

Introduced by: Bagley, Cooper, Mayor
Date: 05/19/15
Hearing: 06/16/15
Action: Enacted as Amended
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2015-12**

**AN ORDINANCE AMENDING KPB CHAPTER 5.35, REGARDING UTILITY
SPECIAL 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 5.35 sets forth the process for the creation of utility special assessment districts (“USADs”) in the borough; and
- WHEREAS,** both USAD and road improvement assessment district (“RIAD”) projects are managed by the same borough employee, the special assessment coordinator, who is employed in the assessing department; and
- WHEREAS,** in 2009, the borough conducted a work session and as a result several code changes were made to KPB chapter 5.35; and
- WHEREAS,** over the past five years, the assessing department and clerk’s office have operated under the 2009 code changes and have had sufficient time to determine whether the special assessment process works to the benefit of the borough and those residents seeking to create special assessment districts; 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 USAD process as well as provide more transparency and ease of use for borough residents impacted by USADs; 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 ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB Chapter 5.35 is hereby amended as follows:

CHAPTER 5.35. SPECIAL ASSESSMENTS – PUBLIC UTILITIES

5.35.010. Assessment authority.

This chapter is enacted under the authority of and in conformance with chapter 29.46 of the Alaska Statutes, to provide for the establishment of special assessment procedures. Under this authority the borough assembly may assess against private real property and/or the property of a governmental unit all or a portion of the cost of constructing or improving those capital projects of local benefit as described hereunder. As provided by AS 29.46.020[(C)], these procedures set out through KPB Chapter 5.35 shall replace and supersede the procedures set out by [AS CHAPTER] AS 29.46[AT SECTIONS].030- AS 29.46.100[, .040, .050, .060, .070, .100, .110, .120, .130, AND .140].

5.35.020. Authorized capital improvements.

Special assessments may be utilized solely for financing of the extension of the lines of service of those public utilities regulated by the Regulatory Commission of Alaska, or of city-owned utilities to areas outside the boundaries of the city. Special assessments are not available for the construction and financing of private hookups or service connections running from the utility's main line to private structures or facilities to be served on the benefitted parcels.

5.35.030. Initiation of improvement proposal—Preclearance—Resubmission.

A. When a petition application is submitted by a project sponsor, the boundaries of the district shall be approved following these steps:

[A]1. A special assessment district proposal shall be initiated by [A PETITIONER] submitting a complete application and a map or detailed description of the proposed geographic area subject to inclusion in the special assessment district [IN THE MANNER PRESCRIBED BY THE MAYOR] to the borough assessor or assessor's designee. Any property owner interested in bringing the public utility improvement to their property or neighborhood can initiate the process.

2. Upon receipt of [A] the application and map or description, the assessor or the assessor's designee shall review [IT] the materials to determine whether the proposed boundary is [IM]proper [OR INAPPROPRIATE]. The boundary [IS] will be considered improper [OR INAPPROPRIATE] if:

[1] a. any property adjacent to the proposed district will be benefited by the proposed utility and is clearly excluded for the primary purpose of enabling the included properties to meet assessment percentage and signature requirements of this chapter; [OR]

b. the boundary covers a large, non-contiguous area, such as parcels unconnected by roadways, utility easements or property boundaries; or

c. the boundary includes too many parcels with the intention of diluting costs or minimizing the effect of delinquent properties; or

[2)]d. such other grounds as may [HAVE BEEN] be established by regulation or administrative policy.

3. If the assessor makes a preliminary finding that the boundary is proper, s/he shall then obtain the approval of the borough mayor to submit the proposed boundary to the utility whose service is sought.

4. Once the assessor and mayor both approve the boundary, [T]he assessor shall consult with the utility whose service is sought to be extended and obtain written acknowledgment that the proposed boundary meets the requirements of the utility, [AND] that the utility approves and will support construction of the extension, and a written estimate of the utility's total cost of constructing the extension. [THE ASSESSOR SHALL ALSO OBTAIN THE APPROVAL OF THE BOROUGH MAYOR PRIOR TO APPROVING THE PROPOSED BOUNDARY.]

5. If the utility company approves the project as described in subsection (A)(4), the assessor shall contact the sponsor and inform him/her of the assessor's approval and the utility's cost estimate.

B. In the event that the assessor determines the proposed boundary is improper [OR INAPPROPRIATE], the boundary description shall be returned to the [PETITIONER] sponsor along with a written explanation describing [HOW THE PETITION IS IMPROPER OR INAPPROPRIATE] why the proposed boundary has been deemed improper. The [PETITIONER] sponsor may modify and resubmit the boundary description to the assessor for [THE ASSESSOR'S AND MAYOR'S] approval as described in Section A above.

[C. IF THE ASSESSOR APPROVES THE PROPOSED BOUNDARY, THE BOUNDARY DESCRIPTION SHALL BE RETURNED TO THE PETITIONER BEARING THE ASSESSOR'S APPROVAL.]

[D] C. If the proposed boundary is approved under KPB 5.35.030(A) [BY THE ASSESSOR AND MAYOR], the [PETITIONER] sponsor may provide written notice to the [A]assessing [D]department of intent to proceed with full administrative review [ASSEMBLY REVIEW] of the petition report [APPLICATION AS PROVIDED IN] under KPB 5.35.105. [THE MAYOR OR THE MAYOR'S DESIGNEE SHALL PREPARE FOR THE ASSEMBLY A RESOLUTION APPROVING THE PETITION APPLICATION.]

D. A non-refundable filing fee as established in the most current Schedule of Rates, Charges and Fees under KPB chapter 1.26 shall be submitted with the sponsor's notice to proceed with administrative review.

E. After the written notice to proceed and filing fee are [IS] received by the [A]assessing [D]department from the [PETITIONER] sponsor, the [BOROUGH CLERK] assessing department shall provide notice of the proposed USAD to all parcel owners within the proposed USAD

by certified mail, return receipt requested.[AT LEAST 60 DAYS PRIOR TO ASSEMBLY REVIEW OF THE PETITION APPLICATION AS PROVIDED IN KPB 5.35.105.] 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 PUBLIC HEARING; AND] the timeframe for the mayor to complete the administrative review pursuant to KPB 5.35.105(C);
 4. notice that the legal description of parcels within the proposed district as of the date the mayor approves the petition report will be used to determine assessments per KPB 5.35.070(B). Any action to replat parcels within the proposed district shall be completed and recorded before the date the mayor approves the petition report under KPB 5.35.105(C); and [NO SUBDIVISION, REVERSION OF ACREAGE, OR LOT LINE ADJUSTMENT WILL BE RECOGNIZED FOR USAD ASSESSMENT PURPOSES AFTER ASSEMBLY APPROVAL OF THE PETITION APPLICATION.]
 5. notice that parcel owners shall submit any comments, including objections to their parcel's inclusion in the proposed district, in writing within 45 days of the date the assessing department mails the notices under this section, in order to be considered in the mayor's review of the petition report pursuant to KPB 5.35.105. Comments may be submitted via mail, hand-delivery, email, or facsimile. The date the assessing department receives the written comment will determine whether that comment has been timely submitted.
- F. 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 administrative review of the proposed district, the revised district shall be subject to all steps for preclearance and resubmission of the proposed district as provided in KPB 5.35.030. The sponsor will not be required to submit an additional filing fee.

5.35.060. Administration—Regulations—Procedures.

The mayor [SHALL] may adopt regulations, subject to assembly approval, setting out such requirements and procedures as deemed necessary for the efficient administration of this program. The assessing department shall be responsible for the processing of petitions and development of an assessment roll for the special assessment district. The finance department shall be responsible for the sale of any bonds and collection of assessments.

5.35.070. Property assessed – Restrictions on formation.

- A. The assembly may assess for an improvement any real property, or any interest in real property, directly benefitted by the improvement. The property to be assessed may include any property which is otherwise for any reason exempt from taxation by law.

B. The legal description of parcels within the proposed district as of the date of the mayor's [ASSEMBLY'S] approval of the petition [APPLICATION] report under KPB 5.35.105 will establish the parcels for assessment. No subdivision, reversion of acreage, or lot line adjustment will be recognized for USAD assessment purposes after [ASSEMBLY] the mayor's approval of the petition [APPLICATION] report.

[C. IN THE CASE WHERE THE ASSEMBLY DETERMINES THAT THE DISTRICT BOUNDARY AS PROPOSED BY PETITION IS IMPROPER OR INAPPROPRIATE, THEN THE ASSEMBLY MAY MODIFY THE PETITION TERMS AND RESUBMIT THE PETITION TO THE UTILITY FOR FURTHER CONSIDERATION AND RESUBMISSION WITH APPROPRIATE SIGNATURES BY THE PETITIONERS.]

[D.] C. In no case may a property be assessed an amount in excess of [21] 50 percent of the fair market value of the property [AFTER GIVING EFFECT TO THE BENEFIT ACCRUING FROM THE IMPROVEMENT FOR WHICH ASSESSED].

For the purposes of this restriction, the estimated amount of the special assessment lien 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. Any such payment shall be received no later than the close of business at least 15 days prior to the date the assembly is scheduled to act 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 shall refund the prepayment.

[E.] D. In no case shall a special assessment district be approved for formation by the assembly under KPB 5.35.110 where properties which will bear more than 10 percent of the estimated costs of the improvement [ARE DELINQUENT IN PAYMENT OF] are subject to unpaid, past-due borough property taxes [FROM THE IMMEDIATELY PRECEDING TAX YEAR] 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 shall 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.

E. A special assessment district may not be formed under this chapter if one owner owns more than 40 percent of the total number of parcels to be benefited.

5.35.080. Costs assessed.

The assembly shall assess one hundred percent of all costs of a public improvement against the parcels of property directly benefitted by the improvement, less [THE FILING FEE OR] any [OTHER] costs prepaid prior to assessment. The total costs for an improvement shall include the actual costs of the improvement, including costs of acquisition of interest in land necessary for the improvement, design, engineering, [ADMINISTRATION, OVERHEAD,] administrative costs, professional services, bond costs, financing costs, and interest incurred as a result of the improvement, and all other costs resulting from the construction of the improvement.

5.35.090. Method of assessment.

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

5.35.100. Financing special assessment districts.

The mechanism for financing of special assessment districts shall be determined on a case by case basis and set out and approved by the assembly in the [R]resolution to [F]form the [D]district and [P]proceed with the [I]improvement adopted for each respective special assessment district.

5.35.105. [RESOLUTION APPROVING PETITION APPLICATION.] Preparation and review of petition report.

A. After the sponsor gives notice of intent to proceed with administrative review of the proposed USAD, [T]the [MAYOR] assessor or [MAYOR'S] assessor's designee shall prepare [FOR ASSEMBLY RESOLUTION] a petition report [APPLICATION] for [ASSEMBLY] the mayor's approval. The petition report [APPLICATION] shall include the following information:

1. a description of the proposed improvement;
2. the total estimated cost of the improvement supported by a written statement from the utility constructing the improvement;
3. a map showing the boundary of the proposed district;
4. the estimated roll:
 - a. the total estimated cost of the improvement;
 - b. the name of the record owner of each parcel in the proposed district;
 - [5.]c. the tax parcel number of each parcel in the proposed district;
 - d. the legal description of each parcel in the proposed district;
 - [6.]e. the assessed valuation of each parcel in the proposed district;
 - [7.]f. an estimate of the amount to be assessed to each parcel in the proposed district;
 - [8. THE STATUS OF TAX PAYMENTS OF EACH PARCEL IN THE PROPOSED DISTRICT;]
 - [9.]g. whether there are other special assessment liens against any of the parcels in the proposed district; and
 - [10.]h. a description of any parcels that [EXCEED THE ASSESSMENT-TO-VALUE RATIO SET FORTH IN] violate the restrictions listed in KP.B 5.35.070(C) or (D);
5. all written comments timely received per KP.B 5.35.030(E)(5), including any objections from parcel owners regarding inclusion of their property in the proposed district;
- 6.[11.] the method of proposed financing for the improvement; and
- [12. THE TOTAL NUMBER OF PARCELS TO BE ASSESSED WITHIN THE PROPOSED DISTRICT.]
7. the name, address and daytime telephone number of the sponsor.

B. The [ASSEMBLY] mayor shall exclude from the proposed district any real property, or any interest in real property, that is not directly benefitted by the improvement. [PROPERTY IS NOT BENEFITTED BY THE IMPROVEMENT IF PHYSICAL CHARACTERISTICS OF THE PROPERTY MAKE IT UNREASONABLE TO DEVELOP OR IMPROVE THE PROPERTY IN MANNER THAT WOULD ENABLE THE PROPERTY TO BENEFIT FROM THE PROPOSED IMPROVEMENT.] If a property owner claims the physical characteristics of his or her property make it legally impermissible, physically impossible, or financially infeasible to develop or improve it in a manner that would enable the property to benefit from the proposed improvement, the property owner has the burden of demonstrating that the property cannot be developed or improved.

1. Factors that may allow a parcel to be excluded from the district include, but are not limited to, the utility company's inability to provide service to the parcel via main line, and plat restrictions on development.

2. For the purposes of this section, "financially infeasible" means the cost to develop the property would exceed the increase in value due to development.

C. The mayor will consider the petition report and make a final determination to approve the report or to require additional or amended information not less than 45 days and not more than 60 days from the date the assessing department mails notice to affected property owners under KPB 5.35.030(E) to allow for the comment period described in that section. In the case where the mayor determines the district boundary as proposed in the petition report is improper, the mayor may modify and resubmit the district boundaries to the utility company for further consideration. The sponsor shall provide written agreement of any changes to the boundaries, cost per parcel, or other project elements prior to the project proceeding.

[C. THE ASSEMBLY SHALL HOLD A PUBLIC HEARING ON THE RESOLUTION.]

[D. AFTER PUBLIC HEARING THE ASSEMBLY MAY ADOPT THE RESOLUTION APPROVING THE PETITION APPLICATION.]

5.35.106. Petition [FILING].

[AFTER THE PETITION APPLICATION HAS BEEN APPROVED BY THE ASSEMBLY, THE PETITIONER SHALL FILE A PETITION WITH THE ASSEMBLY THROUGH THE BOROUGH CLERK UPON FORMS PRESCRIBED BY THE MAYOR OR DESIGNEE, INCLUDING THE APPROVED BOUNDARY DESCRIPTION.]

A. Once the petition report is approved by the mayor, the assessing department shall create the final petition containing all information required under KPB 5.35.107(A) and provide at least one copy of the petition to the sponsor for distribution to affected property owners.

B. Upon receiving a copy of the petition, the sponsor may pursue the signatures of owners of property within the approved boundaries. Once sufficient signatures are obtained, the sponsor shall file a complete petition with the assembly, through the assessing department, following the process described in KPB 5.35.107.

5.35.107. Petition filing; Requirements of petition.

- A. Petition content. The petition, which shall be distributed by the sponsor to all owners of property within the proposed district, shall include: [ALL INFORMATION APPROVED IN] the petition report [APPLICATION] approved by [ASSEMBLY RESOLUTION,] the mayor under KPB 5.35.105; a statement notifying the property owners to contact the applicable utility for any additional costs that may be required to utilize the improvement; [AND] notification that any costs to connect individual parcels to the main improvement are not included in the assessment; and a signature page with instructions.
- B. Deadline for signatures. The sponsor shall submit the completed petition signature page(s) to the assessing department within 45 days of the date on which the assessing department distributes the petition to the sponsor.

Proposed districts involving more than 150 properties may have additional time, up to 30 days, to collect signatures at the discretion of the mayor, so long as the delay has no negative impact on the utility company's estimate and timeframe for construction. The sponsor shall request the additional time when submitting the notice of intent to proceed with administrative review under KPB 5.35.030(C). However, the mayor has the discretion to approve a request for additional time at a later point in the process so long as the request for additional time does not impact the timeline for the project.

- C Signature requirements. The petition shall contain the signatures of (a) the owners of record of [MORE THAN SEVENTY] at least 60 percent of the total number of parcels subject to assessment within the proposed district, and (b) the owners of at least 60 percent in value of the property to be benefited, in order to be considered by the assembly for formation. [; AND (B) THE OWNERS OF RECORD OF PROPERTIES WITHIN THE DISTRICT WHICH WOULD BE SUBJECT TO GREATER THAN SEVENTY PERCENT OF THE TOTAL ASSESSMENT UNDER THE PETITIONER'S PROPOSAL.]

1. Multiple owners. When a parcel is owned by more than one person or entity, signatures for each record owner are required in order for the parcel to count towards the signature thresholds, consistent with the requirements listed in KPB 5.35.107(C)(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 borough 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 a corporation, the petition shall 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 shall 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 shall 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) shall be accepted by the borough 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, shall be reduced by the number of parcels owned by the borough within the proposed district.

7. Excluded parcels. When a parcel is excluded from the district by the mayor under KPB 5.35.105(B) or by law, the total number of parcels within the district, for the purpose of calculating the signature thresholds, shall be reduced by the number of excluded parcels within the proposed district.

D. Utility acknowledgement. The petition shall contain or be accompanied by a statement from an authorized officer or employee of the utility whose service is sought to be extended acknowledging that the project as proposed by the petition meets the requirements of the utility and that the utility approves and will support construction of the extension.

[A NONREFUNDABLE FILING FEE IN THE AMOUNT LISTED IN THE MOST CURRENT KENAI PENINSULA BOROUGH SCHEDULE OF RATES, CHARGES AND FEES SHALL BE REMITTED WITH THE PETITION.]

E. Withdrawal of signature. 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 completed petition is filed.

[NO PROPERTY OWNER MAY WITHDRAW HIS APPROVAL OF THE PROPOSED IMPROVEMENT FOR A PERIOD OF SIX (6) MONTHS AFTER THE DATE OF FILING OF PETITION, AND THIS SIX (6) MONTH APPROVAL SHALL BE EXPRESSLY STATED UPON THE PETITION. NOTHING IN THIS

SECTION SHALL BE CONSTRUED TO PRECLUDE A PROPERTY OWNER FROM FILING AN OBJECTION AS PROVIDED IN KPB 5.35.110(D) WITHIN THE TIME PROVIDED BY ORDINANCE OR REGULATION.]

F. Certification of petition. Once the sponsor files the signed petition with the assessing department, the borough clerk shall determine whether the petition contains sufficient signatures as described in KPB 5.35.107. If the petition meets the requirements of KPB 5.35.107, the borough clerk shall certify the petition and submit the petition to the mayor for preparation of a resolution to form the district and proceed with the improvement under KPB 5.35.110.

5.35.110. Resolution to form the district and proceed with the improvement.

- A. When the borough clerk has determined that a petition bears sufficient signatures as described in KPB 5.35.107, the mayor or mayor's designee shall prepare for assembly consideration a resolution to form the special assessment district and proceed with the improvement. The mayor [OR DESIGNEE] shall submit to the assembly with the resolution a copy of the petition as described in KPB 5.35.107(A). [REPORT ON THE PROPOSED DISTRICT CONTAINING THE INFORMATION INCLUDED IN THE ASSEMBLY APPROVED PETITION APPLICATION.]
- 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 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 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 objections to the necessity of 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 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 [OR MAY NOT] adopt the resolution to form the district and proceed with the improvement. [T] If the assembly approves the district, the resolution shall:

1. describe the improvement and its location;
2. describe the parcels benefitted by the improvement;
3. make a finding that the improvement is necessary and should be made;
4. 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;
5. if the mayor signed the petition on behalf of the borough, approve the mayor's action;
- [3.] 6. approve the estimated cost of the improvement;
- [4.] 7. include an estimated assessment roll showing the amount of the assessment against each parcel;
- [5.] 8. authorize the mayor to proceed with the construction of the improvement; and
- [6.] 9. require the clerk to record in the district recorder's office a copy of the resolution to form the district and proceed with the improvement and the estimated assessment roll.

F. After passage of the resolution to form the district and proceed with the improvement, 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 EXCEEDS THE ESTIMATED COST FOR LABOR AND MATERIALS BY MORE THAN 10 PERCENT, 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 CERTIFIED MAIL, RETURN RECEIPT REQUESTED, 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.]

5.35.125 Ordinance of appropriation.

A. An ordinance of appropriation shall be scheduled for enactment at the same assembly meeting that the resolution to form the district and proceed with the improvement is adopted. The amount of the appropriation shall be equal to the estimated cost of the improvement included in the petition report under KPB 5.35.105(A).

B. In the event that the borough puts the project out to bid, and the lowest, responsive, responsible, qualified bid exceeds the appropriation by more than 10 percent, 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 certified mail, return receipt requested, notify affected property owners of the time and place when they may be heard on the question.

5.35.130. Effect of resolution to form the district and proceed with the improvement.

Adoption of the resolution to form the district and proceed with the improvement shall be a final determination that properties in the assessment district are properly included and subject to assessment for the improvement.

5.35.140. Improvements financed through the sale of bonds.

If the cost of the improvements are to be paid from bond proceeds the bonds [CANNOT] shall not be sold until 30 days after the adoption of the resolution to proceed. No construction may begin prior to receipt of the proceeds from the sale of the bonds.

5.35.150. Ordinance of assessment.

- A. After the actual cost of the public improvements has been ascertained, the borough assembly shall by ordinance assess a lien against each [LOT AND] parcel [OF LANDS] enumerated in the estimated assessment roll adopted under KPB 5.35.110. The final assessment roll shall be developed in the same proportion to the estimated assessment roll as the actual cost of the improvement bears to the estimated cost of the improvement. This assessment shall be payable in the manner provided in the resolution to form the district and proceed with the improvement adopted under KPB 5.35.110, and shall be final upon the [ADOPTION] enactment of the ordinance.
- B. The assessment roll made under this section shall be filed with the borough assembly at the time of the introduction of said ordinance of assessment and shall be open to public inspection.
- C. Prior to [ADOPTION] enactment of the ordinance of assessment, the assembly shall:
1. Fix a time to hear objections to the assessment roll;
 2. Provide that the borough clerk publish notice [OF THE FILING] of the ordinance of assessment as required under KPB 22.40.010(D) [ROLL ONCE IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE BOROUGH STATING THAT SUCH ASSESSMENT HAS BEEN MADE AND IS ON FILE IN THE OFFICE OF THE BOROUGH CLERK, AND ALSO STATING THE TIME AND PLACE FOR THE HEARING OF OBJECTIONS]; and

3. Provide that the borough clerk notify the owners of record of the [LOTS AND] parcels [OF THE LAND] to be assessed for the improvement by regular mail not less than [TEN] 15 days before the hearing; the notice shall include notice of individual assessment and notice of the time and place of the hearing.

5.35.155. 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 shall continue to accrue on the assessment during the period of deferral.
- D. Property owners wishing to seek a deferral of the assessment shall 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 shall 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 shall resume starting with the next payment due.

5.35.160. Notice of assessment.

- A. Within [FIFTEEN] 15 days after the [ADOPTION] enactment of an ordinance under [SECTION] KPB 5.35.150 levying a special assessment, the finance director shall mail a statement to the owner of record of each property assessed. For each property the statement shall designate the property, the total allocated assessment, the assessment lien amount, the schedule of payments, the time of delinquency, [AND] penalties, and notice of the deferral of principal option described in KPB 5.35.155.
- B. Within [FIVE] 5 days after the 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 enactment of an ordinance under [SECTION] KPB 5.35.150 levying a special assessment, the clerk shall file in the office of the district recorder an appropriate notice of assessment lien on all lands assessed.

5.35.170. Return of excess funds.

Any and all funds collected from assessments levied for a specific project which exceed the actual total expenditures made by the borough on the project; and, any and all funds returned to the borough by the utility as a refund of expenditures made by the borough on a specific project, shall either be returned to the owners of record of the assessed properties on a pro rata basis or applied to the outstanding debt, in the manner provided by the ordinance of assessment.

5.35.180. 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 is provided for the original assessment.

5.35.190. 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.

“Benefit” means an advantage gained from the improvement greater than that shared by the general public under this ordinance. Benefit may include, for example, increased property value and marketability, a special adaptability of the land, or a relief from some burden (for example, lower energy costs).

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

“Directly benefitted” means that the property may hook up its private service line to the main service line without any further extension of the main line, based upon the utility’s guidelines.

“District” means an area composed of individual parcels of land that are connected to the public improvement for which the special assessment is to be levied.

“Estimated assessment roll” means a spreadsheet that includes the name of each recorded owner, tax parcel number, assessed value and legal description of the parcels of land and other property 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 of land or other property.

“Petition report” means the document created by the assessing department, for the mayor’s review, which contains all pertinent information regarding the proposed district and special assessment project.

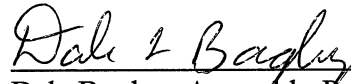
“Petition” means the formal written request signed by record owners within the proposed boundaries to form the utility special assessment district.

“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 Resolution 92-54, “A resolution adopting regulations for the implementation of KPB Chapter 5.35 ‘Utility Special Assessment Districts’” is hereby repealed.

SECTION 3. That this ordinance takes effect immediately upon its enactment.

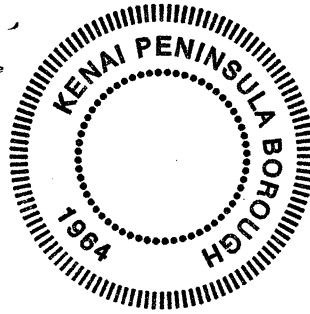
ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF JUNE, 2015.



Dale Bagley, Assembly President

ATTEST:


John Blankenship, MMC, Borough Clerk



Yes: Cooper, Haggerty, Gilman, Johnson, McClure, Ogle, Welles, Wolf, Bagley
No: None
Absent: None