



# City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

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## Memorandum

### Agenda Changes/Supplemental Packet

TO: MAYOR ZAK AND HOMER CITY COUNCIL  
FROM: MELISSA JACOBSEN, MMC, CITY CLERK  
DATE: AUGUST 28, 2017  
SUBJECT: AGENDA CHANGES AND SUPPLEMENTAL PACKET

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#### **CITY MANAGER'S REPORT**

Mayor Zak's AML Summer Conference Report Page 3

#### **CITY ATTORNEY'S REPORT**

City Attorney Report July/August Page 5



Alaska Municipal League Trip Report for Mayor Zak  
August 15 to 18, 2017

The Mayor traveled with City Manager Koester and Councilman Smith to Haines, Alaska and met with other mayors, city managers and council members. The focus of the Mayors meeting this year was on solving the fiscal crisis and how to communicate this to the legislatures.

On Day 2 - City Manager Koester facilitate the city managers meeting while the mayor and the city councilmember attended the Mayor's Meeting. City Managers commented later to the Mayor what a wonderful job City Manager Koester did facilitating their meeting.

The constitutional budget reserve will be completely depleted in FY 18. After that, Alaska's current revenue structure will produce approximately \$1.5 billion in unrestricted general funds (UGF), assuming oil price returns to \$55/bbl.

We have to deal with the State fiscal crisis; otherwise the opportunity will go away. No one is big enough to solve this by themselves. Together we need to develop a comprehensive fix to get stable. We need a revenue plan, which takes us to a sustainability plan It is going to take the restructuring of the permanent fund, revenue generating taxes, elimination of oil tax credits, as well as controlled spending. We have got to stop burning the rafters to stay warm. Pat Pitney's no action plan budget is not the Alaskan we want to live in The cost shift to communities would be significant.

- The budget would be one-third of the current FY 17 budget and only one-quarter of the FY 15 budget.
- Local education employment would fall from the current 24,400 to an estimated 10,000 statewide.
- School funding would be reduced to 32% of the current \$1.25 billion, dropping to \$400 million.
- Medicaid and other health formula funding would be reduced by 25% to maintain as much federal coverage as possible.
- All other health programs would be shut down, privatized, or significantly reduced. These include senior benefits, childcare benefits, homeless assistance, victim's assistance, housing programs, pioneer homes, health clinics, public health labs, etc.

The magnitude of a revenue plan, smaller, leaner, tighter, fewer programs, smaller capital budgets but this has to be a revenue plan. We cannot be dependent on the State to fund our local governments. If we do not we will see a decrease in School Bonding, a decrease of PERs/ TERs support from the state. It is up to use now to educate the citizens. We could face retroactive requirements to pay for bonds.

Cost shifting without a revenue plan will result in greater failure. In Homer we are more fortunate in that we have a diversified economy. If the State does not raise revenues, raising revenues will get pushed to the communities to address the State budget issues.

The Winter AML training for newly elected officials as well as the Legislative and Resolutions committee meetings will be in Anchorage on November.

## **Future Conference & Meetings**

### **Future Annual Conference Location & Dates**

[Anchorage, Alaska | November 13-17, 2017,](#)



**MEMORANDUM**

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

**FROM: HOLLY C. WELLS**

**RE: CITY ATTORNEY REPORT FOR JULY AND EARLY AUGUST, 2017**

**FILE NO.: 506,742.24**

**DATE: AUGUST 24, 2017**

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The following summarizes our most substantial activities as City Attorney during the month of July and in early August, 2017.

City Council. Katie Davies attended the July City Council meeting and advised the Council and City administration on various action items at that meeting, including but not limited to revisions to the Permanent Fund.

City Manager. I worked with the City Manager to address numerous matters, including but not limited to review of the City's lease policies and procedures, election requirements under the Homer City Code, and land acquisition and sale matters. I also worked with City Manager Koester regarding Council member questions arising from the recall election process. We also discussed taxation issues, including but not limited to the potential imposition of a temporary lodging tax by the Kenai Peninsula Borough.

Homer Port and Harbor. I met with Bryan Hawkins and City Manager Koester regarding various land use, service fee, and acquisition matters.

Litigation. Katie Davies, Tom Klinkner, and I worked on several cases pending before Alaska Supreme Court, including most notably the following:

Griswold v. Homer Board of Adjustment, John Smith, Norma Smith, Terry Yager, Jonnie Yager, Rick Abboud. This case is currently awaiting the Alaska Supreme Court's decision on appeal. On or about August 11, 2015, Frank Griswold appealed the Homer Board of Adjustment's decision upholding the decision of the Homer Advisory Planning Commission to approve a conditional use permit. Mr. Griswold argued, in part, that the City Attorney improperly postponed the hearing; that the Board erroneously determined Mr. Griswold did not have standing to challenge the conditional use permit; and that the Board improperly found that the mayor did not have a disqualifying bias. After oral and

written argument before the Alaska Superior Court, that court upheld the Board's decision and ruled in favor of the City. On April 1, 2016, Mr. Griswold filed an appeal with the Alaska Supreme Court. As of this date, the briefing and the oral argument before the Alaska Supreme Court have been completed and the City is awaiting a ruling.

*Griswold v. Homer City Council and City Manager Walt Wrede.* On or about January 30, 2015, Frank Griswold appealed City Manager Walt Wrede's decision to withhold descriptions of potential and pending litigation from the City's legal bills that were requested by Mr. Griswold pursuant to a public records request. The City argued that the limited redactions were justified under the City Code and under the Alaska Rules of Evidence as privileged attorney-client communications and attorney work product. The Alaska Superior Court ruled in the City's favor on Mr. Griswold's challenges and upheld the City's determination that the substantive descriptions of the legal work performed by the City Attorney were privileged and not subject to disclosure. The court did, however, rule that the names of the individuals involved in those discussions and the amount of time billed were subject to disclosure. Consequently, the City provided Mr. Griswold with copies of the relevant legal bills in accordance with the Superior Court's ruling.

In March 2016, Mr. Griswold filed an appeal with the Alaska Supreme Court, in which he alleged that the City was not in full compliance with the court's order because one of the billing descriptions was entirely redacted, with the exception of the time billed and the date of service. The un-redacted bill was provided to the Supreme Court *in camera* and will show that the City is in full compliance with the Superior Court's order. Finally, Mr. Griswold is challenging the Superior Court's determination that the City is the prevailing party in the underlying appeal. In the alternative, Mr. Griswold argues that he is a public interest litigant who is not obligated to pay any portion of the City's attorney's fees. The City clearly prevailed on the substantive issues on appeal. Additionally, the public interest litigant exception to paying attorney's fees no longer exists in Alaska.

As of this date, the briefing before the Alaska Supreme Court has been completed and the City is awaiting a ruling.

*Griswold v. Homer Board of Adjustment, Rick Abboud, Jose Ramos and Kenton Bloom.* Frank Griswold is appealing the Homer Board of Adjustment's decision upholding the decision of the Homer Advisory Planning Commission to approve a conditional use permit. Mr. Griswold contends, in part, that the Planning Commission is not authorized to grant conditional use permits; that a City Planning Department employee improperly participated in the proceedings before the Planning Commission and the Board of Adjustment; and that several members of the Board of Adjustment should have been disqualified for having a conflict of interest or partiality. He also argued that the City Attorney should not have been permitted to represent the Board since Attorney Tom Klinkner had represented the Planning Commission.

After briefing and oral argument, the Superior Court dismissed Mr. Griswold's appeal on the basis that Mr. Griswold lacked standing to challenge the issuance of the conditional use permit. Mr. Griswold is now appealing the Superior Court's decision to the Alaska Supreme Court. Mr. Griswold filed his appeal brief and our firm is currently drafting the City's response, which is not yet due. If Mr. Griswold prevails before the Supreme Court, the case will be remanded to the Superior Court to issue a decision on the merits of Mr. Griswold's appeal.

I will be available to answer questions regarding these matters and any others at the September 11, 2017 Council meeting.

cc: Katie Koester  
Melissa Jacobsen

