

**PETERSBURG BOROUGH
ORDINANCE #2017-01**

AN ORDINANCE AMENDING PETERSBURG MUNICIPAL CODE CHAPTER 4.12, LOCAL IMPROVEMENTS, TO UPDATE FROM CITY CODE TO BOROUGH CODE AND TO INCORPORATE THE PROVISIONS OF PETERSBURG BOROUGH CHARTER ARTICLE 16, LOCAL IMPROVEMENT, INTO THE BOROUGH CODE

WHEREAS, on January 3, 2013, the City of Petersburg was dissolved and the Petersburg Borough incorporated; and

WHEREAS, Petersburg Borough Charter Section 19.06 requires all ordinances, resolutions, regulations, orders and rules in effect for the former City of Petersburg continue in full force and effect within the Petersburg Borough, Service Area 1, until expressly reaffirmed, revised or repealed by the assembly.

THEREFORE THE PETERSBURG BOROUGH ORDAINS, the existing provisions of Chapter 4.12, Local Improvements, as noted with amendments, are hereby approved and adopted as a Borough ordinance to be administered within Service Area 1.

Section 1. Classification: This ordinance is of a permanent nature and shall be codified in the Petersburg Borough Code.

Section 2. Purpose: The purpose of this ordinance is to amend the Borough Code to update Chapter 4.12, Local Improvements, from City Code to Borough Code and to incorporate the provisions of Petersburg Borough Charter Article 16, Local Improvement, into the Borough Code.

Section 3. Substantive Provisions: The Petersburg Borough Municipal Code Chapter 4.12, Local Improvements, shall be adopted to read as follows:

Chapter 4.12 LOCAL IMPROVEMENT DISTRICTS

Sections:

4.12.010 - Applicability.

A. Provisions of this chapter shall apply to the creation of a Local Improvement District (hereinafter "LID") to provide for a property owner-funded capital improvement project within the LID for extensions of borough streets, curbs and sidewalks, paving, utilities, or any combination thereof in the borough-controlled public rights-of-way, at the request of the owners of land benefited by the proposed project, where such project may be done by borough personnel or under contract let by the borough. This chapter shall also have application to other types of capital improvements upon a specific resolution adopted by the borough assembly which authorizes the procedures of this chapter, subject to such limitations, if any, as may be recited in the resolution.

B. The assembly may assess against the properties within an LID all or a portion of the cost of the capital improvement. All such capital improvements shall be owned by the borough, regardless of whether the project was wholly or partially property owner-funded under this chapter.

- C. This chapter shall apply within Service Area 1 only.

4.12.020 - Intent.

It is the intent of this chapter to formulate a policy and payment method whereby the owners of land may jointly cooperate and pay for a capital improvement project extended to a newly developed area or to improve infrastructure or services to a previously developed area.

4.12.030 - Petition to initiate proposal.

A. Creation of an LID will be considered by the borough upon submission of a written petition, on a form provided by the borough, signed by the owners of property that would collectively bear more than fifty percent (50%) of the projected cost of the assessment for the capital improvement. The petition shall include a map demonstrating the boundaries of the proposed LID, or contain a listing of the properties within the LID, by lot, block and subdivision, or if unsubdivided, by other appropriate designation.

B. A capital improvement plan must be submitted with the petition. The plan shall clearly identify the scope and extent of the work sought and shall also include a credible estimate of the total cost of the capital improvement to be borne by the properties within the proposed LID, the proposed rate or percentage of the total to be assessed against each property, and an estimated assessment amount for each property.

C. The petition and capital improvement plan shall be submitted to the borough manager who will, with other borough staff, review and analyze the documents.

D. If sufficient petition signatures are validated, the borough shall, within sixty (60) calendar days of the clerk's validation of signatures, review the capital improvement plan and develop a conformed plan that meets borough standards, and includes a time schedule and a revised estimated cost of the proposal as modified to meet borough standards.

E. If the conformed capital improvement plan results in a change in the projected costs for the improvement, and/or a change in the rate or percentage of the total cost to be assessed against each property or the estimated assessment amount for each property within the proposed LID, the costs will be evaluated to ensure that section 4.12.030(A) is met prior to moving forward. Upon completion of a conformed capital improvement plan, the borough shall prepare an initial assessment roll, containing the following information:

1. The legal description of each property located within the proposed LID, and the name of the owner of each such property;
2. The total estimated cost of the proposed project; and
3. The rate or percentage of the total cost to be assessed against each property located within the proposed LID, the estimated amount to be assessed against each such property, and an estimated pay back schedule.

F. Upon prior resolution of the Assembly, borough personnel may facilitate a petition process as described above, including providing assistance in the development of a capital improvement plan and cost analysis.

4.12.040 - Public hearing.

A. A public hearing before the Assembly shall be scheduled within sixty (60) days of validation of signatures on the petition and completion by borough staff of a conformed capital improvement plan and initial assessment roll. Such hearing is to be held for the purposes of fully explaining to the property owners the extent of the proposed project, including the layout, time schedule, estimated total cost, rate or percentage of the total cost to be assessed against each property, the estimated assessment amount for each property and the assessment payment schedule, and to provide the property owners the opportunity to comment to the Assembly. The hearing shall be a duly advertised public hearing open to the general public, but shall be primarily for the benefit of the affected property owners. The borough will send notice of the date, time and location of the hearing, not less than thirty (30) calendar days prior to the hearing, to each owner of property located within the proposed LID by regular mail, to the owner's last known address, as it appears on municipal real property tax rolls. The notice shall include a copy of the initial assessment roll, a copy of the conformed capital improvement plan or a summary of the plan containing sufficient information developed by staff concerning the proposed project in order that each owner may fully understand the project and be aware of their specific obligations as a result of it, and shall generally inform the property owner of the manner of protesting or objecting to the creation of the proposed LID. Proof of mailing of the notice shall be made by the clerk's filing an affidavit with the assembly, setting forth the mailing. The affidavit is conclusive as to facts stated in it. At the hearing, staff will explain the proposed project and public comment will be taken.

B. If written protests are filed with the borough clerk, at or before the hearing, by at least fifty percent (50%) of the number of properties in the proposed LID, without regard to property value, the assembly shall not proceed until a number of the protests have been settled and the resulting total number of protesting LID properties is equal to thirty-four (34%) or less of the number of properties in the LID. Protests not timely made in writing shall be presumed to have been waived. If a property owner has more than one lot or parcel of land within the proposed LID, all of the owner's properties shall be treated as one property for purposes of this protest procedure. In the event a protest is filed by the owner of a property which has multiple owners, such protest is considered to have been filed on behalf of all owners. If an LID fails due to protest, property owners may resubmit the petition and capital improvement plan after modifications to the plan are enacted insofar as to eliminate the grounds for prior protests.

C. Following closing of the public hearing on the proposed LID, the Assembly may make amendments to the proposed LID boundaries by deleting properties found not to be benefited by the improvement, and may alter the capital improvement plan by decreasing the extent or value of the improvement or the total subject to assessment. The Assembly shall decide whether to proceed with the balloting of property owners under section 4.12.050. If it decides to proceed with balloting, it shall direct the preparation of a final assessment roll.

4.12.050 - Balloting by property owners.

A. After the conclusion of the hearing described in Section 4.12.040, at the direction of the Assembly, the borough clerk shall send by U.S. Mail a copy of the final assessment roll and one ballot per property to the property owner of record, providing space for the property owner to state either support or opposition to the proposed LID. The ballot shall set forth the legal description of the property and its assessed value, a statement that the final assessment amount against each property may increase or decrease from the estimate depending upon the actual costs of the project once completed, and the due date for submission of the ballots. The minimum period for balloting, and the final date for ballots to be received back by the borough, shall be established by the Assembly. At the close of the voting period, the ballots received will be opened and counted by the borough clerk. Any ballots not received back by the borough on or before the deadline will be counted as votes in opposition to formation of the proposed LID.

B. Proof of mailing of the balloting shall be made by the clerk's filing an affidavit with the assembly, setting forth the mailing. The affidavit is conclusive as to facts stated in it.

4.12.060 - Effect of ballot results; Assembly action after balloting.

A. The results of the balloting shall be presented to the Assembly at its next regular or special meeting following the ballot due date.

B. If creation of the proposed LID receives votes from properties that would collectively bear at least sixty-six percent (66%) of the projected cost of the assessment for the capital improvement, and the requirements of paragraph (C) hereof are met, the borough may, but is not required to, proceed with further procedures under this chapter. An affirmative vote of less than sixty-six percent (66%), or a failure to meet the requirements of paragraph (C) hereof, shall cause termination of the borough's participation in the plan under this chapter, but such rejection is without prejudice and a new petition containing a plan of any differing magnitude may be subsequently commenced.

C. The total cost of the planned capital improvement must be less than the assessed value of properties in the proposed LID that support the creation of the LID.

D. Upon a determination that the balloting and valuation requirements set out above have been adequately met, the Assembly may, by ordinance, approve creation of the LID subject to budgetary approval under section 4.12.080, and confirm and certify the assessment roll of the LID. The ordinance shall establish the terms of payment pursuant to section 4.12.110(A) and 4.12.120. The ordinance must contain a finding that there is a need for the proposed capital improvement and that the capital improvement will provide a reasonable benefit to the properties within the LID, and to the borough at large. The certified assessment roll shall be attached to the ordinance.

4.12.070 - Capital Improvements by Agreement.

When the owners of one hundred percent (100%) of the property bearing the cost of improvements agree, the Assembly may, by ordinance, authorize a contract for provision of such improvements in lieu of special assessments, upon such terms and conditions as may be agreed upon. Amounts due the borough shall be a lien upon all real property involved in the same manner and with the same priority as special assessments hereunder, and shall be subject to penalty and interest as provided for special assessments.

4.12.080 - Assembly approval of project budgeting.

Upon passage of an ordinance under 4.12.060(D), the public works department shall place in its next proposed capital-improvement-project budget, or a supplemental budget, a line-item amount equal to the project's estimated cost plus ten percent (10%). The borough assembly is not obligated as a result of passage of the ordinance under 4.12.060(D) to approve the line-item amount budgeted for the project. Upon approval by the Assembly of the budget item for the project, the borough clerk shall cause the ordinance and certified assessment roll to be recorded in the office of the district recorder.

4.12.090 - Assessment procedures.

A. If the budget item is approved, the borough manager shall direct the project to proceed and all borough costs related to the project, including identifiable initial administrative costs and engineering and attorney fees, shall be charged to the project account and recorded in order that the actual project costs can be determined. An account for each LID shall be created and kept separate from all other borough accounts.

B. At the completion of the project, the actual costs plus the interest generated on the account shall be determined and divided among the affected property owners as outlined in Section 4.12.110 to determine each property's final assessment.

C. The borough shall, after determining the final assessment amounts, transmit a copy of the assessment statement provided for in 4.12.110(B) to each then-owner of record of existing affected property advising them of required payment.

4.12.100 - All Real Property Liable for Special Assessments

A. All real property, including that which is exempt from taxation in accordance with law, is liable for the cost of local improvements assessed in accordance with this article unless specifically exempted from special assessments by law. If borough property is benefited by the local improvement, the assembly may participate in the costs for the improvement by making payments in lieu of the amount which would otherwise be assessed against the property.

B. If a governmental unit benefited by an improvement refuses to pay the assessment, it may be denied the benefit of the improvement.

4.12.110 - Terms for payment of assessments; assessment statements.

A. The assembly shall fix terms and times of payments, times of delinquencies, penalties on delinquent payments, and the rate of interest on the unpaid balance of the assessments. Payment may be in one sum or by installments over such terms as the assembly deems appropriate

B. Within thirty (30) days after completion of the project and final computation of the total cost of the improvement, the borough shall mail an assessment statement to the record owner of each property assessed. The statement designates the property, the assessment amount, method of payment, rate of interest on the unpaid balance of the assessment, the time of delinquency, and penalties on delinquent payments. Within five (5) days after the statements are mailed, the clerk shall publish notice on the borough website that the statements have been mailed. Failure of the borough to bill the current owner, or failure of the owner to receive the billing, shall not invalidate the payment obligation or property lien created hereunder.

C. Assessments are liens on the property assessed and are prior and paramount to all liens except municipal tax liens and prior special assessments. They may be enforced as provided by law for enforcement of property tax liens.

D. All street, water, sewer and electrical assessments against any lot must be paid current, either in full if lump-sum or by installment, as the case may be, before any utility service connections are provided to that lot.

4.12.120 - Calculation of each property's assessment.

A. An assessment made under this Chapter shall be proportionate to the benefit received from the improvement. The Assembly may assess all or a portion of the cost of the capital improvement against the properties within the LID in

- 1) equal shares for every property within the LID,
- 2) on a per foot of frontage rate,
- 3) in proportionate shares based upon the percentage an individual property bears to the total area of the LID, or
- 4) a combination of any of the above.

Unless otherwise determined by ordinance, it shall be presumed that each property within an LID receives an equal benefit, and the assessment will be made on the basis of equal shares for every property within the LID.

B. For streets, where the costs are assessed on a per foot of frontage rate, a rate per foot will be determined by taking the as-built cost of the street extension and dividing it by the total front footage of all the adjacent properties on both sides of the street extension. This rate per foot will then be used to determine the assessment to each property by multiplying the rate per foot by the front footage of each property.

C. For utility extensions where the costs are assessed on a per foot of frontage rate, a rate per foot will be determined by taking the as-built cost of the utility extension and dividing it by the applicable front footage of all properties adjacent to and receiving benefit from the utility extension. This rate per foot will then be used to determine the assessment of each property by multiplying the rate per foot by the applicable front footage of each property.

4.12.130 - Treatment of adjacent properties.

All properties with a property line or corner lying immediately next to the improvement shall be considered adjacent properties properly included within the LID. Property which is adjacent to the improvement but is separated from it by a grade separation, and which cannot receive benefit or use from the improvement, or which has no need for the improvement because of previous development, may be excluded from the LID and exempted from payment of an assessment, only if the borough assembly, after hearing the owners' presentation of no benefit received, exempts the subject property, and states the reasons for such action.

4.12.140 - Designation of property fronts for assessment made on a per foot of frontage basis.

A Properties bordered on more than one side with streets where utilities or street infrastructure are being improved shall have included in the calculation of the rate-per-foot cost only one side, which shall be the longest side of the property bordering the extension; this side of the property shall be considered the applicable front footage of the subject property.

B. The front footage of properties having only one side adjacent to a utility or street infrastructure improvement shall have that front footage considered as the applicable front footage for purposes of assessment basis.

C. Corner lots that benefit from the improvement but have no identifiable frontage shall be assessed for a distance equal to the width of the right of way which is the subject of the LID.

4.12.150 - Appeal.

A decision of the Assembly concerning the creation of an LID or the assessment relating to the LID must be appealed to the superior court of the State of Alaska within thirty (30) days of the date on which the assembly adopts the ordinance under 4.12.060(D) creating the LID and certifying the assessment roll. If no appeal is taken within that time, the assessment procedure shall be considered valid and final in all respects.

4.12.160 - Curative Provision.

No assessment shall be invalid by reason of an error in the name or identification of the owner of a property within an LID, or by reason of any error, mistake, delay, omission, irregularity or other act in any of the proceedings held under this chapter, unless it appears that the assessment as made, insofar as it affects the objecting party, is unfair and unjust. The assembly shall have the power and authority to remedy and correct such matters by suitable action and proceedings. If payments have been made under an invalid or irregular procedure, such payments shall be credited to payments required under the corrected or revised procedure.

Section 4. Severability: If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and the application of other persons or circumstances shall not be affected.

Section 5. Effective Date: This Ordinance shall become effective immediately upon final passage.

Passed and approved by the Petersburg Borough Assembly, Petersburg, Alaska this 27th day of February, 2017.

Mark Jensen, Mayor

Attest:

Debra K. Thompson, Borough Clerk

Adopted: 2/27/2017
Published: 3/2/2017
Effective: 2/27/2017