

2015 REVENUE OPTIONS

REVENUE	ANNUAL \$ VALUE	PRO	CON	BARRIER	EFFECTIVE 2016?	HOW WOULD BECOME EFFECTIVE	RESPONSE FROM PUBLIC	NOTES	ADD. INFO.
Raise Property Tax 1 Mill	\$660,000 per mill.	Can be implemented by Council.	Increases taxes on residents when many of the services City provides are to entire Homer area.		Yes	Council pass a resolution by July 1, 2016 increasing the mill rate.	Town Hall: 65% positive response; Online poll: selected by 24.74% of respondents	Currently COH taxpayers pay 4.5 COH, 4.5 KPB and 2.3 SPH (total 11.3). According to HCC if property taxes increase to 6 mills, sales tax is eliminated.	KPB Mill Rate Chart. Pg. 13
Raise Sales Tax .5%	\$854,434	Raises sufficient funds to bring City close to closing the gap. Taxes non-residents who use City services.	Places burden on local business. Makes rents more expensive.	Need a vote of City residents.	Yes - after first quarter	Council would pass an ordinance to increase the sales tax and for a special election. If ordinances follow budget cycle, voters would vote in a February special election.	Town Hall: 85% positive response; Online survey: 35.43% selected option	Based on 2014 sales tax revenue. Revenue estimate for 2016 (2-4 quarters) is \$717,669. Current COH sales tax is 4.5% COH and 3% KPB.	
1% seasonal sales tax increase (6 moths of year)	\$1,141,762	Captures more visitor revenue. Closes gap.	Burden on local businesses.	Need a vote of City residents.	Yes	Council would pass an ordinance to increase the sales tax for a special election. If ordinances follow budget cycle, voters would vote in a February special election.	Not polled	Based on 2014 sales tax revenue.	
Repeal HART (direct .75% sales tax back to general fund)	\$996,601	No tax increase for public. Generates sufficient revenue to close the gap.	Eliminates funding for roads and trails, basic infrastructure Short term fix. Would effect road HSAD program.	Need a vote of City residents.	Yes	Council would pass an ordinance to not continue to fund HART and for a special election. If ordinance follows budget cycle, voters would vote in a February special election. If ballot language is retroactive, we could capture full estimated amount for 2016.	Not polled	Based on 2014 sales tax revenue. HART has been around since 1987.	HART fund activity reports. Pg. 15 Legislation enacting HART. Pg. 17 HART Policy Manual. Pg. 21
Reinstate Seasonal Sales Tax on Non-prepared Food	\$833,473	Can be implemented by Council. Not a 'new' tax.	Taxes basic necessity. Regressive.	Voters will likely remove option to not participate for first class cities in October.	Only if voters fail October ballot initiative.	Ordinance by Council.	Town Hall: 82% positive response; Online survey: 46.96% selected	Sales tax that would have been generated from 9/1 to 5/31: 2010-2011 \$735,501; 2011-2012 \$794,163; 2012-2013 \$812,065; 2013-2014 \$833,473	KPB Ordinance 2008-28. Pg. 31
Raise Sales Tax Cap from \$500-1000	Unknown	Instituted Borough wide.	Burden on businesses, especially those that sell large items. Raise rent cost.	Unsure how much momentum is behind current proposal.	No	Ordinance by Borough and vote (note, it can be implemented w/o a vote, but the current proposal puts a vote to Borough residents).	Town Hall: 80% positive response; Online survey: 39.83% selected option	KPB Assembly Member Cooper has proposed putting this on the October 2017 ballot. If voters approve raising the cap, no other action by the City is required.	KPB Ordinance 2015-09. Pg. 33

2015 REVENUE OPTIONS

REVENUE	ANNUAL \$ VALUE	PRO	CON	BARRIER	EFFECTIVE 2016?	HOW WOULD BECOME EFFECTIVE	RESPONSE FROM PUBLIC	NOTES	ADD. INFO.
Eliminate COH \$20,000 Property Tax Exemption for Primary Residence	\$94,000	Can be implemented by Council.	Burden is on year round City of Homer residents. Does not raise much revenue.		Yes	Requires Council action only.	Town Hall: 42% positive response; Online survey: 25.79% selected option	The City cannot exempt more than \$50,000 on primary residence. Currently we exempt the first \$20,000, but could exempt less. The \$94,000 figure eliminations entirely the exemption for primary residence.	Certified Real Property from KPB. Pg. 37
Internet Sales	Unknown	Wouldn't it be great to tax Amazon! Or at least tax those sales that are taxable...	Pretty difficult to implement.	Borough would have to expand its taxation of internet sales to its full ability. City taxing on own requires Borough approval and would be logistically difficult.	No	A) Borough would expand its taxation of internet sales to full extent allowed by constitution (lots of rules apply, most sales not taxable). B) Borough would allow municipalities to tax internet sales. Then the City would have to collect tax.	Not polled	Limitations on what you can tax are severe. Store has to have to have a physical presence in Borough/State.	Memo from City attorney on taxation of internet sales. Pg. 39
Increasing Fines for Code Violations	Negligible	Can be done by Council.	Enforcement can cost more than revenue (officer/staff/legal time).		Yes	With budget cycle.	Town Hall: 67% positive response; Online survey: 29.77% selected option	Staff will review fee schedule and propose reasonable increases for 2015 budget cycle.	
Bed Tax	\$120,000 per 1%	Captures revenue from visitors.	Targets one industry. Argument revenue should be dedicated to economic development. Not enough to balance budget unless very high.	Requires Borough action.	Unlikely	Borough would need to allow COH to institute a tax OR pass one themselves. Then would need a vote. Borough appetite for bed tax seems low. If Borough allowed City to collect tax, we would have to get in the business of tax collection.	Town Hall: 81% positive response; Online survey: 65.41% positive response	Estimate provided by KPTMC in 2012	Tourism, Its Everyone's Business Flyer. Pg. 45
Excise Tax	Unknown	Popular to tax alcohol, tobacco, and marijuana.	Difficult to implement. Revenue impact very unknown.	State rules, may be opportunity with marijuana changes.	Maybe?	Borough could implement an excise tax which would impact City. City may be able to implement, and collect, excise tax on own.	Not polled	Lots of outstanding issues and potential with legalization of marijuana and desire to tax it.	

TAF	TAG	
	10 SELDOVIA	
10	Seldovia	4.60
11	Seldovia RSA	0.75
50	Borough	4.50
		9.85
	11 SELDOVIA RSA	
11	Seldovia RSA	0.75
50	Borough	4.50
67	Road Maint.	1.40
		6.65
	20 HOMER	
20	Homer	4.50
50	Borough	4.50
52	So. Hospital	2.30
		11.30
	21 HOMER ODLA	
20	Homer	4.50
21	Homer ODLA	9.9625
50	Borough	4.50
52	So. Hospital	2.30
		21.2625
	30 KENAI	
30	Kenai	4.35
50	Borough	4.50
51	Cent. Hosp.	0.01
		8.86
	40 SEWARD	
40	Seward	3.12
43	Sew/Bear Cr. Flood	0.75
50	Borough	4.50
		8.37
	41 SEWARD SPECIAL	
41	Seward Special	3.12
43	Sew/Bear Cr. Flood	0.75
50	Borough	4.50
		8.37
	43 SEWARD-BEAR CREEK FLOOD SA	
43	Sew/Bear Cr Flood	0.75
50	Borough	4.50
67	Road Maint.	1.40
		6.65
	52 SOUTH HOSPITAL	
52	So. Hospital	2.30
50	Borough	4.50
		6.80
	53 NIKISKI FIRE	
53	Nikiski Fire	2.90
50	Borough	4.50
51	Cent. Hosp.	0.01
54	No. Pen Rec.	1.00
67	Road Maint.	1.40
		9.81
	54 N. PENINSULA RECREATION	
54	No.Pen.Rec.	1.00
50	Borough	4.50
51	Cent. Hosp.	0.01
58	Cent. Emer. Ser.	2.65
67	Road Maint.	1.40
		9.56

TAF	TAG	
	55 NIKISKI SENIOR	
55	Nikiski Sen.	0.20
50	Borough	4.50
51	Cent. Hosp.	0.01
53	Nikiski Fire	2.90
54	No. Pen Rec.	1.00
67	Road Maint	1.40
		10.01
	57 BEAR CREEK FIRE	
57	Bear Creek Fire	3.25
43	Sew/Bear Cr. Flood	0.75
50	Borough	4.50
67	Road Maint.	1.40
		9.90
	58 CENTRAL EMERGENCY SERVICES	
58	Cent. Emer.Ser.	2.65
50	Borough	4.50
51	Cent. Hosp.	0.01
67	Road Maint.	1.40
		8.56
	61 CENTRAL HOSPITAL WEST	
50	Borough	4.50
51	Cent. Hosp.	0.01
67	Road Maint.	1.40
		5.91
	63 CENTRAL HOSPITAL EAST	
50	Borough	4.50
51	Cent. Hosp.	0.01
64	Cent. Pen. EMS	1.00
67	Road Maint.	1.40
		6.91
	64 CENTRAL PEN. EMERGENCY MEDICAL	
64	Cent Pen. EMS	1.00
50	Borough	4.50
52	South Hosp.	2.30
67	Road Maint.	1.40
		9.20
	65 SOUTH HOSPITAL/ROADS	
50	Borough	4.50
52	South Hosp.	2.30
67	Road Maint.	1.40
		8.20
	67 KPB ROAD MAINTENANCE	
50	Borough	4.50
67	Road Maint.	1.40
		5.90

TAF	TAG	
	68 ANCHOR POINT FIRE/EMERGENCY	
68	Fire/Emergency	2.75
50	Borough	4.50
52	South Hosp.	2.30
67	Road Maint.	1.40
		10.95
	70 SOLDOTNA	
70	Soldotna	0.50
50	Borough	4.50
51	Cent. Hosp.	0.01
58	Cent. Emer. Ser.	2.65
		7.66
	80 KACHEMAK*	
80	Kachemak	1.00
50	Borough	4.50
52	South Hosp.	2.30
		7.80
	81 KACHEMAK EMERGENCY SERV.	
81	Kachemak EMS	2.60
50	Borough	4.50
52	South Hosp.	2.30
67	Road Maint.	1.40
		10.80

50K Borough TAF's and Homer 20K
All other City TAF mills do not apply

EMS VOLUNTEER 10,000 EXEMPTION
ALL BOROUGH TAF'S
HOMER (20) & SEWARD (40)

***Kachemak City TAG 80-No tax on personal property/boats/aircraft**

100,000 PERSONAL EXEMPTION
ALL BOROUGH TAF'S
HOMER (20) & SOLDOTNA (70)

AIRCRAFT TAX:
FLAT TAX FOR ALL BOROUGH TAF'S,
SELDOVIA (10) & SOLDOTNA (70)
Borough Flat Portion + City Flat Portion
TAG'S 20,40 & 41
Full value X TAF Millrate
Plus (+) Borough Flat Portion

BOAT TAX:
FLAT TAX FOR ALL BOROUGH TAF'S
HOMER(20),SOLDOTNA(70),SELDOVIA(10)
Borough Flat Portion + City Flat Portion
TAG'S 40 & 41 (Seward)
Full value X TAF Millrate PLUS (+)
Borough Flat Portion
TAG 30 Class 1 & 2 Exempt and
Class 3-7 Full value X TAF Millrate
PLUS (+) Borough Flat Portion

Senior Exemptions:
Borough 300,000 exempt unless Variable
10,20,30,40,41,70,80 upto 150,000 exempt
over is Taxed at City TAF Rate

Disability Tax Credit:
TAF 30 Kenai \$250.00
Borough TAF'S \$500.00

*TAF= Tax Authority Fund

*TAG = Tax Authority Group

HART Fund
Roads - Activities Report

	<u>12/31/2010</u>	<u>12/31/2011</u>	<u>12/31/2012</u>	<u>12/31/2013</u>	<u>12/31/2014</u>	<u>7/31/2015</u>
Revenue						
160-0375-4201 Sales Tax	989,932	1,061,183	1,057,215	1,095,521	1,122,738	462,156
160-0375-4801 Interest Income	9,149	34,990	26,215	25,966	18,068	4,422
160-0771-4610 Sale of Plans & Specs	0	60	0	0	0	0
160-0774-4610 Specs & Plans	0	0	0	600	0	0
Total Revenue	<u>999,081</u>	<u>1,096,233</u>	<u>1,083,430</u>	<u>1,122,088</u>	<u>1,140,807</u>	<u>466,578</u>
Expenditures						
160-0375-5241 G/F Admin Fees	144,856	0	161,590	75,737	0	0
160-0766-5241 G/F Admin Fees	0	141,927	0	0	93,476	115,365
160-0766-5105 Overtime	0	0	0	2,138	0	0
160-0766-5212 Engr/Arch/Desin	0	0	27,620	0	0	0
160-0774-5212 Engr/Arch/Design	0	0	16,350	12,785	0	0
160-0766-5261 Construction	0	0	2,988	690,080	33,800	0
160-0771-5261 Construction	0	169,588	2,014	0	0	0
160-0774-5261 Construction	0	0	0	630,449	44,845	0
160-0771-5227 Advertising	0	300	0	0	0	0
160-0766-5227 Advertising	0	150	861	0	0	0
160-0774-5227 Advertising	0	0	0	414	200	0
160-0774-5103 Part Time Employees	0	0	0	9,608	0	0
160-0766-5102 Fringe Benefits	0	0	0	677	0	0
160-0774-5104 Fringe Benefits - P/T	0	0	0	1,208	0	0
160-0774-5107 P/T Overtime	0	0	0	2,616	0	0
Total Expenses	<u>144,856</u>	<u>311,965</u>	<u>211,424</u>	<u>1,425,712</u>	<u>172,320</u>	<u>115,365</u>
Revenue Over (Under) Exp.	<u>854,225</u>	<u>784,269</u>	<u>872,007</u>	<u>(303,625)</u>	<u>968,486</u>	<u>351,213</u>
Beginning Fund Balance	<u>3,818,917</u>	<u>4,673,142</u>	<u>5,457,410</u>	<u>6,329,417</u>	<u>6,025,792</u>	<u>6,994,279</u>
Ending Fund Balance	<u>4,673,142</u>	<u>5,457,410</u>	<u>6,329,417</u>	<u>6,025,792</u>	<u>6,994,279</u>	<u>7,345,491</u>

HART Fund
Trails - Activities Report

	<u>12/31/2010</u>	<u>12/31/2011</u>	<u>12/31/2012</u>	<u>12/31/2013</u>	<u>12/31/2014</u>	<u>7/31/2015</u>
Revenue						
165-0375-4201 Sales Tax	111,631	134,891	100,502	121,725	124,744	51,351
165-0375-4801 Interest Income	522	1,695	1,506	1,448	1,391	340
165-0375-4610 Plans & Specs		300				
Total Revenue	<u>112,153</u>	<u>136,886</u>	<u>102,007</u>	<u>123,172</u>	<u>126,135</u>	<u>51,691</u>
Expenditures						
165-0375-5102 Fringe Benefits	0	0	0	27	0	0
165-0375-5105 Overtime	0	0	0	81	0	0
165-0375-5212 Engr/Arch/Desin	3,150	0	0	17,500	7,769	4,284
165-0375-5227		100				
165-0375-5241 G/F Admin Fees	16,095	15,770	17,954	8,415	10,386	28,841
165-0375-5261 Construction	0	7,715	0	18,103	5,810	1,672
165-0375-5990 Transfers To			61,000			
Total Expenses	<u>19,245</u>	<u>23,585</u>	<u>78,954</u>	<u>44,125</u>	<u>23,965</u>	<u>34,796</u>
Revenue Over (Under) Exp.	<u>92,908</u>	<u>113,300</u>	<u>23,053</u>	<u>79,047</u>	<u>102,170</u>	<u>16,895</u>
Beginning Fund Balance	<u>133,314</u>	<u>226,222</u>	<u>339,522</u>	<u>362,576</u>	<u>441,623</u>	<u>543,793</u>
Ending Fund Balance	<u>226,222</u>	<u>339,522</u>	<u>362,576</u>	<u>441,623</u>	<u>543,793</u>	<u>560,687</u>

**CITY OF HOMER
HOMER, ALASKA**

Council/Manager

ORDINANCE 06-42

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA SUBMITTING A SET OF BALLOT QUESTIONS TO THE VOTERS AT THE REGULAR MUNICIPAL ELECTION ON OCTOBER 3, 2006, REGARDING THE HOMER ACCELERATED ROADS PROGRAM (HARP), INCLUDING CONTINUATION OF THE PROGRAM AND REAUTHORIZING THE THREE FOURTHS PERCENT ($\frac{3}{4}\%$) SALES TAX LEVY FOR UP TO TWENTY ADDITIONAL YEARS, AMENDING HARP TO AUTHORIZE CONSTRUCTION OF NEW ROADS AND NEW TRAILS, AND AMENDING HOMER CITY CODE SUBSECTION 9.16.010 (C) ACCORDINGLY.

WHEREAS, The Homer Accelerated Roads Program (HARP) and the three fourths percent ($\frac{3}{4}\%$) sales tax levy approved by the voters in October 1987 to provide funding for the program, both expire on December 31, 2007; and

WHEREAS, The general intent of the program, as approved by the voters in 1987, is to provide for the reconstruction of local substandard roads and/or upgrade existing City roads, thereby reducing maintenance costs, improving access, increasing property values, and improving the quality of life (Resolution 88-47 #1); and

WHEREAS, The purpose, intent, qualifying criteria, financing, and other provisions of the HARP are provided in the HARP Policy Manual as amended from time to time and in Ordinance 87-19; and

WHEREAS, The City Council has determined that reconstruction and upgrades of local streets and associated utilities remains a urgent need and top priority; and

WHEREAS, The Council wishes to continue to provide a dedicated source of local revenue for this purpose and wishes to ask the voters to reauthorize the HARP Program and the existing three quarters percent ($\frac{3}{4}\%$) sales tax levy to provide funding for HARP for up to 20 additional years; and

WHEREAS, State and Federal funding for the construction of new local roads and trails is dwindling and the Council hereby finds it is in the public interest to develop a local source of funding to provide for necessary expansion of the local transportation infrastructure; and

WHEREAS, the construction of new roads and new trails are high priorities in both the Homer Transportation Plan and the Homer Non-Motorized Transportation Plan respectively; and

WHEREAS, The Council also wishes to ask the voters for authorization to amend the HARP to allow the revenue generated by the three fourths percent (3/4%) dedicated sales tax levy to be used for the construction of new local roads and new trails.

NOW THEREFORE, The City of Homer Ordains:

Section 1: The Homer City Council finds that it is in the best interest of the community to ask the voters if the Homer Accelerated Roads Program (HARP) and the three fourths percent (3/4%) sales tax levy currently dedicated to this purpose should be reauthorized and extended for up to twenty additional years. The Council also finds that it is in the best interest of the community to ask the voters if they will authorize amendments to the HARP and permit the dedicated sales tax levy to be used for construction of new local roads and trails.

Section 2: Homer City Code Section 9.16.010 is hereby amended to read as follows:

9.16.010 c. An additional consumer's sales tax in the amount of three quarter's percent (3/4%) is hereby levied by the City of Homer on all sales, rents, and services within the City except the same may be otherwise exempted by law, for the purpose of funding of street reconstruction improvements and related utilities, construction of new local roads, and construction of new local trails.

Section 3: The City Clerk shall submit the following questions to the voters at the regular municipal election to be held on October 3, 2006. The ballot propositions shall read as follows:

PROPOSITION 1:

Shall the City of Homer, Alaska continue to provide a funding source for street reconstruction improvements and related utilities in accordance with the City of Homer Accelerated Roads Program (HARP) by continuing after December 31,2007 to levy a three fourth percent (3/4%) sales tax to fund HARP for up to twenty additional years?

YES _____ NO _____

PROPOSITION 2:

If Proposition 1 is approved by the voters, shall the City also be authorized to use the revenue from the three fourths percent (3/4 %) dedicated sales tax for the construction of new local streets?

YES _____ NO _____

PROPOSITION 3:

If Proposition 1 is approved by the voters, shall the City also be authorized to use the revenue from the three fourths percent (3/4%) dedicated sales tax for the construction of new local non-motorized trails?

YES _____ NO _____

Section 4. If Ballot Proposition 1 contained herein is not approved by the voters, the amendments to HCC 9.16.010 (C) approved in Section 2 of this ordinance shall not take effect and the three fourths percent (3/4%) dedicated sales tax levy is not extended beyond December 31, 2007.

Section 5. If Ballot Proposition 1 contained herein is approved by the voters but Ballot Propositions 2 and 3 are rejected, the amendment to HCC 9.16.010 (C) approved in section 2 of this ordinance shall not take effect, but the authorization to extend HARP and to levy the three fourths percent (3/4%) dedicated sales tax for HARP shall take effect and continue for 20 years after December 31, 2007.

Section 6. If Ballot Proposition One and Proposition Two contained herein are approved by the voters, then the amendment to HCC 9.16.010 C referring to construction of new streets shall take effect, and the Council shall amend the HARP program by resolution to provide qualifying criteria and conditions under which new street construction projects could be funded using HARP revenue.

Section 7. If Ballot Proposition One and Proposition Three contained herein are approved by the voters, then the amendment to HCC 9.16.010 C referring to construction of new trails shall take effect, and the Council shall amend the HARP program by resolution to provide qualifying criteria and conditions under which new trail construction projects could be funded using HARP Revenue.

Section 8. The City Manager and the City Clerk and their designees are authorized to provide unbiased factual and educational information to the public regarding these ballot questions and what effect they might have on the budget, the capital improvement program, community development generally, or other relevant information that might help the voters make an informed decision.

Section 9. If Ballot Proposition 1 and either or both of Ballot Propositions 2 and 3 are approved by the voters, the respective amendments to HCC 9.16.010 C shall be effective immediately upon certification of the election. If approved by the voters, the amendment(s) to HCC 9.16.010 C shall be incorporated in the Homer City Code. The remaining sections of this ordinance are not of a permanent nature and as such, shall not be codified.

PASSED AND ENACTED by the Homer City Council this 14 day of August,
2006.



CITY OF HOMER

James C. Hornaday
JAMES C. HORNADAY, MAYOR

ATTEST:

Mary L. Calhoun
MARY L. CALHOUN, CMC, CITY CLERK

Introduction: 07/24/06
Public Hearing: 08/14/06
Second reading: 08/14/06
Effective Date: 08/15/06

Ayes: 6
Nays: 0
Abstain: 0
Absent: 0

Reviewed as to form and content:

Walt Wrede
Walt Wrede, City Manager
Date: 8/15/06

Gordon Tans
Gordon Tans, City Attorney
Date: 22 August 2006

Fiscal Note: Revenue estimated at \$1 Million per year

H.A.R.T. POLICY MANUAL

Homer Accelerated Roads and Trails Program



Adopted September 10, 2007

H.A.R.T. POLICY MANUAL
(HOMER ACCELERATED ROADS AND TRAILS PROGRAM)

TABLE OF CONTENTS

- I. Purpose and Intent
- II. Definitions
- III. Qualifying Criteria
- IV. Financing and Assessments
- V. Utilities
- VI. Special Provisions
- VII. Trail Prioritizing Criteria and Planning Guidelines

February 2008

I. PURPOSE and INTENT

1. The H.A.R.T. is a combined local funding source of dedicated sales tax and assessments to upgrade city streets, new city streets and new city non-motorized trails.(Ordinance 06-42(S); Resolution 88-47 #1)
2. The intent of the program is to reconstruct local substandard city roads and/or upgrade existing city roads, construct new city streets and non motorized trails, thereby reducing maintenance cost, improving access, increasing property values and improving the quality of life. (Ordinance 06-42(S); Resolution 88-47 #2)
3. Reconstruction and new construction shall be to City Standards. (Ordinance 06-42(S) Resolution 88-47 #19)
4. The City will not accept a street for full time maintenance until it meets city standards and is shown on the official maintenance map.¹ (Ordinance 85-14 07/01/85; Resolution 88-47 #8)
5. When practical, the intent of the program is to preclude the destruction of existing property improvements in built up areas. (Resolution 88-77(A), be it further Resolved clause.)
6. State maintained roads are not part of this program. (Resolution 88-47 #7)
7. The criteria for the H.A.R.T. shall be reviewed annually by the Transportation Advisory Committee, with recommendations reported to the Homer City Council. (Resolution 88-47 #22)
8. Annexed roads are included as newly eligible roads, as listed on the Official Road Maintenance Map. (Resolution 03-116, 08/25/03)
9. New roads shall be listed on the Official Road Maintenance Map. (Resolution 07-82)
10. New trails shall be listed on a map in the City Clerk's Office. (Resolution 07-82)

II. DEFINITIONS

- A. Sidewalk- the term "sidewalk" means a pedestrian facility associated with a road and generally within a street right of way. (Resolution 07-82)
- B. Trail – a pedestrian facility detached from a road, or not within a street right of way. (Resolution 07-82)

¹1.Clerk's Note: Done by Ordinance

III. QUALIFYING CRITERIA

A. Roads

The schedule of street improvements and costs developed by the Public Works Department August 87, consisting of Groups I-IV and the annexed roads of the City boundary amendment of Ordinance 02-08(A) and as noted on the Official Road Maintenance Map, are hereby incorporated. (Resolution 05-70, 06/13/05; Ordinance 02-23(A), 06/10/02; Ordinance 02-08(A), 04/08/03; Resolution 03-116, 08/25/03)

Amendments to the schedule can be accomplished only by Council action and are limited to additions to the schedule due to revision of the street map or transfer of state rights-of-ways to the City.

All projects will be authorized only after a public hearing to insure public participation in the process. (Resolution 88-47 #13)

1. The following criteria may be considered for roads qualifying for reconstruction/utility improvements: (Resolution 88-47 #14, Resolution 87-61(S))

- a. Life, safety and traffic flow (Resolution 87-61(S), Resolution 88-47);
- b. Correct deficiencies of existing systems (Resolution 87-61(S), Resolution 88-47);
- c. System wide basis versus local needs (Resolution 87-61(S), Resolution 88-47);
- d. Complete traffic circulation pattern (Resolution 87-61(S), Resolution 88-47);
- e. Encourage economic development (Resolution 87-61(S), Resolution 88-47);
- f. Correct drainage problems (Resolution 87-61(S), Resolution 88-47);
- g. Reduce maintenance cost (Resolution 87-61(S), Resolution 88-47);
- h. Built to city standards prior to acceptance for maintenance (Resolution 61(S), Resolution 88-47);
- i. Reconstruction is a higher priority than new construction projects (Resolution 87-61(S), Resolution 88-47);
- j. Property owner contribution through LID process by paying \$30 per front foot for gravel and \$17 per front foot for paving cost of a residential standard street and the city pays all costs for additional improvements deemed necessary (Resolution 87-61(S); Resolution 88-47, Resolution 94-50; Resolution 95-97)
- k. City share can apply to related utilities, sidewalks, street lighting, drainage, paving and/or reconstruction of roads identified on the road maintenance map. (Resolution 88-47, Resolution 04-41(A).);
- l. Other factors deemed appropriate by the City Council. (Resolution 87-61(S), Resolution 88-47))

2. The following criteria may be considered for new local roads in addition to applicable criteria in 1:

- a. Connectivity to existing road(s), for example completes a traffic pattern.
- b. Arterials or thoroughfares;
- c. Existing utilities;
- d. Contributing funds such as property owner assessments, loans, grants, etc;
- e. Level of need. (Resolution 07-82)

B. Trails

New local non motorized trails shall be prioritized according to the following:

- a. Project is listed in the HNMTTP or furthers a stated goal of that plan;
- b. Solves a safety concern;
- c. Creates connectivity to existing trail(s), completes pattern or provides access to a point of interest;
- d. Protects an established trail;
- e. Creates or improves a trailhead;
- f. Has significant scenic or aesthetic value;
- g. Existence or potential for contributing funds;
- h. Property owner participation. (Resolution 07-82)

IV. FINANCING and ASSESSMENTS

1. The program will utilize an additional dedicated City sales tax not to exceed three quarters of one percent ($\frac{3}{4}\%$) supplemental with assessments against adjacent benefited properties. (Ordinance 06-42, Resolution 87-61(S), Resolution 88-47 #3).

2. A three quarters of one percent ($\frac{3}{4}$) dedicated sales tax and will be collected for up to twenty years expiring December 31, 2007 and reauthorizing up to an additional twenty years expiring December 31, 2027 to participate in funding the accelerated roads and trails program (Ordinance 06-42, Resolution 87-61(S), Resolution 88-47 #4). Reauthorized twenty additional years at the October 3, 2006 election (Resolution 06-145(S)) to expire December 31, 2027. Ten percent of the annual revenue shall be used for trail projects.

3. The road improvements will be financed on a combined pay as you go basis as well as sale of revenue bonds in a fifty-fifty ratio. There may be future bond sales as revenues increase. (Resolution 87-47 #6)

4. The City will attempt to obtain long term financing for up to ten years for the private share of funding. (Resolution 88-74 #12, bond change Ordinance 89-17, regarding ten years financing.)

5. Interest, if any, generated from the program will remain with the program funds. (Resolution 88-47 #18)
6. Abutting property owners will share the cost of upgrading a street to residential standards by paying \$30 per front foot for gravel and \$17 per front foot for paving.² (Resolution 87-61(S), Resolution 88-47, Resolution 94-50, Resolution 95-97)
7. The City will pay all costs for any additional improvements required when deemed necessary by the City. Other improvements requested by the benefited property owners will be paid by those same property owners. (Resolution 88-47 #11)
8. The \$30/\$17 split in front foot assessment stands unless there is 100% agreement on a revised formula for a specific project or the amount is adjusted by the City Council. (Resolution 87-61(S), Resolution 88-47; #21; Resolution 95-97)
9. Road Reconstruction assessment payment date, penalty and interest shall be set as soon as the reconstruction project has been accepted by the Public Works Department regardless if the LID/Assessment district wherein reconstruction has been completed is also scheduled for paving as part of the same LID/Assessment District. Paving assessment payment date, penalty and interest will be set as soon as the paving project has been accepted by the Public Works Department. HCC 17.04.070--110. (Resolution 96-73)
10. New Local Roads may be constructed by 100% program funds when the construction thereof benefits the entire City or when the City owns the property wherein the road is to be constructed. The Road to be constructed must meet the qualifying criteria and be recommended by the Transportation Advisory Committee to the City Council. This expenditure must be approved via Ordinance with justification noted within the body of the Ordinance. Whenever possible, New Local Roads will be constructed using the LID process HCC 17.04 and the assessment methodology as noted in item 6. and 8. (Resolution 07-82)
11. HART funds may be used to leverage outside funds for New Local Roads and Trails. (Resolution 07-82)
12. New Local Trails may be constructed using 100% program funds and follow the procedures listed in item 10. (Resolution 07-82)
13. Sidewalks shall be paid for out of road funds, and trails shall be paid for out of the 10% allocated to trails. (Resolution 07-82)

² Danview/Svedlund and Sabrina/Mark White are grandfathered in at the \$20/\$11 split per Council action. (Resolution 94-52)

V. UTILITIES

1. Prior to street reconstruction, necessary related non existing water and sewer improvements shall be encouraged whenever possible. (Resolution 88-47 #9)
2. Water and Sewer utility extensions necessary to extend the utilities short distances beyond a construction area will be paid for by the program. (Resolution. 88-47 #10)
3. Water and sewer utility relocations directly caused by reconstruction will be paid for by the Accelerated Roads Program. (Resolution. 88-47 #10)
4. Water and sewer utility upgrades necessary for future capacity that are done concurrently with reconstruction and/or paving will be paid for by the utility (a) fund. (Resolution 88-47 #10)
5. The City shall recover from the property owner the cost of construction of City-provided sewer and water service connections by including the cost of construction of such connections in the service connection fee established under HCC Chapter 14.13. (Resolution. 88-47)
6. Cost of installing stub-outs would be a necessary expense to anyone building on lots requiring sewer and/or water service. Sewer and/or Water funds or other public money was provided to pay the cost of these stub-outs because of the benefit of a quality finished road and the use of stub-outs benefit only those particular lots. Costs will be recouped from benefiting property owners through deferred assessments. The Planning Clerk and Finance Department will maintain a listing of these deferred sewer and/or water service connection fees.
7. Whenever practical street lights shall be included in the construction of new local roads and shall be paid by HART funds. Property owners participating in a road reconstruction and/or paving LID may request street lights. If the project is deemed feasible the property owners shall be assessed for the installation of the street lights on an equal share per parcel methodology. Property owner approval of the street light assessment shall follow the process in HCC 17.04. Once constructed, the City will absorb the utility billing for the street light(s). (Resolution 07-82)

VI. SPECIAL PROVISIONS

1. Additional right-of-way required will be paid by this program, at no additional cost to abutting property owners. (Resolution 88-47 #20)
2. Corner lots are exempt from a double front footage assessment and the total assessed frontage shall not exceed the longest side of the lot. Reconstruction assessments apply to

reconstruction and paving. Corner lot agreement is required after 10/25/94. (Resolution 87-61(S) #15; Resolution. 88-47 #15, Resolution 91-68, Ordinance 94-16(A))

3. Lots having a frontage on two parallel streets, or flag lots having a frontage on two perpendicular streets, are exempt from a double front footage assessment unless actually accessing the lot from both streets either prior to or after reconstruction and/or paving Deferred Assessment Agreement Required pursuant to HCC 17.04.160. (Resolution 88-47 #16)

4. This program includes paving driveway aprons on contracts funded by H.A.R.P. (Resolution 88-47 #17; Resolution 91-48)

5. When at all practical, the center line of rights-of-way will be the established road center line. Where impractical, the center line may be shifted to mitigate improvement encroachments of high cost hillside excavation. (Resolution 88-77(A))

6. In established neighborhoods, where improvements such as housing, carports, lawns or landscaping have been constructed near the right-of-way line and ditching would seriously impact these improvements, alternates to open ditching may be considered. These alternates may include gently sloping ditches back to the lawn, trench drains, standard or rolled curbs and gutter or any other sound engineering practices. The cost of these alternates will be born by the road program unless the residents elect to participate in the curb, gutter and sidewalk programs. (Resolution 88-77(A))

7. Pedestrian amenities shall be included in all new road projects unless exempted by the City Council. (Resolution. 04-41(A))

8. Exempting Certain Lands that will not be Developed due to Conservation Easements or Owned by Organizations that Conserve Land for Public Purpose and/or Habitat Protection from the Homer Accelerated Roads Program and the Homer Accelerated Water and Sewer Program Assessment District Assessments on a Case by Case Basis and that Each Program Shall be Amended to Include this Exemption under Special Provisions. (Resolution 05-50(A).)

9. New Subdivisions may not participate in HART for the construction of subdivision roads or trails.

a. Exception: To encourage trail connectivity, the Subdivider will be required to pay a prorated share of the project cost not to exceed 75% of the cost of public trail construction. (Resolution 07-82)

10. HART funds may be used in accordance with Title 11.04.05. If a development includes a segment of an arterial or collector street as shown on the Master Plan, the

developer shall construct the streets on the alignment adopted in the Master Roads and Streets Plan, and conforming to the respective classification. The developer shall be required to construct the street to a twenty-eight-foot width in accordance with the minimum requirements of a local residential street; provided, however, that the City may, upon direction of the City Council, elect to require construction to the full standards and pay to the developer the cost difference between the required street and the proposed street. (Resolution 07-82)

VII. TRAIL PRIORITIZING CRITERIA AND PLANNING GUIDELINES

A. Trail Prioritizing. The TAC and Parks and Recreation Advisory Commission will review the trail priority list during the annual review of the HART. The list will be presented in a memorandum from staff, and will contain a mix of large and small projects. Generally it will include up to five trail projects that staff has reviewed and found ready for preliminary work. Trails on this list are planned for construction in the near term (one to three year timeframe). Staff will actively work to prepare those projects for construction. (Resolution 07-82)

B. Trail Planning Guidelines

Trail design shall take into account at minimum the following:

1. Use context sensitive design when locating and planning trails to take advantage of scenic resources.
2. Respect the character of trails based on function, setting, and expectation of accessibility.
3. Evaluate the soils, drainage, wetlands, Tsunami zone, flood plain, stream setbacks, historical resources, visual resources, topography, existing and potential land use, zoning and land ownership.
4. Where estimated costs, operating costs and outside funding availability are considerations and important criteria, care should be used to ensure that important trails are not eliminated solely using cost as a determinant.
5. Multi-use trails are encouraged. Design of the trail should include consideration of compatible uses such as pedestrians and bicycles.
6. All trails should be designed to recognize the requirements of ADA standards and guidelines. (Resolution 07-82)

Introduced by:	Mayor
Date:	08/19/08
Hearings:	09/02/08 & 09/16/08
Action:	Postponed Until 09/16/08
Action:	Enacted as amended
Vote:	6 Yes, 1 No, 2 Absent
Action:	Reconsideration Filed by Fischer
Date:	10/14/08
Action:	Reconsideration Failed
Vote:	1 Yes, 8 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2008-28**

**AN ORDINANCE AUTHORIZING THE GENERAL LAW CITIES IN THE KENAI
PENINSULA BOROUGH TO LEVY AND COLLECT SALES TAXES ON
NONPREPARED FOOD ITEMS**

WHEREAS, if approved by the voters in the October 7, 2008, election, ballot Proposition 1 will require that nonprepared food items be exempt from borough sales taxes from September 1 through May 31 of each year; and

WHEREAS, Alaska Statute 29.45.700 requires general law cities in the borough that levy a sales tax to levy the tax sources taxed by the borough unless the assembly by ordinance authorizes the city to levy and collect taxes on other sources; and

WHEREAS, the cities of Soldotna, Homer, and Seldovia are general law cities that levy a sales tax and will be required to exempt nonprepared foods if Proposition 1 passes, unless the assembly gives them the option to tax nonprepared food year-round; and

WHEREAS, the cities of Seward and Kenai are home rule cities and are, therefore, exempt from the statutory requirement to tax the same sources as the borough unless otherwise provided by the assembly; and

WHEREAS, at its meeting on August 13, 2008, the Soldotna City Council adopted Resolution 2008-052 requesting the Kenai Peninsula Borough to grant the city of Soldotna the option to tax nonprepared food; and

WHEREAS, at its meeting of September 10, 2008 the Seldovia City Council adopted Resolution 09-03 in support of Kenai Peninsula Borough Ordinance 2008-28; and

WHEREAS, at its meeting of July 28, 2008, the Homer City Council introduced Ordinance 08-32, amending the Homer Sales Tax Code to seasonally exempt sales of nonprepared food between September 1 and May 31 each year and scheduled that ordinance for public hearing on October 27, 2008; and

WHEREAS, exempting nonprepared food items for nine months each year will likely have a significant impact on the cities' revenues; and

WHEREAS, each city is in the best position to make policy decisions concerning whether or not to exempt nonprepared food items from its respective city sales tax; and

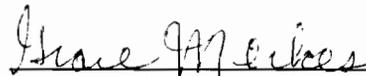
WHEREAS, it is accordingly appropriate to authorize the city councils of general law municipalities to make this decision on behalf of their own constituents;

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

SECTION 1. That the general law cities in the Kenai Peninsula Borough are authorized to levy and collect sales taxes on nonprepared food items on a year-round basis except for sales that are required to be exempted by AS 29.45.700 as now enacted or may be hereinafter.

SECTION 2. That this ordinance shall take effect on October 14, 2008, if Proposition 1 of the Kenai Peninsula Borough regular election is approved by the voters.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 16TH DAY OF SEPTEMBER, 2008.



Grace Merkes, Assembly President

ATTEST:



Johni Blankenship, Borough Clerk



Enactment:

- Yes: Long, Martin, Smith, Sprague, Superman, Merkes
- No: Fischer
- Absent: Gilman, Knopp

Reconsideration:

- Yes: Fischer
- No: Fischer, Gilman, Knopp, Long, Martin, Smith, Sprague, Superman, Merkes
- Absent: None

Introduced by:	Cooper
Date:	04/07/15
Hearing:	05/05/15
Action:	Introduced and Set for Public Hearing 05/05/15
Date:	05/05/15
Action:	Postponed as Amended Until 07/07/15
Date:	07/07/15
Action:	Tabled
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
ORDINANCE 2015-09**

**AN ORDINANCE AMENDING KPB 5.18.430, COMPUTATION-MAXIMUM TAX, BY
INCREASING THE MAXIMUM AMOUNT OF A SALE SUBJECT TO THE BOROUGH
SALES TAX TO \$1,000 WITH A TRIENNIAL ADJUSTMENT FOR INFLATION,
SUBJECT TO VOTER APPROVAL**

WHEREAS, KPB 5.18.430(A) currently provides for a ‘maximum tax’ of \$500, meaning that the borough’s sales tax is only to be applied to the first \$500 of each separate sale, rent, or service transaction unless otherwise provided; and

WHEREAS, Ordinance No. 9, enacted by the assembly in 1965, set the maximum taxable amount at \$500 and this sum has never been adjusted for inflation or otherwise; and

WHEREAS, the present value of \$500 in 1965 is \$3,056.73 according to the Anchorage Consumer Price Index inflation calculator and \$3,757.71 according to the national calculator, which is much greater than \$1,000; and

WHEREAS, with the declining statewide revenues the borough will need additional revenues to offset some of the lost state funds; and

WHEREAS, KPB 5.18.430(F) requires that any increase in the amount of the cap be approved by the voters;

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

SECTION 1. That Kenai Peninsula Borough Code of Ordinances Section 5.18.430 is amended as follows:

5.18.430. Computation—Maximum tax.

- A. The sales tax referred to in KPB 5.18.100 shall be applied only to the first \$1,000.00~~[500.00]~~ of each separate sale, rent or service transaction, except as otherwise provided in this section. On January 1 of every third year, beginning with January 1, 2019, this cap may be increased based upon the preceding year's Anchorage Consumer Price Index (CPI-U), rounded to the nearest \$10 subject to assembly approval by ordinance.
- B. Except as provided below for long-term vehicle leases, the payment of rent, whether for real or personal property, in excess of the current cap in KPB 5.18.430(A) ~~[\$500.00]~~ and for more than one month, shall be treated as several separate transactions covering the rental/lease for one month each.
- C. Services provided on account and billed to the customer on a periodic basis are subject to [APPLICATION TO] the tax on a maximum of the current cap in KPB 5.18.430(A) ~~[\$500.00]~~ of each billing, per account. For purposes of this section, any advance payment for services other than to a trust or escrow account is considered to be paid pursuant to a "billing."
- D. Each night's rental of each individual room shall be considered a separate transaction and therefore the maximum tax computation shall be calculated on a per room per night basis.
- E. Long-term vehicles leases shall be treated as one transaction per year, and per fractional year, of the lease term. The tax paid for any fraction of a year shall equal the tax paid for a whole year. The sales tax for the entire long-term vehicle lease shall be due and collected at the time of the first payment. Tax shall be calculated at the sales tax rate in effect on the day the lease is signed. There shall be no refund of such taxes should the lease terminate earlier than on its terms. Any extension of the initial lease term shall be treated as a new long-term vehicle lease.
- F. Any increase to the maximum sales tax described in subsection (a), above, shall not take effect until ratified by a simple majority of voters at a regular borough election.
- G. Recreational sales shall be treated on a per person per day basis and therefore the maximum tax computation shall be calculated on a per person per day basis. For purposes of this subsection, the term "person" means an individual human being.

SECTION 2. That a ballot proposition shall be placed before borough voters at the next regular election to read as follows:

PROPOSITION No. _____

Shall Ordinance 2015-09, increasing the maximum amount of a sale subject to the borough sales tax from \$500 to \$1,000 with a triennial adjustment for inflation, be ratified?

Yes _____ No _____

SECTION 3. That Section 2 shall become effective immediately upon enactment of this ordinance. Section 1 of this ordinance shall become effective January 1, 2016, only if the proposition contained in Section 2 is approved by a majority of voters voting on the question in the regular election of October 6, 2015.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY OF * 2015.

Dale Bagley, Assembly President

ATTEST:

Johni Blankenship, MMC, Borough Clerk

05/05/15 Vote on Motion to Postpone as Amended:

Yes: Cooper, Johnson, Ogle, Welles, Wolf

No: Gilman, Haggerty, McClure, Bagley

Absent: None

07/07/15 Vote on Motion to Table:

Yes: Cooper, Haggerty, Gilman, Johnson, McClure, Ogle, Welles, Wolf, Bagley

No: None

Absent: None

2015 Certified Values Real Values
TAG 20 REAL PROPERTY SUMMARY GRM_Live
(Excludes Oil Accounts)

		ASSESSED VALUES	KPB	CITY
Total Accounts	4,358	Total Ass'd Land	316,256,200	316,256,200
Total Acreage	15,192.17	Total Ass'd Improvements	744,245,900	744,245,900
		Total Ass'd Real Property	<u>1,060,502,100</u>	<u>1,060,502,100</u>

EXEMPTIONS & DEFERMENTS

MANDATORY EXEMPTIONS

		Count		KPB Value	City Value
7	Government Ex Value	280	280	272,422,600	272,422,600
9	Disabled Veteran Exemption	10	10	1,447,400	1,447,400
10	Religious Exemption	25	25	15,684,700	15,684,700
15	ANCSA Native Ex Value	1	1	1,672,400	1,672,400
17	Armed Forces Agency Ex Value	1	1	185,900	185,900
18	Electric CoOp Ex Value	4	4	4,382,600	4,382,600
19	Fire Control System Exemption	11	11	206,888	206,888
20	State Educational Ex Value	7	7	980,400	980,400
26	Hospital Ex Val	1	1	4,166,300	4,166,300
28	University Ex Val	2	2	6,720,700	6,720,700
44	Charitable Ex Val	37	37	9,512,700	9,512,700
49	FCL Foreclosure	1	1	114,800	114,800
54	MSV Multi-Purpose Senior Variable	1	1	1,032,200	1,032,200
182	Senior Mandatory	432	432	61,208,700	61,208,700
	Total MANDATORY EXEMPTIONS	813	<u>813</u>	<u>379,738,288</u>	<u>379,738,288</u>

OPTIONAL EXEMPTIONS

		Count		KPB Value	City Value
30	Disabled Resident \$500TAX CREDIT Bo	18	18	0	0
36	OP Volunteer FF/EMS Exemption 1	8	8	80,000	80,000
183	OP Homer Residential Exemption	1,070	1,070	0	21,054,300
188	OP Community Purpose Ex Val	24	24	12,883,300	0
189	OP Homers Override Exemption	22	22	0	12,849,700
190	OP >150k Senior Ex Borough Only	357	357	33,796,300	0
191	OP >150k DisVet Ex Borough Only	9	9	918,200	0
194	Soldotna Disabled Vet > 150k	9	9	0	0
195	OP Residential Exemption	850	850	40,793,600	0
	Total OPTIONAL EXEMPTIONS	2,367	<u>2,367</u>	<u>88,471,400</u>	<u>33,984,000</u>

TAG 20 Exemption Totals: 3,180 **3,180** **468,209,688** **413,722,288**

	TAXABLE VALUE	KPB Value	City Value
RECAP	TOTAL ASSESSED VALUE	\$1,060,502,100	\$1,060,502,100
	TOTAL EXEMPTIONS	\$468,209,688	\$413,722,288
	TOTAL TAXABLE	<u>\$592,292,412</u>	<u>\$646,779,812</u>

2015 Certified Values Real Values
TAG 21 REAL PROPERTY SUMMARY GRM_Live
(Excludes Oil Accounts)

		ASSESSED VALUES	KPB	CITY
Total Accounts	14	Total Ass'd Land	975,900	975,900
Total Acreage	10.83	Total Ass'd Improvements	2,320,300	2,320,300
		Total Ass'd Real Property	<u>3,296,200</u>	<u>3,296,200</u>

EXEMPTIONS & DEFERMENTS

MANDATORY EXEMPTIONS		Count	KPB Value	City Value
7	Government Ex Value	2 2	1,800	1,800
182	Senior Mandatory	5 5	646,700	646,700
	Total MANDATORY EXEMPTIONS	7 7	<u>648,500</u>	<u>648,500</u>

OPTIONAL EXEMPTIONS		Count	KPB Value	City Value
183	OP Homer Residential Exemption	0 8	0	158,200
190	OP >150k Senior Ex Borough Only	4 4	325,900	0
195	OP Residential Exemption	7 7	334,100	0
	Total OPTIONAL EXEMPTIONS	11 19	<u>660,000</u>	<u>158,200</u>

TAG 21 Exemption Totals: 18 **26** **1,308,500** **806,700**

	TAXABLE VALUE	KPB Value	City Value
RECAP	TOTAL ASSESSED VALUE	\$3,296,200	\$3,296,200
	TOTAL EXEMPTIONS	\$1,308,500	\$806,700
	TOTAL TAXABLE	<u>\$1,987,700</u>	<u>\$2,489,500</u>



Birch Horton Bittner & Cherot

a professional corporation

MEMORANDUM

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

FROM: THOMAS F. KLINKNER

RE: TAXATION OF INTERNET SALES

FILE NO.: 506,742.221

DATE: AUGUST 28, 2015

1. Introduction and Summary.

You have asked whether the City has authority to tax internet sales.¹ The short answer is that the City may tax some internet sales but not others. The City may tax an internet sale if the sale meets each of the following overlapping criteria: (i) the sale must be “within the City,”² as that term is defined for the purpose of the City’s sales tax ordinance; (ii) the City’s taxation of the sale must be permitted under the Due Process Clauses of the U.S. and Alaska constitutions and the Commerce Clause of the U.S. constitution;³ and (iii) the sale must be subject to taxation by the Kenai Peninsula Borough (“Borough”). Below, I explain the application of each of these rules to the City’s taxation of internet sales. I also discuss federal legislation related to taxation and the internet.

¹ For the purposes of this discussion, an “internet sale” consists of the following: (i) a purchaser in the City directs an online order (ii) to a vendor at a location outside the City, (iii) which the vendor fulfills by a shipment to the purchaser from a location outside the City.

² HCC 9.16.010.

³ The Borough has codified this requirement explicitly as a tax exemption in its sales tax ordinance, which the City’s sales tax ordinance has adopted by reference. HCC 9.16.100. KPBC 5.18.200(A)(7) provides: “The following classes of retail sales, services and rentals are exempt ... Retail sales, rents or services which the borough is prohibited from taxing by the Constitution or laws of the United States or of the State of Alaska.”

As I will explain below, a provision in the Borough's sales tax ordinance misallocates some internet sales that should be treated as sales within the City. However, the last of the criteria above is the most restrictive. This is because the Borough has not extended its sales taxation authority to its constitutional limits, and the City may levy its sales tax only on the sources that are taxed by the Borough.

2. Sales within the City.

The City levies its sales tax on sales made within the City.⁴ The City's sales tax ordinance does not define what constitutes a sale "within the City." However, the City's sales tax ordinance incorporates by reference "those sections of the Kenai Peninsula Borough Code of Ordinances applicable to the levy and collection of the [City's] sales tax ..."⁵ Thus, the rules in the Borough sales tax ordinance regarding where a sale is made determine whether a sale is made within the City. Those rules apply to the location of internet sales as follows:

- When goods are delivered into the Borough from a point outside of the Borough and the seller maintains an "ongoing physical presence" (defined as a sales person making sales calls, a local telephone number, or keeping advertising and ordering materials for customers' use) in the Borough, then the location of the seller's in-Borough presence will determine the place of sale.⁶
- If a seller has no "ongoing physical presence" (defined as a sales person making sales calls, a local telephone number, or keeping advertising and ordering materials for customers' use) in the Borough but has "established a nexus" with the Borough (defined as a connection within the Borough by use of marketing techniques, such as telephone or door-to-door sales, which are significantly associated with the seller's ability to establish or maintain a market for its goods in the Borough), the location of the sale will be where physical possession of the goods is transferred to the customer.⁷

The first of these rules is problematic for the City's taxation of internet sales. Under this rule, if a vendor maintains a "bricks and mortar" store in the Borough, the Borough's sales tax ordinance treats the location of that store as the location of all internet sales by that vendor to purchasers in the Borough. The following example shows how this rule would work to the City's disadvantage in taxing internet sales: If a purchaser in the City orders a product online from Home Depot, the Borough sales tax ordinance would treat the City of Kenai as the place of the sale, because Home Depot has a store in Kenai, but not in the City.

⁴ HCC 9.16.010.

⁵ HCC 9.16.040.

⁶ KPBC 5.18.450(A).

⁷ KPBC 5.18.450(A).

3. Constitutional Limits on Taxation of Internet Sales.

A. Introduction.

Constitutional limitations on the levying of a sales tax on the sale of goods delivered to the taxing jurisdiction by a vendor located outside that jurisdiction developed mostly in the context of sales ordered by mail or telephone. However, courts would apply the same limitations to the taxation of internet sales. These limitations are imposed under either the Due Process Clauses of the U.S. and Alaska constitutions⁸ or the Commerce Clause of the U.S. constitution.⁹

B. Due Process.

The City only may tax only those internet sales that have a sufficient nexus with the City to meet minimal requirements of due process. The seller need not be physically present in the City to meet this standard—it is sufficient to satisfy due process that the seller be “engaged in continuous and widespread solicitation of business” within the City.¹⁰ Thus, the United States Supreme Court held that due process did not forbid a requirement that a mail order company with no place of business in a state, but that solicited orders by mailing catalogs to the state’s residents, collect the state’s use tax on orders from the state’s residents.¹¹

So long as the seller purposefully directs its activities at City residents by such means as advertising on television or radio broadcasts that are generally available to City residents, a newspaper that circulates generally in the City, or the yellow page telephone directory that is used by telephone subscribers in the City, the seller will have satisfied the due process threshold for the City’s taxation of its internet sales of products for delivery in the City.

C. Commerce Clause.

The United States Constitution restricts the City's power to impose taxes that unduly burden interstate commerce.¹² However, “[t]he commerce clause of the United States Constitution poses no bar to local taxation of purely intrastate transactions which

⁸ U.S. Constitution, amendment 5; Alaska Constitution art. I, §7.

⁹ U.S. Constitution, art. I, §8, cl. 3. While referring explicitly to the power of Congress to regulate interstate commerce, the Commerce Clause also implicitly prohibits certain state actions that interfere with interstate commerce. *Quill Corporation v. North Dakota*, 504 U.S. 298, 309; 112 S.Ct. 1904, 1911 (1992).

¹⁰ *Quill Corporation*, 504 U.S. at 304-308; 112 S.Ct. at 1909-1911.

¹¹ *Quill Corporation*, 504 U.S. at 308; 112 S.Ct. at 1911.

¹² *Douglas v. Glacier State Telephone Co.*, 615 P.2d 580, 583 (Alaska 1980).

are not components of interstate commerce.”¹³ Thus, Commerce Clause considerations can apply only to the City’s taxation of internet sales that have an origin outside the State of Alaska.

The Commerce Clause does not permit taxation of sales by an out-of-state seller that solicits orders in the taxing state through advertising, but that has no physical presence in the taxing state.¹⁴ In contrast, as discussed above, the solicitation of orders within a taxing jurisdiction does supply the nexus between the seller and the taxing jurisdiction that is required for taxation under the less demanding standard of due process.¹⁵ Meeting the latter standard is sufficient to tax sales made to purchasers within the City by a seller with a physical presence in the State of Alaska, even though the seller has no physical presence in the City. Moreover, this is the case even where the sales are not made through one of the seller’s in-state facilities, but instead by direct contact with one of the seller’s out-of-state facilities.¹⁶ Thus, an internet seller’s promotion of sales in the City by such means as advertising, promotional events or solicitation of sales, provides a basis for taxing sales by that seller if, and only if, the seller has a physical presence in the state of Alaska.

While an internet seller’s physical presence in the state of Alaska is sufficient to make its sales to purchasers in the City subject to City sales tax regardless of the origin of those sales, care must be taken to identify the internet seller correctly, because the internet seller, although affiliated with the owner of a “bricks-and-mortar” facility in the state of Alaska, may be a separate corporate entity. In that case, the simple presence of the facility in the state of Alaska may not be sufficient to justify applying the City’s sales tax to sales by the affiliated internet seller. The presence of the in-state facility will justify applying the City’s sales tax to the affiliated internet seller’s transactions only if the entity that owns the in-state facility is shown to be acting as the “agent” of the internet seller. This agency relationship could be established by showing that the in-state facility accepts returns of merchandise ordered over the internet, or provides installation or maintenance services for merchandise ordered over the internet, or otherwise acts as a local presence for the internet seller.

4. Sources Taxed by the Borough.

The City may apply its sales tax only to sources that are subject to Borough sales tax, except where the Borough by ordinance permits the City to tax another source.¹⁷

¹³ *Id.* (upholding borough sales tax on charges for intrastate long distance telephone calls).

¹⁴ *Quill Corporation*, 504 U.S. at 310-313; 112 S.Ct. at 1912-1914.

¹⁵ *Quill Corporation*, 504 U.S. at 313; 112 S.Ct. at 1913-1914.

¹⁶ *State, Dept. of Revenue v. Sears, Roebuck and Company*, 660 P.2d 1188, 1190-1191 (Alaska 1983).

¹⁷ AS 29.45.700(a); *City of Homer v. Gangl*, 650 P.2d 396, 399-400 (Alaska 1982).

Thus, the City may tax an internet sale only if the Borough also taxes that sale. Under the rules that the Borough has adopted to determine what sales are taxable, the Borough does not levy its sales tax on internet sales to the full extent permitted by the U.S. and Alaska constitutions. Because the Borough does not tax certain internet sales that it could tax within constitutional limits, the City may not tax those sales either.

The following explains where the Borough falls short of taxing all constitutionally taxable internet sales:

- The Borough taxes sales by sellers located outside the state of Alaska only if the seller maintains a sales force, a plant or an office in the Borough.¹⁸ Consistently with constitutional limitations, the Borough also could tax sales by sellers located outside the state of Alaska that maintain a sales force, a plant or an office anywhere in the State of Alaska rather than just in the Borough.¹⁹ Only the Commerce Clause of the U.S. constitution imposes this physical presence requirement, and it is concerned only with a physical presence within the state where the tax is levied.
- Sales by sellers in the state of Alaska but outside the Borough are taxable only when the sales are made through a “physical presence” (defined as a sales person making sales calls, a local telephone number, or keeping advertising and ordering materials kept for customers’ use) in the Borough.²⁰ Sales are not taxable if the seller can clearly establish they are neither assisted by nor attributed to physical presence in the Borough.²¹ The taxation of sales by sellers with a physical presence in the state of Alaska is restricted only by the requirements of due process. To satisfy due process, it is sufficient that the seller be engaged in continuous and widespread solicitation of business within the Borough. Taxation of a sale by an in-state seller that is engaged in such solicitation of business within the Borough is constitutionally permissible even if the sale is neither assisted by nor attributed to a physical presence in the Borough. The Borough specifically declines to consider advertising in publications published and distributed by third parties as sufficient to be considered a physical presence,²² which such activity suffices to satisfy the requirements of due process.

If the City wants the authority to tax internet sales to the full extent permitted by the U.S. and Alaska constitutions, it must persuade the Borough either to modify the rules discussed above, or to adopt an ordinance authorizing the City to tax internet

¹⁸ Borough Sales Tax Policy 95-02.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

sales to the extent that is constitutionally permissible even though the Borough elects not to do so.

5. Federal Moratorium on Taxation of Internet Access.

There may be a misconception among some members of the public that federal law exempts all internet sales from state or local taxation. That is not the case. A federal statute, the Internet Tax Freedom Act of 1998,²³ placed a moratorium on the imposition of “taxes on Internet access” services as well as any “multiple or discriminatory taxes on electronic commerce” by state or local governments. This moratorium currently will expire October 1, 2015.²⁴ The moratorium only prohibits state and local taxes on internet access (e.g., a sales tax on the monthly fee charged a customer by an internet service provider), and taxes that apply only to electronic commerce, or make electronic commerce subject to a different tax rate than transactions conducted through other media.²⁵ It does not provide any blanket tax exemption for transactions over the Internet.

Please let me know if I may be of further assistance in this matter.

TFK/

²³ Pub. L. No. 105-277, 112 Stat. 2681-2719, §§1100, *et seq.*

²⁴ Pub. L. No. 105-277, as amended by Pub. L. No. 113-235.

²⁵ Pub. L. No. 105-277.

TOURISM, IT'S EVERYONE'S BUSINESS

ARGUMENTS AGAINST A BED TAX:

CON: A bed tax would put an additional burden on the accommodations sector to collect taxes for the rest of the industry.

PRO: We could build in a 5% return for the businesses collecting the tax to offset the time spent on additional bookkeeping and credit card charges.

ARGUMENTS FOR A BED TAX:

The intent of a bed tax would be to create a sustainable funding source for tourism marketing and infrastructure for the Borough and our cities. Investing in Tourism Marketing is an investment in the economic development of the Kenai Peninsula Borough.

An identified funding source that would be 100% identified as being from the Tourism Industry would stop the argument from many in the Borough that they do not want their tax dollars going to pay for tourism marketing.

We could all stop spending so much time fighting for a small slice of what the industry deserves and get about the business of selling our product!

IMAGINE WHAT WE COULD DO WITH AN ADEQUATE MARKETING BUDGET...

TV and Radio advertising in the Anchorage market all Spring and Fall to drive shoulder season visitation.

Full page cooperative ads in national magazines.

A presence at national consumer shows that our competitors are attending.

A presence on international sales missions that our competitors are attending.

A position dedicated to working to bring conventions and meetings to The Kenai.

Stimulate off season and niche markets such as Eco-tourism and winter sports.

ALASKA SALES AND BED TAXES

Destination	Sales Tax	Bed Tax	Total
Anchorage		12	12
Cordova		6	6
Fairbanks		8	8
Haines		4	4
Homer	7.5		7.5
Juneau		12	12
Kenai	6	0	6
Ketchikan		6.5	6.5
Kodiak		10	10
Mat-Su CVB		5	5
Palmer	3	5	8
Seldovia	7.5		7.5
Seward	7	4	11
Sitka		12	12
Soldotna	6		6
Unalaska/Dutch Harbor	3	5	8
Wasilla	2.5	5	7.5

By aggressively marketing The Kenai and our individual communities, we will see our fair share of visitors and groups – and their expenditures, which will support hundreds of small businesses in the region that rely on the tourism industry – from golf courses and restaurants to art galleries and outdoor adventure operators.

THE NATIONAL AVERAGE

BED TAX IS 10%

The goal is to HELP the industry, to provide funds to attract tourists and meetings to The Kenai, which in turn will generate sales tax revenue for the region, which helps to pay for schools, fire, police, streets and other city services.

HOW MUCH WOULD A BED TAX GENERATE ON THE KENAI?

Using 2012 Accommodations Sales Tax figures, a 1% Borough wide bed tax would generate just under \$700,000.

A 1% City bed tax in Homer would generate \$120,000.



TOURISM, IT'S EVERYONE'S BUSINESS

CHALLENGES WITH THE KENAI'S CURRENT TOURISM MARKETING STRATEGY

We are the best Alaska has to offer, and yet we aren't competing on a level playing field with our competition!

Tourism in Alaska is big business, and communities are aggressively competing for visitor dollars. If the Kenai is going to remain competitive, we have got to stay in the game.

Anchorage - 7 million dollars
 Juneau - 1 million
 Fairbanks - 2.9 million
 Mat-Su Borough - \$850,000
 KPTMC - \$300,000 from KPB

When the Kenai Peninsula is not marketing competitively with other areas, we do not exist in the minds of potential Alaskan visitors.

We do not have our hand out for a gift!

TOURISM GETS VERY LITTLE RESPECT ON THE KENAI. It is estimated that tourism brings in more than 30% of our sales tax, yet asking for our marketing dollars to keep that money flowing into our communities is viewed as an ask as for a hand out rather than an investment.

We should be working together! Incorporated communities that benefit from sales tax dollars are in the same boat as the Borough as a whole.

WE ALL SPEND A HUGE AMOUNT OF TIME SECURING A SMALL AMOUNT OF MONEY FOR PROMOTING WHEN WE COULD BE MARKETING AND MAKING A REAL DIFFERENCE IN THE NUMBER OF PEOPLE WHO ARE VISITING OUR COMMUNITIES!

WE ARE ASKING THAT YOU ARE PART OF THE CONVERSATION... IS A BED TAX WORTH EXPLORING?

KPTMC put forward a broad base 1% tourism assessment plan that would collect from all segments of the industry. This plan was not supported by the KPB administration. Bed taxes are common and accepted by the traveling public and the administration would support formulating a plan. **If the tourism industry on The Kenai bands together to create it's own stream of marketing dollars WE CAN CONTROL OUR OWN DESTINY AND GROW!**

ARGUMENTS AGAINST A BED TAX:

CON: Some argue that higher prices will lead to a decline of tourism.

PRO: The marketing that we will be able to put in place will GROW our visitor base, not shrink it. Bed taxes are in place throughout the nation and Alaska. We are the only region in Alaska that does not have one.

CON: Bed taxes, as with other taxes, have the habit of continuously increasing regardless of economic conditions.

PRO: If The Kenai's tourism industry formulates this plan and brings it forward to our Borough and Cities, we can control the amount of tax levied and the way it is spent, rather than having it forced on us and used for general government in the future.

CON: A bed tax could affect our residents, such as traveling sports teams.

PRO: We can control the way a bed tax would be structured and look at options such as making it seasonal.

TOURIST PAY. BUSINESS BENEFITS. THE KENAI WINS.