CITY OF WASILLA
290 E. HERNING AVE.
WASILLA, ALASKA 99654-7091
PHONE: (907) 373-9050
FAX: (907) 373-9085

COUNCIL MEMORANDUM
NO. 94-16

FROM: CLERK'S OFFICE

DATE: APRIL 7, 1994

SUBJECT: AMENDMENT TO ORDINANCE 94-02

I believe our attorneys are now happy with Ordinance 94-02 except for one small change.

Our Bond Attorney would like the phrase within 15 days of the date on the notice. added to the end of line 9 of Section 2.60.070 after the word writing. A bid from a contractor is only good for a limited period of time, usually 30 days, so a decision has to be made in a prompt manner.

Erling P. Nelson

Erling P. Nelson, CMC
City Clerk

PRESTON THORGRIMSON SHIDLER GATES & ELLIS

ATTORNEYS AT LAW

Suite 400
420 L Street
Anchorage, AK 99501-1937

Telephone: (907) 276-1969
Facsimile: (907) 276-1365

MEMORANDUM

TO: Erling Nelson

FROM: Lee Sharp LS

RE: Amendment of City Assessment Code to Permit Assessment Interest Above Bond Interest

DATE: December 29, 1993

In accordance with our conversation at the closing of the Paving Assessment District Bond on Wednesday, December 22, 1993, I have included below the revisions that should be made to the Wasilla Special Assessment District Code to permit the Council to establish the interest rate to be paid on assessments at a rate that is higher than the rate paid on the bonds financing the assessment. The additions and deletions are set out in the format used in bills before the Alaska legislature.

Code Section 2.60.110 should be amended to read:

> 2.60.110 Payment. Payment of Assessment; Delinquency; Interest and Penalty. The Council in the resolution confirming the assessment roll shall fix a schedule of dates when the special assessment or special assessment installment payments become due and delinquent. Deferred or installment payments [MAY] bear interest at the rate payable on bonds issued to finance the improvements within the Special Assessment District or at such other rate as may be established by the Council in the resolution confirming the assessment roll, payable from the date of the confirmation of the assessment roll until paid. No payment shall be required within sixty (60) days after adoption of the resolution. A penalty of eight percent (8%) shall be added to any assessment installment not paid before the date of delinquency, and both the assessment installment and penalty shall draw interest at a rate three percent (3%) per annum higher than the rate payable on the deferred or installment payments [ON BONDS ISSUED TO FINANCE THE IMPROVEMENTS WITHIN THE SPECIAL ASSESSMENT DISTRICT] until paid.

You may also want to consider either amending or repealing Section 110A. Literally, this section indicates that the entire interest is waived (with permission of the Council). While the waiver of a penalty where the property owner is not at fault is generally seen as an appropriate relief, waiver of interest is another matter. Interest is payment for the use of the City's money and the fact that a property owner used the City's money longer than he or she was permitted, does not change the fact that the City did not have the money and would thus be injured if interest were waived. The City may be counting on the base interest to meet bond interest payments. At the most, only the additional three percent that is added to the delinquent payment should be the subject of the waiver. If you don't repeal Section 110A or repeal the authority of the council to waive all interest, you might consider amending it to read:

> A. Waiver of Penalty and Interest. Penalty and the additional three percent (3%) interest on delinquent payments may be waived by the Council where the delinquency occurred [PENALTY AND INTEREST ACCRUED] through no fault of the property owner so assessed.

This language makes the 3% look a little more like a penalty than before and you should consult with your City Attorney on this and any other change contemplated.

I would suggest also that subsection 110B be repealed. This is another one of those sections that appears to have been borrowed from the old Anchorage code. Anchorage provided by resolution for a level debt service payment on assessments in accordance with a resolution adopted by the Assembly. The resolution allowed different repayment schedules based on the total amount of the assessment. The largest assessments were given 20 years for a payoff, while the smaller assessments were given only 5 years. I believe that Anchorage also may have required the first annual payment to be made right after the end of the prepayment period. In any event, the language of 110B appears to apply only to situations where interest has been assessed and paid prior to an assessment payoff. That situation does not appear to be one that will occur in Wasilla. The presence or absence of this language should not affect your ability to issue bonds, but could lead a property owner making a prepayment to believe that they would be entitled to a discount of some sort.

In any event, you should be careful in drafting the ordinance to be sent to the Council that subsections A and B are either amended, repealed or are retained as a part of Section 110.

Section 2.60.050A (Time Payment Periods) should be repealed as this is a section that authorizes/requires the general installment payment schedule resolution such as the one just discussed. It is superfluous and in conflict with sections 020A7, 020B7, and 100 which require repayment schedules to be set in the assessment roll resolution.

Although Section 2.60.070 has nothing to do with the provisions of which we spoke, it seems a likely candidate for revision. It, too, appears to be modeled after the Anchorage ordinance which requires 50% approval before proceeding with a district formation or a contract exceeding the estimate, rather than a 50% objection to prevent going forward. Your Code uses a 50% objection to prevent going forward at the LID formation stage, but shifts to the 50% approval before proceeding if the construction bid exceeds the estimate by 10%. If you change this to make it consistent with your formation standards, you might also consider changing reference to the "last approved estimate." It makes more sense, and gives the property owners a little more protection, if the standard against which the actual bid is measured is the construction contract estimate used in developing the estimated costs that were provided to the property owners in the formation process. If you adopt the objection route, you need to require notice of the increase be sent to property owners with a reasonable, but short, period of time to file a written objection.

Note also that this section refers only to the owners who would bear more than 50% of the "estimated cost of the improvement" and not those who would bear 50% of the assessed amount. Where the City assesses 100% of the project costs, these two would be the same. However, if the City is going to pay for one-half of the project costs, it would require 100% of the property owners to give their affirmative approval of the increased costs as these are the property owners who would bear 50% of the improvement cost. If the City were to pick up 51% of the project cost, it would be impossible to obtain the approval of those who would bear more than 50% of the total cost of the project. On the other hand, using the project cost works to City's advantage if you require a 50% objection. This section seems to be a good candidate for amendment.

I would be happy (and would appreciate the opportunity) to review and comment on the draft of any ordinance you may propose amending Chapter 2.60.

#home\wasilla