Chapter 17.04 Special Assessment Districts

Chapter 17.04

SPECIAL ASSESSMENT DISTRICTS
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17.04.010 Definitions. In this chapter:
a. "Cost" means all expenses incurred by the city for an improvement, including without limitation advertising expenses, fees of engineers, architects and surveyors, legal fees, costs of property acquisition, payments to construction contractors, costs of interim and long-term financing of the improvement, including costs of issuing bonds and notes, and city administrative costs.
b. “District” means a special assessment district created under this chapter.
c "Improvement" means a capital improvement, including without limitation streets, sidewalks, alleys and bridges; street lighting; drainage and flood control facilities; sanitary sewage collection and treatment facilities; water supply and distribution facilities; natural gas distribution facilities; and parks, playgrounds, public squares and open space.
d. "Record owner" means the person in whose name real property is listed on the property tax roll prepared by the Kenai Peninsula Borough. (Ord. 12-15 §1, 2012).

Note: Chapter 17 repealed via Ordinance 12-15 April 10, 2012. For statutory provisions authorizing municipalities to collect special improvement assessments, see AS 29.46.
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(Homer 06/12)
17.04.020—17.040.040(a)(2)(ii)

17.04.020 Purpose of chapter. a. A special assessment district may be created for the purpose of acquiring, installing or constructing a capital improvement that primarily benefits real property in the district, in contrast to capital improvements that benefit the entire community and are paid for with general government resources.
b. The purpose of this chapter is to prescribe the procedure for initiating a special assessment district, authorizing an improvement in a special assessment district, approving and levying special assessments, payment of special assessments, and the authorization of special assessment bonds, for public information and administrative guidance. (Ord. 12-15 §1, 2012).

17.04.030 Assessment authority. a. The city may assess all or part of the cost of a capital improvement against real property benefited by the improvement, whether the property is privately or governmentally owned, including real property that is exempt from taxation.
b. A capital improvement that is provided through a special assessment district may be owned by the city, a public utility, or another entity that is qualified to own and operate the capital improvement. (Ord. 12-15 §1, 2012).

17.04.040 Initiation of district. a. A special assessment district may be initiated by:
1. Resolution approved by a vote of not less than three-fourths of the council; or
2. Petition signatures of the record owners of not less than one half in value of the real property in the proposed district received by the city clerk within 60 days after the mailing of the petition to record owners of property in the proposed district. Upon payment of the nonrefundable filing fee in the city fee schedule established by resolution of the council, the city clerk shall prepare a petition for distribution by certified mail to all record owners of property in the proposed district that contains:
i. A statement that it is a petition to form a special assessment district, and describing the capital improvement for which the district is proposed;
ii. For each property in the proposed district, the Kenai Peninsula Borough tax parcel number and property description, the name and mailing address of the record owner, the current assessed value, and a place for the record owner’s signature; and

iii. A statement that to support initiation of the proposed district, the record owner must sign and return the petition to the city clerk within 60 days after the date the petition was mailed
b. Upon adoption of a resolution initiating a special assessment district, or the city clerk‘s verification that a petition to initiate a district bears sufficient signatures, the city clerk shall
1. Schedule a meeting of record owners of real property in the proposed district, notify the record owners by mail of the date, time and location of the meeting, and include a copy of the notice in the city's regular meeting advertisement, and
2. Refer the proposed district to the city manager, who shall prepare an improvement plan for the district that includes final boundaries for the district, the design of the proposed improvement, a cost estimate for the improvement, the percentage of the improvement cost to be assessed against properties in the district, a method for allocating the assessed cost of the improvement among the properties in the district, the time period over which assessments will be financed, and a preliminary assessment roll for the district. (Ord. 12-15 §1, 2012).

17.04.050 Creation of district. a. Upon completion of an improvement plan under HCC §17.04.040, the city clerk shall set a time for a public hearing on the necessity of the improvement and proposed improvement plan. Notice of the hearing shall be published at least twice in a newspaper of general circulation in the city, and mailed via certified mail to every record owner of real property in the proposed district not less than 60 days before the hearing.
b. A record owner of real property in the proposed district may file a written objection to the improvement plan with the city clerk no later than the day before the date of the public hearing on the improvement plan. If owners of real property that would bear 50 percent or more of the assessed cost of the improvement file timely written objections, the council may not proceed with the improvement unless it revises the improvement plan to reduce the assessed cost of the improvement that is borne by objecting record owners to less than 50 percent of the assessed cost of the improvement. If the resolution changes the district boundary in the improvement plan, the city clerk shall notify all record owners of property included in the district under the improvement plan of the change.

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17.04.050(c)—17.04.070(a)

c. At the noticed date and time, the council shall hold a public hearing on the necessity of the improvement and proposed improvement plan. After the public hearing, the council shall act upon a resolution determining to proceed with the proposed improvement. The resolution shall find that the improvement is necessary, of benefit to the properties to be assessed, and if the district is initiated by petition, that the petition is in proper form and bears sufficient signatures. The findings of the council are conclusive. The resolution shall contain a description of the improvement, the estimated cost of the improvement, the percentage of the cost to be assessed against the properties in the district, and a description of the properties to be assessed.
d. If the owners of 100 percent of the real property in the proposed district waive in writing the notice, protest period and public hearing required under this section, the question of creating the district may be submitted to the council without such notice, protest period or public hearing. (Ord. 12-15 §1, 2012).

17.04.060 Contract; Approval of increased costs. a. After a special assessment district has been created, the city shall contract for the construction of the improvement. If the city will own the improvement, it shall solicit bids for construction of the improvement. If the city will not own the improvement, it shall contract with the owner of the improvement to provide for its construction.
b. If the cost of constructing the improvement will exceed 115 percent of the estimated cost of construction of the improvement in the improvement plan, the city shall not contract for the construction of the improvement without first:
1. Notifying all record owners of property in the district via certified mail of the increased cost, and
2. Within 30 days after the mailing of notice of the increased cost to record owners of property in the district, receiving written objections from record owners of property that would bear less than one-half of the cost of the improvement.
c. If record owners of property that would bear one-half or more of the cost of the improvement object in writing to the increased cost, the city will not contract to construct the improvement. The council either may levy assessments in the district in an amount sufficient to recover costs incurred for preliminary design and engineering services, or determine that the city shall assume such costs. (Ord. 12-15 §1, 2012).

17.04.070 Assessment roll. a. After completion of the improvement the council shall assess costs of the improvement by a method that the council determines will assess each property in the district in proportion to the benefit that it receives from the improvement.
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17.04.070(b)—17.04.090

b. The city shall prepare an assessment roll stating for each property in the district the name and address of the record owner, Kenai Peninsula Borough parcel number, a description of the property, the amount assessed against the property, and the assessed value of the property as determined by the Borough Assessor.
c. Each property in the district shall be identified and assessed on the assessment roll in accordance with the legal description of the property at the time the council certifies the assessment roll; except that where assessments are in an equal amount per parcel (i.e., without regard to parcel area, dimension or other characteristic), a property that was created by combining parcels after the public hearing under HCC §17.040.050(c) shall be assessed that amount multiplied by the number of parcels that comprised the property at the time of the public hearing.
d. The council shall fix a time to hear objections to the assessment roll. Not less than fifteen days before the hearing, the city clerk shall send notice of the hearing and assessment roll by certified mail to each record owner of an assessed property, and publish notice of the hearing in a newspaper of general circulation in the city. (Ord. 12-15 §1, 2012).

17.04.080 Certification of assessment roll. After the hearing the council shall correct any errors or inequalities in the assessment roll. If an assessment is increased, a new hearing shall be set and notice published, except that a new hearing and notice is not required if all record owners of property subject to the increased assessment consent in writing to the increase. Objection to the increased assessment shall be limited to record owners of properties whose assessments were increased. When the assessment roll is corrected, the council shall confirm the assessment roll by resolution. The city clerk shall record the resolution and confirmed assessment roll with the district recorder. (Ord. 12-15 §1, 2012).

17.04.090 Payment. a. In the resolution confirming the assessment roll, the council shall fix the time or times when

assessments or assessment installments are due, the amount of penalty on a delinquent payment and the rate of interest on the unpaid balance of an assessment. An assessment that is to be paid in a single payment shall not be due before 60 days after billing.
b. Within 30 days after fixing the time when payment of the assessments is due, the finance director shall mail a statement to the record owner of each assessed property identifying the property and stating the assessment amount, the payment due date and the amount of the penalty on a delinquent payment. Within five days after mailing the statements, the finance director shall publish notice of mailing the statements in a newspaper of general circulation in the city. (Ord. 12-15 §1, 2012).

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17.04.100—17.04.120

17.04.100 Subdivision after levy of assessments. a. Except as provided in subsection (b) of this section, upon the subdivision of a property assessed as a single parcel, the amount of the assessment shall be allocated among the resulting lots that benefit from the improvement on the same basis that the assessment originally was allocated.
b. Upon the subdivision of a property assessed as a single parcel in an assessment district where assessments were levied in an equal amount per parcel (i.e., without regard to parcel area, dimension or other characteristic), then no resulting parcel, other than the parcel that contains the original connection to the improvement for which the assessment was levied, may connect to the improvement until a subdivided property connection fee is paid for the parcel.
1. The amount of the connection fee shall be equal to the amount of the original assessment, adjusted up or down by a percentage equal to the change in the Consumer Price Index, All Urban Consumers (CPI-U) for Anchorage, Alaska from the end of the calendar year preceding the original assessment date to the end of the calendar year preceding the date the parcel is connected to the improvement.
2. If the original assessment was payable in installments the city may enter into a written agreement for the payment of the connection fee in installments on terms that are substantially the same as those authorized for the payment of the original assessment, secured by a deed of trust on the parcel.
3. Upon receiving connection fee payments, the city shall allocate such payments to each property assessed in the district in proportion to the amount originally assessed against the property, either by adjusting the original assessment amount or disbursing a payment to the record owner at the time of disbursement. (Ord. 12-15 §1, 2012).

17.04.110 Assessments to be liens. Assessments are liens upon the property assessed and are prior and paramount to all liens except those having priority under State law. They shall be enforced in the same manner as property tax liens. (Ord. 12-15 §1, 2012).

17.04.120 Reassessment. a. The City Council shall within one year correct any deficiency in a special assessment found by a court, under the procedure for certification of the assessment roll in HCC §§17.04.070 and 17.04.080.
b. Payments on the initial assessment are credited to the property upon reassessment. The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the assessment procedure. (Ord. 12-15 §1, 2012).

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17.04.130—17.04.150(b)

17.04.130 Objection and appeal. a. The regularity or validity of an assessment may not be contested by a person who did not file with the city clerk a written objection to the assessment roll before its confirmation. The decision of the council on the objection may be appealed to the superior court within 30 days after the date of confirmation of the assessment roll.
b. If no objection is filed or appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects. (Ord. 12-15 §1, 2012).

17.04.140 Interim financing. a. The council may provide by resolution or ordinance for the issuance of notes to pay the costs of an improvement that shall be payable from the special assessments for the improvement. The notes shall bear interest at a rate or rates authorized by the resolution or ordinance, and shall be redeemed either in cash or bonds for the improvement project.

b. Notes issued against assessments shall be claims against the assessments that are prior and superior to a right, lien or claim of a surety on the bond given to the city to secure the performance of the contract for construction of the improvement, or to secure the payment of persons who have performed work or furnished materials under the contract.
c. The finance director may accept notes against special assessments on conditions prescribed by the council in payment of:
1. Assessments against which the notes were issued in order of priority;
2. Judgments rendered against property owners who have become delinquent in the payment of assessments; and
3. Certificates of purchase when property has been sold under execution or at tax sale for failure to pay the assessments. (Ord. 12-15 §1, 2012).

17.04.150 Special assessment bonds. a. The council by ordinance may 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 the bonds shall be payable solely from the special assessments levied against property in the district. The assessment shall constitute a sinking fund for the payment of principal and interest on the bonds. The benefitted property may be pledged by the council to secure payment of the bonds.
b. On default in a payment due on a special assessment bond, a bondholder may enforce payment of principal, interest, and costs of collection in a civil action in the same manner and with the same effect as actions for the foreclosure of mortgages on real property. Foreclosure shall be against all property on which assessments are in default. The period for redemption is the same as for a mortgage foreclosure on real property.

c. Before the council may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover a deficiency in meeting payments of principal and interest on bonds if the reason for the deficiency is nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund. (Ord. 12-15 §1, 2012).

17.04.160 Time limit for special assessment districts. If five or more years elapse between the creation of a special assessment district and the city contracting for construction of the improvement, the city may not enter into the contract unless the council by resolution extends the period for entering into the contract by not more than an additional five years.
b. Before the council acts on a resolution under subsection (a) of this section, the city clerk shall mail notice of the resolution to each current record owner of property listed on the preliminary assessment roll that the city will not contract for construction of the improvement in the district unless the resolution is adopted. The notice also shall include an updated copy of the preliminary assessment roll. (Ord. 12-15 §1, 2012).

17.04.170 Water and sewer connections required. The owner of property in a water or sewer special assessment district that contains an occupied building shall connect to the improvement constructed in the district within one year after the date that the resolution confirming the assessment roll for the district becomes final. (Ord. 12-15 §1, 2012).

17.04.180 Road improvement assessments for lots with two street frontages. a. The record owner of a through lot or flag lot may obtain a deferment of the part of an assessment for road improvements that is based on frontage on a road to which the lot does not have access. To obtain the deferment, the owner shall enter into a deferred assessment agreement with the city before the end of the period for filing objections to the district under HCC §17.04.050. The agreement shall provide that the lot has frontage on two streets, to only one of which the lot has access; that the lot owner shall pay the part of the assessment that is based on frontage on the street to which the lot has access; and that the owner shall pay the part of the assessment that is based on the other street frontage when the lot acquires access to the street from that frontage. The agreement shall be recorded with the district recorder's office.
b. The assessment for road improvements against a corner lot shall be based only on the longer of the lot’s road frontages. (Ord. 12-15 §1, 2012).

17.04.190—17.04.190(e)(2)

17.04.190 Deferment of assessment payments for senior citizens. a. A person may obtain a deferment of assessment payments under this section if the person:
1. Will be at least 62 years of age within 12 months after the date of confirmation of the assessment roll;
2. Has an annual family income that would qualify under the United States Department of Housing and Urban Development designation of lower income families adjusted for Alaska and the Kenai-Cook Inlet Region;
3. Owns or has a life tenancy in the assessed property, and permanently resides in a single family dwelling on the property; and
4. Is not determined by the city, after notice and hearing, to have been conveyed the property primarily for the purpose of obtaining the exemption.
b. An assessment payment deferment is subject to approval by the council. A person seeking deferment of an assessment payment shall file a written application with the finance director on or before the first payment is due, supported by documentation showing that the applicant meets the criteria in subsection (a) of this section. A person receiving an assessment payment deferment must file with the city by April 15th of each subsequent year a new application proving eligibility as of January 1st of that year in order to retain the exemption. Within the same year the city for good cause shown may waive the claimant's failure to make timely application and approve the application as if timely filed.
c. Assessment payment deferments are subject to the availability of funds appropriated for that purpose. An application for an assessment payment deferment shall be submitted to the council with a report from the finance director as to the availability of funds to appropriate for the deferment. Deferred assessments are funded from the following sources:
1. The appropriate utility operating fund for deferred water and sewer assessment payments.
2. The accelerated roads program fund for deferred road improvement assessment payments.
If funds for an assessment payment deferment are not available from the appropriate source, the council may loan the necessary amount to the appropriate source from the general fund.
d. A person who receives an assessment payment deferment shall execute a deed of trust on the property subject to assessment, together with a promissory note payable to the city on demand, to secure the eventual payment of the deferred payment.
e. A deferred assessment payment shall be immediately due and payable upon the earlier to occur of the following events:
1. The sale or lease of the assessed property; or
2. The death of both the deferred assessment applicant and the applicant’s surviving spouse, if any. (Ord. 12-15 §1, 2012). 170
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17.04.200

17.04.200 "In lieu of assessment". a. An "in lieu of assessment" must be paid for a property to receive additional water or sewer service within or beyond the area within a local improvement district.
b. An "in lieu of assessment" shall be computed on the actual cost of the additional water or sewer service, and shall be paid in accordance with HCC §§17.04.090 and 17.04.100.
c. A property on which an "in lieu of assessment" for water or sewer service has been levied in accordance with subsection (a) of this section nonetheless may be included in special assessment district for the same service in the future date, and will be assessed in that district. An amount not exceeding the lesser of (i) the amount of "in lieu of assessment" paid for the property and (ii) the amount of the assessment levied on the property in the future special assessment district shall be a credit against the amount of the assessment levied on the property in the future special assessment district. (Ord. 12-15 §1, 2012).

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