

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



WORKSESSION
5:00 P.M. MONDAY
APRIL 18, 2016
COWLES COUNCIL CHAMBERS

MAYOR BETH WYTHE
COUNCIL MEMBER DAVID LEWIS
COUNCIL MEMBER BRYAN ZAK
COUNCIL MEMBER GUS VAN DYKE
COUNCIL MEMBER CATRIONA REYNOLDS
COUNCIL MEMBER DONNA ADERHOLD
COUNCIL MEMBER HEATH SMITH
CITY ATTORNEY THOMAS KLINKNER
CITY MANAGER KATIE KOESTER
CITY CLERK JO JOHNSON

WORKSESSION AGENDA

1. CALL TO ORDER, 5:00 P.M.

Councilmember Zak has requested telephonic participation.

Councilmember Reynolds has requested excusal.

2. AGENDA APPROVAL (Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual, pg. 5)

3. PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA

4. REVENUES FOR THE CITY

Memorandum 16-066 from City Manager

5. COMMENTS OF THE AUDIENCE

6. ADJOURNMENT

Next Regular Meeting is Monday, April 25, 2016 at 6:00 p.m. and Committee of the Whole 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.



City of Homer

www.cityofhomer-ak.gov

Office of the City Manager

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Memorandum 16-066

TO: Honorable Mayor Wythe and Homer City Council
FROM: Katie Koester, City Manager
DATE: April 13, 2016
SUBJECT: April 18, 2016 Revenue Worksession

Council has dedicated one worksession a month to finding revenue solutions for the City of Homer. This memo outlines the goals and questions Council articulated at the last worksession:

GOALS:

- 1) No sacred cows: everything is on the table
- 2) Timeframe (see attached calendar)
- 3) List of things Council can do without voter approval
 - a. Increase property taxes (though HCC 9.16.020 states that the mill rate cannot exceed 6 without the abolishment of sales tax, the Council could amend that by ordinance). 1 mill equals approximately \$660,000.
 - b. Eliminate the property tax exemption for primary residence, currently first \$20,000. This is \$94,000 in missed revenue.
 - c. Increase code violations and fees for service. The City has little room to do this with great impact. Furthermore, during the 2016 budget cycle fines and fees were increased in camping, animal control, and ambulance billing.
- 4) How to approach the Kenai Peninsula Borough?

The Borough Administration is working on a list of items to present to the Assembly for reviewing the tax code. Some of these could have a positive impact and the City should consider weighing in by resolution, in addition to networking with our assembly representatives and Borough Mayor. I will share the list with Council as soon as I receive it, I am anticipating in the next few weeks.
- 5) How to approach City residents
 - a. Understand their pain. The state is struggling, the City needs funding to survive – we must remain cognizant of these pressures on pocketbooks.
 - b. Come up with a plan and coalesce around a common message. What will increased (and possible decreased) taxes look like. This is one of the reasons the suspend HART campaign was so successful- everyone was on the same page and singing the same tune.

- c. Direct outreach. This could take the form of attending membership and board meetings of various organizations around town (see attached spreadsheet). Keep in mind that many of these organizations have their speakers lined out many months in advance, if they even have speakers, and it may be difficult to get on an agenda. Another approach Councilmember Smith has suggested is bringing the conversation to residents through neighborhood meetings. For example, a councilmember could ask a friend to organize a small coffee or tea in their home and attend to explain the revenue plan and answer questions.

Enc:

Calendar for next 3 months

Spreadsheet of area member organizations and meeting schedule

Sales and property tax rates for the Peninsula

Fund balance spreadsheet

Memo from Attorney Klinkner RE: Dedication of sales tax to fund HART

April Calendar

April 2016						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18 Revenue Worksession	19	20	21	22	23
24	25 CC	26	27	28	29	30

More Calendar: [May](#), [Jun](#), [PDF Calendar](#)

May Calendar

May 2016						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3	4	5	6	7
8	9 CC	10	11	12	13	14
15	16 Revenue Work Session	17	18	19	20	21
22	23 CC Last Meeting to Introduce Property Tax Increase	24	25	26	27	28
29	30	31	Notes:			

More Calendar: [Jun](#), [Jul](#), [PDF Calendar](#)

June Calendar

June 2016						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13 CC Last Night to Introduce Ballot Ord. 2 nd Reading Property Tax Ord.	14	15	16	17	18
19	20 Revenue Work Session	21	22	23	24	25
26	27 CC 2 nd Reading of Ballot ? Ordinance	28	29	30	Notes:	

More Calendar: [Jul.](#), [Aug.](#), [PDF Calendar](#)

Organization	Meeting Type	Meeting Schedule	Contact
American Legion Auxiliary	Membership Meeting	Third Thursday of the month 6pm	Darlene Sheldon 235-6789
Benevolent & Protective Order of the Elks USA	Membership & Board Meetings	Regular Meeting First & Third Tuesday's @ 7 p.m. / Trustee Meetings Monday Prior to Regular Meeting. Non-members are not allowed at meetings but may have someone to speak at it.	Jan Jonker 435-7652
Friends of the Homer Public Library	Board Meeting	Second Wednesday of every month	Mercedes Harness - 435-3195 Mercedes@friendshomerlibrary.org
Homer Chamber of Commerce	Board Meeting	Fourth Thursday of month at 12 p.m. Membership meeting annual Fourth Tuesday of January at the Bidarki 12 p.m.	Karen Zak - 235-7740 Exdir@homerlaska.org
Homer Council on the Arts	Board Meeting	Third or sometimes Fourth Tuesday of the month	Peggy Paver - director@homerart.org
Homer Senior Citizens Inc.	Board Meeting	Third Wednesday of every month at 1:30 p.m.	Keren Kelley - 235-7655 keren@homerseniors.com
Homer Society of Natural History	Board Meeting	Third Tuesday of every month at 4 p.m.	Diane Converse - 435-3333 director@prattmuseu.org
Kachemak Board of Realtors	Membership Meeting	Third Wednesday of every month at the Bidarki (upstairs) 12 p.m.	Gina Pelaia - 399-6183 gpelaia@msn.com
Kachemak Shellfish Mariculture Association Inc.	Membership Meeting	Annual Membership Third Sat. of May	Marie Bader - 350-1436
Rotary Club of Homer Kachemak Bay	Membership Meeting	Every Thursday at 12 p.m.	Craig Forrest
Snowmads Snow Machine Club	Membership Meeting & Board Meeting	Board meeting Second Thursday of every month. General Membership meetings third Thursday in Nov., Jan., Feb., and Mar.	Cristin Roehl - cristinroehlsnowmads@gmail.com

Marine Trades Association	Board Meeting	Monthly - Generally 1st Thursday of month 5:30 p.m. (Homer Foundation, Harbor Masters Office, or Nomar)	Kate Mitchell homermarinetrades@gmail.com
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Municipality	2015 MILL Rate
10 Seldovia	9.85
10 Seldovia	4.6
11 Seldovia RSA	0.75
50 Borough	4.5
20 Homer	11.3
20 Homer	4.5
50 Borough	4.5
52 So. Hospital	2.3
30 Kenai	8.86
30 Kenai	4.35
50 Borough	4.5
51 Cent. Hosp.	0.01
40 Seward	8.37
40 Seward	3.12
43 Sew/Bear Cr. Flood	0.75
50 Borough	4.5
68 Anchor Point Fire/Emergency	10.95
68 Fire/Emergency	2.75
50 Borough	4.5
52 South Hosp.	2.3
67 Road Maint.	1.4
70 Soldotna	7.66
70 Soldotna	0.5
50 Borough	4.5
52 South Hosp.	0.01
67 Road Maint.	2.65
80 Kachemak	7.8
80 Kachemak	1
50 Borough	4.5
52 South Hosp.	2.3
81 Kachemak Emergency Serv.	10.8
81 Kachemak EMS	2.6
50 Borough	4.5
South Hosp.	2.3
Road Maint.	1.4

Property Tax by July 15th

Municipality	Sales Tax		Bed Tax	
	Rate*	Revenues	Rate*	Revenues
Kenai Peninsula Borough	3%	\$30,040,682	0.0%	0
Homer	4.5%	\$7,484,925	0.0%	0
Kachemak	0.0%	0	0.0%	0
Kenai	3.0%	\$7,136,866	5%	0
Seldovia	2.5%/4.5% (1)	\$117,065	0.0%	0
Seward	4.0%	\$4,535,707	4.0%	\$421,980
Soldotna	3.0%	\$7,641,757	0.0%	0

* Local municipality rates may be in addition to borough rates, or exclusive of; please check with the local municipality for these details.

(1) Seasonal Sales Tax rate varies according to the time of year, rates expressed for periods Oct-Marc and Apr-Sep respectively.

City of Homer Fund Balance Summary

Unaudited

<u>GL</u>	<u>Fund Code</u>	<u>Description</u>	<u>12/31/2014</u>	<u>12/31/2015</u>
DONNATION FUNDS				
805-0000-2710	805	Community Recreation Program	492	517
807-0000-2710	807	SUSTAINABILITY -GLOBAL WARMING	14,781	14,781
804-0000-2710	804	ANIMAL SHELTER DONATIONS	335	335
803-0000-2711	803	LIBRARY DONATIONS FUND	32,593	32,724
802-0000-2710	802	FIRE DONATIONS FUND	97,195	102,087
		TOTAL		150,443
OTHER FUNDS				
806-0000-2710	806	PERMANENT FUND	2,031,828	2,042,608
620-0000-2710	620	REVOLVING ENERGY FUND	107,046	141,341
610-0000-2710	610	ISF - LEAVE CASH OUT	7,386	(114,317)
600-0000-2710	600	HEALTH INSURANCE FUND	872,969	727,305
808-0000-2710	808	Ocean Dr LP Special Assessment	67,505	92,307
173-0000-2710	173	SEAWALL	23,887	25,327
175-0000-2710	175	COH Natural Gas Dist	(281,413)	789,866
		TOTAL		3,704,437
PORT AND HARBOR FUNDS				
460-0000-2710	460	CRUISE SHIP LANDING TAX RESERV	669	28,519
456-0000-2710	456	P & H DEPRECIATION RESERVES	1,284,301	3,518,888
452-0000-2710	452	HARBOR FLEET RESERVES	102,892	130,735
415-0000-2710	415	PORT & HARBOR PROJECTS	472,161	(2,391,488)
400-0000-2710	400	PORT & HARBOR ENTERPRISE FUND	9,698,996	5,833,697
		TOTAL		7,120,350
WATER AND SEWER FUNDS				
256-0000-2710	256	W/S DEPRECIATION RESERVES	4,080,331	4,112,150
215-0000-2710	215	WATER / SEWER PROJECT FUND	(1,034,427)	(140,306)
205-0000-2710	205	HAWSP	(4,181,689)	(4,840,910)
200-0000-2710	200	WATER / SEWER SPECIAL REVENUE	2,906,092	3,169,432
		TOTAL		2,300,366
HART FUNDS				
165-0000-2710	165	HART TRAILS	543,793	624,512
160-0000-2710	160	HART CAPITAL PROJECTS FUND	6,994,278	7,449,236
155-0000-2710	155	HART ASSESSMENTS FUND	373,425	396,794
		TOTAL		8,470,543
GENERAL FUND FUNDS				
156-0000-2710	156	DEPRECIATION RESERVES	1,374,613	1,288,585
152-0000-2710	152	FLEET RESERVES FUND	549,163	498,272
151-0000-2710	151	GENERAL FUND CAPITAL PROJECTS	(43,228)	321,837
150-0000-2710	150	LAND RESERVES FUND	(269)	(3,074)
100-0000-2712	100	GENERAL FUND	5,932,906	5,769,000
		TOTAL		7,874,620



MEMORANDUM

**TO: KATIE KOESTER
CITY MANAGER
CITY OF HOMER**

FROM: THOMAS F. KLINKNER

RE: DEDICATION OF SALES TAX TO FUND HART

FILE NO.: 506,742,805

DATE: APRIL 7, 2016

1. Summary and Conclusion

You have asked whether voter approval is required in order to use the proceeds of a $\frac{3}{4}\%$ increase in City sales tax authorized by the voters for purposes other than the Homer Accelerated Roads and Trails Program ("HART"),¹ despite statements in the voter authorizations that the sales tax increase would be dedicated to HART. I conclude that current Alaska case law leaves it unclear whether voter authorization is required for those proceeds to be used for other purposes.

2. Background

At the 1987 regular City election, the voters approved a proposition to levy an additional $\frac{3}{4}\%$ "dedicated sales tax." The purpose of the tax was "to provide a partial funding source for street reconstruction improvements and related utilities ... in accordance with [HART]..."² The proposition provided that the additional sales tax would remain in effect for 20 years. At the 2006 regular City election, the voters approved the following three propositions regarding this additional $\frac{3}{4}\%$ sales tax:

¹ As amended in 2006, HART provides for street reconstruction improvements and related utilities, new local streets, and new local non-motorized trails.

² This program initially was referred to by the acronym "HARP." Since its renewal and expansion in 2006, it has been referred by the acronym "HART." This memorandum refers to the program at all times as "HART."

- to continue to provide a funding source for street reconstruction improvements and related utilities in accordance with [HART] by continuing after December 31, 2007 to levy the ¾% sales tax for this purpose.³
- to use the revenue from the ¾% dedicated sales tax for the construction of new local streets.
- to use the revenue from the ¾% dedicated sales tax for the construction of new local non-motorized trails.

At the December 1, 2015 special City election the voters approved a proposition to suspend the dedication of the ¾% sales tax to HART for a period of three years, commencing January 1, 2016. However, the suspension of the dedication does not apply to sales tax revenue that the City collected before January 1, 2016.

3. Analysis

A. Introduction

Alaska Statute 29.45.670 provides that “[a] new sales and use tax or an increase in the rate of levy of a sales tax approved by ordinance does not take effect until ratified by a majority of the voters at an election.” Thus, the ¾% increase in City sales tax for HART that was authorized in 1987 and reauthorized in 2006 clearly was subject to voter approval. However, neither AS 29.45.670 nor any other statute requires voter approval of specific terms of a sales tax other than its rate and its application to additional categories of sales.

In general, the Council may amend or repeal ordinances, including an ordinance that establishes the terms of a sales tax, without voter approval. However, if, as is the case here, the terms of the sales tax were part of the ballot proposition authorizing the tax, voter approval of a change in the voter approved terms may be required. In other words, since ballot propositions expressly stated that the ¾% sales tax increase would be used to fund HART, voter approval may be required to authorize a different use of the tax proceeds.⁴

³ At the December 1, 2015 special City election the voters approved Proposition 1, which removed the 20-year limitation on the authority to levy this additional sales tax. See Ordinance 15-36(A)(2).

⁴ In a memorandum dated December 13, 2013 (copy attached), we advised that the Council could repeal the sales tax exemption for non-prepared foods without voter approval. That exemption was adopted by the Council without submission to the voters, and so could be repealed without voter approval.

B. The Council's Power to Repeal or Amend a Sales Tax Ordinance

The Council may exercise the City's legislative power unless prohibited by law from doing so.⁵ One prohibition on the Council's exercise of legislative power is the requirement in AS 29.45.670 for voter ratification of a new sales tax or an increase in the rate of levy of a sales tax. In *City of St. Mary's v. St. Mary's Native Corporation*,⁶ the court held that, because repealing a sales tax exemption neither increases the rate of levy of a sales tax, nor imposes a new sales tax—the two actions that AS 29.45.670 makes subject to voter approval—the city council could repeal the sales tax exemption under its implicit authority to repeal any ordinance that it had the power to enact.⁷

The court's decision is consistent with the general principle of municipal law that a city council may not limit the legislative discretion of future councils by prohibiting the repeal of an ordinance:

The power of repeal extends, generally speaking, to all ordinances. Indeed, a municipal corporation cannot abridge its own legislative powers by the passage of irrevocable ordinances. The members of its legislative body are trustees for the public, and the nature and limited tenure of their office impress the ordinances enacted by them with liability to change. One council may not by an ordinance bind itself or its successors so as to prevent free legislation in matters of municipal government.⁸

Under this principle, the ordinance that dedicated the revenue from the ¾% sales tax increase to HART should be subject to amendment or repeal by the Council without voter approval.

C. The Effect of Including the Dedication in the Ballot Proposition for the Sales Tax Increase

While it is well established that the Council has the legislative power to amend or revise an ordinance and this authority generally would apply to an ordinance addressing the use of sales tax proceeds, the Council's ability to use an ordinance to undo an action originally subject to voter approval is less clear. In the *City of St. Mary's* case, the voters authorized the city's sales tax by approving the following proposition: "Shall the City of St. Mary's levy a 3% sales tax?"⁹ The St. Mary's City Council did not adopt a

⁵ AS 29.35.250(a), AS 29.20.050(a).

⁶ 9 P.3d 1002 (Alaska 2000).

⁷ 9 P.3d at 1006-1008.

⁸ 6 McQuillin, *The Law of Municipal Corporations* § 21.10, at 374 (rev. 3d ed. 2007) (footnotes omitted).

⁹ 9 P.3d at 1004.

detailed sales tax ordinance that included exemptions until after the voters approved the proposition.¹⁰

However, the court's decision implied that if the exemption had been presented to the voters, the case might have had a different result: "We therefore conclude that when a local government grants an exemption by ordinance **and the exemption is not subjected to a public vote**, it may repeal that exemption by ordinance without a public vote."¹¹

The court was presented with a sales tax exemption that had been subject to a public vote in the later case of *Interior Cabaret, Hotel, Restaurant & Retailers Association v. Fairbanks North Star Borough* ("ICHRRA").¹² The court responded with the following discussion of the *City of St Mary's* decision:

In *St. Mary's* we concluded that "when a local government grants an exemption by ordinance and the exemption is not subjected to a public vote, it may repeal that exemption by ordinance without a public vote." **The negative implication of this statement may be that when exemptions are approved by public vote, they may not be repealed by a mere ordinance.**¹³

The *ICHRRA* decision leaves open the question whether inclusion of the dedication to HART in the ballot propositions for the 3/4% sales tax increase that the voters approved requires that the dedication may be repealed only with voter approval.¹⁴

TFK/lcj

¹⁰ *Id.*

¹¹ 9 P.3d at 1007-1008 (emphasis added).

¹² 135 P.3d 1000 (Alaska 2006).

¹³ *Id.* (footnote omitted, emphasis added). However, the court concluded that it did not need to decide whether the exemption at issue in *ICHRRA* could be repealed without voter approval until a repeal by ordinance was attempted. See 135 P.3d at 1004 n. 20.

¹⁴ In a memorandum dated December 13, 2013, we advised that the Council could repeal a voter approved dedication of proceeds from the repeal of the sales tax exemption for nonprepared foods without voter approval. The conclusion in that opinion should have been qualified by the discussion of the *ICHRRA* decision that appears above.

From: [Katie Koester](#)
To: [Jo Johnson](#)
Subject: FW: April 18 council revenue worksession
Date: Wednesday, April 13, 2016 3:21:45 PM

JO,

Please include this in the Revenue work session packet.

Thanks,

Katie

From: Mary Griswold [mailto:mgrt@xyz.net]
Sent: Wednesday, March 30, 2016 5:46 PM
To: Catriona Reynolds; Donna Aderhold; Mayor Email; Katie Koester
Subject: April 18 council revenue worksession

Council April 18 Revenue Worksession

I would like to hear a discussion about different increases in property taxes combined with various increases in annual or seasonal sales taxes to meet a best-guess revenue target.

Then I would like to hear how the city might finance a 30-year bond for the new police station.

I would also like you to discuss how city taxes might be lowered in the future if the borough increases the sales tax limit or the city lowers property tax exemptions.

It would be helpful include property and sales tax information for other communities on the Peninsula.

Lastly, I would like to hear about potential additional expenses the city faces due to legislative action or city needs, and how we might pay for them.

