

MEMORANDUM 19-125

**TO: HOMER CITY COUNCIL
KATIE KOESTER, CITY MANAGER**

FROM: HOLLY C. WELLS

**RE: ORDINANCE 19-23: PUBLIC UTILITY SYSTEM AND SPECIAL
ASSESSMENTS ORDINANCE**

CLIENT: CITY OF HOMER

FILE NO.: 506,742.27

DATE: SEPTEMBER 12, 2019

INTRODUCTION

The following is an updated table for use at the September 16, 2019 work session. This table incorporates changes into the Ordinance after the May 22, 2019 memo distributed to Council regarding the purpose and scope of the revisions proposed in Ordinance 19-23.

Table 1: Title 14 Comparison

Current HCC Title 14	The Ordinance
No Chapter 14.01	<p>Chapter 14.01 was added to consolidate general provisions that apply to all utilities. It includes a definition of the “service area,” the City Manager’s rulemaking authority, City immunity, and contractor licensure requirements. It also incorporates the appeal and violation procedures that apply to all violations of Title 14 and all Title 14 permit appeals.</p> <p>Specifically, the HCC 14.01 sections are as follows:</p> <p>14.01.010 Water and sewer service area.</p> <p>14.01.020 City Manager rule making authority.</p>

	<p>14.01.030 Immunity for discretionary acts.</p> <p>14.01.040 Violation-Penalty.</p> <p>14.01.045 Violation-Right of appeal.</p> <p>14.01.050 Utility permits-Appeal procedure.</p> <p>14.01.060 Utility permit appeals-Superior court.</p> <p>14.04.070 Bond or cash deposit.</p> <p>14.01.080 State contractor required.</p> <p>14.04.090 Water and sewer rate schedules.</p>
<p>HCC 14.04.115 “Extraterritorial services.”</p> <p>HCC 14.04.115 provides a process where an application for sewer service is presented to Public Works for approval, evaluated by Public Works and the Finance Department, and granted or denied by Council based upon specified criteria in the Code. There is no provision for water services outside the City.</p>	<p>PHCC 14.01.010 “Water and sewer service Area” replaces HCC 14.04.115. PHCC 14.01.010 prohibits water/sewer service unless approved by ordinance or otherwise permitted in Title 14. While it applies to both water and sewer, it removes all the specific requirements for extraterritorial services previously required. The intent of the substantially simplified proposed provision was to permit Council to revisit extraterritorial services outside the Title 14&17 review process in light of the significant policy implications of this section. However, there is not an ordinance currently pending before Council and Ordinance 19-19, which specifically addressed extraterritorial services requirements, failed to pass at Council’s September 9, 2019 meeting. As a result, Council may want to consider incorporating the existing approval process in HCC 14.04.115 into this proposed section.</p>
<p>HCC 14.04.120 and HCC 14.08.055</p>	<p>PHCC 14.01.020 “City Manager rule making authority” consolidates the enabling provisions currently located in both water and sewer. Currently, both</p>

	<p>provisions in the Code state the “City Manager is empowered, subject to approval of Council, to make rules and regulations not inconsistent with law...” Council has expressed a desire to change the reference to “rules and regulations” in the current Title or to create more clarity regarding “rules and regulations” and “procedure” references throughout Code.¹</p>
<p>No HCC 14.01.030 but see HCC 14.08.079 “Immunity for discretionary acts.”</p>	<p>PHCC 14.01.030 “Immunity for discretionary acts” essentially expands the scope of the immunity provision in HCC 14.08, which applies to the Water System, to all public utility systems.</p>
<p><u>Sewer System Provisions</u></p> <p>HCC 14.04.100 “Appeals-Board of Appeals-Notice of appeal.”</p> <p>HCC 14.04.105 “Appeals-Procedure.”</p> <p>HCC 14.04.110 “Appeal to Superior Court.”</p> <p>HCC 14.04.130 “Violation-Penalty.”</p> <p><u>Water System Provisions</u></p> <p>HCC 14.08.140 “Appeals – Board of Appeals – Notice of appeal.”</p> <p>HCC 14.08.150 “Appeals – Procedure.”</p> <p>HCC 14.08.160 “Appeal to Superior Court.”</p> <p>HCC 14.08.170 “Violation – Penalty.”</p> <p>HCC 14.08.130 “Permit suspension, revocation.”</p>	<p>The following sections were added to Chapter 14.01, which created a uniform penalty assessment, revocation, suspension, and appeal process for all utilities, including waste and water. These provisions replace all of the provisions listed on the other side of the column in the current Code.</p> <p>PHCC14.01.040 “Violation-Penalty”</p> <p>PHCC 14.01.045 “Violation-Right to Appeal”</p> <p>PHCC 14.01.050 “Utility permits-Appeal procedure”</p> <p>PHCC 14.01.060 “Utility permit appeals-Superior court.</p> <p>PHCC 14.04.130 “Industrial Waste-Penalties” remains separate and in the Code and other process and hearing procedures specific to industrial waste remain in the rules and regulations moved to the Industrial Waste Manual.</p>

¹ For Council’s edification, please see the attached worksheet entitled “Understanding References to Rules, Regulations, Policies, and Procedures in Homer, Alaska.” As Council correctly noted, there is longstanding inconsistency throughout Homer City Code referencing policies, procedures, rules, and regulations.

<p>No purpose section in HCC 14.04</p>	<p>PHCC 14.04.010 “Purpose” added. This section provides a formal name for the City’s system, namely, the “Homer Sanitary Wastewater and Sewage System” and recognizes the general purpose of the Code to ensure that all properties are eventually connected to the City’s system.</p>
<p>HCC 14.04.010 “Definitions.”</p>	<p>PHCC 14.04.010 is the purpose section and definitions are in PHCC 14.04.015. “Definitions” have been revised to remove definitions not referenced in Title 14 and adds definitions for important terms such as “directly adjacent,” “on-site sewer connection line,” “off-site sewer connection line,” “sewer connection line,” and “spaghetti line.” The Ordinance revises the Code to ensure these defined terms are consistently and uniformly used throughout. A definition for “Significant Industrial User” now appears in definitions.</p>
<p>No HCC 14.04.018</p>	<p>PHCC 14.04.018 “Service Connection Charges” consolidates numerous sections regarding fees and costs surrounding connection in one user-friendly location.</p>
<p>HCC 14.04.020 “Connection-Required.” Exempts “alternative sanitary facilities” in one subsection but requires all properties to connect to the system when available in another subsection.</p>	<p>PHCC 14.04.020 “Connection-Required” provides property owners three years instead of just one to connect to the City System and provides an exemption from connection for those with compliant and fully-functioning septic systems until those systems require replacement or substantial repair. A person seeking such exemption must complete a Notice to Stay Connection.</p>
<p>HCC 14.04.050 “Sewer service connections and extensions.”</p>	<p>PHCC 14.04.050 “Sewer Service connections and extensions permits” removes the lengthy references to the</p>

	standards and specifications needed to install a connection or extension and instead creates a permit process. This allows the property owner to access the permit application and have clearly-delineated requirements applicable to that process. It also allows the City to update the permit criteria as needed.
HCC 14.04.060 "Disposition of Revenue."	Removed: Provision requiring 100% of funds deposited into "central treasury" of the City and the "sewer utility fund" referred to requirements that are no longer necessary.
HCC 14.04.070 "Destruction of private sewage disposal systems." Requires destruction of private sewage facilities within 60 days of connection to City System.	PHCC 14.04.070 "Destruction/Abandonment of private sewage disposal systems" removes the 60-day restriction because in practice it may be too strict but instead requires compliance with the Alaska Department of Environmental Conservation.
HCC 14.04.080 "Sewage or waste disposal permit requirements." Grants a "permit" to one family existing or "future" dwellings connecting to the system and requires all others to have a permit, except for "significant industrial users." There is no notice provision.	PHCC 14.04.080 "Commercial waste disposal permit" Incorporates as-built and survey requirements unless the specific lease agreement provides otherwise. It simplifies language but adds protections for permit applicants, such as requiring notice before revocation or modification of a permit, except in cases of emergency.
HCC 14.04.090 "Discharge of Surface Drainage into City Sewer."	Moved to PHCC 14.04.100 "Discharge of surface drainage into HSWS Illegal." Simplified and clarified language.
HCC 14.04.100 "Board of Appeals."	Moved to PHCC 14.01.070 and changed from permitting an appeal to the "Board of Appeals," which was Council and the Mayor to the City Manager or a designated hearing officer.

HCC 14.04.105 “Appeals Procedure.”	Moved to PHCC 14.01.050 “Utility Permits-Appeal Procedure.” Provides less extensive appeal procedures because briefing schedules and process can be tailored to the needs of each case. Different permits will have differing levels of complexity.
HCC 14.04.110 “Appeal to Superior Court.”	Moved to PHCC 14.01.060 “Utility Permit Appeals-Superior Court.”
HCC 14.04.115 “Extraterritorial services.”	See explanation above. Moved to PHCC 14.01.010 “Water and sewer service area.” Removes lengthy extraterritorial services application procedure for sewage and provides for a uniform policy for water and sewer, both of which will require Council approval by ordinance before property outside the City will be approved to connect to the System.
HCC 14.04.120 “Rulemaking Authority.”	Moved to PHCC 14.01.020 and language clarified. Now requires City Council to approve the rules and regulations by resolution.
HCC 14.04.130 “Violation.”	Moved to PHCC 14.01.040 “Violation Penalty” and PHCC 14.01.045 “Violation right to appeal.” Adopts uniform appeal procedures and rights to appeal for all Title 14 violations.
Chapter 14.05 “Sewage-Industrial Pretreatment and Discharge.”	Chapter 14.05 repealed. Inserted PHCC 14.04.110 “Industrial waste pretreatment and disposal requirements,” PHCC 14.04.120 “Industrial waste disposal permit requirements,” and PHCC 14.04.130 “Industrial waste-penalties.” These provisions provide the basic requirements for industrial users and

	notification that the criteria and technical specifications are located in separate rules and regulations. The remainder of HCC 14.05 is incorporated through a separate rules and regulations manual adopted and/or revised by Council via ordinance.
HCC Chapter 14.08 “Water Rules and Regulations.”	PHCC Chapter 14.08 renames the chapter “Homer Public Water System.” HCC Chapter 13.28 is repealed and its provisions incorporated into PHCC 14.08.
HCC 14.08.010 “Purpose.”	PHCC 14.08.010 “Purpose” revises the purpose to include reference to the intent to provide for the financial management of the Water System and to include a formal name for the system, namely “The Homer Public Water System.”
HCC 14.08.020 “Definitions.”	PHCC 14.08.020 provides a consistent definition of “directly adjacent,” defines “surplus water,” “water connection line,” “water extension,” “spaghetti line,” “water filling station,” “on-site water connection line,” “off-site water connection line,” and provides a definition of “multiple-family dwelling.” It removes the definition for “certified service area” since the service area section for both water and sewer is incorporated into PHCC 14.01.010.
HCC 14.08.030 “Water connections and extensions.”	PHCC 14.08.075 “Operation of water valves, fire hydrants, and curb stops” incorporates the basic requirement in HCC 13.28.040 “Operation of water valves, fire hydrants, and curb stops” that only City personnel may operate these things.
HCC 14.08.040 “Private water systems-Connection Permits-Fees.”	PHCC 14.08.040 encompasses prohibition against connecting to the Water System without a permit.

HCC 14.08.037 “Water meters.”	PHCC 14.08.050 “Water meter installation”
HCC 14.08.050 “Water connections and extensions.”	PHCC 14.08.040 “Water connections and extension permit.”
HCC 14.08.060 “Frozen Pipes-City not liable.”	Moved to PHCC 14.08.070 “Frozen Pipes-City not liable.” No substantial changes.
HCC 14.08.070 “Discontinuance of supply.”	Moved to PHCC 14.08.080 and renamed “Discontinuance of water”. No substantial changes.
HCC 14.08.072 “Priority use of water.”	Moved to PHCC 14.08.090 “Priority use of water.” No substantial changes.
HCC 14.08.074 “Surplus water-Sale.”	Moved to PHCC 14.08.100 “Surplus water-Sale” simplified but not substantially changed.
HCC 14.08.076 “Water shortage or emergency declaration.”	Moved to PHCC 14.08.110 “Water shortage or emergency declaration” simplified the water shortage declaration process and requires a resolution by Council but does not require the hearing and other procedures that may derail a response to a water shortage.
HCC 14.08.077 “Water shortage or emergency-Interruption of sale of surplus water-Other measures.”	Moved to HCC 14.08.120 and simplified to provide the City Manager with the flexibility to react swiftly to a water shortage but ensure public awareness and notice.
HCC 14.08.078 “Water Shortage or emergency-Appeal.”	Moved to PHCC 14.08.130. No substantial changes
HCC 14.08.079 “Immunity for discretionary acts.”	Moved to PHCC 14.01.030 to apply to all public utility systems.

HCC 14.08.080 "Schedule of rates-Rules and regulations and HCC 14.08.090 "Schedule of Rates Outside of the City Limits."	Moved to PHCC 14.01.090 "Sewer and water rate schedule," which consolidates the rate provisions for sewer and water and provides that rates will be in a schedule adopted by Council.
HCC 14.08.091 "Service deposits."	Moved to PHCC 14.08.150 "Service deposits." No substantial changes but language was simplified to identify clear criteria for refund.
HCC 14.08.100 "Bulk Water Sales."	Moved to PHCC 14.08.160; No substantial changes.
HCC 14.08.105 "Resale of water."	Repealed.
HCC 14.08.110 "Permit for resale of water."	Moved to PHCC 14.08.170 "Water filling station permit." Requires a permit application but moves the technical criteria for the permit into the permit application itself. It does identify some of the types of criteria that will be included in the application to ensure applicants have notice of the nature and scope of the permit criteria.
HCC 14.08.130 "Permit suspension, revocation." HCC 14.08.140 "Board of appeals-Notice of appeal." HCC 14.08.150 "Appeals-procedure." HCC 14.08.160 "Appeal to superior court." HCC 14.08.170 "Violation-penalty."	Moved to PHCC 14.01.040 "Violation"; PHCC 14.01.050 "Utility permits-Appeal procedure"; and PHCC 14.01.060 "Utility permit appeals-Superior Court" and applied to all City\public utility systems.
HCC Chapter 14.12 "Water and Sewer Zone Connection Fee."	Repealed. This fee has not been charged and is not administered. The Code was adopted to reflect longstanding practice.

HCW/PSC