



City of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

491 East Pioneer Avenue

Homer, Alaska 99603

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Memorandum Agenda Changes/Supplemental Packet

TO: MAYOR ZAK AND HOMER CITY COUNCIL

FROM: JO JOHNSON, MMC, CITY CLERK

DATE: MARCH 13, 2017

SUBJECT: AGENDA CHANGES AND SUPPLEMENTAL PACKET

RECONSIDERATION

Resolution 17-014(S), A Resolution of the City Council of Homer, Alaska, Authorizing the Extension of City of Homer Water Services to Benefited Lots in Kachemak City and Nullifying the Statement in Resolution 04-42(A) With Regard to Extending City Water to Non-City Properties. Stroozas.

Written public comments

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CONSENT AGENDA

Memorandum 17-046, from City Manager, Re: Letter to Governor Walker and Alaska State Legislature Regarding the Effects of Budget Cuts on the City of Homer and Revenue Options for the State of Alaska.

Amended Letter and Councilmember Aderhold comments

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ANNOUNCEMENTS/PRESENTATIONS/BOROUGH REPORT/COMMISSION REPORTS

Mayor Zak Juneau Trip Report

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Councilmember Smith Juneau Trip Report

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Letter to Senator Bishop from Mayor Zak, Re: Importance of Alaska Marine Highway System to coastal communities

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CITY MANAGER'S REPORT

Written public comments on water services to Alaska Bible Institute Page 17

Maps on Bridge Creek lot for sale Page 19

CITY ATTORNEY REPORT

Memorandum 17-037, from City Attorney, Re: Certification of Petition for Recall Application
Page 23

RECOMMENDATION:

Voice consensus to changes under Agenda Approval.

Fiscal Note: N/A

Jo Johnson

From: Kelly Cooper <midnightsun.kelly@live.com>
Sent: Sunday, March 12, 2017 12:13 PM
To: Jo Johnson
Subject: Please vote yes to reconsider and then vote no on Resolution 17-014

Resolution 17-014(S), A Resolution of the City Council of Homer, Alaska, Authorizing the Extension of City of Homer Water Services to Benefited Lots in Kachemak City and Nullifying the Statement in Resolution 04-42(A) With Regard to Extending City Water to Non-City Properties

Jo,
Please distribute to council.

Please vote yes to reconsider Resolution 17-014 and then vote no on this resolution. There should have been communication with Kachemak City on this resolution giving them the opportunity to get public input, determine if their residents support this and research done by the two cities to see if it makes sense. While there may be a few that think this is a good idea, the current resolution has not been vetted.

Thank you.
Kelly Cooper

Jo Johnson

From: Francie Roberts <francieroberts@gmail.com>
Sent: Monday, March 13, 2017 10:34 AM
To: Department Clerk
Subject: Resolution 17-014(S)

Dear Homer City Council Members,

I do not support Resolution 17-014(S). I am glad you are reconsidering it.

Kachemak City residents have specifically chosen not to be a part of the City of Homer and not to pay property tax to our city. By extending the rights to utilize the water system, you are allowing benefits to a particular group of citizens who do not wish to be a part of our city.

There are also people in the city who do not have water services, the energy would be better spent to provide them with services.

I am sorry I had a previous commitment or I would be there in person to tell you how I feel.

Francie Roberts



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March 13, 2017

Governor Walker
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Governor Walker and Legislators of the great State of Alaska,

The Homer City Council continues to recognize our ongoing state fiscal crisis. During our recent visit to the state capitol we were encouraged by the attention being given to this serious matter by legislators. However, we found it disconcerting to find the House and Senate so far apart on the solution to the crisis. We reaffirm Homer City Council's position submitted to you during the last legislative session via Resolution 16-017 (see attached). Producing an ongoing balanced, sustainable, and predictable budget brings confidence to Alaskan residents, investors, and the economy as a whole. We support new measures that will create a balanced and fair revenue stream to offset oil revenue losses.

The Homer City Council evaluated proposals being discussed by the legislature for balancing the state budget and has developed positions as follows:

REVENUE

- Homer City Council recognizes the need to use our largest asset – the Permanent Fund – as part of the solution and supports a percent of market value (POMV) approach that funds government while protecting the principal of the fund.
- Potential mechanisms to fill the remaining gap include an income tax, a statewide sales tax, and a variety of taxes on specific goods (such as studded tires and motor fuels). Sales taxes and taxes on specific goods may have direct impacts on municipalities such as the City of Homer.
 - Sales Tax: Over 50% of general fund revenue for the City of Homer comes from sales tax, making it an important part of how government is funded in a small town that serves as a hub community for a much greater area. Combined with the Kenai Peninsula Borough sales tax, Homer shoppers pay 7.5% sales tax. Any state-wide sales tax MUST consider the impact to local municipalities and not simply add a new sales tax on top of what local municipalities charge.
 - Taxes on Specific Goods: Specific taxes on goods (such as studded tires or motor fuels) hit rural areas harder than urban areas because the cost of these items is already higher. Multiple taxes on specific goods results in “death by a thousand taxes” to municipalities and local residents.

BUDGET CUTS

- The Homer City Council understands that budget cuts will continue to be considered as the state struggles to make ends meet. The community of Homer has suffered from cuts to state government during the past several years. As cuts are made, problems in our municipality, ranging from drug violence to heavy snow loads, do not go away. Below are examples of past and proposed state budget cuts that have direct or indirect impacts on the City of Homer.
 - Community Jails—the City of Homer contracts with the Department of Corrections to help fund our jail. Alaska State Troopers house prisoners at the Homer Community jail from well outside City limits. Past

cuts to our contract have affected our ability to staff the jail and future cuts would be highly detrimental.

- State Troopers—the Homer police department partners with the Alaska State Troopers on law enforcement. Reductions in coverage on the lower Kenai Peninsula affects the ability of the Homer police to do their jobs and compromises the safety of the greater Homer area.
- Transportation—Homer is criss-crossed with state maintained roads and our community has one highway linking us to the central peninsula and Anchorage. We depend on the Alaska Department of Transportation and Public Facilities (ADOT&PF) to perform year-round maintenance on the state highway and state roads within Homer. We also have agreements with ADOT&PF for winter maintenance that would be jeopardized with further cuts to the agency. In addition, as the home port of the M/V Tustumena and the Alaska Marine Highway System (AMHS) link to Seldovia, Kodiak, and southwest Alaska, Homer City Council recognizes the importance and value of the AMHS. We are concerned about the economic impact further cuts to the AMHS would have on coastal municipalities.
- K-12 Education—While K-12 education is a function of the Kenai Peninsula Borough, cuts to the school district’s budget result in changes that directly affect our community’s economy.
- University—Homer is home to the Kachemak Bay Campus (KBC) of the Kenai Peninsula College. KBC is at the heart of Homer, providing classes our community members depend on to seek undergraduate and graduate degrees, learn trades, and continue their educations. KBC is a direct positive for our economy and its loss or diminishment would leave a deep hole.
- Community Assistance--The City of Homer no longer includes Community Assistance (formerly known as Revenue Sharing) in our annual operating budget due to its uncertain nature. However, we use the funds for capital projects in the community and appreciate that it offsets the unfunded mandate of the senior property tax exemption.
- PERS/TRS—Homer City Council appreciates the state legislature honoring the existing agreement with municipalities on funding rates for PERS (Public Employees’ Retirement System) and TRS (Teachers’ Retirement System).

We applaud your diligence in working to resolving this crisis. As you work to balance the state budget for a sustainable future for our state, we encourage you to fully weigh the ramifications cuts and taxes have on municipalities.

Thank you again for your willingness to serve the residents of this state and your work to secure a stable future for generations to come.

Sincerely,

Homer City Council

Mayor Bryan Zak

Donna Aderhold

Heath Smith

Tom Stroozas

Shelly Erickson

David Lewis

Catriona Reynolds

Jo Johnson

From: Donna Aderhold
Sent: Sunday, March 12, 2017 9:38 PM
To: Jo Johnson; Katie Koester
Cc: Heath Smith
Subject: Revisions to Memo 17-046 (memo to governor and legislature)

Hi Jo and Katie,

As Katie and I discussed on Friday, I have two proposed additions to the memo we plan to send to the governor and legislature regarding the Alaska Marine Highway System and PERS/TRS (Katie should review and revise my language as needed). I also found a few typos.

Additions:

1. Add at end of Transportation bullet: In addition, as the home port of the M/V Tustemena and the Alaska Marine Highway System (AMHS) link to Seldovia, Kodiak, and southwest Alaska, Homer City Council recognizes the importance and value of the AMHS. We are concerned about the economic impact further cuts to the AMHS would have on coastal municipalities.
2. Add new bullet: PERS/TRS--Homer City Council appreciates the state legislature honoring the existing agreement with municipalities on funding rates for PERS and TRS. (I can't remember what PERS and TRS actually stand for, it would be consistent with the rest of the memo to define the terms.)

Typos:

1. "Potential" should not be underlined.
2. At end of Transportation bullet (before new text) insert "to" between "cuts" and "the".
3. Change dash after "Community Assistance" so it is consistent with others.

If there is not time to get these into the supplemental packet I can pull the memo from the consent agenda and make these amendments during the meeting.

Thanks,
Donna

Donna Aderhold
Homer City Council

907.244.4388

DonnaAderhold@ci.homer.ak.us

Public Records Law Disclosure:

Emails from or to this address will be available for public inspection under Alaska public records law



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Mayor Bryan Zak trip report to Juneau:

Tuesday, Feb 21st

2:00pm	Met with USCG Captain Laura Dickey, Chief of Staff. 907-463-2028	USCG- Fed. Bldg. Rm 651 709 W 9 th Ave. Bring ID for security
3:45pm	Paul Seaton's office 907-465-2689	Rm 505 Capital
4:30pm	Sen. Gary Stevens 907-465-4925	Rm 429 Capitol

Wednesday, February 22nd

Ray Gillespie

Huge Deficit –

1. Potential Cuts University, HSS, DOT, PERS/TERS, Education, Community Assistance.
2. New Revenue: SB 21, SB 26, HB115 - , HB60/SB25 – Motor Fuels 100M – small part of fix
3. Savings: CBR \$4.4B will be gone in three years

Expenditure Reductions to Date

Expenditure Category	Reductions To Date	FY18 Gov. Funding
Capital	\$1.8B	100M
Operating (not including k12 formula)	\$1.6B	\$2.5B

Direct Community Payments:

PRS/TRS (on-behalf)	\$.00B	\$200M
Community Assistance	\$30M	\$0.0
School Debt Reimbursement	\$10M	\$100M
Education Funding (k12 formula)		
Pupil Transportation	\$6.3M Veto	\$72.6M

Impacts of Reduction Scenarios

Community	Education Formula	School Debt Assistance	Retirement Assistance	Community Assistance
Kenai \$89.1	\$3.1	\$9.7	\$1.8	\$103.7

Reductions

What the Mil Rate increase might be 2.2Mils +50%

Snapshot of Reduction Legislation

Stedman SB21	Governor SB25/HB61	House Finance HB 115
\$1700+	\$1000	\$1100
POMV 4.5%	5.25%	4.75
5		
Available to General Fund \$1.9B		1.9B est \$1.5-2.5B
HB11 Oil Tax Credits \$45M est FY 18	\$75M est FY 19	Income Tax \$655 M, 15% of Fed, 10% Cap Gains

Fairbanks cannot raise the tax cap to what the Department of Revenue slide shared. You will have the chance to ask the Department of Revenue person about this.

3% Borough Sales tax is equivalent to about 5 Mils

Revenue Sharing –

This year 30M

Next Year if nothing happens 20M, so if nothing happens we have to have something to backfill. –

Another approach may or may not get legs, resurrecting municipal dividend from 2002 to set aside proposal Set aside \$100 for every dividend that gets paid. Sct29.60.330 Municipal Dividend Funds

PERS / TRS

Proposed FY18 \$92.5M \$11.7M Governors Budget – 22% lowest since 2008

Right now the State picks up the difference between 22% and 25% the projection this number will go back up in the future.

PES/TRS information in our packets = State Responsibility

Last Year attempt to raise the contribution rate from 22 to 26% and they withdrew the bill. This year the discussion is different; it would accomplish the same thing, which is cost shifting to the municipalities. If you change shall to May this is a backdoor rate of cost shifting that is equivalent to raising this rate.

If you did this it would make the States balance sheet look better and it would make the State be able to borrow more, but it left out of this what it does to the municipalities.

Governors Aid – OPIOD Addiction, asking for comprehensive legislation coming soon. Questions – The State needs to grow, we need jobs, you cannot contract, contract, contract.

Alaska Command Staff of 60 all services 907-552-2341 Handle all issues for military in the State of Alaska. Northern Edge – Presentation is at AML website:

<http://www.akml.org/conferences/>

2017 Winter Legislative Conference Presentations

[Heroin Summit Panel Information](#)

[Exercise Northern Edge](#) – Alaskan Command

[Legislative Update](#) – Ray Gillespie

[Governor's Fiscal Plan Overview](#) – Pat Pitney

[Alaska Affordable Energy Strategy](#) – Katie Conway & Cady Lister

[Expenditure Reduction Overview](#) – Commissioner Hoffbeck

[Alaska Gasline Development Corporation](#) – Fritz Krusen



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Councilmember Smith
Juneau Travel Report

February 2017

It was an honor to represent the City of Homer along with Council Member Aderhold, Mayor Zak, City Manager Koester and Port and Harbor Director Hawkins at the 2017 Alaska Municipal League conference in Juneau February 21-23.

We were able to sit down with Captain Laura Dickey the U.S. Coast Guard 17th District Chief of Staff. Director Hawkins was able to share our larger boat harbor expansion plans along with our hopes to accommodate the new Fast Response Vessels due to be commissioned in 2020. They were intrigued at the prospect but unable to officially endorse or commit to the project.

We had a meeting with the Alaska Department of Corrections Commissioner Dean Williams. Here we reiterated the value of our relationship and explored some options that may evolve out of new policies that focus on cost savings in the department. He and his staff are planning on a visit to Homer to pitch a more detailed proposal. All possibilities here will hinge on costs, as the city is not positioned to take any more on.

Senator Gary Stevens and Representative Paul Seaton each hosted a meeting where they pitched their respective bodies approach at tackling the states current fiscal crisis. It was clear they are not on the same page and both seem to clearly be in opposition of what the other is presenting as a solution...is this madness?

Had the opportunity to listen to Senator Lisa Murkowski address a joint session of the house and senate.

During the AML conference we heard from a Herion Summit Panel (this was encouraging dialog), received a legislative update from Ray Gillespie, presented the Governors Fiscal Plan by Pat Pitney, Katie Conway and Cady Lister showed us the results of their work related to the Alaska Affordable Energy Strategy, Senator Lisa Murkowski addressed us, and Commissioner Hoffbeck wrapped things up with the Expenditure Reduction Overview. All valuable information...but much is unchanged in regard to our state budget issues. Bottom line is there is a lot of work ahead of these legislative bodies and we will need to be in tune with what they bring forward in order to ensure our interests are represented.



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March 10, 2017

Senator Bishop
Alaska State Capitol
Juneau, AK 99801

Delivered electronically

Honorable Senator Bishop,

The purpose of this letter is to reiterate the importance of the Alaska Marine Highway System to Coastal communities such as Homer. In 2015 the Homer City Council passed Resolution 15-069 Supporting the Alaska Marine Highway System. Homer is the homer port of the Tustumena and serves as a hub for many communities such as Kodiak, Seldovia and Western Alaska. A \$5-10 million reduction to the Alaska Marine Highway System would result in a 3-6 week gap in service for Homer. Please consider the impacts a cut to this important lifeline will have to coastal Alaska.

Sincerely,

Mayor Zak

Cc:

Senator Gary Stevens
Representative Paul Seaton

Jo Johnson

From: sminsch@alaska.net
Sent: Friday, March 10, 2017 5:06 AM
To: Lori Evans
Cc: Jo Johnson
Subject: Dear Editor and Homer City Council

I just read the City Managers report where Public Work proposes to hook up Alaska Bible Institute to Public Water. According to the report, allowing this "will increase significantly revenue to the Water Department". How much is significantly? When did revenue become the reason to change public policy for specific users?

Are we now going to allow other users to hook up to public water and not require them to have public sewer?

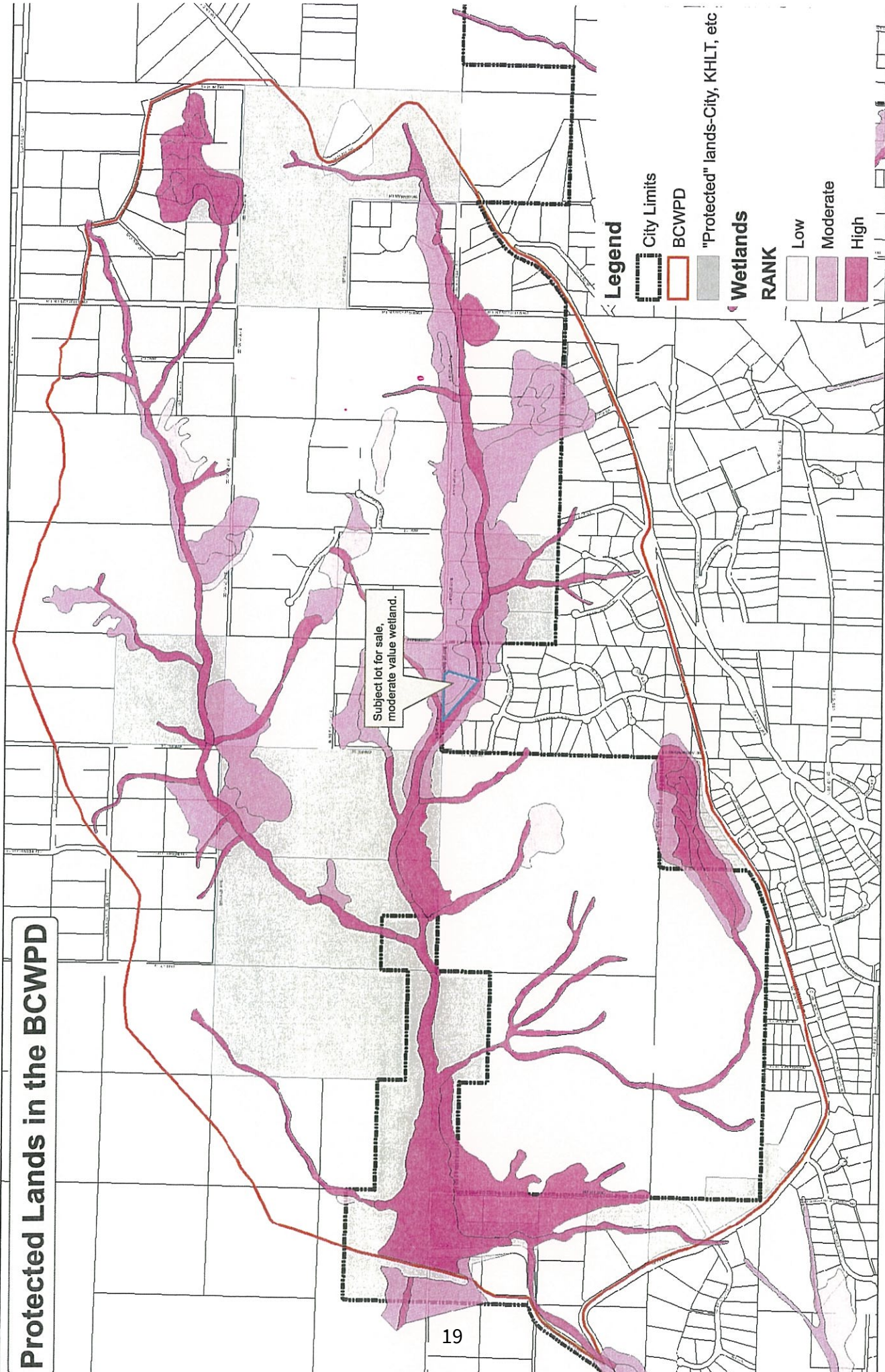
The proposal is to allow a commercial facility that will use "significant water" to remain on a private septic system. That does not sound like good public policy. How old is the septic system at ABI? Has it been tested to make sure that it can handle this "significant" amount of water and not pollute other property down slope? Has the design been reviewed to make sure it is adequate for the existing uses? Do they have a commercially sized and designed septic system that will take them into the future?

Many people in Homer face issues of not having any or adequate water. They haul water and the the City does not hook them up to public water. We do not change policy to allow them to hook up without a main fronting the property. Commercial water users should be on Public Sewer.

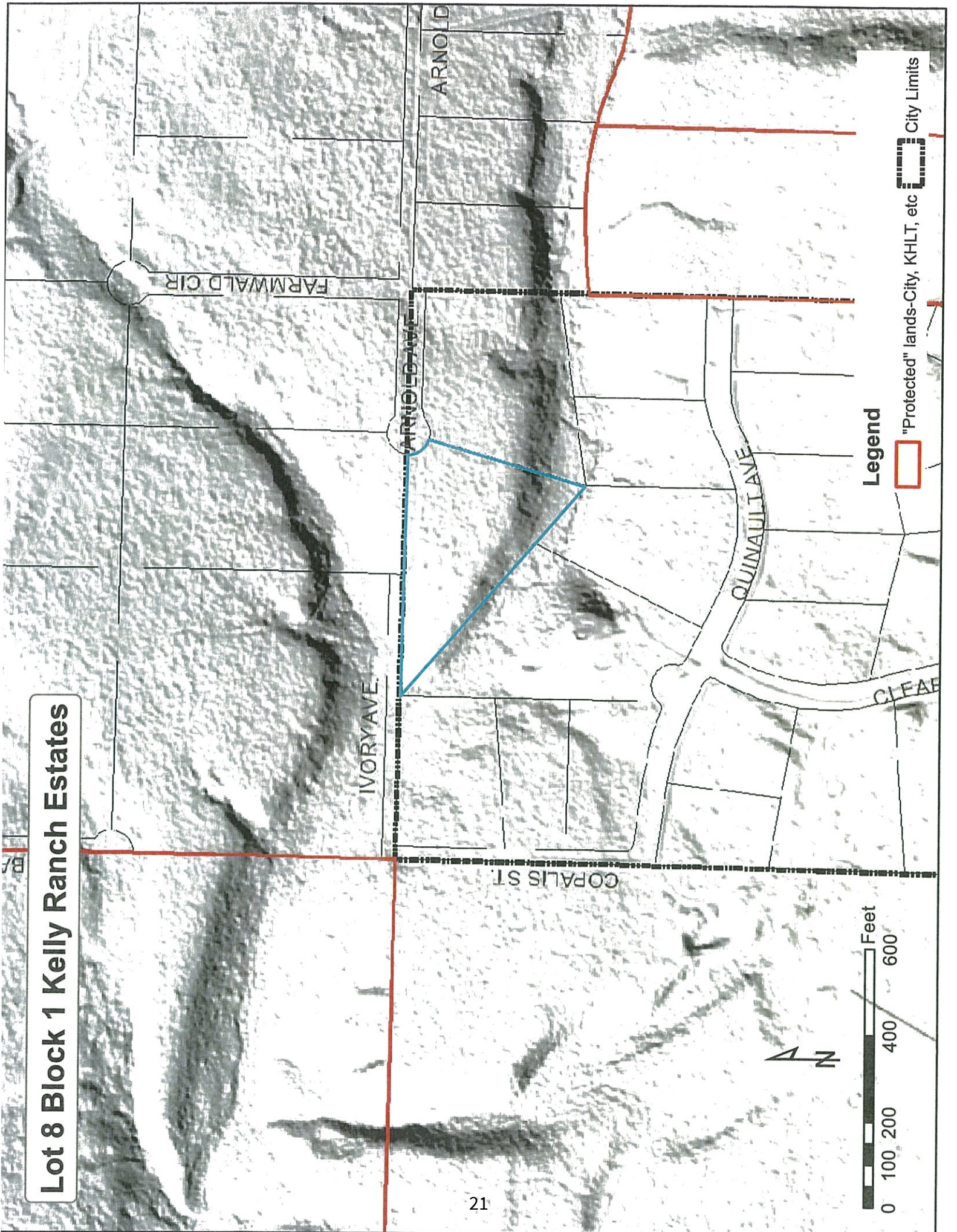
I hope the Council will look at this issue closely and make sure they have all the information needed to make a decision based on fairness and sound public policy. I look forward to learning more about this issue.

Sharon Minsch

Protected Lands in the BCWPD



Lot 8 Block 1 Kelly Ranch Estates



MEMORANDUM 17-037

**TO: HOMER CITY COUNCIL
HOMER CITY CLERK JO JOHNSON
CITY MANAGER KATIE KOESTER**

FROM: HOLLY C. WELLS

**RE: MEMORANDUM REGARDING CERTIFICATION OF PETITION FOR
RECALL APPLICATION**

CLIENT: CITY OF HOMER

FILE NO.: 506,742.223

DATE: MARCH 9, 2017

I. INTRODUCTION

On March 6, 2017, a petition for recall application was filed with Homer City Clerk Jo Johnson (the "Recall Petition Application"). City Manager Katie Koester and City Clerk Johnson have requested a legal analysis regarding the Recall Petition Application and the recall issuance/certification process. Given the significant interests and rights at issue, City Manager Koester requested that I expedite my initial considerations and prepare this preliminary analysis for presentation to the public so that the public and the City Council had information regarding the recall process.

After analysis of the Recall Petition Application and the relevant laws, I recommend issuance of the Recall Petition once all technical requirements are met. That said, I recommend that certification of the Recall Petition be done in a manner that limits the grounds for the recall to those based in law and stated with particularity.

The City should also be aware that issuance of the Recall Petition on the grounds provided by the sponsors exposes the City to constitutional challenges based upon protections afforded speech under the Alaska and United States Constitutions. In an effort to minimize these risks, I researched the City's options for seeking court guidance prior to or shortly after certification. Unfortunately, I could find no avenue that did not require the City to identify an adverse party, even if the City filed a complaint for declaratory action. Further, any attempt to engage the court requires the City to take a position on the legality of the alleged grounds of the Recall Petition and expose the City to attorney's

fees in the event the court does not share its position. Thus, the City Council should be aware that the grounds asserted in the Recall Petition require the City Clerk to take action but the laws governing the issuance/certification process are woefully unclear. Consequently, regardless of the action taken by the City, it has significant exposure to challenge.

II. BACKGROUND

On March 6, 2017, a petition application to recall Homer City Council Members Donna Aderhold, Catriona Reynolds, and Dave Lewis was filed with the Homer City Clerk (the "Recall Petition Application" or the "Application"). That same day, City Clerk Johnson forwarded the Application to me requesting assistance with the review and certification determination.

The Application included a statement for recall that states, in part:

Be here advised that Homer City Council members Aderhold, Lewis and Reynolds are each proven unfit for public office, as evident by their individual efforts in preparation of Resolution 16-121 and 17-019, the test of which stands in clear and obvious Violation [sic] of Homer City Code, Title 1....

The statement includes the full text of Homer City Code 1.18.030(n) and the language of the Alaska Constitution art XII, section 5, which requires an oath of office of all public officials by which such officials vow to uphold the United States and Alaska Constitutions.

The statement also alleges:

Whereas the use of City Council office as a platform for broadcasting political activism is unlawful, unethical, and outside the bounds of permissible conduct in public service.... Misconduct in office is further claimed by irreparable damage done by draft Resolution 17-019 being made public and widely distributed on social and news media, and publicly promoted as conspicuously drafted by and representing the City of Homer. This action has further caused economic harm and financial loss to the City of Homer.

III. ANALYSIS

In order to understand the recall issuance/certification process and how it is applied to the Recall Petition, it is necessary to understand the derivation of the recall process in the State of Alaska as well as the requirements and procedures surrounding a recall petition.

The Recall Petition Process

The recall process is similar to an initiative/referendum process and has been laid out by the Alaska legislature as authorized by the Alaska Constitution.

Article XI, section 8 of the Alaska Constitution states:

All elected public officials in the State, except judicial officers, are subject to recall by the voters of the State or political subdivision from which elected. Procedures and grounds for recall shall be prescribed by the legislature.

The legislature prescribed the grounds for recall in article 3 of AS 29.26. The City fully incorporates and wholesale adopts article 3 of AS 29.26 in HCC 4.26.020.

An application for recall is filed with the city clerk and must contain:

- 1) Name and resident addresses of at least ten sponsors who are municipal voters;
- 2) Name of the contact person and an alternate to whom all correspondence may be sent; and
- 3) Statement of 200 words or less of the recall grounds stated with particularity.

If the municipal clerk determines that a recall petition application meets these requirements, the clerk must prepare a recall petition. The petition as prepared by the clerk must contain:

- (1) the name of the official sought to be recalled;
- (2) the statement of the grounds for recall as set out in the application for petition;
- (3) the date the petition is issued by the clerk; [and]
- (4) notice that signatures must be secured within 60 days after the date the petition is issued;

.....

The statutory grounds for recall are "misconduct in office, incompetence, or failure to perform prescribed duties." AS 29.26.250.

If the clerk determines that an application meets the requirements of AS 29.26.260, he or she then "issues" a recall petition. AS 29.26.270. After the petition is circulated by its sponsors, the clerk determines whether the signatures obtained meet the signature requirements under State law. AS 29.26.280. After determining if the signature

requirements under State law have been met, the City Clerk determines if a petition is sufficient and certifies sufficient petitions. Petitions deemed to be sufficient are then submitted to the municipal governing body, which schedules a recall election. AS 29.26.310–.320.

The statutes permit the council members who are subject to a recall petition an opportunity to defend themselves against the recall in a statement of 200 words or less that is placed on the ballot along with the statement of the charges. AS 29.26.330(2).

Pursuant to AS 29.26.270(a), if the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.26.260, the clerk shall prepare a recall petition. All copies of the petition must contain:

- (1) the name of the official sought to be recalled;
- (2) the statement of the grounds for recall as set out in the application for petition;
- (3) the date the petition is issued by the clerk; [and]
- (4) notice that signatures must be secured within 60 days after the date the petition is issued;

....

(b) The clerk shall notify the contact person in writing when the petition is available. That person is responsible for notifying sponsors. Copies of the petition shall be provided by the clerk to each sponsor who appears in the clerk's office and requests a petition, and the clerk shall mail the petition to each sponsor who requests that the petition be mailed.

The grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties. AS 29.26.250. "Misconduct in office" is not defined in the recall statutes. It is, however, defined in Black's Law Dictionary 1089 (9th ed. 2009), which is often relied upon by courts in defining terms. Black's Law defines "misconduct" as "[a] dereliction of duty; unlawful or improper behavior;" and "official misconduct" as "[a] public officer's corrupt violation of assigned duties by malfeasance, misfeasance, or nonfeasance." The term "embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act." See 1988 Inf. Op. Att'y Gen. at 3 (Apr. 22; 663-88-0462) (quoting Black's Law Dictionary (5th ed. 1979)) (recall of Copper River School District Board Chairman).

Recall Petitions: History, Policy, and the Law

Although the recall petition process is fairly straight forward when it comes to the technical requirements, the requirements regarding determination of sufficiency or review of the grounds for recall and whether or not such grounds are stated with particularity are

vague. In the absence of much needed legislative or judicial guidance on the issuance/certification of recall petitions, the history and policy underlying the recall petition process as applied by the Alaska courts plays a more central role in determining what standards a city clerk applies when reviewing a petition.

The recall option entered into American laws alongside initiatives and referendums. These processes are all designed to provide voters a heightened check over their elected officials that exceed the power to reelect or pass over that official upon the expiration of his or her term. *Meiners v. Bering Strait School Dist.*, 687 P.2d 287 (Alaska 1984).

The states have varying perspectives on the recall process. As summarized by the Alaska Supreme Court:

At one end of the spectrum is the view that recall is 'special, extraordinary, and unusual,' and produces the 'harsh' result of removing an official prior to the expiration of the fixed term to which he was elected. From this perspective, one emphasizes the legal as opposed to the political character of the recall process. The statutory grounds for recall are construed narrowly, in favor of the officeholder. All doubts are resolved against forcing the officer to face the voters in a recall election. Likewise, procedural statutes are strictly construed. There is no doctrine that "substantial compliance" with the procedures is sufficient and that technical errors will be overlooked after-the-fact. Any violation of the prescribed procedures is sufficient to invalidate the recall effort. *Id.*

At the other end of the spectrum, recall can be seen as an essentially political process in which the role of judicial or administrative review is minimal and all doubts are resolved in favor of placing the recall question before the voters. Influenced by this philosophy, some states have no statutory grounds for recall; disagreement with an officeholder's position on questions of policy is sufficient. *Id.* (citations omitted).

Here in Alaska, the court determined that the Alaska legislature intended to take a position in the middle of the spectrum, only permitting recall for cause but liberally applying the standards for showing cause. The court also cautioned itself against interpreting the statutes in a manner that would require "municipal clerks to make significant discretionary decisions of a legal nature." *Id.* (citations omitted).

Ultimately, after a detailed review of the constitutional convention minutes and other evidence of legislative intent, the court summarized its interpretation as follows:

...we conclude that statutes relating to the recall, like those relating to the initiative and referendum, 'should be liberally construed so that 'the people [are] permitted to vote and express their will' Like the initiative and

referendum, the recall process is fundamentally a part of the political process. The purposes of recall are therefore not well served if artificial technical hurdles are unnecessarily created by the judiciary as parts of the process prescribed by statute. *Id.*

The Alaska Supreme Court reaffirmed their interpretation about a decade later, stating that:

This court stated in *Meiners* that it will not determine the truth or falsity of allegations in a recall petition: "We emphasize that it is not our role, but rather that of the voters, to assess the truth or falsity of the allegations in the petition." *Von Stauffenberg v. Committee for Honest and Ethical School Board*, 903 P.2d 1055 (Alaska 1995).

Applying the Law to the Recall Petition

Based upon the liberal interpretation applied by the Alaska Supreme Court to recall petitions in light of the court's acknowledgement that there must be grounds for certification, I recommend the following the following approach to the Recall Petition:

Step 1: Issue the Recall Petition.

The City Clerk identified two requirements in AS 29.26.270(a) that the Application for Recall Petition failed to address. Those insufficiencies were explained to the applicants in a letter sent on March 10, 2017. If the amended application includes the omitted requirements, issuance appears appropriate. The petition should then be prepared by the City Clerk.

Step 2: Determine the Sufficiency of the Petition.

The much more difficult question facing the City Clerk will be whether or not the Petition is sufficient as to the grounds on which it is based. Although these determinations are most appropriately made after the Petition has been issued and the Clerk has determined that the signature requirements have been met, I have serious concerns regarding the legal bases for the grounds stated.

The Recall Petition appears to raise two separate allegations:

- 1) Council members at issue are unfit because they violated HCC 1.18, their oaths of office, and the Alaska Constitution oath requirements in sponsoring Resolutions 16-121 and 17-019; and
- 2) Council members at issue engaged in misconduct by drafting resolution 17-019 due, in part, to the irreparable economic harm it caused the City.

The first allegation alleges that the resolutions violated HCC 1.18, which prohibits “political activity” and the oath requirements under the Alaska Constitution. Specifically HCC 1.18 states that:

A City official may not take an active part in a political campaign or other *political activity* when on duty. Nothing herein shall be construed as preventing such officials from exercising their voting franchise, contributing to a campaign or candidate of their choice, or expressing their political views when not on duty or otherwise conspicuously representing the City. (Emphasis added.)

Presumably, the Recall Petition Application sponsors are alleging that the accused Council Members have engaged in prohibited “political activity.” However, Homer City Code 1.18.020 defines “political activity” as:

any act for the purpose of influencing the nomination or election of any person to public office, or for the purpose of influencing the outcome of any ballot proposition or question. Informing the public about a ballot proposition or question without attempting to influence the outcome of the ballot proposition or question is not political activity. (Emphasis added.)

HCC 4.01.110 “Oath of Office” states:

Oaths of office shall be administered for City offices including Councilmen and Mayor, which shall affirm in writing that they will honestly, faithfully and impartially perform their duties. These oaths will be kept on file at City Hall by the City Clerk.

Similarly, the Alaska Constitution, art. XII, § 5 provides:

All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation: “I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as to the best of my ability.” The legislature may prescribe further oaths or affirmations.

The resolutions at issue were drafted and presented after the certification of the national election and were not directed at any candidate or pending ballot proposition or question. The Code does not prohibit speech on federal policies, elected politicians, politics, or any other type of policy-based or political commentary outside the election/campaign realm. Based on my review of the allegation, it does not appear that the Recall Petition Application states a violation of the Council members’ oaths of office.

The Recall Petition Applicant’s second allegation, which asserts misconduct because of the irreparable economic harm caused by Draft Resolution 07-19 also creates

difficulty. While the Council members subject to recall under the Recall Petition Application certainly took action by sponsoring the resolution, it is unclear if the circulation, distribution, and reaction to that resolution can be identified as conduct by them directly. If the dissemination of the Draft Resolution can be blamed on the Council members, there is a question as to whether an accusation of "misconduct" must arise from the violation of some law or state policy.

As noted above, "Misconduct in office" is not defined in the recall statutes. Black's Law defines "misconduct" as "[a] dereliction of duty; unlawful or improper behavior;" and "official misconduct" as "[a] public officer's corrupt violation of assigned duties by malfeasance, misfeasance, or nonfeasance." The term "embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act." See 1988 Inf. Op. Att'y Gen. at 3 (Apr. 22; 663-88-0462) (quoting Black's Law Dictionary (5th ed. 1979)) (recall of Copper River School District Board Chairman). Using this definition, sponsors statement may be sufficient to survive the Clerk's review for certification because "improper behavior" is a very subjective standard.

Despite the concerns raised in this memorandum, certification is the second step of the Recall Petition process and this memorandum need not make a determination or recommendation regarding certification at this time.

IV. CONCLUSION

In conclusion, the recall process is mired in confusion. Once the technical requirements are met, the Recall should be issued by the Clerk. The City Clerk then has a difficult task in deciding whether to certify the Recall Petition at issue given the nature of the speech of the Council members that are subject to recall.

HCW/PSC