

Introduced by:	Mayor
Date:	06/05/12
Hearing:	07/03/12
Action:	Enacted
Vote:	7 Yes, 0 No, 2 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2012-21**

**AN ORDINANCE REPEALING KPB 5.04.110 AND KPB 16.16.085 WHICH REQUIRE
VOTER APPROVAL FOR CERTAIN MAJOR CAPITAL IMPROVEMENT PROJECTS**

WHEREAS, in 2004 the North Peninsula Recreation Service Area (NPRSA) voters approved an initiative requiring NPRSA voter approval for all major capital improvement projects to be constructed for the NPRSA costing more than \$500,000, which was codified at KPB 16.16.085; and

WHEREAS, in 2005 the borough voters approved initiative Ordinance No. 2005-01 which required 60 percent prior voter approval for borough capital improvement projects to be constructed or acquired by the borough with a total cost of more than \$1,000,000, which was codified at KPB 5.04.110; and

WHEREAS, in 2006 the Alliance of Concerned Taxpayers, Inc. (ACT) filed a lawsuit against the Kenai Peninsula Borough which among other things claimed that the borough had violated KPB 5.04.110 by not requiring prior voter approval for certain capital improvement projects costing more than \$1,000,000 and requesting that the court enjoin the borough from approving any such projects without prior voter approval; and

WHEREAS, the borough claimed it had not violated the initiative and that the initiative was legally invalid as it required an unconstitutional referendum on the appropriation of public assets; and

WHEREAS, the superior court granted summary judgment in favor of the borough on this issue ruling that the prior voter approval requirement violated the Alaska Constitution by improperly restricting the assembly's appropriation powers; and

WHEREAS, ACT appealed the superior court's decision to the Alaska Supreme Court; and

WHEREAS, on April 6, 2012, the Alaska Supreme Court entered a final decision in favor of the borough and concluded that allowing voters to veto capital improvement projects has the effect of diluting the borough assembly's exclusive control over the budget and is therefore an impermissible appropriation in violation of the Alaska Constitution; and

WHEREAS, as both KPB 05.04.110 and 16.16.085 enable the voters to veto capital improvement projects they are not legal provisions and should be removed from the borough code;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. KPB 05.04.110, Major capital improvement projects – Referendum required, is hereby repealed.

SECTION 2. KPB 16.16.085, major capital improvement projects – Referendum required, is hereby repealed.


SECTION 3. That this ordinance takes effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 3RD DAY OF JULY, 2012.

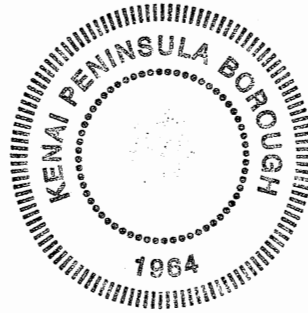


Gary Knopp, Assembly President

ATTEST:



Johni Blankenship, Borough Clerk



Yes: Haggerty, McClure, Murphy, Pierce, Smalley, Smith, Knopp
No: None
Absent: Johnson, Tauriainen