

1 **CITY OF HOMER**
2 **HOMER, ALASKA**

Aderhold

3
4 **ORDINANCE 17-15**

5
6 AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, UPDATNG
7 AND CLARIFYING THE IMPLEMNTATION OF A PENALTY AND INTEREST
8 STRUCTURE FOR SPECIAL ASSESSMENTS IN THE HOMER NATURAL GAS
9 DISTRIBUTION SPECIAL ASSESSMENT DISTRICT THAT BECAME
10 DELINQUENT ON OR AFTER JULY 1, 2016, AND PROVIDED TERMS FOR
11 REINSTATEMENT ON OR AFTER JULY 1, 2016 OF ASSESSMENTS THAT
12 BECAME DELINQUENT BEFORE THAT DATE, AND THE POLICIES AND
13 PROCEDURES FOR WAIVING PENALTIES ON DELINQUENT SPECIAL
14 ASSESSMENT PAYMENTS IF THEY MEET CERTAIN REQUIREMENTS, AND
15 CREATING AN APPEAL PROCESS FOR WAIVER DENIALS TO THE BOARD OF
16 ADJUSTMENT.

17
18 WHEREAS, The Council adopted Resolution 16-052 that implemented a penalty and
19 interest structure for special assessments in the Homer Natural Gas Distribution Special
20 Assessment District that became delinquent on or after July 1, 2016, and provided terms for
21 reinstatement on or after July 1, 2016 of assessments that became delinquent before that date;
22 and

23
24 WHEREAS, The Council adopted Resolution 16-079(S)(A) which provides policies and
25 procedures for waiving penalties on delinquent special assessment payments (“waivers”) if
26 they meet certain requirements; and

27
28 WHEREAS, It is in the City of Homer’s (“City’s”) best interest to update the penalty and
29 interest structure for special assessments in the Homer Natural Gas Distribution Special
30 Assessment District found in Resolution 16-052 and the policies and procedures for waiving
31 penalties on delinquent payments in Resolution 16-079(S)(A) to clarify the process, and to
32 establish an appeal process to the Board of Adjustment (“Board”) for denials of applications
33 for waivers.

34
35 NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

36
37 Section 1: The City hereby determines:

38
39 I. PAYMENT

- 40
41 1. If an assessment in the District has not been delinquent before July 1, 2016, a
42 delinquent annual installment of principal and interest on the assessment that is

43 due on or after July 1, 2016 shall be subject to a late payment penalty equal to fifty
44 dollars (\$50.00) multiplied by the number of calendar months (or portions thereof)
45 that elapse until the delinquent installment, plus interest and penalty are paid in
46 full, or are being paid in installments in accordance with a payment plan approved
47 by the Finance Director; provided, that the amount of this penalty shall not exceed
48 two hundred dollars (\$200.00). If the delinquent installment, plus interest and
49 penalty, are not paid in full within four calendar months after the installment due
50 date, the entire outstanding principal amount of the assessment shall be in default
51 and shall be immediately due and payable, and thereafter the entire outstanding
52 assessment principal shall bear interest at the rate of ten and one-half percent
53 (10.5%) per annum until paid. The penalty imposed under this paragraph does not
54 bear interest.

- 55
- 56 2. Notwithstanding Resolutions 15-017, 15-047(S)(A) and 15-081(S), an assessment in
57 the District that became delinquent before July 1, 2016 shall not be immediately
58 due and payable in full because of that delinquency, but may continue to be payable
59 in installments of principal plus interest at a rate of four percent (4%) per annum
60 and thereafter shall be subject to the penalty and interest structure provided in the
61 preceding paragraph, if on or before July 1, 2016, the City receives payment of (i) the
62 delinquent assessment installment plus a penalty of ten percent (10%) of the total
63 assessment amount and interest on the total assessment amount at a rate of ten
64 and one-half percent (10.5%) per annum, and (ii) the assessment installment that is
65 due on July 1, 2016.

66

67 II. POLICY

68

69 It is the policy of the City of Homer to provide fair and consistent administration of Alaska
70 statutes and City ordinances with respect to waiving the assessment of penalties on delinquent
71 assessment payments in special assessment districts, and to recognize that exceptional
72 circumstances may occur in which, in the interest of fairness, a penalty on a delinquent
73 assessment should be waived.

74

75 III. PROCEDURE

76

- 77 A. An owner of property in a special assessment district who is delinquent in making an
78 assessment payment may apply to the Finance Director for a waiver of the penalty on
79 the delinquent assessment payment on a form provided by the Finance Director.
- 80
- 81 B. The application to waive the penalty shall be accompanied by payment of all
82 delinquent assessment payments that the property owner owes to the City.
- 83

84 C. The Finance Director will review and either approve or disapprove the application. The
85 Finance Director will approve an application to waive a penalty on a delinquent
86 assessment payment if one of the following criteria is met:
87

88 1. A clerical error by the City Clerk or Finance Department contributed
89 substantially to the late payment.
90

91 i. For the purpose of this procedure, a clerical error is a mistake made by City
92 personnel that resulted in the failure of the City to correctly and timely
93 notify the property owner of the due date for the delinquent assessment
94 payment, or to correctly credit a timely assessment payment to the
95 property owner's account. Examples of a clerical error include, but are not
96 limited to:

- 97 • Application of a timely payment to the wrong account.
- 98 • Failing to send the property owner timely notice of the payment
99 due date.
- 100 • Sending the property owner notice of the payment due date using
101 a name or address other than the name and addresses of the
102 property owner that currently appear on the Kenai Peninsula
103 Borough property tax roll.
104

105 ii. The property owner is responsible for notifying the Kenai Peninsula
106 Borough Assessor of any change in property owner name or address. The
107 City is not responsible for updating the property owner name and address
108 on the Kenai Peninsula Borough property tax roll, or for investigating the
109 accuracy of the property owner name or address that currently appears on
110 the Kenai Peninsula Borough property tax roll.
111

112 2. A U.S. Postal Service error contributed substantially to the late payment. A
113 waiver on this ground requires proof of one of the following:

114 i. The Postal Service failed to deliver either the payment or the notice of the
115 payment due date to the address that appeared on the envelope.
116

117 ii. The Postal Service delayed delivery of either the payment or notice of the
118 payment due date to a degree that contributed substantially to the
119 lateness of the payment.
120

121 iii. The postmark on the payment did not accurately reflect when the property
122 owner delivered the payment to the Postal Service.
123

124 3. Proof that the property owner was unable to make the payment on time because
125 of an extreme non-financial personal hardship. This could include a serious

126 illness or death of the property owner or an immediate family member that
127 reasonably prevented making the payment on time.

- 128
129 4. Other circumstances deemed relevant by the Finance Director that substantially
130 interfered with the property owner's ability to make the payment on time.

131
132 The property owner bears the burden by substantial evidence of proving that one of the
133 grounds for waiving the penalty exists, based on relevant documentation and sworn
134 testimony.

- 135
136 D. The Finance Director will decide whether to approve or disapprove an application to
137 waive a penalty on a delinquent assessment payment. Within thirty days of receiving
138 the application the City Clerk shall give the property owner a written notice of the
139 Finance Director's decision, stating the Finance Director's reasons for the decision. An
140 appeal from the Finance Director's final decision may be taken to the Board of
141 Adjustment by the applicant, and shall be filed within 30 days of the date of distribution
142 of the Finance Director's final decision.

- 143
144 E. All appeals must be heard within 90 days of the applicant filing a notice of appeal. The
145 Board may for good cause shown extend the time for hearing. The decision on appeal
146 must be rendered within 60 days after the appeal hearing.

- 147
148 1. The appeal hearing shall be in compliance with the requirements contained in
149 Homer City Code ("HCC") 21.93.540 and HCC 21.93.550.

- 150
151 2. The applicant may present oral argument at the appeal hearing, subject to the
152 order of presentation and time limitations that the chair adopts at the
153 commencement of the hearing. The rules of evidence are relaxed during the
154 Board's appeal hearing.

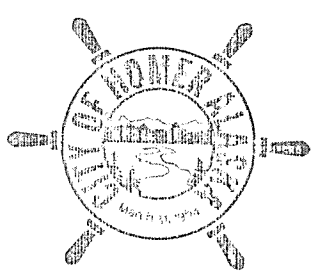
- 155
156 3. The Board shall defer to the findings of the Finance Director regarding disputed
157 issues of fact. Findings of fact adopted expressly or by necessary implication by
158 the Finance Director shall be considered as true if they are supported by
159 substantial evidence. If the Finance Director fails to make a necessary finding of
160 fact and substantial evidence exists in the record to enable the Board to make
161 the finding of fact, the Board may do so in the exercise of its independent
162 judgment. "Substantial evidence," as used in this section, means such relevant
163 evidence as a reasonable mind might accept as adequate to support a
164 conclusion.

- 165
166 4. The decision of the Board of Adjustment on the application is final and not
167 subject to appeal.

168 Section 2: All applications for waiver of penalty subject to approval at the February 13,
169 2017 Council meeting may apply for reconsideration under the above procedure so long as an
170 application for reconsideration is filed within 30 days of the adoption of this ordinance.
171

172 Section 3: This Ordinance is general and permanent in nature, but shall not be codified.
173

174 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this 28th day of
175 March, 2017.



CITY OF HOMER
Bryan Zak
BRYAN ZAK, MAYOR

182 ATTEST:
183
184 Jo Johnson
185
186 JO JOHNSON, MMC, CITY CLERK
187

188
189
190 YES: 6
191 NO: 0
192 ABSTAIN: 0
193 ABSENT: 0
194

195
196
197 First Reading: 3/13/17
198 Public Hearing: 3/28/17
199 Second Reading: 3/28/17
200 Effective Date: 3/29/17
201

202 Reviewed and approved as to form.

203
204 Mary K Koester
205 Mary K. Koester, City Manager
206

Holly C. Wells
Holly C. Wells, City Attorney

207 Date: 3-30-17
208

Date: 4.10.17

209 Fiscal Note: NA