

HOMER CITY COUNCIL
491 E. PIONEER AVENUE
HOMER, ALASKA
www.cityofhomer-ak.gov



SPECIAL MEETING
6:00 P.M. TUESDAY
OCTOBER 20, 2015
COWLES COUNCIL CHAMBERS

MAYOR BETH WYTHE
COUNCIL MEMBER DAVID LEWIS
COUNCIL MEMBER BRYAN ZAK
COUNCIL MEMBER BEAUREGARD BURGESS
COUNCIL MEMBER GUS VAN DYKE
COUNCIL MEMBER CATRIONA REYNOLDS
COUNCIL MEMBER DONNA ADERHOLD
CITY ATTORNEY THOMAS KLINKNER
CITY MANAGER WALT WREDE
CITY CLERK JO JOHNSON

AMENDED
SPECIAL MEETING AGENDA

- 1. CALL TO ORDER, 6:00 P.M.**
- 2. AGENDA APPROVAL** (Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual, pg. 5)
- 3. NEW BUSINESS**
 - A. **Memorandum 15-171** from City Attorney, Re: Council Succession Pending Runoff Election
 - B. Oath of Office administered to Newly Elected Official Donna Aderhold
- 4. ADJOURNMENT**

Next Regular Meeting is Monday, October 26, 2015 at 6:00 p.m. and Committee of the Whole 5:00 p.m. A Special Meeting is scheduled for Monday, November 9, 2015 at 5:00 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.



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MEMORANDUM 15-171

**TO: MAYOR AND COUNCIL MEMBERS
CITY OF HOMER**

FROM: THOMAS F. KLINKNER

RE: COUNCIL SUCCESSION PENDING RUNOFF ELECTION

FILE NO.: 506,742.103

DATE: OCTOBER 15, 2015

1. *Background.*

At the October 6, 2015, regular City election, two Council members were to be elected on an at-large basis, each for a three-year term. At this election, one of the seven candidates for Council, Donna Aderhold, received the necessary 40% of the vote for her "respective seat" to be elected.¹ The remaining Council seat will be filled after a runoff election that is scheduled for November 3, 2015, between the two of the remaining candidates who received the highest number of votes at the regular election.²

One of the two incumbent Council members whose three-year term is scheduled to expire after the October 6, 2015, election is Francie Roberts; the other is Beauregard Burgess. Council member Roberts did not run for reelection. Council member Burgess did run for reelection, and will be one of the two candidates in the November 3, 2015, runoff election.

2. *Commencement of Term of Office for Newly Elected Council Members.*

Under AS 29.26.150(c) and HCC 2.08.030(c), a person who is elected to the Council takes office on the first Monday following certification of the election in which the person was elected. HCC 2.08.030(c) provides that this occurs at a special Council meeting at which the oath of office is administered. The results of the October 6, 2015, regular City election were certified at the regular Council meeting held on October 12, 2015. Thus, Ms. Aderhold, who was elected to the Council at that election, will take

¹ HCC 4.35.010(f), 4.40.010(a).

² HCC 4.40.020, 4.40.010(b).

office at a special Council meeting on Monday, October 19, 2015. The candidate who is elected to the Council at the November 3, 2015, runoff election will take office on the first Monday after certification of the runoff election.

3. Expiration of Term of Office for Incumbent Council Members.

AS 29.20.150(a) provides that a Council member is elected for a three-year term and until a successor qualifies, unless a different term not exceeding four years is prescribed by ordinance. HCC 2.08.030(a) provides that a Council member serves a term of three years. Although there is no “until a successor qualifies” language in HCC 2.08.030(a), two factors indicate that this omission was not intended to prescribe a different term for Council members than that provided in AS 29.20.150(a). First, a Council member remaining in office until a successor qualifies serves the public policy of avoiding vacancies in office.³ Second, the grounds for declaring a vacancy in the office of Council member do not include the expiration of the Council member’s three-year term without the election of a successor.⁴ Thus, the terms of Council members Roberts and Burgess continue until a successor qualifies, as provided in AS 29.20.150(a).

4. Determination of Succession in Office.

One qualifies for the office of Council member by taking the oath of office.⁵ HCC 2.08.030(c) provides that there will be a special meeting on the first Monday following certification of an election for the purpose of administering the oath of office to the elected candidates. Ms. Aderhold will qualify for the office of Council member by taking the oath of office on October 19, 2015. The term of the Council member for whom Ms. Aderhold is the successor thus will expire on October 19, 2015.

Council members are elected at large rather than to designated seats, and no statute or City Code provision addresses which of two Council members with expiring terms is succeeded by a single newly elected Council member. Thus, it is unclear whether Ms. Aderhold is the successor to Council member Roberts or Council member Burgess. In my opinion this is a matter for the Council to resolve. A practical solution would be for Ms. Aderhold to be the successor of Council member Roberts, who has not sought another term on the Council, rather than Council member Burgess, who is a candidate for Council in the pending runoff election. If the Council desires this result,

³ *State ex rel. Musa v. Minear*, 401 P.2d 36, 39 (Or. 1965).

⁴ HCC 2.08.040(l) states the grounds for declaring a vacancy in the office of Council member. The Court of Appeals of Louisiana concluded that a similar omission from the grounds for declaring a Council seat vacant indicated that the incumbent remained in office until a successor was elected. *Bolar v. Crosby*, 40 So.3d 1093, 1096 (2010).

⁵ *Reale v. Board of Real Estate Appraisers*, 880 P.2d 1205, 1211 (Colo. 1994).

I recommend that the Council adopt a motion at its October 19, 2015, special meeting that Ms. Aderhold shall be the successor to Council member Roberts upon taking the oath of office.

TFK/lcj

cc: Katie Koester
Jo Johnson