

Introduced by: Popp, Scalzi
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Action: Enacted
Vote: 7 Yes, 2 No

**KENAI PENINSULA BOROUGH
ORDINANCE 97-51**

**AN ORDINANCE ADOPTING KPB 14.32 SPECIAL ASSESSMENTS FOR
COOPERATIVE COLLECTOR ROAD IMPROVEMENT PROJECTS AND
PROVIDING FOR SPECIAL ASSESSMENT DISTRICTS FOR PARTIAL FINANCING
OF IMPROVEMENTS TO EXISTING PUBLIC RIGHTS-OF-WAY
IN COOPERATION WITH THE STATE GOVERNMENT**

- WHEREAS**, Article 10, § 13 of the Alaska Constitution encourages and authorizes cooperative agreements between state and local governments; and
- WHEREAS**, there exists a service area within the borough for the purposes of road maintenance and improvements; and
- WHEREAS**, many dedicated public rights-of-way including collector roads within the Kenai Peninsula Borough Road Service Area are in poor and deteriorating condition; and
- WHEREAS**, it is difficult for residents of areas served by these substandard roads to obtain financing for road upgrades and to ensure that all property owners benefitting from such upgrades are required to fairly participate in the expense involved; and
- WHEREAS**, improved roads decrease maintenance costs; and
- WHEREAS**, the Alaska Department of Transportation has indicated its support for a program where the state and borough cooperate in road improvement projects on the Peninsula; and
- WHEREAS**, the Alaska Department of Transportation has indicated support for the borough managing the engineering and design and road improvement projects using state funds; and
- WHEREAS**, the Alaska Department of Transportation has indicated local contribution to the funding of state road projects on the Peninsula may increase the roads' priority on the state's capital improvement list; and
- WHEREAS**, the Alaska Statutes at Chapter 29.46 provide authority for the Kenai Peninsula Borough to enact legislation providing for special assessment districts which can

provide for financing and construction of capital improvements which benefit a local area through assessment of those properties specially benefitted; and

WHEREAS, federal funding is available through the state-wide road surfacing and transfer fund, which in fiscal year 1998 is projected to have \$2.5 million available for distribution, and the program is intended to upgrade and transfer to municipalities state roads for purposes of maintenance and ownership;

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

SECTION 1. KPB 14.32 is hereby enacted as follows:

Chapter 14.32 SPECIAL ASSESSMENTS - ROAD IMPROVEMENTS

14.32.010 Assessment authority.

- A. Within the borough road service area, the borough may assess against the property of a state or federal governmental unit and private property to be benefitted by a capital improvement described in KPB 14.32.020 all or a portion of the cost of acquiring, installing or constructing the capital improvement.
- B. Pursuant to AS 29.46.020(a) the procedures in KPB 14.32.040 through 14.32.100 apply to the levying of assessments under this chapter in lieu of the procedures in AS 29.46.030 through 29.46.100.

14.32.020 Authorized capital improvements.

- A. Special assessments may be levied under this chapter only for the improvement of existing collector and subcollector roads in public rights-of-way up to five miles in length to meet or exceed local road construction standards set forth in KPB 14.06.030. This chapter shall govern road assessment districts for roads which are subject to other funding sources; e.g., borough, state, or federal funds, in addition to the funds generated by payments of the property owners within the assessment district.
- B. This chapter may not be used to form special assessment districts for the improvement of arterial or major highways.

14.32.030 Property subject to assessment.

The assembly may assess any real property or interest in real property that the assembly determines is benefitted directly or indirectly by an improvement. The real property or interest in real property that is benefitted by an improvement may be abutting, adjoining, adjacent, contiguous or noncontiguous to the improvement. Real property may be assessed for an improvement notwithstanding its exemption from taxation by law.

14.32.040 Initiation of special assessment district.

- A. A special assessment district proposal is initiated by the filing with the borough clerk of a petition prepared by the borough assessor under KPB 14.32.060 that bears sufficient signatures

of record owners of parcels subject to assessment in the proposed district, as determined under KPB 14.32.070.

- B. To obtain a petition for formation of a special assessment district, the sponsor of the district submits an application to the borough assessor.
- C. The borough may send informational packets to property owners within the road service area when the borough is aware of proposed road improvement projects that may have multiple or alternative funding sources, and may be suitable for cooperative improvement projects.

14.32.050 Review of petition application.

After receiving an application for a petition to form a special assessment district, the borough assessor shall determine the boundaries of the proposed district after consulting with the road service area director. Once the borough assessor makes an initial determination that formation of the proposed district is feasible a nonrefundable filing fee established by the mayor shall be paid by the petition sponsor to defray the costs of petition preparation. The road service area director shall obtain an estimate of the cost of the improvement proposed for the district. Based upon the proposed district boundaries, and the estimated assessments in the district, the borough assessor shall inform the sponsor whether the proposed district may violate any of the restrictions on district formation in KPB 14.32.080.

14.32.060 Preparation and issuance of petition.

- A. After collection of the filing fee and consulting with the sponsor of the special assessment district concerning any legal deficiencies in the proposed district, the borough assessor will prepare a special assessment district petition for circulation. The petition form will include the following:
 - 1. a description of the proposed improvement;
 - 2. the total estimated cost of the improvement;
 - 3. the estimated share of the cost of the improvement which will be paid by property owners within the district;
 - 4. the estimated financial contribution to the improvement from sources other than the assessment district;
 - 5. a map of the proposed district;
 - 6. the name of the record owner of each parcel in the proposed district;
 - 7. the tax parcel number of each parcel in the proposed district;
 - 8. the assessed valuation of each parcel in the proposed district;
 - 9. the proposed method of allocating the cost of the improvement to each parcel in the proposed district;
 - 10. an estimate of the amount to be assessed to each parcel in the proposed district;
 - 11. a description of the limitations on withdrawing a petition signature under KPB 14.32.070.B; and
 - 12. the name, address and daytime telephone number of the sponsor of the petition.
- B. Borough staff shall submit to the road service area board a report on the proposed special assessment district and a recommendation on formation of the district, along with the completed petition form. The road service area board shall vote on whether the formation of the special assessment district should proceed. The petition form will be returned to the special assessment district sponsor for circulation only if it is approved by the road service area board.

- C. The service area board may adopt written policies and guidelines, subject to the mayor's approval, for evaluating and prioritizing projects submitted under this ordinance.

14.32.070 Circulation and filing of petition; signature requirements.

- A. After the road service area board has determined that a special assessment district should proceed, the sponsor may circulate the petition for signature.
- B. A signature on a petition may be withdrawn only by written notice from the signer filed with the borough clerk before the filing of the petition with the borough clerk.
- C. The sponsor shall file the signed petition with the borough clerk. If the borough clerk finds that the petition contains sufficient signatures, the borough clerk shall submit the petition to the mayor for preparation of a resolution to form the district and proceed with the improvement under KPB 14.31.090. The sufficiency of signatures on a petition shall be determined as of the date the petition is filed with the borough clerk. The petition contains sufficient signatures only if it contains the signatures of:
 - 1. the record owners of more than seventy percent of the total number of parcels subject to assessment in the proposed district; and
 - 2. the record owners of parcels that would bear more than seventy percent of the total assessments in the proposed district.

14.32.080 Restrictions on district formation.

- A. A special assessment district may not be formed if it violates any of the following restrictions, determined as of the date of filing the petition to form the district with the borough clerk:
 - 1. The estimated amount of the assessment to be levied against each parcel in the district may not exceed twenty-one (21%) percent for gravel improvements, or twenty-five (25%) percent for paving improvements, of the current assessed value of the parcel. For the purposes of this restriction, the estimated amount of the assessment against a parcel will be reduced by the amount of a prepayment of the assessment for the parcel that is received by the borough before the assembly acts on the resolution to form the district and proceed with the improvement. If the assembly does not approve the resolution to form the district and proceed with the improvement, the borough will refund the prepayment.
 - 2. A special assessment district may not be formed if parcels in the proposed district which would bear more than four (4%) percent of the estimated cost of the improvement are delinquent in payment of borough real property taxes.
 - 3. A special assessment district may not be formed if unimproved parcels represent more than 40 percent of the total assessed value of real property in the district. A parcel is improved under this subsection if it contains operable water and waste-water disposal systems or a dwelling or a building suitable for commercial use.
- B. The provisions of KPB 14.32.080 must be met at the time the Clerk certifies the petition pursuant to 14.32.070(C).

14.32.090 Resolution to form district and proceed with improvement.

The petition to form the district must be filed with the borough clerk's office within 60 days after the first signature on the petition.

- A. When the borough clerk has determined that a petition bears sufficient signatures, and the borough assessor has determined that the proposed district complies with KPB 14.32.080, the

mayor shall prepare for assembly consideration a resolution to form the special assessment district and proceed with the improvement. The mayor shall submit to the assembly with the resolution a report on the proposed district containing the following:

1. a legal description of the parcels to be benefitted by the improvement, and a map of the proposed district;
 2. a description of the current condition of the rights-of-way that are to be improved and a statement of the need for the proposed local improvement;
 3. a proposed allocation of the cost of the improvement among parcels in the district;
 4. the estimated amount to be assessed against each parcel;
 5. a profile of the parcels in the proposed district, including nature of ownership and status of tax payments;
 6. whether there are other special assessment liens against any of the parcels in the proposed district;
 7. a description of any parcels that exceed the assessment-to-value ratio set forth in KPB 14.32.080(A);
 8. the method of financing the improvement; e.g., bonding, borough investment, or a combination; and
 9. all estimated costs of the improvement set forth in KPB 14.32.110;
 10. whether the borough will manage the improvement project.
- B. The assembly shall hold a public hearing regarding the necessity of the improvement and on the resolution to proceed with the improvement. The borough clerk shall give notice of the public hearing on the resolution:
1. by certified mail, return receipt requested, mailed not less than 65 days before the date of the hearing, to each record owner of a parcel in the proposed district; and
 2. by publication once a week for four consecutive weeks in a newspaper of general circulation in the borough, with the first publication appearing not less than 30 days before the date of the hearing.
- C. Each notice of the public hearing shall include the following:
1. a description of the special assessment district and the proposed improvement;
 2. the date of public hearing;
 3. the place for reviewing the estimated assessment roll, and
 4. the procedure for presenting objections to the formation of the district.
- D. Written objections to the formation of the district may be filed with the borough clerk for a period of 60 days after mailing the notice of the public hearing. If written objections are filed by the owners of parcels bearing one-half or more of the estimated cost of the improvement, the assembly may not proceed with the improvement unless it revises the district so that parcel owners objecting bear less than one-half of the cost of the improvement, except on approval of not fewer than three-fourths of the assembly. The revised district shall be subject to notice and public hearing as provided in subsections B and C of this section.
- E. After public hearing, the assembly may adopt the resolution declaring the necessity of the improvement, forming the district, and proceeding with the improvement. The resolution to proceed shall:
1. describe the improvement and its location;
 2. describe the parcels benefitted by the improvement;
 3. approve the estimated cost of the improvement;

4. state the method of allocating the cost of the improvement among the benefitted parcels;
 5. include an estimated assessment roll showing the amount of the assessment against each parcel;
 6. authorize the mayor to proceed with the construction of the improvement; and
 7. Require the clerk to record in the district recorder's office a copy of the resolution to proceed and the estimated assessment roll.
- E. 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 once funds are appropriated by the state. The borough may agree to manage the expenditure of state funds for the improvement project on behalf of the state, including but not limited to engineering, design and construction phases of the project.
- F. In the event that the borough has management of the project pursuant to KPB 14.32.090(E), and the lowest, responsive, responsible, qualified 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 borough clerk shall publish notice once in a newspaper of general circulation in the borough stating the time and place when owners of parcels to be assessed 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. If written objections are not received by or on the date set for consideration of the increased improvement costs from owners of parcels bearing at least one-half of the cost of the improvement, the assembly may approve the improvement contract.

14.32.100 Ordinance levying assessments.

- A. After the actual cost of an improvement authorized under KPB 14.32.090 has been ascertained, the mayor shall prepare and submit to the assembly an assessment roll containing a description of the parcels in the special assessment district, the names of their record owners, and the amounts of the assessments. The assessment roll shall be submitted with an ordinance confirming the assessment roll and levying the assessments. The ordinance shall fix the times for payment of the assessments, the rate of interest on unpaid installments, and the penalty and rate of interest on delinquent installments. The assessment roll shall be filed with the borough clerk at the time of the introduction of the ordinance and shall be open to public inspection.
- B. The borough clerk shall give notice of the public hearing on the ordinance:
1. by regular mail mailed not less than fifteen days before the date of the hearing to each record owner of a parcel in the district; and
 2. by publication once not less than fifteen days before the date of the public hearing in a newspaper of general circulation in the borough.
- C. Each notice of the public hearing shall state that the assessment roll is on file in the office of the borough clerk and is available for public inspection, and the time and place for the hearing of objections to an assessment. In addition, the notice mailed to each record owner of a parcel in the district shall state the amount of the assessment to be levied against the parcel.
- D. After the public hearing on the ordinance, the assembly shall correct any errors or inequalities in the assessment roll, and confirm the corrected roll by adoption of the ordinance.
- E. Final assessment will not occur until after the legislature has appropriated funds to the project.

14.32.110 District termination.

If the Alaska state legislature does not appropriate funds to the project within three years of the adoption by the assembly of the resolution to form district and proceed, the project shall be terminated and a release of the resolution to proceed and estimated assessment shall be recorded with state of Alaska District Recorder's office in the recording district within which the assessment district lies. During this three-year period, properties cannot be withdrawn from the district by a property owner, however, any government entity participating in the project may terminate the cooperative improvement project.

14.32.120 Costs assessed.

The assembly shall assess the district's share of the costs against the benefitted parcels within the district including the costs that are allowable under AS 29.46.110, including without limitation costs of land acquisition, design, engineering, administrative overhead, professional services, constructing, financing costs and interest; provided that the assessment allocated to a parcel shall be reduced by the amount of any prepayment for that parcel under KPB 14.32.080(A). Up to 25 percent of the total costs of the improvement project may be assessed against the properties within the district.

14.32.130 Methods of assessment.

- A. The method of allocating the cost of an improvement shall be proportional to the benefit of the improvement to each assessed parcel. The assembly shall determine the method of allocating the cost of the improvement. The methods of allocating the cost of an improvement include without limitation the following:
 - 1. Allocation based on the area of a parcel;
 - 2. Allocation based on lineal feet of street frontage of a parcel;
 - 3. Allocation based on the assessed valuation of a parcel;
 - 4. Allocation by zones within the special assessment district which allow differential assessment based upon differing benefits to different geographic locations within the district; and
 - 5. Any method which the assembly determines fairly apportions the cost of assessment based on benefit to the parcels.
- B. The mayor may adopt written guidelines and procedures subject to assembly approval for apportioning the costs of the assessment consistent with the provisions of this section.

14.32.140 Notice of assessment.

- A. Within fifteen days after the adoption of an ordinance levying an assessment under KPB 14.31.120, the finance director shall mail an assessment statement to the record owner of each assessed parcel. The statement shall describe the parcel, state the date of mailing of the statement, the amount of the assessment, the times for payment of the assessment, the rate of interest on unpaid installments, and the penalty and rate of interest on delinquent installments. The statement shall include notice that it is the final determination of the assessment and that the property owner has thirty days from the date of mailing of the notice to appeal the assessment to the superior court.
- B. Within five days after the assessment 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 adoption of an ordinance levying a special assessment under KPB 14.31.110, the borough clerk shall file in the office of the district recorder an appropriate notice of assessment lien on all assessed parcels.

14.32.150 Special assessment financing.

- A. Special assessment bonds. The borough may, by ordinance, authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of bonds so issued shall be payable solely from the levy of special assessments against the property to be benefitted. The assessment shall constitute a sinking fund for the payment of principal and interest on the bonds. Interest on funds borrowed to finance the improvement prior to the sale of special assessment bonds shall be a cost of the assessment district.
- B. Borough Investment Funds. In conformance with KPB Chapter 5.10 regarding investment of borough funds, the assembly may authorize investment of borough monies in special assessment districts to pay all or part of the cost of an improvement at an interest rate determined by the assembly. In all such cases, the properties benefitted shall stand as security for payment of the cost of improvements.
- C. Service area contribution. Subject to available funding and service area board approval the borough road service area may contribute no more than 10 percent of the project costs under this ordinance.
- D. Cap on outstanding assessments. There may be no more than five million dollars outstanding for assessments under this chapter at any time.

14.32.160 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 provided for the original assessment.

14.32.170 Definitions.

“Arterial road” means a road intended to carry traffic from local and subdivision roads to major highways. Such roads primarily accommodate relatively large volumes of traffic for relatively long distances at relatively high speeds.

“Benefit” means an advantage gained from the improvement greater than that shared by the general public under this ordinance. Improved access is one way of ascertaining that a parcel is benefitted.

“Collector road” means roads which provide both land access and carry traffic from local or subdivision roads to arterial or major highway systems.

“Local roads” means a road designed and intended to serve local areas. Such roads primarily accommodate land access to abutting property. Local roads feed traffic into collector and arterial street systems.

“Record owner” means the owner of a parcel of land according to borough assessment records.

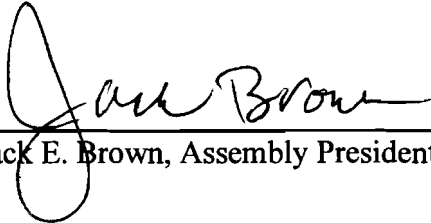
“Subcollector road” means a local road which also provides through traffic service between local roads and collector, arterial, or major highway roads.

SECTION 3. That KPB 5.10.040(A)(11) shall be amended as follows:

11. Special assessments of the borough or one of its political subdivisions authorized by Chapter 5.35, [OR] 14.31[.] , or 14.32. Total principal investment is not to exceed \$1,000,000 at the end of any fiscal year.

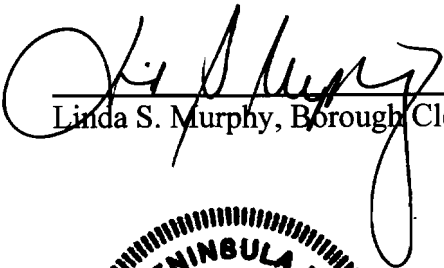
SECTION 4. That this ordinance shall take effect immediately upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 2ND DAY OF SEPTEMBER, 1997.



Jack E. Brown, Assembly President

ATTEST:



Linda S. Murphy, Borough Clerk

