board shall adopt bylaws or regulations governing the conduct of its affairs so long as such bylaws are procedural in nature and do not conflict with the substantive rules and regulations governing the board in its delegated powers. The board shall adopt rules of procedure for the conduct of its meetings so long as such rules of procedure are not in conflict with bylaws and regulations governing the board.

16.50.180. Purchasing—Agent.

A. The purchasing agent for the service area is the borough purchasing and contracts manager. All purchases of supplies, materials, equipment, and contractual services shall be made in accordance with the rules and regulations adopted by the assembly.

B. All contracts for capital improvements and maintenance performed in connection with the service area shall be bid and administered by the borough public works department in accordance with the department's normal procedure for letting of contracts.

16.50.190. Accounts—Vouchers—Accounting.

All accounting functions for the service area shall be under the supervision of the borough finance director who shall provide rules, regulations, and procedures governing the issuance and payment of vouchers, the issuance and payment of checks, the use of the central treasury of the borough, and the manner in which all bonds, contracts, leases or

other obligations requiring the payment of funds from the appropriations in the service area budget are to be processed and administered.

16.50.200. Fiscal procedures.

The service area shall abide by the fiscal policies and procedures applicable to the borough general government budget.

SECTION 2. That the following proposition shall be placed before the voters of the Kenai Peninsula Borough Seward-Bear Creek Flood Service Area at the regular election to be held on October 7, 2003:

PROPOSITION:

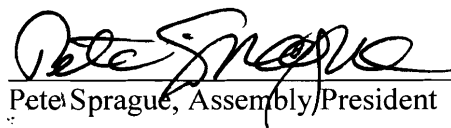
"Shall the Kenai Peninsula Borough be authorized to exercise powers to provide flood planning, protection, and mitigation services in the Kenai Peninsula Borough Seward-Bear Creek Flood Service Area within the service area boundaries defined by Ordinance 2003- 30?"

YES _____ NO _____

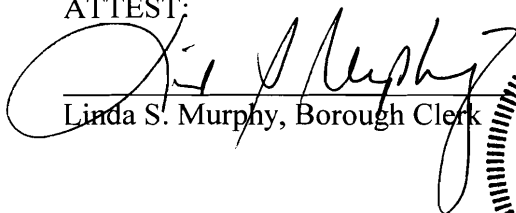
SECTION 3. That Section 2 of this ordinance shall take effect immediately upon its adoption, and Section 1 of this ordinance shall take effect upon approval of the proposition in Section 2 above by a majority of the qualified voters voting on the issue and when either the borough receives Department of Justice preclearance under the Voting Rights Act of 1965 or 60 days after the Department of Justice has received the borough's request for preclearance, whichever is earlier. If the borough's request for Department of Justice preclearance has been resolved prior to the certification of the election results, the date of certification shall be the effective date of the ordinance.

SECTION 4. That this ordinance shall also only take effect after the city of Seward either agrees to be included in the service area by ordinance or approval is granted by a majority of the voters as required by AS 29.35.450.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF AUGUST, 2003.


Pete Sprague, Assembly President

ATTEST:


Linda S. Murphy, Borough Clerk

