

# April Calendar

| April 2016 |                              |     |     |     |     |     |
|------------|------------------------------|-----|-----|-----|-----|-----|
| Sun        | Mon                          | Tue | Wed | Thu | Fri | Sat |
|            |                              |     |     |     | 1   | 2   |
| 3          | 4                            | 5   | 6   | 7   | 8   | 9   |
| 10         | 11                           | 12  | 13  | 14  | 15  | 16  |
| 17         | 18<br>Revenue<br>Worksession | 19  | 20  | 21  | 22  | 23  |
| 24         | 25<br>CC                     | 26  | 27  | 28  | 29  | 30  |

More Calendar: [May](#), [Jun](#), [PDF Calendar](#)

# May Calendar

| May 2016 |   |     |               |     |     |        |
|----------|---|-----|---------------|-----|-----|--------|
| ◀ April  |   |     |               |     |     | June ▶ |
| Sun      | Mon   | Tue | Wed           | Thu | Fri | Sat    |
| 1        | 2   | 3   | 4             | 5   | 6   | 7      |
| 8        | 9<br>CC   | 10  | 11            | 12  | 13  | 14     |
| 15       | 16<br>Revenue Work<br>Session                                     | 17  | 18            | 19  | 20  | 21     |
| 22       | 23<br>CC<br>Last Meeting to<br>Introduce Property<br>Tax Increase | 24  | 25            | 26  | 27  | 28     |
| 29       | 30  | 31  | <b>Notes:</b> |     |     |        |

# June Calendar

| June 2016 |   |     |     |     |        |     |
|-----------|---|-----|-----|-----|--------|-----|
| Sun       | Mon   | Tue | Wed | Thu | Fri    | Sat |
|           |   |     | 1   | 2   | 3      | 4   |
| 5         | 6   | 7   | 8   | 9   | 10     | 11  |
| 12        | 13<br>CC<br>Last Night to<br>Introduce Ballot<br>Ord.<br>2 <sup>nd</sup> Reading<br>Property Tax Ord. | 14  | 15  | 16  | 17     | 18  |
| 19        | 20<br>Revenue Work<br>Session   | 21  | 22  | 23  | 24     | 25  |
| 26        | 27<br>CC<br>2 <sup>nd</sup> Reading of<br>Ballot ? Ordinance  | 28  | 29  | 30  | Notes: |     |

## Council Outreach

| Organization                                    | Meeting Type                       | Meeting Schedule  | Contact   |
|---|------------------------------------|---|---|
| American Legion Auxiliary                       | Membership Meeting                 | Third Thursday of the month 6pm   | Darlene Sheldon 235-6789  |
| Benevolent & Protective Order of the Elks USA   | Membership & Board Meetings        | Regular Meeting First & Third Tuesday's @ 7 p.m. / Trustee Meetings Monday Prior to Regular Meeting. Non-members are not allowed at meetings but may have someone to speak at it. | Jan Jonker 435-7652   |
| Friends of the Homer Public Library             | Board Meeting                      | Second Wednesday of every month   | Mercedes Harness - 435-3195<br>Mercedes@friendshomerlibrary.org |
| Homer Chamber of Commerce                       | Board Meeting                      | Fourth Thursday of month at 12 p.m. Membership meeting annual Fourth Tuesday of January at the Bidarki 12 p.m.  | Karen Zak - 235-7740<br>Exdir@homerlaska.org                    |
| Homer Council on the Arts                       | Board Meeting                      | Third or sometimes Fourth Tuesday of the month  | Peggy Paver -<br>director@homerart.org                          |
| Homer Senior Citizens Inc.                      | Board Meeting                      | Third Wednesday of every month at 1:30 p.m.   | Keren Kelley - 235-7655<br>keren@homerseniors.com               |
| Homer Society of Natural History                | Board Meeting                      | Third Tuesday of every month at 4 p.m.  | Diane Converse - 435-3333<br>director@prattmuseu.org            |
| Kachemak Board of Realtors                      | Membership Meeting                 | Third Wednesday of every month at the Bidarki (upstairs) 12 p.m.  | Gina Pelaia - 399-6183<br>gpelaia@msn.com                       |
| Kachemak Shellfish Mariculture Association Inc. | Membership Meeting                 | Annual Membership Third Sat. of May   | Marie Bader - 350-1436  |
| Rotary Club of Homer Kachemak Bay               | Membership Meeting                 | Every Thursday at 12 p.m.   | Craig Forrest   |
| Snowmads Snow Machine Club                      | Membership Meeting & Board Meeting | Board meeting Second Thursday of every month. General Membership meetings third Thursday in Nov., Jan., Feb., and Mar.  | Cristin Roehl -<br>cristinroehlsnowmads@gmail.com               |

## Council Outreach

|                           |               |   |  |
|---------------------------|---------------|---|--|
| Marine Trades Association | Board Meeting | Monthly - Generally 1st Thursday of month 5:30 p.m. (Homer Foundation, Harbor Masters Office, or Nomar) | Kate Mitchell<br>homermarinetrades@gmail.com |
|---------------------------|---------------|---|--|

| Municipality                          | 2015 MILL Rate |
|---------------------------------------|----------------|
| <b>10 Seldovia</b>                    | <b>9.85</b>    |
| 10 Seldovia                           | 4.6            |
| 11 Seldovia RSA                       | 0.75           |
| 50 Borough                            | 4.5            |
| <b>20 Homer</b>                       | <b>11.3</b>    |
| 20 Homer                              | 4.5            |
| 50 Borough                            | 4.5            |
| 52 So. Hospital                       | 2.3            |
| <b>30 Kenai</b>                       | <b>8.86</b>    |
| 30 Kenai                              | 4.35           |
| 50 Borough                            | 4.5            |
| 51 Cent. Hosp.                        | 0.01           |
| <b>40 Seward</b>                      | <b>8.37</b>    |
| 40 Seward                             | 3.12           |
| 43 Sew/Bear Cr. Flood                 | 0.75           |
| 50 Borough                            | 4.5            |
| <b>68 Anchor Point Fire/Emergency</b> | <b>10.95</b>   |
| 68 Fire/Emergency                     | 2.75           |
| 50 Borough                            | 4.5            |
| 52 South Hosp.                        | 2.3            |
| 67 Road Maint.                        | 1.4            |
| <b>70 Soldotna</b>                    | <b>7.66</b>    |
| 70 Soldotna                           | 0.5            |
| 50 Borough                            | 4.5            |
| 52 South Hosp.                        | 0.01           |
| 67 Road Maint.                        | 2.65           |
| <b>80 Kachemak</b>                    | <b>7.8</b>     |
| 80 Kachemak                           | 1              |
| 50 Borough                            | 4.5            |
| 52 South Hosp.                        | 2.3            |
| <b>81 Kachemak Emergency Serv.</b>    | <b>10.8</b>    |
| 81 Kachemak EMS                       | 2.6            |
| 50 Borough                            | 4.5            |
| South Hosp.                           | 2.3            |
| Road Maint.                           | 1.4            |

Property Tax by July 15th

| Municipality            | Sales Tax     |              | Bed Tax |           |
|-------------------------|---------------|--------------|---------|-----------|
|                         | Rate*         | Revenues     | Rate*   | Revenues  |
| Kenai Peninsula Borough | 3%            | \$30,040,682 | 0.0%    | 0         |
| Homer                   | 4.5%          | \$7,484,925  | 0.0%    | 0         |
| Kachemak                | 0.0%          | 0            | 0.0%    | 0         |
| Kenai                   | 3.0%          | \$7,136,866  | 5%      | 0         |
| Seldovia                | 2.5%/4.5% (1) | \$117,065    | 0.0%    | 0         |
| Seward                  | 4.0%          | \$4,535,707  | 4.0%    | \$421,980 |
| Soldotna                | 3.0%          | \$7,641,757  | 0.0%    | 0         |

\* Local municipality rates may be in addition to borough rates, or exclusive of; please check with the local municipality for these details.

(1) Seasonal Sales Tax rate varies according to the time of year, rates expressed for periods Oct-Marc and Apr-Sep respectively.

## City of Homer Fund Balance Summary

Unaudited

| <u>GL</u>                    | <u>Fund Code</u> | <u>Description</u>             | <u>12/31/2014</u> | <u>12/31/2015</u> |
|------------------------------|------------------|--------------------------------|-------------------|-------------------|
| <b>DONNATION FUNDS</b>       |                  |                                |                   |                   |
| 805-0000-2710                | 805              | Community Recreation Program   | 492               | 517               |
| 807-0000-2710                | 807              | SUSTAINABILITY -GLOBAL WARMING | 14,781            | 14,781            |
| 804-0000-2710                | 804              | ANIMAL SHELTER DONATIONS       | 335               | 335               |
| 803-0000-2711                | 803              | LIBRARY DONATIONS FUND         | 32,593            | 32,724            |
| 802-0000-2710                | 802              | FIRE DONATIONS FUND            | 97,195            | 102,087           |
|                              |                  | <b>TOTAL</b>                   |                   | <b>150,443</b>    |
| <b>OTHER FUNDS</b>           |                  |                                |                   |                   |
| 806-0000-2710                | 806              | PERMANENT FUND                 | 2,031,828         | 2,042,608         |
| 620-0000-2710                | 620              | REVOLVING ENERGY FUND          | 107,046           | 141,341           |
| 610-0000-2710                | 610              | ISF - LEAVE CASH OUT           | 7,386             | (114,317)         |
| 600-0000-2710                | 600              | HEALTH INSURANCE FUND          | 872,969           | 727,305           |
| 808-0000-2710                | 808              | Ocean Dr LP Special Assessment | 67,505            | 92,307            |
| 173-0000-2710                | 173              | SEAWALL                        | 23,887            | 25,327            |
| 175-0000-2710                | 175              | COH Natural Gas Dist           | (281,413)         | 789,866           |
|                              |                  | <b>TOTAL</b>                   |                   | <b>3,704,437</b>  |
| <b>PORT AND HARBOR FUNDS</b> |                  |                                |                   |                   |
| 460-0000-2710                | 460              | CRUISE SHIP LANDING TAX RESERV | 669               | 28,519            |
| 456-0000-2710                | 456              | P & H DEPRECIATION RESERVES    | 1,284,301         | 3,518,888         |
| 452-0000-2710                | 452              | HARBOR FLEET RESERVES          | 102,892           | 130,735           |
| 415-0000-2710                | 415              | PORT & HARBOR PROJECTS         | 472,161           | (2,391,488)       |
| 400-0000-2710                | 400              | PORT & HARBOR ENTERPRISE FUND  | 9,698,996         | 5,833,697         |
|                              |                  | <b>TOTAL</b>                   |                   | <b>7,120,350</b>  |
| <b>WATER AND SEWER FUNDS</b> |                  |                                |                   |                   |
| 256-0000-2710                | 256              | W/S DEPRECIATION RESERVES      | 4,080,331         | 4,112,150         |
| 215-0000-2710                | 215              | WATER / SEWER PROJECT FUND     | (1,034,427)       | (140,306)         |
| 205-0000-2710                | 205              | HAWSP                          | (4,181,689)       | (4,840,910)       |
| 200-0000-2710                | 200              | WATER / SEWER SPECIAL REVENUE  | 2,906,092         | 3,169,432         |
|                              |                  | <b>TOTAL</b>                   |                   | <b>2,300,366</b>  |
| <b>HART FUNDS</b>            |                  |                                |                   |                   |
| 165-0000-2710                | 165              | HART TRAILS                    | 543,793           | 624,512           |
| 160-0000-2710                | 160              | HART CAPITAL PROJECTS FUND     | 6,994,278         | 7,449,236         |
| 155-0000-2710                | 155              | HART ASSESSMENTS FUND          | 373,425           | 396,794           |
|                              |                  | <b>TOTAL</b>                   |                   | <b>8,470,543</b>  |
| <b>GENERAL FUND FUNDS</b>    |                  |                                |                   |                   |
| 156-0000-2710                | 156              | DEPRECIATION RESERVES          | 1,374,613         | 1,288,585         |
| 152-0000-2710                | 152              | FLEET RESERVES FUND            | 549,163           | 498,272           |
| 151-0000-2710                | 151              | GENERAL FUND CAPITAL PROJECTS  | (43,228)          | 321,837           |
| 150-0000-2710                | 150              | LAND RESERVES FUND             | (269)             | (3,074)           |
| 100-0000-2712                | 100              | GENERAL FUND                   | 5,932,906         | 5,769,000         |
|                              |                  | <b>TOTAL</b>                   |                   | <b>7,874,620</b>  |



Birch Horton Bittner & Cherot

*a professional corporation*

## MEMORANDUM

**TO:** KATIE KOESTER  
CITY MANAGER  
CITY OF HOMER

**FROM:** THOMAS F. KLINKNER

**RE:** DEDICATION OF SALES TAX TO FUND HART

**FILE NO.:** 506,742,805

**DATE:** APRIL 7, 2016

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### **1. Summary and Conclusion**

You have asked whether voter approval is required in order to use the proceeds of a  $\frac{3}{4}\%$  increase in City sales tax authorized by the voters for purposes other than the Homer Accelerated Roads and Trails Program ("HART"),<sup>1</sup> despite statements in the voter authorizations that the sales tax increase would be dedicated to HART. I conclude that current Alaska case law leaves it unclear whether voter authorization is required for those proceeds to be used for other purposes.

### **2. Background**

At the 1987 regular City election, the voters approved a proposition to levy an additional  $\frac{3}{4}\%$  "dedicated sales tax." The purpose of the tax was "to provide a partial funding source for street reconstruction improvements and related utilities ... in accordance with [HART]..."<sup>2</sup> The proposition provided that the additional sales tax would remain in effect for 20 years. At the 2006 regular City election, the voters approved the following three propositions regarding this additional  $\frac{3}{4}\%$  sales tax:

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<sup>1</sup> As amended in 2006, HART provides for street reconstruction improvements and related utilities, new local streets, and new local non-motorized trails.

<sup>2</sup> This program initially was referred to by the acronym "HARP." Since its renewal and expansion in 2006, it has been referred by the acronym "HART." This memorandum refers to the program at all times as "HART."



- to continue to provide a funding source for street reconstruction improvements and related utilities in accordance with [HART] by continuing after December 31, 2007 to levy the ¾% sales tax for this purpose.<sup>3</sup>
- to use the revenue from the ¾% dedicated sales tax for the construction of new local streets.
- to use the revenue from the ¾% dedicated sales tax for the construction of new local non-motorized trails.

At the December 1, 2015 special City election the voters approved a proposition to suspend the dedication of the ¾% sales tax to HART for a period of three years, commencing January 1, 2016. However, the suspension of the dedication does not apply to sales tax revenue that the City collected before January 1, 2016.

### **3. Analysis**

#### **A. Introduction**

Alaska Statute 29.45.670 provides that “[a] new sales and use tax or an increase in the rate of levy of a sales tax approved by ordinance does not take effect until ratified by a majority of the voters at an election.” Thus, the ¾% increase in City sales tax for HART that was authorized in 1987 and reauthorized in 2006 clearly was subject to voter approval. However, neither AS 29.45.670 nor any other statute requires voter approval of specific terms of a sales tax other than its rate and its application to additional categories of sales.

In general, the Council may amend or repeal ordinances, including an ordinance that establishes the terms of a sales tax, without voter approval. However, if, as is the case here, the terms of the sales tax were part of the ballot proposition authorizing the tax, voter approval of a change in the voter approved terms may be required. In other words, since ballot propositions expressly stated that the ¾% sales tax increase would be used to fund HART, voter approval may be required to authorize a different use of the tax proceeds.<sup>4</sup>

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<sup>3</sup> At the December 1, 2015 special City election the voters approved Proposition 1, which removed the 20-year limitation on the authority to levy this additional sales tax. See Ordinance 15-36(A)(2).

<sup>4</sup> In a memorandum dated December 13, 2013 (copy attached), we advised that the Council could repeal the sales tax exemption for non-prepared foods without voter approval. That exemption was adopted by the Council without submission to the voters, and so could be repealed without voter approval.

## **B. The Council's Power to Repeal or Amend a Sales Tax Ordinance**

The Council may exercise the City's legislative power unless prohibited by law from doing so.<sup>5</sup> One prohibition on the Council's exercise of legislative power is the requirement in AS 29.45.670 for voter ratification of a new sales tax or an increase in the rate of levy of a sales tax. In *City of St. Mary's v. St. Mary's Native Corporation*,<sup>6</sup> the court held that, because repealing a sales tax exemption neither increases the rate of levy of a sales tax, nor imposes a new sales tax—the two actions that AS 29.45.670 makes subject to voter approval—the city council could repeal the sales tax exemption under its implicit authority to repeal any ordinance that it had the power to enact.<sup>7</sup>

The court's decision is consistent with the general principle of municipal law that a city council may not limit the legislative discretion of future councils by prohibiting the repeal of an ordinance:

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.<sup>8</sup>

Under this principle, the ordinance that dedicated the revenue from the ¾% sales tax increase to HART should be subject to amendment or repeal by the Council without voter approval.

## **C. The Effect of Including the Dedication in the Ballot Proposition for the Sales Tax Increase**

While it is well established that the Council has the legislative power to amend or revise an ordinance and this authority generally would apply to an ordinance addressing the use of sales tax proceeds, the Council's ability to use an ordinance to undo an action originally subject to voter approval is less clear. In the *City of St. Mary's* case, the voters authorized the city's sales tax by approving the following proposition: "Shall the City of St. Mary's levy a 3% sales tax?"<sup>9</sup> The St. Mary's City Council did not adopt a

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<sup>5</sup> AS 29.35.250(a), AS 29.20.050(a).

<sup>6</sup> 9 P.3d 1002 (Alaska 2000).

<sup>7</sup> 9 P.3d at 1006-1008.

<sup>8</sup> 6 McQuillin, *The Law of Municipal Corporations* § 21.10, at 374 (rev. 3d ed. 2007) (footnotes omitted).

<sup>9</sup> 9 P.3d at 1004.

detailed sales tax ordinance that included exemptions until after the voters approved the proposition.<sup>10</sup>

However, the court's decision implied that if the exemption had been presented to the voters, the case might have had a different result: "We therefore conclude that when a local government grants an exemption by ordinance **and the exemption is not subjected to a public vote**, it may repeal that exemption by ordinance without a public vote."<sup>11</sup>

The court was presented with a sales tax exemption that had been subject to a public vote in the later case of *Interior Cabaret, Hotel, Restaurant & Retailers Association v. Fairbanks North Star Borough* ("ICHRRA").<sup>12</sup> The court responded with the following discussion of the *City of St Mary's* decision:

In *St. Mary's* we concluded that "when a local government grants an exemption by ordinance and the exemption is not subjected to a public vote, it may repeal that exemption by ordinance without a public vote." **The negative implication of this statement may be that when exemptions are approved by public vote, they may not be repealed by a mere ordinance.**<sup>13</sup>

The *ICHRRA* decision leaves open the question whether inclusion of the dedication to HART in the ballot propositions for the 3/4% sales tax increase that the voters approved requires that the dedication may be repealed only with voter approval.<sup>14</sup>

TFK/lcj

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<sup>10</sup> *Id.*

<sup>11</sup> 9 P.3d at 1007-1008 (emphasis added).

<sup>12</sup> 135 P.3d 1000 (Alaska 2006).

<sup>13</sup> *Id.* (footnote omitted, emphasis added). However, the court concluded that it did not need to decide whether the exemption at issue in *ICHRRA* could be repealed without voter approval until a repeal by ordinance was attempted. See 135 P.3d at 1004 n. 20.

<sup>14</sup> In a memorandum dated December 13, 2013, we advised that the Council could repeal a voter approved dedication of proceeds from the repeal of the sales tax exemption for nonprepared foods without voter approval. The conclusion in that opinion should have been qualified by the discussion of the *ICHRRA* decision that appears above.

**From:** [Katie Koester](#)  
**To:** [Jo Johnson](#)  
**Subject:** FW: April 18 council revenue worksession  
**Date:** Wednesday, April 13, 2016 3:21:45 PM

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JO,

Please include this in the Revenue work session packet.

Thanks,

Katie

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**From:** Mary Griswold [mailto:mgrt@xyz.net]  
**Sent:** Wednesday, March 30, 2016 5:46 PM  
**To:** Catriona Reynolds; Donna Aderhold; Mayor Email; Katie Koester  
**Subject:** April 18 council revenue worksession

### Council April 18 Revenue Worksession

I would like to hear a discussion about different increases in property taxes combined with various increases in annual or seasonal sales taxes to meet a best-guess revenue target.

Then I would like to hear how the city might finance a 30-year bond for the new police station.

I would also like you to discuss how city taxes might be lowered in the future if the borough increases the sales tax limit or the city lowers property tax exemptions.

It would be helpful include property and sales tax information for other communities on the Peninsula.

Lastly, I would like to hear about potential additional expenses the city faces due to legislative action or city needs, and how we might pay for them.