

CHAPTER 5.35. SPECIAL ASSESSMENTS—PUBLIC UTILITIES

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 Regulatory Commission of Alaska, 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 a petitioner 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 or the assessor's designee 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. The petitioner may modify and resubmit the boundary description to the assessor for the assessor's and mayor's approval as described in Section A above.

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

D. If the proposed boundary is approved by the assessor and mayor, the petitioner may provide written notice to the Assessing Department of intent to proceed with assembly review of the petition application as provided in KPB 5.35.035. The mayor or the mayor's designee shall prepare for the assembly a resolution approving the petition application.

E. After written notice to proceed is received by the Assessing Department from the petitioner, the borough clerk shall provide notice of the proposed USAD to all parcel owners within the proposed USAD by certified mail, return receipt requested, at least 60 days prior to assembly review of the petition application as provided in KPB 5.35.035. The notice shall include the following:

1. a description of the special assessment district and proposed improvement;
2. a map of the proposed improvement;
3. the date of public hearing; and
4. notice that no subdivision, reversion of acreage, or lot line adjustment will be recognized for USAD assessment purposes after assembly approval of the petition application.

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. The legal description of parcels within the proposed district as of the date of the assembly's approval of the petition application will establish the parcels for assessment. No subdivision, reversion of acreage, or lot line adjustment will be recognized for USAD assessment purposes after assembly approval of the petition application.

C. 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.'

D. In no case may a property be assessed an amount in excess of 21 percent of the fair market value of the property after giving effect to the benefit accruing from the improvement for which assessed.

E. In no case shall a special assessment district be approved where properties which will bear more than 10 percent of the estimated costs of the improvement are delinquent in payment of borough property taxes from the immediately preceding tax year.

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, less the filing fee or any other costs prepaid prior to assessment. The total costs 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 method of assessment shall be an allocation of costs on a per lot basis so that each lot is charged an equal amount.

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 to Form the District and Proceed with the Improvement adopted for each respective special assessment district.

5.35.105. Resolution approving petition application.

A. The mayor or mayor's designee shall prepare for assembly resolution a petition application for assembly approval. The petition application shall include the following information:

1. a description of the proposed improvement;
2. the total estimated cost of the improvement supported by a written statement from the utility constructing the improvement;
3. a map showing the boundary 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. an estimate of the amount to be assessed to each parcel in the proposed district;
8. the status of tax payments of each parcel in the proposed district;
9. whether there are other special assessment liens against any of the parcels in the proposed district;
10. a description of any parcels that exceed the assessment-to-value ratio set forth in KPB 5.35.070(D);
11. the method of proposed financing the improvement; and
12. the total number of parcels to be assessed within the proposed district.

B. The assembly shall exclude from the proposed district any real property, or any interest in real property that is not benefitted by the improvement. Property is not benefitted by the improvement if physical characteristics of the property make it unreasonable to develop or improve the property in manner that would enable the property to benefit from the proposed improvement.

C. The assembly shall hold a public hearing on the resolution.

D. After public hearing the assembly may adopt the resolution approving the petition application.

5.35.106. Petition filing.

After the petition application has been approved by the assembly, the petitioner shall file a petition with the assembly through the borough clerk upon forms prescribed by the mayor or designee, including the approved boundary description.

5.35.107. Requirements of petition.

The petition shall include all information approved in the petition application by assembly resolution, a statement notifying the property owners to contact the applicable utility for any additional costs that may be required to utilize the improvement, and notification that any costs to connect to the main improvement are not included in the assessment. 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. A nonrefundable filing fee shall be remitted with the petition in an amount to be determined by the mayor. 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. Nothing in this section shall be construed to preclude a property owner from filing an objection as provided in KPB 5.35.110(D) within the time provided by ordinance or regulation.

5.35.110. Resolution to form the district and proceed with the improvement.

A. When the borough clerk has determined that a petition bears sufficient signatures, the mayor or mayor's designee shall prepare for assembly consideration a resolution to form the special assessment district and proceed with the improvement. The mayor or designee shall submit to the assembly with the resolution a report on the proposed district containing the information included in the assembly approved petition application.

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 35 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 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 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 or may not 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. include an estimated assessment roll showing the amount of the assessment against each parcel;
5. authorize the mayor to proceed with the construction of the improvement; and
6. require the clerk to record in the district recorder's office a copy of the resolution to form the district and proceed with the improvement and the estimated assessment roll.

F. After passage of the resolution to form the district and proceed with the improvement, 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 certified mail, return receipt requested, 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.

5.35.130. Effect of resolution to form the district and proceed with the improvement.

Adoption of the resolution to form the district and proceed with the improvement 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 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 KPB 5.35.110. 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 to form the district and proceed with the improvement adopted under KPB 5.35.110, 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.

5.35.155. Deferral of payment.

A. All of the assessments on real property owned and occupied as the primary residence and permanent place of abode by a resident who is economically disadvantaged may be deferred as provided in this section.

B. For purposes of this section, a resident is economically disadvantaged if the person's income is less than 200 percent of the current U.S. Health and Human Services Poverty Guidelines for Alaska.

C. The deferred assessment, including all accrued interest, becomes due and payable in full when the property ceases to be owned by the resident who qualified for the deferral. Any remaining balance due shall be paid on the same schedule as would have been in place if no deferral had applied.

5.35.160. Notice of assessment.

A. Within fifteen days after the adoption of an ordinance under section 5.35.150 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 5.35.150 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 either be returned to the owners of record of the assessed properties on a pro rata basis or applied to the outstanding debt, in the manner provided by the ordinance of assessment.

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.