

KENAI PENINSULA BOROUGH ROAD SERVICE AREA

RESOLUTION 2008-12

**A RESOLUTION RECOMENDING AMENDMENTS TO KPB CHAPTER 14.31
"SPECIAL ASSESSMENTS- ROAD IMPROVEMENTS" TO THE KENAI PENINSULA
BOROUGH ASSEMBLY**

WHEREAS, KPB Chapter 14.31 Special Assessments-Road Improvements provides authority and facilitation for benefitted property owners and the Road Service Area (RSA) to share in the cost and process of road improvements for existing roads to RSA road standards; and

WHEREAS, KPB 5.20.170 and KPB 14.31.055 provides for a match funding program for Road Improvement Assessment Districts (RIADs); and

WHEREAS, the RSA, with few exceptions, requires all new roads within the Borough's rights-of-way be built to KPB 14.06 road standards; and

WHEREAS, there are many undeveloped private parcels and rights-of-way within the Borough; and

WHEREAS, it is often cost prohibitive or otherwise impractical for one private property owner to construct new access to KPB 14.06 road standards that would allow for vehicular access or development; and

WHEREAS, broadening the scope of KPB 14.31 to include new road construction would provide a means for neighboring lot owners to share in the cost of new construction and provides opportunity for new quality roads to be built where it otherwise might not be practical; and

WHEREAS, improvement of existing roads is a higher priority than construction of new roads and limiting RSA match funds to road improvements will ensure that available match funding is used for road improvements and will ensure public funds are not used for private development; and

WHEREAS, engineer's estimates for RIADs are consistently greater than the current \$1,000 filing fee intended to pay for the estimate and should be increased to more reasonably account for the costs incurred;

NOW THEREFORE, BE IT RESOLVED BY THE KENAI PENINSULA BOROUGH ROAD SERVICE AREA:

SECTION 1. That the RSA recommends the following changes to KPB 14.31 as set forth below in its entirety:

14.31.010. 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 14.31.020 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 14.31.040 through 14.31.100 apply to the levying of assessments under this chapter in lieu of the procedures in AS 29.46.030 through 29.46.100.

14.31.020. Authorized capital improvements.

Special assessments may be levied under this chapter [ONLY] for the improvement of existing roads or construction of new roads in dedicated public rights-of-way to meet or exceed road construction standards adopted in KPB Chapter 14.06[.030] that are in effect at the time of the formation of the special assessment district in which the assessments are levied.

14.31.030. 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.

14.31.040. 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 14.31.060 that bears sufficient signatures of record owners of parcels subject to assessment in the proposed district, as determined under KPB 14.31.070.

B. To obtain a petition for formation of a special assessment district, the sponsor of the district submits an application to the borough assessor.

14.31.050. Review of petition application.

A. 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 based on the proposed boundaries and criteria set forth in KPB 14.31.080, a filing fee based on the cost of obtaining a professional civil engineer's estimate of the total project costs and petition preparation shall be paid pursuant to one of the methods below, as determined by the road service area board:

1. The petition sponsor shall pay a nonrefundable filing fee consistent with the following table:

<u>Assessed Value of Property Subject to Assessment</u>	<u>Filing Fee</u>
<u>\$2,000,000.00 or less</u>	<u>\$1,000.00</u>
<u>\$2,000,000.01 to \$3,000,000.00</u>	<u>\$1,400.00</u>
<u>\$3,000,000.01 to \$4,000,000.00</u>	<u>\$1,800.00</u>
<u>\$4,000,000.01 to \$5,000,000.00</u>	<u>\$2,200.00</u>
<u>Assessed Value of Property Subject to Assessment greater than \$5,000,000.00 shall require a filing fee consistent with the scale in</u>	

this table.

[OF \$1,000] If an additional filing fee is necessary to defray the cost of the engineer's estimate for the project cost, the remaining filing fee may be paid by the road service area. One hundred percent of the costs incurred by the borough to complete the project shall be assessed against the benefitted parcels in compliance with KPB 14.31.110.

2. The petition sponsor shall pay 100[%] percent of the above described filing fee, which shall be nonrefundable. One hundred percent of the costs incurred by the borough to complete the project shall be assessed against the benefitted parcels in compliance with KPB 14.31.110.

B. 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 14.31.080.

C. Applications for road improvement assessment district formations under KPB 14.31.050(A)(1) must be received no later than June 1 of each year. The Roads Department shall make a report and recommendation to the RSA board regarding the applications. The road service area board shall review the petitions by August 1 of each year for construction in the following year.

D. The road service area board shall consider the following factors in evaluating petition applications and determining which projects shall be funded under KPB 14.31.050(A)(1).

1. Whether the road is currently on the maintenance system;
2. To what extent do the assessed values of properties support the proposed scope of work for each project;
3. The number of petitions for projects received that year;
4. The funds available in the road improvement assessment district engineer's estimate fund established under KPB 5.20.160;
5. Whether an application for district formation has been previously filed and whether conditions have changed that make the project more feasible than in past application years.

E. The Road Service Area Board shall adopt administrative procedures for application of the factors set forth in KPB 14.31.050(D) by board resolution.

14.31.055. Road service area match program.

A. There is established pursuant to KPB 5.20.170 a borough match program for RIAD projects that upgrade existing roads as follows:

1. The road service area board may authorize that up to 50 percent of the costs of a RIAD be defrayed from this fund for local or internal subdivision roads subject to the assembly's annual appropriation to the fund.
2. The road service area board may authorize that up to 70 percent of the costs of a RIAD be defrayed from this fund to pave or improve a paved collector road subject to the assembly's annual appropriation to the fund.
3. Where pavement RIADS include both parcels abutting a collector road and internal subdivision roads, the parcels abutting the collector road qualify for up to a 70 percent match, and the parcels abutting an internal subdivision road qualify for up to a 50 percent match.

B. A borough match may be considered for the following types of RIAD projects:

1. Pavement projects for existing roads which have been certified for borough maintenance;
2. Gravel projects for existing roads which do not meet borough standards in order that the road be brought to borough standards;
3. Gravel projects for existing substandard gravel roads which have been certified for borough maintenance in order that the road be brought to borough standards.
- C. The annual deadline application for the match program is June 1 of each year.
- D. The road service area board shall consider the following factors in evaluating applications for the match program:
 1. Whether it is economically feasible to improve the road to RSA certification standards;
 2. To what extent do the assessed values of properties support the scope of work for each project;
 3. The number of applications for projects received that year;
 4. The funds available in the Road Improvement Assessment District Match Fund;
 5. Whether an application for district formation has been previously filed and whether conditions have changed to make the project more feasible than in past application years;
 6. The number of residents served;
 7. The number of parcels served;
 8. The feasibility of the project's compliance with KPB 14.31.080 criteria regarding restrictions on formation; and
 9. Whether there is alternate access to properties served by the road and the condition of that alternate access.
- E. The road service area board may adopt procedures by board resolution for implementation of this program consistent with this chapter.

14.31.060. 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. A map of the proposed district;
 4. The name of the record owner of each parcel in the proposed district;
 5. The tax parcel number of each parcel in the proposed district;
 6. The assessed valuation of each parcel in the proposed district;
 7. The proposed method of allocating the cost of the improvement to each parcel in the proposed district;
 8. An estimate of the amount to be assessed to each parcel in the proposed district;
 9. A description of the limitations on withdrawing a petition signature under KPB 14.31.070.B; and
 10. 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.

14.31.070. 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. The petition must be filed with the clerk's office within 30 days of the date of the first signature on the petition.

B. A signature on a petition may be withdrawn only by written notice from the signer filed with the borough clerk. A withdrawal is effective only if notice of the withdrawal is filed with the borough clerk:

1. Not less than six months after the date of the signature on the petition; and
2. 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.

14.31.080. 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%)] 21 percent for gravel improvements to an existing road, or [TWENTY-FIVE (25%)] 25 percent for paving improvements, or 40 percent for construction of a new road, 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 [TEN (10)] 10 percent of the estimated cost of the improvement are delinquent in payment of borough real property taxes in the immediately preceding tax year.
3. A special assessment district for the upgrade of an existing road, including paving, 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.

4. For construction of new roads, a special assessment district may not be formed if one owner owns more than 40 percent of the parcels to be benefited.

B. The provisions of KPB 14.31.080 must be met at the time the clerk certifies the petition pursuant to 14.31.070(C).

C. The legal description of parcels within the proposed district as of the date of the clerk's certification will be used to determine assessment. Any replats of parcels pending during the formation process must be complete by the clerk's certification of the petition in order for the parcels to be assessed as replatted.

14.31.090. Resolution to form district and proceed with improvement.

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 14.31.080, 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 14.31.080(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 14.31.110.

B. The assembly shall hold a public hearing on the resolution. The borough clerk shall give notice of the public hearing on the resolution:

1. By certified mail, return receipt requested, mailed not less than thirty-five 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 two consecutive weeks in a newspaper of general circulation in the borough, with the first publication appearing not less than thirty 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 30 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 parcels

objecting to the district bear less than one-half of the cost of the improvement. 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 to form the district and proceed with the improvement. The resolution 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.

F. 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.

G. In the event that the lowest, responsive, responsible, qualified bid for labor and materials for the improvement exceeds the estimated cost for labor and materials by more than 10 percent, 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.

14.31.100. Ordinance levying assessments.

A. After the actual cost of an improvement authorized under KPB 14.31.090 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.

14.31.110. Costs assessed.

The assembly shall assess against the benefitted parcels costs of the improvement that are allowable under AS 29.46.110 which are not subject to the road service area match program, including without limitation costs of land acquisition, design, engineering, administrative overhead, professional services, 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 14.31.080(A).

14.31.120. Methods of assessment.

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:

- A. Allocation based on the area of a parcel;
- B. Allocation based on lineal feet of street frontage of a parcel;
- C. Allocation based on the assessed valuation of a parcel;
- D. Allocation by zones within the special assessment district which allow differential assessment based upon differing benefits to different geographic locations within the district; and
- E. Allocation on a per lot basis so that each lot is charged an equal amount.

14.31.130. Notice of assessment.

A. Within fifteen days after the adoption of an ordinance levying an assessment under KPB 14.31.110, 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.

14.31.140. 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 on investment of borough funds, the assembly may authorize investment of borough moneys 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.

14.31.150. 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.

14.31.160. 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 that provide both land access and carry traffic from local or subdivision roads to arterial or major highway systems.

"Improved parcel" means a parcel that contains operable water and a wastewater disposal system or a dwelling or a building for commercial use.

"Local road" 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.

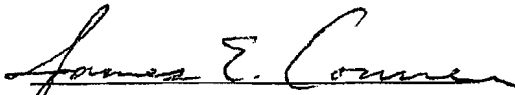
SECTION 2. The RSA request the Mayor sponsor an Ordinance for Assembly consideration of the RSA's recommended changes to KPB 14.31 described above.

ADOPTED BY THE KENAI PENINSULA BOROUGH ROAD SERVICE AREA THIS 21ST DAY OF OCTOBER 2008.



Ron Wille, Road Service Area Chairman

ATTEST:



Jim Conner, Road Service Area Director