



KENAI PENINSULA BOROUGH

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MIKE NAVARRE
BOROUGH MAYOR

MEMORANDUM

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

FROM: Mike Navarre, Mayor *MN*
Dale Bagley, Assembly President *DLB*
Kelly Cooper, Assembly Member *K. Cooper*

DATE: May 7, 2015

SUBJECT: Ordinance 2015- 12, An Ordinance Amending KPB Chapter 5.35, Regarding Utility Special Assessment Districts

Over the past several years, the assessing department has seen an uptick in the number of special assessment projects initiated by residents wishing to bring improvements to their neighborhoods. Given this increase in interest, in 2014 the administration convened a group of stakeholders from various departments to review KPB chapters 5.35 (utility special assessment districts, or USADs) and 14.31 (road improvement assessment districts, or RIADs), in order to evaluate these processes and make recommendations to improve the way such projects are managed.

Throughout the various projects, the departments involved in processing USADs, in particular the assessing department and clerk's office, have found that the same questions and difficulties arise time and again. As such, the proposed amendments are intended to provide improved clarity and organization to the USAD process. Furthermore, similar steps between the USAD and RIAD processes are often inconsistent under existing code – these amendments create consistency between the two chapters where appropriate. There are several major substantive changes, which are based on research, public input, and interests identified by the three sponsors of this ordinance. These major changes are summarized below. Details about all of the amendments are included in the sectional analysis that accompanies this memo.

Major updates to the code include:

- 1) The pre-clearance process has been shifted from the assembly to the administration. Under existing code, based on a 2009 code amendment, the assembly must determine whether a district is properly defined and described before the sponsor is allowed to collect signatures on the petition. This is more appropriately an administrative function, and as such, approval of the petition application, now called the petition report, will be handled by the mayor. See KPB 5.35.105. Under the proposed amendment, affected property owners will still be offered an opportunity to comment before the project moves forward. At this stage, the district is still only at the initiation stage, and no costs (other

than the filing fee) are assessed against any property owner. The mayor's approval of the petition report will simply determine whether a viable project has been proposed and "green light" the sponsor's ability to collect signatures and present the USAD to the assembly for formation. Note that this change does not impact in any way the assembly's duties to approve the formation of the project, appropriate funds, or issue the final assessment roll.

- 2) The percentage of property owners required to move the project forward has been reduced from "more than 70 percent" to "at least 60 percent." Under Alaska Statutes, the support of 50 percent of property owners is required to form a special assessment district. The Kenai Peninsula Borough has elected to exercise its ability under the statute to increase this threshold. Even if the threshold is reduced to "at least 60 percent," the borough will still have the highest threshold in the state for special assessment district formation. The basis for this change is concern that a small minority of property owners can block a project from moving forward, even if most of their neighbors wish to proceed. While 60 percent still allows a minority to impact the decision, the group involved in drafting these proposed amendments believes this is a more balanced approach.
- 3) The lien limit, described in KPB 5.35.070 as the ratio of the cost of the assessment compared to the assessed value of a parcel, has been increased from 21 percent to 50 percent. The 21 percent limit was created by ordinance in 1996, and was based on bank ratios – at that time, banks were still financing USAD projects. Today, all funding is provided by the borough. Under the existing 21 percent lien limit, some projects are faced with a significant "pre-pay" amount, which is the amount of the cost per parcel that must be paid up front so that the assessment against any given parcel does not exceed 21 percent. A recent proposed project calculated a "pre-pay" of \$83,000 for all parcels above the lien limit, for example. By raising the lien limit to 50 percent, the borough can protect its interests should it need to foreclose on a parcel for lack of payment (much like a tax foreclosure), while easing the burden on property owners having to pay a large part of the assessment as an up-front cost.
- 4) The existing code allows for a perpetual deferral of the assessment costs for residents who are "economically disadvantaged." While this option was presumably well-meaning, it has the possibility of creating a significant hardship for the property owners because interest continues to accrue even while the deferral is in place. This has the potential of creating a massive debt for future owners of a parcel impacted by the deferral. Likewise, while state statute and borough code requires that all costs of the improvement are assessed against the benefitted parcels, perpetual deferrals mean that such costs are never paid, to the detriment of the borough. The proposed amendment is intended to afford some relief to economically disadvantaged residents without creating a large lien on their property. Under the amendment, the principal amount of the assessment can be deferred, but accrued interest must be paid each year. A requirement for annual certification has been added to account for changes in circumstances.

Your consideration of this ordinance is appreciated. The assistant borough attorney and special assessment coordinator will make a presentation to the assembly at the policies and procedures committee meeting on May 19, 2015, and will be available to answer any questions.