

Non-Code Ordinance

By: Borough Manager
Introduced: 09/06/22
Public Hearing: 09/27/22
Adopted: 09/27/22

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 22-098**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY PROVIDING FOR THE FINANCING NOT TO EXCEED \$77,000 PRINCIPAL AMOUNT OF SPECIAL ASSESSMENT INTERNAL SERVICE FUNDS FOR THE TOLSON AVENUE AND ELKINS STREET NATURAL GAS LOCAL IMPROVEMENT DISTRICT NO. 634, AND FIXING DETAILS OF SAID FINANCING.

WHEREAS, the Assembly of the Matanuska-Susitna Borough (the "Borough") has determined and does hereby determine that it is necessary to proceed to plan, design, develop, construct, equip, acquire property for, or otherwise provide for Natural Gas in the Tolson Avenue & Elkins Street Natural Gas Local Improvement District (the "project"); and

WHEREAS, a local improvement district known as the Tolson Avenue and Elkins Street Natural Gas Local Improvement District No. 634 (the "LID") has been formed for the project, special assessments will be levied on properties in the LID that are specially benefited by the project, and said special assessments, with interest thereon, will be sufficient (together with other amounts) and available to pay the principal of and interest on the hereinafter defined financing; and

WHEREAS, it is deemed necessary and advisable and in the best interests of the Borough and its inhabitants that not to exceed \$77,000 principal amount of special assessment financing from the LID Internal Service fund be designated for the project; and

WHEREAS, the Assembly has approved financing using the Internal Service Fund for special assessments.

NOW, THEREFORE, BE IT ENACTED BY THE ASSEMBLY OF THE MATANUSKA-SUSITNA BOROUGH:

Section 1. Classification. This ordinance is a noncode ordinance.

Section 2. Purpose. The purpose of this ordinance is to authorize the financing of not to exceed \$77,000 of principal from the Internal Service Fund for special assessments to pay for the costs of the project.

Section 3. Definitions. The following terms shall have the following meanings in this ordinance:

A. "Assembly" means the Borough Assembly, as the general legislative authority of the Borough, as the same shall be duly and regularly constituted from time to time.

B. "Cost" or "Costs" means all costs of the project allowable in special assessments under AS 29.46.110.

C. "1986 Code" means the Internal Revenue Code of 1986, as amended from time to time, together with all regulations applicable thereto.

D. "Ordinance" shall mean this Ordinance Serial No. 22-098 of the Borough.

E. "LID" means Local Improvement District No. 634.

Section 4. Authority for ordinance. The Borough has ascertained and hereby determines that each and every matter and thing as to which provision is made in this ordinance is necessary in order to carry out and effectuate the purposes of the Borough in accordance with the Constitution and statutes of the state of Alaska, and the code of ordinances of the Borough, and to issue the financing.

Section 5. Obligation of financing. The financing is a special obligation of Tolson Avenue and Elkins Street Natural Gas Local Improvement District No. 634 of the Borough and is payable solely from assessments levied against the properties which are specially benefited by the project within the Tolson Avenue and Elkins Street Natural Gas Local Improvement District No. 634 and funds pledged for the payment of the financing under this ordinance. Said assessments shall constitute a sinking fund for the payment of principal of and interest on the financing. Neither the faith and

credit nor the taxing power of the Borough are pledged to the payment of the principal of and interest on the financing.

Section 6. Authorization of financing. For the purpose of providing part of the funds required to pay the cost of the project, the Assembly hereby authorizes and determines to finance not to exceed \$77,000.

Section 7. Maturities, payment dates, designation and form of financing. The financing will be in the form of a loan from the Internal Service Fund for special assessments and shall be designated Matanuska-Susitna Borough Special Assessment Loan, Tolson Avenue and Elkins Street Natural Gas Local Improvement District No. 634, 2022, shall be dated the date of approval of this ordinance, and shall mature on October 1, 2032.

The loan shall bear interest at the rate of Prime Rate plus two points from the date of adoption of this Ordinance Serial No. 22-098 and shall not exceed that percent per annum. Installments of principal and interest on the loan (the "installment payments") shall be payable semiannually on April 1 and October 1 of each year, commencing April 1, 2023. Each installment payment shall consist of an equal amount of principal, plus accrued interest.

Section 8. Details of loan. The principal and the interest on the loan shall be payable in any coin or currency of the United

States of America, which at the respective dates of payment thereof, is legal tender for the payment of public and private debts.

Payment of the principal and interest on the loan shall be made by check or by internal accounting.

Section 9. Redemption of loan. The loan is subject to redemption at the option of the Borough, in whole or in part, at any time. Any redemption of the loan shall be the principal amount of the loan, plus accrued interest to the redemption date.

Section 10. Establishment of guaranty fund. There is established the Tolson Avenue and Elkins Street Natural Gas Local Improvement District No. 634 special assessment loan guaranty fund (The "guaranty fund") to which the Assembly shall annually appropriate a sum the Assembly determines to be adequate, with other available funds, to cover a deficiency in meeting payments of principal and interest on the loan if the reason for the deficiency is nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments confirmed by Ordinance Serial No. 22-097 of the Borough shall be credited to the guaranty fund. Amounts in the guaranty fund shall be used to pay principal and interest on the loan when other funds are not available for that purpose.

Section 11. Disbursement of loan proceeds for project costs.

That part of the loan proceeds required for costs of the project shall be deposited in the Tolson Avenue and Elkins Street Natural Gas Local Improvement District No. 634 construction account, which is hereby established within the Tolson Avenue & Elkins Street Natural Gas fund 825, heretofore established by the Borough. There shall be paid from this account all amounts required for costs of the project.

Section 12. Establishment of reserve and refund account.

A. There is established the Tolson Avenue & Elkins Street Natural Gas Local Improvement District No. 634 reserve and refund account (the "reserve and refund account") within the Tolson Avenue & Elkins Street fund 825.

B. There shall be paid into the reserve and refund account:

1. That part of the loan proceeds not expended or required for the initial LID expenses such as construction of the natural gas improvements, attorney fees, and similar expenses, and all anticipated administrative costs; and

2. Any sinking fund and guaranty fund balances after discharge of the loan.

C. At the end of each fiscal year, interest on the average reserve and refund account balance during the fiscal year at the

rate determined by the Finance Director to be the average interest earned on Borough investments during the fiscal year shall be transferred from the general fund to the reserve and refund account.

D. Until the loan has been discharged, the funds within the reserve and refund account may be used only to pay the difference between the amount of principal and interest due on the loan and the amount of special assessment payments including interest, received and available to pay that amount; provided, if the Finance Director determines that the amount of funds available in the reserve and refund account substantially exceeds that which is reasonably expected to be needed to meet assessment delinquencies, the Finance Director may, to the extent of such excess, make a prepayment on the loan.

E. At such time as the Finance Director determines that the sum of the amounts in the reserve and refund account, the guaranty fund and the sinking fund equals or exceeds the amount required to (i) discharge the loan, (ii) pay all refunds of assessments required upon discharge of the loan, and (iii) pay any other amounts that may be owing on the loan, the Finance Director shall cause such payment to be made and the loan to be discharged.

Section 13. Establishment of sinking fund. There is established the Tolson Avenue & Elkins Street Natural Gas Local

Improvement District No. 634 sinking fund (the "sinking fund"). Payments of principal and interest on assessments confirmed by Ordinance Serial No. of the Borough shall be deposited in the sinking fund. Amounts in the sinking fund shall be used to pay principal and interest on the loan, and are hereby pledged for that purpose. At the end of each fiscal year, interest on the average sinking fund balance during the fiscal year at the rate determined by the Finance Director to be the average interest earned on Borough investments during the fiscal year shall be transferred from the general fund to the sinking fund.

Section 14. Distribution of reserve and refund account funds.

A. Upon the discharge of the loan, and the payment of all refunds of assessments required upon the discharge of the loan, the funds remaining in the reserve and refund account shall be distributed as provided under this section.

B. The Finance Director shall distribute the balance of the reserve and refund account by sending to each owner of record as shown on the most recent records of the Borough assessor an amount equal to the Enstar refund(s) received divided by the number of lots within the LID. If any lot or tract within the LID is divided into two or more lots, the refund for such resubdivided lots shall be computed by counting the resubdivided lots as a single lot for

purposes of determining the initial refund entitlement. The initial refund entitlement shall then be divided equally among the resubdivided lots.

Section 15. Compliance with 1986 code. The Borough hereby covenants to comply with any and all applicable requirements set forth in the 1986 code in effect from time to time to the extent that such compliance shall be necessary for the exemption from federal income taxes of the interest on the loan. The Borough hereby further covenants to observe any and all applicable requirements in any future federal tax legislation to the extent that such compliance is determined by the Borough to be legal and practicable and required for such exemption.

Section 16. Authority of officers. The Mayor, the acting Mayor from time to time, the Borough Manager, the acting Borough Manager from time to time, the Finance Director, the acting Finance Director from time to time, the Borough Clerk and the acting Borough Clerk from time to time, are, and each of them hereby is, authorized and directed to do and perform all things within the scope of their existing authority and determine all matters not determined by this ordinance, to the end that the Borough may carry out its obligations under the loan and this ordinance.

Section 17. Pledge of funds. All assessments levied in the LID, interest thereon and foreclosure proceeds thereof, are hereby irrevocably pledged to the payment of the principal of and interest on the loan. The pledge under this section remains in effect until the loan has been discharged.

Section 18. Miscellaneous. No recourse shall be had for the payment of the principal of or the interest on the loan or for any claim based thereon or on this ordinance against any member of the Assembly or officer of the Borough or any person executing the loan. The loan is not and shall not be in any way a debt or liability of the state of Alaska or of any political subdivision thereof and shall not create or constitute an indebtedness or obligation, either legal, moral or otherwise, of said state or of any political subdivision thereof.

Section 19. Severability. If any one or more of the covenants and agreements provided in this ordinance to be performed on the part of the Borough shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements shall be null and void and shall be deemed separable from the remaining covenants and agreements in this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the loan.


Section 20. Appropriation. There is appropriated for the purposes set out in this ordinance, all assessments and interest thereon from the assessments levied in the LID and assessment foreclosure proceeds. The appropriation under this section does not lapse until the final refund required under Section 14.B. of this ordinance has been made.

Section 21. Effective date. Ordinance Serial No. shall take effect upon adoption by the Borough Assembly.

ADOPTED by the Matanuska-Susitna Borough Assembly this 27 day of September, 2022.


EDNA DeVRIES, Borough Mayor

ATTEST:


LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)



PASSED UNANIMOUSLY: Hale, Nowers, McKee, Yundt, Tew, Sumner, and
Bernier