CC-26-143

# MEMORANDUM

**Resolution 26-051, A Resolution of the City Council of Homer, Alaska Initiating the Mallard Way Sewer Extension Special Assessment District (SAD) through the Developer Reimbursement Program and Authorizing the City Manager to Negotiate and Execute the Developer Reimbursement Agreement. City Manager/Public Works Director.**

| | |
|---|---|
| **Item Type:** | Backup Memorandum |
| **Prepared For:** | Mayor Lord and Homer City Council |
| **Date:** | July 14, 2026 |
| **From:** | Melissa Jacobsen, City Manager |

**Background:** Mike Arno owns two properties on Mallard Way and has made two attempts at initiating a sewer main extension special assessment district (SAD) in the area using the petition process and they have failed due to insufficient response by property owners in the proposed district. The SAD initiation process is outlined in Homer City Code (HCC) 17.02.

HCC 17.18 provides for a Developer Reimbursement Program (DRP) where a developer can apply for a resolution from Council to initiate a SAD. The DRP eliminates the petition process and if it's approved by Council, it proceeds to the neighborhood meeting and public hearing steps in the process.

**Discussion:** Mr. Arno applied to the City Clerk's office using the DRP and Resolution 26-051 is provided for your consideration. This is the first application we've received since this code was created in 2019 and has been a challenging process for Mr. Arno and for staff. This is because prior to 2019 a few of these deferred assessment districts were accomplished without specific direction in code, and in working through the code, there are significant changes from the way we used to do things. In HCC 17.18 there are references to the process outlined in 17.02 that staff feel could be clearer, and we've worked with the City Attorney to clarify what applies. In addition, there is no reference to deferred assessments, and the reimbursement process is not direct reimbursement from the City to the Developer.

Staff is not opposed to creation of this district and looks forward to working with Mr. Arno on the project if it comes to fruition. The request is for sewer only because Mr. Arno owns the two properties that are immediately adjacent to East End Road, Puffin Place and Mallard Way. He can access water from East End Road, however the gravity sewer connection needs to come in through Mallard Way. If the properties in the proposed district want water in the future there is the possibility of hauled water, or another SAD could be considered to install a water main.

**Next steps:** If Council adopts the resolution initiating the SAD and approving the Developer Reimbursement Agreement, the process per code is as follows:

- The City Clerk will schedule a neighborhood meeting with the property owners in the proposed district.
- The City Clerk will set a time for a Public Hearing on the necessity of the improvement, notice it in the newspaper, and send a certified mailing to property owners in the district not less than 60 days before the hearing.

- Record owners of real property may file written objections and if owners that would bear 50% or more of the assessed cost file timely written objections, Council may not proceed unless the plan is revised and adequate support is achieved.
- If there is no written objection or less than 50% objections are filed, a Public Hearing will be noticed for a resolution approving the assessment and finding the improvement is necessary for the properties that will be assessed.
- Upon completion of the improvement and certification of the final assessment roll, a copy of the resolution adopting the final assessment roll will be filed with the State Recorder's office and attached to each benefitted property.

Developer reimbursement is defined in 17.18 and key points in that section include

- The City may collect, but is not required to collect, the amounts assessed to any benefited property for the pro rata share of the developer's costs of construction.
- The City shall transfer any payments received by the City in payment for the assessments within the district.
- The City will disburse any payments received from property owners in the district to the developer within 90 days from the date the City collects or receives the assessment payment.
- The pro rata payment must be paid before any benefited property connects to or uses the municipal improvement.
- No benefited property is permitted to connect to or use the municipal improvement without first making the pro rata payment.

**Recommendation:** Adopt Resolution 26-051 and initiate the Mallard Way Sewer Improvement SAD.

**Attachments:**
Arno Application for Developer Reimbursement Program
Proposed Mallard Way Sewer Improvement SAD Boundaries
Mallard Way Plat
Draft Developer Reimbursement Agreement
HCC 17.18 and 17.02

City of Homer
www.cityofhomer-ak.gov

Office of the City Clerk
491 East Pioneer Avenue
Homer, Alaska 99603
clerk@cityofhomer-ak.gov
(p) 907-235-3130
(f) 907-235-3143

# SPECIAL RESOLUTION REQUEST FORM

**Applicant & Proposed Assessment Information**

Name: Mike & Keard-Arno MK Properties Phone: 907 235 3643 Cell: 907 299 0427

Address: PO. Box 1772 City: Homer State: AK Zip: 99603

Email: 60gball@Gmail.com Fax:

Please check the type of Municipal Improvement Special Assessment District Resolution is being requested:

☐ Road Reconstruction & Paving Special Assessment District ☐ Water Only Assessment District

☐ Water & Sewer Special Assessment District ☒ Sewer Only Special Assessment District

Cost Estimate for the Improvements to be constructed: $242,500.00

Proposed Method of Construction Used to Calculate the Amount Claimed by Each Record Owner of Benefited Property in the proposed district: Applicant will construct, total cost to be shared between 9 benefitting properties.

Percentage of the Improvement Cost to be Assessed Benefited Properties within the District: 77.78 %

Percentage of the Improvement Cost to be Assessed Developer's property and or project: 22.22 %

Boundaries of the proposed district. Please list the streets to be included in the proposed and be as specific as possible:
Mallard Way: Design & construct approx 500 LF sewer main along Mallard Way. The new sewer main will connect to an existing sewer main that runs North to South along the eastern border of this subdivision and along the West border of Paul Banks elementary school property.

**OFFICE USE ONLY**

☒ $100 Application Fee Received – Attach Copy

☐ Approved & Notification sent to Petitioner – Date ______ ☐ Rejected - Reason for Rejection: ______

☒ Submitted Proposed District to PW Director for Final Boundaries: ______

☐ Petition Created and Sent via Certified Mail: 2 faild SAD's

☐ Petition is Sufficient (50% of Record owners) ☐ Petition is Not Sufficient

- Neighborhood Meeting Scheduled: ______
- Neighborhood Meeting Advertised: ______
- Public Hearing Date: ______
- 60 Day Notification of Hearing: ______

- Notification to Petitioner: ______

☐ Developer Reimbursement Agreement

- Approved


Proposed Boundary

Proposed Parcels

N

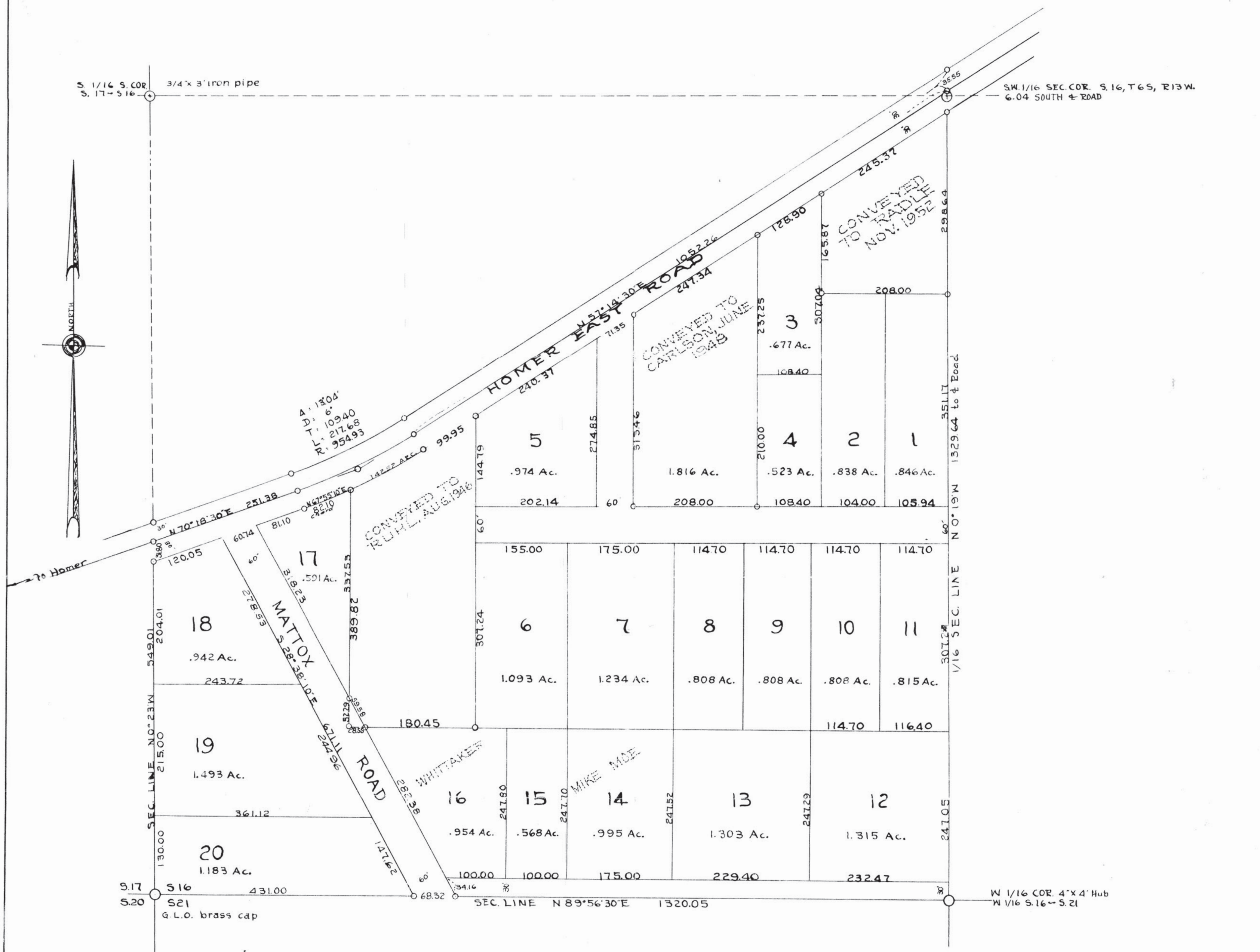
0 62.5 125 250 375 500 US Feet

0 0.02 0.04 0.09 0.14 Kilometers

# Mallard Way Developer Reimbursement Program Proposal

Department of Public Works

6/12/2026




No. 3017
FILED FOR RECORDING
July 12, 1956 at 3:45 P.M.
Vol. 8 Page 283
Homer Recording Precinct
Terr. of Alaska
At the Request of J. C. Reynolds

# MATTOX SUBD.

ALL OF THE S.W. 1/4, OF THE S.W. 1/4, Section 16, T6 S., R 13 W. LAYING SOUTH OF THE ROAD

SURVEYED BY: DAVID L. BEAR, REGISTERED TERR. LAND SURVEYOR REG. JUNE 1949

DATE: JUNE, 1956

SCALE: 1" = 100'

When Recorded Return Document to:

City Clerk's Office
City of Homer
491 E Pioneer Avenue
Homer, Alaska 99603
Homer Recording District

# Developer Reimbursement Agreement
## Mk Properties, LLC
### 2026 Mallard Way Sewer Main Extension

This Agreement, made and entered into by and between the **City of Homer**, Alaska, a Municipal Corporation, hereinafter called the "City"; and **MK Properties, LLC**, P.O. Box 1772, Homer, Alaska 99603, hereinafter called the "Developer";

The Developer proposes to construct a municipal improvement consisting of an 8" sewer main serving nine benefitting properties, in accordance with City of Homer Standard Construction Specifications, 2011 Edition. The City Council has approved or will approve a Special Assessment District and this reimbursement agreement pursuant to Homer City Code 17.02 and 17.18. The parties desire to set the terms of construction, acceptance, reimbursement, and assessment of the benefiting properties.

The parties agree as follows:

1. Description of the Improvement:
   Developer shall design and construct the Mallard Way sewer main in accordance with the approved plans and specifications. The estimated cost of construction is $242,500. The final reimbursement cost shall be the Developer's actual total cost of construction as defined in HCC 17.18.020.

2. Benefiting Properties and Pro-Rata Shares:
   The following parcels are identified as benefiting properties

   - 17906201 MK Properties $26,944.44
   - 17906303 MK Properties $26,944.44
   - 17906304 Thompson $26,944.44
   - 17906305 Meredith $26,944.44
   - 17906216 Essex $26,944.44
   - 17906205 Weisser $26,944.44

- 17906206 Wieber $26,944.44
- 17906207 Stallard $26,944.44
- 17906208 Purcell $26,944.44

3. City Responsibilities:
   Upon:
   (a) Completion of the improvement in accordance with approved plans and City Standards as outlined in the Construction Agreement, and
   (b) City inspection and final acceptance of the improvement.

a. If Council approves the district and the developer reimbursement agreement under the procedures set forth in Chapter 17.02 HCC, and upon completion of the approved municipal improvement in accordance with the City's standards and acceptance of the same by the City, and only to the extent permitted by law, the City shall transfer any payments received by the City in payment for the assessments within the district. The City will disburse any payments received from property owners in the district to the Developer within 90 days from the date the City collects or receives the assessment payment.

b. The City may collect, but is not required to collect, the amounts assessed to any benefited property for the pro rata share of the Developer's costs of construction. The pro rata payment must be paid before any benefited property connects to or uses the municipal improvement. No benefited property is permitted to connect to or use the municipal improvement without first making the pro rata payment. The pro rata payment is in addition to any connection fees, service fees, or other fees that may be charged for connection and/or use of the municipal improvement, or any other fees chargeable by the City under the code for the construction of a particular municipal improvement.

c. The City accepts no liability to collect any pro rata payment from the owners of benefited property, or in the event of nonpayment, to pursue enforcement for nonpayment of any pro rata payment, or to disconnect or remove any benefited property from the municipal improvement for nonpayment of a pro rata payment. The City assumes no liability or responsibility regarding the enforceability of any reimbursement agreement, or the Developer's ability to seek a pro rata payment. To the extent permitted by law, enforcement matters relating in any way to a pro rata payment, or recovery or reimbursement of any costs of construction, shall be the sole responsibility of the Developer.

4. Developer Responsibilities:

   - Design and construct the improvement at the Developer's sole cost and risk.
   - Provide as-built drawings, a warranty guarantee, and all documents required for City acceptance of the improvement.
   - Comply with all permitting, insurance, bonding, and indemnification requirements of the City.

- Enter into a Construction Agreement with the City prior to commencing construction of the improvement. The requirements of the Construction Agreement are expressly incorporated as requirements of this Agreement.

5. Terms and Termination of the Agreement:

   This Agreement remains in effect until the Developer is fully reimbursed for the shares of the benefiting properties, or until such a time the Construction Agreement and warranty period of the improvement has been satisfied, whichever occurs first.

6. General Provisions:
   - This Agreement is subject to all provisions of the Homer City Code Title 17, Chapters 17.02 and 17.18, which are expressly incorporated as requirements of this Agreement.
   - Developer indemnifies and holds the City harmless from claims arising from or relating to construction of the improvement or enforcement for non-payment of any pro rata payment from owners of benefited properties.
   - Governing Law: State of Alaska. Any litigation regarding this agreement shall be filed in the court for the State of Alaska, Third Judicial District at Homer.
   - Amendments to this Agreement must be in writing and approved by the Homer City Council.

IN WITNESS WHEREOF, we, the parties hereto, each herewith subscribe the same this _______day of ________, 2026.

| **CITY OF HOMER** | **DEVELOPER** |
| --- | --- |
| By: ________________________________ | By:_____________________________ |
| Title: ______________________________<br>Public Works Director | Title: _________________________<br>Mike Arno on behalf of MK Properties LLC |

STATE OF ALASKA )
) ss.
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this ____ day of _________, 2026, **Daniel Kort** appeared before me, the undersigned Notary Public, known to me to be the **Public Works Director** of **City of Homer, Alaska**, a municipal corporation organized and existing under the laws of the State of Alaska, and has acknowledged to me that he executed this **Construction Agreement** on behalf of the City of Homer for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and seal the day and year first hereinabove written.

________________________________
Notary Public in and for Alaska
My Commission Expires:_________

_________________________ )
) ss.
_________________________ )

THIS IS TO CERTIFY that on this ____ day of ___________, 2026, **Michael Arno, whom is personally known or presented ___________________ as identification,** appeared before me, the undersigned Notary Public, and acknowledged to me that he executed this **Construction Agreement** as the Developer for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first hereinabove written.

(SEAL) ________________________________

Notary Public

My commission expires: __________

# Chapter 17.02 SPECIAL ASSESSMENT DISTRICTS

Sections:



## 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 as well as the Public Works Director's findings that explain why the recommended assessment allocation method will create the fairest distribution of costs;

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, as defined in HCC 17.01.010, is specified in the improvement plan. [Ord. 22-11(S)(A) § 2, 2022; 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.

a. Except as otherwise provided in this 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.

b. Property owners and developers interested in initiating water special assessment districts should review the provisions of HCC 14.08.040, which provides that "[e]xcept as otherwise provided in the Homer City Code, permits for connections to the water system or an extension of a water main to properties that are not served with City sewer service will not be issued." Thus, special assessment districts for water main extensions will only be formed (1) where City sewer is available or (2) if a special assessment district for a sewer main extension is also formed. [Ord. 20-74 § 1, 2020; 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].

# Chapter 17.18
# DEVELOPER REIMBURSEMENT PROGRAM

Sections:



**17.18.010 Purpose.**

It is the intent of this chapter to provide incentive through reimbursement and access to the City's special assessment district process and procedures to developers expanding access to public utilities and capital improvements within the boundaries of the City. [Ord. 19-23(S-2)(A) § 5, 2019].

**17.18.020 Definitions.**

In this chapter, unless otherwise provided, or the context otherwise requires, the following words and phrases shall have the meaning set forth below:

"Benefiting property" means one or more parcel(s) of real property which are adjacent to, will benefit from, or are likely to require connection to a municipal improvement.

"Cost of construction" means the developer's actual direct cost of constructing a municipal improvement.

"Developer" means an owner of real property who is developing his, her, or its real property.

"Developer reimbursement agreement" means a written contract between the City, as approved by the Council, and one or more developers, which provides for reimbursement of a portion of the costs of construction of a municipal improvement by a developer, and the method for assessing the pro rata share of the costs of construction of a municipal improvement to benefited property.

"Municipal improvement" means water, sewer, electrical, and/or stormwater systems or other capital improvements which have been designed and constructed according to City standards, approved by the City, accepted by the City, and provide potential benefits and/or service to benefited property. [Ord. 19-23(S-2)(A) § 5, 2019].

**17.18.030 Developer requested special assessment district.**
a. A developer may request a resolution of the Council approving a special assessment district in connection with the construction of a municipal improvement as set forth in HCC 17.02.040.

b. A request for special assessment district initiated by a developer shall be filed on the special assessment district resolution request form, which is available from the City Clerk's office.

c. The developer's request must include all information required by the special assessment district resolution request form, including, without limitation, a description of the boundaries of the district requested and the municipal improvement the developer intends to construct or extend, a cost estimate for the improvements to be constructed, the proposed method used to calculate the amount claimed by each record owner of benefited property in the proposed district, the percentage of the improvement cost to be assessed to benefited properties within the district, and the percentage of the improvement cost to be assessed to the developer's property and/or project.

d. Upon adoption of a resolution of Council finding there is a necessity for the special assessment district identified by the developer in the developer's application and the initiation of the special assessment district process under this chapter, a developer reimbursement agreement must also be presented to Council for approval. This agreement must include the terms and conditions of the improvement plan and the proposed construction and installation terms by the contractor. [Ord. 19-23(S-2)(A) § 5, 2019].

**17.18.040 Developer incentive and reimbursement program.**
a. If Council approves the district and the developer reimbursement agreement under the procedures set forth in Chapter 17.02 HCC, and upon completion of the approved municipal improvement in accordance with the City's standards and acceptance of the same by the City, and only to the extent permitted by law, the City shall transfer any payments received by the City in payment for the assessments within the district. The City will disburse any payments received from property owners in the district to the developer within 90 days from the date the City collects or receives the assessment payment.

b. The City may collect, but is not required to collect, the amounts assessed to any benefited property for the pro rata share of the developer's costs of construction. The pro rata payment must be paid before any benefited property connects to or uses the municipal improvement. No benefited property is permitted to connect to or use the municipal improvement without first making the pro rata payment. The pro rata payment is in addition to any connection fees, service fees, or other fees that may be charged for connection and/or use of the municipal improvement, or any other fees chargeable by the City under the code for the construction of a particular municipal improvement.

c. The City accepts no liability to collect any pro rata payment from the owners of benefited property, or in the event of nonpayment, to pursue enforcement for nonpayment of any pro rata payment, or to disconnect or remove any benefited property from the municipal improvement for nonpayment of a pro rata payment. The City assumes no liability or responsibility regarding the enforceability of any reimbursement agreement, or the developer's ability to seek a pro rata payment. To the extent permitted by law, enforcement matters relating in any way to a pro rata payment, or recovery or reimbursement of any costs of construction, shall be the sole responsibility of the private developer. [Ord. 19-23(S-2)(A) § 5, 2019].

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