



## **KENAI PENINSULA BOROUGH**

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**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 *ell*

**DATE:** May 7, 2015

**SUBJECT:** Sectional analysis of Ordinance 2015-13, An Ordinance Amending KPB Chapter 14.31, Regarding Road Improvement Assessment Districts

Ordinance 2015-13 presents an extensive reorganization of the road improvement assessment district (RIAD) code. This sectional analysis is intended to provide you with an explanation of the proposed amendments to aid your review of the ordinance. Those sections that have only been amended to clean up confusing language or otherwise have non-substantive changes are not included here.

**KPB 14.31.020.** Removes unnecessary limitation on RIAD process to improvements located only in dedicated rights-of-way, as there are roads throughout the borough that are not within dedicated rights-of-way, such as roads in undedicated section line easements.

**KPB 14.31.030.** Under the amended code, only those parcels that are directly benefitted may be included in a RIAD. Essentially, parcels are directly benefitted when they touch the improvement. It is difficult to define indirect benefits, which are very subjective and may unfairly capture parcels that have no or little use of the improvement.

**KPB 14.31.040.** The existing code refers to a step that does not truly initiate the RIAD process. Deleted part A and amended part B to more clearly explain how the process begins. The deadline has been extended to July 1 to give sponsors more time to apply while still allowing projects to be completed in a reasonable amount of time.

**KPB 14.31.050.** The current version of the code presents the steps of the RIAD application process out of order and as such it is difficult to follow. The proposed amendments create a more chronological explanation of the process and the various steps the sponsor has to take. Note that the process itself has not changed; this section is simply reorganized, with clarifying language added as needed. Several paragraphs have been deleted, but are reinserted in more logical provisions.

- **14.31.050(A).** Amendment adds description of improper boundaries, consistent with the criteria for utility special assessment districts (USADs).
- **14.31.050(B).** Removes reference to estimated costs, as the assessing department does not have this information at this stage of the process.
- **14.31.050(C).** Adds the same language as in proposed USAD amendment to explain what happens when the boundary is deemed improper.
- **14.31.050(D).** Formalizes the current practice that an initial staff report is drafted by the assessing department and provided to the RSA board to aid their decision to approve an order for an engineer's estimate.
- **14.31.050(E).** States the timeframe for the RSA board's consideration of RIAD applications. Note that the deadline has been extended to September 1, to accommodate the July 1 application deadline. The amendment deletes the reference to assessments/costs because this information is not available at this stage.
- **14.31.050(G).** The amendment changes the time at which the filing fee must be paid. Under the amendment, the filing fee will be due after the RSA board approves the order for an engineer's estimate but before any additional work is completed, as there is significant cost in terms of time and resources associated with obtaining an engineer's estimate and continuing with the RIAD process.
- **14.31.050(H).** A new section that specifically addresses the engineer's estimate.
- **14.31.050(I).** Adds a requirement that the sponsor provide a written notice to proceed with the project for record-keeping purposes, and to trigger the next steps in the RIAD process.
- **14.31.050(J).** Under existing code, there is no requirement that the borough provide notice of the proposed RIAD, prior to notice of the assembly's hearing regarding formation of the district. This new section adds a notice requirement that is consistent with the USAD process and informs impacted property owners about the RSA board's public hearing to approve the petition report and recommend a borough match.
- **14.31.050(K).** Consistent with USAD code, adds requirement that any changes made to the boundaries by the sponsor must be vetted by the preclearance process described in KPB 14.31.050, up to and including review by the RSA board and notice to affected property owners.

**KPB 14.31.055.** Under current code, different types of projects may receive more or less of a match through the borough match program. However, in practice, the RSA board generally recommends a 50 percent match. Furthermore, it is difficult to allocate the match among parcels when different match percentages apply to a single project. The amendments reflect this reality and allow a 50 percent match for any type of eligible RIAD. The deadline has been extended to July 1 to give sponsors more time to apply while still allowing projects to be completed in a reasonable amount of time.

**KPB 14.31.060.** Most of the changes in this section are organizational, not content-driven. In short, the current version of this chapter makes it seem like there are two petition reports that must be submitted over the course of the district formation (see 14.31.060 and 14.31.090). In reality, the report created in 14.31.060 is used again in the 14.31.090 step of the process. Minor changes were made to 14.31.060 to make sure all the elements required in 14.31.090 are included in a single petition report, which can be relied upon throughout the RIAD process.

- Under 14.31.060(2), a contingency fee of ten percent on the total estimated costs has been added. The issue is that the engineer's estimate is typically a fairly superficial estimate and is not based on the actual design or with any specific engineering. Allowing a small contingency factor is intended to close the gap between the engineer's estimate and the actual cost of construction, without having to re-appropriate funds. Property owners will be aware of the estimated costs, including the contingency, when they receive a copy of the petition (prior to signature). Ultimately, the cost of assessment will only include actual costs.

**KPB 14.31.065.** Creates a new provision specifically describing the RSA board resolution approving the petition report and recommend match funds. This requirement was previously included as a sub-section in 14.31.060, and did not provide sufficient detail.

**KPB 14.31.070.** Contains several updates:

- **14.31.070(A).** Describes the initiation of the petition circulation process.
- **14.31.070 (B).** Specifies the exact information that must be provided to each property owner within the proposed district.
- **14.31.070(C).** 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.
- **14.31.070(D).** 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 approve a RIAD. The second part of the signature threshold paragraph has been deleted, as all assessments will be allotted on a per-parcel basis under the proposed amendment.
  - Subsection D 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.
- **14.31.070 (E).** This is the existing criteria for withdrawing one's signature, moved to a more logical placement within the code.
- **14.31.070 (F).** Provides clarity regarding certification of petition by the clerk.

**KPB 14.31.080.** Requires prepayments for delinquent taxes or assessments in excess of the lien limits to be submitted no later than 15 days prior to the assembly consideration of the resolution to form and proceed. Clarifies how and when the borough will determine if there are too many parcels delinquent in their tax payments. An updated definition for "improved parcel" has been added. Redundant language has been deleted.

**KPB 14.31.090.** See note for 14.31.060 for explanation. Simplifies this section by referring to the petition report, which already contains all of the information listed. Otherwise reorganizes the information to make it easier to understand and to reflect current practice.

- **14.31.090(D).** Deletes 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.
- **14.31.090(E).** Adds several requirements regarding findings that must be included in the assembly's resolution. These include: a finding that the project is necessary, as required by Alaska Statutes; identification of any excluded parcels; and approval of mayor's signature on the petition, if applicable.
- **14.31.090(G).** This section is relocated to new section 14.31.095, which addresses the appropriation for the project.

**KPB 14.31.095** Although an ordinance of appropriation has always been required in order to fund RIADs, the existing code does not reference the appropriation. This new section simply makes clear that approval of an ordinance of appropriation is one step in the RIAD process. Additionally, KPB 14.31.090(G), which explains the process if a bid exceeds the appropriation, was moved to this section.

**KPB 14.31.100.** 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 14.31.110.** The amendment clarifies that the total amount assessed to the benefitted parcels is equal to the total costs minus any match approved by the assembly.

**KPB 14.31.120.** The amendment only allows allocation of costs on per parcel basis. This is the only method of assessment that has been used in recent past, as other methods are difficult to implement.

**KPB 14.31.145.** 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:

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

- **14.31.145(D)**. Requires annual certification. Currently, property owners only apply once for the deferral, so it can continue indefinitely and is not subject to any changes in the owner's income.
- **14.31.145(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.
- **14.31.145(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 14.31.160**. The amendments add definitions for key terms that are currently undefined. Definitions are consistent with USAD code where appropriate.