



Birch Horton Bittner & Cherot

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Memorandum 16-070

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

FROM: THOMAS F. KLINKNER

RE: PETITION REQUIREMENT FOR SAD FORMATION

FILE NO.: 506,742.221

DATE: APRIL 12, 2016

Currently HCC 17.04.040(a) provides that a special assessment district (SAD) is initiated by either (i) a resolution approved by a vote of not less than three-fourths of the Council; or (ii) petition signatures of the record owners of not less than one-half in value of the real property in the proposed SAD. I understand that the Council wants the second alternative to be rewritten to provide that a SAD may be initiated by petition signatures of the record owners of real property that would bear 50 percent or more of the assessed cost of the improvement. A draft ordinance making this change is attached.

Currently HCC 17.04.050(b) provides that after initiation of an SAD, the preparation of an improvement plan for the SAD, and notification of the record owners of property in the proposed SAD of a public hearing on the necessity of the improvement and proposed improvement plan, "[i]f 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."

With the requested change to the signature requirement on the petition to form an SAD, the objection procedure in HCC 17.04.050(b) repeats the property owner vote that would be required for an SAD initiated by property owner petition, and may seem redundant for an SAD initiated in that manner. However, the objection procedure must remain, as it is required by state law.

AS 29.26.020(a) authorizes a municipality by ordinance to prescribe procedures for the formation of special assessment districts, making local improvements, levying

and collecting assessments, and financing improvements, which the City has done in HCC 17.04. Under AS 29.46.020(b), a municipal ordinance prescribing the procedure for forming special assessment districts is subject to the requirement that "[i]f protests as to the necessity of a proposed local improvement are made by owners of property that will bear 50 percent or more of the estimated cost of the improvement, the governing body may not proceed with the improvement until the objections have been reduced to less than 50 percent, except on approval of not fewer than three-fourths of the governing body." Because of this statutory mandate, the objection procedure in HCC 17.04.050(b) must be retained for every SAD, including one that is initiated by property owner petition.

TFK/lcj