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**CITY OF HOMER  
HOMER, ALASKA**

City Manager

**ORDINANCE 12-14**

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA,  
REPEALING AND REENACTING HCC CHAPTER 17.04 REGARDING  
SPECIAL ASSESSMENT DISTRICTS.

WHEREAS, The City of Homer and others are seeking funding for the construction of a  
natural gas transmission line from Anchor Point to the City; and

WHEREAS, The City Council deems it necessary and in the best interest of the City and  
its residents to form special assessment districts to finance a natural gas distribution system in  
the City upon the completion of the natural gas transmission line, by the issuance of bonds  
secured by special assessments on real property in the City; and

WHEREAS, It is necessary to revise HCC Chapter 17.04, regarding special assessments,  
to allow the formation of special assessment districts for natural gas distribution facilities.

NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. HCC Chapter 17.04, Special Assessment Districts, is repealed and reenacted  
to read as follows:

Chapter 17.04

SPECIAL ASSESSMENT DISTRICTS

Sections:

- 17.04.010 Definitions.
- 17.04.020 Purpose of chapter.
- 17.04.030 Assessment authority.
- 17.04.040 Initiation of district.
- 17.04.050 Creation of district.
- 17.04.060 Contract award; Approval of increased costs.
- 17.04.070 Assessment roll.
- 17.04.080 Certification of assessment roll.
- 17.04.090 Payment.
- 17.04.100 Subdivision after levy of assessments.
- 17.04.110 Assessments to be liens.
- 17.04.120 Reassessment.
- 17.04.130 Objection and appeal.
- 17.04.140 Interim financing.
- 17.04.150 Special assessment bonds.
- 17.04.160 Time limit for special assessment districts.

- 47 17.04.170 Connection required.  
48 17.04.180 Road improvement assessments for lots with two street frontages.  
49 17.04.190 Deferment of assessment payments for senior citizens.  
50 17.04.200 "In lieu of assessment".

51

52 17.04.010 Definitions. In this chapter:

53 a. "Cost" means all expenses incurred by the city for an improvement, including  
54 without limitation advertising expenses, fees of engineers, architects and surveyors, legal fees,  
55 costs of property acquisition, payments to construction contractors, costs of interim and long-  
56 term financing of the improvement, including costs of issuing bonds and notes, and city  
57 administrative costs.

58 b. "District" means a special assessment district created under this chapter.

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

63 d. "Record owner" means the person in whose name real property is listed on the  
64 property tax roll prepared by the Kenai Peninsula Borough.

65

66 17.04.020 Purpose of chapter. a. A special assessment district may be created for the  
67 purpose of acquiring, installing or constructing a capital improvement that primarily benefits real  
68 property in the district, in contrast to capital improvements that benefit the entire community and  
69 are paid for with general government resources.

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

74

75 17.04.030 Assessment authority. a. The city may assess all or part of the cost of a capital  
76 improvement against real property benefited by the improvement, whether the property is  
77 privately or governmentally owned, including real property that is exempt from taxation.

78 b. A capital improvement that is provided through a special assessment district may  
79 be owned by the city, a public utility, or another entity that is qualified to own and operate the  
80 capital improvement.

81

82 17.04.040 Initiation of district. a. A special assessment district may be initiated by:

83 1. Resolution of the council; or

84 2. Petition signatures of the record owners of not less than one half in value  
85 of the real property in the proposed district received by the city clerk within 60 days after  
86 the mailing of the petition to record owners of property in the proposed district. Upon  
87 payment of the nonrefundable filing fee in the city fee schedule established by resolution  
88 of the council, the city clerk shall prepare a petition for distribution by certified mail to  
89 all record owners of property in the proposed district that contains:

90 i. A statement that it is a petition to form a special assessment  
91 district, and describing the capital improvement for which the district is proposed;

92                   ii. For each property in the proposed district, the Kenai Peninsula  
93 Borough tax parcel number and property description, the name and mailing  
94 address of the record owner, the current assessed value, and a place for the record  
95 owner's signature; and

96                   iii. A statement that to support initiation of the proposed district, the  
97 record owner must sign and return the petition to the city clerk within 60 days  
98 after the date the petition was mailed.

99           b. Upon adoption of a resolution initiating a special assessment district, or the city  
100 clerk's verification that a petition to initiate a district bears sufficient signatures, the city clerk  
101 shall:

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

105                   2. Refer the proposed district to the city manager, who shall prepare an  
106 improvement plan for the district that includes final boundaries for the district, the design  
107 of the proposed improvement, a cost estimate for the improvement, the percentage of the  
108 improvement cost to be assessed against properties in the district, a method for allocating  
109 the assessed cost of the improvement among the properties in the district, the time period  
110 over which assessments will be financed, and a preliminary assessment roll for the  
111 district.

112  
113           17.04.050 Creation of district. a. Upon completion of an improvement plan under HCC  
114 §17.04.040, the city clerk shall set a time for a public hearing on the necessity of the  
115 improvement and proposed improvement plan. Notice of the hearing shall be published at least  
116 once in a newspaper of general circulation in the city, and mailed via certified mail to every  
117 record owner of real property in the proposed district not less than 60 days before the hearing.

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

127           c. At the noticed date and time, the council shall hold a public hearing on the  
128 necessity of the improvement and proposed improvement plan. After the public hearing, the  
129 council shall act upon a resolution determining to proceed with the proposed improvement. The  
130 resolution shall find that the improvement is necessary, of benefit to the properties to be  
131 assessed, and if the district is initiated by petition, that the petition is in proper form and bears  
132 sufficient signatures. The findings of the council are conclusive. The resolution shall contain a  
133 description of the improvement, the estimated cost of the improvement, the percentage of the  
134 cost to be assessed against the properties in the district, and a description of the properties to be  
135 assessed.

136           d. If the owners of 100 percent of the real property in the proposed district waive in  
137 writing the notice, protest period and public hearing required under this section, the question of

138 creating the district may be submitted to the council without such notice, protest period or public  
139 hearing.

140  
141 17.04.060 Contract; Approval of increased costs. a. After a special assessment district  
142 has been created, the city shall contract for the construction of the improvement. If the city will  
143 own the improvement, it shall solicit bids for construction of the improvement. If the city will  
144 not own the improvement, it shall contract with the owner of the improvement to provide for its  
145 construction.

146 b. If the cost of constructing the improvement will exceed 115 percent of the  
147 estimated cost of construction of the improvement in the improvement plan, the city shall not  
148 contract for the construction of the improvement without first:

149 1. Notifying all record owners of property in the district via certified mail of  
150 the increased cost, and

151 2. Within 30 days after the mailing of notice of the increased cost to record  
152 owners of property in the district, receiving written objections from record owners of  
153 property that would bear less than one-half of the cost of the improvement.

154 c. If record owners of property that would bear one-half or more of the cost of the  
155 improvement object in writing to the increased cost, the city will not contract to construct the  
156 improvement. The council either may levy assessments in the district in an amount sufficient to  
157 recover costs incurred for preliminary design and engineering services, or determine that the city  
158 shall assume such costs.

159  
160 17.04.070 Assessment roll. a. After completion of the improvement the council shall  
161 assess costs of the improvement by a method that the council determines will assess each  
162 property in the district in proportion to the benefit that it receives from the improvement.

163 b. The city shall prepare an assessment roll stating for each property in the district  
164 the name and address of the record owner, Kenai Peninsula Borough parcel number, a  
165 description of the property, the amount assessed against the property, and the assessed value of  
166 the property as determined by the Borough Assessor.

167 c. Each property in the district shall be identified and assessed on the assessment roll  
168 in accordance with the legal description of the property at the time the council certifies the  
169 assessment roll; except that where assessments are in an equal amount per parcel (i.e., without  
170 regard to parcel area, dimension or other characteristic), a property that was created by  
171 combining parcels after the public hearing under HCC §17.040.050(c) shall be assessed that  
172 amount multiplied by the number of parcels that comprised the property at the time of the public  
173 hearing.

174 d. The council shall fix a time to hear objections to the assessment roll. Not less than  
175 fifteen days before the hearing, the city clerk shall send notice of the hearing and assessment roll  
176 by certified mail to each record owner of an assessed property, and publish the notice in a  
177 newspaper of general circulation in the city.

178  
179 17.04.080 Certification of assessment roll. After the hearing the council shall correct any  
180 errors or inequalities in the assessment roll. If an assessment is increased, a new hearing shall be  
181 set and notice published, except that a new hearing and notice is not required if all record owners  
182 of property subject to the increased assessment consent in writing to the increase. Objection to  
183 the increased assessment shall be limited to record owners of properties whose assessments were

184 increased. When the assessment roll is corrected, the council shall confirm the assessment roll by  
185 resolution. The city clerk shall record the resolution and confirmed assessment roll with the  
186 district recorder.

187  
188 17.04.090 Payment. a. In the resolution confirming the assessment roll, the council shall  
189 fix the time or times when assessments or assessment installments are due, the amount of penalty  
190 on a delinquent payment and the rate of interest on the unpaid balance of an assessment. An  
191 assessment that is to be paid in a single payment shall not be due before 60 days after billing.

192 b. Within 30 days after fixing the time when payment of the assessments is due, the  
193 finance director shall mail a statement to the record owner of each assessed property identifying  
194 the property and stating the assessment amount, the payment due date and the amount of the  
195 penalty on a delinquent payment. Within five days after mailing the statements, the finance  
196 director shall publish notice of mailing the statements in a newspaper of general circulation in  
197 the city.

198  
199 17.04.100 Subdivision after levy of assessments. a. Except as provided in subsection (b)  
200 of this section, upon the subdivision of a property assessed as a single parcel, the amount of the  
201 assessment shall be allocated among the resulting lots that benefit from the improvement on the  
202 same basis that the assessment originally was allocated.

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

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

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

217 3. The city shall adjust the original assessment amount or disburse payments  
218 to the record owner at the time of disbursement of each property assessed in the district in  
219 proportion to the amount originally assessed against the district.

220  
221 17.04.110 Assessments to be liens. Assessments are liens upon the property assessed and  
222 are prior and paramount to all liens except those having priority under State law. They shall be  
223 enforced as provided in Title 9 of this Code.

224  
225 17.04.120 Reassessment. a. The City Council shall within one year correct any  
226 deficiency in a special assessment found by a court, under the procedure for certification of the  
227 assessment roll in HCC §§17.04.070 and 17.04.080.

228           b.       Payments on the initial assessment are credited to the property upon reassessment.  
229       The reassessment becomes a charge upon the property notwithstanding failure to comply with  
230       any provision of the assessment procedure.  
231

232           17.04.130 Objection and appeal. a. The regularity or validity of an assessment may not  
233       be contested by a person who did not file with the city clerk a written objection to the assessment  
234       roll before its confirmation. The decision of the council on the objection may be appealed to  
235       the superior court within 30 days after the date of confirmation of the assessment roll.

236           b.       If no objection is filed or appeal taken within the time provided in this section, the  
237       assessment procedure shall be considered regular and valid in all respects.  
238

239           17.04.140 Interim financing. a. The council may provide by resolution or ordinance for  
240       the issuance of notes to pay the costs of an improvement that shall be payable from the special  
241       assessments for the improvement. The notes shall bear interest at a rate or rates authorized by  
242       the resolution or ordinance, and shall be redeemed either in cash or bonds for the improvement  
243       project.

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

248           c.       The finance director may accept notes against special assessments on conditions  
249       prescribed by the council in payment of:

- 250                   1.       Assessments against which the notes were issued in order of priority;  
251                   2.       Judgments rendered against property owners who have become delinquent  
252       in the payment of assessments; and  
253                   3.       Certificates of purchase when property has been sold under execution or at  
254       tax sale for failure to pay the assessments.  
255

256           17.04.150 Special assessment bonds. a. The council by ordinance may authorize the  
257       issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in  
258       a special assessment district. The principal and interest of the bonds shall be payable solely from  
259       the special assessments levied against property in the district. The assessment shall constitute a  
260       sinking fund for the payment of principal and interest on the bonds. The benefited property may  
261       be pledged by the council to secure payment of the bonds.

262           b.       On default in a payment due on a special assessment bond, a bondholder may  
263       enforce payment of principal, interest, and costs of collection in a civil action in the same manner  
264       and with the same effect as actions for the foreclosure of mortgages on real property. Foreclosure  
265       shall be against all property on which assessments are in default. The period for redemption is  
266       the same as for a mortgage foreclosure on real property.

267           c.       Before the council may issue special assessment bonds, it shall establish a  
268       guarantee fund and appropriate to the fund annually a sum adequate to cover a deficiency in  
269       meeting payments of principal and interest on bonds if the reason for the deficiency is  
270       nonpayment of assessments when due. Money received from actions taken against property for  
271       nonpayment of assessments shall be credited to the guarantee fund.  
272

273           17.04.160 Time limit for special assessment districts. If five or more years elapse  
274 between the creation of an improvement district and the city contracting for construction of the  
275 improvement, the city may not enter into the contract unless the council by resolution extends the  
276 period for entering into the contract by not more than an additional five years.

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

282  
283           17.04.170 Water and sewer connections required. The owner of property in a water or  
284 sewer special assessment district that contains an occupied building shall connect to the  
285 improvement constructed in the district within one year after the date that the resolution  
286 confirming the assessment roll for the district becomes final.

287  
288           17.04.180 Road improvement assessments for lots with two street frontages. a. The  
289 record owner of a through lot or flag lot may obtain a deferment of the part of an assessment for  
290 road improvements that is based on frontage on a road to which the lot does not have access. To  
291 obtain the deferment, the owner shall enter into a deferred assessment agreement with the city  
292 before the end of the period for filing objections to the district under HCC §17.04.050. The  
293 agreement shall provide that the lot has frontage on two streets, to only one of which the lot has  
294 access; that the lot owner shall pay the part of the assessment that is based on frontage on the  
295 street to which the lot has access; and that the owner shall pay the part of the assessment that is  
296 based on the other street frontage when the lot acquires access to the street from that frontage.  
297 The agreement shall be recorded with the district recorder's office.

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

300  
301           17.04.190 Deferment of assessment payments for senior citizens. a. A person may obtain  
302 a deferment of assessment payments under this section if the person:

303           1. Will be at least 62 years of age within 12 months after the date of  
304 confirmation of the assessment roll;

305           2. Has an annual family income that would qualify under the United States  
306 Department of Housing and Urban Development designation of lower income families  
307 adjusted for Alaska and the Kenai-Cook Inlet Region;

308           3. Owns or has a life tenancy in the assessed property, and permanently  
309 resides in a single family dwelling on the property; and

310           4. Is not determined by the city, after notice and hearing, to have been  
311 conveyed the property primarily for the purpose of obtaining the exemption.

312           b. An assessment payment deferment is subject to approval by the council. A person  
313 seeking deferment of an assessment payment shall file a written application with the finance  
314 director on or before the first payment is due, supported by documentation showing that the  
315 applicant meets the criteria in subsection (a) of this section. A person receiving an assessment  
316 payment deferment must file with the city by April 15th of each subsequent year a new  
317 application proving eligibility as of January 1st of that year in order to retain the exemption.

318 Within the same year the city for good cause shown may waive the claimant's failure to make  
319 timely application and approve the application as if timely filed.

320 c. Assessment payment deferments are subject to the availability of funds  
321 appropriated for that purpose. An application for an assessment payment deferment shall be  
322 submitted to the council with a report from the finance director as to the availability of funds to  
323 appropriate for the deferment. Deferred assessments are funded from the following sources:

324 1. The appropriate utility operating fund for deferred water and sewer  
325 assessment payments.

326 2. The accelerated roads program fund for deferred road improvement  
327 assessment payments.

328 If funds for an assessment payment deferment are not available from the appropriate source, the  
329 council may loan the necessary amount to the appropriate source from the general fund.

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

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

335 1. The sale or lease of the assessed property; or

336 2. The death of both the deferred assessment applicant and the applicant's  
337 surviving spouse, if any.

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339 17.04.200 "In lieu of assessment". a. An "in lieu of assessment" must be paid for a  
340 property to receive additional water or sewer service within or beyond the area within a local  
341 improvement district.

342 b. An "in lieu of assessment" shall be computed on the actual cost of the additional  
343 water or sewer service, and shall be paid in accordance with HCC §§17.04.090 and 17.04.100.

344 c. A property on which an "in lieu of assessment" for water or sewer service has  
345 been levied in accordance with subsection (a) of this section nonetheless may be included in  
346 special assessment district for the same service in the future date, and will be assessed in that  
347 district. An amount not exceeding the lesser of (i) the amount of "in lieu of assessment" paid for  
348 the property and (ii) the amount of the assessment levied on the property in the future special  
349 assessment district shall be a credit against the amount of the assessment levied on the property  
350 in the future special assessment district.

351  
352 Section 2. This Ordinance is of a permanent and general character and shall be included  
353 in the City Code.

354  
355 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this \_\_\_\_\_ day of  
356 \_\_\_\_\_ 2012.

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CITY OF HOMER

\_\_\_\_\_  
JAMES C. HORNADAY, MAYOR

364 ATTEST:

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366

367

368 JO JOHNSON, CMC, CITY CLERK

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370

371

372 YES:

373 NO:

374 ABSTAIN:

375 ABSENT:

376

377

378 First Reading:

379 Public Hearing:

380 Second Reading:

381 Effective Date:

382

383

384 Reviewed and approved as to form:

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386

387

388 Walt E. Wrede, City Manager

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390 Date: \_\_\_\_\_

391

392

Thomas F. Klinkner, City Attorney

Date: \_\_\_\_\_