



# City of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

491 East Pioneer Avenue  
Homer, Alaska 99603

clerk@cityofhomer-ak.gov

(p) 907-235-3130

(f) 907-235-3143

## Memorandum Agenda Changes/Supplemental Packet

TO: MAYOR WYTHE AND HOMER CITY COUNCIL

FROM: JO JOHNSON, MMC, CITY CLERK 

DATE: OCTOBER 12, 2015

SUBJECT: AGENDA CHANGES AND SUPPLEMENTAL PACKET

### ANNOUNCEMENTS/PRESENTATIONS/BOROUGH REPORT/COMMISSION REPORTS

Recognizing Councilmembers' Service, Written public comment **Page 3**

International Economic Development Conference, Report by Councilmember Zak  
**Page 5**

### PUBLIC HEARINGS

**Ordinance 15-36(A)(S)**, An Ordinance Amending HCC 9.16.010 to Suspend the Dedication of 0.75% of the City Sales Tax to the Homer Accelerated Roads and Trails (H.A.R.T.) Program for a Period of Up to Three Years, **Subject to Earlier Termination by Ordinance**, and Authorizing the City to Submit the Question of Suspending Such Sales Tax Dedication to the Qualified Voters of the City at a Special Election to be Held in the City on \_\_\_\_\_ . Mayor. **Page 9**

### RESOLUTIONS

**Resolution 15-087(S)**, A Resolution of the City Council Certifying the Results of the City of Homer Regular City Election Held October 6, 2015 to Elect Two Council Members. City Clerk/Canvass Board. **Page 13**

Written public comment **Page 17**

### RECOMMENDATION:

Voice consensus to changes under Agenda Approval.

Fiscal Note: N/A



## FRANCIE ROBERTS

Thank you for serving on the city council for twelve years. Six of those years I was fortunate to serve along side of you and always valued your very thoughtful and educated thoughts and opinions. Not only did you come to each council meeting well prepared, you listened carefully to others and honored views of many before you made your comments.

Thank you for serving so ably as our Mayor Pro Tem and serving on the Transportation Committee all of which is very important in the democratic process.

You will be missed, Francie.

Barbara Howard

## BEAUREGARD BURGESS

Thank you for your years of service as our city council member. Your view points on a variety of issues has been refreshing and thought provoking to say the least. Each council meeting you came well prepared and ready to engage in meaningful discussion in order to develop the best public policy possible.

Hopefully you will find it in your heart and spirit to stay engaged in cities issues and find the time and energy to offer your services along the way.

A big thank you for your recent training as a volunteer EMT.

Sincerely,

Barbara and Bob Howard

## Jo Johnson

---

**From:** bryanzak@aol.com  
**Sent:** Monday, October 12, 2015 9:45 AM  
**To:** Jo Johnson  
**Subject:** International Economic Development Conference Notes  
**Attachments:** IEDC.docx

Hello Jo:

I had the opportunity to attend the International Economic Development Conference and took quite a few notes. I would like to share with the Council the City Manger as well as the Assistant City Manger and also the Economic Development Advisory Commission.

Of particular interest to me were the many P3 or Public / Private Partnerships that were tremendously successful. Below is an excerpt from my notes specifically about P3's.

### **Financing Public-Private Partnerships**

John Finkie from the National Development Council (NDC)

Financing vehicles to help communities primarily for social infrastructure.

We build public buildings

A power point here, which was not the one, I was planning on using, as the one that I was going to use got lost.

How many people have done P3's? Anyone done public facilities – buildings

Ninth and Jefferson – King County, Washington

Was not started as a P3 building.

Serves as a

Starting this using bonds. Erased a \$30,000,000 project overrun on previous GC-CM process.

Financing 63-20 bonds

Bond issue: \$189,720,000

By the time the university got a whole dug it was too expensive, the county stopped it and moved the money. It sat for four years as a hole in the ground.

Ultimately we built it and we reduced to zero their 30M gap. They were estimating it would cost \$800 a square foot. We brought it in for half of the square foot costs. This one was audited and they said the cut the cost in half

P3 has two models an international and an American Model

American Model 63-20 or 501©(3) Bonds

Chart comparing the two approaches – could get this presentation

The American model needs a not for profit entity.

Explanation of chart of difference between American and International approach.

Very important to understand about equity. Equity is the most costly source of money - so equity and taxable debt.

Bucket of finance

Bucket of construction

Bucket of operations – can be public or private we like private long-term lease. Private operations, private maintenance through a funded maintenance reserve,

Private buckets you get the lowest costs. American model all been exempt from property tax.

You cannot do this in a public works arena

Public works does not have a motivation for efficiency. Public works revolves around consensus. There is a penalty if you make a mistake.

The private sector wants efficiency.

Public works process is designed to move slowly. Time is money. Money differentiates

Private delivery with incentives to perform if you bring it in under budget.

Difference between taxable and tax exempt financing (Slide)

**Taxable**

- Combination of Taxable Debt & Equity
- Required Debt Coverage Ration 1.1 or higher
- Two Lenders – Construction then Permanent
- Difficulty with Abatement

**Other column**

**4 Pillars of value**

- Development expertise
- Financing
- Revenue Stream
- Operations

**How to marry tax exempt with non-taxable**

(SLIDE) This is the model we use – we enter in to a Design phase to identify the Public Agency, Developer and Property Manager, Architect and Engineer and general contractor, Construction Manager for the Special Purpose Not for Profit

Having this approach with everyone together at the beginning is not something the public works process does not bring the critical players to the beginning of a project.

You get to 20% you do not need to get to 40% and you can have the guaranteed costs and a lease between the special purpose agency and the lease. The government is guaranteed not to face cost overruns. Rent that equals for 30 years . . . at the end of 30 years the asset transfers to local government. New Slide – private delivery model  
If management does a good job they stay, if not they are let go.

Long Beach courthouse \$1,000 sq ft. to build, \$122 per sq. foot to occupy.

**Best Practices in Public Procurement:**

1. RFP Development Team – issued only 3 or 4 teams
2. Five Questions
  - a. Identify the Team Members, Their time commitments & Experience on similar projects?
  - b. What ideas does the Team have to create public value?
  - c. Will they accept the terms of an applied Pre-Development Agreement and Development Agreement?
  - d. With a assumed Per Sq. Ft Hard cost, bid all soft cost
  - e. Confidentially provide financial information and litigation history
3. No Architectural Renderings – never allow architectural renderings in an RFP, preclude architectural renderings.  
University of Alaska Fairbanks Dining Hall expansion was P3

Gail Lewis Director, office of P3 Initiatives  
Arizona Department of Transportation

Arizona is so polar opposite it is just hot and cold – we do have a lot of public lands, native, . . . So a lot of similarities  
What is a Public-Private Partnership, (a.k.a P3 or PPP), exactly? Slide

The close collaboration of a public entity(s) and a private entity to structure, negotiate and implement the finance, design, development, construction and /or operation of one or more facilities.

Both the public entry AND the private entry “share the responsibility and risks for the project

**Slide – Risk Transfer**

P3s transfer risk from the public to the private sector in return for the change to earn return on investment.

Example: Private partner guarantees construction timing – I penalized for delays.

Example: Private partner guarantees level of service is penalized for congestion.

Private sector is not willing to take on the stringent environmental or the hazard so on the two ends of the spectrum they want the public sector to stay involved. On the far right you hand it over to the private sector. The two ends do not work it is the space in the middle where you can share risk.

**P3's are not free money**

- Free money!! Private finance needs to be repaid, at a competitive long-term rate of return.
- Shifting risks to the private sector can be a good idea for the public sector, with or without private finance
- But they are not a substitute for adequate funding.

Arizona's P3 Law – you are going to need it

Eligibility: enhanced, upgraded or new roads, rail, transit, and facilities

Types of partnerships: design/build all the way to design/build/finance/operate/maintain. Very flexible.

Allows for ADOT to solicit projects, but also receive unsolicited projects.

Gives ADOT significant authority to enter into negotiations and agreements

Can use a number of revenue sources as repayment, including public funds, bonds, tolls and fees.

Slide Path to P3

Internal Process

Partner Dialogue

Unsolicited Proposal

Feasible

Technically Viable

Traffic and Revenue

Value for Money

Publicly Acceptable

Outcome Based

Best Value

Steps to P3

Components of Analysis

Risk Analysis: All internal stakeholders and subject matter experts. Each component of the project. What could possibly go wrong?

Value for Money: Develop likely cost structure for the public sector. Develop likely cost structure for a few versions of public-private partnerships.

Put into black box and stir. Someone with a PHD can give you the value of your money –

It might show you that you can save money in the long run and shift risk. This shows you how little you know about yourself.

May be bringing down base rate - -but not the other costs

Slide – Public comparative looks like this Traditional with P3 on the right.

Potential p3 projects

Interstate 11

Eagle P3 in Denver

Early stages of a P3 connecting Phoenix and Las Vegas

14 Rest Areas = use sponsorships to offset costs

Flagstaff facilities – trade property to a developer and in exchange revamping a property.

Looking Forward – We don't have enough money to spend your money. New ideas – Texas TRZs,

Hybrid procurements

Sophisticated analysis

Get the outside help you need

Mike Catsi: In this job since 2010 AIDEA Overview slides

Public Private Partnerships – Expanding the Traditional Model – fund private infrastructure with private funds.

Federal loans, guarantees, and lines of credit – TIFIA

State . . .

On the Private Infrastructure side

- Financed through a combination of government grants/incentives, corporate debt, and private equity
- Repayment of investment is through generated

-

P3s public private partnerships meld these

- Public takes the initial risk

AIDEA expects the private sector to participate  
Created in 1967 by the State legislature to create employment opportunities.  
1.4 billion in assets and provide an annual dividend back to the State legislature.

AA+ Credit rating

Tide to our mission to grow diversified jobs throughout Alaska.

Does it make sense financially?

Industry looks to us to bring different players together.

Pathway to capital – equal partner with the private sector

We work from the general revolving fund.

Red Dog mine return 6.5% for fifty years

AIDEA \$265M

Jobs in an area that did not have any

Allowed the locals in an area, businesses in the area.

Largest property tax payer in the area.

This is the type of project we have been doing to develop private sector to benefit the public sector.

The more “winners” in a project, the greater chance for success.

How does development impact the local resources?

Payments they make to NANA are spread and shared among other regional corporations.

Stem decrease in oil flow through TAPS so invested in 4.5 miles road to drill site. Creating jobs, permanent and indirect

For each phase of this project an LLC was formed.

This led to increased opportunities

Slide Capital in the project . . .

Slide LLC Financing Structure – safe, secure and highly collateralized

Slide – General Takeaways

AIDEA's Lessons Learned

- A strong business case and comprehensive due diligence provide valuable cover for the decision you make
- Have a variety of financial tools available
- Experienced commercial evaluation team is critical – backgrounds in business valuation, private finance, public finance, business law industry specific knowledge

**Bryan Zak**

**Cell 907-223-6681**

CITY OF HOMER  
HOMER, ALASKA

Mayor

ORDINANCE 15-36(A)(S)

AN ORDINANCE AMENDING HCC 9.16.010 TO SUSPEND THE DEDICATION OF 0.75% OF THE CITY SALES TAX TO THE HOMER ACCELERATED ROADS AND TRAILS (H.A.R.T.) PROGRAM FOR A PERIOD OF UP TO THREE YEARS, SUBJECT TO EARLIER TERMINATION BY ORDINANCE, AND AUTHORIZING THE CITY TO SUBMIT THE QUESTION OF SUSPENDING SUCH SALES TAX DEDICATION TO THE QUALIFIED VOTERS OF THE CITY AT A SPECIAL ELECTION TO BE HELD IN THE CITY ON \_\_\_\_\_.

THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code 9.16.010 is amended to read as follows:

9.16.010 Levied.

a. A consumer's sales tax in the amount of three and three-quarters percent is levied by the City on all sales, rents and services within the City except as the same may be otherwise exempted by law.

b. An additional consumer's sales tax in the amount of three-quarters percent is hereby levied by the City of Homer on all sales, rents and services within the City except as the same may be otherwise exempted by law, for the purpose of funding debt retirement of the sewer treatment plant improvements, and to the extent revenues from such tax exceed such debt retirement obligations, for the purpose of funding water and sewer systems.

~~c. An additional consumer's sales tax in the amount of three-quarters percent is hereby levied by the City of Homer on all sales, rents and services within the City except as 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 2. Homer City Code 9.16.010 is amended to read as follows:

9.16.010 Levied.

a. A consumer's sales tax in the amount of three ~~and three-quarters~~ percent is levied by the City on all sales, rents and services within the City except as the same may be otherwise exempted by law.

b. An additional consumer's sales tax in the amount of three-quarters percent is hereby levied by the City of Homer on all sales, rents and services within the City except as the same may be otherwise exempted by law, for the purpose of funding debt retirement of the sewer

44 treatment plant improvements, and to the extent revenues from such tax exceed such debt  
45 retirement obligations, for the purpose of funding water and sewer systems.

46 c. An additional consumer's sales tax in the amount of three-quarters percent is  
47 hereby levied by the City of Homer on all sales, rents and services within the City except as  
48 the same may be otherwise exempted by law, for the purpose of funding of street  
49 reconstruction improvements and related utilities, construction of new local roads, and  
50 construction of new local trails.

51  
52 Section 3. A special election in and for the City is called for \_\_\_\_\_, 2015, at  
53 which the City shall submit the following proposition to the qualified voters of the City. The  
54 proposition must receive an affirmative vote from a majority of the qualified voters voting on  
55 the question to be approved.

56  
57 PROPOSITION NO. \_\_\_\_

58  
59 **SUSPEND THE DEDICATION OF 0.75% OF THE CITY SALES TAX TO THE HOMER**  
60 **ACCELERATED ROADS AND TRAILS (H.A.R.T.) PROGRAM FOR A PERIOD OF UP**  
61 **TO THREE YEARS, SUBJECT TO EARLIER TERMINATION BY ORDINANCE, TO**  
62 **MAKE SUCH 0.75% OF CITY SALES TAX AVAILABLE FOR GENERAL GOVERNMENT**  
63 **PURPOSES**

64  
65 Shall the dedication of 0.75% of the City sales tax to the Homer Accelerated  
66 Roads and Trails (H.A.R.T.) Program be suspended for a period of up to three  
67 years, subject to earlier termination by ordinance, to make such 0.75% of City  
68 sales tax available for general government purposes?

69  
70 Section 4. The proposition shall be printed on paper ballots and machine ballots, and  
71 the following words shall be added as appropriate next to an oval provided for marking the  
72 ballot for voting by hand or machine:

73  
74 PROPOSITION NO. \_\_\_\_

75  
76  Yes  
77  No

78  
79 Section 5. Section 1 of this ordinance shall become effective on January 1, 2016, but  
80 only if the proposition described in Section 3 is approved by a majority of the qualified voters  
81 voting on the proposition at the special election to be held in the City on \_\_\_\_\_, 2015.  
82 Section 2 of this ordinance shall become effective on January 1, 2019 or an earlier date  
83 determined by ordinance, but only if the proposition described in Section 3 is approved by a  
84 majority of the qualified voters voting on the proposition at the special election to be held in  
85 the City on \_\_\_\_\_, 2015. The remaining sections of this ordinance shall become effective  
86 upon adoption.







42 BE IT FURTHER RESOLVED that the Canvass Board's Certificate of Election (Exhibit A)  
43 be attached permanently as part of this Resolution.

44  
45 PASSED AND ADOPTED by the Homer City Council this 12<sup>th</sup> day of October, 2015.

46  
47 CITY OF HOMER

48  
49  
50 \_\_\_\_\_  
51 MARY E. WYTHE, MAYOR

52 ATTEST:

53  
54  
55 \_\_\_\_\_  
56 JO JOHNSON, MMC, CITY CLERK

57  
58  
59 Fiscal Note: N/A

City of Homer Regular Election October 6, 2015

We, the Election Canvass Board, duly appointed, of the City of Homer, Alaska hereby certify that the validated absentee and validated questioned ballots were opened, counted, and recorded at a legally authorized and convened meeting of the City of Homer Canvass Board, held October 6, 2015 and that the results of that count are hereon entered with the certified results of the votes counted for the precinct polling places via Accu-Vote Ballot Tabulation System and that the total results are recorded hereon.

	31-350 Homer #1	31-360 Homer #2	Absentee/ Questioned/ Special Needs	Total Regular Votes	% of Votes
<b>CITY COUNCIL</b>					
<i>3 Year Term</i>					
Beauregard Burgess	202	117	72	391	35%
Robert (Bob) Howard	112	54	53	219	20%
Joni Wise	187	138	40	365	33%
Donna Aderhold	263	160	72	495	44%
Micheal Neece	19	19	6	44	4%
Heath Smith	203	141	64	408	37%
Tom Stroozas	130	104	54	289	26%
Write-In	7	6	1	14	1%
Registered Voters	2504	2006			

We further certify that there were 1017 Regular voters and 191 Absentee voters, 13 Special Needs Voters, and 12 Questioned voters for a total of 1233 voters that voted in this election. Percentage of voter turnout is 27%. Total registered voters for the City of Homer are 4510 as of October 6, 2015.

IN WITNESS WHEREOF, I have hereunto set my hand this 9<sup>th</sup> day of October, 2015.

Canvass Board: Maryann Lyda Sharon Minsch  
 Staff: Melissa Jacobsen Jo Johnson, MMC, City Clerk



CITY OF HOMER, ALASKA  
ORDINANCE NO. 91-1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HOMER, ALASKA,  
REGARDING THE DATE FOR AND NOTICE OF RUNOFF ELECTIONS,  
AMENDING TITLE 4, ELECTIONS

WHEREAS, Alaska Statutes 29.26.060 allows municipalities, by ordinance, to select a date for holding a runoff election; and,

WHEREAS, conducting a local runoff election in conjunction with a State general or special election would reduce the costs associated with the election and might also increase voter turnout;

THE CITY OF HOMER ORDAINS:

Section 1. Section 4.04.200 of the Homer City Code is hereby amended to read as follows:

4.04.200 Runoff election; required. a. If no City Council candidate ~~for the office of Councilman~~ receives in excess of forty percent of the votes cast for ~~his a~~ respective ~~office seat~~, a runoff election shall be held ~~on the third Tuesday following the regular election or within three weeks after certification of the results of the election~~. When more than one Council seat for the same term is to be filled, total votes cast for a respective ~~office seat~~ shall be determined by dividing the total number of votes cast for all candidates by the number of ~~vacancies for the positions~~ seats to be filled.

b. In the event a runoff is required, the number of candidates receiving the highest votes to provide two candidates for each vacancy shall be included in the list of candidates for the runoff election.

c. If no candidate for the office of Mayor receives forty percent of the votes cast for that office, a runoff election between the two candidates receiving the highest number of votes will be held.

Section 2. Section 4.04.202 of the Homer City Code is hereby created to read as follows:

4.04.202 Runoff election; date and notice. a. If a runoff election is required due to the outcome of a regular election, the runoff election shall be held on the Tuesday after the first Monday in November. If a runoff election is required due to the outcome of a special election, the runoff election shall be held on the 4<sup>th</sup> Tuesday following the special election.

b. At least five days prior to the election, the City Clerk shall post notice of a runoff election in three public places and publish it once in a newspaper of general circulation in the City. The notice shall be in substantially the same form as the notice required for regular and special elections set forth at § 4.04.050 b.

Section 3. This is a general ordinance of a permanent nature and the provisions of Section 1 and Section 2 as contained herein shall be codified for inclusion in the Homer City Code.

Section 4. The City Clerk shall pre-clear the provisions of this ordinance with the U.S. Department of Justice pursuant to the Federal Voting Rights Act.

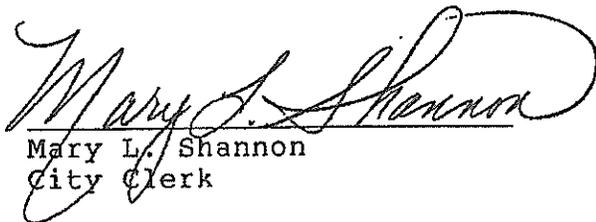
ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER, ALASKA,  
this 11<sup>th</sup> day of February, 1998.

THE CITY OF HOMER, ALASKA

  
HARRY GREGOIRE, MAYOR

AYES: 5  
NOES: 0  
ABSENT: 1  
ABSTAIN: 0

ATTEST:

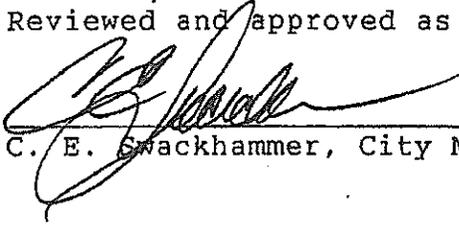
  
Mary L. Shannon  
City Clerk

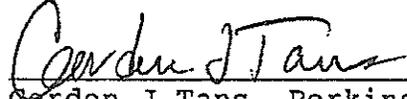
(City Seal)



First Reading: 01/14/91  
Public Hearing: 01/28/91  
Second Reading: 02/11/91  
Effective Date: 02/12/91

Reviewed and approved as to form and content:

  
C. E. Swackhammer, City Manager

  
Gordon J. Tans, Perkins Coie



Ken Castner  
PO Box 558  
Homer, Alaska 99603

907.299.2770

kcastner@tonsina.biz

OCT 12 2015  


October 12, 2015

Beth Wythe, Mayor  
Homer City Council Members  
*Delivered via Email and through Clerk*

Dear Mayor Wythe and Members of the Homer City Council:

You have before you this evening, Resolution 15-087, a request to certify the election of two council members.

The Canvass Board has adopted the view that *only one* candidate is required to receive 40% of the vote to fill a seat; the second candidate can ride the coat-tails of the first and claim the second seat without regard to achieving a 40% plurality. I do not believe this view is supported by existing City Code, and that a run-off election for the second seat is required.

The results, as posted on the City's website, indicate that neither Mr. Smith nor Mr. Burgess (having placed 2<sup>nd</sup> and 3<sup>rd</sup> behind Ms. Aderhold) received the requisite plurality for the second seat. A run-off election is required when:

"... no City Council candidate receives in excess of 40 percent of the votes cast for a respective seat, a runoff election shall be held. When more than one Council seat for the same term is to be filled, total votes cast for a respective seat shall be determined by dividing the total number of votes cast for all candidates by the number of seats to be filled." Homer Ord. 4.40.010 (a)

And that the run-off should be between Smith and Burgess:

" In the event a runoff is required, the number of candidates receiving the highest votes to provide two candidates for each vacancy shall be included in the list of candidates for the runoff election." Homer Ord. 4.40.010 (b)

The underlying policy purpose is in the requirement of receiving a minimum of 40% of the votes cast (properly calculated) for election to a seat. Nothing in the relevant provisions suggests that only one seat need be filled by someone with the requisite plurality and that other at-large seats can be filled by candidates not receiving that threshold level of voter support, in a sense democratically cheapening those seats.

The language of the runoff provisions - which in the statute focuses on "a seat" and in the ordinance focuses on a "respective seat," both explicitly recognizing that each seat is *individually* subject to the 40% threshold and runoff requirements; *see, e.g.*, the Merriam Webster Dictionary, which defines "respective" as "belonging or relating *to each one* of the

people or things that have been mentioned" and the Collins Dictionary, which defines it "as relates *individually to each* of two or more persons or things".

Any ambiguity concerning the meaning of the runoff ordinance's provisions in this regard is resolved by the separate ordinance addressing the "Review of election documents by Canvass Board." It provides that after the Board determines the proper vote counts:

*"The candidate receiving the required 40 percent and the plurality of the total votes cast for his **respective office** or in the case of a tie winning the coin toss provided at subsection (e) of this section shall be determined to have been elected to that office."* Homer Ord. 4.35.010(f).

This ordinance provision makes it clear that 40% of the "total votes cast" is a threshold requirement for election to *each* "respective office"; and it suggests no exceptions to that requirement. The runoff election provision, 4.40.010(a), simply establishes the method by which the "total votes cast" is to be calculated in a multi-at-large seat election.

The plurality provision is either meaningful or meaningless – it cannot be both. Council seats are equal in every way and the way they are filled should, likewise, be the same. That is, in fact, what the law requires.

Sincerely:

Kenneth W. Castner, III  
Registered Voter, City of Homer

## Jo Johnson

---

**From:** Francie Roberts  
**Sent:** Saturday, October 10, 2015 9:12 AM  
**To:** Jo Johnson  
**Subject:** RE: Election Results - Runoff?

If no City Council candidate receives in excess of 40 percent of the votes cast for a respective seat, a runoff election shall be held. This is what the code says verbatim. I interpret this to mean, if no candidate receives 40% of the vote for a specific seat at the table, then a runoff election shall be held. This leaves one to wonder, what is a "respective seat".

Well, the next sentence in code defines respective seat. When more than one Council seat for the same term is to be filled, total votes cast for a respective seat shall be determined by dividing the total number of votes cast for all candidates by the number of seats to be filled. In the case of the election results posted Friday, there were 2225 votes cast for 2 seats. The code tells you to divide the number of votes by 2, which is 1112.5. This is the number utilized to determine if the a candidate received 40% of the vote. In the case of the election just completed, one candidate received more than 40% of the votes. No else received 40%. Since receiving a respective seat is determined by calculating 40% of 1112.5, there is to be a runoff election.

I think the attorney errs because he neglects to consider the effect of the first sentence highlighted. One candidate received 40% for one seat but the other seat did not have a candidate obtaining 40% of the vote. The word "seat" is singular. Each seat is to have the 40% standard applied. I am concerned if I vote to certify this election, I would leave the City of Homer open to litigation from candidates or voters who did not feel a fair election was held.

As a side note, it would be strange to mandate the first place candidate to receive at least 40% of the vote, but the second place vote getter, who also receives a seat, would not be held to the same standard.

---

**From:** Jo Johnson  
**Sent:** Friday, October 9, 2015 2:02 PM  
**To:** Beauregard Burgess; Bryan Zak; Bryan Zak; Catriona Reynolds; David Lewis; Francie Roberts; Gus Van Dyke; Mary (Beth) E. Wythe  
**Subject:** FW: Election Results - Runoff?

Sending this to you so you have time to digest prior to Monday's meeting. I will include it in the supplemental packet too.

*Jo Johnson*

**From:** Thomas Klinkner [mailto:tklinkner@BHB.com]  
**Sent:** Friday, October 09, 2015 8:39 AM  
**To:** Jo Johnson  
**Subject:** RE: Election Results - Runoff?

Jo,

The answer is no. This question is addressed in HCC 4.40.010(a): "When more than one Council seat for the same term is to be filled, total votes cast for a respective seat shall be determined by dividing the total number of votes cast for all candidates by the number of seats to be filled." Two Council seats for the same term are to be filled, so total votes cast for a respective seat shall be determined by dividing the total number of votes cast for all Council candidates by two—the number of seats to be filled. Thus, the threshold for a runoff election, "40 percent of the votes cast for a respective seat", is 40 percent of the result that is obtained by dividing the total number of votes cast for all Council candidates by two. I regret that I cannot make this any clearer.

Tom

---

Thomas F. Klinkner

Birch Horton Bittner & Cherot

1127 West 7th Ave | Anchorage AK 99501

Tel 907.263.7219 | Main 907.276.1550

[tklinkner@bhb.com](mailto:tklinkner@bhb.com) | [www.birchhorton.com](http://www.birchhorton.com)  
[Bio](#) | [vCard](#)

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**From:** Jo Johnson [<mailto:JJohnson@ci.homer.ak.us>]  
**Sent:** Thursday, October 08, 2015 5:01 PM  
**To:** Thomas Klinkner  
**Subject:** RE: Election Results - Runoff?

Tom,

I have been asked if the respective seat should mean just one council seat, thus requiring each candidate to receive in excess of 40 percent.

Can you clarify the meaning of respective in relation to this please?

a. If no City Council candidate receives in excess of 40 percent of the votes cast for a respective seat, a runoff election shall be held.

*Jo Johnson*

**From:** Thomas Klinkner [<mailto:tklinkner@BHB.com>]  
**Sent:** Thursday, October 08, 2015 10:28 AM  
**To:** Jo Johnson  
**Subject:** RE: Election Results - Runoff?

Jo,

There are several steps to determining whether a runoff election is required. I will review them one at a time.

The first step is identifying the method of electing Council members.

The governing state statute is AS 29.20.130.  
AS 29.20.130 provides in relevant part:

Each first class city [such as Homer] has a council of six members elected by the voters at large ... The council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

Homer provides for the election of Council members in HCC 2.08.030(a):

2.08.030 Composition of governing body – Terms of office.

a. The governing body of the City of Homer shall consist of six Council members, two of whom are elected each year and shall serve for a term of three years.

Thus, under the method for electing Council members prescribed in AS 29.20.130 (at large), as modified by HCC 2.08.030(a), two Homer Council members are elected at large each year. I understand that this is reflected in the form of ballot that the City uses, which lists all Council candidates together, and instructs the voter to vote for two of them.

The second step is identifying the correct standard for requiring a runoff election.

The governing state statute is AS 29.26.060.

AS 29.26.060. Runoff elections.

(a) Unless otherwise provided by ordinance, a runoff election shall be held if no candidate receives over 40 percent of the votes cast for the office of

(1) mayor; or

(2) member of the governing body or school board if candidates run for a designated seat.

(b) Unless otherwise provided by ordinance, if candidates for the governing body or school board run at large, a runoff election for a seat shall be held if no candidate receives a number of votes greater than 40 percent of the total votes cast for all candidates divided by the number of seats to be filled.

(c) Unless otherwise provided by ordinance, a runoff election shall be held within three weeks after the date of certification of the election for which a runoff is required, and notice of the runoff election shall be published at least five days before the election date. The runoff election shall be between the two candidates receiving the greatest number of votes for the seat.

Because candidates for the Homer Council run at large, the rule in AS 29.26.060(b) determines whether a runoff election is required, unless otherwise provided by ordinance.

In Homer, the governing ordinance is HCC 4.40.010(a):

4.40.010 Runoff election – Required.

a. If no City Council candidate receives in excess of 40 percent of the votes cast for a respective seat, a runoff election shall be held. When more than one Council seat for the same term is to be filled, total votes cast for a respective seat shall be determined by dividing the total number of votes cast for all candidates by the number of seats to be filled.

Under HCC 4.40.010(a), a runoff election is held if, and only if, no Council candidate receives in excess of 40 percent of the votes cast for a “respective seat.” In last Tuesday’s election, where two Council seats for the same term are to be filled, the total number of votes cast for a “respective seat” is determined by dividing the total number of votes cast for all candidates by the number of seats (two) to be filled.

Thus, a runoff election is held only if the results of last Tuesday’s election for Council show that no candidate received more than 40 percent of: (a) the total number of votes cast for all candidates, (b) divided by two. At this point, it is important to emphasize the reference to “no candidate” in HCC 4.40.010(a). The ordinance does not say “if no two candidates receive in excess of 40 percent”, or “if no number of candidates equal to the number of seats to be filled receives in excess of 40 percent.” The wording of the ordinance is clear—if at least one candidate receives in excess of 40 percent of the votes cast for a respective seat, there is no runoff election.

The final step is applying the rules discussed above to the results of last Tuesday's election for Council. Two seats on the Council, both for three-year terms, were to be filled at this election. The unofficial Certificate of election shows that the total regular votes cast for all candidates for Council was 1,863. Under HCC 4.40.010(a), the total number of regular votes cast for a respective seat is this number divided by two, the number of seats to be filled. 1,863 regular votes divided by two equals 931.5. 40% of 931.5 is 372.6. Thus, based only on regular votes cast, a runoff election would be held only if no candidate received at least 373 votes.

The calculation above is only hypothetical, because it does not include votes cast by absentee, special needs or questioned voters, which remain to be counted. However, even assuming that each of the 216 absentee, special needs and questioned ballots is counted, and each includes two votes for Council members, the total number of votes cast for a respective seat would be 2,079 divided by two, or 1,039.5. 49 percent of this number is 415.8. Thus, under this hypothetical calculation, a runoff election would be held only if no candidate received at least 416 votes.

Please let me know if you have questions of if further clarification is needed.

Tom

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Thomas F. Klinkner

Birch Horton Bittner & Cherot

1127 West 7th Ave | Anchorage AK 99501

Tel 907.263.7219 | Main 907.276.1550

[tklinkner@bhb.com](mailto:tklinkner@bhb.com) | [www.birchhorton.com](http://www.birchhorton.com)

[Bio](#) | [vCard](#)

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**From:** Jo Johnson [<mailto:JJohnson@ci.homer.ak.us>]

**Sent:** Thursday, October 08, 2015 8:48 AM

**To:** Thomas Klinkner

**Cc:** Katie Koester

**Subject:** Election Results - Runoff?

**Importance:** High

Hi Tom,

We have had a few inquiries about the methodology used for the percentages of each candidate's votes, that we reached 200% total instead of 100%. Your opinion on HCC 4.40.010 isn't entirely clear about the 40% requirement, whether it is for one candidate or both.

This is my interpretation: It says "if no" candidate. If it were meant to be plural it would say "if a or any city council candidate does not receive over 40%".

Please provide clarification in layman's terms☺ so we know what to do for tomorrow's canvass.

I include Math Teacher and Councilmember Robert's comments and the unofficial Certificate of Election.

Thank you,

*Jo Johnson*

**From:** Francie Roberts  
**Sent:** Thursday, October 08, 2015 4:57 AM  
**To:** Jo Johnson  
**Subject:** No runoff?

Jo,  
I am not sure I agree with your interpretation of the attorney's message about runoffs. The code defines total votes cast for a respective seat as "dividing the total number of votes cast ... by the number of seats" In the current election, according to your report of votes counted so far, that would be 1863 votes divided by 2. The number is 931.5. The code then states the candidate must receive 40% of those votes.

If a candidate received 423 votes, then their percentage would be calculated as 45.4% (423 divided by 931.5) If a candidate received 325 votes, then their percentages would be calculated as 34.8% (325 divided by 931.5) which does not reach the 40% threshold.

The attorney's interpretation of 20% threshold was simply attained by taking all the votes cast and calculating the percentage of each candidate. This should have you arrive at the same percentages as the above paragraph. For instance if a candidate received 423 votes out of the total 1863 votes, their percentage would be 22.7% (note that this percent is half of what they would have received in the other method). Another example is if a candidate received 325 votes, their percentage is 17.4 %, not reaching the 20% threshold. The attorney states that using this calculation method would also be satisfactory, as you would mathematically be arriving at the number the same way.

So based on your preliminary reports, I would not think I could vote to certify the election without a runoff. I have heard it reported the Clerk's Office says there will be no runoff needed.

Perhaps I will have time to stop by on my way to Animal Control meeting.

If no City Council candidate receives in excess of 40 percent of the votes cast for a respective seat, a runoff election shall be held. When more than one Council seat for the same term is to be filled, total votes cast for a respective seat shall be determined by dividing the total number of votes cast for all candidates by the number of seats to be filled.



## Jo Johnson

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**From:** Ken Castner <kcastner@tonsina.biz>  
**Sent:** Friday, October 09, 2015 12:27 PM  
**To:** Jo Johnson  
**Subject:** 2015 Homer City Council Election

Jo:

This is what the City Code states as necessary to be elected to office:

### 4.40.010 Runoff election – Required. SHARE

- a. If no City Council candidate receives in excess of 40 percent of the votes cast for a respective seat, a runoff election shall be held. When more than one Council seat for the same term is to be filled, total votes cast for a respective seat shall be determined by dividing the total number of votes cast for all candidates by the number of seats to be filled.
- b. In the event a runoff is required, the number of candidates receiving the highest votes to provide two candidates for each vacancy shall be included in the list of candidates for the runoff election.
- c. If no candidate for the office of Mayor receives 40 percent of the votes cast for that office, a runoff election between the two candidates receiving the highest number of votes will be held. [Ord. 95-1(S), 1995; Ord. 91-1 § 1, 1991; Ord. 88-14 § 3, 1988; Ord. 82-6 § 20, 1982].

Of particular interest is the clause “for a respective seat”. That clause means that each seat needs 40 per cent of votes cast divided by the number of seats. I don’t see anything here that would cause a person to believe it only applies to one seat and not others.

So I would like to read your attorney’s opinion on this.

Even though I said I would contest the election, I am not going to. I doubt a run-off would change the result, voter turn-out would be low, and the expense is unnecessary. But I do believe in the rule of law, and this piece of code seems to be ignored for the purpose of administrative convenience; it’s a matter of willfulness that I am have now become an unwilling accomplice.

Please send me Mr. Klinkner’s opinion.

Thank you.

Ken Castner

## Jo Johnson

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**From:** Mary Griswold <mgrt@xyz.net>  
**Sent:** Thursday, October 08, 2015 9:26 AM  
**To:** Jo Johnson  
**Subject:** Election procedures

It is mathematically offensive to report the candidates' percentage of votes so the sum of all percentages comes to 200%. I understand that this is done because "the total votes cast for a respective seat is determined by dividing the total number of votes cast for all candidates by the number of seats to be filled." The purpose of this calculation is to determine whether a candidate has met the 40% threshold to avoid a run-off. This is an internal calculation. The election results should report actual percentages. The total of candidates' percentages should add up to 100%.

Please look at the KPB election results for Seward's three candidate roster for three council seats. The percentages won by all candidates add up to 100% of votes cast.

HCC provides that if no council candidate receives more than 40% of the votes cast for a respective seat, a runoff election shall be held.

There are two respective seats. I believe each seat must be won by a candidate receiving more than 20% of the total votes cast to avoid a runoff for each seat, contrary to Klinkner's memo. The code is ambiguous, but it makes sense that if one seat requires a 40% threshold, then both should.