



City of Homer

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Office of the City Clerk

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Memorandum 20-097

TO: MAYOR CASTNER AND HOMER CITY COUNCIL

FROM: MELISSA JACOBSEN, MMC, CITY CLERK

DATE: JUNE 25, 2020

SUBJECT: INITIATION OF SPECIAL ASSESSMENT DISTRICT INFORMATION

If Resolution 20-060 to initiate the Seawall Improvement Special Assessment District for Armored Toe Improvement is adopted at the July 1, 2020 Special Meeting with five affirmative votes the Clerk's office will, pursuant to HCC 17.02.040:

- Schedule a meeting of record owners of real property in the proposed district (property owners), commonly referred to as the Neighborhood Meeting, for the evening of July 23rd.
- Mail notices of the Neighborhood Meeting with copies of the proposed improvement plan and map of the proposed district boundaries to property owners in the proposed district and publish the notice in the Homer News.
- Conduct the Neighborhood Meeting with the City Engineer and Public Works Director in attendance to discuss and answer questions from property owners regarding the proposed improvement plan.

Upon completion of the Neighborhood Meeting the Clerk's office will, pursuant to HCC 17.02.050:

- Schedule a public hearing for the September 28th Regular City Council Meeting.
- Not less than 60 days before the hearing, mail a notice of public hearing and property owner's right to object to property owners in the proposed district by certified mail, and publish the notice of public hearing at least twice in the Homer News. The deadline for property owners to respond is no later than the day before the date of public hearing on the proposed improvement plan.

At the September 28th Regular Meeting, Council will conduct the public hearing and consider a resolution regarding the approval of the Seawall Improvement Special Assessment District for Armored Toe Improvement.

HCC 17.02.050(b & c) outlines that if more than 50% of the property owners in the proposed district file timely written objections to the improvement plan, Council may not proceed unless the plan is revised. If less than 50% object, Council shall adopt a resolution approving the assessment if Council finds the improvement is necessary and benefits the properties assessed.

Attachments:

- HCC Title 17.02
- Notice of Right to Object Template

Chapter 17.02

SPECIAL ASSESSMENT DISTRICTS

Sections:

- 17.02.030 Purpose and authority for special assessment districts.
- 17.02.040 Initiation of special assessment district.
- 17.02.050 Creation of a special assessment district.
- 17.02.060 Contract – Approval of increased costs.
- 17.02.070 Special assessment roll.
- 17.02.080 Certification of assessment roll.
- 17.02.090 Payment.
- 17.02.100 Subdivision after levy of assessments.
- 17.02.120 Reassessment.
- 17.02.130 Objection and appeal.
- 17.02.140 Interim financing.
- 17.02.150 Special assessment bonds.
- 17.02.160 Time limit for special assessment districts.
- 17.02.170 Water and sewer connections required.
- 17.02.190 Hardship deferrals.
- 17.02.200 Payment in lieu of assessment.

17.02.030 Purpose and authority for special assessment districts.

- a. A special assessment district may be created for the purpose of acquiring, installing or constructing a capital improvement that primarily benefits real property in the district, in contrast to capital improvements that benefit the entire community and are paid for with general government resources or improvements that benefit a specific individual parcel.
- b. The purpose of this chapter is to prescribe the procedure for initiating a special assessment district, authorizing an improvement in a special assessment district, approving and levying special assessments, payment of special assessments, and the authorization of special assessment bonds, for public information and administrative guidance. [Ord. 19-23(S-2)(A) § 5, 2019].

17.02.040 Initiation of special assessment district.

- a. A special assessment district may be initiated by:
 - 1. A resolution, initiated by a Council member, the City Manager, or through the developer reimbursement application process set forth in this title and approved by a vote of not less than three-fourths of Council; or
 - 2. A petition signed by 50 percent of the total record owners who receive notice from the City Clerk's office that they will be assessed a portion of the costs of a single capital improvement.
- b. A benefitted property owner proposing a special assessment district by petition must file a complete special assessment petition application with the City Clerk. Special assessment petition applications are available at the City Clerk's office.

Upon receipt of a completed application and special assessment district filing fee, the City Clerk shall within 10 days:

- 1. Submit the application to the Public Works Director and Finance Director for review; and
- 2. Notify the applicant in writing that the application is either sufficient or insufficient and identify the insufficiencies.

Upon approval of an application, the Clerk shall then prepare the petition and distribute it by certified mail to all record owners of property in the proposed district no more than 30 days after the petition application is approved.

Petition signatures of the record owners of real property in the district to be benefitted must be received by the City Clerk within 60 days after the mailing of the petition.

c. Upon adoption of a resolution initiating a special assessment district, or the filing of a sufficient petition with the Clerk, the City Clerk shall:

1. Schedule a meeting of record owners of real property in the proposed district, notify the record owners by mail of the date, time and location of the meeting, and include a copy of the notice in the City's regular meeting advertisement;
2. Refer the proposed district to the Public Works Director, who shall prepare an improvement plan for the proposed district, to be provided at the neighborhood meeting. The proposed district improvement plan shall include:
 - a. The boundaries of the proposed district;
 - b. The design of the proposed improvement;
 - c. A cost estimate for the improvement;
 - d. The assessment allocation method used to calculate the amount owed by each record owner in the proposed district;
 - e. The percentage of the improvement cost to be assessed against properties in the district;
 - f. The time period over which assessments will be financed; and
 - g. Preliminary assessment roll for the proposed district.
3. The Public Works Director shall use the equal area method in calculating the assessment amount unless another method is specified in the improvement plan. [Ord. 20-12 § 1, 2020; Ord. 19-23(S-2)(A) § 5, 2019].

17.02.050 Creation of a special assessment district.

- a. Upon completion of an improvement plan under this chapter, the City Clerk shall set a time for a public hearing on the necessity of the improvement and proposed improvement plan. Notice of the hearing shall be published at least twice in a newspaper of general circulation in the City, and mailed via certified mail to every record owner of real property in the proposed district not less than 60 days before the hearing.
- b. A record owner of real property in the proposed district may file a written objection to the improvement plan with the City Clerk no later than the day before the date of the public hearing on the improvement plan. If owners of real property that would bear 50 percent or more of the assessed cost of the improvement file timely written objections, the Council may not proceed with the improvement unless it revises the improvement plan to reduce the assessed cost of the improvement that is borne by objecting record owners to less than 50 percent of the assessed cost of the improvement. If the resolution changes the district boundary in the improvement plan, the City Clerk shall notify all record owners of property included in the district under the improvement plan of the change.
- c. At the noticed date and time, Council shall hold a public hearing and shall adopt a resolution approving the assessment if Council finds, via resolution, that the improvement is necessary and benefits the properties that will be assessed. Council must also approve the proposed improvement plan. The resolution shall contain a description of the improvement, the estimated cost of the improvement, the percentage of the cost to be assessed against the properties in the district, and a description of the properties to be assessed.
- d. If record owners of all real property in the proposed assessment district waive in writing the notice, protest period and public hearing required under this section, the question of creating the district may be submitted to Council without such notice, protest period or public hearing. [Ord. 19-23(S-2)(A) § 5, 2019].

17.02.060 Contract – Approval of increased costs.

a. After a special assessment district has been created, the City shall contract for the construction of the improvement. If the City will own the improvement, it shall solicit bids for construction of the improvement. If the City will not own the improvement, it shall contract with the owner of the improvement to provide for its construction.

b. If the cost of constructing the improvement will exceed 15 percent of the estimated cost of construction identified in the improvement plan, the City shall not contract for the construction of the improvement without first notifying all record owners in the district via certified mail of the increased cost and providing record owners in the proposed district 30 days to object to the increase.

c. If the City receives written objections from record owners collectively bearing one-half or more of the cost of the improvement, the City may not contract to construct the improvement unless it can do so at an amount not more than 15 percent above the estimated cost of construction identified in the improvement plan. The City may still impose an assessment or levy taxes on the district for the costs of developing the improvement plan so long as the record owners approved the initiation of the district and the improvement plan. [Ord. 19-23(S-2)(A) § 5, 2019].

17.02.070 Special assessment roll.

a. After completion of the improvement, the City shall assess costs of the improvement and prepare an assessment roll stating for each property in the special assessment district the name and address of the record owner, Kenai Peninsula Borough parcel number, the legal description of the property, the amount assessed against the property, and the assessed value of the property as determined by the Borough Assessor.

b. Council shall certify the assessment roll by resolution.

c. Prior to certifying the assessment roll, Council shall hold a hearing. All record owners in the proposed district will have an opportunity to raise objections to the assessment roll at the hearing. At least 15 days before the hearing, the City Clerk shall send written notice of the hearing on the certification of the assessment roll by certified mail to each record owner appearing on the assessment roll and publish notice of the hearing in a newspaper of general circulation in the City. [Ord. 19-23(S-2)(A) § 5, 2019].

17.02.080 Certification of assessment roll.

After the hearing the Council shall correct any errors or inequalities in the assessment roll. If an assessment is increased, a new hearing shall be set and notice published, except that a new hearing and notice are not required if all record owners of property subject to the increased assessment consent in writing to the increase. Objection to the increased assessment shall be limited to record owners of properties whose assessments were increased. When the assessment roll is corrected, the Council shall confirm the assessment roll by resolution. The City Clerk shall record the resolution and confirmed assessment roll with the District Recorder. [Ord. 19-23(S-2)(A) § 5, 2019].

17.02.090 Payment.

a. In the resolution certifying the assessment roll, Council shall fix the time or times when assessments or assessment installments are due, the amount of penalty on a delinquent payment and the rate of interest on the unpaid balance of an assessment. An assessment that is to be paid in a single payment shall not be due before 60 days after billing.

b. Within 30 days after fixing the time when payment of the assessments is due, the Finance Director shall mail a statement to the record owner of each assessed property identifying the property and stating the assessment amount, the payment due date, and the amount of the penalty on a delinquent payment. Within five days after mailing the statements, the Finance Director shall publish notice of mailing the statements in a newspaper of general circulation in the City. [Ord. 19-23(S-2)(A) § 5, 2019].

17.02.100 Subdivision after levy of assessments.

a. Except as otherwise provided in this section or required by a governing tariff, a “subdivided property connection fee” shall be paid before subdivided lots may be connected to an improvement for which the original assessment was levied.

- b. The “subdivided property connection fee” shall only be required when the original assessment on the pre-subdivided lot was apportioned equally between parcels and was not apportioned based upon lot size or area.
- c. The amount of the “subdivided property connection fee” shall be equal to the amount of the original assessment adjusted by the increase in the number of parcels.
- d. If the original assessment was payable in installments, the City may enter into a written agreement for the payment of the connection fee in installments on terms that are substantially the same as those authorized for the payment of the original assessment, secured by a deed of trust on the parcel.
- e. Upon the subdivision of a property assessed as a single parcel in the natural gas district improvements where assessments were levied in an equal amount per parcel (i.e., without regard to parcel area, dimension or other characteristic), the assessment levied on the property that is to be subdivided shall be paid in full before the recording of the final plat. No parcel that results from the subdivision shall be subject to assessment for the improvements, but shall be charged for connecting to the improvements in accordance with the tariff of the public utility that provides natural gas service to the parcel.
- f. Subdivisions of lots included in the original assessment shall only incur the “subdivided property connection fee” when the subdivision of the lot occurs on or before the date the total assessment for the district is paid in full.
- g. All subdivided property connection fees collected under this section shall be deposited in the Homer accelerated water sewer program fund. [Ord. 19-23(S-2)(A) § 5, 2019].

17.02.120 Reassessment.

- a. Council shall within one year correct any deficiency in a special assessment found by a court, under the procedure for certification of the assessment roll in this chapter.
- b. Payments on the initial assessment are credited to the property upon reassessment. The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the assessment procedure. [Ord. 19-23(S-2)(A) § 5, 2019].

17.02.130 Objection and appeal.

- a. An assessment may only be contested by a person who filed a written objection to the assessment roll before its certification. Council’s decision regarding an objection to the assessment roll is final and may be appealed to the Superior Court within 30 days after the date of certification of the assessment roll.
- b. If no objection is filed or appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects. [Ord. 19-23(S-2)(A) § 5, 2019].

17.02.140 Interim financing.

- a. Council may provide by resolution or ordinance for the issuance of notes to pay the costs of an improvement from the special assessments for that improvement. The notes shall bear interest at a rate or rates authorized by the resolution or ordinance, and shall be redeemed either in cash or bonds for the improvement project.
- b. Notes issued against assessments shall be claims against the assessments that are prior and superior to a right, lien or claim of a surety on the bond given to the City to secure the performance of the contract for construction of the improvement, or to secure the payment of persons who have performed work or furnished materials under the contract.
- c. The Finance Director may accept notes against special assessments on conditions prescribed by the Council in payment of:
 - 1. Assessments against which the notes were issued in order of priority;
 - 2. Judgments rendered against property owners who have become delinquent in the payment of assessments;and

3. Certificates of purchase when property has been sold under execution or at tax sale for failure to pay the assessments. [Ord. 19-23(S-2)(A) § 5, 2019].

17.02.150 Special assessment bonds.

a. Council by ordinance may authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of the bonds shall be payable solely from the special assessments levied against property in the district. The assessment shall constitute a sinking fund for the payment of principal and interest on the bonds. The benefited property may be pledged by the Council to secure payment of the bonds.

b. On default in a payment due on a special assessment bond, a bondholder may enforce payment of principal, interest, and costs of collection in a civil action in the same manner and with the same effect as actions for the foreclosure of mortgages on real property. Foreclosure shall be against all property on which assessments are in default. The period for redemption is the same as for a mortgage foreclosure on real property.

c. Before the Council may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover a deficiency in meeting payments of principal and interest on bonds if the reason for the deficiency is nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund. [Ord. 19-23(S-2)(A) § 5, 2019].

17.02.160 Time limit for special assessment districts.

a. If five or more years elapse between the creation of a special assessment district and the City contracting for construction of the improvement, the City may not enter into the contract unless the Council by resolution extends the period for entering into the contract by not more than an additional five years.

b. Before the Council acts on a resolution under subsection (a) of this section, the City Clerk shall mail notice of the resolution to each current record owner of property listed on the preliminary assessment roll that the City will not contract for construction of the improvement in the district unless the resolution is adopted. The notice also shall include an updated copy of the preliminary assessment roll. [Ord. 19-23(S-2)(A) § 5, 2019].

17.02.170 Water and sewer connections required.

Except as otherwise provided in the code, the owner of property in a water or sewer special assessment district that contains an occupied building shall connect to the improvement constructed in the district within three years after the date that the resolution confirming the assessment roll for the district becomes final. [Ord. 19-23(S-2)(A) § 5, 2019].

17.02.190 Hardship deferrals.

a. A person may obtain a deferment of assessment payments under this section if the person:

1. Has an annual family income that is less than 125 percent of the current U.S. Health and Human Services Poverty Guidelines for Alaska;

2. Is the record owner of the assessed property, and permanently resides in a single-family dwelling on the property; and

3. Is not determined by the City, after notice and hearing, to have been conveyed the property primarily for the purpose of obtaining the deferment.

b. A person seeking deferment of an assessment payment shall file a written application with the Finance Director supported by documentation showing that the applicant meets the criteria in subsection (a) of this section. A person requesting an assessment payment deferment the first year the assessment is levied must file an application for deferment with the City no more than 15 days after receiving the initial assessment. A person requesting an assessment payment deferment under this section in any year after the first year must file an application for deferment no later than April 15th of the year for which the deferment is sought. A person must file an application each year for which deferment is sought and shall be required to prove eligibility for deferment as of January 1st of each year for which a deferment is requested. Within the same year, the City for good cause shown may waive the claimant's failure to make timely application and approve the application as if timely filed.

c. A person who receives an assessment payment deferment shall execute a deed of trust on the property subject to assessment, together with a promissory note payable to the City on demand, to secure the eventual payment of the deferred payment.

d. A deferred assessment payment shall be immediately due and payable upon the earlier to occur of the following events:

1. The sale or lease of the assessed property; or
2. The death of both the deferred assessment applicant and the applicant's surviving spouse, if any.

e. Except for assessments imposed upon the natural gas assessment district, hardship deferrals are not available from assessment payments for the infrastructure of a privately owned utility. [Ord. 19-23(S-2)(A) § 5, 2019].

17.02.200 Payment in lieu of assessment.

a. The purpose of an in lieu of assessment is to allow the City to respond to changing circumstances and allow a lot outside a special assessment district access to an improvement after the formation of the District. It provides a mechanism for the City to be compensated for access to the improvement while maintaining an incentive for the formation of future special assessment districts. An in lieu of assessment should be used infrequently and only in furtherance of this purpose.

b. A payment in lieu of assessment may be available to owners of property outside a special assessment district who want to connect to the improvement funded by a special assessment district. In order to qualify for connection to an improvement under this section, the record owner of the property and the City shall enter into a written agreement. The record owner shall agree in writing to:

1. Pay the full and actual costs of extending the benefit of the improvement onto their property; and
2. Pay in full the property's prorated share of the assessed improvement.

c. The Public Works Director retains authority to deny a request for extension of an improvement under this section.

d. A payment in lieu of assessment must be paid in an equal or shorter period than the term of the original assessment.

e. Property accessing an improvement under this section may be included in a special assessment district for the same service created in the future. If a property is included in an assessment district under this subsection, the property will receive a credit towards the total assessment equal to (1) the amount of the "in lieu of assessment" already paid for the property or (2) the amount of the assessment levied on the property in the future special assessment district, whichever amount is less. [Ord. 19-23(S-2)(A) § 5, 2019].



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CITY OF HOMER

NOTICE OF RIGHT TO OBJECT

_____ IMPROVEMENT
SPECIAL ASSESSMENT DISTRICT

SPECIAL ASSESSMENT DISTRICT:

_____ IMPROVEMENT SPECIAL ASSESSMENT DISTRICT, affecting the property described on the Preliminary Assessment Roll.

On _____ the Homer City Council Initiated the _____ Improvement Special Assessment District. If the assessment district is approved and project construction is approved, the cost of the improvements will be assessed against and become a lien on the property benefited by the improvements.

PUBLIC HEARINGS:

A Public hearing on the assessment, necessity of the improvements, and on the proposed improvement plan are scheduled before the Homer City Council at **6:00 p.m.** on _____ in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska via Zoom Webinar. Any person may testify at the public hearing.

NOTICE OF RIGHT TO OBJECT:

The owner of property to be assessed may file a written objection to the improvement plan no later than **the day before the date of the scheduled public hearing**. Non-responses during the objection period shall be deemed to be non-objections.

If owners of real property that would bear 50 percent or more of the assessed cost of the improvement file timely written objections, the Council may not proceed with the improvement unless it revises the improvement plan to reduce the assessed cost of the improvement that is borne by objecting record owners to less than 50 percent of the assessed cost of the improvement. If the resolution changes the district boundary in the improvement plan, the City Clerk shall notify all record owners of property included in the district under the improvement plan of the change.

At the noticed date and time, the Council shall hold a public hearing on the necessity of the improvement and proposed improvement plan. After the public hearing, the Council shall act upon a resolution determining to proceed with the proposed improvement. The resolution shall find that the improvement is necessary, of benefit to the properties to be assessed, and if the district is initiated by petition, that the petition is in proper form and bears sufficient signatures. The findings of the Council are conclusive. The resolution shall contain a description of the improvement, the

estimated cost of the improvement, the percentage of the cost to be assessed against the properties in the district, and a description of the properties to be assessed.

OBJECTIONS MUST BE IN WRITTEN FORM AND FILED AT THE OFFICE OF THE CITY CLERK NO LATER THAN THE DAY BEFORE THE DATE OF THE SCHEDULED PUBLIC HEARING

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Office of the City Clerk
491 E. Pioneer Avenue
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Email: clerk@ci.homer.ak.us

Dated this _____ day of _____, 2020

Renee Krause, MMC, Deputy City Clerk

Enc: Notice of Public Hearing
Preliminary Assessment Roll
Statement of Objection