



# City of Homer

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October 25, 2019

RE: Contest of October 1, 2019 Municipal Election

Dear Mayor Castner and Homer City Council,

This report addresses a Contest filed on October 7, 2019 by Thomas Stroozas, contesting the residency qualifications of Storm Hansen-Cavasos in the municipal election held by the City of Homer on October 1, 2019.

### 1. Background and Legal Standards

The City of Homer ("City") is a first-class city incorporated under Title 29 of the Alaska Statutes ("AS") and governed by the Homer Municipal Code ("HCC").<sup>1</sup> Pursuant to Title 29, the governing body of the City shall prescribe the rules for conducting an election.<sup>2</sup> City elections are thus subject to Title 29 and governed by Title 4 of the HCC.<sup>3</sup> Pursuant to AS 29.26.070(a), the governing body of a municipal organization may provide by ordinance the time and procedure for the contest of a municipal election.

At a meeting on October 14, 2019, the Homer City Council certified the results of the October 1, 2019 municipal election. The City Council also adopted Memorandum 19-134, which instructed the City Manager to investigate the election contest received by the City of Homer Clerk's Office on October 7, 2019. The contest and investigation are conducted pursuant to AS 29.26.070 and Homer City Code 4.50. Upon completion of the investigation, the City Council shall vote to determine the qualifications of its members while sitting in a quasi-judicial capacity.<sup>4</sup>

The Contest filed by Mr. Stroozas alleges that Ms. Hansen-Cavasos was not an eligible candidate in the October 1, 2019 election because she did not meet the candidate qualifications set forth in HCC 4.10.020.<sup>5</sup> Specifically, the Contest alleges she was not eligible for candidacy because she was not a resident within the City for a period of one year immediately preceding the election day on which she was a candidate, as required by HCC 2.08.020(a).<sup>6</sup> The relevant rules for determining voter and candidate residency under HCC 2.08.020(a) are set forth in HCC 4.05.020. The code states:

<sup>1</sup> AS 29.04, HCC 1.10.010.

<sup>2</sup> AS 29.26.010(a).

<sup>3</sup> Under HCC 4.01.010, "The provisions of the Alaska Statutes relating to conduct of municipal elections are incorporated into this chapter as if fully set out. Procedures for the conduct of State elections shall also govern City elections to the extent that they are applicable." Therefore, standards adopted for state elections also apply to City of Homer elections, where applicable.

<sup>4</sup> See *Miller v. North Pole City Council*, 532 P.2d 1013, 1016 n. 8 (Alaska 1975).

<sup>5</sup> HCC 4.10.020 states that a candidate: 1) must be a qualified voter as noted in HCC 4.050.010; and 2) must meet the eligibility requirement of HCC 2.08.020. See Footnote 6, *infra*.

<sup>6</sup> HCC 2.08.020(a) states: "A person is eligible for the office of City Council or the office of Mayor if the person is a voter of the City as prescribed by HCC 4.05.010 and has been a resident within the City for a period of one year immediately preceding the election day on which the person is a candidate." There is no dispute as to whether Ms. Hansen-Cavasos was an eligible voter under HCC 4.05.010 for the October 1, 2019 election. A person is an eligible voter in the City of Homer if the person: 1) Is a citizen of the United States; 2) Has passed his eighteenth birthday or is such other age as prescribed by law for voting in State elections; 3) Has been a

For purposes of determining residence for voting, the place of residence is governed by the following rules:

- a. The residence of a person is that place in which habitation is fixed, and to which, whenever he is absent, he has intention to return. If a person resides in one place but does business in another, the former is the person's place of residence. Temporary camps do not constitute a dwelling place.
- b. A change of residence is made only by the act of removal joined with the intent to remain in another place. There can only be one residence.
- c. A person does not gain or lose his residence solely by reason of his presence while employed in the service of the United States or of this State, or while a student of an institution or asylum at public expense, or while confined in a public prison or while residing upon an Indian or military reservation, or while residing at the Alaska Pioneers Home.
- d. No member of the armed forces of the United States, his spouse or his dependent is a resident of this State solely by reason of being stationed in the State.
- e. A person does not lose his residence if he leaves his home and goes to another country, state, or place within this State for temporary purposes only and with the intention of returning.
- f. A person does not gain a residence in a place to which he comes without a present intent to establish a permanent dwelling there.
- g. A person loses his residence in this State if he votes in an election held in another state, and has not upon his return regained his residence in this State under the provisions of this chapter and State law.
- h. The term of residence is computed by including the day on which the person's residence commences and by excluding the day of the election.

Therefore, to meet the residency requirements to be eligible for City Council in the October 1, 2019 election, Ms. Hansen-Cavasos would have been required to be a resident of the City of Homer from September 30, 2018 to September 30, 2019. This means she must have kept her fixed habitation within the City of Homer, and whenever she was absent, had the intent to return. Whether a person is a resident of an election district depends on the totality of the circumstances surrounding the person involved and largely depends upon the present intention of the individual.<sup>7</sup> Residency and intent are questions of fact.<sup>8</sup> For the purposes of determining a voter's residence, AS 15.050.020(8) states, "The address of a voter as it appears on the official voter registration record is presumptive evidence of the person's voting residence."

Pursuant to 6 AAC 25.260, candidate eligibility contests are evaluated under a "preponderance of the evidence standard." This means that Council Members should find Ms. Hansen-Cavasos met the qualifications for candidacy if it is more likely than not – or 51 percent – that she was a resident of the City of Homer for the relevant time period of September 30, 2018 to September 30, 2019. Conversely, if Council Members determine it was more likely than not she was *not* a resident for the relevant time period, it should find she did not meet the qualifications for candidacy.

The Alaska Supreme Court has held that, due to the public interest in governance stability and the finality of election results, "every reasonable presumption will be indulged in favor of the validity of an election."<sup>9</sup> Given

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resident of the municipality for 30 days immediately preceding the election; 4) Is registered to vote in State elections at a residence address within the municipality at least 30 days before the municipal election at which the person seeks to vote.

<sup>7</sup> *Lake and Peninsula Borough Assembly v. Oberlatz*, 329 P.3d 214, 222 (Alaska 2014); *Woods v. Legg*, 2011 WL 3524290 (Tex. App. Houston 1<sup>st</sup> Dist. 2011).

<sup>8</sup> *Lake and Peninsula Borough Assembly*, 329 P.3d at 222.

<sup>9</sup> *Dansereau v. Ulmer*, 903 P.2d 555, 559 (Alaska 1995) (citing *Turkington v. City of Kachemak*, 380 P.2d 593, 595 (Alaska 1963)); see also *In re Hanssens*, 821 A.2d 1247 (Pa. Commw. Ct. 2003), as amended, (May 20, 2003); *Russell v. Goldsby*, 780 So. 2d 1048 (La. 2000) (holding that any doubt as to the qualifications of a candidate should be resolved in favor of permitting the candidate to run for office).

this public interest, the standard to sustain post-election contests in Alaska is higher than that for pre-election challenges.<sup>10</sup> “The different standards serve the important purpose of discouraging parties from mounting post-election challenges just because they are displeased with the results of a given election.”<sup>11</sup> To sustain a post-election challenge, a contest must demonstrate that, “there was both a significant deviation from statutory direction, and that the deviation was of a magnitude sufficient to change the result of the election.”<sup>12</sup> The burden is upon the contestant to prove the grounds of an election contest alleged.<sup>13</sup>

## 2. Evidence

Both parties submitted evidence pursuant to the City’s request, all of which has been reviewed by the City as part of the investigation. The City required that all testimony, written or oral, be provided under oath and under the penalty of perjury. The documents have been made available to both the Council and the general public. The City conducted oral interviews with Ms. Hansen-Cavasos and Matt Hambrick, her landlord at the 54730 Rolling Meadows address. It also requested to speak with Dan and David Gerard, her neighbors near the 54730 Rolling Meadows address, but they declined to be interviewed. Mr. Stroozas also provided comments under oath and answered questions.

### a) Evidence Provided by Mr. Stroozas

Mr. Stroozas alleges that Ms. Hansen-Cavasos kept her fixed habitation at 54730 Rolling Meadows Road, Homer, Alaska, 99603, outside the City of Homer, for at least some period of time between September 30, 2018 and September 30, 2019. Mr. Stroozas submitted eight affidavits from community members averring that they observed Ms. Hansen-Cavasos at the 54730 Rolling Meadows address with her dogs and children during the relevant time period. The affidavits also state that Ms. Hansen-Cavasos kept vehicles stored at the 54730 Rolling Meadows address. Mr. Stroozas did not submit a written statement himself, and stated during his oral testimony he has no firsthand knowledge of Ms. Hansen-Cavasos’ residency.

As additional evidence, Mr. Stroozas submitted a Trustee’s Deed recorded on December 27, 2018, indicating a transfer of property located at 39888 Brenmark Road, Homer, Alaska 99603 to Guy Brooksbank. He also submitted several voter registration forms filed by Ms. Hansen-Cavasos. The registration forms indicate that Ms. Hansen-Cavasos registered to vote at the 54730 Rolling Meadows address on March 23, 2018 and again on April 4, 2019. An additional record shows she changed her voter registration to 408 Rangeview Drive, Homer, Alaska 99603 on August 8, 2019. Finally, Mr. Stroozas submitted social media posts showing Ms. Hansen-Cavasos at the 54730 Rolling Meadows property during the relevant time period, social media messages she sent to community members referring to the 54730 Rolling Meadows address as hers, and photos of vehicles belonging to her in the driveway.

As more fully described below, during oral testimony, Ms. Hansen-Cavasos acknowledged that she was registered to vote at the 54730 Rolling Meadows address until August of 2019. She also acknowledged that she retained a lease, spent time, and kept personal belongings (including vehicles) at the 54730 Rolling Meadows address until summer of 2019.

### b) Evidence Provided by Ms. Hansen-Cavasos

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<sup>10</sup> *DeNardo v. Municipality of Anchorage*, 105 P.3d 136, 140 (Alaska 2005).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 141 (citing *Dansereau*, 903 P.2d at 559).

<sup>13</sup> *Lake and Peninsula Borough Assembly*, 329 P.3d at 222; *In re Hanssens*, 821 A.2d 1247; *Streeter v. Paschal*, 267 Ga. 207 (Ga. 1996).

Ms. Hansen-Cavasos submitted an affidavit averring that she began residing at 1345 Mission Road, Homer, Alaska 99603, within the city limits of Homer, in June 2018. She states that in June of 2019 she subsequently moved to, and currently lives at, 408 Rangeview Drive, which is also within the city limits of Homer. Thus, Ms. Hansen-Cavasos avers under oath that for the relevant time period she resided at the 1345 Mission Road address or the 408 Rangeview Drive address with the intent to continue residing in the City of Homer indefinitely.

She states in her affidavit that she and her estranged husband retained the property at 54730 Rolling Meadows in the event he would return from out-of-state and need a place to stay, and as a place to continue storing their marital property. She gave oral testimony to this point as well. She does not deny retaining a lease at the 54730 Rolling Meadows address nor spending time there following June 2018, and says she would return to "mow the lawn and sort through [her] marital possessions." In written and oral testimony, Ms. Hansen-Cavasos stated her eldest child would frequently stay at the property. She stated that the family pets stayed there because they could not stay at her mother's house. If no one was spending the night at 54730 Rolling Meadows, Ms. Hansen-Cavasos or one of her children would go to care for them. She stated that she would spend time at the 54730 Rolling Meadows address during the relevant time period. She said she would spend approximately five nights a month there, which increased around holiday seasons and during the time she was moving her property out of the house. She also states that several cars belonging to her family were kept at the 54730 Rolling Meadows house. Her property was fully moved out of the house sometime in July or August 2019.

Ms. Hansen-Cavasos submitted an affidavit from her mother, stating that Ms. Hansen-Cavasos lived with her at the 1345 Mission Road address from June 2018 to summer of 2019, at which point she moved to 408 Rangeview Drive. Affidavits were also submitted from her son and two friends stating that she resided within the city limits of Homer from June 2018 to the current day.

During oral testimony, she stated that she used the 54730 Rolling Meadows address in her April 2019 voter registration and on her 2019 Permanent Fund Dividend Application. She also stated that she normally used a PO Box to receive mail, but would occasionally receive it at other locations, including the place she was residing or at her employer. Finally, she stated that her children were enrolled at the Kenai Peninsula Borough School District at the 1345 Mission Road address during the 2018-2019 and 2019-2020 school years, and that is where the school bus would pick them up.

As additional evidence, Ms. Hansen-Cavasos submitted her Declaration of Candidacy and Public Official Conflict of Interest Disclosure statement, both of which were submitted under oath and state that she resides at 408 Rangeview Drive and has been a resident of the City since May 2018. Finally, she submitted her current Individual Voter Report, which was completed on August 8, 2019 and reflects her 408 Rangeview Drive address.

### *c) Additional Evidence*

Matt Hambrick, Ms. Hansen-Cavasos' landlord at the 54730 Rolling Meadows address, testified that she had a 12-month lease at the property from March 2018 to March 2019. At that time, it transitioned to an oral month to month lease. Mr. Hambrick has no knowledge of whether Ms. Hansen-Cavasos was actually residing at the property; he did not visit the property and did not see if she was there. Mr. Hambrick also provided a copy of the lease he had with Ms. Hansen-Cavasos.

The City reviewed Ms. Hansen-Cavasos' voter registration prior to her August 8, 2019 change, which showed that as of the November 2018 election she listed a residential address of 54730 Rolling Meadows Road. This registration reflects the voter registration forms submitted by both Ms. Hansen-Cavasos and Mr. Stroozas.

The City also requested Ms. Hansen-Cavasos' electric and water utility shut off records. Those records have not yet been produced at this time. However, the City notes that Ms. Hansen-Cavasos has acknowledged she maintained a lease at the 54730 Rolling Meadows address, and that her family continued to utilize the house and its utilities during the relevant period.

### 3. Summary and Conclusion

Ms. Hansen-Cavasos has averred under oath that she resided at either 1345 Mission Road or 408 Rangeview Drive since June of 2018, an assertion which should be provided deference.<sup>14</sup> She has submitted four additional affidavits, including one from her mother, which also state she resided at 1345 Mission Road or 408 Rangeview Drive during the relevant time period. She currently resides within the City at 408 Rangeview Drive. It is not disputed that, as documented by Mr. Stroozas' affidavits and attendant evidence, that she retained a lease at the 54730 Rolling Meadows address until the summer of 2019, that she spent time there during the relevant time period, and that it was still utilized by her family. It is also not disputed that she was registered to vote at 54730 Rolling Meadows address until August 8, 2019, or that she used that address when applying for her 2019 PFD.

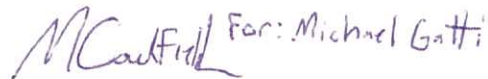
If a Council Member believes it is more likely than not that Ms. Hansen-Cavasos kept her fixed habitation at either the 1345 Mission Road or 408 Rangeview Drive address from September 30, 2018 to September 30, 2019, and intended to return to and maintain her fixed habitation at those addresses while she spent time at the 54730 Rolling Meadows address, the Member should vote to confirm the previously certified election results. If a Council Member believes Mr. Stroozas has met his burden to demonstrate it is more likely than not that she kept her fixed habitation at 54730 Rolling Meadows at some point during the relevant time period, the Member should vote to find her ineligible for candidacy.

Either party has the right to appeal the Council's decision to superior court within 10 days.<sup>15</sup> If no such action is commenced within the 10-day period, the election and election results shall be conclusive, final and valid in all respects.<sup>16</sup>

Sincerely,



Katie Koester  
City Manager



Michael Gatti  
City Attorney



Melissa Jacobsen  
City Clerk



Michael Caulfield  
Associate Attorney

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<sup>14</sup> See *Lake and Peninsula Borough Assembly*, 329 P.3d at 222.

<sup>15</sup> AS 29.26.070(e).

<sup>16</sup> Id.