

Introduced By: Council Members  
Bagley and Sprague  
Date: September 12, 2012  
Public Hearing: September 26, 2012  
Action: Amended, Enacted  
Vote: 4 Yes, 0 No, 2 Absent

CITY OF SOLDOTNA  
ORDINANCE 2012-022

AN ORDINANCE TO REPEAL CHAPTER 3.17, SPECIAL ASSESSMENT DISTRICTS, OF THE SOLDOTNA MUNICIPAL CODE IN ITS ENTIRETY AND TO ADOPT A NEW CHAPTER FOR SPECIAL ASSESSMENT DISTRICTS, SMC 3.18, AND TO AMEND REFERENCES TO SMC 3.17 IN OTHER AREAS OF THE CODE

WHEREAS, special assessment districts are used to finance public improvements which primarily benefit property owners of a limited geographical area, as distinguished from improvements which benefit the entire community; and

WHEREAS, the current chapter governing special assessment districts, SMC 3.17, was adopted on November 14, 2007 (Ordinance 2007-27); and

WHEREAS, certain provisions of the current SMC 3.17 create confusion in administering the special assessment process, which causes additional burdens and costs for city administration, and can result in frustration for the public in attempting to create a special assessment district; and

WHEREAS, the City Council finds it is in the best interest of the citizens of Soldotna to revise the procedures for creating special assessment districts.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOLDOTNA, ALASKA:

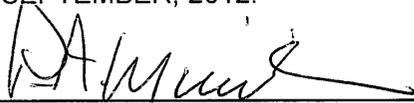
Section 1. That Section 3.17 of the Soldotna Municipal Code is repealed in its entirety.

Section 2. That a new chapter of the Soldotna Municipal Code is hereby adopted, to be cited as Soldotna Municipal Code Title 3, Chapter 18, and entitled Special Assessment Districts, which shall govern special assessments and the procedures to create special assessment districts for the construction of public improvements within the City of Soldotna.

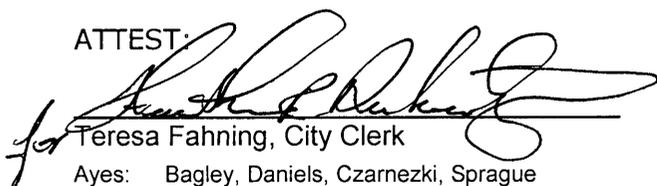
[See 'Attachment A' for new text]

Section 3. This ordinance shall become effective immediately upon its enactment.

ENACTED BY THE CITY COUNCIL THIS 26th DAY OF SEPTEMBER, 2012.

  
\_\_\_\_\_  
Peter A. Micciche, Mayor

ATTEST:

  
\_\_\_\_\_  
Teresa Fahning, City Clerk

Ayes: Bagley, Daniels, Czarnezki, Sprague  
Noes: None  
Absent: Hartman, Anderson

12ORD022



**City of Soldotna**

177 North Birch Street ▶ Soldotna, Alaska ▶ Phone (907) 262-9107

**MEMORANDUM**

**To:** Larry Semmens, City Manager  
**Cc:**  
**From:** Stephanie Queen, Planning Director *Steph*  
**Date:** Tuesday, September 04, 2012  
**Subject:** Ordinance 2012-022, Special Assessment District Code re-write

Ordinance 2012-022 proposes to repeal in its entirety, and readopt the chapter of municipal code governing special assessment districts (SAD) within the City of Soldotna. The City's first SAD code was adopted in 1986, and several special assessment districts were created and administered under this original chapter (including Endicott, the 'Flower Streets,' Golf Acres Subdivision, and Ridgewood/Diane Lane). In 2007, the City determined that sections of the code were outdated and no longer supported by State Statutes, and that the process was difficult to administer. Ordinance 2007-027, enacted November 14, 2007, repealed SMC 3.16 in its entirety, and readopted SMC 3.17, with the goal of establishing clearer standards and requirements.

Only one SAD petition has been submitted under our existing SAD code, and through the process, the City has again identified sections which could be revised to provide a clearer and more efficient procedure. This memorandum highlights the main differences between the proposed ordinance adopting Chapter 3.18, and our existing Chapter 3.17.

**INITIATION OF A SPECIAL ASSESSMENT DISTRICT**

Our existing code allows an SAD to be initiated either by a sponsor, or by the City Council (SMC 3.17.050). The proposed re-write provides both of these options as well (SMC 3.18.080). The main difference is how a sponsor-initiated petition is created, and at what point the city becomes involved in the formation of the district.

Initiation. Our existing code allows a sponsor to prepare a petition and collect signatures, then turn these documents in to the City Clerk with a non-refundable \$500 filing fee. The petition must contain a detailed description of the improvement and a map showing the proposed area to be benefitted, but the sponsor has the sole discretion to determine the extent (geographical area) of the improvements, and the level of improvement (i.e. paving vs. gravel, whether utilities are included, etc.) for their petition.

The process contained in the proposed re-write is similar to that used by the Kenai Peninsula Borough, and would allow for the city administration to become involved earlier. Under the proposed language, a sponsor may initiate an SAD by filling out an application and paying the \$500 fee, but the city administration would put the actual petition together, including determining the extent and level of improvements. In addition, the administration would make an initial recommendation as to the method of allocating the costs among the properties.

Withdraw a signature. The current code allows owners to remove their signature from the petition at any point in the process, if authorized by the City Council (SMC 3.17.050(D)).

The proposed alternate language would only allow an owner to withdraw their signature if they do so before the petition has been submitted to the City Clerk (SMC 3.18.080(A)(3)(b)). The owner's next opportunity to object would be during a 30-day objection period, prior to the public hearing at which the Council would consider a resolution to establish the SAD (SMC 3.18.100(D)).

Establishing a valid petition - Signatures required. The existing code contains an inconsistency here. SMC 3.17.050(C) states that a petition may be initiated by the "owners of at least **one-half in value** of the property to be benefitted." However, SMC 3.17.050(C)(1) requires signatures of owners of the property "that will bear **fifty percent or more of the estimated cost of the improvement.**" For the first test, the administration uses the KPB assessed values. However, we are not able to determine whether the second test is met, because at this point in the process, the Council has not yet determined which allocation method would be used. Therefore it would be impossible to know which parcels would bear 50% of the costs.

The proposed language would require the record owners of at least sixty percent (60%) of the total number of parcels in the SAD; **and** the record owners of parcels that would bear more than fifty percent (50%) of the total cost. This two-prong test *would be* feasible under the new process, because the petition created by the administration would already contain the recommended cost allocation method.

**PROPOSED 3.18.070. CITY MATCH PROGRAM. (SMC 3.17.250)**

Rather than the code containing specific details about the process for municipal matching funds, this section would instead require that the Council set such a policy by Resolution. It would be the administration's intent that a resolution be prepared and scheduled in conjunction with the public hearing on this ordinance.

## CHAPTER 3.18. - SPECIAL ASSESSMENTS

- 3.18.010. – PURPOSE.
- 3.18.020. - ASSESSMENT AUTHORITY.
- 3.18.030. - AUTHORIZED CAPITAL IMPROVEMENTS.
- 3.18.040. - COSTS ASSESSED.
- 3.18.050. - PROPERTY SUBJECT TO ASSESSMENT.
- 3.18.060. - METHODS OF ALLOCATION.
- 3.18.070. - CITY MATCH PROGRAM.
- 3.18.080. - INITIATION OF SPECIAL ASSESSMENT DISTRICT.
- 3.18.090. - RESTRICTIONS ON DISTRICT FORMATION.
- 3.18.100. - RESOLUTION TO FORM DISTRICT AND PROCEED WITH IMPROVEMENT.
- 3.18.110. - ORDINANCE LEVYING ASSESSMENTS.
- 3.18.120. - NOTICE OF ASSESSMENT.
- 3.18.130. - PAYMENT.
- 3.18.140. – PRORATION OF ASSESSMENT.
- 3.18.150. - REASSESSMENT.

### **3.18.010. – PURPOSE.**

Special assessments may be created for the purpose of acquiring, installing or constructing capital improvements and are used for the financing of public improvements which primarily benefit property owners in a limited geographical area. This distinguishes them from improvements which benefit the entire community, paid for with general governmental resources.

### **3.18.020. - ASSESSMENT AUTHORITY.**

A. The city may assess all or a portion of the cost of acquiring, installing, or constructing improvements against the property of a state or federal governmental unit or private property to be benefitted by a capital improvement described in SMC 3.18.020, notwithstanding its exemption from taxation by law.

B. Pursuant to AS 29.46.020(a) the procedures in SMC 3.18.040 through 3.18.160 apply to the levying of assessments under this chapter in lieu of the procedures in AS 29.46.030 through 29.46.100.

### **3.18.030. - AUTHORIZED CAPITAL IMPROVEMENTS.**

Special assessments may be levied under this chapter for the improvement of existing roads or construction of new roads, and installation of utilities in dedicated public rights-of-way to meet or exceed construction standards adopted by the City of Soldotna that are in effect at the time of the formation of the special assessment district in which the assessments are levied.

### **3.18.040. - COSTS ASSESSED.**

The city council shall assess against the benefitted parcels costs of the improvement that are allowable under AS 29.46.110, 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 SMC 3.18.090(A)(1).

**3.18.050. - PROPERTY SUBJECT TO ASSESSMENT.**

The city council may assess any real property or interest in real property that the council 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.

**3.18.060. - METHODS OF ALLOCATION.**

The method of allocating the cost of an improvement shall be proportional to the benefit of the improvement to each assessed parcel. The methods of allocating the cost of an improvement include without limitation the following, or any combination thereof:

- 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.

**3.18.070. CITY MATCH PROGRAM.**

The City Council shall, by resolution, establish a policy regarding use of city funds to fund a portion of the cost of improvements associated with a special assessment district.

**3.18.080. - INITIATION OF SPECIAL ASSESSMENT DISTRICT.**

A special assessment district may be initiated either by application from a sponsor, and subsequent petition of the required number of property owners; or by action of the City Council. For the purposes of this chapter, the record owner shall be the owner(s) listed with the Kenai Peninsula Borough public parcel information.

A. Sponsor Initiated. To obtain a petition for formation of a special assessment district, the sponsor of the district must first submit an application to the city clerk. The application shall be on a form provided by the clerk.

1. Review of Application. After receiving an application to form a special assessment district, the city administration shall determine the boundaries of the proposed district. Once the city makes an initial determination that formation of the proposed district is feasible based on the proposed boundaries and criteria set forth in SMC 3.18.090, a filing fee of five hundred dollars (\$500.00) shall be paid. The filing fee shall be nonrefundable.

2. Preparation and Issuance of Petition. After consulting with the sponsor of the special assessment district concerning any legal deficiencies in the proposed district and collection of the filing fee, the administration shall, within thirty (30) days, prepare a special assessment district petition for circulation. The petition form will include the following:

- a. A copy of Soldotna Municipal Code chapter 3.18, Special Assessment Districts;
- b. A description of the proposed improvement;
- c. A map of the proposed district;

- d. The name of the record owner of each parcel in the proposed district, as of the date the petition was created;
- e. The tax parcel number of each parcel in the proposed district;
- f. The assessed valuation of each parcel in the proposed district;
- g. The proposed method of allocating the cost of the improvement to each parcel in the proposed district;
- h. A description of the limitations on withdrawing a petition signature under SMC 13.18.080(A)(3)(b); and
- i. The name, address and daytime telephone number of the sponsor of the petition.

3. Circulation and Filing of Petition; Signature Requirements

- a. After the city has determined that a special assessment district is eligible to 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 city clerk. A withdrawal is effective only if notice of the withdrawal is filed before the filing of the petition with the city clerk.
- c. The sponsor shall file the signed petition with the city clerk. If the city clerk finds that the petition contains sufficient signatures, the clerk shall submit the petition to the city manager for preparation of a resolution to form the district and proceed with the improvement under SMC 3.18.100. The sufficiency of signatures on a petition shall be determined as of the date the petition is filed with the clerk. The petition contains sufficient signatures only if it contains the signatures of:
  - i. The record owners of sixty percent (60%) or more of the total number of parcels subject to assessment in the proposed district; and
  - ii. The record owners of parcels that would bear more than fifty percent (50%) of the total cost of the assessments in the proposed district.
- d. If the City of Soldotna is an owner of property in the assessment district, the City Manager is authorized to sign the petition on behalf of the City, upon passage of a resolution by the City Council.

B. City Council Initiated.

The City Council may initiate a special assessment improvement proposal by motion or other action directing the city manager to prepare the resolution in accordance with Section 3.18.100. Council-initiated special assessment districts are subject to restrictions contained in SMC 13.18.090, but do not require a petition signed by property owners.

**3.18.090. - 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 city clerk:

- 1. The estimated amount of the assessment to be levied against each parcel in the district may not exceed fifty percent (50%) of the current assessed value for land and improvements on the parcel. For the purposes of this restriction, the estimated amount of the assessment against a

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parcel will be reduced by the amount of a prepayment of the assessment for the parcel that is received by the city before the city council acts on the resolution to form the district and proceed with the improvement. If the council does not approve the resolution to form the district and proceed with the improvement, the city will refund the prepayment.

2. 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.

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.

B. The provisions of this section must be met at the time the clerk certifies the petition pursuant to SMC 3.18.080(A)(3).

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 or subdivision of parcels pending during the formation process must be recorded by the clerk's certification of the petition in order for the parcels to be assessed as replatted or subdivided.

**3.18.100. - RESOLUTION TO FORM DISTRICT AND PROCEED WITH IMPROVEMENT.**

A. Within one hundred twenty (120) days after the city clerk has determined that a petition bears sufficient signatures or was initiated by the city council in accordance with SMC 3.18.080(B), the city manager shall prepare for city council consideration a resolution to form the special assessment district and proceed with the improvement. The city manager shall submit to the city council 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. An engineer's estimate of the cost of the improvement to the district, and 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 SMC 3.18.090(A)(1);
8. The method of financing the improvement; e.g., bonding, city investment, or a combination; and
9. All estimated costs of the improvement set forth in SMC 3.18.040

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

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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 city, 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 city 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 city council 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, except on approval of not fewer than three-fourths of the council. 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 city council 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. Approve any City Matching Funds for the improvement in accordance with SMC 3.18.070;
  5. State the method of allocating the cost of the improvement among the benefitted parcels;
  6. Include an estimated assessment roll showing the amount of the assessment against each parcel;
  7. Authorize the city manager to proceed with the construction of the improvement; and
  8. 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 contract amount for improvements exceeds the estimated cost of the improvement by more than 10 percent, then no contract shall be entered without further city council approval by resolution. The city council shall hold a public hearing on the resolution, to allow owners of parcels to be assessed to be heard. The city clerk shall publish notice of the public hearing once in a newspaper of general circulation in the city and shall, by regular mail, notify affected property owners. If written objections are not received by or on the date set for the public hearing from owners of parcels bearing at least one-half of the cost of the improvement, the city council may approve the improvement contract.
- H. If construction of the project has not been initiated within two (2) years of adoption of the

resolution forming the district, the special assessment district shall expire.

**3.18.110. - ORDINANCE LEVYING ASSESSMENTS.**

A. After the actual cost of an improvement authorized under SMC 3.18.040 has been ascertained, the city manager shall prepare and submit to the city council 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 city clerk at the time of the introduction of the ordinance and shall be open to public inspection.

B. The city 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 city.

C. Each notice of the public hearing shall state that the assessment roll is on file in the office of the city 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 council shall correct any errors in the assessment roll, and confirm the corrected roll by adoption of the ordinance.

**3.18.120. - NOTICE OF ASSESSMENT.**

A. Within fifteen days after the adoption of an ordinance levying an assessment under SMC 3.18.110, the city clerk 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 city clerk shall publish a notice that such assessments have been mailed and that the assessment roll is on file in the office of the city clerk.

C. After adoption of an ordinance levying a special assessment under SMC 3.18.110, the city clerk shall file in the office of the district recorder an appropriate notice of assessment lien on all assessed parcels.

**3.18.130. - PAYMENT.**

Payment may be in lump sum or by installments. Unless otherwise authorized by council, the following terms shall apply to the payment of assessments:

A. The period of time allowed for installment payments of assessments shall not exceed ten years.

- B. A penalty equal to ten percent of the payment due plus any surcharge required to be imposed by AS 12.55.039 shall be added to all delinquent payments.
- C. The annual rate of interest on the unpaid balance of the assessment, excluding any penalty imposed on delinquent payments, shall be 2 percent (%) plus prime rate as published by the Wall Street Journal on the date the assessment roll is confirmed by the city council under SMC 3.18.110.
- D. Payment may not be required sooner than sixty (60) days after assessment.

**3.18.140. – PRORATION OF ASSESSMENT.**

Where any property on the confirmed assessment roll is subsequently subdivided or resubdivided prior to paying off the assessment, then the amount of principal and interest due on such property at the time of such subdivision or resubdivision shall be prorated between or among the subdivided or resubdivided lots in proportion to the benefitted area contained in each, as determined by the administration.

**3.18.150. - REASSESSMENT.**

- A. The city council shall within one year correct any deficiency in a special assessment found by a court. Notice and hearing must conform to the initial assessment procedures in SMC 3.18.100(B).
- 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.