

Introduced by:	Johnson
Date:	04/05/22
Hearing:	05/03/22
Action:	Postponed as Amended to 05/17/22
Vote:	9 Yes, 0 No, 0 Absent
Date:	05/17/22
Action:	Enacted as Amended
Vote:	7 Yes, 1 No, 1 Absent

**KENAI PENINSULA BOROUGH  
ORDINANCE 2022-08**

**AN ORDINANCE AMENDING KPB 5.12.116 TO BROADEN ECONOMIC  
DEVELOPMENT PROPERTY TAX EXEMPTION FOR INDEPENDENT POWER  
PRODUCERS**

- WHEREAS,** AS 29.45.050(m) provides municipalities discretionary authority to partially or totally exempt all or some types of economic development property from taxation for a designated period; and
- WHEREAS,** pursuant to AS 29.45.050(m) a municipality that is a school district may only exempt all or a portion of the amount of taxes that exceeds the amount levied on other property for the school district’s required local contribution under AS 14.17.410(b)(2).
- WHEREAS,** electricity prices average 24¢/kWh on the Kenai Peninsula, 20¢ kWh in the Matanuska-Susitna Borough, and 16¢ /kWh in Anchorage; and
- WHEREAS,** in 2018, the State of Alaska Department of Natural Resources estimated that Cook Inlet Natural Gas generates 70% of the Alaska Railbelt’s electricity and Cook Inlet Natural Gas currently generates 84% of Homer Electric Association Generation; and
- WHEREAS,** according to an op-ed written by Ben Boettger titled, *Confronting Painful Truths on Cook Inlet’s Natural Gas Future* that appeared in the May 21, 2021 edition of the *Anchorage Daily News*, Cook Inlet gas producers have received tax credits worth \$1.44 billion, a sum that will total \$2.32 billion when remaining obligations are paid; and
- WHEREAS,** Kenai Peninsula Borough (“KPB”) electricity generation can be made more resilient and more cost competitive by diversifying power generation sources; and
- WHEREAS,** the current war in Ukraine demonstrates the wisdom of diversifying electricity generation sources; and

- WHEREAS,** according to LAZARD’s 2020 Levelized Cost of Energy Analysis Report, wind and solar energy are the cheapest forms of new energy and there is potential for new generation sources to suppress future electricity prices in the KPB; and
- WHEREAS,** an Independent Power Producer (“IPP”) is defined as an entity that owns facilities to generate electric power for sale to public utilities regulated by the Regulatory Commission of Alaska; and
- WHEREAS,** IPPs can bring value to a cooperative utility by accessing capital and bearing risk for a fixed fee contract; and
- WHEREAS,** the IPP model can add economic opportunity, bring local construction and maintenance jobs to the KPB and can increase the benefits of competitive market economics to electricity generation in the KPB; and
- WHEREAS,** local electric cooperatives will enter into a Power Purchase Agreement only when their elected Board and the Regulatory Commission of Alaska determines it will benefit ratepayers going forward and these benefits are directly passed onto ratepayers; and
- WHEREAS,** property taxes increase the cost of electricity generation and the price at which IPP’s sell electricity to electric cooperatives, ultimately increasing the cost of electricity to cooperative members; and
- WHEREAS,** property conveyed to Alaska Native entities pursuant to the Alaska Native Claims Settlement Act (“ANCSA”) is tax exempt by law; however if the property is sold or leased to a third party, or otherwise developed, the property, or the portion of the land that is subject to a lease, must be taxed at full and true value; and
- WHEREAS,** reducing KPB property taxes for IPP’s will incentivize economic development in KPB, diversify its electricity generation and reduce the price at which IPP’s can sell electricity to cooperative utilities and this benefit is passed onto KPB residents, businesses and governments; and
- WHEREAS,** the borough currently provides for economic development property tax exemptions at KPB 5.12.116; and
- WHEREAS,** applications for an exemption must be filed by January 15 of the assessment year, therefore, tax year 2023 will be the first year an entity may apply under the provisions specific to independent power producers; and
- WHEREAS,** amending KPB 5.12.116 to broaden the available property tax exemption amount and duration for IPP’s will encourage this type of economic development in KPB and the IPP industry is expected to benefit KPB residents, businesses and governments; and

**WHEREAS,** Governor Dunleavy has called for 80% of Railbelt power to be renewable by 2030; and

**NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:**

**SECTION 1.** That KPB 5.12.116 is amended as follows:

**5.12.116. Economic development property exemption.**

- A. The assessed value of property used for economic development, as defined in this section, is partially exempt from borough property taxes, under the conditions listed in this section.
- B. "Property used for economic development," as used in this section, means that part of real or personal property, as determined by the borough assessor, to which one or more of the following apply:
  - 1. Has not previously been taxed as real or personal property by the borough.
  - 2. That will be used to create a new business operation, or to reopen a business operation five years or more after ceasing all business operations within the borough and is used in a trade or business in a way that:
    - a. creates employment in the borough;
    - b. generates sales outside of the borough of goods or services produced in the borough;
    - c. materially reduces the importation of goods or services from outside the municipality; or
    - d. an exemption on the property enables a significant capital investment in physical infrastructure that:
      - i. expands the tax base of the municipality; and
      - ii. will generate property tax revenue after the exemption expires.
  - 3. That has not been used in the same trade or business in another municipality for at least six months before the application for exemption is filed; this paragraph does not apply if the property was used in the same trade or business in an area that has been annexed to the municipality within six months before the

application for deferral or exemption is filed; and this paragraph does not apply to inventories.

C. Except as provided in 5.12.116(C)(1), the exemption shall be for a designated amount at the assembly's discretion up to fifty percent (50%) of the assessed value of the property, for a designated period up to five consecutive years at the assembly's discretion.

1. Independent Power Producers exemption shall be for a designated period up to fifteen consecutive years if the criteria in KPB 5.12.116(B) is met and if the applicant provides the borough assessor proof that the requirements under KPB 5.12.116(C)(1)(a) are satisfied.

a. To qualify as an Independent Power Producer under this section, an entity must

i. Own and operate a generation facility larger than two-megawatts; and

ii. Sell electricity to a public utility which is regulated by the Regulatory Commission of Alaska

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.

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.

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.

**SECTION 2.** SPECIAL NOTE: Pursuant to AS 29.45.050(m), notice is hereby given that this ordinance, if enacted, may be repealed by the voters through referendum.

**SECTION 3.** This ordinance is effective immediately upon enactment.

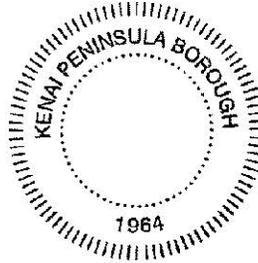
**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 17TH DAY OF MAY, 2022.**

*Brent Johnson*

Brent Johnson, Assembly President

ATTEST:

*John Blankenship*  
John Blankenship, MMC, Borough Clerk



05/03/22 Vote on motion to postpone as amended to 05/17/22:

- Yes: Bjorkman, Chesley, Cox, Derkevorkian, Ecklund, Elam, Hibbert, Tupper, Johnson
- No: None
- Absent: None

05/17/22 Vote on motion to enact as amended:

- Yes: Bjorkman, Chesley, Cox, Ecklund, Elam, Tupper, Johnson
- No: Derkevorkian
- Absent: Hibbert