



KENAI PENINSULA BOROUGH

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**DAVE CAREY
BOROUGH MAYOR**

MEMORANDUM

TO: Pete Sprague, Assembly President
Kenai Peninsula Borough Assembly

FROM: *SJB*
Scott Bloom, Assistant Borough Attorney

DATE: July 2, 2010

SUBJECT: Assembly Questions Regarding Ordinance 2010-25, An Ordinance Enacting KPB 14.31.145, Deferral of Payments to Authorize Economically Disadvantaged Residents to Defer Payments for Road Improvement Assessments

At the June 22, 2010 Assembly meeting, Ordinance 2010-25 was postponed due to questions of the assembly that were not adequately addressed at the meeting. This memorandum is intended to provide the requested information.

Question: Is there a form that the borough uses for deferral of special assessment payments and would there be any follow up or verification of the information provided?

Answer: The borough does not have a form at this time, however one does need to be developed. There will be a verification procedure of the applicant's information. Likely, IRS tax returns or some other form of income verification would be required to qualify for the deferral. Qualification for deferral is based on U.S. Health and Human Services Poverty Guidelines for Alaska.

Question: This provision exists in the Utility Special Assessment District (USAD) code and has not been utilized to date, why are we adding this to the RIAD code?

Answer: The addition of a payment deferral for the RIAD code chapter is recommended for two reasons. First, both RIADs and USADs are special assessments governed by AS 29.46.010 *et seq* and the recommended change adds consistency within the Kenai Peninsula Borough code. Second, a request was received from a resident regarding a proposed RIAD which brought the matter to the administration's attention.

Question: Is it possible to provide for a payment deferral and prohibit those seeking a deferral from voting in favor of the proposed improvement?

Answer: This issue raises legal and procedural concerns. While AS 29.46.020(d) provides for a deferral process it does not include a provision allowing for a municipality to exclude an affected resident from voting. While those qualifying for the deferral do not pay upfront for the improvement in the same manner as those not qualifying for a deferral they are still burdened by the improvement in the form of a lien on their property and should have a right to vote. Additionally, not allowing a property owner with a low income to vote in favor of (or against) an improvement could be construed as a form of discrimination.

Procedurally, if the borough were to impose such a restriction on the ability to sign a petition, it would have to require potential deferral applicants to apply for the deferral and be approved prior to the improvement being approved in order to determine who could or could not sign the petition. There is no way of knowing if an affected property owner's financial situation might change allowing them to qualify for a deferral after the petition has been signed.

The borough does have several existing safeguards to protect its investments in place. For example, the estimated amount of the assessment to be levied against each parcel in the district may not exceed 21 percent for gravel improvements to an existing road, 25 percent for paving improvements, or 40 percent for new road construction, of the current assessed value of the parcel. Further, a special assessment district may not be formed if parcels in the proposed district which would bear more than 10 percent of the estimated cost of the improvement are delinquent in payment of borough real property taxes in the immediately preceding tax year. Finally, 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.

Question: Is an approved deferral applicant required to reapply each year?

Answer: An applicant would be required to apply and be certified each year.

Question: What event triggers the assessment becoming due?

Answer: Pursuant to AS 29.46.020(d) the assessment becomes due when the property ceases to be owned by the resident who qualifies for the deferral. In order to qualify, the resident must own and occupy the property as his/her primary residence and permanent place of abode. For any year the homeowner does not qualify, that yearly assessment would be due.