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Local Boundary Commission
550 W. 7th Ave., Ste. 1640
Anchorage, Alaska 99501

INCORPORATION OF CITY OF NIKISKI - RESPONSIVE BRIEF

Thank you for considering my comments.

I moved to Nikiski in 1973, and have lived there ever since. Over the years, my wife and I raised a family and built a business in Nikiski. I served as a volunteer fireman on the Nikiski Fire Department from 1974-2000; and then as an elected member of the Nikiski Fire Service Area Board since 2000. I have also served as the Nikiski representative on the Kenai Peninsula Road Maintenance Service Area Board since 2008.

The Constitution of the State of Alaska supports and provides for local self-governing home rule cities. When I arrived in Nikiski in 1973, the Borough's mission statement was to support and promote service areas with locally elected service area boards within the Borough that would provide for the needs of the local residents. Over the last two decades, that no longer seems to be the case.

As an elected official in the Nikiski area, my hope is that the Local Boundary Commission would allow the people of Nikiski the opportunity for self-determination by accepting the Petition in its entirety. It is also my opinion that the Nikiski service area boards, which are made up of citizens of Nikiski, have done an exemplary job of managing their areas and would be able to roll over into a home rule city and continue to keep the needs of Nikiski at the forefront. I strongly support incorporation of Nikiski as a home rule city, with the boundaries of the Nikiski Fire Service Area. Here's why:

- 1. Move Away from Local Self-Determination.** The Nikiski Fire Service Area (NFSA) was established in 1969, by vote of the people residing in the Nikiski area. Nikiski had the first fire service area in the Borough. In 1974, the people of Nikiski voted to establish the North Peninsula Recreation Service Area (NPRSA), so that they could provide a swimming pool for the school children in their area, as the Borough would not provide one. In 1982, the people of Nikiski voted to establish a road maintenance service area. At the time, there were state funds available to pay for these services, but gradually the state stopped providing these funds, and now Nikiski property taxpayers fund the services. In 1993, the people of Nikiski voted to establish a senior service area. Nikiski is the only place in the Borough that has a recreation service area and a senior service area.

In the early years, NFSA and NPRSA operated mostly independently from the central Borough administration, located in Soldotna, approximately 20 miles away from “central” Nikiski, with the City of Kenai in between. In 1979, the Borough Assembly adopted two resolutions, Resolutions 79-161 and 79-162 that delegated authority to the NFSA and NPRSA boards to run the service areas independently from the Borough administration. See enclosed.

However, starting in the 1980s, there has been a gradual erosion of local control of service area powers and funds, and local self-determination, towards more centralized Borough administration control and providing of services. Although these changes are often billed by the Borough administration as “efficiencies,” these changes have short changed Nikiski residents.

2. Take Back of Delegated Authority. Resolutions 79-161 and 79-162 are not currently operational. The Borough administration has increasingly moved to control all aspects of the Nikiski service areas: hiring the directors, strict controls on finances and operations, and so forth. For example, in 2012 Assemblyman Linda Murphy (a former KPB Clerk) brought forward an ordinance, which was supported by the current Borough Clerk (KPB Ord. 2012-07) to do away with ELECTED service area boards and replace with administration APPOINTED service Area boards only.

The Borough Administration has increasingly ignored and overridden the recommendations of the Nikiski Service Areas on unanimous decisions proposed by the Service Area Boards. For instance, in recent years, the NFSA Board unanimously voted to NOT adjust the mill rate and the Borough Mayor disregarded their recommendation and reduced the mill rate. There is a continued disregard of the community elected boards’ recommendations and the needs of Nikiski residents.

3. Loss of Local Representation and Political Power. There used to be 16 Borough assembly members, in four districts. The Nikiski area was represented by 5 “at large” assembly seats. In 1991, the Borough assembly reduced itself to 9 members, with only one member representing the Nikiski area. These changes resulted in Nikiski wielding much less political power on the Borough assembly, even though Nikiski is the one of the largest unincorporated population centers on the Kenai Peninsula Borough.

4. Imposition of “Administrative Fees.” I believe it was in the 1990s that the Borough administration started charging the Nikiski service areas “administrative” fees -- 10% of interest generated taken out of service area tax revenues and paid into general Borough funds. The Borough has never provided any accounting for these fees, so Nikiski taxpayers can’t determine what the fees are for, and whether the fees are reasonable or not.

5. Less Local Self-Determination. The Borough administration recommended an ordinance to require ALL fire service areas to charge an ambulance service charge, which was adopted by the Borough assembly. Neither the administration or assembly asked the NFSA board for comment; the NFSA board was unanimously opposed to this plan. When the NFSA board voted to remove the ambulance service charge in our service area the KPB told them “no”, as the measure was already standardized into the emergency and healthcare systems within the Borough.

The NFSA board is moving toward building a third fire station but the Borough administration has made it increasingly difficult to build, even though our service area fund balance has money to pay for this project.

Recently, the NFSA service area board was told that the Borough was considering different options which included possibly closing Nikiski Fire Station No. 1 as a cost-cutting move instead of completing the planned NFS #3; even though the NFSA board opposes this.

6. Take Over of Service Area Fund Balances. It is always a struggle with the Borough administration over the service area fund balances. "Fund balance" is the term which means excess of revenue over expenses, that we refer to as our savings accounts. The excess funds are invested by the Borough and earn interest. The Nikiski service area boards want to build up our fund balances so that we can pay up front for needed equipment and buildings, but the Borough administration is often resistant to these plans.

In fact, it is my understanding that currently the Finance Director has been directed to implement changes to alter criteria and define service area fund balances, which in my opinion, would result in the fund balances being considered property of the Borough and not the service areas from which the taxes revenues are derived. I believe these directions were a result of the Nikiski incorporation petition. I expect the Borough to argue that Nikiski is not entitled to this money to fund the new city, even though Nikiski service area taxpayers paid these funds.

7. Road Maintenance Service Area Merger - A Disaster for Nikiski. In 1991, without a vote of the Nikiski road maintenance service area (RMSA) voters, the Borough administration and assembly merged the Nikiski RMSA with the three other maintenance road service areas in the Borough. The Nikiski RMSA board and citizens were opposed to this merger. This merger has been a disaster for Nikiski: while all Nikiski road maintenance taxes now go into one fund, Nikiski taxpayers don't get services anywhere near equivalent of what they pay.

As far as I can estimate, the Nikiski road maintenance service area raises about \$2.2 million in property taxes, but we may receive back as little as \$300,000 in services. This means that the NRMSA is subsidizing the other three road service areas, while the Nikiski area is being starved of services.

As the Nikiski representative on the Borough RMSA board, I receive many complaints about how poor the Borough road maintenance is in Nikiski. I have repeatedly asked the Borough road director for a detailed accounting of how the Nikiski RMSA property tax revenues are received and spent, but I have yet to receive this information. I have consistently lobbied for more funding of Nikiski road maintenance, but have not been successful, I believe because of the lack of political power.

This merger was also a setback in Nikiski's political power. Before merger, there were 7 elected NRMSA board members that the Borough administration (road director) had to report to; now Nikiski has only has 1 appointed RMSA board member out of 7 Borough-wide. And since the board positions are political appointments, an appointee who is outspoken in defense of his area may not be reappointed.

This merger also decreased opportunities for local road service providers. Before merger, there were more road maintenance contracts for Nikiski, so more opportunities for local service providers. After merger, there are fewer opportunities available, plus cronyism at the Soldotna central office means even less opportunities for our outlying areas.

8. Increasing Efforts Of Centralization In Soldotna. Over the last few years, the Borough has increasingly tried to centralize administration of service area services in the Soldotna offices. For the Nikiski service areas, this has been a negative: less local decision-making and self-determination.

For example, the NFSA used to have its own supervising physician for its EMTs, but then the Borough has centralized this position to one physician who is not chosen by the Nikiski fire chief and who is not located in Nikiski, as he was before centralization. The Nikiski service area budget pays part of the “centralized” supervising physician’s salary, but the Nikiski fire department has no ability to supervise or control their actual work. Having a supervising physician so far away working with several different fire departments has made coordination with the NFSA more difficult.

Currently there are rumors that the Borough administration will propose merging all the emergency service areas into one service area, to be administered from Soldotna. As with the road maintenance service areas, this can be done without a vote of the people and over their objections. I believe that this merger would be the same disaster for Nikiski as with the RMSA merger: the Nikiski Fire Service Area would subsidize the other emergency service areas, getting less services and having even less autonomy than now.

9. No Consideration for Impacts on Nikiski Community. The Borough exercises minimal land use powers within the areas outside cities. Within the last decade, the Borough administration has made little to no effort to address Nikiski residents’ concerns about impacts of large-scale industrial projects on Nikiski residents. For example, Nikiski residents were very concerned about a hazardous waste site proposed for the Nikiski area, but the Borough did nothing to address their concerns. This project was later abandoned, but the Borough’s failure to consider or address community concerns seems to be a regular management practice.

Currently, the Alaska LNG plant has proposed to locate in the Nikiski area, and the Borough has not had any outreach to Nikiski residents about the plans for the plant or made any effort to address the plant’s impacts on residents. For example, one of the LNG plant’s proposals is to re-route the Kenai Spur Highway inland from its current location, which would make a longer drive and be much more inconvenient for local residents. The Borough didn’t ask for input of Nikiski residents about this re-route, and has apparently all but approved the re-route.

When I contacted LNG plant officials about the re-route, the response was that we should contact the Borough with our concerns; the officials could only work with the Borough.

10. Community Connection is Intertwined Throughout Nikiski, the Platforms and the West Side. The lives of the folks who live and work in Nikiski are deeply connected. The community of Nikiski is a hub of activity supporting energy, fishing, tourism, and government sector jobs. The daily commerce from and through our Nikiski roads, docks, heliports, and airfields are a huge impact on the community of Nikiski economy. Nikiski taxpayers support and protect the trade and commerce that transpires daily by means of our fire (and emergency), recreation, senior (and formerly road maintenance) service areas.

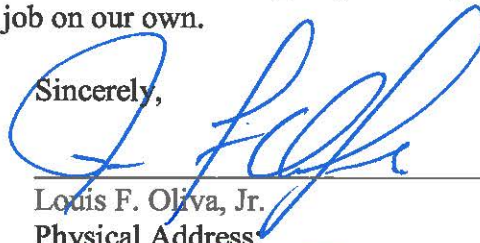
The Nikiski service areas' tax base supports its first responders from the time commerce crosses the city limits of Kenai (through mutual aid agreement), down our roads, all the way to our docks, through our heliports and airstrips, out to our platforms and across to the West side of Cook Inlet. If the City of Nikiski is not granted its current Service Area boundaries, Nikiski will not be able to continue the outstanding level of service we currently provide to protect the people and property in the Cook Inlet area, and could crucially harm the ability to provide critical services inland.

Nikiski has the most highly trained staff and specialty-equipped fire department to be at the ready 24/7 for the risks involved in and around Nikiski's Cook Inlet basin. The historical evidence shows that Nikiski is excellently equipped and prepared to continue its responsibilities in the service and protection of the area that is currently serves in the boundary it serves.

In conclusion, Nikiski's ability to make decisions for its own residents has greatly decreased over the last couple of decades. Currently we Nikiski residents have very little control over Borough services provided in our area, and we effectively have no political power compared to the other large population areas of the Borough.

Although it may be asked why we need to incorporate since municipal services are already being provided to our area by the Borough, the answer is because we have experienced a large decrease in quality, quantity and local control of services in the last two-three decades under Borough management. This is the result of Nikiski having no political power. I believe we Nikiski residents can do a much better job on our own.

Sincerely,



Louis F. Oliva, Jr.

Physical Address:

52260 Sara Jane St.
Nikiski AK 99611

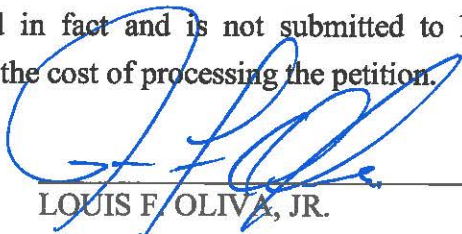
AFFIDAVIT

STATE OF ALASKA)
)
THIRD JUDICIAL DISTRICT) ss.

LOUIS F. OLIVA, JR., being first duly sworn, deposes and says that:

1. To the best of my knowledge, information, and belief, formed after reasonable inquiry, the responsive brief is founded in fact and is not submitted to harass or to cause unnecessary delay or needless expense in the cost of processing the petition.

DATED: 3/8/17



LOUIS F. OLIVA, JR.

SUBSCRIBED AND SWORN TO before me this 8th day of March, 2017.

SAMANTHA M. HALSTEAD
Notary Public, State of Alaska
Commission # 150423009
My Commission Expires
April 23, 2019



Notary Public, State of Alaska
My Commission Expires: 4-23-2019

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 3-8-17, a copy of the foregoing document, was served by hand delivery to: Petitioner Stacy Oliva.

by: 

1084

Introduced by: Mayor
Date: November 20, 1979
Vote: Unanimous
Action: Adopted as Amended by
Finance Committee

KENAI PENINSULA BOROUGH

RESOLUTION 79-161

PROVIDING FOR THE DELEGATION OF CERTAIN ADMINISTRATIVE POWERS TO THE NORTH PENINSULA RECREATION SERVICE AREA BOARD OF DIRECTORS.

WHEREAS, the Assembly, in Ordinance 79-37, provided for the delegation of certain administrative powers to service area boards of directors; and

WHEREAS, the Mayor has proposed that the North Peninsula Recreation Service Area Board of Directors assume certain delegated administrative powers; and

WHEREAS, the North Peninsula Recreation Service Area Board has agreed, at its meeting of October 31, 1979, to accept certain delegated powers, subject to the provisions of Ordinance 79-37; and

WHEREAS, the assembly finds that it is desirable to delegate certain administrative powers to the Board of Directors, subject to the provisions of Ordinance 79-37, codified as KPB 16.04.001;

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

Section 1. That the assembly authorized the delegation by the Mayor of certain administrative powers as set forth below, subject to the provisions of Ordinance 79-37, codified as KPB 16.04.001:

- (A) Personnel: The Board of Directors of the North Peninsula Recreational Service Area shall appoint a chief administrative officer of the service area, whose title shall be "Pool Manager". The Board shall have the prerogative of retaining the current, temporary appointee or appointing another person.

The position of Pool Manager shall be considered an executive position and not subject to the benefits of job security granted to other employees in the service area. The salary and benefits of the Pool Manager shall be recommended by the Board and approved by the Mayor. The Board may dismiss the Manager; however, in the event of dismissal, the Board must prepare a bill of particulars and present it to the Mayor within 48 hours of the dismissal. The Assembly explicitly reserves to the Mayor the right to suspend the Pool Manager by written order in the event that the Manager has violated ordinances of the Borough or state or federal statutes and regulations. In the event of suspension, the Mayor shall notify immediately the Chairman of the Board and communicate to the Board the reasons for such suspension. The Board shall take all action necessary to correct the deficiencies and problems noted by the Mayor in his Order of Suspension. All other personnel appointments to full-time positions will be made by the Pool Manager in the manner specified by KPB 3.04.100. All other personnel actions will be accomplished in accordance with the terms and conditions of the labor relations contract ratified by the Assembly.

- (B) Operational Budget: The initial drafting of the operational budget shall be the exclusive responsibility of the service area board, except that debt service payments shall be programmed as specified by the Borough. The Borough Finance Director will notify the Board in writing of the amount necessary to retire debt as scheduled and the Board will place in the budget adequate funds for this purpose. The budget as submitted by the Board will be presented to the Assembly as the recommended program for the next fiscal year, and the Assembly shall consider the Board's submission in adopting the final budget for the service area. It shall be the responsibility of the Board to implement the program as authorized by the Assembly. In the event the line items within the budget must be adjusted during the fiscal year, the Board, by resolution, may authorize such changes. Under no circumstances may the Board commit funds in excess of those authorized by line item in the budget without first making an appropriate line item change.

All purchasing of supplies and equipment shall be made through the normal purchasing system and procedures of the Borough.

The Board shall not authorize, nor appoint, more personnel than approved by the Assembly, nor may the Board alter job descriptions approved by the Assembly or appoint, pay, or employ personnel at variance with the job descriptions authorized by the Assembly.

- (C) Capital improvements: The service area shall be responsible initially for recommending a capital improvement budget to the Assembly. Before the budget is submitted to the Assembly, the Board shall hold at least one public hearing on the proposed budget within the service area and shall provide at least one week's notice of the hearing by publication in a newspaper of general circulation or by one week's notice made through local broadcast media, or by both. The Board shall review all proposed designs, contracts, bids and ancillary documents for capital improvement projects. All bid documents shall be prepared and released under the supervision of the Department of Public Works, which shall be responsible for the solicitation and opening of bids. The Assembly shall approve and award all contracts for capital improvements, and the Department of Public Works shall be responsible for the administration of each project.
- (D) Internal rules and regulations: The Board of Directors shall, by resolution, adopt the rules and regulations which deal solely with the internal workings of the Board, with the administration of the service area, with community use of service area facilities, and with any other items not covered explicitly or implicitly by ordinance, statute or agreement of the Borough. Such rules and regulations may not supersede Borough ordinances or other legislative enactments. Upon adoption of its internal rules or regulations, the Board shall promptly notify the Assembly of such rules or regulations.

Section 2. Line item budget changes pursuant to this Resolution shall be reported to the Borough Mayor who shall advise the Borough Assembly of such changes as required under the provisions of Section 5.04.100(R) of the Borough Code.

Section 3. That the Mayor is authorized to effectuate this resolution, which takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH
ON THIS 5th DAY OF December, 1979.



JoAnn Elson, Assembly President

ATTEST:



Frances Bryner
Borough Clerk

1088

Introduced by: Mayor
Date: Nov. 20, 1979
Vote: Unanimous
Action: Adopted as Amended by
Finance Committee

KENAI PENINSULA BOROUGH

RESOLUTION 79-162

PROVIDING FOR THE DELEGATION OF CERTAIN ADMINISTRATIVE POWERS TO THE NIKISKI FIRE SERVICE AREA BOARD OF DIRECTORS.

WHEREAS, the Assembly, in Ordinance 79-37, provided for the delegation of certain administrative powers to service area boards of directors; and

WHEREAS, the Mayor has proposed that the Nikiski Fire Service Area Board of Directors assume certain delegated administrative powers; and

WHEREAS, the Nikiski Fire service Area Board has agreed to accept certain delegated powers, subject to the provisions of Ordinance 79-37; and

WHEREAS, the Assembly finds that it is desirable to delegate certain administrative powers to the Board of Directors, subject to the provisions of Ordinance 79-37, codified as KPB 16.04.001;

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

Section 1. That the Assembly authorizes the delegation by the Mayor of certain administrative powers as set forth below, subject to the provisions of Ordinance 79-37, codified as KPB 16.04.001:

- (A) Personnel: The Board of Directors of the Nikiski Fire Service Area shall appoint a chief administrative officer of the service area, whose title shall be "Fire Chief". The position of "Fire Chief" shall be considered an executive position and not subject to the benefits of job security granted to other employees of the service area. The salary and benefits of the Fire Chief shall be recommended by the Board and approved by the

Mayor. The Board may dismiss the Chief; however, in the event of dismissal, the Board must prepare a bill of particulars and present it to the Mayor with 48 hours of the dismissal. The Assembly explicitly reserves to the Mayor the right to suspend the Fire Chief by written order in the event that the Chief has violated ordinances of the Borough or state or federal statutes and regulations. In the event of suspension, the Mayor shall notify immediately the Chairman of the Board and communicate to the Board the reasons for such suspension. The Board shall take all action necessary to correct the deficiencies and problems noted by the Mayor in his Order of Suspension. All other personnel appointments to full-time positions will be made by the Chief in the manner specified by KPB 3.04.100. All other personnel actions will be accomplished in accordance with the terms and conditions of the labor relations contract ratified by the Borough Assembly.

- (B) Operational Budget: The initial drafting of the operational budget shall be the exclusive responsibility of the service area board, except that debt service payments shall be programmed as specified by the Borough. The Borough Finance Director will notify the Board in writing of the amount necessary to retire debt as scheduled and the Board will place in the budget adequate funds for this purpose. The budget as submitted by the Board will be presented to the Assembly as the recommended program for the next fiscal year, and the Assembly shall consider the Board's submission in adopting the final budget for the service area. It shall be the responsibility of the Board to implement the program as authorized by the Assembly. In the event that line items within the budget must be adjusted during the fiscal year, the Board, by resolution, may authorize such changes. Under no circumstances may the Board commit funds in excess of those authorized by line item in the budget without first making an appropriate line item change.

All purchasing of supplies and equipment shall be made through the normal purchasing system and procedures of the Borough.

The Board shall not authorize, nor appoint, more personnel than approved by the Assembly, nor may the Board alter the job descriptions as approved by the Assembly or appoint, pay, or employ personnel at variance with the job descriptions authorized by the Assembly.

- (C) Capital Improvements: The service area shall be responsible initially for recommending a capital improvement budget to the Assembly. Before the budget is submitted to the Assembly, the Board shall hold at least one public hearing on the proposed budget within the service area and shall provide at least one week's notice of the hearing by publication in a newspaper of general circulation or by one week's notice made through local broadcast media, or by both. The Board shall review all proposed designs, contracts, bids and ancillary documents for capital improvement projects. All bid documents shall be prepared and released under the supervision of the Department of Public Works, which shall be responsible for the solicitation and opening of bids. The Borough Assembly shall approve and award all contracts for capital improvements, and the Department of Public Works shall be responsible for the administration of each project.
- (D) Internal Rules and Regulations: The Board of Directors shall, by resolution, adopt the rules and regulations which deal solely with the internal workings of the Board, with the administration of the service area, with community use of service area facilities, and with any other items not covered explicitly or implicitly by ordinance, statute or agreement of the Borough. The Board shall have the authority to enter into agreements with on-call (volunteer) firefighters regarding the terms and conditions of their employment so long as sufficient funds are available in the Service Area's budget. Such rules and regulations may not supersede Borough ordinances or other legislative enactments. Upon adoption of its internal rules or regulations, the Board shall promptly notify the Borough Assembly of such rules or regulations.

Section 2. Line itme budget changes pursuant to this Resolution shall be reported to the Borough Mayor who shall advise the Borough Assembly of such changes as required under the provisions of Section 5.04.100(B) of the Borough Code.

Section 3. That the Mayor is authorized to effectuate this resolution, which takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH
ON THIS 5th DAY OF December, 1979.


JoAnn Eison, Assembly President

ATTEST:


Francis Guymen
Borough Clerk