

# KENAI PENINSULA BOROUGH

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Johni Blankenship, MMC  
Borough Clerk

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### MEMORANDUM

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

**THRU:** Johni Blankenship, Borough Clerk (JB)

**FROM:** Michele Turner, Deputy Borough Clerk (MT)

**DATE:** June 16, 2015

**RE:** Ordinance 2015-13: Amending KPB Chapter 14.31, Regarding Road Improvement Assessment Districts (Bagley, Cooper, Mayor)

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The Road Service Area Board has addressed the referenced matter at their last meeting.

Please amend the final Whereas to read as follows:

**WHEREAS,** at its June 9, 2015, meeting the Road Service Area Board recommended approval;

Thank you.

Agenda Item M.5

Committee PEP

Page Number 74

**KENAI PENINSULA BOROUGH ROAD SERVICE AREA  
RESOLUTION 2015-06**

**AN RESOLUTION RECOMENDING THE KENAI PENINSULA BOROUGH  
ASSEMBLY AMEND KPB CHAPTER 14.31 REGARDING ROAD IMPROVEMENT  
ASSESSMENT DISTRICTS**

- WHEREAS,** AS 29.46 authorizes municipalities to assess against real property the cost of constructing or improving capital projects of local benefit; and
- WHEREAS,** KPB chapter 14.31 sets forth the process for creating road improvement assessment districts ("RIADs") in the borough; and
- WHEREAS,** the RIAD process was created by ordinance in 1997 and, while amendments have been made from time to time, there has never been a comprehensive review of KPB chapter 14.31; and
- WHEREAS,** both utility and road special assessment district ("USAD" and "RIAD") projects are managed by the same borough employee, the special assessment coordinator, who is employed in the assessing department; and
- WHEREAS,** in 2014, in response to the increased use of special assessment districts by borough property owners to bring improvements to their neighborhoods, the administration convened a group of stakeholders from various departments, including the assessing department, legal department, clerk's office and the mayor's office to review KPB chapters 5.35 and 14.31 to ensure that the special assessment processes were operating well; and
- WHEREAS,** this group identified a number of amendments that will increase the efficiency of the RIAD process as well as provide more transparency and ease of use for borough residents impacted by RIADs; and
- WHEREAS,** in particular, the existing RIAD code was not organized in such a way to clearly describe the steps of the process required to create a road improvement district, which has created confusion for the administration, assembly, and property owners; and
- WHEREAS,** these amendments will also make the USAD and RIAD processes more similar, which is intended to streamline the work of the special assessment coordinator and assist both the administration and assembly in their review of proposed special assessment projects;

**NOW, THEREFORE, BE IT RESOLVED BY THE KENAI PENINSULA BOROUGH ROAD SERVICE AREA BOARD:**

**SECTION 1.** That the Road Service Area Board recommends the Kenai Peninsula Borough Assembly amend KPB Chapter 14.31 as follows:

**CHAPTER 14.31. SPECIAL ASSESSMENTS—ROAD IMPROVEMENTS**

**14.31.010. Assessment authority.**

- A. Within the borough road service area, the borough may assess against the property of a state or federal governmental unit and private property to be benefitted by a capital improvement described in KPB 14.31.020 all or a portion of the cost of acquiring, installing or constructing the capital improvement.
- B. Pursuant to AS 29.46.020(a) the procedures [IN KPB 14.31.040 THROUGH 14.31.100 APPLY TO THE LEVYING OF ASSESSMENTS UNDER THIS CHAPTER IN LIEU OF] set out through KPB chapter 14.31 shall replace and supersede the procedures in AS 29.46.030 through 29.46.100.

**14.31.020. Authorized capital improvements.**

Special assessments may be levied under this chapter for the improvement of existing roads or construction of new roads in [DEDICATED] public rights-of-way to meet or exceed road construction standards adopted in KPB Chapter 14.06 that are in effect at the time of the formation of the special assessment district in which the assessments are levied.

**14.31.030. Property subject to assessment.**

The assembly may assess any real property or interest in real property that the assembly determines is directly benefitted [DIRECTLY OR INDIRECTLY] by an improvement. The real property or interest in real property that is benefitted by an improvement may be abutting, adjoining, adjacent, or contiguous [OR NONCONTIGUOUS] to the improvement. Real property may be assessed for an improvement notwithstanding its exemption from taxation by law.

**14.31.040. Initiation of special assessment district.**

- [A. A SPECIAL ASSESSMENT DISTRICT PROPOSAL IS INITIATED BY THE FILING WITH THE BOROUGH CLERK OF A PETITION PREPARED BY THE BOROUGH ASSESSOR UNDER KPB 14.31.060 THAT BEARS SUFFICIENT SIGNATURES OF RECORD OWNERS OF PARCELS SUBJECT TO ASSESSMENT IN THE PROPOSED DISTRICT, AS DETERMINED UNDER KPB 14.31.070]
- [B.] To [OBTAIN] initiate a petition for the formation of a special assessment district, the sponsor of the proposed district submits an application and a map or detailed description of the proposed geographic area subject to inclusion in the special assessment district to the borough assessor or assessor's designee. Applications to form a road improvement

assessment district (RIAD) and participate in the RIAD match program shall be received no later than July 1 of each year.

#### **14.31.050. Review of petition application.**

- A. District boundaries – Review by assessor and RSA director. After receiving an application for a petition to form a [SPECIAL ASSESSMENT DISTRICT] RIAD, the borough assessor or the assessor's designee, in consultation with the road service area director, shall determine whether the boundaries of the proposed district are proper [AFTER CONSULTING WITH THE ROAD SERVICE AREA DIRECTOR]. The boundary will be considered improper if:

1. any property adjacent to the proposed district will be benefited by the proposed improvement and is clearly excluded for the primary purpose of enabling the included properties to meet assessment percentage and signature requirements of this chapter;
2. the boundary covers a large, non-contiguous area, such as parcels unconnected by the roadway or property lines;
3. the boundary includes too many parcels with the intention of diluting costs or minimizing the effect of delinquent properties; or
4. such other grounds as may be established by regulation or administrative policy.

[ONCE THE BOROUGH ASSESSOR MAKES AN INITIAL DETERMINATION THAT FORMATION OF THE PROPOSED DISTRICT IS FEASIBLE BASED ON THE PROPOSED BOUNDARIES AND CRITERIA SET FORTH IN KPB 14.31.080, A FILING FEE BASED ON THE COST OF OBTAINING A PROFESSIONAL CIVIL ENGINEER'S ESTIMATE OF THE TOTAL PROJECT COSTS AND PETITION PREPARATION SHALL BE PAID PURSUANT TO ONE OF THE METHODS BELOW, AS DETERMINED BY THE ROAD SERVICE AREA BOARD:

1. THE PETITION SPONSOR SHALL PAY A NONREFUNDABLE FILING FEE CONSISTENT WITH THE AMOUNT LISTED IN THE MOST CURRENT KENAI PENINSULA BOROUGH SCHEDULE OF RATES, CHARGES AND FEES.

IF AN ADDITIONAL FILING FEE IS NECESSARY TO DEFRAY THE COST OF THE ENGINEER'S ESTIMATE FOR THE PROJECT COST, THE REMAINING FILING FEE MAY BE PAID BY THE ROAD SERVICE AREA. ONE HUNDRED PERCENT OF THE COSTS INCURRED BY THE BOROUGH TO COMPLETE THE PROJECT SHALL BE ASSESSED AGAINST THE BENEFITED PARCELS IN COMPLIANCE WITH KPB 14.31.110.

2. THE PETITION SPONSOR SHALL PAY 100 PERCENT OF THE FILING FEE, WHICH SHALL BE NONREFUNDABLE. ONE HUNDRED PERCENT OF THE COSTS INCURRED BY THE BOROUGH TO COMPLETE THE PROJECT SHALL BE ASSESSED AGAINST THE BENEFITED PARCELS IN COMPLIANCE WITH KPB 14.31.110]

- B. [THE ROAD SERVICE AREA DIRECTOR SHALL OBTAIN AN ESTIMATE OF THE COST OF THE IMPROVEMENT PROPOSED FOR THE DISTRICT.] Based upon the proposed district boundaries, [AND THE ESTIMATED ASSESSMENTS IN THE DISTRICT,] the borough assessor shall inform the

sponsor whether the proposed district may violate any of the restrictions on district formation in KPB 14.31.080.

C. District boundaries – Deemed improper. In the event that the assessor determines the proposed boundary is improper, the boundary description shall be returned to the sponsor along with a written explanation describing why the proposed boundary has been deemed improper. The sponsor may modify and resubmit the boundary description to the assessor for approval as described in KPB 14.31.050(A).

[C. APPLICATIONS FOR ROAD IMPROVEMENT ASSESSMENT DISTRICT FORMATIONS UNDER KPB 14.31.050(A)(1) MUST BE RECEIVED NO LATER THAN JUNE 1 OF EACH YEAR. THE ROADS DEPARTMENT SHALL MAKE A REPORT AND RECOMMENDATION TO THE RSA BOARD REGARDING THE APPLICATIONS. THE ROAD SERVICE AREA BOARD SHALL REVIEW THE PETITIONS BY AUGUST 1 OF EACH YEAR FOR CONSTRUCTION IN THE FOLLOWING YEAR.]

D. Initial staff report. Once the assessor approves the boundaries of the proposed district, assessing and road service area staff will prepare an initial report for the road service area (RSA) board to consider for approval of an order for the engineer's estimate regarding the proposed project. The initial staff report shall contain the following information:

1. Sponsor's application, description of the subject road(s) and scope of the proposed project;
2. Review of KPB 14.31.080(A)(3) and (4) restrictions on formation for the proposed project;
3. Review of KPB 14.31.050(E) criteria for the proposed project;
4. Any additional comments that may help the RSA board evaluate the project; and
5. RSA staff recommendation for the proposed project.

E. RSA Board – approval to proceed with engineer's estimate. The RSA board shall review the staff reports for all RIAD applications timely submitted under KPB 14.31.040 no later than September 1 of each year, for construction in the following year. The road service area board shall consider the following factors in evaluating petition applications and determining whether to approve an order for an engineer's estimate: [AND DETERMINING WHICH PROJECTS SHALL BE FUNDED UNDER KPB 14.31.050(A)(1)].

1. Whether the road is currently on the maintenance system;
- [2. TO WHAT EXTENT DO THE ASSESSED VALUES OF PROPERTIES SUPPORT THE PROPOSED SCOPE OF WORK FOR EACH PROJECT;]
- [3.]2. The number of petitions for projects received that year;
- [4.]3. The funds available in the RIAD engineer's estimate fund established under KPB 5.20.160; and
- [5.]4. Whether an application for district formation has been previously filed and whether conditions have changed that make the project more feasible than in past application years.

- [E.] F. RSA Board – administrative procedures. The [ROAD SERVICE AREA BOARD] RSA board [SHALL] may adopt administrative procedures for application of the factors set forth in [KPB 14.31.050(D)] KPB 14.31.050(E) by board resolution.
- G. Non-refundable filing fee. Upon receiving notice that the RSA board has approved an order for an engineer's estimate under KPB 14.31.050(E), the sponsor must submit a non-refundable filing fee as described in the borough's Schedule of Rates, Charges and Fees, before any additional efforts are made by the borough to proceed with the proposed district.
- H. Engineer's estimate. After the sponsor submits the non-refundable filing fee, the road service area director or designee shall obtain an estimate of the cost of the improvement proposed for the district, referred to as the "engineer's estimate." The borough assessor shall re-evaluate whether the proposed district may violate any of the restrictions on district formation in KPB 14.31.080 taking into account the estimated costs, and inform the sponsor if any violations have been identified.
- I. Sponsor's intent to proceed. If the sponsor wishes to proceed after receiving the engineer's estimate under KPB 14.31.030 (H), s/he must submit to the assessor a written notice of intent to proceed with the project.
- J. After the written notice to proceed is received from the sponsor, the assessing department shall provide notice of the proposed RIAD to all parcel owners within the proposed RIAD district by regular mail, at least 10 days prior to the RSA board's consideration of the resolution to approve the petition report and recommend a borough match under KPB 14.31.065. The notice shall include the following:
1. A description of the special assessment district and proposed improvement;
  2. A map of the proposed improvement;
  3. The date of RSA public hearing; and
  4. Notice that the legal description of parcels within the proposed district as of the date the RSA board approves the resolution will be used to determine assessments per KPB 14.31.080(C). Any action to replat parcels within the proposed district must be completed and recorded before the date the RSA board approves the resolution.
- K. If any changes are made to the proposed district boundary by the sponsor after the assessing department receives the sponsor's written intent to proceed with the project, the revised district shall be subject to all steps for preclearance and resubmission of the proposed district as provided in KPB 14.31.050. The sponsor will not be required to submit an additional filing fee.

#### **14.31.055. Road service area match program.**

- A. There is established pursuant to KPB 5.20.170 a borough match program for RIAD projects that upgrade existing roads. The RSA board may authorize up to 50 percent of the costs of a RIAD be defrayed from this fund for any project that upgrades existing roads subject to the assembly's annual appropriation to that fund. [AS FOLLOWS:

1. THE ROAD SERVICE AREA BOARD MAY AUTHORIZE THAT UP TO 50 PERCENT OF THE COSTS OF A RIAD BE DEFRAIDED FROM THIS FUND FOR LOCAL OR INTERNAL SUBDIVISION ROADS SUBJECT TO THE ASSEMBLY'S ANNUAL APPROPRIATION TO THE FUND.
  2. THE ROAD SERVICE AREA BOARD MAY AUTHORIZE THAT UP TO 70 PERCENT OF THE COSTS OF A RIAD BE DEFRAIDED FROM THIS FUND TO PAVE OR IMPROVE A PAVED COLLECTOR ROAD SUBJECT TO THE ASSEMBLY'S ANNUAL APPROPRIATION TO THE FUND.
  3. WHERE PAVEMENT RIADS INCLUDE BOTH PARCELS ABUTTING A COLLECTOR ROAD AND INTERNAL SUBDIVISION ROADS, THE PARCELS ABUTTING THE COLLECTOR ROAD QUALIFY FOR UP TO A 70 PERCENT MATCH, AND THE PARCELS ABUTTING AN INTERNAL SUBDIVISION ROAD QUALIFY FOR UP TO A 50 PERCENT MATCH. ]
- B. A borough match may be considered for the following types of RIAD projects:
1. Pavement projects for existing roads which have been certified for borough maintenance;
  2. Pavement or [G]gravel projects for existing roads, which do not meet borough standards in order that the road will be brought to borough standards; and
  3. Pavement or [G]gravel projects for existing substandard gravel roads, which have been certified for borough maintenance in order that the road will be brought to borough standards.
- C. The annual deadline application for the match program is [JUNE 1] July 1 of each year, and must be submitted with the application to form a proposed district.
- D. The [ROAD SERVICE AREA] RSA board shall consider the following factors in evaluating applications for the match program:
1. Whether it is economically feasible to improve the road to RSA certification standards;
  2. To what extent do the assessed values of properties support the scope of work for each project;
  3. The number of applications for projects received that year;
  4. The funds available in the Road Improvement Assessment District Match Fund;
  5. Whether an application for district formation has been previously filed and whether conditions have changed to make the project more feasible than in past application years;
  6. The number of residents served;
  7. The number of parcels served;
  8. The feasibility of the project's compliance with KPB 14.31.080 criteria regarding restrictions on formation; and
  9. Whether there is alternate access to properties served by the road and the condition of that alternate access.
- E. The road service area board may adopt procedures by board resolution for implementation of this program consistent with this chapter.



#### **14.31.060. Preparation and issuance of petition report.**

After the sponsor submits a written notice to proceed under KPB 14.31.050(I) [COLLECTION OF THE FILING FEE AND CONSULTING WITH THE SPONSOR OF THE SPECIAL ASSESSMENT DISTRICT CONCERNING ANY LEGAL DEFICIENCIES IN THE PROPOSED DISTRICT], the borough assessor or the assessor's designee, in consultation with RSA staff, will prepare a special assessment district petition report for circulation. The petition report [FORM] will include the following:

1. A description of the proposed improvement;
2. The estimated roll:
  - a. the total estimated cost of the improvement based on the engineer's estimate and other allowable costs, including a ten percent contingency calculated by the assessing department;
  - b. the name of the record owner of each parcel in the proposed district;
  - c. the tax parcel number of each parcel in the proposed district;
  - d. the legal description of each parcel in the proposed district;
  - e. the assessed valuation of each parcel in the proposed district;
  - f. an estimate of the amount to be assessed to each parcel in the proposed district; and
  - g. whether there are other special assessment liens against any of the parcels in the proposed district; and
  - h. a description of any parcels that violate the restrictions listed in KPB 14.31.080(A).
- [2. THE TOTAL ESTIMATED COST OF THE IMPROVEMENT.]
3. A map of the proposed district;
- [4. THE NAME OF THE RECORD OWNER OF EACH PARCEL IN THE PROPOSED DISTRICT;
5. THE TAX PARCEL NUMBER OF EACH PARCEL IN THE PROPOSED DISTRICT;
6. THE ASSESSED VALUATION OF EACH PARCEL IN THE PROPOSED DISTRICT;
7. THE PROPOSED METHOD OF ALLOCATING THE COST OF THE IMPROVEMENT TO EACH PARCEL IN THE PROPOSED DISTRICT;
8. AN ESTIMATE OF THE AMOUNT TO BE ASSESSED TO EACH PARCEL IN THE PROPOSED DISTRICT;
- 9.] 4. A description of the limitations on withdrawing a petition signature under KPB 14.31.070(E)[.B]; and
- [10.] 5. The name, address and daytime telephone number of the sponsor of the petition.

[B. BOROUGH STAFF SHALL SUBMIT TO THE ROAD SERVICE AREA BOARD A REPORT ON THE PROPOSED SPECIAL ASSESSMENT DISTRICT AND A RECOMMENDATION ON FORMATION OF THE DISTRICT, ALONG WITH THE COMPLETED PETITION FORM. THE ROAD SERVICE AREA BOARD SHALL VOTE ON WHETHER THE FORMATION OF THE SPECIAL ASSESSMENT DISTRICT SHOULD



PROCEED. THE PETITION FORM WILL BE RETURNED TO THE SPECIAL ASSESSMENT DISTRICT SPONSOR FOR CIRCULATION ONLY IF IT IS APPROVED BY THE ROAD SERVICE AREA BOARD.]

**14.31.065 RSA Board resolution to approve the petition report and recommend a borough match.**

- A. The assessor or assessor's designee, with the assistance of road service area staff, shall submit to the road service area board the petition report described in KPB 14.31.060 and a recommendation on formation of the district. Borough staff shall prepare for RSA board's consideration a resolution to approve the petition report and recommend a borough match.
- B. The RSA board shall vote on whether to approve the petition report for the proposed RIAD and make a recommendation to the borough assembly regarding formation of the district. The petition will be distributed to the sponsor for circulation only if the petition report is approved by the road service area board.
- C. When a timely application to participate in the match program has been received, the RSA board shall vote on whether to approve the proposed district for participation in the match program using the criteria set forth in KPB 14.31.055(D). The RSA resolution to approve the petition report and recommend a borough match must include the RSA board's findings with regards to the KPB 14.31.055(D) criteria.

**14.31.070. Circulation and filing of petition; signature requirements.**

- A. After the road service area board approves the RSA resolution to approve the petition report and recommend a borough match [HAS DETERMINED THAT A SPECIAL ASSESSMENT DISTRICT SHOULD PROCEED], the [SPONSOR] assessing department shall create the final petition and [MAY] distribute [CIRCULATE THE PETITION] at least one copy to the sponsor. [FOR SIGNATURE. THE PETITION MUST BE FILED WITH THE CLERK'S OFFICE WITHIN 30 DAYS OF THE DATE OF THE FIRST SIGNATURE ON THE PETITION.]
- B. The petition must include the petition report approved by the RSA board under KPB 14.31.065 and a signature page with instructions.
- C. Upon receiving a copy of the petition, the sponsor is responsible for distributing the petition to all property owners within the approved boundaries and collecting the signatures of those property owners who support the formation of the RIAD. Completed petition signature page(s) must be filed with the assessing department within 45 days of the date the assessing department distributes the petitions to the sponsor.
- D. In order for the assembly to consider the proposed special assessment district, the petition must contain the signatures of the owners of record of (a) at least 60 percent of the total number of parcels subject to assessment within the proposed district and (b) at least 60 percent in value of the property to be benefited, in order to be considered by the assembly for formation.

1. Multiple owners. When a parcel is owned by more than one person or entity, signatures for each owner are required in order for the parcel to count towards the signature thresholds. All signatures shall be consistent with the requirements listed in KPB 14.31.070(D)(2)-(6), as applicable.

2. Signature by Proxy. Signatures by proxy will not be accepted by the clerk.

3. Power of Attorney. The signature of a power of attorney will only be accepted by the clerk if the signature is accompanied by a copy of the Power of Attorney document providing authority for such signatures.

4. Business entities.

a. Corporations. Where a parcel is owned by the corporation, the petition must be signed by two individuals: one of whom is the chair of the board, the president, or the vice president, and the other of whom is the secretary or treasurer; or by another person or persons who have been given authority via corporate resolution.

b. Limited liability companies. Where a parcel is owned by a LLC, the petition must be signed by a member if the LLC is member-managed, or by the manager, if a manager has been designated.

c. Other business owners. Where a parcel is owned by another type of business entity, only those persons who have signatory authority to bind the business entity under Alaska Statutes may sign the petition as owner.

5.Trusts. Where a parcel is owned by a trust, only the trustee may sign as the property owner. If there are co-trustees, a majority must sign the petition in order for the parcel to count towards the signature thresholds unless otherwise provided in the trust document. The signature of the trustee(s) will only be accepted by the clerk if it is accompanied by a copy of the trust document.

6. Kenai Peninsula Borough. The mayor shall be the designee for signing any petition when borough land is part of the proposed district. Where the Kenai Peninsula Borough abstains from participating in the petition signature process, the total number of parcels within the district, for the purpose of calculating the signature thresholds, will be reduced by the number of parcels owned by the borough within the proposed district.

[B.] E. A signature on a petition may be withdrawn only by written notice from the signer submitted to the assessing department prior to the final filing of the petition signatures by the sponsor. A withdrawal is effective only if notice of the withdrawal is submitted before the filing of the completed petition.

[C.] F. The sponsor shall [FILE] timely submit the [SIGNED] petition signatures [WITH THE BOROUGH CLERK] to the borough assessor, who will provide the complete petition, along with supporting documentation, to the borough clerk. If the borough clerk finds that the petition contains sufficient signatures as described in KPB 14.31.070(D), the borough clerk shall certify the petition and submit the petition to the mayor, who will prepare [FOR PREPARATION OF] a resolution to form the district and proceed with the improvement under KPB 14.31.090 for assembly consideration. [THE SUFFICIENCY OF SIGNATURES ON A PETITION SHALL BE DETERMINED AS OF THE DATE THE PETITION IS FILED WITH THE BOROUGH CLERK. THE PETITION CONTAINS SUFFICIENT SIGNATURES ONLY IF IT CONTAINS THE SIGNATURES OF:

1. THE RECORD OWNERS OF MORE THAN SEVENTY OF THE TOTAL NUMBER OF PARCELS SUBJECT TO ASSESSMENT IN THE PROPOSED DISTRICT; AND
2. THE RECORD OWNERS OF PARCELS THAT WOULD BEAR MORE THAN SEVENTY PERCENT OF THE TOTAL ASSESSMENTS IN THE PROPOSED DISTRICT.]

#### **14.31.080. Restrictions on district formation.**

A. A special assessment district may not be formed if it violates any of the following restrictions [DETERMINED AS OF THE DATE OF FILING THE PETITION TO FORM THE DISTRICT WITH THE BOROUGH CLERK]:

1. The estimated amount of the assessment to be levied against each parcel in the district may not exceed 21 percent for gravel improvements to an existing road, or 25 percent for paving improvements, or 40 percent for construction of a new road, of the current assessed value of the parcel.

A. For the purposes of this restriction, the estimated amount of the assessment against a parcel will be reduced by the amount of a prepayment of the assessment for the parcel that is received by the borough before the assembly acts on the resolution to form the district and proceed with the improvement. If the assembly does not approve the resolution to form the district and proceed with the improvement, the borough will refund the prepayment.

B. Any such prepayment must be received no later than the close of business at least 15 days prior to the date the assembly will act on the resolution to form the district and proceed with the improvement.

2. In no case shall a special assessment district be approved by the assembly where properties that will bear more than 10 percent of the estimated costs of the improvement are subject to unpaid, past-due borough property taxes at the time the assembly approves the resolution to form the district and proceed with the improvement.

For the purposes of this restriction, the delinquent tax may be paid before the assembly acts on the resolution to form the district and proceed with the improvement. Any such payment must be received no later than the close of business at least 15 days prior to the date the assembly will act on the resolution to form the district and proceed with the improvement.

[A SPECIAL ASSESSMENT DISTRICT MAY NOT BE FORMED IF PARCELS IN THE PROPOSED DISTRICT WHICH WOULD BEAR MORE THAN 10 PERCENT OF THE ESTIMATED COST OF THE IMPROVEMENT ARE DELINQUENT IN PAYMENT OF BOROUGH REAL PROPERTY TAXES IN THE IMMEDIATELY PRECEDING TAX YEAR.]

3. A special assessment district for the upgrade of an existing road, including paving, may not be formed if unimproved parcels represent more than 40 percent of the total assessed value of real property in the district. A parcel is improved under this subsection if it contains operable water [AND] or waste-water disposal systems, [OR A DWELLING OR A BUILDING SUITABLE FOR COMMERCIAL USE.] or a structure assessed for more than \$5,000.
4. For construction of new roads, a special assessment district may not be formed if one owner owns more than 40 percent of the parcels to be benefitted.

[B. THE PROVISIONS OF KPB 14.31.080 MUST BE MET AT THE TIME THE CLERK CERTIFIES THE PETITION PURSUANT TO 14.31.070(C).]

[C]B. The legal description of parcels within the proposed district as of the date [OF THE CLERK'S CERTIFICATION] of the RSA resolution to approve the petition report and recommend a borough match under KPB 14.31.065 will be used to determine assessment. No subdivision, reversion of acreage, or lot line adjustment will be recognized for RIAD assessment purposes after the RSA board issues the resolution under KPB 14.31.065. [ANY REPLATS OF PARCELS PENDING DURING THE FORMATION PROCESS MUST BE COMPLETE BY THE CLERK'S CERTIFICATION OF THE PETITION IN ORDER FOR THE PARCELS TO BE ASSESSED AS REPLATTED.]

#### **14.31.090. Assembly resolution to form district and proceed with improvement.**

A. When the borough clerk has determined that a petition bears sufficient signatures as described in KPB 14.31.070, and the borough assessor has determined that the proposed district complies with KPB 14.31.080, the mayor shall prepare for assembly consideration a resolution to form the special assessment district and proceed with the improvement. The mayor shall submit the following information to the assembly with the resolution [A REPORT ON THE PROPOSED DISTRICT CONTAINING THE FOLLOWING]:

1. The petition report prepared by borough staff under KPB 14.31.060, updated to account for any change in information;
2. The RSA resolution to approve the petition report and recommend a borough match;
3. A description of the current condition of the rights-of-way that are to be improved and a statement of the need for the proposed local improvement; and
4. The method of financing the improvement; e.g., bonding, borough investment, or a combination.

- [1. A LEGAL DESCRIPTION OF THE PARCELS TO BE BENEFITTED BY THE IMPROVEMENT, AND A MAP OF THE PROPOSED DISTRICT;
2. A DESCRIPTION OF THE CURRENT CONDITION OF THE RIGHTS-OF-WAY THAT ARE TO BE IMPROVED AND A STATEMENT OF THE NEED FOR THE PROPOSED LOCAL IMPROVEMENT;

3. A PROPOSED ALLOCATION OF THE COST OF THE IMPROVEMENT AMONG PARCELS IN THE DISTRICT;
  4. THE ESTIMATED AMOUNT TO BE ASSESSED AGAINST EACH PARCEL;
  5. A PROFILE OF THE PARCELS IN THE PROPOSED DISTRICT, INCLUDING NATURE OF OWNERSHIP AND STATUS OF TAX PAYMENTS;
  6. WHETHER THERE ARE OTHER SPECIAL ASSESSMENT LIENS AGAINST ANY OF THE PARCELS IN THE PROPOSED DISTRICT;
  7. A DESCRIPTION OF ANY PARCELS THAT EXCEED THE ASSESSMENT-TO-VALUE RATIO SET FORTH IN KPB 14.31.080(A);
  8. THE METHOD OF FINANCING THE IMPROVEMENT; E.G., BONDING, BOROUGH INVESTMENT, OR A COMBINATION; AND
  9. ALL ESTIMATED COSTS OF THE IMPROVEMENT SET FORTH IN KPB 14.31.110]
- B. The assembly shall hold a public hearing on the resolution. The borough clerk shall give notice of the public hearing on the resolution:
1. By certified mail, return receipt requested, mailed not less than [THIRTY-FIVE] 35 days before the date of the hearing, to each record owner of a parcel in the proposed district; and
  2. By publication once a week for two consecutive weeks in a newspaper of general circulation in the borough, with the first publication appearing not less than [THIRTY] 30 days before the date of the hearing.
- C. Each notice of the public hearing shall include the following:
1. A description of the special assessment district and the proposed improvement;
  2. The date of public hearing;
  3. The place for reviewing the estimated assessment roll, and
  4. The procedure for presenting objections to the formation of the district.
- D. Written comments, including any objections as to the necessity of the formation of the district may be filed with the borough clerk for a period of 30 days after mailing the notice of the public hearing. If written objections to the necessity of the formation of the district are filed by the owners of parcels bearing one-half or more of the estimated cost of the improvement, the assembly may not proceed with the improvement [UNLESS IT REVISES THE DISTRICT SO THAT PARCELS OBJECTING TO THE DISTRICT BEAR LESS THAN ONE-HALF OF THE COST OF THE IMPROVEMENT. THE REVISED DISTRICT SHALL BE SUBJECT TO NOTICE AND PUBLIC HEARING AS PROVIDED IN SUBSECTIONS B AND C OF THIS SECTION].
- E. After public hearing, the assembly may adopt the resolution to form the district and proceed with the improvement. The resolution shall:
1. Describe the improvement and its location;
  2. Describe the parcels benefitted by the improvement;
  3. Approve the estimated cost of the improvement;

4. make a finding that the improvement is necessary and should be made, as required by AS 29.46.020;
  5. identify any parcels within the boundaries excluded from the district, which will not receive the benefit of the improvement and will not be subject to the assessment;
  6. if the mayor signed the petition on behalf of the borough, approve the mayor's action;
    - [4. STATE THE METHOD OF ALLOCATING THE COST OF THE IMPROVEMENT AMONG THE BENEFITTED PARCELS;]
    - [5.] 7. Include an estimated assessment roll showing the amount of the assessment against each parcel;
    - [6.] 8. Authorize the mayor to proceed with the construction of the improvement; and
    - [7.] 9. Require the clerk to record in the district recorder's office a copy of the resolution to proceed and the estimated assessment roll.
- F. After passage of the resolution to proceed, the improvement may be constructed by force account or by contract, or in any other manner provided by law.
- [G. IN THE EVENT THAT THE LOWEST, RESPONSIVE, RESPONSIBLE, QUALIFIED BID FOR LABOR AND MATERIALS FOR THE IMPROVEMENT BY MORE THAN 10 PERCENT EXCEEDS THE ESTIMATED COST FOR LABOR AND MATERIALS, THEN NO CONTRACT SHALL BE ENTERED WITHOUT FURTHER ASSEMBLY APPROVAL. PRIOR TO SUCH FURTHER APPROVAL, THE BOROUGH CLERK SHALL PUBLISH NOTICE ONCE IN A NEWSPAPER OF GENERAL CIRCULATION IN THE BOROUGH STATING THE TIME AND PLACE WHEN OWNERS OF PARCELS TO BE ASSESSED MAY BE HEARD ON THE QUESTION AND SHALL, BY REGULAR MAIL, NOTIFY AFFECTED PROPERTY OWNERS OF THE TIME AND PLACE WHEN THEY MAY BE HEARD ON THE QUESTION. IF WRITTEN OBJECTIONS ARE NOT RECEIVED BY OR ON THE DATE SET FOR CONSIDERATION OF THE INCREASED IMPROVEMENT COSTS FROM OWNERS OF PARCELS BEARING AT LEAST ONE-HALF OF THE COST OF THE IMPROVEMENT, THE ASSEMBLY MAY APPROVE THE IMPROVEMENT CONTRACT.]

#### **14.31.095. Ordinance of appropriation.**

A. An ordinance of appropriation shall be scheduled for action at the same assembly meeting as the resolution to form the district and proceed with the improvement. The amount of the appropriation shall be equal to the estimated cost of the improvement presented in the petition report under KPB 14.31.060, including the 10 percent contingency calculated by the assessing department.

B. In the event that the lowest, responsive, responsible, qualified bid exceeds the appropriation, then no contract shall be entered without further assembly approval.

Prior to such further approval, the borough clerk shall by regular mail, at least 10 days before the public hearing on the matter, notify affected property owners of the time and place when they may testify before the assembly.



#### **14.31.100. Ordinance levying assessments.**

- A. After the actual cost of an improvement authorized under KPB 14.31.090 has been ascertained, the mayor shall prepare and submit to the assembly an assessment roll containing a description of the parcels in the special assessment district, the names of their record owners, and the amounts of the assessments. The assessment roll shall be submitted with an ordinance confirming the assessment roll and levying the assessments. The ordinance shall fix the times for payment of the assessments, the rate of interest on unpaid installments, and the penalty and rate of interest on delinquent installments. The assessment roll shall be filed with the borough clerk at the time of the introduction of the ordinance and shall be open to public inspection.
- B. The borough clerk shall give notice of the public hearing on the ordinance:
  - 1. By regular mail mailed not less than [FIFTEEN] 15 days before the date of the hearing to each record owner of a parcel in the district; and
  - 2. By publication [ONCE NOT LESS THAN FIFTEEN DAYS BEFORE THE DATE OF THE PUBLIC HEARING IN A NEWSPAPER OF GENERAL CIRCULATION IN THE BOROUGH.] as required by KPB 22.40.010(D).
- C. [EACH NOTICE OF THE PUBLIC HEARING] The notice mailed to each record owner in the district shall state that the assessment roll is on file in the office of the borough clerk and is available for public inspection, [AND] the time and place for the hearing of objections to an assessment, [. IN ADDITION, THE NOTICE MAILED TO EACH RECORD OWNER OF A PARCEL IN THE DISTRICT SHALL STATE] and the amount of the assessment to be levied against the parcel.
- D. After the public hearing on the ordinance, the assembly shall correct any errors or inequalities in the assessment roll, and confirm the corrected roll by adoption of the ordinance.

#### **14.31.110. Costs assessed.**

The assembly shall assess against the benefitted parcels any costs of the improvement that are allowable under AS 29.46.110, [WHICH ARE NOT SUBJECT TO THE ROAD SERVICE AREA MATCH PROGRAM,] including without limitation costs of land acquisition necessary for the improvement, design, engineering, [ADMINISTRATIVE OVERHEAD,] administrative costs, professional services, financing costs and interest; provided that the assessment allocated to a parcel shall be reduced by the amount of any prepayment for that parcel under KPB 14.31.080[(A)]. Before the costs are allocated to the benefitted parcels under KPB 14.31.120, the amount of the approved borough match will be subtracted from the total cost of the improvement.

#### **14.31.120. Methods of assessment.**

The method of assessment shall be an allocation of costs on a per parcel basis so that each benefitted parcel is charged an equal amount.



[THE METHOD OF ALLOCATING THE COST OF AN IMPROVEMENT SHALL BE PROPORTIONAL TO THE BENEFIT OF THE IMPROVEMENT TO EACH ASSESSED PARCEL. THE ASSEMBLY SHALL DETERMINE THE METHOD OF ALLOCATING THE COST OF THE IMPROVEMENT. THE METHODS OF ALLOCATING THE COST OF AN IMPROVEMENT INCLUDE WITHOUT LIMITATION THE FOLLOWING:

- A. ALLOCATION BASED ON THE AREA OF A PARCEL;
- B. ALLOCATION BASED ON LINEAL FEET OF STREET FRONTAGE OF A PARCEL;
- C. ALLOCATION BASED ON THE ASSESSED VALUATION OF A PARCEL;
- D. ALLOCATION BY ZONES WITHIN THE SPECIAL ASSESSMENT DISTRICT WHICH ALLOW DIFFERENTIAL ASSESSMENT BASED UPON DIFFERING BENEFITS TO DIFFERENT GEOGRAPHIC LOCATIONS WITHIN THE DISTRICT; AND
- E. ALLOCATION ON A PER LOT BASIS SO THAT EACH LOT IS CHARGED AN EQUAL AMOUNT.]

#### **14.31.130. Notice of assessment.**

- A. Within [FIFTEEN] 15 days after the adoption of an ordinance levying an assessment under KPB 14.31.110, the finance director shall mail an assessment statement to the record owner of each assessed parcel. The statement shall describe the parcel, state the date of mailing of the statement, the amount of the total allocated assessment, the assessment lien amount, the times for payment of the assessment, the rate of interest on unpaid installments, [AND] the penalty and rate of interest on delinquent installments, and notice of the deferral of principal option described in KPB 14.31.145. The statement shall include notice that it is the final determination of the assessment and that the property owner has [THIRTY] 30 days from the date of mailing of the notice to appeal the assessment to the superior court.
- B. Within five days after the assessment statements are mailed, the finance director shall publish a notice that such assessments have been mailed and that the assessment roll is on file in the office of the borough clerk.
- C. After adoption of an ordinance levying a special assessment under KPB 14.31.110, the borough clerk shall file in the office of the district recorder an appropriate notice of assessment lien on all assessed parcels.

#### **14.31.140. Special assessment financing.**

- A. Special assessment bonds. The borough may, by ordinance, authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of bonds so issued shall be payable solely from the levy of special assessments against the property to be benefitted. The assessment shall constitute a sinking fund for the payment of principal and interest on the bonds. Interest on funds borrowed to finance the improvement prior to the sale of special assessment bonds shall be a cost of the assessment district.
- B. Borough Investment Funds. In conformance with KPB Chapter 5.10 on investment of borough funds, the assembly may authorize investment of borough moneys in special assessment districts to pay all or part of the cost of an improvement at an interest rate

determined by the assembly. In all such cases, the properties benefitted shall stand as security for payment of the cost of improvements.

#### **14.31.145. Deferral of payment of principal.**

- A. The principal of [ALL OF] the special assessment[s] lien on real property owned and occupied as the primary residence and permanent place of abode by a resident who is economically disadvantaged may be deferred as provided in this section. The deferral of payment on the principal of the special assessment lien means that such payment will be postponed, but not forgiven.
- B. For purposes of this section, a resident is economically disadvantaged if the person's adjusted gross income is less than 200 percent of the current U.S. Health and Human Services Poverty Guidelines for Alaska.
- C. Interest will continue to accrue on the assessment during the period of deferral.
- D. Property owners wishing to seek a deferral of the assessment must submit a form prescribed by the finance director or designee no later than February 1 of each calendar year to certify that the conditions described in this section continue to exist.
- E. Deferral is for the principal balance only. Individuals who qualify for the deferral must pay the accrued interest by the due date each year.
- [C.] F. The deferred assessment, including all unpaid accrued interest, becomes due and payable in full when the property ceases to be owned or occupied by the resident who qualified for the deferral. Any remaining balance due shall be paid on the same schedule as would have been in place if no deferral had applied.
- G. If the resident who previously qualified for the deferral no longer qualifies, but continues to own and occupy the property, then payments on the principal will resume, starting with the next payment due.

#### **14.31.150. Reassessment.**

When it appears to the assembly that a special assessment is invalid or when an assessment is adjudged to be illegal by a court, the assembly shall order a reassessment whether the improvement has been made or not. Proceedings for a reassessment and for the collection thereof, shall be conducted in the same manner as provided for the original assessment.

#### **14.31.160. Definitions.**

"Application" means the form provided by the borough assessing department and completed by the district sponsor to initiate the process of proposing a special assessment district.

["ARTERIAL ROAD" MEANS A ROAD INTENDED TO CARRY TRAFFIC FROM LOCAL AND SUBDIVISION ROADS TO MAJOR HIGHWAYS. SUCH ROADS PRIMARILY ACCOMMODATE RELATIVELY LARGE VOLUMES OF TRAFFIC FOR RELATIVELY LONG DISTANCES AT RELATIVELY HIGH SPEEDS.]

"Benefit" means an advantage gained from the improvement greater than that shared by the general public under this ordinance. Improved access is one way of ascertaining that a parcel is benefited.

["COLLECTOR ROAD" MEANS ROADS THAT PROVIDE BOTH LAND ACCESS AND CARRY TRAFFIC FROM LOCAL OR SUBDIVISION ROADS TO ARTERIAL OR MAJOR HIGHWAY SYSTEMS.]

"Deferral of payment" means that payment is postponed or suspended until a certain time or event.

"Directly benefitted" means a property that is abutting, adjoining, adjacent or contiguous to the proposed improvement.

"District" or "special assessment district" means an area composed of individual parcels of land that are directly benefitted by the public improvement for which the special assessment is to be levied.

"Estimated assessment roll" means a spreadsheet which includes the name of each recorded owner, tax parcel number, assessed value and legal description of the parcels which will be specially benefited by the proposed improvement and the estimated amount of the cost and expense thereof to be borne by each parcel.

"Improved parcel" means a parcel that contains an operable water [AND A] or wastewater disposal system, or a [DWELLING OR A BUILDING FOR COMMERCIAL USE] structure assessed for more than \$5,000.

["LOCAL ROAD" MEANS A ROAD DESIGNED AND INTENDED TO SERVE LOCAL AREAS. SUCH ROADS PRIMARILY ACCOMMODATE LAND ACCESS TO ABUTTING PROPERTY. LOCAL ROADS FEED TRAFFIC INTO COLLECTOR AND ARTERIAL STREET SYSTEMS.]

"Petition" means the formal written request signed by parcel owners within the proposed boundaries to form the road improvement assessment district.

"Petition report" means the document created by the assessing department, for the RSA board's review, which contains all pertinent information regarding the proposed district and special assessment project.

"Sponsor" means the person who initiates the process proposing a special assessment district and coordinates the project on behalf of the property owners of the proposed district.

**SECTION 2.** That this ordinance takes effect immediately upon its enactment.

RESOLVED BY THE KENAI PENINSULA BOROUGH ROAD SERVICE AREA BOARD ON THIS 9TH DAY OF JUNE, 2015.



Stan A. McLane, Road Service Area Board Chair

ATTEST:



Pat Malone, RSA Director