



City of Homer Agenda

City Council Worksession
Wednesday, July 10, 2019 at 3:00 PM
City Hall Cowles Council Chambers

CALL TO ORDER, 3:00 P.M.

AGENDA APPROVAL (Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual, pg. 6)

DISCUSSION TOPIC(S)

- a. Ordinance 19-23(S) An Ordinance of the City Council of Homer, Alaska, Repealing and Reenacting Homer City Code Title 14 to be Entitled "Homer Public Utility Systems" and Homer City Code Title 17 to be Entitled "Public Assessments" to: 1) Consolidate Water and Sewer System Regulations and Rates; 2) Update Definitions and Common Terms; and 3) Create Uniformity between Service and Assessment Practices and Repealing Homer City Code Chapters 9.08, 13.24 and 13.28 to Relocate Utility Construction Practices and Fees from Homer City Code 13.24 and Homer City Code 13.28 into Titles 14 and 17 and Move Homer City Code 9.08 to Homer City Code 17.03 and Update Assessment Lien Enforcement Provisions to Incorporate State Law Requirements. Lord/Stroozas.

Memorandum 19-080 from Councilmembers Lord and Stroozas as backup

Memorandum 19-058 from Councilmembers Lord and Stroozas as backup

Memorandum 19-063 from City Attorney as backup

COMMENTS OF THE AUDIENCE (3 minutes)

ADJOURNMENT NO LATER THAN 5:00 P.M.

Next Regular Meeting is MONDAY, JULY 22, 2019 at 6:00 p.m., Committee of the Whole at 5:00 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska

ORDINANCE REFERENCE SHEET
2019 ORDINANCE
ORDINANCE 19-23

An Ordinance of the City Council of Homer, Alaska, Repealing and Reenacting Homer City Code Title 14 to be Entitled “Homer Public Utility Systems” and Homer City Code Title 17 to be Entitled “Public Assessments” to: 1) Consolidate Water and Sewer System Regulations and Rates; 2) Update Definitions and Common Terms, and 3) Create Uniformity Between Service and Assessment Practices and Repealing Homer City Code Chapters 9.08, 13.24 and 13.28 to Relocate Utility Construction Practices and Fees from Homer City Code 13.24 and Homer City Code 13.28 Into Titles 14 and 17 and Move Homer City Code 9.08 to Homer City Code 17.03 and Update Assessment Lien Enforcement Provisions to Incorporate State Law Requirements.

Sponsor: Lord/Stroozas

1. City Council Regular Meeting May 28, 2019 Introduction

Memorandum 19-058 from Councilmembers Lord and Stroozas as backup
Memorandum 19-063 from City Attorney as backup

2. City Council Regular Meeting June 10, 2019 Worksession and Public Hearing

Memorandum 19-058 from Councilmembers Lord and Stroozas as backup
Memorandum 19-063 from City Attorney as backup

3. City Council Regular Meeting June 24, 2019 Public Hearing

Memorandum 19-058 from Councilmembers Lord and Stroozas as backup
Memorandum 19-063 from City Attorney as backup

4. City Council Worksession July 10, 2019

Memorandum 19-058 from Councilmembers Lord and Stroozas as backup
Memorandum 19-063 from City Attorney as backup

**CITY OF HOMER
HOMER, ALASKA**

Lord/Stroozas

ORDINANCE 19-23(S)

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA
REPEALING AND REENACTING HOMER CITY CODE TITLE 14 TO BE
ENTITLED "HOMER PUBLIC UTILITY SYSTEMS" AND HOMER CITY
CODE TITLE 17 TO BE ENTITLED "PUBLIC ASSESSMENTS" TO: 1)
CONSOLIDATE WATER AND SEWER SYSTEM REGULATIONS AND
RATES; 2) UPDATE DEFINITIONS AND COMMON TERMS, AND 3)
CREATE UNIFORMITY BETWEEN SERVICE AND ASSESSMENT
PRACTICES AND REPEALING HOMER CITY CODE CHAPTERS 9.08,
13.24 AND 13.28 TO RELOCATE UTILITY CONSTRUCTION
PRACTICES AND FEES FROM HOMER CITY CODE 13.24 AND
HOMER CITY CODE 13.28 INTO TITLES 14 AND 17 AND MOVE
HOMER CITY CODE 9.08 TO HOMER CITY CODE 17.03 AND
UPDATE ASSESSMENT LIEN ENFORCEMENT PROVISIONS TO
INCORPORATE STATE LAW REQUIREMENTS.

WHEREAS, The Homer City Code currently requires property owners to connect to the
Homer Sanitary Wastewater and Sewage System and the Homer Public Water System and
regulates construction, installation, and use of these systems; and

WHEREAS, The regulatory, assessment, and fee provisions regarding Homer's public
utilities are located in various sections throughout the Code; and

WHEREAS, The laws governing Homer's public utilities have not been recently
updated to reflect the City's growth, progress, and needs; and

WHEREAS, The Code contains technical construction and installation requirements
that are best addressed via permit criteria rather than provisions in the Code; and

WHEREAS, It is in the City's and the public's best interest to identify assessments and
procedures arising from public utilities and capital improvements in the same title and
ensure all assessment procedures are clear, consistent, and easily understood; and

WHEREAS, Certain fees and assessments were addressed in Titles 9, 13, and 14 while
others were in Title 17.

NOW THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1: Chapter 13.24 entitled “Sanitary Systems” is hereby repealed.

Section 2: Chapter 13.28 entitled “Water Systems” is hereby repealed.

Section 3: Chapter 9.08 entitled “Enforcement of Local Improvement District Assessments” is hereby repealed.

Section 4: Title 14 “Public Services” is repealed and reenacted to read as follows:

TITLE 14
CITY OF HOMER PUBLIC UTILITY SYSTEMS

Chapters

- 14.01 Homer Public Utility Systems-General Provisions
- 14.04 Homer Sanitary Wastewater and Sewage System
- 14.08 Homer Public Water System
- 14.50 Utility Distribution Facilities

CHAPTER 14.01
HOMER PUBLIC UTILITY SYSTEMS-GENERAL PROVISIONS

Sections:

- 14.01.010 Water and sewer service area.
- 14.01.020 City Manager rule making authority.
- 14.01.030 Immunity for discretionary acts.
- 14.01.040 Violation-Penalty.
- 14.01.045 Violation-Right of appeal.
- 14.01.050 Bond or cash deposit.
- 14.01.060 State contractor required.
- 14.04.070 Utility permits-Appeal procedure.
- 14.01.080 Utility permit appeals-Superior court.
- 14.04.090 Water and sewer rate schedules.

- 14.01.010 Water and sewer service area.

a. No water or sewer service shall be provided beyond the boundaries of the City of Homer except as otherwise provided in this title or upon approval granted by City Council via ordinance.

- 14.01.020 City Manager rulemaking authority

a. The City Manager is empowered to make rules and regulations for the administration of City water and sewer services and construction, repair, operations, and maintenance of City water and sewer systems. Any rules and regulations adopted by the City Manager under this section and the current utility rates adopted by Council shall be available for public inspection at the City Clerk's office, the Public Works Department, and on the City's website.

b. No person shall fail to comply with any rule or regulation adopted under the authority of this section.

14.01.030 Immunity for discretionary acts.

An action for damages may not be brought against the City, or any of its agents, officers, contractors or employees, for a claim based on the exercise or failure to exercise any discretionary function or duty granted in this title, whether or not the discretion was abused, including, without limitation, the exercise of discretion to restrict, interrupt, decrease, or terminate the sale of water to bulk water customers, resellers, or others for export or consumption outside the certificated service area or the discontinuance of water or sewer services. Nothing in this section shall be construed to limit any defenses or immunities available under AS 09.65.070 or any other provision of law.

14.01.040 Violation-Penalty.

a. The penalty for violating a provision of this title is the fine listed in the fine schedule in HCC 1.16.040. If no fine is listed for the offense in HCC 1.16.040, then the defendant must appear in court and, if convicted, is subject to the general penalty as provided in HCC 1.16.010 unless another penalty is specifically provided.

b. The City shall provide notice of a violation via certified return receipt U.S. mail to the owner of the property on which the violation is occurring. This notice shall include the name of the property owner, the location of the violation, the Code provisions violated, and the action necessary to correct the violation.

c. Before assessing penalties under this section, the City shall provide written notice of penalty to the property owner via certified return receipt U.S. mail and personal delivery. This notice shall include all the information required in subsection (b), the date from which penalties incur, and notice of the right to appeal to the City Manager.

14.01.045 Violation-Right of appeal.

a. The finding of a violation and assessment of a penalty within 30 days from the date the notice of penalty was postmarked.

b. Untimely appeals shall not be accepted. A notice of appeal must be filed in writing with the City Clerk and be accompanied by the appeal fee set forth in the Homer fee schedule. The notice must contain:

1. Name and address of the owner of the property issued the citation;
2. A copy of the notice being appealed;
3. A statement of the grounds for appeal that must include detailed and specific allegations of error and references to applicable provisions of the Code or other law.

c. The City Manager may appoint a hearing officer or City official, other than the Public Works Director, to act as the decision maker in an appeal under this section.

d. An appeal before the City Manager or his or her designee shall be heard within 30 days from the day the appeal is filed. The person against whom the violation is assessed shall be given an opportunity to be heard at a public hearing and shall have an opportunity to make an oral argument and present evidence.

e. The City Manager or his or her designee shall issue a final written decision with his or her findings no more than 30 days after the hearing.

14.01.050 Bond or cash deposit

a. Every person, firm or corporate entity carrying on the business of construction and connecting to City sewer and/or water within the City may be required to deposit a bond or cash deposit in favor of the City in an amount and under such conditions deemed appropriate by the City Manager or his or her designee to cover damages of any kind resulting from that person's, firm's or entity's operations. All such sewer or water construction and connections shall be completed in a good and workmanlike manner in accordance with the specifications required by the City. The bond or cash deposit shall be further conditioned that the principal shall repair any damage done to the public sewer or water system on account of such work and shall return the surface of the ground, street, road, building, facility, right-of-way or easement to its original condition insofar as possible and in accordance with the requirements of the City.

b. Every person, firm or corporate entity carrying on the business of construction and connecting to City sewer and/or water within the City must be approved in writing by the Public Works Director. The Public Works Director shall approve a person, firm or corporate entity under this section so long as he, she or it:

1. Meets all state and local licensing requirements
2. Provides a statement demonstrating experience in substantially similar or the same construction projects
3. Carries liability insurance in the aggregate amount of not less than \$500,000 or as may be additionally required in an amount in excess of \$500,000 as may be deemed

necessary for the work by the Public Works Director or their designee to cover the insurance requirement of the work.

14.01.060 State contractor required.

A contractor working for the City on a water or sewer project or conducting construction within a public easement or right-of-way shall file a copy of their current State contractor's certificate with the office of the City Clerk.

14.01.070 Utility permits-Appeal procedure.

a. Any person who is dissatisfied with the approval or denial of a permit under this title may appeal the decision to the City Manager no more than 30 days after the Public Works Director approves or denies the permit.

b. An appeal to the City Manager must be filed within 30 days of the written approval or denial of a permit under this chapter. Untimely appeals shall not be accepted. A notice of appeal must be filed in writing with the City Clerk and be accompanied by the appeal fee set forth in the Homer fee schedule. The notice must contain:

1. Name and address of the permit applicant;
2. A copy of the order or decision being appealed;
3. A statement of the grounds for appeal that must include detailed and specific allegations of error and references to applicable provisions of the Code or other law.

c. The City Manager may appoint a hearing officer or City official, other than the Public Works Director, to act as the decision maker in an appeal under this section.

d. An appeal before the City Manager or his or her designee shall be heard within 30 days from the day the appeal is filed. The permit applicant shall be given an opportunity to be heard at a public hearing and shall have an opportunity to make an oral argument and present evidence.

e. The City Manager or his or her designee shall issue a final written decision with his or her findings no more than 30 days after the hearing.

14.01.080 Utility permit appeals- Superior Court

A final decision of the City Manager or his or her designee may be appealed to the Superior Court no later than 30 days following the date the decision of the hearing officer is issued. An appeal to the court must be filed according to the applicable court rules.

14.01.090 Water and sewer rate schedule

a. The City Council shall adopt, renew, review and amend, as necessary, a water and sewer rate schedule annually via resolution. Copies of the rate schedule shall be available at the Public Works Department. The schedule may also be available on the City's website.

b. The City will allow, upon approval of a written application and payment of fee established by the City Council, a second water usage meter to measure the flow of City water that is not discharged to the Sanitary System. This second meter will be read monthly and sewer charges will be credited monthly.

CHAPTER 14.04 HOMER SANITARY WASTEWATER AND SEWAGE SYSTEM

Sections:

- 14.04.010 Purpose.
- 14.04.015 Definitions.
- 14.04.018 Service connection charges.
- 14.04.020 Connection – Required.
- 14.04.030 Industrial waste.
- 14.04.050 Sewer service connection and extension permit.
- 14.04.055 Sewer connection and extension permit fee.
- 14.04.060 Disposition of revenue.
- 14.04.070 Destruction/abandonment of private sewage disposal systems.
- 14.04.080 Commercial waste disposal permit.
- 14.04.090 Industrial waste disposal permit.
- 14.04.100 Discharge of surface drainage into HSWS illegal.

14.04.010 Purpose.

It is the intent of this chapter to establish rules and regulations for the operation and installation of the Homer Sanitary Wastewater and Sewage System, which may be called the "HSWS" or the "Sanitary System" throughout this chapter. It is the goal of the City of Homer for all wastewater and sewage within City boundaries to be connected to the HSWS, ensuring proper wastewater and sewage management throughout the City. This Code should be interpreted in furtherance of that goal.

14.04.015 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings set forth below:

"ADEC" means the State of Alaska Department of Environmental Conservation.

A “directly adjacent” sewer main means either (1) the main extends the entire length of the frontage of the lot along an easement or right-of-way; or (2) it extends at least 10 feet into an easement or right-of-way adjacent to the lot and the Public Works Director determines that the main will not be extended to serve additional lots.

“Domestic sewage” means waste containing human or animal excretion, other than industrial waste.

“Dwelling” or “dwelling unit” means any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, for not more than one family.

“Industrial plant” means a plant or works producing waste material, other than domestic sewage.

“Industrial waste” means liquid or solids contained within a liquid, other than domestic sewage.

“Multiple-family dwelling” means a building or portion thereof designed for occupancy by two or more families living independently in separate dwelling units which may or may not share common entrances and/or other spaces.

“On-site sewer connection line” means the part of the sewer connection line located on the property being serviced by that line.

“Off-site sewer connection line” means the part of the sewer connection line located in a public easement or right-of-way.

“Premises” means a lot, parcel of land, building or establishment.

“Sewage” means a combination of liquid- or water-carried human waste conducted away from residences, business buildings and institutions, which is known as domestic sewage, together with the liquid- or water-carried waste resulting from a manufacturing process employed in industrial establishments, including the washing, cleaning or drain water from such process or establishment, which is known as industrial waste.

“Sewer connection line” means a line or pipe carrying sewage from a premises to a sewer main.

“Sewer extension” means an extension of the sewer main.

“Spaghetti line” means a pipe or line connecting to a sewer main that is not directly adjacent to the lot being serviced by the line or pipe.

14.04.018 Service connection charges.

A person applying for sewer service to property not previously connected to the Sanitary System shall pay a sewer connection charge, which shall include engineering costs of inspecting and/or installing the on-site sewer connection line and permit application fees and costs. The amount of the sewer connection charge and the costs included in that charge shall be published annually on the City website and a newspaper of general circulation.

14.04.020 Connection – Required.

a. Except as otherwise provided in this chapter, no person shall erect or occupy a dwelling or commercial or industrial building directly adjacent to the Sanitary System without connecting to the Sanitary System.

b. Except when expressly approved by permit, spaghetti lines are prohibited. No service will be provided to a lot that is not directly adjacent to a sewer main.

c. Where the Sanitary System is not available, a septic system may be used so long as the septic system is installed and maintained as required by ADEC and all other laws and provide adequate disposal of waste.

d. Except as otherwise provided in this section, Property owners must connect to the Sanitary System no more than three years after the owner of a property receives written notice that the Sanitary System is available to the property.

e. Property owners with compliant and fully functioning septic systems may wait to connect to the Sanitary System but shall connect to the Sanitary System before and instead of replacing or repairing any substantial component of a septic system on the property. Property owners delaying connection the Sewer System under this subsection must provide written notice of the property owner’s intent to temporarily stay connection only in compliance with the code. The notice of stay must be received by the City no more than 60 days after the City provides written notice to the property owner that the Sanitary System is available to the property. A Notice to Stay Connection is available at the Clerk’s office, the Public Works Department, and/or on the City’s website.

f. Outhouses, cesspools, privies or any private wastewater system that is not subject to approval and regulation by **ADEC** is prohibited within the City.

14.04.030 Industrial Waste.

The City shall adopt industrial pretreatment discharge and waste disposal procedures and regulations. These procedures and regulations and any amendments to them must be approved by Council via ordinance.

14.04.050 Sewer service connection and extension permit.

a. No person shall install a sewer extension or a sewer connection line without first obtaining a sewer connection permit from the City. Permit applications may be obtained from the Public Works Department, the City Clerk's office, and/or the City's website. Permit fees must be paid at the time the application is submitted. The sewer connection and extension permit fee shall include all inspection and administrative costs. All other fees for delayed or deferred services, in lieu of assessments and necessary right-of-way permits shall be in addition to the permit fee.

b. A property owner installing a sewer connection or extension which qualifies for a deferred assessment payment or makes a payment in lieu of assessment, shall pay the assessment prior to issuance of the connection or extension permit.

c. The sewer connection permit criteria shall be identified in the permit application obtained from the Public Works Office.

d. All work and materials must meet the standards and specifications as described in the permit application, Homer City Code, the Uniform Building Code, and ADEC.

e. Property owners connecting to the Sanitary System shall provide and pay for all materials, labor, and equipment for the excavation, connection and installation of the sewer line and shall be responsible for any liability, damages or costs arising from installation, excavation, and connection.

f. All sewer connections and extensions shall be inspected by the Public Works Department before the connection is used. The customer shall make arrangements with the Public Works Department at least 24 hours in advance for all required inspections.

14.04.070 Destruction/Abandonment of private sewage disposal systems.

All septic tanks, cesspools, privies, or sewage holding tank/vaults shall be removed, filled or destroyed in full compliance with Conservation requirements and the Uniform Plumbing Code.

14.04.080 Commercial waste disposal permit.

a. Except for property owners connecting to the Sanitary System for disposal of waste from a single family dwelling or property owners required to obtain an industrial waste disposal permit, all property owners must obtain a commercial waste disposal permit before discharging any waste into the Sanitary System.

b. The waste disposal permit application shall be available at the Public Works Office and may be available on the City's website. The permit fee must be paid at the time the application is submitted. The criteria for the permit shall be included in the application.

c. The Public Works Director shall issue a commercial waste disposal permit so long as:

1. The Public Works Director reasonably believes, and the property attests that the type of waste reported by the property owner will not damage the Sanitary System; and
2. The sewer pipeline has sufficient capacity to dispose of the disclosed wastes.

d. The Public Works Director or his designee may revoke, modify or impose conditions upon a disposal permit if he or she finds, in his or her sole discretion, that revocation, conditions or modifications to the permit are required to prevent or stop damage to the Sanitary System. Except when immediate action is necessary to protect the Sanitary System and prevent immediate harm to public health and sanitation, the Public Works Director shall provide notice to the property owner at least 30 days before revoking or modifying a disposal permit.

14.04.090 Industrial waste disposal permit.

a. All significant industrial users must obtain an industrial waste disposal permit from the City. A significant industrial user means an industrial user of the System who meets any one of the following criteria:

1. Is subject to or potentially subject to national pretreatment standards promulgated under Section 307(b) or (c) of the Clean Water Act;
2. Has in its wastes any priority toxic pollutants listed in 40 CFR 401.15 or 40 CFR Part 403 or listed by the Public Works Director;
3. Has in its wastes toxic pollutants as defined pursuant to Section 307 of the Clean Water Act or regulations promulgated thereto;
4. Has a discharge flow of 10,000 gallons or more of wastewater per average work day;
5. Has a flow greater than five percent of the flow into the HSWS or of the design pollutant loading capacity of the HSWS; or
6. Is determined by the Public Works Director to have a significant impact or potential for significant impact, either singly or in combination with other contributing industries, on the wastewater treatment system, the quality of sludge, the HSWS effluent quality, or air emissions generated by the HSWS.

b. The industrial waste disposal permit application shall be available at the Public Works Office, and may also be available on the City's website. The permit fee must be paid at the time the application is submitted. The criteria for the permit shall be included in the application.

c. The Public Works Director shall only issue an industrial waste disposal permit after finding that:

1. The applicant and the sewage generated on the property subject to the permit complies with the City of Homer Industrial Pretreatment and Discharge Policies as adopted by Council; and
2. The sewer pipeline has sufficient capacity to dispose of the disclosed wastes.

d. The Public Works Director or his designee may revoke, modify or impose conditions upon an industrial waste disposal permit if he or she finds, in his or her sole discretion, revocation, conditions or modifications to the permit are required to prevent or stop damage to the Sanitary System. Except when immediate action is necessary to protect the Sanitary System and prevent immediate harm to public health and sanitation, the Public Works Director shall provide notice to the property owner at least 30 days before revoking or modifying a disposal permit.

14.04.100 Discharge of surface drainage into HSWS Illegal.

No connections shall be made to any public sewer or any premises for the purpose of directing or diverting any storm water or any surface or underground drainage into the sewer, and no person shall discharge into any public sewer or house lateral any leader pipe from a roof, surface drain, underground drain or any solid or liquid waste other than the sewage composed of the ordinary liquid wastes of residences, business buildings and institutions from baths, toilets, laundries, wash tubs, sinks and floor drains. Connections of surface or groundwater to the sanitary sewer are considered illegal.

CHAPTER 14.08 HOMER PUBLIC WATER SYSTEM

Sections:

- 14.08.010 Purpose.
- 14.08.020 Definitions.
- 14.08.030 Water connections and extensions.
- 14.08.037 Water meters.
- 14.08.040 Water meter installation.
- 14.08.050 Water connection and extension permit.
- 14.08.060 Disconnection due to nonpayment.
- 14.08.070 Frozen pipes – City not liable.
- 14.08.080 Discontinuance of water.
- 14.08.090 Priority use of water.

- 14.08.100 Surplus water – Sale.
- 14.08.110 Water shortage or emergency declaration.
- 14.08.120 Water shortage or emergency – Interruption of sale of surplus water –
Other measures.
- 14.08.130 Water shortage or emergency – Appeal.
- 14.08.150 Service deposits.
- 14.08.160 Bulk water sales.
- 14.08.170 Water filling station permit.

14.08.010 Purpose.

It is the intent of this chapter to establish rules and regulations for the operation of the Homer Public Water System. The Homer Public Water System may also be called “HPWS” or the “Water System” in this chapter, permit applications, and/or City regulations and policies. The provisions in this chapter also provide for the financial management of the Water System.

14.08.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings set forth below:

“Bulk water” means water purchased from the City and supplied to the customer by means of fire hydrant, tanker truck, or by any other means other than through a direct connection from a water main to the premises where the water is consumed.

“Bulk water customer” means a person who purchases bulk water from the City.

A “directly adjacent” water main either (1) extends the entire length of the frontage of the lot along a public easement or right-of-way; or (2) extends at least 10 feet into the easement or right-of-way adjacent to the lot and the Public Works Director has determined that at no time will the water main be extended to serve additional lots.

“Reseller” or “reseller of water” means a person who purchases water from the City and, for valuable consideration, provides any quantity of such water to another person, but it shall not include any eating or drinking establishment that provides its customers City water only by the glass.

“Standard service account” means an established City water utility account for metered water service through a direct connection from the City water main to the premises served.

“Surplus water” means water that the City administration has determined, in its sole discretion, is in excess of the water needed to meet the consumption, sanitation, and fire protection needs within the boundaries of the City.

“Multiple-family dwelling” means a building or portion thereof designed for occupancy by two or more families living independently in separate dwelling units which may or may not share common entrances and/or other spaces.

“Off-site water connection line” means the part of the water connection line located in a public easement or right-of-way.

“On-site water connection line” means the part of the water connection line located on the property being serviced by that line.

“Premises” means a lot, parcel of land, building or establishment.

“Water connection line” means a line or pipe carrying water from the water main to a premises.

“Water extension” means an extension of the water main.

“Spaghetti line” means a pipe or line connecting to a sewer main that is not directly adjacent to the lot being serviced by the line or pipe.

“Water filling station” means a non-City facility used to supply bulk water from the Water System to a tanker truck or other means of conveyance.

14.08.030 Operation of water valves, fire hydrants and curb stops.

Only authorized City personnel shall operate water valves, fire hydrants, and curb stops.

14.08.040 Water meter installation.

a. Property owners must install a water meter and related components before they will be eligible to connect to the Water System. Installation of all water meters must comply with installation instructions drafted by the Public Works Department and approved by City Council and available at the City Clerk’s Office and Public Work’s office. A violation of the installation instructions shall constitute a violation of this chapter.

b. The property owner required to install the water meter shall be responsible for all costs associated with installation of that meter and its corresponding mechanisms and a rental fee for the meter from the City.

c. The City shall have the right to install a water meter remote on a building serviced or scheduled to be serviced by the Water System. The meter shall be the size and model indicated by the Public Works Director.

d. Water meters remain City property. Persons renting meters shall be responsible for damage arising from external damage and freezing. Internal wear and tear and failure of the meter due to general external wear and tear shall be the responsibility of the City. Customers shall provide reasonable access for City personnel to maintain, monitor, and service a meter.

14.08.050 Water connection and extension permit.

a. All property owners connecting to the Water System must obtain a permit prior to starting construction.

b. The Water System connection and extension permit application shall be available at the City Clerk's office, the Public Works Department, and/or on the City's website. The permit fee must be paid at the time the application is submitted. The criteria for the permit shall be included in the application.

c. The Public Works Director or his or her designee may revoke, modify or impose conditions upon a Water System permit if he or she finds, in his or her sole discretion, that revocation, conditions or modifications to the permit are required to prevent or stop damage to the Water System. Except when immediate action is necessary to protect the Water System and prevent immediate harm to public health and sanitation, the Public Works Director shall provide notice to the property owner at least 30 days before revoking or modifying a Water System permit.

d. Installation of a Water System connection or extension of a water main must meet the standards and specification in the permit application, the Homer City Code, and any applicable state or federal law or regulations, including but not limited to State of Alaska Department of Labor Occupational Safety and Health requirements.

e. A property owner installing an on-site water connection line or extending a water main is solely responsible for all costs and liability associated with or arising from the excavation, connection, and installation of the on-site water line or water main extension.

14.08.060 Disconnection due to nonpayment.

The City may discontinue water service for nonpayment of any utility service charges, connection fees and related charges. The City shall provide notice to a Water System user at least 30 days before discontinuing water service due to nonpayment.

14.08.070 Frozen pipes – City not liable.

Customers will be solely responsible for all on-property frozen water connections and extensions.

14.08.080 Discontinuance of water.

Water may at any time be shut off from water mains without notice for repairs, extensions or other necessary purposes. The City will not be liable to the customer for any loss or damage caused by disruptions in water service.

14.08.090 Priority use of water.

The first priority of use of the water produced by the Water System is to provide for human consumption, sanitation, and fire protection needs of water consumers within the boundaries of the City of Homer.

14.08.100 Surplus water – Sale.

a. Subject to subsection (b) of this section and other provisions of this chapter, water may be made available for sale to bulk water customers, resellers, and others for export or consumption outside the boundaries of the City of Homer.

b. Notwithstanding any other provision of this title, City Council may by resolution restrict, interrupt, decrease, or terminate the sale of water for export or consumption outside the boundaries of the City if Council determines it is in the best interests of the City to do so.

14.08.110 Water shortage or emergency declaration.

a. City Council may declare a water shortage and restrict the use of water within the boundaries of the City if it finds, via resolution, and after conducting a public hearing, insufficient water available to meet the sanitation, fire protection, and consumption needs within the boundaries of the City.

b. City Council may declare a surplus water shortage via resolution and restrict use of surplus water as Council deems necessary and in the City's best interest.

c. The City Manager may declare a water emergency of up to 30 days if he or she finds that there is an imminent threat or actual impairment to the City's ability to meet water supply demands. The City Manager shall submit a summary of the declaration of water emergency and the reasons for the declaration at the next regularly scheduled Council meeting.

14.08.120 Water shortage or emergency – Interruption of sale of surplus water – Other measures.

a. If a water shortage or water emergency is declared, the City shall first restrict, decrease, interrupt, or terminate the sale of surplus water. The City may take any other measures that the City determines, in its sole discretion, are necessary to address the water shortage or emergency so long as it does so without discrimination between similarly situated consumers.

b. Any measures adopted in response to a declared water shortage or emergency shall, for the duration of the period of the declared shortage or emergency, prevail over any conflicting provisions of law establishing rights of persons to receive specific or proportionate amounts of the water supply.

c. Any measures adopted in response to a declared water shortage or water emergency will be made available for public inspection at the City Clerk's office, at the City Library, and at the Public Works Department while those measures are in effect. Notice of the measures shall also be posted on the City's website within 48 hours after the declaration of the water shortage or emergency.

14.08.130 Water shortage or emergency – Appeal.

Any person aggrieved by a City Council declaration of a water shortage or water emergency under HCC 14.08.110, or by any action taken by the City in response to such a declaration, may appeal the declaration or action to the Superior Court. The appeal must be filed within 30 days from the date the declaration was adopted or action taken. The declaration or action of the City shall not be reversed except on the ground that such declaration or action was fraudulent, arbitrary, or capricious.

14.08.150 Service deposits.

a. All water service users, at the time the service is established, shall pay a deposit based on meter size, established by Council via resolution.

b. Deposits and any accrued interest shall be refunded:

1. After one year of service provided the customer has made all payments owed in full and at the time due; or

2. No more than 45 days after the date customer is disconnected from the Water System or stops receiving service. Service deposits and any interest shall first be applied to any outstanding balance owed by the disconnecting customer. If there is a balance, the remaining deposit and interest after the payment of that balance shall be refunded to the disconnecting customer.

c. Waiving of Deposits. If a customer has had utility service with the City within the last two years and paid their City utility payments on time, the Finance Department may waive the deposit requirement under this section.

d. Landlord Agreement. An owner/customer who requests an automatic continuance of utility service between renters may enter into a landlord agreement with the City for this purpose. This request should be directed to the Finance Department.

14.08.160 Bulk water sales.

a. Bulk water sales rates shall be established by City Council via resolution. The schedule for service fees shall apply to all bulk water service requests.

b. The meter deposit will be returned when the meter is returned undamaged.

c. If a bulk water customer purchases a meter from the City for measuring the quantity of water purchased it shall be exempt from the monthly meter service charge. It is the responsibility of the bulk water customer to maintain that meter so the City can accurately determine the amount of water being purchased. In the event the meter fails, the customer must repair or replace the meter at its sole expense. The City may at any time test the meter for accuracy and reject a repaired meter that it is not accurate.

14.08.170 Water filling station permit.

a. No person shall establish or operate a water filling station to obtain water from the Water System unless that person has a water filling station permit issued by the City.

b. A person shall apply for a water filling station permit on a form provided by the City. The permit application is available at the City Clerk's office, the Public Works Department, and may be available on the City's website. The permit fee must be submitted with the application.

c. The water filling station permit criteria shall be included in the permit application and any conditions and terms of the permit shall be included on the face of the permit. Water filling station permit terms and conditions may include, but are not be limited to, uniform or site-specific flow rate restrictions, storage tank requirements, and other provisions required by the Public Works Department to minimize adverse effects on the Water System and promote its efficient operation.

CHAPTER 14.50
UTILITY DISTRIBUTION FACILITIES

Sections:

14.50.010 Definitions.

14.50.020 Underground installation of cable extensions.

14.50.030 Enforcement of this chapter.

14.50.010 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Cable” includes cables and wires of all descriptions.

“Natural Gas Assessment District” means City of Homer Natural Gas Distribution Special Assessment District created by Homer City Ordinance 13-02.

“Public utility” includes every corporation, whether public, cooperative, or otherwise, company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages, or controls any plant or system for (1) furnishing, by generation, transmission, or distribution, electrical service to the public for compensation; (2) furnishing telecommunication service to the public for compensation.

“Public utility” includes all public utilities, whether or not subject to regulation by the Regulatory Commission of Alaska.

“Telecommunications” means the transmission and reception of messages, images, impressions, pictures, data, and signals by means of electricity, electromagnetic waves, and any other kind of energy, force variations, or impulses, whether conveyed by cable, wire, radiated through space, or transmitted through other media within a specified area or between designated points.

14.50.020 Underground installation of cable extensions.

After October 24, 2006, all public utility cable facilities, including, but not limited to, electric power, telephone, and telecommunications cables constructed or installed for the purpose of providing utility service to any land not served before that date by overhead cable facilities, shall be installed underground, and no cables or supporting poles shall be constructed or installed above ground for such purpose, unless the utility obtains an approved exception pursuant to HCC 22.10.055(e) or (f).

14.50.030 Enforcement of this chapter.

a. In addition to penalties and remedies set forth in this title, no permit may be issued to install a utility line on City property or in a City-owned or controlled easement or right-of-way in violation of this chapter.

Section 8: Title 17 entitled “Improvement Districts” is hereby repealed and reenacted to read as follows:

TITLE 17 PUBLIC ASSESSMENTS

Chapters:

- 17.01 General Provisions
- 17.02 Special Assessment Districts
- 17.03 Enforcement of Public Assessments
- 17.05 Homer Public Water System Assessment Fund
- 17.10 Water and Sewer Zone Connection Assessments
- 17.15 Water and Sewer Individual Connection Assessments
- 17.15 Public Utility and improvement short-term financing
- 17.20 Developer Reimbursement Plans

CHAPTER 17.01 GENERAL PROVISIONS

Sections:

- 17.01.010 Definitions.
- 17.01.020 Purpose.
- 17.01.030 Assessment authority.
- 17.01.010 Definitions.
- 17.01.010 Definitions.

For the purposes of this title, the following words and phrases shall have the meanings set forth below:

“Benefited area method” means a method of assessment that determines each parcel’s share of the assessment by dividing the total cost of the improvements on which the assessment is based by the total square footage of land benefitted by the improvement and then allocating a portion of the cost of the assessment to each parcel based upon the square footage of the land benefitted by the improvement. The Public Works Director has the authority and discretion to calculate and apply the benefited area method. The square footage included in the calculation shall include only developable land.

“Cost” means all expenses incurred by the City for an improvement, including but not limited to, advertising expenses, fees of engineers, architects and surveyors, legal fees, costs of

property acquisition, payments to construction contractors, costs of interim and long-term financing of the improvement, including costs of issuing bonds and notes, and City administrative costs.

“Developable land” means land that, in the discretion of the Public Works Director, can be reasonably developed for uses permitted within the property’s zoning district.

“District” means a special assessment district created under this chapter unless otherwise specified.

“Improvement” means a capital improvement, including without limitation streets, sidewalks, alleys and bridges; street lighting; drainage and flood control facilities; sanitary sewage collection and treatment facilities; water supply and distribution facilities; natural gas distribution facilities; and parks, playgrounds, public squares and open space.

“Public Works Director” means the Public Works Director or his or her designee. If the Public Works Director position is not filled or temporarily empty, the City Manager or his or her designee will serve as the “Public Works Director” for purposes of this Title.

“Special Assessment Application Fee” means the fee charged for the processing of the special assessment district application. The fee is approved annually by Council in the resolution adopting the City fee schedule.

“Record owner” means the person in whose name real property is listed on the property tax roll prepared by the Kenai Peninsula Borough and thus the record owner of that real property for purposes of this Title.

17.01.020 Purpose.

a. The purpose of this title is to identify the assessments the City may charge for acquiring, installing or constructing capital improvements and utility systems that benefit real property within City boundaries.

17.01.030 Assessment authority.

The City may assess all or part of the cost of a capital improvement against real property benefited by the improvement, whether the property is privately or governmentally owned, including real property that is exempt from taxation.

CHAPTER 17.02 SPECIAL ASSESSMENT DISTRICTS

Sections:

17.02.030 Purpose and authority for special assessment districts.

17.02.040 Initiation of a special assessment district.

17.02.050 Creation of a special assessment district.

17.02.060 Contract – Approval of increased costs.

17.02.070 Special assessment roll.

17.02.080 Certification of assessment roll.

17.02.090 Payment.

17.02.100 Subdivision after levy of assessments.

17.02.120 Reassessment.

17.02.130 Objection and appeal.

17.02.140 Interim financing.

17.02.150 Special assessment bonds.

17.02.160 Time limit for special assessment districts.

17.02.170 Water and sewer connections required.

~~17.02.180 Road improvement assessments for lots with two street frontages.~~ **[This section was clarified and moved to a new Chapter, HCC 17.15. The original language of the section has been edited in HCC 17.15 to permit review of the changes.]**

17.02.190 Hardship deferrals.

17.02.200 Payment in lieu of assessment.

17.02.030 Purpose and authority for special assessment districts.

a. A special assessment district may be created for the purpose of acquiring, installing or constructing a capital improvement that primarily benefits real property in the district, in contrast to capital improvements that benefit the entire community and are paid for with general government resources or improvements that benefit a specific individual parcel.

b. The purpose of this chapter is to prescribe the procedure for initiating a special assessment district, authorizing an improvement in a special assessment district, approving and levying special assessments, payment of special assessments, and the authorization of special assessment bonds, for public information and administrative guidance.

17.02.040 Initiation of special assessment district.

a. A special assessment district may be initiated by:

1. A Resolution, initiated by a Council member, the City Manager, or through the developer reimbursement application process set forth in this Title and approved by a vote of not less than three-fourths of Council; or

2. A Petition signed by 50% of the total record owners who receive notice from the City Clerk's office that they will be assessed a portion of the costs of a single capital improvement.

b. Special assessment petition applications are available from the Clerk's office. A benefitted property owner proposing a special assessment district by petition must file with the Clerk a complete special assessment petition application no more than 60 days after the notice of assessment is issued to record owners. The Clerk shall approve all properly and timely submitted applications within 10 days of the date on which the application is filed. The Clerk shall notify the petition sponsor in writing that the petition has been approved, prepare the petition, and distribute it by certified mail to all record owners of property in the proposed district no more than 30 days after the petition application is approved.

c. Upon adoption of a resolution initiating a special assessment district, or the filing of a sufficient petition with the Clerk, the City Clerk shall:

1. Schedule a meeting of record owners of real property in the proposed district, notify the record owners by mail of the date, time and location of the meeting, and include a copy of the notice in the City's regular meeting advertisement; and

2. Refer the proposed district to the Public Works Director, who shall prepare an improvement plan for the proposed district. The proposed district improvement plan shall include:

A. The boundaries of the proposed district

B. The design of the proposed improvement

C. A cost estimate for the improvement

D. The assessment allocation method used to calculate the amount owed by each record owner in the proposed district

E. The percentage of the improvement cost to be assessed against properties in the district

F. The time period over which assessments will be financed, and

G. Preliminary assessment roll for the proposed district.

3. The Public Works Director shall use the benefitted area method in calculating the assessment amount unless another method is specified in the improvement plan.

17.02.050 Creation of a special assessment district.

a. Upon completion of an improvement plan under this chapter, the City Clerk shall set a time for a public hearing on the necessity of the improvement and proposed improvement plan. Notice of the hearing shall be published at least twice in a newspaper of general circulation in the City, and mailed via certified mail to every record owner of real property in the proposed district not less than 60 days before the hearing.

b. A record owner of real property in the proposed district may file a written objection to the improvement plan with the City Clerk no later than the day before the date of the public hearing on the improvement plan. If owners of real property that would bear 50 percent or more of the assessed cost of the improvement file timely written objections, the Council may not proceed with the improvement unless it revises the improvement plan to reduce the assessed cost of the improvement that is borne by objecting record owners to less than 50 percent of the assessed cost of the improvement. If the resolution changes the district boundary in the improvement plan, the City Clerk shall notify all record owners of property included in the district under the improvement plan of the change.

c. At the noticed date and time, Council shall hold a public hearing and shall adopt a resolution approving the assessment if Council finds, via resolution, that the improvement is necessary and benefits the properties that will be assessed. Council must also approve the proposed improvement plan. The resolution shall contain a description of the improvement, the estimated cost of the improvement, the percentage of the cost to be assessed against the properties in the district, and a description of the properties to be assessed.

d. If record owners of all real property in the proposed assessment district waive in writing the notice, protest period and public hearing required under this section, the question of creating the district may be submitted to Council without such notice, protest period or public hearing.

17.02.060 Contract – Approval of increased costs.

a. After a special assessment district has been created, the City shall contract for the construction of the improvement. If the City will own the improvement, it shall solicit bids for construction of the improvement. If the City will not own the improvement, it shall contract with the owner of the improvement to provide for its construction.

b. If the cost of constructing the improvement will exceed 15 percent of the estimated cost of construction identified in the improvement plan, the City shall not contract for the construction of the improvement without first notifying all record owners in the district via certified mail of the increased cost and providing record owners in the proposed district 30 days to object to the increase.

c. If the City receives written objections from record owners collectively bearing one-half or more of the cost of the improvement, the City may not contract to construct the improvement unless it can do so at an amount not more than 15 percent above the estimated cost of construction identified in the improvement plan. The City may still impose an assessment or levy taxes on the district for the costs of developing the improvement plan so long as the record owners approved the initiation of the district and the improvement plan.

17.02.070 Special assessment roll.

a. After completion of the improvement, the City shall assess costs of the improvement and prepare an assessment roll stating for each property in the special assessment district the name and address of the record owner, Kenai Peninsula Borough parcel number, the legal description of the property, the amount assessed against the property, and the assessed value of the property as determined by the Borough Assessor.

b. Council shall certify the assessment roll by resolution.

c. Prior to certifying the assessment roll, Council shall hold a hearing. All record owners in the proposed district will have an opportunity to raise objections to the assessment roll at the hearing. At least 15 days before the hearing, the City Clerk shall send written notice of the hearing on the certification of the assessment roll by certified mail to each record owner appearing on the assessment roll and publish notice of the hearing in a newspaper of general circulation in the City.

17.02.080 Certification of assessment roll.

After the hearing the Council shall correct any errors or inequalities in the assessment roll. If an assessment is increased, a new hearing shall be set and notice published, except that a new hearing and notice is not required if all record owners of property subject to the increased assessment consent in writing to the increase. Objection to the increased assessment shall be limited to record owners of properties whose assessments were increased. When the assessment roll is corrected, the Council shall confirm the assessment roll by resolution. The City Clerk shall record the resolution and confirmed assessment roll with the District Recorder.

17.02.090 Payment.

a. In the resolution certifying the assessment roll, Council shall fix the time or times when assessments or assessment installments are due, the amount of penalty on a delinquent payment and the rate of interest on the unpaid balance of an assessment. An assessment that is to be paid in a single payment shall not be due before 60 days after billing.

b. Within 30 days after fixing the time when payment of the assessments is due, the Finance Director shall mail a statement to the record owner of each assessed property identifying the property and stating the assessment amount, the payment due date, and the amount of the penalty on a delinquent payment. Within five days after mailing the statements, the Finance Director shall publish notice of mailing the statements in a newspaper of general circulation in the City.

17.02.100 Subdivision after levy of assessments.

a. Except as otherwise provided in this section or required by a governing tariff, a “subdivided property connection fee” shall be paid before subdivided lots may be connected to an improvement for which the original assessment was levied.

b. The “subdivided property connection fee” shall only be required when the original assessment on the pre-subdivided lot was apportioned equally between parcels and was not apportioned based upon lot size or area.

c. The amount of the “subdivided property connection fee” shall be equal to the amount of the original assessment adjusted by the increase in the number of parcels.

d. If the original assessment was payable in installments the City may enter into a written agreement for the payment of the connection fee in installments on terms that are substantially the same as those authorized for the payment of the original assessment, secured by a deed of trust on the parcel.

e. Upon the subdivision of a property assessed as a single parcel in an assessment district for natural gas distribution improvements where assessments were levied in an equal amount per parcel (i.e., without regard to parcel area, dimension or other characteristic), the assessment levied on the property that is to be subdivided shall be paid in full before the recording of the final plat. No parcel that results from the subdivision shall be subject to assessment for the improvements, but shall be charged for connecting to the improvements in accordance with the tariff of the public utility that provides natural gas service to the parcel.

f. Subdivisions of lots included in the original assessment shall only incur the “subdivided property connection fee” when the subdivision of the lot occurs on or before the date the total assessment for the district is paid in full.

g. All subdivided property connection fees collected under this section shall be deposited in the Homer Accelerated Water Sewer Program fund.

17.02.120 Reassessment.

a. Council shall within one year correct any deficiency in a special assessment found by a court, under the procedure for certification of the assessment roll in HCC 17.02.

b. Payments on the initial assessment are credited to the property upon reassessment. The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the assessment procedure.

17.02.130 Objection and appeal.

a. An assessment may only be contested by a person who filed a written objection to the assessment roll before its certification. Council's decision regarding an objection to the assessment role is final and may be appealed to the Superior Court within 30 days after the date of certification of the assessment roll.

b. If no objection is filed or appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects.

17.02.140 Interim financing.

a. Council may provide by resolution or ordinance for the issuance of notes to pay the costs of an improvement from the special assessments for that improvement. The notes shall bear interest at a rate or rates authorized by the resolution or ordinance, and shall be redeemed either in cash or bonds for the improvement project.

b. Notes issued against assessments shall be claims against the assessments that are prior and superior to a right, lien or claim of a surety on the bond given to the City to secure the performance of the contract for construction of the improvement, or to secure the payment of persons who have performed work or furnished materials under the contract.

c. The Finance Director may accept notes against special assessments on conditions prescribed by the Council in payment of:

1. Assessments against which the notes were issued in order of priority;
2. Judgments rendered against property owners who have become delinquent in the payment of assessments; and
3. Certificates of purchase when property has been sold under execution or at tax sale for failure to pay the assessments.

17.02.150 Special assessment bonds.

a. Council by ordinance may authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of the bonds shall be payable solely from the special assessments levied against property in the district. The assessment shall constitute a sinking fund for the payment of principal and interest on the bonds. The benefited property may be pledged by the Council to secure payment of the bonds.

b. On default in a payment due on a special assessment bond, a bondholder may enforce payment of principal, interest, and costs of collection in a civil action in the same manner and

with the same effect as actions for the foreclosure of mortgages on real property. Foreclosure shall be against all property on which assessments are in default. The period for redemption is the same as for a mortgage foreclosure on real property.

c. Before the Council may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover a deficiency in meeting payments of principal and interest on bonds if the reason for the deficiency is nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund.

17.02.160 Time limit for special assessment districts.

a. If five or more years elapse between the creation of a special assessment district and the City contracting for construction of the improvement, the City may not enter into the contract unless the Council by resolution extends the period for entering into the contract by not more than an additional five years.

b. Before the Council acts on a resolution under subsection (a) of this section, the City Clerk shall mail notice of the resolution to each current record owner of property listed on the preliminary assessment roll that the City will not contract for construction of the improvement in the district unless the resolution is adopted. The notice also shall include an updated copy of the preliminary assessment roll.

17.02.170 Water and sewer connections required.

Except as otherwise provided in Title 14, the owner of property in a water or sewer special assessment district that contains an occupied building shall connect to the improvement constructed in the district within three years after the date that the resolution confirming the assessment roll for the district becomes final.

17.02.190 Hardship Deferrals.

a. A person may obtain a deferment of assessment payments under this section if the person:

1. Has an annual family income that is less than 200% of the current U.S. Health and Human Services Poverty Guidelines for Alaska;
2. Is the record owner of the assessed property, and permanently resides in a single-family dwelling on the property; and
3. Is not determined by the City, after notice and hearing, to have been conveyed the property primarily for the purpose of obtaining the deferment.

b. A person seeking deferment of an assessment payment shall file a written application with the Finance Director supported by documentation showing that the applicant meets the

criteria in subsection (a) of this section. A person requesting an assessment payment deferment the first year the assessment is levied must file an application for deferment with the City no more than 15 days after receiving the initial assessment. A person requesting an assessment payment deferment under this section in any year after the first year must file an application for deferment no later than April 15th of the year for which the deferment is sought. A person must file an application each year for which deferment is sought and shall be required to prove eligibility for deferment as of January 1st of each year for which a deferment is requested. Within the same year the City for good cause shown may waive the claimant's failure to make timely application and approve the application as if timely filed.

c. A person who receives an assessment payment deferment shall execute a deed of trust on the property subject to assessment, together with a promissory note payable to the City on demand, to secure the eventual payment of the deferred payment.

d. A deferred assessment payment shall be immediately due and payable upon the earlier to occur of the following events:

1. The sale or lease of the assessed property; or
2. The death of both the deferred assessment applicant and the applicant's surviving spouse, if any.

e. Except for assessments imposed upon the Natural Gas Assessment District, hardship deferrals are not available from assessment payments for the infrastructure of a privately owned utility.

17.02.200 Payment in lieu of assessment.

a. A payment in lieu of assessment may be available to owners of property outside a special assessment district who want to connect to the improvement funded by a special assessment district. In order to qualify for connection to an improvement under this section, the record owner of the property and the City shall enter into a written agreement. The record owner shall agree in writing to:

1. Pay the full and actual costs of extending the benefit of the improvement onto their property; and
2. Pay in full the property's pro-rated share of the assessed improvement.

b. The Public Works Director retains authority to deny a request for extension of an improvement under this section.

c. A payment in lieu of assessment must be paid in an equal or shorter period than the term of the original assessment.

d. Property accessing an improvement under this section may be included in a special assessment district for the same service created in the future. If a property is included in an assessment district under this subsection, the property will receive a credit towards the total assessment equal to (1) the amount of the “in lieu of assessment” already paid for the property or (2) the amount of the assessment levied on the property in the future special assessment district, whichever amount is less.

CHAPTER 17.03

ENFORCEMENT OF PUBLIC ASSESSMENTS

Sections:

17.03.010 Delinquent assessment payments-enforcement.

17.03.020 Priority of lien.

17.03.010 Delinquent assessment payments-enforcement.

a. Assessments under this title and any interest or penalties on these assessments are liens on the property assessed.

b. Foreclosure of assessment liens shall be in accordance with the procedures required for foreclosure of property tax liens under Alaska Statute.

17.03.020 Priority of Lien.

a. Assessments under this title and any interest or penalties on these assessments are liens on the property assessed and are prior and paramount to all liens except municipal tax liens. Assessment liens may be enforced as provided in this Code and AS 29.45.320-29.45.470 for enforcement of property tax liens.

b. Assessment liens run with the land, and that portion of the assessment under the assessment contract that has not yet become due is not eliminated by foreclosure of a property tax lien.

CHAPTER 17.15

ROAD IMPROVEMENT ASSESSMENTS

Sections

17.15.010 Partial payment for inaccessible frontage road.

17.15.020 Corner lot assessment.

17.15.010 Partial payment for inaccessible frontage road.

a. The record owner of a through lot or flag lot may delay payment of the part of an assessment for road improvements that is based on frontage on a road to which the lot does

not yet have access. To delay payment under this section, the owner shall enter into a delayed payment agreement with the City before the end of the period for filing objections to the district under HCC 17.01.050.

b. A delayed payment agreement shall include provisions confirming:

1. The lot fronts two streets but only has access to one of those streets;

2. The lot owner agrees to pay the part of the assessment based on frontage on the street to which the lot has access; and

3. When and if the lot acquires access to the other street the property fronts, the owner agrees to the remaining part of the assessment.

c. A delayed payment agreement shall be recorded with the District Recorder's office.

17.15.010 Corner lot assessment.

The assessment for road improvements against a corner lot shall be based only on the longer of the lot's road frontages.

CHAPTER 17.18 DEVELOPER REIMBURSEMENT PROGRAM

Sections:

17.18.010 Purpose.

17.18.020 Definitions.

17.18.030 Developer Requested Special Assessment District

17.18.040 Developer Incentive and Reimbursement Program

17.18.010 Purpose.

It is the intent of this chapter to provide incentive through reimbursement and access to the City's special assessment district process and procedures to developers expanding access to public utilities and capital improvements within the boundaries of the City.

17.18.020 Definitions.

In this chapter, unless otherwise provided, or the context otherwise requires, the following words and phrases shall have the meaning set forth below:

"Benefiting property" means one or more parcel(s) of real property which are adjacent to, will benefit from, or are likely to require connection to a Municipal Improvement.

“Cost of Construction” means the developer’s actual direct cost of constructing a Municipal Improvement.

“Developer” means an owner of real property who is developing his, her, or its real property.

“Developer Reimbursement Agreement” means a written contract between the City, as approved by the Council, and one or more developers, which provides for reimbursement of a portion of the Costs of Construction of a Municipal Improvement by a developer, and the method for assessing the pro rata share of the Costs of Construction of a Municipal Improvement to Benefitted Property.

“Municipal Improvement” means water, sewer, electrical, and/or storm water systems or other capital improvements which have been designed and constructed according to City standards, approved by the City, accepted by the City, and provide potential benefits and/or service to Benefitted Property.

17.18.030 Developer Requested Special Assessment District.

a. A developer may request a Resolution of the Council approving a special assessment district in connection with the construction of a Municipal Improvement as set forth in HCC 17.02.040.

b. A request for special assessment district initiated by a developer shall be filed on the Special Assessment District Resolution Request Form, which is available from the City Clerk’s Office.

c. The developer’s request must include all information required by the Special Assessment District Resolution Request Form, including, without limitation, a description of the boundaries of the district requested and the Municipal Improvement the developer intends to construct or extend, a cost estimate for the improvements to be constructed, the proposed method used to calculate the amount claimed by each record owner of Benefitted Property in the proposed district, the percentage of the improvement cost to be assessed to Benefitted Properties within the district, and the percentage of the improvement cost to be assessed to the developer’s property and/or project.

d. Upon adoption of a Resolution of Council finding there is a necessity for the special assessment district identified by the developer in the developer’s application and the initiation of the special assessment district process under this chapter, a Developer Reimbursement Agreement must also be presented to Council for approval. This agreement must include the terms and conditions of the improvement plan and the proposed construction and installation terms by the Contractor.

17.18.040 Developer Incentive and Reimbursement Program.

a. If Council approves the district and the Developer Reimbursement Agreement under the procedures set forth in Title 17.02, and upon completion of the approved Municipal Improvement in accordance with the City's standards and acceptance of the same by the City, and only to the extent permitted by law, the City shall transfer any payments received by the City in payment for the assessments within the district. The City will disburse any payments received from property owners in the district to the developer within 90 days from the date the City collects or receives the assessment payment.

b. The City may collect, but is not required to collect, the amounts assessed to any Benefitted Property for the pro rata share of the developer's Costs of Construction. The Pro Rata Payment must be paid before any Benefitted Property connects to or uses the Municipal Improvement. No Benefitted Property is permitted to connect to or use the Municipal Improvement without first making the Pro Rata Payment. The Pro Rata Payment is in addition to any connection fees, service fees, or other fees that may be charged for connection and/or use of the Municipal Improvement, or any other fees chargeable by the City under the Code for the construction of a particular Municipal Improvement.

c. The City accepts no liability to collect any Pro Rata Payment from the owners of Benefitted Property, or in the event of non-payment, to pursue enforcement for non-payment of any Pro Rata Payment, or to disconnect or remove any Benefitted Property from the Municipal Improvement for non-payment of a Pro Rata Payment. The City assumes no liability or responsibility regarding the enforceability of any Reimbursement Agreement, or the developer's ability to seek a Pro Rata Payment. To the extent permitted by law, enforcement matters relating in any way to a Pro Rata Payment, or recovery or reimbursement of any Costs of Construction, shall be the sole responsibility of the private developer.

Section 9: This ordinance is of a permanent and general character and shall be included in the Homer City Code.

ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER THIS ____ DAY OF _____, 2019.

CITY OF HOMER

KEN CASTNER, MAYOR

ATTEST:

MELISSA JACOBSEN, MMC, CITY CLERK

1337

1338 YES:

1339 NO:

1340 ABSTAIN:

1341 ABSENT:

1342

1343 First Reading:

1344 Public Hearing:

1345 Second Reading:

1346 Effective Date:

1347

1348

1349 Reviewed and approved as to form:

1350

1351 _____

1352 Katie Koester, City Manager

1353

1354 Date: _____

1355

1356

Holly Wells, City Attorney

Date: _____



Memorandum 19-080

TO: Mayor Castner and Homer City Council

FROM: Councilmembers Lord & Stroozas

DATE: July 3, 2019

SUBJECT: July 10 Worksession Regarding Ordinance 19-23(S)

The purpose of this memo is to outline our conversation for the upcoming Title 14/17 worksession on July 10th. We propose the primary goal of that worksession will be to develop a working document that moves the conversation forward. That document will include:

1. Changes/updates agreed upon at the worksession that can be incorporated into a draft revision of Ord. 19-23(S)
2. Questions that need more discussion (during the worksession Council will task sponsors with collecting feedback and returning to the body with recommendations)
3. Items Council can agree to put in a parking lot for a later date (with timeline for addressing them separately from this ordinance)
4. Next steps and associated timelines

Title 14 Points of Conversation

During our June 24th Council worksession, our discussion focused on Title 14. Councilmembers and the Mayor raised a number of questions and flags that are outlined below (transcribed from the notes taken by Katie on the flip chart during our meeting). If you had a concern that was flagged, or one not listed below, please come to the worksession on July 10th prepared to flush out your concerns in more detail. With Council's agreement, we will suggest a prioritized order for the discussion that starts us off with the biggest high-level questions and moves from there to the (hopefully) simpler ones.

General Comments

- Extraterritorial equals water service in proposed Homer City Code.

- **Councilmember Aderhold** – Our service area is inclusive than extraterritorial. This does not include sewer.
- **Councilmember Smith** – RCA service area?

14.01 - Public Utility Systems-General Provisions

- **Councilmember Smith** – What constitutes rules and regulations? Where else in code do we designate this authority?
 - **Attorney Wells** – Admin can draft policy as directed in code (manuals, forms, permits).
- Industrial Waste is duplicative. Separate from commercial. HCC 14.090 to follow HCC 14.030.
- **Councilmember Smith** – Get rid of “sanitary system.” Use only 1 term. Use acronym.

14.04.100-Discharge of surface drainage into HSWS Illegal

- **Mayor Castner** – Keep more than surface drainage out. Better described in more detail below. Take out the word ‘surface.’

14.08.030 - Water connections and extensions

- **Councilmember Smith** – Define ‘surplus’ and ‘bulk’
 - ‘Surplus’ defined by PHCC 14.08.020, Lines 500 – 502 as being synonymous with ‘*in excess of*’
 - “Surplus water” means water that the City administration has determined, in its sole discretion, is in excess of the water needed to meet the consumption, sanitation, and fire protection needs within the boundaries of the City.
 - ‘Bulk’ defined by PHCC 14.08.020, Lines 482 – 484 as being synonymous with ‘*cargo*’
 - “Bulk water” means water purchased from the City and supplied to the customer by means of fire hydrant, tanker truck, or by any other means other than through a direct connection from a water main to the premises where the water is consumed.
- **Mayor Castner** – Line 502: “*protection needs within the boundaries of the City.*”

14.08.060 - Disconnection due to nonpayment

- **Councilmember Erickson** – Disconnection due to nonpayment
- **Councilmember Smith** – Freezing pipes. Include “from the stub out” to clarify (curb-stop)

Title 17 Proposed Points of Conversation

- Title 17 comments from June 24th worksession notes:
 - **Councilmember Smith** - Line 906 - Benefited area: “3. *The Public Works Director shall use the benefited area method in calculating the...*”
 - **Councilmember Smith** - HCC 17.02.100 – How gas impacts a subdivision

Sponsors Lord and Stroozas highlighted sections of Title 17 in Memorandum 19-058 that need further input by the Body:

PHCC 17.02.010 - Definitions

- This section provides definitions for benefited area and developable land, providing a clear alternative to equal area assessments and maintaining flexibility in establishing the assessment method for a district. **Discuss Benefited Area as preferred methodology for levying assessments**

HCC/PHCC 17.02.100 - Subdivision after levy of assessments

- This section is a revision of the subdivision after levy of assessment section of current code which you may recall from Ordinance 18.18 (failed). This proposal clarifies the calculation of the connection fee, and provides for a sunset date equal to the financing terms for the original assessment. **Discuss proposed changes to how city policy deals with a property owner who subdivides including sunset date and fund reverting to HAWSP**

HCC 17.04.190/PHCC 17.04.190 - Deferment of assessment payments for low income residents

- This section increases the qualifying income to 200% instead of 125% to be consistent with surrounding communities on the Kenai Peninsula. This would mean a family of four making less than \$64,380 would be able to qualify for a hardship deferral (vs. the current guideline of 125% or \$40,237). **Discuss expansion of eligible applicant pool for deferred assessments**

HCC 17.04.200/PHCC 17.02.200 -Payment in lieu of assessment

- This section provides a clear process for properties outside an assessment district to join the district. **Explain history of in lieu of assessment code and the rare need for this section of code via an example**

Next Steps

Updates to Title 14 and 17 are massive and far reaching. Once the code has been updated, other policy documents will need to be created or updated. One way Council could tackle this issue is to give Ordinance 19-23 an effective date of January 1, 2020, which would give time to work through the next steps.

As detailed in Attorney Wells' Memorandum 19-063, the next steps for this project include:

- a. Council adoption of permits for water and sewer system extension and connection and waste disposal (both commercial and industrial)
- b. Updating Fine Schedule to include penalties for non-compliance with sections of city code adopted in these chapters
- c. Updating Fee Schedule for permit application and appeal fees
- d. Updating the HART and HAWSP Policy Manual to reflect changes in SAD process (including conversation on how and when to re-open HAWSP for projects)



Memorandum 19-058

TO: MAYOR CASTNER AND HOMER CITY COUNCIL

FROM: COUNCIL MEMBERS LORD AND STROOZAS

DATE: MAY 22, 2019

SUBJECT: REWRITE OF HOMER CITY CODE TITLE 14 AND TITLE 17

Ordinance 19-23 provides a major overhaul of our City Code regarding water and sewer public utilities and special assessment districts. The legal memo outlines the major changes, encompassing both the proposed structural and policy changes. We have reserved June 11, 2019 at 4:00 p.m. for a worksession on this Ordinance, and we propose at least two public hearings to ensure time for both the public and Council to review and digest these proposed changes.

This is a huge undertaking, and we want to highlight several proposed **policy changes for the Council's** attention:

- Proposed Homer City Code (PHCC) 14.01. While also providing a critical consolidation of general **provisions for Homer's water and sewer utilities, this section also includes basic language that is a skeleton of Ordinance 19-19 (14.04.010)**. We understand these are moving simultaneously, and suggest that the language be maintained in this Ordinance as a place-holder while 19-19 moves through the public process. As this Ordinance will likely take substantially longer to move, an amendment can be made to replace the language on Page 2, Lines 24-26 as appropriate. Note that this Ordinance also proposes deleting HCC 14.04.115
- Homer City Code (HCC)/PHCC 14.04.02 (Page 4 of the legal memo)
- HCC 14.30 deleted, revised and moved to PHCC 17.18. Pulls the developer reimbursement program in line with the special assessment district process and provides clarity on City responsibility (Page 7 of the legal memo)
- PHCC 17.02.010 Provides definitions for benefited area and developable land, providing a clear alternative to equal area assessments and maintaining flexibility in establishing the assessment method for a district.
- HCC/PHCC 17.02.100 is a revision of the subdivision after levy of assessment section of current code which you may recall from Ordinance 18.18 (failed). This proposal clarifies the calculation of the connection fee, and provides for a sunset date equal to the financing terms for the original assessment.
- HCC 17.04.190/PHCC 17.04.190 increases the qualifying income to 200% instead of 125% to be consistent with surrounding communities on the Kenai Peninsula. This would mean a family of four making less than \$64,380 would be able to qualify for a hardship deferral (vs. the current guideline of 125% or \$40,237).

- HCC 17.04.200/PHCC 17.02.200 Provides a clear process for properties outside an assessment district to join the district. See the accompanying diagram.

Future work, following on the heels of this Ordinance, will include updates to HCC 11.38 (the developer reimbursement program for roads), the HAWSP/HART policy manuals, the fee schedule, and a review of the penalty schedule (a copy of our current schedule is included in this packet for your reference).

Similar to the legal memo provided by BHBC, this does not encompass all of the substantive changes in the Ordinance. However, it does highlight significant points that we believe the Council should review and discuss at a minimum, and we look forward to the conversation.

**CITY OF HOMER
HOMER, ALASKA**

*Failed
4/23/18*

Lord

ORDINANCE 18-18

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA
REPEALING HOMER CITY CODE 17.04.100, SUBDIVISION AFTER
LEVY OF ASSESSMENT.

WHEREAS, Homer City Code 17.04.100 requires that a subdivision connection fee be collected when a property assessed as a single parcel in an assessment district where assessments were levied in an equal amount per parcel creates a new lot by subdividing and connects to the improvement; and

WHEREAS, The subdivision connection fee is substantially equal to the amount of the original assessment; and

WHEREAS, The levying of a subdivision connection fee discourages subdividing and infill where costly water and sewer infrastructure is installed; and

WHEREAS, It is in the best interest of the City to have more customers on the Water and Sewer System to share in the cost of maintaining the system; and

WHEREAS, Encouraging infill is will also help with the City of Homer's Comprehensive Plan Goal 9 under the Economic Vitality Chapter to provide affordable housing by creating smaller, affordable lots with city services; and

WHEREAS, In recognition of the impacts of levying a subdivision connection fee the Homer City Council exempted the Homer Natural Gas Line Special Assessment District from HCC 17.04.100 when it was established; and

WHEREAS, The Homer City Council recognizes there may be other issues that need to addressed in Title 14, Public Services and Title 17, Improvement Districts and directs the City Manager to work with the City Attorney to simplify and improve these sections of code.

NOW, THEREFORE, The City of Homer Ordains:

Section 1. Homer City Code 17.04.100 Subdivision after levy of assessments is hereby repealed:

~~a. Except as provided in subsections (b) and (c) of this section, upon the subdivision of a property assessed as a single parcel, the amount of the assessment shall be allocated among~~

the resulting lots that benefit from the improvement on the same basis that the assessment originally was allocated.

b. Except as provided in subsection (c) of this section, upon the subdivision of a property assessed as a single parcel in an assessment district where assessments were levied in an equal amount per parcel (i.e., without regard to parcel area, dimension or other characteristic), then no resulting parcel, other than the parcel that contains the original connection to the improvement for which the assessment was levied, may connect to the improvement until a subdivided property connection fee is paid for the parcel.

1. The amount of the connection fee shall be equal to the amount of the original assessment, adjusted up or down by a percentage equal to the change in the Consumer Price Index, All Urban Consumers (CPI-U) for Anchorage, Alaska, from the end of the calendar year preceding the original assessment date to the end of the calendar year preceding the date the parcel is connected to the improvement.

2. If the original assessment was payable in installments the City may enter into a written agreement for the payment of the connection fee in installments on terms that are substantially the same as those authorized for the payment of the original assessment, secured by a deed of trust on the parcel.

3. Upon receiving connection fee payments, the City shall allocate such payments to each property assessed in the district in proportion to the amount originally assessed against the property, either by adjusting the original assessment amount or disbursing a payment to the record owner at the time of disbursement.

c. Upon the subdivision of a property assessed as a single parcel in an assessment district for natural gas distribution improvements where assessments were levied in an equal amount per parcel (i.e., without regard to parcel area, dimension or other characteristic), the assessment levied on the property that is to be subdivided shall be paid in full before the recording of the final plat. No parcel that results from the subdivision shall be subject to assessment for the improvements, but shall be charged for connecting to the improvements in accordance with the tariff of the public utility that provides natural gas service to the parcel. [Ord. 15-11 § 1, 2015; Ord. 12-15 § 1, 2012].

Section 2: This ordinance shall take effect upon its adoption by City Council.

Section 3: This ordinance is of a permanent and general character and shall be included in the City Code.

ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this ____ day of _____, 2018.

CITY OF HOMER

BRYAN ZAK, MAYOR

ATTEST:

MELISSA JACOBSEN, MMC, CITY CLERK

YES:

NO:

ABSTAIN:

ABSENT:

First Reading:

Public Hearing:

Second Reading:

Effective Date:

Reviewed and Approved as to form and content:

Katie Koester, City Manager

Holly Wells, City Attorney

Date: _____

Date: _____

MEMORANDUM 19-063

**TO: HOMER CITY COUNCIL
CITY MANAGER KATIE KOESTER**

FROM: HOLLY C. WELLS

**RE: ORDINANCE 19-23: PUBLIC UTILITY SYSTEM AND SPECIAL
ASSESSMENTS ORDINANCE**

CLIENT: CITY OF HOMER

FILE NO.: 506,742.27

DATE: MAY 22, 2019

Introduction

In early 2018 City Council Member Lord and City administration requested a review of the public utility provisions in the Homer City Code and City practices and procedures regarding public utilities to ensure they were up to date, clear, and consistent. As a result of the substantive review, Ordinance 19-23 proposes substantial changes to the Code's public utility provisions to address the current inconsistencies and outdated procedures enumerated in the Code. The purpose of this memorandum is to provide a blueprint to Council and the public regarding the revisions proposed in Ordinance 19-23. This ordinance was designed to accomplish several goals:

1. Place all Homer City Code provisions that require property owners to pay for public utilities or improvements into one area in the Code so property owners know what to expect.
2. Create clear public utility and improvement assessment procedures that can be consistently applied and anticipated by property owners and future purchasers and investors.
3. Ensure that local laws reflect local practice, obligations, and needs.

To this end, this memorandum provides a summary of the proposed substantial changes and the reasons for these changes. It includes tables specifically enumerating most of the changes made to ensure Council focuses on these changes during its consideration of the Ordinance. Of course, in light of the significant changes, this memo should be supplemented with public hearings and Council work sessions to ensure that all of the changes, and the effects of these changes, are understood.

The Reasons Behind the Rewrite

In order to understand the proposed changes, it is helpful to understand the current relevant titles of the Code.

Current Title 14

Currently, Title 14 entitled “Public Services” regulates both the water and sewer systems within the City but has separate sections governing both. While many of the processes related to management of the Homer sewer and water systems are the same, the Code provisions were adopted and apply to each system separately. Additional provisions were adopted or changed sporadically over the last 50 years, with enactment in the late 1960s and the latest amendment in 2013.¹ As a result of the disjointed evolution of HCC Title 14, utility users must be familiar with Code provisions in different Code locations in order to understand their obligations. The inclusion of water and sewer management provisions in multiple Code titles increases the potential for unintended violations of the City Code and leads to frustration among those attempting to comply with local law.

The most substantial changes to Title 14 involve:

1) consolidating common terms and provisions that apply to all Homer’s public utility systems into a single “general provisions” section;

2) integrating Code provisions from Title 13, namely Chapters 13.24 and 13.28, governing the management of the public utility systems into Title 14 so individuals connecting into the systems and users of the system have one place in the Code to look for all the relevant regulations;

3) removing conflicting or inconsistent terminology and requirements in order to ensure that the laws governing the systems are user-friendly; and

4) consolidating the permit and appeals procedures to the greatest extent possible to encourage compliance and ensure the public knows its rights, remedies, and responsibilities.

¹ See Ordinance 13-30(A), which amended HCC 14.08.080 and 14.04.040 to adopt the respective water and sewer rate schedules annually via resolution. Ordinance 90-24(A) repealed and reenacted HCC 14.04, 14.05, and 14.08 to add the industrial wastewater treatment regulations required by the Environmental Protection Agency and the Clean Water Act and to create a mechanism to bill fish processors separately for their water since they use large amounts of water but that water does not enter the City sewer system.

The Ordinance also removes the highly technical and lengthy industrial pretreatment and sewage system regulations in HCC Chapter 14.05 and places them in procedures and regulations approved by Council. To this end, Council will have a resolution approving the industrial waste management policy manual and the proposed manual before it for review in June. The removal of the industrial waste management provisions from the Code and the placement of these requirements into a policy manual prevents the average user of City utilities from being confused or misdirected by the industrial waste requirements.

Current Title 17

Unlike HCC Title 14, HCC Title 17, entitled “Improvement Districts,” has been recently updated and the current special assessment procedure provides a fairly straightforward, albeit in-depth, process for creating a special assessment district. However, additional provisions regarding assessment for public utilities are located in Title 14 and in other areas of the Code. Exceptions to the assessment districts or programs such as the developer reimbursement program are codified in separate titles or, in some cases, by agreement. This inconsistency in process does not provide for a user-friendly assessment process.

The Ordinance consolidates all public assessment processes in Title 17 and incorporates the developer reimbursement program into the special assessment district procedure. The assessment procedures were also changed to adopt a presumed “benefited area” method of assessment while preserving the ability for different methodologies to be used when more appropriate in a particular district. The proposed Title requires a subdividing lot owner to pay the subdivision connection fee in assessment districts where the assessment was equally apportioned between the existing lots but it limits imposition of the assessment fee on subdivided lots to those created before the original assessment amount is paid in full.

Given the unique terrain in Homer, affording flexibility in the assessment methodology provides the City more options to ensure fair and tailored cost distribution in a given district. The Ordinance also directs the Public Works Director rather than Council, to review and approve hardship deferral requests, which provides greater confidentiality to those seeking such a deferment.

Other Relevant Current Code Provisions: HCC 9.08, 11.30, 13.24, AND 13.28

In addition to Title 14 and 17, it is also helpful to examine HCC 9.08, 11.30, 13.24, and 13.28. While these provisions are being repealed, the content of these provisions has been updated and incorporated into the proposed provisions in the Ordinance.

Chapter 9.08 entitled “Enforcement of Local Improvement District Assessments” was codified in the late 1960s. It appears that these provisions properly reflect the process for collecting delinquent assessments under Alaska Statutes. However, Alaska statutes are ever changing and HCC 9.08 does not ensure that the City’s lien enforcement

procedure will change with the statutory requirements. Accordingly, HCC 9.08 was repealed and the identification of delinquent assessment payments as liens and the incorporation of the state process for enforcing and foreclosing on such liens using the property tax procedure was incorporated into HCC 17.03. This ensures that all the provisions regarding public assessments are in one title and easy to locate.

Similarly, HCC Chapter 13.24 entitled “Sanitary Systems” and HCC 13.28 entitled “Water Systems” were both relocated to ensure a user-friendly Code. These provisions were also adopted decades ago as part of a City project to update its construction design manual. The focus of the Council at the time of adoption was to ensure uniform construction practices within City right-of-ways. However, the interplay between the construction practice requirements with management and operation of City water and sewer systems was not anticipated. As a result, many of the definitions and expectations are inconsistent or disjointed. To this end, the Ordinance removes these provisions from the “Standard Construction Practices” title and places them in the respective sections governing the water and sewer systems. The Ordinance also removes many of the specific technical requirements addressed in HCC 13.24 and 13.28 and places those in a permit application process. The permit applications will be presented to Council for review and approval alongside the industrial waste management manual referenced above.

While the majority of Code provisions governing public projects and assessments have been addressed in the Ordinance, HCC 11.30 entitled “Street Extension Cost Reimbursement Plan,” which addresses reimbursement of developers for road projects that benefit adjacent property owners, has not. Although I recommend Council eventually review and update Chapter 11.30 and relocate it if warranted, a review of the road improvement practices will require pointed and independent consideration by Council and the administration and would be difficult to do alongside the Title 14 revisions. For now, Title 11 governs construction of streets, sidewalks, and driveways and thus a developer intending to construct a road will likely turn to Title 11 before beginning road construction and will be aware of the reimbursement program detailed in HCC 11.30. Consequently, HCC 11.30 has not been revised or relocated at this time.

Understanding the Proposed Changes

While the above provides an overview of the most substantial changes in the Ordinance, the following tables present a more detailed summary of the differences between the governing law in this area and the Code provisions proposed in the Ordinance. The first table shows the differences between existing Code Title 14 and Title 14 as proposed in the Ordinance. The second table shows the differences between existing Code Title 17 and Title 17 as proposed in the Ordinance. For ease of reference, the current code is referred to as HCC but proposed sections are identified as PHCC.

Table 1: Title 14 Comparison

Current HCC Title 14	The Ordinance
No Chapter 14.01	PHCC Chapter 14.01 was added to consolidate general provisions that apply to all utilities. It includes a definition of the “service area,” the City Manager’s rulemaking authority, City immunity, and contractor licensure requirements. It also incorporates the appeal and violation procedures that apply to all violations of Title 14 and all Title 14 permit appeals. PHCC 14.01.045 provides the process for setting both water and sewer rate schedules.
No purpose section in HCC 14.04	PHCC 14.04.010 “Purpose” added. This section provides a formal name for the City’s system, namely, the “Homer Sanitary Wastewater and Sewage System” and recognizes the general purpose of the Code to ensure that all properties are eventually connected to the City’s system.
HCC 14.04.010 Definitions	PHCC 14.04.010 is the purpose section and definitions are in PHCC 14.04.015. “Definitions” have been revised to remove definitions not referenced in Title 14 and adds definitions for important terms such as “directly adjacent,” “on-site sewer connection line,” “off-site sewer connection line,” “sewer connection line,” and “spaghetti line.” The Ordinance revises the Code to ensure these defined terms are consistently and uniformly used throughout.
No HCC 14.04.018	PHCC 14.04.018 “Service Connection Charges” consolidates numerous sections regarding fees and costs surrounding connection in one user-friendly location.
HCC 14.04.020 “Connection-Required” Exempts “alternative sanitary facilities” in one subsection but requires all properties to connect to the system when available in another subsection.	PHCC 14.04.020 “Connection-Required” provides property owners three years instead of just one to connect to the City System and provides an exemption from connection for those with compliant and fully-functioning septic systems until those systems require replacement or substantial repair.

HCC 14.04.050 "Sewer service connections and extensions"	PHCC 14.04.050 "Sewer Service connections and extensions permits" removes the lengthy references to the standards and specifications needed to install a connection or extension and instead creates a permit process. This allows the property owner to access the permit application and have clearly-delineated requirements applicable to that process. It also allows the City to update the permit criteria as needed.
HCC 14.04.060 "Disposition of Revenue"	Removed: Provision requiring 100% of funds deposited into "central treasury" of the City and the "sewer utility fund" referred to requirements that are no longer necessary.
HCC 14.04.070 "Destruction of private sewage disposal systems" Requires destruction of private sewage facilities within 60 days of connection to City System.	PHCC 14.04.070 "Destruction/Abandonment of private sewage disposal systems" removes the 60-day restriction because in practice it may be too strict but instead requires compliance with the Alaska Department of Environmental Conservation.
HCC 14.04.080 "Sewage or waste disposal permit requirements" Grants a "permit" to one family existing or "future" dwellings connecting to the system and requires all others to have a permit, except for "significant industrial users." There is no notice provision.	PHCC 14.04.080 "Commercial waste disposal permit" Incorporates as-built and survey requirements unless the specific lease agreement provides otherwise. Simplifies language but adds protections for permit applicants, such as requiring notice before revocation or modification of a permit, except in cases of emergency.
HCC 14.04.090 "Discharge of Surface Drainage into City Sewer"	Moved to PHCC 14.04.100 "Discharge of surface drainage into HSWS Illegal." Simplified and clarified language.
HCC 14.04.100 "Board of Appeals"	Moved to PHCC 14.01.070 and changed from permitting an appeal to the "Board of Appeals," which was Council and the Mayor to the City Manager or a designated hearing officer.
HCC 14.04.105 "Appeals Procedure"	Moved to PHCC 14.01.070 "Utility Permits-Appeal Procedure." Provides less extensive appeal procedures because briefing schedules and process can be tailored to the needs of each case. Different permits will have differing levels of complexity.
HCC 14.04.110 "Appeal to Superior Court"	Moved to PHCC 14.01.080 "Utility Permit Appeals-Superior Court."
HCC 14.04.115 "Extraterritorial services"	Moved to PHCC 14.01.010 "Water and sewer service area." Removes lengthy extraterritorial services application procedure for sewage and provides for a uniform policy for water and sewer, both of which will require Council approval by ordinance before property outside the City will be approved to connect to the System.

HCC 14.04.120 "Rulemaking Authority"	Moved to PHCC 14.01.020 "City manager rulemaking authority."
HCC 14.04.130 "Violation"	Moved to PHCC 14.01.040 "Violation Penalty" and PHCC 14.01.045 "Violation right to appeal." Adopts uniform appeal procedures and rights to appeal for all Title 14 violations.
Chapter 14.05 "Sewage-Industrial Pretreatment and Discharge"	Chapter 14.05 repealed. Inserted PHCC 14.04.090 "Industrial waste disposal permit requirements." HCC 14.05 incorporated through a separate policy and procedure manual adopted and/or revised by Council via resolution.
HCC Chapter 14.08 "Water Rules and Regulations"	PHCC Chapter 14.08 renames the chapter "Homer Public Water System." HCC Chapter 13.28 is repealed and its provisions incorporated into PHCC 14.08.
HCC 14.08.010 "Purpose"	PHCC 14.08.010 "Purpose" revises the purpose to include reference to the intent to provide for the financial management of the Water System and to include a formal name for the system, namely "The Homer Public Water System."
HCC 14.08.020 "Definitions"	PHCC 14.08.020 provides a consistent definition of "directly adjacent," defines "surplus water," "water connection line," "water extension," "spaghetti line," "water filling station," "on-site water connection line," "off-site water connection line," and provides a definition of "multiple-family dwelling." It removes the definition for "certified service area" since the service area boundaries and limitations were incorporated into PHCC 14.01.010.
HCC 14.08.030 "Water connections and extensions"	PHCC 14.08.030 "Operation of water valves, fire hydrants, and curb stops" incorporates the basic requirement in HCC 13.28.040 "Operation of water valves, fire hydrants, and curb stops" that only City personnel may operate these things.
HCC 14.08.040 "Private water systems-Connection Permits-Fees."	PHCC 14.08.040 "Water meter installations" incorporates the core components of HCC 13.28.050. The more specific criteria regarding water meter installation are now placed in "Water Meter Installation Instructions" adopted by the Public Works Director and approved by Council.
HCC 14.08.037 "Water meters"	Removed.
HCC 14.08.050 "Water connections and extensions."	PHCC 14.08.050 "Water connections and extension permit."
HCC 14.08.060 "Frozen Pipes-City not liable."	Moved to PHCC 14.08.070 "Frozen Pipes-City not liable." No substantial changes.

HCC 14.08.070 "Discontinuance of supply"	Moved to PHCC 14.08.080 and renamed "discontinuance of water". No substantial changes.
HCC 14.08.072 "Priority use of water."	Moved to PHCC 14.008.090 "Priority use of water." No substantial changes.
HCC 14.08.074 "Surplus water-Sale."	Moved to PHCC 14.08.100 "Surplus water-Sale" simplified but not substantially changed.
HCC 14.08.076 "Water shortage or emergency declaration"	Moved to PHCC 14.08.110 "Water shortage or emergency declaration" simplified the water shortage declaration process and requires a resolution by Council but does not require the hearing and other procedures that may derail a response to a water shortage.
HCC 14.08.077 "Water shortage or emergency- Interruption of sale of surplus water-Other measures."	Moved to HCC 14.08.120 and simplified to provide the City Manager with the flexibility to react swiftly to a water shortage but ensure public awareness and notice.
HCC 14.08.078 "Water Shortage or emergency- Appeal"	Moved to PHCC 14.08.130. No substantial changes.
HCC 14.08.079 "Immunity for discretionary acts."	Moved to PHCC 14.01.030 to apply to all public utility systems.
HCC 14.08.080 "Schedule of rates-Rules and regulations and HCC 14.08.090 "Schedule of Rates Outside of the City Limits"	Moved to PHCC 14.01.090 "Sewer and water rate schedule," which consolidates the rate provisions for sewer and water and provides that rates will be in a schedule adopted by Council.
HCC 14.08.091 "Service deposits."	Moved to PHCC 14.08.150 "Service deposits." No substantial changes but language was simplified to identify clear criteria for refund.
HCC 14.08.100 "Bulk Water Sales"	Moved to PHCC 14.08.160; No substantial changes.
HCC 14.08105 "Resale of water"	Repealed.
HCC 14.08.110 "Permit for resale of water"	Moved to PHCC 14.08.170 "Water filling station permit." Requires a permit application but moves the technical criteria for the permit into the permit application itself. It does identify some of the types of criteria that will be included in the application to ensure applicants have notice of the nature and scope of the permit criteria.
HCC 14.08.130 "Permit suspension, revocation" HCC 14.08.140 "Board of appeals-Notice of appeal" HCC 14.08.150 "Appeals-procedure" HCC 14.08.160 "Appeal to superior court" HCC 14.08.170 "Violation-penalty."	Moved to PHCC 14.01.040 "Violation"; PHCC 14.01.065 "Permit suspension, revocation"; PHCC 14.01.070 "Utility permits-Appeal procedure"; and PHCC 14.01.080 "Utility permit appeals-Superior Court" and applied to all City/public utility systems.

HCC Chapter 14.12 "Water and Sewer Zone Connection Fee"	Repealed. This fee has not been charged and is not administered. The Code was adopted to reflect longstanding practice.
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HCC Chapter 14.16 "Sewer Contractors State Registration"	Moved to PHCC 14.01.060 "State contractor required" and applied to all City public utility systems.
HCC Chapter 14.20 "Sewer Contractors Bond"	Moved to PHCC 14.01.050 "State contractor required" and applied to all contractors installing, constructing, maintaining or repairing public utility systems.
HCC Chapter 14.30 "Water and Sewer Extension Cost Reimbursement Plan"	Moved to PHCC Chapter 17.18 "Developer Reimbursement Plan." This new chapter applies to all developers expanding access to public utilities and capital improvements within the City. The new chapter provides a clear procedure by which a developer may trigger a special assessment district process by requesting a resolution from Council. A developer agreement must be submitted with all the terms of the district and the utility or capital improvement installation proposed by the developer and it must be approved by Council. Once an approved agreement is in place and the special assessment district process complete, the City will transfer payments to the developer within 90 days of receipt of those payments. The Code clarifies, however, that the City is not required to collect payments and has no liability to the developer if it does not do so. This is necessary given the fluctuation in municipal resources necessary for enforcement.

Table 2: Title 17 Comparison

Title 17	The Ordinance
<p>HCC Title 17 “Improvement Districts” Chapters</p> <p>17.04 Special Assessment Districts</p> <p>17.08 Repealed</p> <p>17.16 Assessment Fund</p>	<p>PHCC Title 17 “Public Assessments.” Changed title to reflect greater scope.</p> <p>PHCC 17 Chapters</p> <p>17.01 General Provisions</p> <p>HCC 17.14 moved to PHCC 17.02 “Special Assessment Districts”</p> <p>PHCC 17.03 “Enforcement of Public Assessments” added.</p> <p>HCC 17.16 “Assessment fund” moved and renamed to 17.05 Homer Public Water System Assessment Fund</p> <p>17.15 Water and Sewer Connection Assessments</p> <p>17.20 Developer Reimbursement Plans</p>
<p>No Title definition section.</p>	<p>PHCC 17.01.010 “Definitions” provides a definition of “benefited area method” that identifies a method of assessment by which each parcel’s share of an assessment is determined, by dividing the total cost of the improvements on which the assessment is based by the total square footage of land benefitted by the improvement and allocating a portion of the cost of the assessment to each parcel based on that parcel’s square footage of the land benefitted by the improvement. This definition gives the Public Works Director discretion to calculate and apply the benefited area method. This method was proposed because it balances flexibility with oversight. While the Public Works Director uses his discretion, his methodology will be subject to review by Council in the special assessment district process under PHCC 17.02.</p> <p>A definition is also added for “developable land,” which also provides the Public Works Director discretion to determine what property can be reasonably developed for uses permitted within the property’s zoning district to ensure the most accurate proportion of an assessment. Definitions for “Public Works Director” and “Special Assessment Application Fee” were also added.</p>

HCC Chapter 17.02 "Special Assessment Districts" HCC 17.04.040 "Initiation of district."	PHCC 17.02.040 "Initiation of district" revised to permit a special assessment district to be requested by a developer through a written request form to Council for resolution. This permits a developer to trigger the assessment district process but ensures that all assessments and the obligations that accompany them follow the same notice and hearing procedures. The petition process was not substantially changed but the language was simplified and the contents of the petition required by the Clerk were removed. The Clerk's petition forms will include that information as a matter of course and under State law. Referral of all proposed districts now go to the Public Works Director rather than the City Manager in order to reflect longstanding practice.
HCC 9.08 "Enforcement of Local Improvement District Assessments" repealed	HPCC 17.03 "Enforcement of Public Assessments" incorporates the essential and current provisions from HCC 9.08. PHCC 17.03.010 declares that assessments create a lien and requires that foreclosure of an assessment lien be done in accordance with the procedures required under Alaska Statute for property taxes, as required by State law. PHCC 17.03.020 acknowledges that a lien under Title 17 has priority.

HCC 17.02.050 "Creation of district."	Moved to PHCC 17.02.050 "Creation of a special assessment district." No substantial changes, just clarification of language.
HCC 17.04.060 "Approval of increased costs."	Moved to PHCC 17.02.060 without substantial changes to the requirements but significant changes to clarify the language.
HCC 17.04.070 "Assessment roll."	Moved to PHCC 17.02.070 and language simplified.
HCC 17.04.100 "Subdivision after levy of assessments."	Moved to PHCC 17.02.100 and limited to property that is assessed by a method other than the benefited area method. The connection fee is identified as the amount of the original assessment adjusted by the increase in the number of parcels but does not require an adjustment for CPI. It removes the allocation of assessment amounts among property owners because of the difficulty of administering this provision and limits the duty to pay a subdivided property connection fee to lot subdivisions that occur before the original assessment has been paid in full.
HCC 17.04.170 "Water and sewer connection required."	Moved to PHCC 17.02.170. The time for connection for water and sewer assessments was extended from one to three years.

HCC 17.04.190 "Deferment of assessment payments for low income residents"	Moved and renamed to PHCC 17.02.190 "Hardship deferrals." Increased the qualifying income to 200% instead of just 125% of U.S. Poverty Guidelines for Alaska. Under this change, more people will qualify for a hardship deferral but the percentage used mirrors that adopted by the Kenai Peninsula Borough for other deferral and exemption programs. Removed the application to a person with "life tenancy" as the record owner bears the payment obligation. Removed the requirement that a deferral be approved by Council and changed the submission of the applications to the Finance Director rather than Council to protect confidentiality of the deferral process.
HCC 17.04.200 "In lieu of assessment"	Moved to PHCC 17.02.200 "Payment in lieu of assessment." Payments in lieu of assessment were substantially changed to provide a clear process for parcel owners outside an assessment district to request to join a district. The terms require a written request that may or may not be granted by the Public Works Director and only allow an outside parcel owner to participate if he, she or it pays all costs for extending the improvement onto their property and the pro-rated share of the improvement for which the assessment district was formed.
No HCC 17.18	Added PHCC 17.18 "Developer Reimbursement Plan," which applies to all developers expanding access to public utilities and capital improvements within the City. It provides a clear procedure by which a developer may trigger a special assessment district process by requesting a resolution from Council. A developer agreement must be submitted with all the terms of the district and the utility or capital improvement installation proposed by the developer and it must be approved by Council. Once an approved agreement is in place and the special assessment district process complete, the City will transfer payments to the developer within 90 days of receipt of those payments. The Code clarifies, however, that the City is not required to collect payments and has no liability to the developer if it does not do so. This is necessary given the fluctuation in municipal resources necessary for enforcement

What Comes Next?

Upon introduction of the Ordinance, the sponsors and the administration will begin preparing several documents that are necessary to complete the revisions proposed in the Ordinance. These documents include:

- 1) The industrial waste management policy manual and a proposed resolution approving the manual;
- 2) Permit applications for the following permits:
 - A. Sewer System extension and connection permit
 - B. Water System extension and connection permit
 - C. Waste Disposal permit
 - D. Water filling station permit
 - E. Commercial waste disposal permit
 - F. Industrial waste disposal permit
- 3) An ordinance updating HCC 1.16.040 "Disposition of scheduled offenses-Fine schedule."
- 4) A resolution updating the City fee schedule to include the permit application and appeal fees imposed under Titles 14 and 17.
- 5) A resolution updating HART and HAWSP manuals and the accompanying updated manuals.

Finally, in addition to the documents identified above, the City administration and Council will need to educate the public regarding the substantial changes to the water and sewer system management and public assessment processes.

Conclusion

While this memorandum attempts to identify the changes between existing Code and the Ordinance, the Ordinance presents significant changes to the structure of the City's process that is not easily captured in a memo. For this reason, I have also attached copies of the current HCC Chapters 9.08, 13.24, and 13.28 and Titles 14 and 17 for easy comparison and reference. In addition, I am prepared to walk Council and the public through the changes in a presentation and any other medium that Council deems helpful.

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