

Permanent Fund Committee

Thursday
JUNE 20, 2013



Special Meeting 5:15 pm
City Hall ♦ CONFERENCE ROOM UPSTAIRS
491 E Pioneer Ave ♦ Homer, Alaska



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**NOTICE OF MEETING
SPECIAL MEETING AGENDA**

- 1. CALL TO ORDER**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENTS REGARDING ITEMS ON THE AGENDA**
- 4. APPROVAL OF MINUTES**
 - A. Synopsis of Regular Meeting of May 9, 2013 Page 5
- 5. VISITORS**
- 6. STAFF & COUNCIL REPORT/COMMITTEE REPORTS/BOROUGH REPORTS**
- 7. PUBLIC HEARING**
- 8. PENDING BUSINESS**
 - A. Review of Homer City Code 3.10 and 3.12, Investment Policies of the Permanent Fund Page 9
Memorandum PFC 13-03 from City Attorney as backup. Page 15
Memorandum PFC 13-04 from City Attorney as backup. Page 19
- 9. NEW BUSINESS**
- 10. INFORMATIONAL MATERIALS**
- 11. COMMENTS OF THE AUDIENCE (3 MINUTE TIME LIMIT)**
- 12. COMMENTS OF THE CITY STAFF**
- 13. COMMENTS OF THE COUNCILMEMBER**
- 14. COMMENTS OF THE CHAIR**
- 15. COMMENTS OF THE COMMISSION**
- 16. ADJOURNMENT/NEXT REGULAR MEETING** is scheduled for Thursday, August 8, 2013 at 5:15 p.m. in the Homer City Hall Cowles Council Chambers, 491 E. Pioneer Avenue, Homer, Alaska.

Session 13-03 a Regular Meeting of the Permanent Fund Committee was called to order on May 9, 2013 at 5:17 p.m. by Chair Barbara Howard at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMITTEE MEMBERS: BARBARA HOWARD, JO JOHNSON, MATT NORTH, FRANCIE ROBERTS

APPROVAL OF AGENDA

JOHNSON/ROBERTS - MOVED TO APPROVE THE AGENDA.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Chair Howard asked that U.S. Bank be allowed more time if needed.

PUBLIC COMMENTS REGARDING ITEMS ON THE AGENDA

There were no public comments.

APPROVAL OF MINUTES

A. Synopsis of Special Meeting of April 11, 2013

ROBERTS/NORTH - MOVED TO APPROVE THE MINUTES OF APRIL 11TH.

There was no discussion.

VOTE: YES. NON OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VISITORS

A. Clarence Hughes & Rod Castelda, U.S. Bank

Matt North asked for an update on the fund and how they interpret the portfolio to be allocated.

U.S. Bank is governed by the City's ordinance and the investment policy statements. There are two portfolios, divided between a growth and fixed income portfolio. The allocation is 60% to growth and 40% to income, again governed by the investment policy statements.

Distributions are contained in the ordinance. Funds can be used for various expenditures by the City Council, primarily from the income fund. The growth fund should be reinvested and not used for outside allocations.

Earnings available for annual appropriation and distribution shall be confined to the interest, dividends, or coupon discounts derived from the investments of the income fund. The growth fund shall not be expended, but shall be added to the principle of the growth sub fund and be reinvested.

Matt North recalled the discussion (years ago) in setting up the funds was that the earnings off the growth fund should be taken and added to the income fund with the principle of the growth fund left in tact.

U.S. Bank, as the manager and custodian, follows the investment policy statements. Until there is an amendment from the committee and City Council, they will follow them.

The portfolio has been rebalanced, but no distribution has been made to the income side. The fixed income has been a buy and hold strategy. It is fully invested with \$.5M in bonds and \$30,000 in cash, all in investment grade, high quality names, yielding about 2.25%. The ten-year treasury is yielding less than 2%. The equity side started out with \$850,000. As of March 28, 2013 the account is \$1.1M. The stock market had appreciated by January and there was the concern about the debt ceiling and issues coming out of Europe. The equity portion of the portfolio was rebalanced to reduce the amount of risk. Funds were put in larger capitalization stocks and mutual funds that paid a hefty dividend. We are up \$225,000 in the equity portfolio. At the City's direction the equity fund could be rebalanced and sent to the fixed income fund.

U.S. Bank investments are reversed in the order the ordinance outlines. When the accounts were set up they were opposite of the ordinance; U.S. Bank took direction from the City when the deposits were originally made. The funds could be reversed. The objective of the money for perpetual growth is to grow the corpus within reason without too much risk. The capital gains were to be passed to the fixed income side. The fixed income fund could handle withdrawals as the City saw fit.

Matt North remembers the discussions from years ago well. He doesn't know how the investment policies were written the other way.

B. Paul Jarvis, Managing Director with Time Value Investments (TVI)

Paul Jarvis has 25 years experience investing, with 20 years experience in public funds investments. He has a long history with the City of Homer and has never lost any money. U.S. Bank has gigantic fees for the \$1.6M portfolio with \$18,000 in fees. The fees total 1.2% of the fund and there is a 30 page statement. Mr. Jarvis can reduce and simplify the portfolio.

The income side should be risk free and the growth side is where the risks are taken. The \$106,000 in fixed income mutual funds is nothing but risk. There is no maturity and they are fully exposed to a change in interest rates. Corporate and foreign issues are the bulk of the fixed income. There is credit risk with the low rated securities.

Mr. Jarvis recommends going to risk free funds. On the income side two federally insured CDs could be purchased with no management fee. They are backed by the FDIC. Five year CDs yield 1% and ten year CDs yield 2.1%. A \$.5M CD would yield \$7,500 a year. It would simplify the fund.

The manager of U.S. Bank and managers of all the mutual funds are all paid fees. Actively managed funds consistently yield less than indexed funds. An indexed fund is an investment with no management fees and follows the S & P 500. If the stock market appreciates by 10% so will your investment.

Mr. Jarvis' fees are \$4,000 for a \$1,000,000 CD. It is a one-time payment. The City's return will match the S & P 500. Once the City has the asset there is no connection to a broker.

Matt North commented the actively managed funds would reduce the opportunity for default. The City initially planned for a \$13M settlement.

STAFF & COUNCIL REPORT/COMMITTEE REPORTS/BOROUGH REPORTS

PUBLIC HEARING

PENDING BUSINESS

- A. Review of Homer City Code 3.12 and Ordinance 13-06, Investment Policies of the Permanent Fund

Memorandum PFC 13-01 from Chair Howard as backup.

The investment policy statements will need to be reviewed.

The ordinance says 95% will be distributed 60% income/40% growth. One hundred percent was invested in the reverse with 60% growth/40% income. There is a question if the 5% was to go to The Homer Foundation or a non-profit in a lump sum. Since the 5% was not allocated, Council will need to approve the allocation. Earnings from both funds were taken, spending more than we should.

Ordinance 05-14(S) states income can be distributed. The City Attorney will craft an ordinance to change the 60/40 allotments. The 60 needs to feed the 40 to make the 40 feed the general fund. 2012 was the first year an allocation could be made. We want to keep the allocation as it is currently set up.

The Permanent Fund was designed to create income and we would never access the growth. Funds from growth are then sent to the income fund.

It is unclear if transferring 5% out of the fund will not pose a problem.

The City Attorney can review the ordinance and make the language clear.

NEW BUSINESS

A. Election of Chair and Vice Chair

Memorandum PFC 13-02 from City Clerk as backup.

Jo Johnson nominated Barbara Howard to continue serving as Chair. Barbara accepted the nomination.

Francie Roberts nominated Matt North as Vice Chair. Matt accepted the nomination pending he runs it by his attorneys.

INFORMATIONAL MATERIALS

COMMENTS OF THE AUDIENCE (3 MINUTE TIME LIMIT)

There was no audience.

COMMENTS OF THE CITY STAFF

There were no comments from the staff.

COMMENTS OF THE COUNCILMEMBER

There were no comments from Councilmember Roberts.

COMMENTS OF THE CHAIR

There were no comments from Chair Howard.

COMMENTS OF THE COMMISSION

Jo Johnson commented it is good the Committee is sorting it out.

Matt North seconded that.

Francie Roberts really likes working with this group. We have been productive as a group. She asked that a special meeting be scheduled in 4-5 weeks.

ADJOURNMENT

There being no further business to come before the Committee, the meeting was adjourned at 6:49 p.m. A Special Meeting is scheduled for June 20, 2013 at 5:15 p.m. and the next Regular Meeting is scheduled for Thursday, August 8, 2013 at 5:15 p.m. in the Homer City Hall Cowles Council Chambers, 491 E. Pioneer Avenue, Homer, Alaska.

Submitted by Jo Johnson

Homer City Code

Chapter 3.10.130 Governance of Homer Permanent Fund Assets.

a. In investing and managing the monies of the Permanent Fund established pursuant to HCC Chapter 3.12, the persons having responsibility for making decisions shall exercise the judgment and care under the circumstances then prevailing which an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation, but in regard to the long term investment of funds considering the probable safety of capital as well as probable income, in accordance with the stated objectives of the Permanent Fund.

b. In order to ensure sound investment strategy, the city council will take action in the following manner:

1. The city council shall establish written investment policies by formal resolution which shall be adhered to without exception;

2. The city council shall review the investment policies of the permanent fund at least once each year during the first quarter and shall, by formal resolution, re-adopt or modify said policies;

3. The city council shall establish, by formal resolution, a plan for the allocation of investment assets each year that provides for the following:

(a) That earnings available for annual appropriation and distribution shall be confined to the interest, dividends or coupon discounts derived from the investments of the fund. Realized or unrealized gains to the portfolio value are not considered earnings,

(b) The portfolio of growth sub-fund will be invested primarily in equities, and is exempt from HCC 3.10.040.

(c)The portfolio of the income sub-fund will be invested primarily in bonds and the other fixed rate securities authorized by HCC 3.10.040.

(d) The income sub-fund may be used as a revolving loan for various city capital projects as provided in HCC Chapter 3.12.

(e) Sets forth portfolio duration, and which establishes performance benchmarks, and which estimates the percentage or amount of that year's annual earnings that would be necessary to retain to inflation-proof the fund principal;

4. The city council shall establish a permanent fund investment committee consisting of the finance director, the city clerk, two members of the city council, and two members of the community at-large. The term of each appointment shall be two years, with initial terms of the city council members and members at-large staggered so that half of the terms will expire each year. The committee shall be appointed by the mayor and confirmed by the city council. The appointment of any city official will automatically terminate on the date when the person no longer holds such city office. Any city council member or member at-large may be removed from the committee at any time by the City Council.

5. The committee shall meet at least quarterly to provide direction as required for maintenance of the fund. The committee shall provide regular reports of its activity to the city council.

6. The city administration shall maintain on file within the offices of the Finance Department monthly reports which indicate transactions affecting the investment account, to include, at a minimum, transfers of cash into and out of the account, and interest or dividends received by the account;

7. The city administration shall order an objective performance evaluation of the investment program every year;

8. The city administration shall retain one or more bank custodians to hold all investment cash and fixed income securities of the permanent fund and require that the custodians shall render monthly reports to the administration regarding assets held at both book and market values, and individual transactions which have taken place; that the banks shall have adequate fidelity insurance, and that written contracts be entered into between the city and the custodian banks.

c. The city, with the approval of the city council, shall retain one or more professional investment managers to design portfolios and invest funds in accordance with the written investment policies adopted by the city council. The investment managers shall be registered financial advisers with both the United States Securities and Exchange Commission and the state of Alaska, unless otherwise exempt from registration, and the investment managers shall agree to serve as a fiduciary to the city. Each investment manager shall carry professional liability insurance in an amount satisfactory to the city, and the terms of the investment relationship shall be memorialized in a written contract entered into between the city and the respective investment advisers.(Ord. 05-14(S) §2), 2006)

Chapter 3.12 Permanent Fund

Sections:

3.12.010 Homer Permanent Fund Established.

3.12.020 Contributions.

3.12.030 Allocation to sub-funds.

3.12.040 Additions to fund.

3.12.050 Investment of fund.

3.12.060 Expenditures of income.

3.12.070 Loans from income sub-fund.

3.12.080 Expenditure of principal.

3.12.010 Homer Permanent Fund Established. There is hereby established the Homer Permanent Fund. The Permanent Fund

shall be governed by this chapter. (Ord. 05-14(S) §2), 2006)

3.12.020 Contributions. a. If monies from the distribution of the Exxon Valdez settlement or other forms of wind-fall monies become available to the City, 95% of such funds shall be placed in the Homer Permanent Fund.

b. Wind-fall monies shall be defined as any new monies received by the City from any source other than standard budgeted operating revenues and not allocated to any specific purpose. Wind-fall monies do not include bond proceeds, grant funds allocated to a specified purpose, or the proceeds of non-Exxon Valdez litigation when such proceeds are recovered as damages to compensate or reimburse the city for expenditures previously made by the city. In all cases, the City Council's determination of whether monies are wind-fall is final and conclusive.

c. The remaining five percent of Exxon Valdez settlement funds and other wind-fall monies are available to be appropriated by the City Council for grants to the Homer Foundation or other local non-profit organizations for the benefit of the community. (Ord. 05-14(S) §2), 2006)

3.12.030 Allocation to sub-funds. When a contribution is made to the Permanent Fund pursuant to HCC 3.12.020, the money received shall be allocated to two sub-funds as follows:

a. Sixty percent of each contribution shall be allocated to an income sub-fund.

b. Forty percent of each contribution shall be allocated to a growth sub-fund. (Ord. 05-14(S) §2), 2006)

3.12.040 Additions to fund. a. The City Council may elect to contribute monies to the Permanent Fund. Unless otherwise allocated by the council, such contributions shall be allocated to sub-funds pursuant to HCC 3.12.030. (Ord. 05-14(S) §2), 2006)

3.12.050 Investment of fund. The sub-funds of Permanent Fund

shall be invested and managed in accordance with HCC 3.10.130. (Ord. 05-14(S) §2), 2006)

3.12.060 Expenditures of income. a. Expenditures of Permanent Fund income may be made only as authorized in this chapter.

b. The income from the income sub-fund may be appropriated by the City Council and be expended for general governmental purposes, including but not limited to ordinary operating expenses.

c. The income from the growth sub-fund shall not be expended. It shall be added to the principal of the growth sub-fund and reinvested. (Ord. 05-14(S) §2), 2006)

3.12.070 Loans from income sub-fund. The principal of the income sub-fund may be used as a source of loan funds for city capital projects, and not as a grant. To be eligible for such a loan the project must receive a majority of its funding from other sources. Such loans shall be on terms approved by resolution of the City Council, which must provide for the repayment of the loan over a reasonable period of time. (Ord. 05-14(S) §2), 2006)

3.12.080 Expenditure of principal. a. Expenditures of Permanent Fund principal may be made only as authorized in this section.

b. Except as a source of loan funds as provided in subsection 3.12.070, the principal of both the income sub-fund and the growth sub-fund shall neither be distributed nor spent without the authorization of sixty percent of city voters at a regular or special election.

c. Prior to submitting to the voters the question of whether to distribute or spend funds from the principal of the Permanent Fund, the City Council shall find that all reasonable options for borrowing have been exhausted, including the option of borrowing from the Homer Permanent Fund pursuant to section 3.12.070. (Ord. 05-14(S) §2), 2006)

MEMORANDUM *DFC 13-03*

TO: PERMANENT FUND COMMITTEE

FROM: THOMAS F. KLINKNER

RE: ALLOCATION OF FUNDS IN THE HOMER PERMANENT FUND

CLIENT: CITY OF HOMER

FILE NO.: 506,742.101

DATE: JUNE 4, 2013

The following responds to the Permanent Fund Committee's request for advice regarding the allocation of funds in the Homer Permanent Fund.

1. Background.

HCC Chapter 3.12 establishes the Homer Permanent Fund,¹ and requires that 95% of "monies from the distribution of the Exxon Valdez settlement" and certain "wind-fall monies" be placed in the Permanent Fund.² 60% of each contribution to the Permanent Fund is to be allocated to an income sub-fund, and 40% is to be allocated to a growth sub-fund.³ The income from the income sub-fund may be expended for general governmental purposes, and its principal may be used for loans for City capital projects.⁴ The income from the growth sub-fund may not be expended, but is added to the principal of the growth sub-fund and reinvested.⁵ Except for loans from the principal of the income sub-fund for City capital projects, the principal of both the income sub-fund and the growth sub-fund may not be distributed or spent without the authorization of 60% of city voters at a regular or special election.⁶

I understand that there have been two deposits to the Permanent Fund. The first, on June 16, 2010, was in the amount of \$1,151,270.64, consisting of a payment of Exxon Valdez settlement funds that the City received in the autumn of 2009, plus earnings on that amount. The second deposit, in the amount of \$266,026.64, came

¹ HCC 3.12.010.

² HCC 3.12.020.

³ HCC 3.12.030.

⁴ HCC 3.12.060(b); HCC 3.12.070.

⁵ HCC 3.12.060(c).

⁶ HCC 3.12.080(b).

directly to the Permanent Fund from Exxon Valdez settlement funds. I also understand that in each case 100% of the amount that the City received was deposited into the Permanent Fund, with 60% of the amount being deposited into the growth sub-fund and 40% of the amount being deposited into the income sub-fund.

Apart from the direction in HCC Chapter 3.12 regarding the deposit of Exxon Valdez settlement funds in the Permanent Fund, I understand that there has been no Council action directing the disposition of the two Exxon Valdez settlement payments described above. I also understand that the deviations in the actual deposits to the Permanent Fund from the disposition of funds prescribed in HCC 3.12 were the result of administrative actions taken by either the City Finance Department or U.S. Bank, the manager of Permanent Fund investments.

On January 14, 2013, the Council adopted Ordinance 12-58, which approved the disbursement from the Permanent Fund of \$3,554.79 "to local non-profit organizations for the benefit of the community." The ordinance described this sum as "the net earnings of 5% of the Permanent Fund." The ordinance did not identify either sub-account in the Permanent Fund as the source of the disbursement. On February 11, 2013, the Council adopted Resolution 13-016, authorizing the allocation of this \$3,554.79 amount to implement the Green Dot program in Homer.

2. Analysis.

A. City Options.

In selecting what action to take in response to the situation described above, the City first should understand that the Council may amend HCC Chapter 3.12 in any manner that it sees fit. As I explained in a memorandum dated November 11, 2009, this is the case notwithstanding the statement in the Permanent Fund ordinance that the principal of either sub-fund may not be distributed or spent without the authorization of 60% of the City voters at a regular or special election.⁷ For example, for reasons explained in my November 11, 2009 memorandum, Ordinance 12-58, which approved the disbursement from the Permanent Fund of \$3,554.79 "to local non-profit organizations for the benefit of the community," superseded any contrary restriction on distributions from the Permanent Fund in HCC Chapter 3.12, as any action that the Council takes by ordinance will supersede the contrary prescription of a previously adopted code section.⁸

In general, the City may take either of two approaches in response to the current state of affairs in the Permanent Fund. First, since administrative action caused the deviations from code requirements in the previous deposits to the Permanent Fund, those deviations also may be reversed by administrative action, thus preserving the status quo regarding the Permanent Fund as contemplated by HCC Chapter 3.12. Second, the Council may amend HCC Chapter 3.12 in any manner that it sees fit,

⁷ HCC 3.12.080(b).

⁸ *Miller v. Matanuska-Susitna Borough*, 54 P.3d 285, 292 (Alaska 2002).

including changing the provisions of HCC Chapter 3.12 to conform to the current state of affairs in the Permanent Fund (e.g., allocating 60% of Permanent Fund assets to the growth sub-account and 40% to the income sub-account).

B. Option One: Return to Status Quo under HCC Chapter 3.12.

To return to the status quo prescribed by HCC Chapter 3.12, the following corrective administrative actions would be required. First, 5% of the total amount on deposit in the Permanent Fund, less the \$3,554.79 previously allocated to the Green Dot program, should be withdrawn pro rata from each sub-fund, and set aside for disposition by the Council "for grants to the Homer Foundation or other local non-profit organizations for the benefit of the community," as prescribed by HCC 3.12.020(c). Second, an amount in the growth sub-fund should be transferred to the income sub-fund so that after the transfer 60% of the amount remaining in the Permanent Fund is in the income sub-fund, and 40% is in the growth sub-fund. After these transfers have been made, the investments in the income sub-fund should be reallocated from equities to fixed income, in accordance with the purposes of the income sub-fund.

C. Option Two: Conform HCC Chapter 3.12 to the Current Structure of the Permanent Fund.

Since the Council may amend HCC Chapter 3.12 in its discretion, another option for the Council would be to amend HCC Chapter 3.12 to conform to the current state of affairs in the Permanent Fund. Such amendments would include the following:

- Amend HCC 3.12.020 to provide that 100% of Exxon Valdez settlement and other "windfall monies" are deposited in the Permanent Fund, with no portion withheld for distribution to non-profit organizations.
- Amend HCC 3.12.030 to provide that 60% of each contribution to the Permanent Fund (including previous contributions) is allocated to the growth sub-fund and 40% of each contribution is allocated to the income sub-fund.
- Amend HCC 3.12.060 to provide that earnings on the growth sub-fund are allocated annually to the income sub-fund, and that the earnings from both sub-funds, once allocated to the income sub-fund, may be appropriated by the City Council and be expended for general governmental purposes, including but not limited to ordinary operating expenses, or for grants to the Homer Foundation or other local non-profit organizations for the benefit of the community.

Of course, this does not exhaust the Council's options for amending HCC 3.12. The Council may amend HCC 3.12 in any manner that it considers will provide for the best future management of the Permanent Fund for the benefit of the City.

cc: Walt Wrede
Jo Johnson

TFK/TFK

MEMORANDUM PFC 13-04

TO: Mayor and Council Members
City of Homer

CC: Walt Wrede, City Manager
Jo Johnson, City Clerk
City of Homer

FROM: Tom Klinkner

DATE: November 11, 2009

FILE NO. 506,742.1

RE: Binding Effect of Homer Permanent Fund Ordinance

I have been asked whether the City Council is precluded from taking legislative action contrary to the provisions of HCC Chapter 3.12 that require deposits to the Homer Permanent Fund ("Permanent Fund"), or restrict expenditures from the Permanent Fund. I conclude that the City Council is not so precluded, but instead at any time may enact an ordinance either (i) amending or repealing HCC Chapter 3.12, or (ii) appropriating funds without complying with the provisions of HCC Chapter 3.12.

HCC Chapter 3.12 requires that 95% of "monies from the distribution of the Exxon Valdez settlement," and certain "wind-fall monies" be placed in the Permanent Fund.¹ "Wind-fall monies" include "monies from any source other than standard budgeted operating revenues and not allocated to any specific purpose," but do not include "bond proceeds, grant funds allocated to a specified purpose, or the proceeds of non-Exxon Valdez litigation when such proceeds are recovered as damages to compensate or reimburse the city for expenditures previously made by the city."²

60% of each contribution made to the Permanent Fund is allocated to an income sub-fund, and 40% is allocated to a growth sub-fund.³ The income from the income sub-fund may be expended for general governmental purposes, and its principal may be used for loans for City capital projects.⁴ The income from the growth sub-fund may not be expended, but is added to the principal of the growth sub-fund and reinvested.⁵ Except for loans from the principal of the

¹ HCC 3.12.020.

² HCC 3.12.020(b).

³ HCC 3.12.030.

⁴ HCC 3.12.060(b); HCC 3.12.070.

⁵ HCC 3.12.060(c).

income sub-fund for City capital projects, the principal of both the income sub-fund and the growth sub-fund may not be distributed or spent without the authorization of 60% of city voters at a regular or special election.⁶

The City may “exercise any power not otherwise prohibited by law.”⁷ The legislative power of the City is vested in the Council.⁸ It is a well established rule of municipal law that a city council may not limit the legislative power of future councils by prohibiting the repeal of certain ordinances:

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. Accordingly, in the absence of a valid provision to the contrary, a municipal council or assembly, having the power to legislate on, or exercise discretionary or regulatory authority over, any given subject, may exercise that power at will by enacting or repealing an ordinance in relation to that subject.⁹

Thus, the Council’s could not “abridge its own legislative power” by enacting the provisions of HCC Chapter 3.12 that require the placement of certain monies in the Permanent Fund, or that restrict the expenditure of monies in the Permanent Fund.

The Council enacted HCC Chapter 3.12 by ordinance. Just as the Council was authorized to adopt HCC Chapter 3.12, the Council may amend or repeal it at any time. Alaska case law and general principles of municipal law establish the authority of the Council to repeal an ordinance:

Specific grant of power to repeal ordinances, however, ordinarily is not necessary since it is the general rule that power to enact ordinances implies power, unless otherwise provided in the grant, to repeal them. It is patently obvious that the effectiveness of any legislative body would be entirely destroyed if the power to amend or repeal its legislative acts were taken away from it.¹⁰

In addition to amending or repealing HCC Chapter 3.12, the Council may abrogate its restrictions simply by appropriating money from the Permanent Fund for any City purpose. The

⁶ HCC 3.12.080(b).

⁷ AS 29.35.250(a).

⁸ AS 29.20.050(a).

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

¹⁰ *City of St. Mary’s v. St. Mary’s Native Corporation* 9 P.3d 1002, 1007 (Alaska 2000), quoting 6 McQuillin, *The Law of Municipal Corporations* § 21.10, at 261 (rev.3d ed.1998).

Council makes appropriations by ordinance,¹¹ and the subsequent legislative act of such an appropriation would release the City from the prior legislative constraints of HCC Chapter 3.12.¹²

Please let me know whether we may be of further assistance in this matter.

¹¹ AS 29.25.010(a)(4).

¹² *Miller v. Matanuska-Susitna Borough*, 54 P.3d 285, 292 (Alaska 2002).

