

Kenai Peninsula Borough Assembly

MEMORANDUM

TO: Brent Johnson, Assembly President
Members, Kenai Peninsula Borough Assembly

FROM: Tyson Cox, Assembly member *(B)* for Tyson Cox

DATE: May 3, 2022

SUBJECT: **LAYDOWN** Amendments to O2022-08, Amending KPB 5.12.116 to Broaden Economic Development for Independent Power Producers (Johnson, Cox)

[Please note the bold underlined language is new and the strikethrough bold language in brackets is to be deleted.]

Amendment #1

The purpose of the below amendment to 5.12.116(D) is for the assembly to discuss whether an applicant may combine this economic development exemption with other available exemptions. For example, under KPB 5.12.125, the first \$100,000 of assessed valuation of personal property is exempt from the borough tax levy on personal property within the borough. Under this amendment an applicant would have to choose between the KPB 5.12.125 exemption and this economic development exemption. An applicant would not be eligible for both exemptions if this amendment is approved.

➤ Amend Section 1 of the ordinance, at KPB 5.12.116(D) as follows

Section 1. That KPB 5.12.116 is amended as follows:

5.12.116. Economic development property exemption.

....

D. This exemption shall not apply to taxes levied for special services in a service area that is supervised by a board under AS 29.35.460. **An exemption for property used for economic development under this section may not be combined with or in addition to any other exemption required or allowed under law.**

Amendment # 2

The purpose of the below amendment to 5.12.116(E) is to explicitly provide that this exemption is for an entire proposal, which must include all phases of any proposed project or use of the property for economic development. The designated period for the exemption begins upon initial approval of the proposal by assembly resolution and a new exemption with a renewed designated exemption period may not be requested in proposal phases.

- Amend Section 1 of the ordinance, at KPB 5.12.116(E) as follows

Section 1. That KPB 5.12.116 is amended as follows:

5.12.116. Economic development property exemption.

...

- E. Any proposal must be approved by assembly resolution after public hearing. **The assembly resolution is a final decision on the proposal for the property used for economic development. An applicant may not apply for the exemption under this section for separate phases of the same proposal. The grant or denial of an application is a discretionary act which shall not give rise to any claim against the borough or its agents.**

Amendment #3

The purpose of the below amendments to 5.12.116(F), (G) and (H) is to provide a process for administrative review of applications, to ensure annual certification of the exemption eligibility, and a clear process for assembly review of initial application under this section and/or eligibility deficiencies in subsequent years.

- Amend Section 1 of the ordinance, amending KPB 5.12.116(F), adding a new subsection G, and re-letting current subsection G as subsection H, as follows

Section 1. That KPB 5.12.116 is amended as follows:

5.12.116. Economic development property exemption.

...

- F. In order to qualify for this exemption, an applicant must file, with the borough assessor, a written application for the exemption no later than January [15] **31** of [EACH] the assessment year for which the exemption is sought. The application shall be on a form prescribed by the borough assessor, and shall include all information [DETERMINED TO BE NECESSARY] **required** by the assessor to determine eligibility of the property for the exemption. **If the assessor determines that the application is complete and meets or exceeds the eligibility criteria, the mayor will submit a resolution to the assembly for action under KPB 5.12.116(E). If the assembly approves the resolution under KPB 5.12.116(E), the approval will be subject to annual certification of eligibility under KPB 5.12.116(G).** [IF THE APPLICANT FAILS OR REFUSES TO PROVIDE INFORMATION REQUIRED OR REQUESTED BY THE ASSESSOR, WITHIN THE TIME PERIOD SET BY THE ASSESSOR, THE EXEMPTION SHALL BE DENIED. THE ASSESSOR MAY MAKE AN INDEPENDENT INVESTIGATION OF THE APPLICATION OR PROPERTY IN MAKING A DETERMINATION UNDER THIS SECTION. THE ASSESSOR SHALL NOTIFY THE APPLICANT, IN WRITING, OF THE ASSESSOR'S DETERMINATION ON THE APPLICATION FOR EXEMPTION.]
- G. **The applicant shall certify annually by January 31 to the assessor or designee that ownership of assets subject of the tax relief and the factors establishing qualification for the tax relief under this section upon which approval was granted remain in existence and that the property remains eligible for tax relief pursuant to this section. All books and records of the owner are subject to inspection by the assessor for a period of three years after the annual certification is made. If the subject property is determined to be wholly or partially ineligible, the tax relief granted shall terminate to the extent of the deficiency. The nature and extent of any deficiency in the taxpayer's eligibility for the tax incentive or relief or the conditions under which such was granted will be reported to the assembly together with a statement of the impact of the tax incentive and deficiencies on the borough. A documentation deficiency under this subsection is cause for the assembly by resolution terminating or modifying an exemption previously approved under this section. An approved exemption may transfer with a change in ownership or a prospective change in ownership upon assembly approval by resolution.**
- H. An applicant delinquent in the registration for, filing of a return for, or payment of, any borough or city property or sales tax, or borough special assessment, may not be granted an exemption under this section.

Your consideration of these amendments is appreciated.