



Birch Horton Bittner & Cherot
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MEMORANDUM 15 - 162

**TO: JO JOHNSON
CITY CLERK
CITY OF HOMER**

FROM: THOMAS F. KLINKNER

RE: ELECTION ISSUES

FILE NO.: 506,742.103

DATE: SEPTEMBER 15, 2015

Two seats on the Council are to be filled at the October 6, 2015, regular City election, each for a three-year term. Seven candidates have filed for these two Council seats. The following responds to questions regarding this election of Council members that I was asked at last night's Council meeting.

1. *Election of Council Members; Runoff Election.*

AS 29.20.130 provides that each first class city has a council of six members elected by the voters at large; provided that the council may by ordinance provide for election of members other than on an at-large basis for all members. In accordance with AS 29.20.130, HCC 2.08.030(a) provides that only two Council members are elected each year on an at-large basis for three-year terms.

AS 29.26.060(b) provides that a runoff election for an office for which candidates run at large shall be held if no candidate receives a number of votes greater than 40% of the total number of votes cast for all candidates divided by the number of seats to be filled, but allows this rule to be varied by ordinance. HCC 4.40.010(a) conforms to the general rule in AS 29.26.060(b), providing that if no Council candidate receives more than 40% of the votes cast for a respective seat, a runoff election shall be held. For this purpose, when more than one Council seat for the same term is to be filled, the total votes cast for a respective seat is determined by dividing the total number of votes cast for all candidates by the number of seats to be filled.

Under AS 29.26.060(b) and HCC 4.40.010(a), a runoff election for Council will be held after the October 6, 2015, general election only if no candidate for Council receives more votes than 40% of one-half of the total number of votes cast for all candidates—or with the calculation simplified, 20% of the total number of votes cast for all candidates.

Thus, if one or more candidates for Council at the October 6, 2015, regular City election receive a number of votes greater than 20% of the total votes cast for all candidates for the two Council seats, there is no runoff election and the two candidates who receive the greatest number of votes are elected.

If no candidate for Council at the October 6, 2015, regular City election receives a number of votes greater than 20% of the total votes cast for all candidates for the two Council seats, there is a runoff election. AS 29.26.060(c) provides that the runoff election shall be between the two candidates receiving the greatest number of votes for the seat. However, this statute does not indicate how it is to be applied to a runoff election for multiple seats that are to be filled at-large. In my opinion, HCC 4.40.010(b) provides a reasonable application of the statute to such a situation: the number of candidates receiving the highest votes to provide two candidates for each vacancy shall be the candidates in the runoff election. Thus, if the outcome of the October 6, 2015, regular City election for Council requires a runoff election, the four candidates for Council that receive the largest number of votes in the regular election shall be the candidates in the runoff election.

2. Commencement and Expiration of Terms of Office.

If a runoff election for Council is required after the October 6, 2015, regular City election, HCC 4.40.020 requires that it be held on the Tuesday after the first Monday in November, which is November 3, 2015. Under AS 29.26.150(c) and HCC 2.08.030(c), the term of office for Council members who are elected at the runoff election will begin on the Monday following the certification of the election.

Under AS 29.20.150(a) and HCC 2.08.030(a), a Council member is elected for a three-year term and until a successor qualifies. If a runoff election for Council is required after the October 6, 2015, regular City election, an incumbent Council member whose term is scheduled to expire in 2015 remains in office until a successor qualifies. One qualifies for the office of Council member by taking the oath of office.¹ HCC 2.08.030(c) provides that there will be a special meeting on the first Monday following certification of the election for the purpose of administering the oath of office to the elected candidates. The term of the predecessor of a candidate who is elected to the Council in the runoff election expires upon the administering of the oath of office to the newly elected Council candidate.

TFK/lcj

¹ *Reale v. Board of Real Estate Appraisers*, 880 P.2d 1205, 1211 (Colo. 1994).