

Introduced by:	Mayor
Date:	05/03/94
Shortened Hearing:	05/17/94
Postponed to:	06/07/94
Postponed to:	06/21/94
Action:	Enacted as Amended
Vote:	Unanimous

**KENAI PENINSULA BOROUGH
ORDINANCE 94-26**

**AN ORDINANCE AMENDING CHAPTER 5.35 OF THE BOROUGH CODE OF
ORDINANCES FOR UTILITY SPECIAL ASSESSMENT DISTRICTS**

WHEREAS, the assembly previously enacted Chapter 5.35 of the Borough Code to provide for special assessment districts for utility line extensions; and

WHEREAS, after creation of one district and attempts to form others, it is apparent changes need to be made to the ordinance; and

WHEREAS, for clarity it is best to repeal the existing ordinance and reenact it with needed changes;

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

SECTION 1. That Chapter 5.35 of the Kenai Peninsula Borough Code is repealed and reenacted to read:

5.35.010. Assessment authority.

This chapter is enacted under the authority of and in conformance with chapter 29.46 of the Alaska Statutes, to provide for the establishment of special assessment procedures. Under this authority the borough assembly may assess against private real property and/or the property of a governmental unit all or a portion of the cost of constructing or improving those capital projects of local benefit as described hereunder. As provided by AS 29.46.020(c), these procedures set out through KPB Chapter 5.35 shall replace and supersede the procedures set out by AS Chapter 29.46 at sections .030, .040, .050, .060, .070, .100, .110, .120, .130, and .140.

5.35.020. Authorized capital improvements.

Special assessments may be utilized solely for financing of the extension of the lines of service of those public utilities regulated by the Alaska Public Utilities Commission, or of city-owned utilities to areas outside the boundaries of the city.

5.35.030. Initiation of improvement proposal -- Preclearance -- Resubmission.

A. A special assessment district proposal shall be initiated by the submitting a map or detailed description of the proposed geographic area subject to inclusion in the special assessment district in the manner prescribed by the Mayor. Upon receipt of a description the assessor shall review it to determine whether the proposed boundary is improper or inappropriate. The boundary is improper or inappropriate if 1) any property adjacent to the proposed district will be benefited by the proposed utility and is clearly excluded for the primary purpose of enabling the included properties to meet assessment percentage and signature requirements of this chapter or 2) such other grounds as may have been established by regulation. The assessor shall consult with the utility whose service is sought to be extended and obtain written acknowledgment that the proposed boundary meets the requirements of the utility and that the utility approves and will support construction of the extension. The assessor shall also obtain the approval of the Borough Mayor prior to approving the proposed boundary.

B. In the event that the assessor determines the proposed boundary is improper or inappropriate the boundary description shall be returned to the petitioner along with a written explanation describing how the petition is improper or inappropriate.

C. If the assessor approves the proposed boundary, the boundary description shall be returned to the petitioner bearing the assessor's approval.

D. The petitioner may modify and resubmit the approved boundary description in accordance with the above procedure at any time prior to filing the completed petition.

5.35.040. Petition filing.

After the proposed boundary has been approved by the assessor, the utility and the mayor, the petitioner shall file a petition with the Assembly through the borough clerk upon forms prescribed by the mayor, including the approved boundary description.

5.35.050. Requirements of petition.

The petition shall include a description of the proposed improvements, the estimated cost, a description of the proposed geographic district subject to the special assessment as previously approved by the assessor pursuant to 5.35.030. The petition shall contain the signatures of (a) the owners of record of more than seventy percent of the total number of parcels subject to assessment within the proposed district; and (b) the owners of record of properties within the district which would be subject to greater than seventy percent of the total assessment under the petitioner's proposal. The petition must contain or be accompanied by a statement from an authorized officer or employee of the utility whose service is sought to be extended acknowledging that the project as proposed by the petition meets the requirements of the utility and that the utility approves and will support construction of the extension. No property owner may withdraw his approval of the proposed improvement for a period of six (6) months after the date of filing of petition, and this six (6) month approval shall be expressly stated upon the petition.

5.35.060. Administration -- Regulations -- Procedures.

The mayor shall adopt regulations, subject to assembly approval, setting out such requirements and procedures as deemed necessary for the efficient administration of this program. The

assessing department shall be responsible for the processing of petitions and development of an assessment roll for the special assessment district. The finance department shall be responsible for the sale of any bonds and collection of assessments.

5.35.070. Property assessed.

A. The assembly may assess for an improvement any real property, or any interest in real property, benefitted by the improvement. The property to be assessed may include any property which is otherwise for any reason exempt from taxation by law.

B. In the case where the assembly determines that the district boundary as proposed by petition is improper or inappropriate, then the assembly may modify the petition terms and resubmit the petition to the utility for further consideration and resubmission with appropriate signatures by the petitioners.

C. In no case may a property be assessed an amount in excess of eighteen (18%) percent of the fair market value of the property after giving effect to the benefit accruing from the improvement for which assessed.

D. In no case shall a special assessment district be approved where properties which will bear more than four (4%) percent of the estimated costs of the improvement are delinquent in payment of borough property taxes.

5.35.080. Costs assessed.

The assembly shall assess one hundred percent of all costs of a public improvement against the parcels of property benefitted by the improvement. The total assessment for an improvement shall include the actual costs of the improvement, including costs of acquisition of interest in land for the improvement, design, engineering, administration, overhead, professional services, bond costs, financing costs, and interest incurred as a result of the improvement, and all other costs resulting from the construction of the improvement.

5.35.090. Method of assessment.

The methods of assessment set forth in this section will be used. The determination of the method to be used may involve determinations on the character of the properties in the assessment district and the benefit received from the improvement.

A. Allocation of costs on a per lot basis so that each lot is assessed an equal amount; or

B. Allocation in proportion to assessed property valuations for land.

The method prescribed in subsection A of this section shall be used unless the character of the properties are such that one or more parcels are more than three times the size of the typical lot in which case the allocation method in subsection B shall be followed; provided, however, the method in subsection A may be used despite a disparity in lot size where legal or physical restrictions effectively limit the larger lot to the same use as the typical lots in the assessment district.

5.35.100. Financing special assessment districts.

The mechanism for financing of special assessment districts shall be determined on a case by case basis and set out and approved by the assembly in the Resolution of Necessity adopted for each

respective special assessment district.

5.35.110. Resolution of necessity.

A. When a petition has been approved by the utility and filed with the borough clerk for assembly consideration, and the tax compliance requirements of Section 5.35.060 D are found to be met, then the mayor shall cause to be prepared for assembly consideration a resolution to determine the necessity and sufficiency of the proposal. The mayor shall have prepared such plans, specifications, profiles and estimated costs of the improvement as necessary to prepare an estimated assessment role in accordance with the method of assessment set forth showing the amount of the assessment against each lot or parcel to be assessed. After public hearing, the assembly may declare the necessity for such improvement by the passage of the resolution of necessity.

B. The resolution of necessity shall:

1. State the nature and location of the improvement and lands to be assessed for the improvement;
2. Approve the plans, specifications, profiles and estimated costs of the proposed improvement;
3. State the method of levying the special assessment;
4. Include an estimated assessment roll in accordance with the method of assessment set forth showing the amount of the assessment against each lot or parcel to be assessed;
5. State the number and frequency of installment payments required for the special assessment;
6. State whether or not bonds will be issued in anticipation of the collection of the special assessments.

C. In addition to the regular public notice provided regarding the resolution of necessity, the borough clerk shall:

1. Individually notify the owners of record of the lots and parcels of land to be assessed by certified mail addressed to each owner at his last known address of the following:
 - a. the date of public hearing on the resolution of necessity,
 - b. the place for review of the estimated assessment role, and
 - c. the procedure for presenting objections.
2. Publish notice of the resolution and the properties included within the special assessment district in a newspaper of general circulation within the borough on two consecutive weeks.

D. Written objections from the record owners of properties within the proposed assessment district may be filed with the borough clerk within thirty (30) days of the public hearing on the resolution of necessity.

5.35.120. Resolution to Proceed.

A. After the expiration of the time for the filing of written objections, if objections have not been received from owners of lots or parcels bearing one-half or more of the estimated costs of improvement, the assembly shall, within thirty days, consider a resolution determining to proceed with the proposed special assessment project. The resolution to proceed shall:

1. State the intentions of the borough to proceed with the improvement in accordance with the provisions of the resolution of necessity adopted under Section 5.35.100;
2. Adopt an estimated assessment roll;
3. Authorize the mayor to proceed with the construction of the improvements;
4. Require the clerk to record in the district recorder's office a copy of the resolution to proceed and the estimated assessment roll.

B. After passage of the resolution to proceed, the improvement may be constructed by force account or by contract, or in any other manner provided by law.

C. In the event that the lowest and best bid for labor and materials for the improvement exceeds the estimated cost for labor and materials, then no contract shall be entered without further assembly approval. Prior to such further approval, the clerk shall publish notice once in a newspaper of general circulation within the borough specifying the time and place when owners of property to be assessed for any improvements may be heard on the question and shall, by regular mail, notify affected property owners of the time and place when they may be heard on the question.

5.35.130. Effect of resolution to proceed.

Adoption of the resolution to proceed shall be a final determination that properties in the assessment district are properly included and subject to assessment for the improvement.

5.35.140. Improvements financed through the sale of bonds.

If the cost of the improvements are to be paid from bond proceeds the bonds cannot be sold until 30 days after the adoption of the resolution to proceed. No construction may begin prior to receipt of the proceeds from the sale of the bonds.

5.35.150. Ordinance of assessment.

A. After the actual cost of the public improvements authorized under section 5.35.090 has been ascertained, the borough assembly shall by ordinance assess against each lot and parcel of lands enumerated in the estimated assessment roll adopted under section 5.35.090. The final assessment roll shall be developed in the same proportion to the estimated assessment roll as the actual cost of the improvement bears to the estimated cost of the improvement. This assessment shall be payable in the manner provided in the resolution of necessity adopted under section 5.35.100, and shall be final upon the adoption of the ordinance.

B. The assessment roll made under this section shall be filed with the borough assembly at the time of the introduction of said ordinance of assessment and shall be open to public inspection.

C. Prior to adoption of the ordinance of assessment, the assembly shall:

1. Fix a time to hear objections to the assessment roll;
2. Provide that the borough clerk publish notice of the filing of the assessment roll once in a newspaper of general circulation within the borough stating that such assessment has been made and is on file in the office of the borough clerk, and also stating the time and place for the hearing of objections;
3. Provide that the borough clerk notify the owners of record of the lots and parcels of the land to be assessed for the improvement by regular mail not less than ten days before the

hearing; the notice shall include notice of individual assessment and notice of the time and place of the hearing.

5.35.160. Notice of assessment.

A. Within fifteen days after the adoption of an ordinance under section 5.35.120 levying a special assessment, the finance director shall mail a statement to the owner of record of each property assessed. The statement shall designate the property, the assessment amount, the schedule of payments, the time of delinquency and penalties.

B. Within five days after the statements are mailed, the finance director shall publish a notice that such assessments have been mailed and that the assessment roll is on file in the office of the borough clerk.

C. After enactment of an ordinance under section 5.35.120 levying a special assessment, the clerk shall file in the office of the district recorder an appropriate notice of assessment on all lands assessed.

5.35.170. Return of excess funds.

Any and all funds collected from assessments levied for a specific project which exceed the actual total expenditures made by the borough on the project; and, any and all funds returned to the borough by the utility as a refund of expenditures made by the borough on a specific project, shall be returned to the owners of record of the assessed properties on a pro rata basis.

5.35.180. Reassessment.

When it appears to the assembly that a special assessment is invalid or when an assessment is adjudged to be illegal by a court, the assembly shall order a reassessment whether the improvement has been made or not. Proceedings for a reassessment and for the collection thereof, shall be conducted in the same manner as is provided for the original assessment.

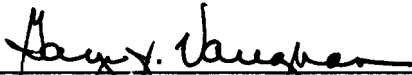
SECTION 2. That no change in this ordinance shall alter or abolish any special assessment district created prior to its effective date and any petitions filed prior the enactment of this ordinance shall be processed under the provisions of Kenai Peninsula Borough Code Chapter 5.35 in effect on the date the petition was filed.

SECTION 3. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON THIS 21st DAY OF JUNE, 1994.


Betty J. Gluck, Assembly President

ATTEST:


Gaye J. Vaughan, Borough Clerk