

Session 13-07 a Regular Meeting of the Homer City Council was called to order on March 11, 2013 at 6:00 p.m. by Mayor Mary E. Wythe at the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska, and opened with the Pledge of Allegiance.

PRESENT: COUNCILMEMBERS: BURGESS (telephonic), HOWARD (telephonic), LEWIS, ROBERTS, ZAK (telephonic)

ABSENT: DOLMA (excused)

STAFF: CITY MANAGER WREDE
CITY CLERK JOHNSON
CITY ATTORNEY WELLS
COMMUNITY & ECONOMIC DEVELOPMENT
COORDINATOR KOESTER
IT MANAGER POOLOS
PORT AND HARBOR DIRECTOR HAWKINS

Councilmembers Howard, Zak, and Burgess have requested telephonic participation. Councilmember Dolma has requested excusal.

There were not enough members present in person to vote on allowing telephonic participation for Councilmembers Howard, Zak, and Burgess.

Mayor Wythe declared Councilmember Dolma's absence as excused. There was no objection from the Council.

Council met as a Committee of the Whole from 5:00 p.m. to 5:23 p.m. to discuss Commission and Committee Reports, Consent Agenda, and Regular Meeting Agenda items.

Department Heads may be called upon from time to time to participate via teleconference.

AGENDA APPROVAL

(Addition of items to or removing items from the agenda will be by unanimous consent of the Council. HCC 1.24.040.)

The agenda was approved by consensus of the Council with the following changes:

CONSENT AGENDA - Letters from Borough Clerk voicing non-objection to Liquor License Renewals for Don Jose's, Homer Liquor and Wine Company, Patel's, and Patel's #2; Substitute Resolution 13-023(S), A Resolution of the City Council of Homer, Alaska, Noting the

Sufficiency of the Petition for the Webber Subdivision Road Reconstruction and Paving Special Assessment District and Setting the Public Hearing Date for May 28 **13**, 2013; **CITY ATTORNEY REPORT** - City Attorney report for February, 2013.

ROBERTS/LEWIS - MOVED TO ACCEPT THE AGENDA AS AMENDED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA

There was no public comment.

RECONSIDERATION

CONSENT AGENDA

(Items listed below will be enacted by one motion. If separate discussion is desired on an item, that item may be removed from the Consent Agenda and placed on the Regular Meeting Agenda at the request of a Councilmember.)

- A. Homer City Council unapproved Regular meeting minutes of February 25, 2013. City Clerk. Recommend adoption.
- B. **Memorandum 13-034**, from Deputy City Clerk, Re: Application for Liquor License Renewals for Don Jose's, Homer Liquor and Wine Company, Patel's, and Patel's #2.
- C. **Memorandum 13-035**, from Mayor, Re: Appointment of Nick Garay to the Prince William Sound Citizens Advisory Commission.
- D. **Ordinance 13-06**, An Ordinance of the Homer City Council, Amending HCC 3.12.020 Permanent Fund Contributions, and HCC 3.12.060 Expenditures of Income, to Provide that Five Percent of Income from the Homer Permanent Fund Income Sub-Fund is Available to be Appropriated for Grants to The Homer Foundation for the Benefit of the Community. City Clerk/Permanent Fund Committee. Recommended dates: Introduction March 11, 2013, Public Hearing and Second Reading March 26, 2013.

Memorandum 13-036 from Permanent Fund Committee as backup.

- E. **Ordinance 13-07**, An Ordinance of the City Council of Homer, Alaska, Amending the 2013 Operating Budget by Appropriating up to \$42,450 from the Sewer, Water and Fleet Reserve Fund for the Purchase of a Steamer Truck. City Manager/Public Works Director. Recommended dates: Introduction March 11, 2013, Public Hearing and Second Reading March 26, 2013.

Memorandum 13-037 from Public Works Superintendent as backup.

- F. **Resolution 13-023**, A Resolution of the City Council of Homer, Alaska, Noting the Sufficiency of the Petition for the Webber Subdivision Road Reconstruction and Paving Special Assessment District and Setting the Public Hearing Date for May 28, 2013. City Clerk. Recommend adoption.

Resolution 13-023(S), A Resolution of the City Council of Homer, Alaska, Noting the Sufficiency of the Petition for the Webber Subdivision Road Reconstruction and Paving Special Assessment District and Setting the Public Hearing Date for May ~~28~~**13**, 2013. City Clerk. Recommend adoption.

- G. **Resolution 13-024**, A Resolution of the City Council of Homer, Alaska, Urging the State of Alaska to Fully Fund Kachemak Bay State Parks. Mayor/Burgess. Recommend adoption.

- H. **Resolution 13-025**, A Resolution of the Homer City Council Urging the Alaska State Legislature to Allocate Funds to Upgrade the Football Field at Homer High School to Artificial Turf. Roberts. Recommend adoption.

- I. **Resolution 13-026**, A Resolution of the City Council of Homer, Alaska, Expressing Support for HB 131, an Act Relating to Abandoned and Derelict Vessels. Mayor. Recommend adoption.

- J. **Resolution 13-027**, A Resolution of the City Council of Homer, Alaska, Expressing Support for HB 4, Legislative Efforts to Construct a Natural Gas Pipeline from the North Slope to South Central Alaska. Mayor. Recommend adoption.

Councilmember Howard removed Item D – Ordinance 13-06 from the Consent Agenda to Ordinances.

Mayor Wythe called for a motion for the adoption of the recommendations of the consent agenda as read.

LEWIS/ROBERTS - SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VISITORS

ANNOUNCEMENTS/PRESENTATIONS/BOROUGH REPORTS

REPORT/COMMISSION

A. Borough Report

Mako Haggerty, Kenai Peninsula Assemblyman, reported the Borough is contracting out the operations and maintenance of the Homer Bailing Facility. D & L Services has been selected as the contractor and is to maintain the same level of availability.

The comment period on the Municipal Entitlement Program has ended. This project will identify the remaining 28,000 acres of State lands located throughout the Kenai Peninsula Borough that will be selected under the Municipal Entitlement Program. During the months of March and April borough staff will be reviewing and discussing the public outreach comments received in January and February with City, State and Federal Agencies. Based on public input, agency coordination, and staff findings a 28,000 acre selection recommendation by staff will then be forwarded to the local Advisory Planning Commissions and the Borough's Planning Commission before the Assembly considers approval on July 2nd.

B. Commissions/Board Reports:

1. Library Advisory Board
2. Homer Advisory Planning Commission
3. Economic Development Advisory Commission

Lindianne Sarno, EDC Chair, reported the commission was tasked with establishing Homer as an agricultural hub. Kyra Wagner of Sustainable Homer reported we have good markets for food, but need more local agricultural production. Woofing (worldwide opportunities on organic farms or willing workers on organic farms) has enterprising workers flocking to Alaska in the summer to work on farms in return for food and shelter. Woofers and woof hosts post their information

on their websites. There is a sizeable movement of energetic young people to Homer in the summer.

4. Parks and Recreation Advisory Commission
5. Port and Harbor Advisory Commission

PUBLIC HEARING(S)

ORDINANCE(S)

- A. **Ordinance 13-06**, An Ordinance of the Homer City Council, Amending HCC 3.12.020 Permanent Fund Contributions, and HCC 3.12.060 Expenditures of Income, to Provide that Five Percent of Income from the Homer Permanent Fund Income Sub-Fund is Available to be Appropriated for Grants to The Homer Foundation for the Benefit of the Community. City Clerk/Permanent Fund Committee. Recommended dates: Introduction March 11, 2013, Public Hearing and Second Reading March 26, 2013.

Memorandum 13-036 from Permanent Fund Committee as backup.

Mayor Wythe called for a motion for the adoption of Ordinance 13-06 for introduction and first reading by reading of title only.

ROBERTS/LEWIS - SO MOVED.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

ROBERTS/LEWIS - MOVED TO POSTPONE ORDINANCE 13-06 TO THE FIRST MEETING IN APRIL AND RETURN TO THE PERMANENT FUND COMMITTEE FOR REVIEW.

HOWARD/ROBERTS – MOVED FOR A FRIENDLY AMENDMENT TO MAKE IT THE SECOND MEETING IN APRIL.

VOTE: (amendment/postponement) YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

CITY MANAGER'S REPORT

A. City Manager's Report

City Manager Wrede reported on the two legal opinions pertaining to condominium assessments for the gas line. Attorney Sally Kucko of Groh Eggers, LLC is a well known expert in condominium associations. Attorney James McCollum is also experienced in condominium law, working with builders, contractors, and developers in setting up condominium associations. Both attorneys have over 20 years experience in condominium law.

Attorney Kucko was provided with the material Council received from Mr. Ken Castner laying out his arguments against the individual assessments for condominiums. She addresses Mr. Castner's arguments one by one, and concluded Attorney Klinkner is right. That is what the law says and how it is applied, but there are always cracks that can be argued. As to the Wisconsin case cited in Mr. Castner's arguments, it would be a very high bar to win. To find the assessment disproportionate to condo owners there would need to be a showing of misconduct or fraud. Attorney McCollum too agrees with Attorney Klinkner that it is proper to assess condominiums individually.

All legal opinions are posted on the City's website: <http://www.cityofhomer-ak.gov/>

Councilmember Burgess asked if there was anything the City could do to further justify the assessment mechanism as equitable.

Attorney Holly Wells advised Council has done a more than comprehensive job in the detailed legal opinions to support the decision. Even in the unlikely circumstance of the validity of proportionality of the assessment, this is not the time for that issue as it is not ripe. The merits of that argument will come when the assessment roll is finalized. It gives Council another opportunity to look at weaknesses that might surround the proportioned assessment. Council has done more than adequate preparation; the final assessment roll gives another opportunity to look at the reality.

City Manager Wrede reported Council held a series of workshops and analyzed different ways to assess. Council walked through all the pros and cons of ways to levy assessments and this way was chosen. There is quite a bit of discussion on the public record already; it could be discussed more as we move along.

Mayor Wythe recognized the six employees' anniversaries for a combined 48 years of service to the community.

1. Lobbyist Report

B. Bid Report

CITY ATTORNEY REPORT

COMMITTEE REPORT

A. Public Arts Committee

B. Transportation Advisory Committee

C. Permanent Fund Committee

D. Lease Committee

E. Port and Harbor Improvement Committee

F. Employee Committee Report

Mayor Wythe declared her ongoing conflict of interest in relation to the gas line and passed the gavel to Mayor Pro Tempore Roberts.

PENDING BUSINESS

- A. **Resolution 13-017(S)**, A Resolution of the City Council of Homer, Alaska, Approving a Contribution in Aid of Construction Agreement (CIAC) Between the City of Homer and Enstar Natural Gas Company for Construction of Improvements Within the Homer Natural Gas Distribution System Special Assessment District, in an Amount Not to Exceed \$12,160,632. City Manager. (Postponed from February 25, 2013)

Motion on the floor from February 25: MOTION FOR THE ADOPTION OF RESOLUTION 13-017(S) BY READING OF TITLE ONLY.

City Manager Wrede reported there was lengthy discussion with Enstar on the free main allowance for the trunk line. He and Attorney Klinkner met with Enstar's attorney and the regulatory folks. City Manager Wrede and Attorney Klinkner decided it was an issue they did not want to push since the chances of success were pretty slim given the barriers involved. It would have required redoing the tariff and it was likely construction would be postponed for a year. The City would have had to file a formal complaint with the regulatory commission so the issue was dropped.

Mayor Pro Tempore Roberts called for a motion for the adoption of Resolution 13-017(S) by reading of title only.

LEWIS/BURGESS - SO MOVED.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Mayor Pro Tempore Roberts passed the gavel back to Mayor Wythe.

NEW BUSINESS

RESOLUTIONS

COMMENTS OF THE AUDIENCE

Mako Haggerty, Homer resident, thanked Councilmember Burgess for bringing Resolution 13-024 forward. He disagrees with the Borough's privatization of the transfer station and did what he could to prevent it. He appreciates the report on Woofers and hopes they can become our new immigrant class, replacing those that used to come to Homer for fishing.

COMMENTS OF THE CITY ATTORNEY

City Attorney Wells thanked Council for letting her be here on a gorgeous Homer day.

COMMENTS OF THE CITY CLERK

City Clerk Johnson had no comment.

COMMENTS OF THE CITY MANAGER

City Manager Wrede had no comment.

COMMENTS OF THE MAYOR

Mayor Wythe thanked everyone for the opportunity to travel to Juneau with Katie Koester. They had a great trip and success while there. The reports will be in the following packet.

COMMENTS OF THE CITY COUNCIL

Councilmember Howard will be happy to be back in person for the next meeting.

Councilmember Burgess reminded everyone the Mayor also sponsored the State Parks resolution. He congratulated the Homer Police Department and the community as a whole for the recent vindication on the airport shooting. He congratulated all the people that worked very hard for that. He thanked Council for allowing him to participate telephonically.

Councilmembers Zak, Roberts, and Lewis had no comment.

ADJOURNMENT

There being no further business to come before the Council, Mayor Wythe adjourned the meeting at 6:38 p.m. The next Regular Meeting is Tuesday, March 26, 2013 at 6:00 p.m., Committee of the Whole 5:00 p.m., and Worksession 4:00 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

JO JOHNSON, CMC, CITY CLERK

Approved: _____