



## **KENAI PENINSULA BOROUGH**

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**MIKE NAVARRE**  
**BOROUGH MAYOR**

### **MEMORANDUM**

**TO:** Gary Knopp, Assembly President  
Members, Kenai Peninsula Borough Assembly

**THRU:** Mike Navarre, Mayor *MN*

**FROM:** Colette Thompson, Borough Attorney *CT*  
Holly Montague, Deputy Borough Attorney *HM*

**DATE:** May 24, 2012

**SUBJECT:** Ordinance 2012-21, repealing KPB 5.04.110 and KPB 16.16.085 requiring voter approval for certain major capital improvement projects

This ordinance repeals two provisions in the borough code requiring voter approval before the assembly may appropriate funds for major capital improvement projects. In 2004 the North Peninsula Recreation Service Area (NPRSA) voters approved an initiative requiring the assembly to obtain voter approval before constructing any capital improvement projects costing in excess of \$500,000. In 2005 the voters throughout the borough approved an initiative requiring 60 percent voter approval of any borough capital improvement project costing more than \$1,000,000. The Alliance of Concerned Taxpayers, Inc. (ACT) sued the Kenai Peninsula Borough in 2006 asking the court to enjoin the borough from violating the 2005 initiative. The borough responded stating that it had not violated the initiative and claimed that the initiative was not legal as it constituted an illegal appropriation of public funds because it diluted the borough assembly's exclusive control over the budget. The superior court ruled in favor of the borough on this issue and ACT appealed. The Alaska Supreme court ruled in favor of the borough on April 6, 2012, finding that this provision had the effect of diluting the borough assembly's exclusive control over the budget and is therefore an impermissible appropriation in violation of the constitution. As both sections of the code contain the same prior voter approval requirement both constitute an impermissible appropriation and should be repealed. The assembly's approval of this ordinance is respectfully requested.