

Introduced by: Borough Manager
Drafted by: Borough Assessor
Introduced on: 09/19/2019
Public Hearing Date: 10/03/2019
Adopted on: 10/03/2019

**KODIAK ISLAND BOROUGH
ORDINANCE NO. FY2020-04**

**AN ORDINANCE OF THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH AMENDING
KODIAK ISLAND BOROUGH CODE TITLE 3 REVENUE AND FINANCE, CHAPTER 3.35
REAL PROPERTY TAX, SECTION 3.35.030 REAL AND PERSONAL PROPERTY EXEMPTED
FROM TAXATION**

WHEREAS, Kodiak Island Borough Code 3.35.030 provides Real and Personal Property Exempted from Taxation; and

WHEREAS, this ordinance would bring this section more in line with Alaska Statutes; and

WHEREAS, this ordinance will address the need for administrative review as outlined in the State Assessor's audit.

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH THAT:

Section 1: This ordinance is of a general and permanent nature and shall become a part of the Kodiak Island Borough Code of Ordinances.

Section 2: That section 3.35.030 of the Kodiak Island Borough Code of Ordinances is amended to read as follows:

3.35.030 Real and personal property exempted from taxation.

A. The following described properties shall be exempt from any and all taxation otherwise imposed under the foregoing sections:

1. All real and personal property belonging to the United States of America, the state of Alaska, the borough, the city of Kodiak, or any other incorporated city lying and being within the boundaries of the borough, and except for property acquired through foreclosure or by deed in lieu of foreclosure. However, a private leasehold interest in otherwise exempt properties that is created by lease, loan, contract, preferential use agreement or otherwise, and is made available to and used by a private person or private enterprise, shall be taxable to the extent of that interest pursuant to AS 29.45.030(a)(1)(A) and KIBC 3.35.020.

2. Real property or an interest in real property that is exempt from taxation under 43 U.S.C. 1620(d) (ANCSA).

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3. All property used exclusively for nonprofit, religious, charitable, cemetery, hospital, or educational purposes (classroom space only), is exempt from taxation for the calendar year in which application is timely filed if the assessor determines that the application demonstrates the property qualifies for exemption as provided by AS 29.45.030. Property used for religious purposes includes the residence of a bishop, pastor, priest, rabbi, minister, or religious order of a recognized religious organization and to further include all other improved property of such organization not used for business, rent, or profit. Property of any religious, educational, or charitable organization from which the organization derives any rentals or profits shall not be exempt. Unimproved or vacant real property of any such organization which is not currently used for religious, hospital, educational, cemetery, or charitable purposes shall be deemed to be property held or used for profit, unless by deed restriction or otherwise the real property has been effectually dedicated to future use for religious, educational, or charitable purposes only and cannot be sold or used for any other purposes. Any vacant land which initially qualifies for an exemption under this section, and for which an application is filed, but is not placed in use within two years of January 1st of the first tax year, shall be subject to taxation in each tax year, retroactive to the first tax year for which the exemption was granted.

a. To qualify for an exemption under subsection (A)(3) of this section, the applicant organization shall provide the following information to the assessor or designee to support a determination of exempt status:

i. The articles of incorporation.

ii. Documentation to support the organization's not-for-profit status (e.g., IRS Section 501(c)(3) determination letter, or equivalent).

iii. A description of the property's use, demonstrating its consistency with the requested exemption.

iv. Contracts of any type that describe or memorialize the use of the property by a person or entity other than the applicant organization.

v. A description of any remuneration received by the applicant organization including:

(A) Any property, or portion of property, from which rentals or income are derived.

(B) Actual operating expenses, excluding debt service or depreciation.

(C) Where property is leased by the organization to other entities, financial statements for the past tax year, including income and expense reports, and a description of any debt service or depreciation reported in the financial statements for the property.

vi. For property used for an educational purpose, a description of course curriculum and classroom space.

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92 vii. For property used as a religious residence, a description of the resident's ordination,
93 commission, or license (according to the standards of the religious organization), and proof of the
94 resident's employment by the religious organization as its spiritual leader.

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96 b. The borough assessor may request additional information prior to making a determination, as
97 reasonably necessary, to determine the exempt status of a property in accordance with borough
98 code and regulations and state law.
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100 4. Any vacant land which initially qualifies for an exemption under this section, but which is not
101 placed in use within two years from January 1st of the first tax year, for which an application is
102 filed, shall be subject to taxation in each tax year, retroactive to the first tax year for which the
103 exemption was granted.

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105 a. No single organization shall receive more than two exempt vacant parcels, and the exemption
106 for any one parcel shall not exceed the average assessed value of a single, similarly zoned
107 property, as determined by the assessor on an annual basis.
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109 5. The property of any organization which is not organized for business purposes and whose
110 membership is composed entirely of veterans of any wars of the United States, as recognized
111 and chartered by the Congress of the United States, and the property of the auxiliary of any such
112 organization. Property of any such veteran's organization or auxiliary from which the organization
113 derives any rentals or profits shall not be exempt.
114

115 6. As described in AS 29.45.030(e), the first \$150,000 of assessed value of the real property
116 owned and occupied as the primary residence and permanent place of abode by:

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118 a. A resident 65 years of age or older;

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120 b. A disabled veteran; or

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122 c. A resident at least 60 years old who is the widow or widower of a person who has previously
123 qualified for an exemption for the same residence under a or b of this subsection, and who jointly
124 owned or occupied the residence with the requestor.
125

126 7. Definitions. For purposes of subsection (A)(6) of this section only, the following words are
127 defined as:

128
129 "Primary residence and permanent place of abode" shall mean a dwelling which is owned by and
130 in which the person resides at least 185 days in the year prior to the exemption year and when
131 absent, the dwelling is not leased or rented to another.
132

133 "Resident" shall mean a person who has a fixed habitation in the Kodiak Island Borough for at
134 least 185 days per calendar year, and when absent, intends to return to the borough and does
135 not claim residency outside the borough or claim a resident exemption in another state or country,

136 or other borough of Alaska or take action or is absent under circumstances inconsistent with the
137 intent to remain and make a home indefinitely in the borough.

138
139 “Disabled veteran” shall mean a disabled person separated from the military service of the United
140 States under a condition that is not dishonorable who is a resident of the state, whose disability
141 was incurred or aggravated in the line of duty in the military service of the United States, and
142 whose disability has been rated as 50 percent or more by the branch of service in which that
143 person served or by the United States Department of Veterans Affairs.

144
145 “Widow or widower” shall mean the surviving un-remarried spouse.

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147 B. To be eligible for any exemption set forth in AS 29.45.030(e), the individual applying for the
148 exemption must also meet at least one of the two following requirements:

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150 1. The individual shall be eligible for a permanent fund dividend under AS 43.23.005 for the year
151 for which an exemption is requested; or

152
153 2. If the individual has not applied or does not apply for the permanent fund dividend, the individual
154 would have been eligible for the permanent fund dividend for that same year had the individual
155 applied. To meet this requirement, the applicant must provide adequate documentation to the
156 assessor that they meet this qualification based on the requirements of AS 43.23.005.

157
158 C. Only one exemption may be granted for the same property. If two or more persons are eligible
159 for an exemption under this subsection in regard to the same property, then the parties shall
160 decide between or among themselves who is to receive the benefit of the exemption.

161
162 D. In the event that a claimant fails to apply for a senior exemption as provided by AS 29.45.030(e)
163 by January 15th of the assessment year for which the exemption is sought, the borough assessor
164 for good cause shown may waive the claimant’s failure to make timely application for the
165 exemption for that year and shall accept the application, as if timely filed, subject to the provisions
166 contained in AS 29.45.030(e).

167
168 ~~1. A waiver may only be granted for the year in which an application is filed. and for the year~~
169 ~~immediately prior. Assessor’s rulings under this provision may be appealed to the borough~~
170 ~~assembly which for good cause shown may waive an applicant’s failure to file timely and~~
171 ~~may direct the assessor to accept the application as if timely filed subject to the provisions~~
172 ~~contained in AS 29.45.030(e) and this subsection D.~~

173 **2. “Good cause” shall mean extraordinary circumstances beyond the control of the**
174 **applicant, including but not limited to a medical condition or disability, impaired**
175 **mental capacity, family emergency, death in the family, or similar serious condition**
176 **or event that substantially impaired the applicant’s ability to file a timely application.**
177 **“Good cause” shall not mean late filing due to the applicant’s inadvertence,**
178 **oversight, or lack of knowledge regarding the filing requirements or deadline,**
179 **financial hardship or failure to pick up or read mail or to make arrangements for an**
180 **appropriate and responsible person to pick up or read mail.**

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E. Applications for Exemptions. The borough assessor shall grant or deny all applications for exemptions, except for community purpose exemptions, which must be granted by the borough assembly.

1. Strict enforcement of deadlines to file an exemption application and annual certification.

a. Properties qualifying for an exemption under this section must be owned and in use on January 1st of the applicable tax year. There shall be no proration of taxes under this section.

b. Written application for real property exemptions under this section, including any required supporting documentation, must be received by the assessor no later than January 15th of the tax year in which the exemption is requested.

c. Once an exemption has been approved, the assessor will review the subject property's exempt status annually, and may require the exempt party to provide annual certification that the exempt use of the property remains consistent with the use described and approved in the original application.

d. Reapplication for the exemption shall be required upon any change in the ownership or use of the property, and shall meet the deadlines prescribed under this chapter.

e. The deadline for filing an application for exemption, filing a reapplication if necessary, requesting an administrative review from the assessor, and filing an appeal to court, shall be strictly enforced and shall not be waived except as provided by subsection ~~(E)(1)(b)~~ (D) of this section.

f. If the assessor determines that a property is not eligible for an exemption, all taxes, penalty, and interest due for all tax years, beginning with the first year that the property should have been subject to taxation, shall become due and owing.

g. No exemption shall be available under this section if, by the determination of the assessor, the subject property has been conveyed to the applicant for the primary purpose of obtaining the exemption.

F. The private interests, other than fee simple record ownership, in real property of an individual residing in the property if the property has been developed, improved, or acquired with federal funds for the provision of low-income housing, and is owned or managed as low-income housing by either the Alaska State Housing Authority pursuant to AS 18.55.100 through 18.55.960 or a regional housing authority formed under AS 18.55.996. This section does not prohibit the borough from continuing to receive payments in lieu of taxes authorized under federal law. This section applies only to those low-income housing units in existence prior to January 1, 1989, hence, any new projects, real property acquisitions, and additions to the existing properties after January 1,

1989, shall require an ordinance of the assembly prior to the granting of an exemption under this section.

G. Administrative Review for all exemptions except community purpose

1. **If the assessor, after review of the application for exemption determines that the property does not qualify for the exemption, the assessor will notify the applicant in writing denying the exemption and providing the reasons for the assessor's decision.**
2. **The owner of record may request a formal review meeting with the assessor within 30 days of the date of the assessor's letter denying the exemption.**
 - a. **The assessor will notify the owner of record with the date of the of that meeting.**
 - b. **The owner of record may present additional documentation and other evidence supporting their claim of exemption at the review meeting for consideration by the assessor.**
 - c. **The assessor, within 30 days of the meeting, will issue a letter with their final determination.**
 - d. **The assessor's final determination after a review meeting is a final administrative decision on the exemption and can be appealed as provided in subsection (H) of this section.**
3. **Community Purpose Exemptions are reviewed in accordance with subsection (I)(7) of this section.**

G. H. Judicial review of the assessor's denial of an exemption under AS 29.45.030.

1. **Having exhausted the administrative review, Only** the owner of record may appeal a decision by the assessor to deny an exemption under this section, and must be made to the Superior Court, Third Judicial District, **State of Alaska in accordance with Alaska Rule of Appellate Procedure 602 and AS 29.45.200(c).**
2. An appeal of the assessor's denial of an application for exemption under this code must be filed within 30 days of the assessor's denial.
3. For purposes of computing time, the date that the assessor's written denial was mailed shall be deemed the date of the denial.

H. I. The property of an organization not organized for business or profit-making purposes which is used exclusively for community purpose activities, may be exempted from taxation by the borough assembly under this section **as allowed under AS 29.45.050(a)(1)(A).** In order to qualify for a community purpose exemption:

1. The property must be dedicated for use by the general public, must provide a benefit to the community as a whole, and any income derived from rental of the property must not exceed the actual cost to the owner of the use by the renter.

270 2. Any entity requesting a community purpose property tax exemption pursuant to this chapter
271 must include with its initial application certified copies of its most recent Return of Organization
272 Exempt from Income Tax Return (Form 990) and Federal Unrelated Business Income Tax Return
273 (Form 990T, or any other equivalent forms that may be adopted by the federal government). If a
274 tax exemption is granted to the applicant organization, it must thereafter submit to the borough,
275 within 30 days of the required filing date with the Internal Revenue Service, exact copies of its
276 Return of Organization Exempt from Income Tax Return (Form 990) and Federal Unrelated
277 Business Income Tax Return (Form 990T).

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279 3. The borough assembly may by ordinance grant tax exemptions for community purpose property
280 if the application meets state law requirements (AS 29.45.050(b)(1)(A)) and the assembly
281 determines that there is a direct and substantial benefit to the borough from the applicant's
282 property use. The assembly, in determining whether to grant an exemption and the amount of
283 exemption to be granted, may consider various factors including, but not limited to, whether:

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285 a. The property is open to public use regardless of sex, race, creed, color, or national origin;

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287 b. The applicant organization is qualified as an exempt organization under Section 501(c)(3) of
288 the Internal Revenue Code, as amended from time to time;

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290 c. No part of the net earnings of the applicant inures to the benefit of any private entity or individual;

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292 d. There is no evidence of a dominant financial motive such as excessive charges, excessive
293 employee compensation, or income that exceeds operating expenses and any rental income does
294 not exceed the actual cost to the owner of the use by the renter;

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296 e. There is no evidence that the property is being used to financially benefit any officer, trustee,
297 director, shareholder, member, or contributor, of the applicant;

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299 f. The property is used for the actual operation of the community activity and does not exceed an
300 amount of property reasonably necessary for the accomplishment of the community activity;

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302 g. The fees and charges for the use of such property and facilities thereon do not effectively deny
303 to a significant portion of the borough the privileges and benefits provided by such property;

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305 h. The applicant organization is governed by a volunteer board of directors;

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307 i. Whether and to what extent a tax exemption is necessary to provide the community benefit;

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309 j. The organization's property is used exclusively for community purposes;

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311 k. The existence of substantially similar community benefits through other public or private
312 entities; and

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314 I. The degree to which the organization's use of the property impacts the quality of life of borough
315 residents.
316
317 4. The assessor shall act as the administrator for community purpose exemption applications
318 gathering the necessary information and making recommendations to the assembly. Also, the
319 assessor may periodically require such information as is reasonably necessary to determine the
320 character of the organization and the nature of uses made for the continuation of the exemption
321 provided in this section. This includes, but is not limited to:
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323 a. The applicant organization's certificate of incorporation.
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325 b. Documentation to support the organization's not-for-profit status (i.e., IRS Section 501(c)(3)
326 determination letter, or equivalent).
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328 c. A description of the use of the property and consistency with the requested exemption.
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330 d. Contracts of any type that describe or memorialize use of the property by a person or entity
331 other than the applicant organization.
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333 e. A description of any remuneration received by the applicant organization including:
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335 i. Any property, or portion of property, from which rentals or income are derived.
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337 ii. Actual operating expenses, excluding only debt service or depreciation.
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339 iii. Financial statements for the past tax year including a copy of Form 990 as filed with the IRS,
340 income and expense reports, and description of any debt service or depreciation included in the
341 financial statements for the property.
342
343 5. Under this subsection, there shall be no proration of taxes for exemptions. Properties qualifying
344 for an exemption shall be in use under the exempt purpose as of January 1st of the year for which
345 the exemption is granted.
346
347 6. The borough assessor may request additional information prior to the determination, as
348 reasonably necessary, to determine the exempt status of a property in accordance with borough
349 code and regulations and Alaska law.
350
351 7. Administrative review of denial for continuation of a community purpose exemption by the
352 assessor.
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354 a. If the assessor denies an application for the continuance of an exemption under this section,
355 the assessor shall state the reason for the denial in a written notice to the owner of record.
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357 b. A denial by the assessor under this section may be appealed to the borough assembly by
358 means of a written request from the owner of record, which must be received by the borough clerk
359 no later than 30 days after the date of denial.
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361 c. Only an owner of record may request the administrative review of the assessor's decision to
362 deny the continuance of an exemption.
363

364 d. For the purposes of computing time for the purposes of an appeal under this section, the date
365 that the assessor's written notice of denial shall be deemed the date of the denial. The date of
366 receipt by the borough clerk shall be the date of the request for administrative review.
367

368 e. As this is an optional exemption pursuant to AS 29.45.050, the borough assembly shall have
369 the final determination of granting a continuance of the exemption.
370

371 8. Pursuant to the process in subsection (1)(3) of this section, the property owned by the
372 following organizations shall be exempt from real and personal property taxation under this
373 section:
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375 a. The Kodiak Island Sportsman's Association;
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377 b. The Kodiak Senior Center;
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379 ~~c. The Kodiak State Fairgrounds;~~
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381 ~~d. The Kodiak Jaycees~~ Kodiak Rodeo and State Fair Association;
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383 ~~e.~~ d. The Kodiak Chamber of Commerce; and
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385 ~~f.~~ e. The Kodiak Island Convention and Visitors Bureau.
386

387 **Effective Date:** This ordinance takes effect upon adoption. (Note: KIBC 2.30.070 states an
388 ordinance takes effect upon adoption or at a later date specified in the ordinance.)
389

390 **ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH**
391 **THIS THIRD DAY OF OCTOBER, 2019.**
392

393 KODIAK ISLAND BOROUGH

ATTEST:

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397 Daniel A. Rohrer, Mayor
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397 Tara Welinsky, Clerk
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399 **VOTES:**

400 Ayes: Schroeder, Smiley, Turner, Arndt

401 Notes: