

CITY OF HOMER
HOMER, ALASKA

ORDINANCE 87-14

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF HOMER REPEALING AND REENACTING CHAPTER 17.04, IMPROVEMENT DISTRICTS; REPEALING AND REENACTING SECTION 17.08.030 SALE, OF SPECIAL ASSESSMENT BONDS; AND REPEALING CHAPTER 17.12 CAPITAL IMPROVEMENT ASSESSMENT COMPUTATION IN ITS ENTIRETY.

WHEREAS, the new Title 29 changes to the Alaska State Statutes changed several aspects of improvement districts procedures, requiring changes be made in the Homer Municipal Code to comply, and

WHEREAS, it has become increasingly apparent that staff required a comprehensive procedure and policy guidelines to follow in administering local improvement districts,

NOW, THEREFORE THE CITY OF HOMER ORDAINS:

Section 1. Chapter 17.04 Improvement Districts, of the Homer Municipal Code is hereby repealed in its entirety and reenacted to read as follows:

Chapter 17.04
IMPROVEMENT DISTRICTS*

Sections:

- 17.04.010 Definitions
- 17.04.020 General/Intent
- 17.04.030 Improvement Districts — Formation and Assessment.
- 17.04.040 Necessity of Improvement/Improvement Plan — Hearing.
- 17.04.050 Improvement Plan — Objections and Revisions.
- 17.04.060 Award of Project Bid.
- 17.04.070 Assessments and Assessment Roll.
- 17.04.080 Certification of Assessment Roll.
- 17.04.090 Payment.
- 17.04.100 Assessments to be liens.
- 17.04.110 Reassessment.
- 17.04.120 Objection and Appeal.
- 17.04.125 Interim Financing.
- 17.04.130 Special Assessment Bonds.
- 17.04.140 Time limitations for improvement districts.

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

* For statutory provisions authorizing municipalities to collect special improvement assessments, see Alaska Statutes 29.46 (Prior ordinance history Ord. 76-16, 77- 17).

a. "Cost" means all expenses incurred by the City for making an improvement and includes, but is not limited to, advertising expenses, engineering and architect fees, legal fees, construction contracts, costs of interim financing, financing the improvement, including the issuance of bonds and administrative overhead as established by the Council of the City.

b. "Improvement" includes, but is not limited to, erecting, building, establishing, laying out, altering, opening, improving and repairing of streets, sewer, water supply and distribution systems, avenues, sidewalks, alleys, bridges, square, and other public highways and places within the City, and draining, sprinkling and street lighting them; removing all obstructions; establishing grades, grading, planking, paving, macadamizing, graveling and curbing them, in whole or in part, and constructing gutters, culverts, sidewalks and crosswalks; acquiring and constructing parks and playgrounds, making changes in channels of streams or watercourses or constructing, erecting, strengthening or repairing bulkheads, embankments or dikes for streams or watercourses.

c. "Local improvement district" means all parcels and right-of-ways included within the boundaries being benefited by a specific improvement. The term "special assessment district" may be used interchangeably with "local improvement district."

d. "Record Owner" means the person in whose name property is listed on the property tax roll as provided by the Kenai Peninsula Borough and is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessment may be made against "unknown owner." (Prior code 13A-200.22).

17.04.020 General/Intent -- It is the intent of this section to define the procedures for a local improvement district from its inception to conclusion, step-by-step, for public information as well as administrative guidance.

Generally, the validity of a special or local assessment has been held dependant upon whether the improvement for which the costs are assessed confers a benefit on the owners of property in the assessment district; no assessment can be made unless the property to be assessed is of such a nature that it is capable of actual enhancement in value as the result of the improvement.

An improvement district which is initiated according to procedures outlined in this section shall constitute a legal and valid improvement district and any costs incurred for preliminary design and engineering services will become an assessment on the property owners of the district in the event that at a later date, the district is dissolved by the request of 51% of the property owners and that the city engineer's estimate is within 15% of the design engineer's estimate. (Ord. 87-14)

17.04.030 Improvement districts -- Formation and assessment. The Council may create local improvement districts and assess the real property benefiting from such capital improvements for all or a portion of the cost of acquiring, installing and constructing such improvements. An improvement proposal may be initiated by:

a. Petition to the City Council of the owners of at least one-half or more in value of the property to be benefited by an improvement. The Property owners may file a petition with the City Clerk requesting that an improvement district be formed and stating what specific public improvement is to be made. Petition forms shall be available from the City Clerk.

Upon receipt of a petition for an improvement district the City Clerk shall forward the request to the City Council who shall find by resolution whether:

1. The improvement requested is necessary and should be made; and
2. The request has sufficient and proper petitioners. (Prior code 13A-200.1 & 13A-200.2).

b. The City Council may determine that an improvement is needed, and initiate by passing a resolution by approval of not fewer than three-fourths vote of the Council so declaring and shall proceed as provided in Section 17.04.040-060. (Ord. 87-14; Prior code 13A-200.3).

17.04.040 Necessity of Improvement/Improvement plan -- Hearing. a. Upon passage of a resolution as specified in Section 17.04.030, the City Manager shall prepare an improvement plan which shall include the extent of the improvement, boundaries of the district, the estimated cost, percentage of the improvement plan cost to be assessed against the property benefited, length of time for financing, and a preliminary assessment roll.

b. At the time of the passage of the resolution noted in Section 17.04.030 the City Council shall set a time for a public hearing on the necessity of the improvement and proposed improvement plan. Notice of such hearing shall be published at least once a week for four consecutive weeks in a newspaper of general circulation within the City. Notices shall also be sent to every record owner of property within the improvement district not less than fifteen days prior to the hearing. (Ord. 87-14; Prior Ord. 84-7, prior code 13A-200.5)

c. Property Owner Petitioners Waiver -- If there is 100% participation by property owners of the district, such owners may request and give written waiver of notice and right to public hearing as outlined in subsection (b) of this section and waive the 60 day objection period as outlined in section 17.04.050(a), whereby the Council shall pass the resolution approving the plan and proceeding with the improvement. If at any time during the preliminary improvement plan process, should added costs appear to cause the total project cost to exceed the engineer's estimate by 15% or more, which was given to the property owners in the preliminary plan, the project may not proceed until the owners of said property have been notified in writing, and the provisions of Section 17.04.060 have been met.

17.04.050 Improvement plan -- Objections and revisions. a. The owner of property to be assessed may file a written objection to the plan no later than sixty days after the public hearing required in subsection (b) of Section 17.04.040. At the end of the sixty days, if the owners of property in the district who shall bear 51% or more of the total costs have not objected, the Council may pass a resolution approving the plan and proceeding with the improvement.

b. If objections are made in writing during the period set forth for objections by owners of property who shall bear 50% or more of the total estimated cost of the improvement, the Council may not proceed with the improvement unless the plan is revised to meet the objections and the objections are reduced to less than fifty percent. The Council may then pass a resolution approving the revised plan, which shall now become an original plan, and proceed with the improvement.

c. If a change is made by Council in an improvement district boundary, such change shall be made promptly by the City Clerk after any amendment thereof has been passed. Property owner(s) affected by the change will be notified promptly by the City Clerk in writing. (Ord 87-14; prior Ord. 84-26, 84-7; prior code 13A 200.6).

17.04.060 Award of Project Bid -- Prior to the award of the contract for the construction of the project, if bid costs exceed 115% of the engineer's estimate, the project may not be awarded until such time as all property owner's of record have been notified in writing of such costs. If property owners, who shall bear one half of the estimated cost, do not object in writing to the additional costs, the Council may award the contract for construction. If the property owners do not consent and the City Council is unable to reduce the costs, the City will not award the project and the property owner shall be liable for any and all costs incurred, except where Council specifically assumes such costs. The Council shall dissolve the district. (Ord. 87-14)

17.04.070 Assessments and assessment roll. a. At any time after project completion and acceptance, the Council shall assess the properties benefited their proportionate share of the cost of the improvement.

b. The Homer City Council shall be the sole authority for determining the method of assessments to the affected district. (Ord. 87-14)

c. An assessment roll shall be prepared which shall contain the name of the record owner, address, description of the properties, the assessment amounts, and the property assessed value as determined by the Borough Assessor.

d. The City Council shall fix a time to hear objections to the roll. The City Clerk shall send an assessment and hearing notice by certified mail to each record owner of an assessed property not less than 15 days prior to the hearing. A notice shall also be published in a newspaper of general circulation within the City. (Ord. 87-14; Prior Code 13A.200.8).

17.04.080 Certification of assessment roll. After the hearing, the Council shall correct any errors or inequalities in the roll. If an assessment is increased, a new hearing shall be set and notice published, except that a new hearing and notice is not required if all record owners of property subject to the increased assessment consent in writing to the increase. Objection to the increased assessment shall be limited to record owners of property on which the assessment was increased. When the roll is corrected, the Council shall pass a resolution confirming the assessment roll and the City Clerk shall so certify. (Ord. 87-14 ; prior code 13A 200.9)

17.04.090 Payment. a. The Council shall fix the time of payment, penalties on delinquent payments, and the rate of interest on the unpaid balance of the assessment by resolution at the time the assessment roll is confirmed. Payments may not be required sooner than sixty days after billing, if payment is to be one sum.

b. Within thirty days after fixing the time of payment, the City Treasurer shall mail a statement to the record owner of each property assessed. The statement shall designate the property, the assessment amount, the time of delinquency and penalties.

c. Within five days after the first statements are mailed, the City Treasurer shall have published a notice that the statements have been mailed. (Ord. 87-14; Prior Code 13A.200.11)

17.04.100 Assessments to be liens. Assessments are liens upon the property assessed and are prior and paramount to all liens except those having priority under State law. They shall be enforced as provided in Chapter 9 Taxation Homer Municipal Code. (Ord. 87-14; Prior code S13A-200.13).

17.04.110 Reassessment. a. The City Council shall within one year correct any deficiency in a special assessment found by a court. Procedures set forth in Sections 17.04.070 through 17.04.100 shall apply.

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

17.04.120 Objection and appeal. a. The regularity or validity of an assessment may not be contested by a person who did not file with the municipal clerk a written objection to the assessment roll before its confirmation.

b. The decision of the City Council upon an objection may be appealed to the superior court within thirty days of the date of confirmation of the assessment roll.

c. If no objection is filed or an appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects. (Prior code S13A-200.17).

17.04.125 Interim Financing. a. The Homer City Council may provide by resolution or ordinance for the issuance of notes in payment of the costs of a local improvement project, payable out of special assessments for the improvement. The notes shall bear interest at a rate or rates authorized by the resolution or ordinance, and shall be redeemed either in cash or bonds for the improvement project.

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

c. The municipal treasurer may accept notes against special assessments on conditions prescribed by the Council in payment of

- (1) assessments against which the notes were issued in order of priority;
- (2) judgments rendered against property owners who have become delinquent in the payment of assessments; and
- (3) certificates of purchase when property has been sold under execution or at tax sale for failure to pay the assessments. (Ord. 87-14)

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

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

c. Before the Council may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover a deficiency in meeting payments of principal and interest on bonds if the reason for the deficiency is nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund. (Ord. 87-14)

17.04.140 Time limitations for improvement districts. In the event that an improvement district is unable to proceed to the construction phase within a period of two years from the date the City Council passes the Resolution creating the local improvement district (LID), the LID shall be considered void, unless Council extends the effective period by resolution for not more than one additional year. (Ord. 87-14; Prior Ord. 84-21 SL,1984).

Section 2. 17.08.030 Sale is hereby repealed and reenacted as follows:

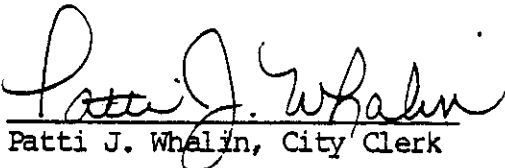
17.08.030 Sale. Such special assessment district bonds may be issued to the contractor or contractors constructing and installing the improvements in such district, or may be sold by the City at public or private sale. The proceeds of sale of such bonds shall be deposited in the applicable special assessment district fund and be applied in payment of the costs of improvement either in cash or by the redemption of warrants or other obligations of the City issued to pay such costs. (Ord. 87-14; Prior Ord. 80-9, 1980; SL3A-200-203).

Section 3. Chapter 17.12 CAPITAL IMPROVEMENT ASSESSMENT COMPUTATION is hereby repealed in its entirety.

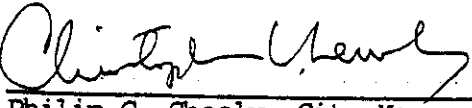
CITY OF HOMER


John P. Calhoun, Mayor

ATTEST:


Patti J. Whalyn, City Clerk

Reviewed & Approved as to form and content:

for 
Philip C. Shealy, City Manager

Date: _____

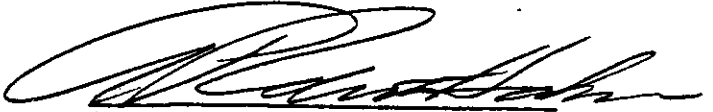
First Reading: 05/11/87

Public Hearing: 06/08/87

Second Reading: 06/22/87

Date of Adoption: 06/22/87

Effective Date: 06/23/87


A. Robert Hahn, City Attorney

Date: 6-24-87