



KENAI PENINSULA BOROUGH

144 North Binkley Street • Soldotna, Alaska 99669-7520

Toll-free within the Borough: 1-800-478-4441

PHONE: (907) 262-4441 • FAX: (907) 262-1892

www.kpb.us

**MIKE NAVARRE
BOROUGH MAYOR**

MEMORANDUM

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

THRU: Mike Navarre, Mayor

FROM: Elizabeth Leduc, Assistant Borough Attorney *el*

DATE: May 7, 2015

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

Ordinance 2015-12 presents a significant revision of the utility special assessment district (USAD) code. This sectional analysis is intended to provide you with an explanation of substantive changes to aid your review of the proposed amendments. Those sections that have only been amended to clean up confusing language or otherwise have non-substantive changes are not included here.

KPB 5.35.020. Additional language explicitly states that USAD process cannot be used to fund private service connections.

KPB 5.35.030. Numerous changes have been made to this section to streamline the boundary approval process and to reflect current practice.

- **5.35.030(A)(1).** Adds a requirement that the sponsor must submit a written application to start the process, similar to the RIAD process. The application is brief (1-2 pages); it is intended to create a written record of the request and clear guidance to the special assessment coordinator to move forward with the project.
- **5.35.030(A)(2).** Adds some specific guidance for determining whether a boundary is improper. Reference to “inappropriate” boundaries is removed, as this is difficult to define or describe.
- **5.35.030(A)(3 – 5).** These subsections reference current practice of obtaining approval and estimate from the utility company at this early stage of the process.
- **5.35.030(C).** New requirement for sponsor to provide written notice of their intent to proceed with the USAD process. This is intended to create a record of the sponsor’s request, and to trigger the next stages of the process, all of which are time-intensive for administrative staff.
- **5.35.030(D).** This section changes the timing of the submission of filing fee, and the amount. The amendment requires the filing fee to be paid at the time the sponsor provides

notice to proceed, as a considerable amount of work is put in by borough staff upon receiving this notice. The assembly will need to update KPB chapter 1.26 to incorporate this filing fee. A resolution amending the fee schedule is expected to be submitted to the assembly on June 16, 2015.

- **5.35.030(E)** Contains several updates:
 - Shifts responsibility for providing notice from the clerk's office to the assessing department, as in current practice the special assessment coordinator handles all contacts with the sponsor and prepares all materials related to the proposed project.
 - This section also clarifies the language regarding any efforts to replat parcels within the district so that the USAD and RIAD codes rely on the same language.
 - Because the proposed amendments shift responsibility for the initial approval of the project from an assembly function to an administrative function, 5.35.030(E)(5) provides a formal opportunity for property owners to provide comments about the proposed district for the mayor's consideration.
- **5.35.030(F)**. Clarifies that the sponsor must obtain approval for any changes to the district boundaries using the process described in 5.35.030. This is intended to allow the utility company to review the proposed changes and to adjust the estimate if necessary, and to ensure that updated notices must be issued to affected property owners.

KPB 5.35.060. Amended such that the mayor is allowed, but not required to, adopt regulations.

KPB 5.35.070. Contains several updates:

- **5.35.070(A)**. Limits special assessments to properties that are directly benefitted by the project. Existing code allows indirect benefits, which are difficult to define, potentially unfair to property owners, and quite subjective. "Directly benefitted" is defined in 5.35.190.
- **5.35.070(C)**. Increases the assessment lien limit to 50 percent of the fair market value of the property. The existing 21 percent lien limit was adopted in the 1990s and was related to bank financing. Today, the borough finances all USADs. The proposed amendment bases the calculation of the lien limit on actual value of the property, rather than value of property plus the value of improvement, as the value of the improvement cannot be accurately estimated. A lien limit of 50 percent was chosen to ensure that the borough would be able to collect the full amount of the assessment if a parcel was foreclosed upon; this recognizes that there are costs associated with foreclosure and redemption. Subsection 1 provides an option to pre-pay the estimated cost of the assessment so that a parcel may meet the 50 percent lien limit restriction.
- **5.35.070(D)**. Clarifies how and when the borough will determine if there are too many parcels delinquent in their tax payments. Provides a deadline for payment so as to remove restriction on USAD formation.

KPB 5.35.090. Removes reference to the term "lots" and instead refers only to parcels as this is the basis for all special assessments. This change was made consistently throughout the chapter.

KPB 5.35.105. This section was substantially modified to require administrative, rather than assembly, review of the petition report (formerly referred to as the "petition application"). Prior to 2009, the administration conducted the initial review of the proposed district, and approved

the project such that the sponsor could proceed with the collection of signatures. In 2009, the process was altered to shift the pre-approval process to the assembly when several steps were consolidated. The borough has been operating under this system for the past five years and those involved in the USAD process have found it to be cumbersome, requiring additional time and resources that do not benefit the borough or the impacted property owners. Review at this early stage is appropriately an administrative function because it is simply intended to evaluate the viability of the project before the sponsor moves forward with the petition signature process. The administration in no way binds the borough or the property owners to form the district by approving the petition report. The mayor's approval of the petition report will replace the existing *resolution approving petition application* under KPB 5.35.105. If the petition is signed by a sufficient number of record property owners, the assembly will then have the opportunity to approve formation of the district, appropriate funds, and approve the final assessment roll.

- **5.35.105(A).** Refers to the "petition report" to distinguish it from the application required under KPB 5.35.030. The information listed is consistent with existing code, however it has been reorganized to reflect the format in which this information is prepared by the assessing department. Adds requirement that the report include any written comments submitted by property owners, and the sponsor's contact information.
- **5.35.105(B).** Describes the circumstances in which parcels located within the district boundaries may be excluded from the district (and thus, will not be subject to the assessment). Such exclusions are intended to be rare and only available to those parcels that truly cannot benefit from the improvement. The amendment also clarifies that the property owner bears the burden of demonstrating that their parcel should be excluded from the district.
- **5.35.105(C).** Because there will be no assembly hearing where property owners can give testimony at this stage, it was necessary to create a similar opportunity to be heard before the mayor considers the petition report. A comment period of 45 days is created in 5.35.030(E)(5). The mayor cannot act on the petition report until this period passes. An outer limit of 60 days from the date the assessing department issues notice under 5.35.030(E) is included to ensure that the mayor reviews the petition report and makes a decision in a timely manner.
 - Under current code, the assembly may deny a petition application due to concerns regarding boundaries and resubmit updated boundaries to the utility. This new paragraph recognizes the new administrative process and requires acknowledgement and approval of the project sponsor to continue with the USAD process if any significant changes are made, prior to sending out the petition for signatures. Although the mayor initially approves the boundary during the preclearance process under KPB 5.35.030, additional information may become available later in the process that makes reconsideration of the boundaries at the petition report stage appropriate.

KPB 5.35.106. The petition is the document that is used to collect the signatures of property owners who support the USAD. Amendments to this section are intended to clarify what exactly the petition is, what information it must contain, and the process by which the petition will be submitted to the assembly. Although this is new language, it reflects current practice.

KPB 5.35.107 Amendments to this section are intended to provide clear guidance to the administration, the clerk, and the affected property owners regarding what is required before a petition can be submitted to the assembly for approval.

- **5.35.107(A).** Specifies the exact information that must be provided to each affected property owner within the proposed district.
- **5.35.107(B).** Changes the deadline for signatures, as well as the triggering date for the period of time the sponsor has to collect signatures. The amendments allowed 45 days to collect signatures, triggered by the date the assessing department distributes the petition. Under existing code, the “trigger” date for determining the 30 day deadline is the date of the first signature, which provides the sponsor and borough no way to anticipate the actual timeframe for signature collection. Under this scheme, the borough has no control over the process, and it is possible to miscalculate the 30 day deadline.
 - Under the proposed code, 45 days was chosen as the period to collect signatures to allow enough time for the petition to be mailed to and from the property owners. Because the time to collect signatures is bound to the date the petition is issued to the sponsor, everyone involved knows the deadline up front.
 - The proposed amendment offers an extension for larger projects, if such an extension will not impact the project timeline (assembly approval and utility construction timeframes) or the utility’s estimate of costs.
- **5.35.107(C).** Shifts the threshold for signatures from “more than 70 percent” to “at least 60 percent” of record property owners. It should be noted that Alaska Statutes only require a 50 percent signature threshold, and the borough has chosen to require a greater percentage of property owner approval before the assembly will consider the formation of a special assessment district. The second part of the signature threshold paragraph has been deleted, as all assessments are allotted on a per-parcel basis.
 - Subsection C also provides guidance regarding signature requirements. This information was added because the clerk’s office and the assessing department are inundated with questions about signature requirements.
 - Note that, if any parcel is excluded from the district, either by the mayor or by law, that parcel will not be counted towards the total number of parcels within the district when calculating whether 60 percent of the parcels support the USAD.
- **5.35.107(E).** Changes the criteria for withdrawing one’s signature from the petition. Under current code, a signor can withdraw their signature on the petition up to 6 months in the future, when the project is already underway. Existing code does not describe the impacts of withdrawal on the project. The proposed language was taken from RIAD code and only allows withdrawals up until the time the sponsor has filed the signature pages. Thus, withdrawals are only effective prior to certification – after that point, the signatures count remains.
- **5.35.107(F).** Provides clarity regarding certification of petition by the clerk.

KPB 5.35.110 Overall, this section is updated to refer to the new administrative process. Additionally:

- **5.35.110(D).** Deleted requirement that assembly revise district if majority of property owners submit written objections to necessity of the improvement. Such an occurrence would, in reality, require a new project to be developed.

- **5.35.110(E).** Requires some additional information that must be included in the resolution to form and proceed. Under the proposed amendments, the assembly will be required to make a finding of necessity to comply with AS 29.46.020. The assembly must also specify any parcels that are excluded so it is clear which parcels, if any, will not receive the benefit of the improvement or be subject to the assessment. Finally, if the mayor signed the petition in support of the project as owner of any borough-owned land within the district, the assembly must approve that action since it will obligate the borough to contribute to the USAD if the assembly forms the district.
- **5.35.110(G).** The amendment moves this section to KPB 5.35.125, which specifically addresses the appropriation.

KPB 5.35.125 Although an ordinance of appropriation has always been required in order to fund USADs, the existing code did not reference the appropriation. This new section simply makes clear the requirement that an ordinance of appropriation is one step in the USAD process.

- Language regarding costs in excess of the appropriation has been moved to this section as a more logical organization. Under existing code, this section (currently 5.35.110(G)) refers to excessive bids, in particular excessive “construction costs.” This has caused confusion, especially in the RIAD context, as there is no definition of construction costs. This has not been an issue for USADS to date, as Enstar handles construction of the improvement. However, the USAD code could be used to construct other types of utility improvements, and it is possible that some time in the future the borough may put such a project out to bid. The amendment also relates the bid directly to the order of appropriation. Finally, the amendment removes the reference to written objections, as this does not give any value to testimony on the issue, and the code does not describe what should happen if written objections are (or are not) received. The amendment does not prohibit submission of written objections.

KPB 5.35.150. The amendment references KPB 22.40.010(D), the general publication requirement for all assembly meetings. The clerk provides direct notice of the assessment role to the property owners, and publishes notice of the assembly agenda in the newspaper. Currently, this provision of code seems to require a second, concurrent publication in the newspaper. The amendment also changes the direct notice period from 10 to 15 days, consistent with the RIAD code.

KPB 5.35.155. Under existing code, property owners may obtain a perpetual deferral of payment on special assessment liens, which become due at the time the resident ceases to own and occupy the property. While this section appears to offer relief to the property owner, in reality it can become a significant hardship at the time the payment become due because interest continues to accrue. Under the proposed code, only the principal may be deferred, in an effort to avoid significant accumulation of interest if a deferral is in effect for an extended period of time. The proposed amendments are intended to provide a clear explanation of the requirements and impacts of a deferral. Changes include:

- **5.35.155(A).** Explains that a deferral is not a forgiveness of the assessment.
- **5.35.155(B).** Clarifies that the borough will consider *adjusted* gross income.
- **5.35.155(C).** Clearly states that interest continues to accrue, even when a deferral is in effect.

- **5.35.155(D).** Requires annual certification. Currently, property owners only apply once for the deferral, so it continues indefinitely and is not subject to any changes in the owner's income.
- **5.35.155(F).** Requires property owners to pay accrued interest each year, as only the principal may be deferred. This protects both the homeowners and the borough. Adds requirement that property must be occupied by owner to comply with AS 29.46.020, and so subsections (A) and (F) are internally consistent.
- **5.35.155(G).** Makes clear that, if a property owner no longer qualifies for the deferral, they will be responsible for making the next year's payment, rather than for any payments of principal that have accrued to date. Essentially, these homeowners will have the same 10 year period to make payments on the principal as other property owners within the district, starting when they begin making payments on the principal.

KPB 5.35.190. The existing code does not include a definition section; one was added at the recommendation of the participants in this code revision.