

Postponed to 7-7-87

Introduced by: Mayor
Date: May 5, 1987
Hearing: July 21, 1987
Vote: 3 Yes, 9 No
Action: DEFEATED 7/21/87

KENAI PENINSULA BOROUGH

ORDINANCE 87-26

AN ORDINANCE OF THE KENAI PENINSULA BOROUGH, ALASKA, PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE BOROUGH IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$150,000,000 TO PROVIDE FUNDS REQUIRED TO REFUND CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE BOROUGH, FIXING CERTAIN DETAILS OF SUCH BONDS AND AUTHORIZING THEIR SALE. THIS ORDINANCE WILL BE ADOPTED ONLY UPON STATE LEGISLATIVE APPROVAL OF BOND REFUNDING.

WHEREAS, there are now outstanding general obligation bonds of the Borough issued pursuant to the Ordinance No.'s 83-16 adopted March 15, 1983, 84-10 adopted March 6, 1984, and 85-97 adopted January 21, 1986; and

WHEREAS, after due consideration it appears to the Assembly that it is advisable for the Borough to refund the aforesaid bonds (the "Outstanding Bonds") by the issuance of general obligation bonds in the principal amount of not to exceed \$150,00,000 (the "Bonds") in a single series entitled 1987 General Obligation Refunding Bonds to refund the aforesaid Outstanding Bonds of the Borough, in order to effect a better debt service schedule for the Borough; and

WHEREAS, in order to effect such refunding in the most economical manner, it is deemed necessary and advisable that the net proceeds of the sale of the Bonds herein authorized and other moneys available for refunding purposes be invested in obligations to be later specified by resolutions of the Assembly

maturing in such amounts and at such times as are required to pay the maturing principal of and interest on the Outstanding Bonds;

WHEREAS, because the amount of Bond proceeds and the obligations necessary to effect the refunding of the Outstanding Bonds depend, in part, on the interest rate to be borne by the Bonds to be issued pursuant to this Ordinance, the exact amount (not to exceed \$150,000,000) and maturities of the bonds to be issued and the specific obligations to be acquired shall hereafter be fixed by resolution of the Assembly.

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

Section 1. Purpose. The purpose of this Ordinance is to authorize the issuance and sale of not to exceed \$150,000,000 of general obligation bonds to provide part of the funds to refund certain outstanding general obligation bonds of the Borough, and to fix certain details of said bonds to be issued.

Section 2. Definitions. As used in this Ordinance, unless a different meaning clearly appears from the context:

A. "Acquired Obligations" means the obligations of the United States of America or its agencies to be acquired to effect the refunding of the Outstanding Bonds as hereafter specified by resolution of the Assembly and obligations, if any, substituted therefor pursuant to Section 9 of this Ordinance.

B. "Bond" or "Bonds" means any of the bonds of the Borough, the issuance and sale of which are authorized herein.

C. "Borough" means the Kenai Peninsula Borough, a municipal corporation of the State of Alaska.

D. "Government Obligations" means any of the following: (1) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United State of America and bank certificates of deposit secured by such obligations; (2) bonds, debentures, notes, participation certificates, or other obligations issued by the banks for cooperatives, the federal intermediate credit bank, the federal home loan bank system, the export-import bank of the United states, federal land banks, or the federal national mortgage association; (3) public housing bonds and project notes fully secured by contracts with the United States; and (4) obligations of financial institutions insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation, to the extent insured.

E. "Outstanding Bonds" means the 1983, 1984, and 1986 General Obligation School Bonds of the Borough dated April 1, 1983, April 1, 1984, and February 1, 1986, respectively, with a current principal outstanding at June 30, 1987, of \$140,605,000.

Words importing the singular number include the plural number and vice versa.

Section 3. Authority for Ordinance. The Borough has ascertained and hereby determines that each and every matter and thing as to which provision is made in this Ordinance is necessary in

order to carry out and effectuate the purposes of the Borough in accordance with the Constitution and statutes of the State of Alaska, and to incur the indebtedness and issue the Bonds.

Section 4. Obligation of Bonds and Pledge. The Bonds shall be direct and general obligations of the Borough. The full faith, credit and taxing power of the Borough are hereby pledged to the payment of the principal of and interest on the Bonds. The Borough hereby irrevocably pledges and covenants that it will levy and collect taxes upon all the taxable property within the Borough without limitation as to rate or amount, in amounts sufficient, together with other funds available therefor, to pay principal and interest on the Refunding Bonds as the same become due and payable.

Section 5. Authorization of Bonds and Purpose of Issuance. For the purpose of providing part of the funds required to purchase Acquired Obligations and to provide beginning cash to effect the refunding of the Outstanding Bonds in the manner and at the times hereinafter set forth, the Borough hereby authorizes and determines to issue and sell its Bonds in the aggregate principal amount of \$150,000,000 or so much thereof as is required, together with other moneys available and used for such purpose, to effect the refunding of the Outstanding Bonds. The exact amount to be issued and the principal amount of the Bonds to mature in each year shall be hereafter fixed and determined by resolution of the Assembly adopted prior to the delivery thereof.

Section 6. Description of Bonds. The Bonds shall bear interest from their date payable on the first days of March and September in each year at such rates as may be fixed and determined by resolution of the Assembly adopted prior to the delivery thereof.

The Bonds shall be coupon in form payable to bearer and registrable as to principal alone as herein provided. The Bonds shall each be of the denomination of Five Thousand Dollars (\$5,000) or any integral multiple thereof approved by the Borough, such approval to be evidenced by the execution of such Bonds. The Bonds shall be substantially in the form of such Bonds hereinafter set forth, with such appropriate variations, omissions or insertions as are permitted or required by this Ordinance, and may have endorsed thereon such legends or text as may be necessary or appropriate to conform to the rules and regulations of any governmental authority, or any usage or requirement of law with respect thereto. Each Bond shall bear a number or letter, or a number and letter, distinguishing it from every other Bond.

The Bonds shall be dated and bear interest from September 1, 1987.

Each of the Bonds shall be signed by the manual or facsimile signature of the Mayor and the official seal of the Borough (or a facsimile thereof) shall be affixed, imprinted or otherwise reproduced on the Bonds, and attested by the manual or facsimile

signature of the Clerk. The coupons attached to the Bonds shall be executed with the facsimile signature of the Clerk. In case any officer whose signature or facsimile of whose signature shall appear on any Bonds or coupons shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in the office until such delivery.

In the event both the signature of the Mayor and the signature of the Clerk are in facsimile form, the Bonds shall contain a certificate of a Paying Agent certifying the authentication of such signatures in the following form:

PAYING AGENT'S CERTIFICATE
OF AUTHENTICATION

This Bond is one of the Bonds described in the within mentioned Ordinance and the signatures imprinted hereon are the authentic signatures in facsimile of the Mayor and Clerk of the Borough.

(Name)

Paying Agent

By _____
Authorized Officer

Both the principal and the interest on the Bonds shall be payable in any coin or currency of the United State of America,

which at the respective dates of payment thereof, is legal tender for the payment of public and private debts.

The principal and the interest on all Bonds shall be payable at the principal offices of the Paying Agents. Payment of the interest on the Bonds shall be made only upon presentation and surrender of the coupons representing such interest as the same respectively fall due.

Section 7. Redemption of Bonds. The Bonds shall not be subject to redemption by or on behalf of the Borough prior to maturity.

Section 8. Form of Bond. Each Bond, the coupons to be attached thereto and the provisions for registration to be endorsed thereon shall be, respectively in substantially the following forms, with such variations, omissions and insertions as may be required or permitted by this Ordinance:

UNITED STATES OF AMERICA
STATE OF ALASKA
KENAI PENINSULA BOROUGH
(A Municipal Corporation of the State of Alaska)

No. \$5,000

1987 General Obligation Refunding Bond

KNOW ALL MEN BY THESE PRESENTS: That Kenai Peninsula Borough, a municipal corporation of the State of Alaska (the "Borough"), for value received, acknowledges itself indebted and hereby promises to pay to the bearer or if this Bond be

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registered as herein provided, the registered owner hereof, on the first day of September, 1987, upon presentation and surrender hereof, the principal sum of Five Thousand Dollars (\$5,000), and to pay interest on such principal sum from the date hereof until its obligation with respect to the payment of such principal sum shall be discharged, at the rate of _____ per centum (____%) per annum, payable on the first days of March and September in each year but only, in the case of interest due at or before maturity of this Bond, according to the tenor of the respective coupons therefore annexed hereto and upon presentation and surrender of said coupons as they severally become due. The principal and interest of this Bond, when due, will be payable at the principal office in _____ of _____, a paying agent of the Borough (hereinafter called the "Principal Paying Agent"), or, at the option of the holder, at the principal office in the _____ of _____ (herein collectively, together with the Principal Paying Agent, called the "Paying Agents"), in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the 1987 General Obligation Refunding Bonds of Kenai Peninsula Borough, of like tenor and effect except as to interest rates and maturity, aggregating \$_____ in principal amount, and constituting Bonds authorized for the purpose of refunding certain general obligation bonds issued by the

Borough is issued pursuant to Ordinance No. 87-26 of the Borough entitled:

AN ORDINANCE OF THE KENAI PENINSULA BOROUGH, ALASKA, PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$150,000,000 TO PROVIDE FUNDS REQUIRED TO REFUND CERTAIN OUTSTANDING GENERAL OBLIGATION BONDS OF THE BOROUGH, FIXING CERTAIN DETAILS OF SUCH BONDS AND AUTHORIZING THEIR SALE. THIS ORDINANCE WILL BE ADOPTED ONLY UPON STATE LEGISLATIVE APPROVAL OF BOND REFUNDING.

(herein called the "Ordinance").

The Bonds are numbered from one consecutively upwards in order of maturity.

The Bonds are not subject to redemption by or on behalf of the Borough prior to maturity.

This Bond is transferable by delivery, unless registered as to principal other than to bearer. It may be registered as to principal in the name of the bearer on the books of the Borough kept for the purpose at the principal office of the Principal Paying Agent, such registration to be noted hereon, after which no transfer hereof shall be valid unless made on said books by the registered owner hereof in person or by his attorney duly authorized in writing, and similarly noted hereon; but this Bond may be discharged from registration by being in like manner transferred to bearer, after which it shall again become transferable by delivery. This Bond may again, from time to time, be registered or discharged from registration in the same manner.

Such registration, however, shall not affect the negotiability by delivery of the coupons appertaining hereto, which shall continue to pay by delivery merely and shall remain payable to bearer. The Borough and the Paying Agents of the Borough may treat and consider the bearer of this Bond, or if it be registered as herein provided, the person in whose name it is registered, as the holder and absolute owner of this Bond for the purpose of receiving payment of, or on account of, the principal hereof and for all other purposes whatever except for the purpose of receiving payment of coupons, and may treat and consider the bearer of any coupon appertaining hereto as the holder and absolute owner thereof for the purpose of receiving payment thereof and for all other purposes whatsoever.

The Bonds are issuable in the form of coupon Bonds in the denomination of \$5,000.

This Bond is a general obligation of the Kenai Peninsula Borough and the full faith, credit and taxing power of the Borough are pledged for the payment of the principal of and interest on this Bond as the same shall become due. The Borough irrevocably pledges and covenants that it will levy and collect taxes upon all the taxable property within the Borough without limitation as to rate or amount, in amounts sufficient together with other funds available therefor, to pay principal and interest on the Bonds as the same become due and payable.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts or things required by the Constitution or statutes of the State of Alaska to exist, to have happened or to have been performed precedent to or in the issuance of this Bond, exist, have happened and have been performed, and that the issuance of Bonds of which this is one, together with all other indebtedness of the Borough, is within every debt and other limit prescribed by said Constitution or statutes.

IN WITNESS WHEREOF, the KENAI PENINSULA BOROUGH, has caused this Bond to be signed in its name, and on its behalf by the manual or facsimile signature of its Mayor and its corporate seal (or a facsimile thereof) to be hereunto affixed, imprinted or otherwise reproduced, and attested by the manual or facsimile signature of its Clerk, and coupons for interest, bearing and signed by the facsimile signature of the said Clerk, to be attached hereto, all as of the first day of September, 1987.

Mayor

(S E A L)

A T T E S T:

Clerk

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(FORM OF PROVISIONS FOR REGISTRATION)
 Notice: No Writing Below Except By The
 Paying Agent as Registrar:

Date of Registration	Name of Registered Owner	Authorized Signature of Registrar
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(FORM OF COUPONS)

No.

On the first day of _____, 19____, Kenai Peninsula Borough, a municipal corporation of the State of Alaska, will pay to the holder at the principal office in the _____ of _____, a paying agent of the Borough, or at the option of the holder, at the principal office in the _____ of _____, upon surrender of this coupon _____ DOLLARS (\$ _____), in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, being six months' interest then due on its 1987 General Obligation Refunding Bond, No. _____.

 Clerk, Kenai Peninsula Borough

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Section 9. Disposition of the Proceeds of Sale of the Bonds and Authorization of a Safekeeping Agreement. The proceeds received from the sale of the Bonds (exclusive of accrued interest) shall be first used to pay all costs incidental to the issuance of the Bonds and the acquisition and safekeeping of the Acquired Obligations. The balance of the proceeds shall be deposited in the 1987 General Obligation Bond Refunding Account which is hereby credited and used, together with moneys to be transferred to said account pursuant to resolution of the Assembly, to deposit cash and to purchase Acquired Obligations maturing as to principal and interest in such amounts and at such times as to provide for the payment of the principal of and interest on the Outstanding Bonds and to redeem and retire the remaining Outstanding Bonds as set forth in the Sixth Recital of this Ordinance.

Such money and Acquired Obligations shall be irrevocably set aside and held in the 1987 General Obligation Bond Refunding Account and deposited in a trust account for safekeeping in a bank or trust company to be hereafter appointed by resolution of this Assembly as Refunding Trustee. Such money and obligations are hereby pledged to be held and applied solely for the purpose set forth herein, provided, however, that the Borough may from time to time transfer, or cause to be transferred, free of trust from such 1987 General Obligation Bond Refunding Account any moneys not required for such purposes upon securing a

verification from the Refunding Trustee and opinion of bond counsel as set forth in the next succeeding paragraph.

The Borough reserves the right to substitute higher yield direct obligations of the United States of America for investments in the 1987 General Obligation Bond Refunding Account in the event it may do so pursuant to Section 103(c) of the Internal Revenue Code and applicable regulations thereunder provided that at all times the moneys and Acquired Obligations in the 1987 General Obligation Bond Refunding Account shall be sufficient to accomplish the refunding of the Outstanding Bonds as provided herein. Prior to each such substitution, the Borough shall obtain (1) a verification by the Refunding Trustee which shall be satisfactory to bond counsel to the Borough that the moneys and Acquired Obligations on deposit after such substitution will be sufficient to effect such refunding of the Outstanding Bonds, and (2) an opinion from bond counsel that such substitution shall not cause any of the Bonds to lose their tax exempt status under Section 103(c) of the Internal Revenue Code of 1954, as amended, and the applicable regulations promulgated thereunder. When all of the Outstanding Bonds shall have been redeemed and retired, the Borough may cause to be transferred from the 1987 General Obligation Bond Refunding Account free of trust all moneys remaining therein.

Section 10. Paying Agents. The Principal Paying Agent and one additional Paying Agent shall be appointed by a resolution

adopted by the Borough Assembly. The Borough shall indemnify and save harmless the Paying Agents against any liabilities which they may incur in the exercise and performance of their powers and duties as Paying Agents which are not due to their negligence or default, and shall pay their reasonable charges for their services as Paying Agents. The Paying Agents may become the owners of or may deal in Bonds, as fully and with the same rights as if they were not the Paying agents.

Section 11. Incorporation by Reference. Sections 8 through 12 inclusive and Section 19 and 20 of Ordinance No. 77-69 effective January 4, 1978, are incorporated by reference with the same force and effect as if fully set forth herein. Said sections contain standard provisions relating to exchange of bonds, negotiability of bonds, transfer of registered bonds, mutilated, destroyed or lost bonds, authority of officers and miscellaneous matters.

Section 12. Arbitrage Covenant. The Borough covenants with the holders of all Bonds at any time outstanding that it will make no use of the proceeds of the Bonds which will cause the Bonds to be "arbitrage bonds" subject to federal income taxation by reason of Section 103(c) of the Internal Revenue Code of 1954. To that end, so long as any of the Bonds are outstanding, the Borough, with respect to the proceeds of the Bonds, shall comply with all requirements of said Section 103(c) and of all regulations of the United States Department of the Treasury issued

thereunder, to the extent that such requirements are, at the time, applicable and in effect.

Section 13. Sale of Bonds. The Bonds shall be sold at public or private sale upon such terms and conditions as may be fixed and determined by a resolution adopted by the Borough Assembly prior to the time of sale.

Section 14. Prohibited Sale of Bonds. No person, firm or corporation, or any agent or employee thereof, acting as financial consultant to the Borough under an agreement for payment in connection with the sale of the Bonds is eligible to bid for the Bonds as a member of the original underwriting syndicate either at public or private sale.

Section 15. Severability. If any one or more of the covenants and agreements provided in this Ordinance to be performed on the part of the Borough shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements shall be null and void and shall be deemed separable from the remaining covenants and agreements in this Ordinance and shall in no way affect the validity of the other provisions of this Ordinance or of the Bonds.

Section 16. Effective Date. This Ordinance shall take effect immediately.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON
THIS _____ DAY OF _____, 1987.

Jonathan W. Sewall, Assembly President

ATTEST:

Borough Clerk

