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Heartbeat of Homer

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

DONNA ADERHOLD, DAVID LEWIS, and  
CATRIONA REYNOLDS,

Plaintiffs,

v.

CITY OF HOMER,

Defendant,

HEARTBEAT OF HOMER,

Intervenor.

Case No. 3AN-17-06227 CI

**INTERVENOR'S OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

COMES NOW Intervenor Heartbeat of Homer, a ballot proposition group registered with the Alaska Public Offices Commission, by and through its attorneys, Holmes Weddle & Barcott, P.C., and hereby files its Opposition to Plaintiff's Motion for Declaratory and Injunctive Relief. Plaintiffs Motion must be dismissed because they have failed to demonstrate that they will be irreparably harmed if the special election occurs, and they have failed to raise serious and substantial questions that certification of the petition which is the subject of the recall action was invalid.

## I. FACTUAL BACKGROUND.

Plaintiffs Donna Aderhold, David Lewis, and Catriona Reynolds are each elected members of Homer City Council for the City of Homer, Alaska.

Intervenor organized in support of the proposed petition, dated March 6, 2017, which seeks to recall Plaintiffs from their elected office on the Homer City Council (“Recall Petition”).<sup>1</sup> The Recall Petition sets forth, as grounds for recall, that Plaintiffs each: (1) are unfit because they violated their oaths of office in sponsoring Resolutions 16-121 and 17-019; and (2) engaged in misconduct surrounding draft resolution 17-019 due, in part, to the irreparable economic harm it caused the City.<sup>2</sup> The Recall Petition further set forth a proposed statement for recall from the sponsors, which represented that Plaintiffs had each proven themselves unfit for public office due to their conduct with regard to Resolution 16-121 and 17-019, which represent clear and obvious violations of Title 1 of the Homer City Code.<sup>3</sup> The Recall Petition continued, stating that “the use of City Council office as a platform for broadcasting political activism is unlawful, unethical, and outside the bounds of permissible conduct in public service.”<sup>4</sup> Finally, the Recall Petition stated that the political activism and misconduct had caused irreparable damage and had an adverse effect on the public in the form of economic harm and financial loss to the City of Homer.<sup>5</sup>

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<sup>1</sup> Exhibit A.

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 2.

The Recall Petition was signed by thirteen Homer residents,<sup>6</sup> and was filed with Jo Johnson, the City Clerk, on March 31, 2017.<sup>7</sup> After a preliminary review, the City Clerk, acting in her administrative role, found that that Recall Petition was facially valid with respect to two of the three allegations contained therein and certified it on April 5, 2017.<sup>8</sup> The City Clerk also issued Memorandum 17-057 to Mayor Bryan Zak and the Homer City Council on April 5, 2017, documenting her decision.<sup>9</sup> Pursuant to AS 29.26.320, the City Clerk scheduled a special election to be held on June 13, 2017 for a public vote.<sup>10</sup>

Plaintiffs seek to invalidate the determination made by the Homer City Clerk that the Recall Petition was sufficient, certifiable, and appropriate for placement on a City special election ballot.<sup>11</sup> Plaintiffs filed their verified complaint in this action on April 24, 2017.<sup>12</sup> The same date, Plaintiffs filed a Motion for Declaratory Judgment and Injunctive Relief.<sup>13</sup>

## II. LEGAL AUTHORITY.

Article XI, section 8 of the Alaska Constitution states that

“All elected public officials in the State, except judicial officers, are subject to recall by the voters of the State or political subdivision from which elected. Procedures and grounds for recall shall be prescribed by the legislature.”

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<sup>6</sup> *Id.* at 2.

<sup>7</sup> Exhibit B.

<sup>8</sup> *Id.* at 1. The Clerk found that the allegation that council members were unfit because they violated HCC 1.18 in sponsoring Resolutions 16-121 and 17-019 was not sufficient as it failed to state a ground for recall with particularity.

<sup>9</sup> *Id.*, generally.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> See the Verified Complaint for Declaratory and Injunctive Relief.

<sup>12</sup> *Id.*

<sup>13</sup> See Case Motion No 1.

The Supreme Court of Alaska recognizes that the “statutes relating to the recall, like those relating to the initiative and referendum, should be liberally construed so that the people [are] permitted to vote and express their will ...”<sup>14</sup> The “recall process is fundamentally a part of the political process.”<sup>15</sup> It allows “voters a check on the activities of their elected officials above and beyond their power to elect another candidate when the incumbent’s term expires.”<sup>16</sup> Accordingly, the “purposes of recall are therefore not well served if artificial technical hurdles are unnecessarily created by the judiciary as parts of the process prescribed by statute.”<sup>17</sup> Review of recall petitions should “avoid wrapping the recall process in such a tight legal straitjacket that a legally sufficient recall petition could be prepared only by an attorney who is a specialist in election law matters.”<sup>18</sup>

For its initiative, referendum, and recall provisions, the Homer City Code incorporates the language of the Alaska Statutes at AS 29.26, Article 2 and 3, as though fully set forth therein.<sup>19</sup>

“An official who is elected or appointed to an elective municipal office may be recalled by the voters after the official has served the first 120 days of the term for which elected or appointed.”<sup>20</sup> Pursuant to AS 29.26.250, “Grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties.”

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<sup>14</sup> *Meiners v. Bering Strait Sch. Dist.*, 687 P.2d 287, 296 (Alaska 1984) (quoting *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974) (internal citations omitted)); *Anchorage v. Frohne*, 568 P.2d 3, 8 (Alaska 1977).

<sup>15</sup> *Meiners*, 687 P.2d at 296.

<sup>16</sup> *Id.* 687 P.2d at 294.

<sup>17</sup> *Id.* 687 P.2d at 296.

<sup>18</sup> *Id.* 687 P.2d at 301.

<sup>19</sup> HCC 4.60.010 and .020.

<sup>20</sup> AS 29.26.240.

“An application for a recall petition shall be filed with the municipal clerk and must contain: (1) the signatures and residence addresses of at least 10 municipal voters who will sponsor the petition; (2) the name and address of the contact person and an alternate to whom all correspondence relating to the petition may be sent; and (3) a statement in 200 words or less of the grounds for recall stated with particularity.<sup>21</sup> AS 29.26.260(a)(3) requires that the grounds for recall be stated with particularity, “to give the officeholder a fair opportunity to defend his conduct in a rebuttal limited to 200 words.”<sup>22</sup>

The recall statutes offer the target official an opportunity to make a rebuttal, which will be placed on the ballot alongside the proponent's statement of charges.<sup>23</sup> The Alaska Supreme Court has found that this rebuttal statement is “the proper forum in which the official may defend against the charges.”<sup>24</sup> “Where the petition merely characterizes the law in a way different than the official (or his or her attorney) would prefer, he or she has an opportunity to put his or her rebuttal before the voters, alongside the charges contained in the petition.”<sup>25</sup> The City Clerk’s role is to determine whether the petition meets the liberally construed minimum standards of validity, not to decide such legal questions.<sup>26</sup>

Where a court is called on to review the sufficiency of the recall petition, once again, it is not for the court to determine the truth or falsity of recall allegations.<sup>27</sup> Rather, the court

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<sup>21</sup> AS 29.26.260(a).

<sup>22</sup> *von Stauffenberg v. Comm. for Honest & Ethical Sch. Bd.*, 903 P.2d 1055, 1060 (Alaska 1995); *Meiners*, 687 P.2d at 302.

<sup>23</sup> AS 29.26.330(2); *Meiners*, 687 P.2d at 301.

<sup>24</sup> *Meiners*, 687 P.2d at 301.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *von Stauffenberg*, 903 P.2d at 1060; *Meiners*, 687 P.2d at 302.

must take all allegations as true as it would in ruling on a motion to dismiss complaint for failure to state claim.<sup>28</sup> Alaska courts “emphasize that it is not [the court’s] role, but rather that of the voters, to assess the truth or falsity of the allegations in the petition.”<sup>29</sup> Accordingly, a recall petition is merely reviewed for facial validity, to ensure that all decisions pertaining to the content thereof can be considered by the voters.

### III. ARGUMENT AND ANALYSIS.

#### a. Declaratory and Injunctive Relief.

AS 09.40.230 sets forth the grounds for an injunction as follows:

When it appears that (1) the plaintiff is entitled to the relief demanded, and the relief or any part of it includes restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the plaintiff; or (2) the defendant is doing, or threatens or is about to do, or is procuring or suffering to be done some act in violation of the plaintiff’s rights concerning the subject of the action and tending to render the judgment ineffectual; or (3) the defendant threatens or is about to remove or dispose of property or a part of it with intent to delay or defraud creditors, an injunction may be allowed to restrain such act, removal, or disposition.

Alaska courts apply a “balance of hardships” approach which entails a three part test:

1) the plaintiff must be faced with irreparable harm; 2) the opposing party must be adequately protected; and 3) the plaintiff must raise serious and substantial questions going to the merits of the case; that is, the issues raised cannot be ‘frivolous or obviously without merit.’”<sup>30</sup> The “serious and substantial question” standard applies only where the injury which will result

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *N. Kenai Peninsula Rd. Maint. Serv. Area v. Kenai Peninsula Borough*, 850 P.2d 636, 639 (Alaska 1993); *State v. Kluti Kaah Native Village*, 831 P.2d 1270, 1273 (Alaska 1992).

from the preliminary injunction is relatively slight in comparison to the injury which the person seeking the injunction will suffer if the injunction is not granted.<sup>31</sup>

Accordingly, to be entitled to enjoin the City of Homer from submitting the Recall Petition for a public vote, Plaintiffs must establish for the Court that they face irreparable harm if the Petition is submitted for vote, that the City and sponsors are adequately protected, and probability of success on the merits. In their Motion for Declaratory and Injunctive Relief, Plaintiffs established none of the three prongs of the balancing test, and in fact, did not even mention the standard for such a provisional remedy in their briefing. Plaintiffs' Motion, rather, appears to argue the merits of the case, only, similar to an Alaska R. Civ. P. 56 motion for summary judgment. The Motion provides no legal basis to this Court to support the findings of law and fact at this juncture, and states no irreparable harm which must be prevented.

Plaintiffs are not entitled to injunctive relief as there is no irreparable harm in allowing this Petition to proceed to a vote. AS 29.26.330(2) allows the subject officials to submit a rebuttal statement to be considered simultaneously by the voter with the Recall Petition. The Petition and the rebuttal are equally situated before the voting public. Moreover, the officials have the option of campaigning against the Petition, in advance of the election, to speak on their own behalf. As such, not only have Plaintiffs failed to allege irreparable harm, there is no harm to be protected with injunction.

Moreover, the sponsors are not adequately protected in the event that injunctive relief is granted. An injunction in this matter would preclude the City from submitting the Petition

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<sup>31</sup> *Id. State v. United Cook Inlet Drift Ass'n*, 815 P.2d 378, 378-79 (Alaska 1991).

for a vote indefinitely, and as such, the sponsor's constitutional right to move for recall would be barred. The time and financial resources used to prepare, circulate, and file the Petition would be forfeited without recourse.

Accordingly, there is no basis in law or in fact to issue an injunction in this matter. Plaintiffs are attempting to argue the merits of this case on an expedited basis without providing the necessary basis to support such early disposition on the limited record available. The Motion should therefore be denied.

b. Legal Sufficiency.

For purposes of Plaintiffs' Motion, the critical analysis is not whether Plaintiffs' actually engaged in misconduct in office, incompetence, or otherwise failed to perform prescribed duties. Rather, the critical determination to be made is whether the Recall Petition was legally sufficient to warrant submission to the public for their consideration and vote. Indeed, the Recall Petition is legally sufficient as it contained the signatures and residence addresses of at least 10 municipal voters who sponsored the petition, the name and address of the contact person and an alternate for purposes of correspondence, and a statement in 200 words or less of the grounds for recall stated with particularity.

"[S]tatutes relating to the recall, like those relating to the initiative and referendum, should be liberally construed so that the people [are] permitted to vote and express their will [...]."<sup>32</sup> In their argument, Plaintiffs focus their attention to whether or not there was "misconduct" in office. In doing so, they allege there must be a violation of law for

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<sup>32</sup> *Meiners*, 687 P.2d at 296.



“misconduct” to have occurred, wholly ignoring the allegations based on the failure to uphold and defend the Constitution of the United States.

In her opinion, the Clerk focused on a limited portion of the Oath of Office that all Homer public officers must take, that “officials are to honestly, faithfully and impartially perform their duties.”<sup>33</sup> Intervenor agrees with the argument set forth therein that Plaintiffs failed to act in a manner which is impartial, and thereby the recall petition is valid. However, by the Clerk and Plaintiffs focusing their attention on this limited portion of the Oath, they miss the crux of the Oath, as set forth in the recall petition.<sup>34</sup> As part of the Oath of Office, officials solemnly swear or affirm to “support and defend the Constitution of the United States and the Constitution of the State of Alaska.”<sup>35</sup>

For example, Draft Resolution 17-019 demonstrates a failure to support and defend the US Constitution as sworn or affirmed. The first Whereas statement refers to the President without a popular mandate, however, the 12<sup>th</sup> Amendment to the United States Constitution provides for the election of the President by the electoral college. Furthermore, both 17-XXX and 17-019 discussed resisting efforts with disregard to national origin and deportation of undocumented immigrants. This can be considered a violation of the Supremacy Clause of the United States Constitution as set forth in Article VI, Clause 2. The Supremacy Clause provides that State laws cannot be contrary to constitutionally authorized federal laws. As set forth in Article I, Section 8, Clause 4 of the United States Constitution, it is the job of Congress to establish a uniform rule of naturalization. To establish a uniform rule sets forth

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<sup>33</sup> Exhibit B, p. 5

<sup>34</sup> Exhibit A, p.1.

<sup>35</sup> *Id.*

that Congress shall establish laws with regard to naturalization that shall apply equally and similarly to immigrants in all 50 states. Therefore, if Plaintiffs were to succeed in the passage of 17-019 there would have been a clear violation of not only the 12<sup>th</sup> Amendment but the Supremacy Clause of the United States Constitution. As Plaintiffs have failed in their Oath to support and defend the Constitution of the United States, it should be left to the residents of Homer to determine if they wish to recall these elected officials. This is especially true as Intevernors have set forth that these actions and the public dissemination of the same have resulted in economic harm and financial loss to the City of Homer, which this court must accept as true in considering whether or not the petition is legally sufficient.

c. Unfitness for Office.

In their motion, Plaintiffs allege that the petition may not be accepted because those who authored the petition used the term “unfitness” for office. This is exactly the type of issue the Supreme Court contemplated when it discussed “artificial technical hurdles”.<sup>36</sup> As can be determined by the statement for recall, the petitioners sought to recall the Plaintiffs given their actions in the individual efforts to draft, produce and disseminate Resolutions 16-121 and 17-019. While it may be ineloquent, the intent is clear, and this minor technicality should not preclude voters from the opportunity to have their voice heard on the particular issue.

Plaintiffs acknowledge that the Clerk determined two allegations of misconduct: “(1) that Plaintiffs violated their Oath of Office, and (2) that Plaintiffs “unlawful[ly]” used the City

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<sup>36</sup> *Meiners*, 687 P.2d at 296.

Council office to broadcast political activism.”<sup>37</sup> Again, as set forth in the foregoing sections, while the clerk certified on the Plaintiffs failure to act in an impartial manner, there are indications that Plaintiffs failed to uphold and defend at least the Constitution of the United States. Therefore, if all facts are taken as true, it should be determined by the voters if Plaintiffs violated their Oath of Office in failing to support and defend the Constitution, and if in doing so, they should be removed from office.

Second, the Plaintiffs attempt to make light of the distribution of the Draft Resolution 17-019. However, in doing so, Plaintiffs disregard the fact that the Draft Resolution was highly political in nature, which if representing the body, may in and of itself be a violation. Furthermore, the content of which was highly political and in violation of the United States Constitution, and such circulation caused economic harm to the City of Homer. It is not the role of this Court to determine if these claims are true or false, but whether the content can be considered by the voters.<sup>38</sup> Indeed, as the voters can determine by the statement that will appear on the ballot whether the Plaintiffs violated their Oath of Office in the course of their actions, this matter must be summarily dismissed and the recall election must proceed.

d. Freedom of Speech.

- i. The certification of the Recall Petition is an administrative function, and does not itself remove the officials from office or restrict their activities.

Plaintiffs characterize the certification of the Recall Petition as restricting their right to speak about political activities across the nation. The argument mischaracterizes the

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<sup>37</sup> Case Motion No. 1, p. 11.

<sup>38</sup> *von Stauffenberg*, 903 P.2d at 1060; *Meiners*, 687 P.2d at 302.

administrative function of the City Clerk's role in the recall process, and wrongfully infers discretion and fact finding into the City's official review of recall petitions.

The power of recall is granted to the public by the Alaska Constitution, which directs the legislature of the City of Homer to set forth the necessary procedures to maintain such right. The Homer City Code incorporates the State recall statutes, set forth in Title 29, Article 3, at AS 29.26.240 et seq. The statutes set forth that an elected official may be recalled from office by the voters after serving 120 days of the elected term,<sup>39</sup> for cause, which may include misconduct in office, incompetence, or failure to perform prescribed duties.<sup>40</sup> The application for a recall petition is filed with the City Clerk, and must contain: (1) the signatures and residence addresses of at least 10 municipal voters who will sponsor the petition; (2) the name and address of the contact person and an alternate to whom all correspondence relating to the petition may be sent; and (3) a statement in 200 words or less of the grounds for recall stated with particularity.<sup>41</sup> Once submitted, the City Clerk reviews the application in accordance with the requirements of AS 29.26.260.<sup>42</sup> If the Clerk determines that the application for recall petition has met the requirements set forth in AS 29.26.260, the Clerk prepares a recall petition.<sup>43</sup>

The recall petition must contain the following: (1) the name of the official sought to be recalled; (2) the statement of the grounds for recall as set out in the application for petition; (3) the date the petition is issued by the clerk; (4) notice that signatures must be secured

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<sup>39</sup> AS 29.26.240.

<sup>40</sup> AS 29.26.250.

<sup>41</sup> AS 29.26.260(a).

<sup>42</sup> AS 29.26.270(a).

within 60 days after the date the petition is issued; (5) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing addresses of each signer; (6) a statement, with space for the sponsor's sworn signature and date of signing, that the sponsor personally circulated the petition, that all signatures were affixed in the presence of the sponsor, and that the sponsor believes the signatures to be those of the persons whose names they purport to be; and (7) space for indicating the number of signatures on the petition.<sup>44</sup> Within 60 days of issuance, the signatures on a recall petition must be secured.<sup>45</sup> The sponsors then file the assembled and complete petition with the Clerk for final review.<sup>46</sup> Within 10 days of filing, the Clerk shall: (1) certify on the petition whether it is sufficient; and (2) if the petition is insufficient, identify the insufficiency and notify the contact person by certified mail.<sup>47</sup> If a recall petition is sufficient, the clerk shall submit it to the governing body at the next regular meeting or at a special meeting held before the next regular meeting.<sup>48</sup> If a majority vote favors recall, the office becomes vacant upon certification of the recall election.<sup>49</sup>

In accordance with the foregoing procedures, the Clerk performs two separate inspections of the recall petition content, both of which constitute basic and facial reviews to ensure the requirements set forth at AS 29.26.260 and AS 29.26.270 are met. The

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*(continued from previous page)*

<sup>43</sup> *Id.*

<sup>44</sup> AS 29.26.270(a).

<sup>45</sup> AS 29.26.280(a).

<sup>46</sup> *Id.*

<sup>47</sup> AS 29.26.290(a).

<sup>48</sup> AS 29.26.310.

<sup>49</sup> AS 29.26.340(a).

certification, by statute, gives the Clerk limited discretion in the determination of sufficiency. The Clerk makes no investigation of the content, requires no evidence of the basis for the claims asserted, and undertakes no fact-finding or value determinations related to the application's reasoning. The reviews are purely administrative, to ensure that the statutory boxes are checked, and the grounds for the petition have been stated with sufficient particularity to provide the subject official sufficient information from which to respond and the public sufficient information for their consideration in voting.

The City's role in reviewing recall petitions is limited in nature and is not an endorsement of the recall effort or conduct alleged. Rather, the Clerk's review and certification is a procedural function to provide direction and instruction for members of the public who wish to exercise their right to recall. The content of the petition is considered only so far as its level of detail, not for its truth. Accordingly, a finding of sufficiency is not an approval of the recall measure, endorsing removal from office, but rather, a base finding of facial validity whereby the petition sponsors can move forward with their recall effort and submit the petition for a vote.

The Alaska Constitution requires the City of Homer to put a process in place to provide the public with procedures for accomplishing a recall. The City, as gatekeeper to the recall petition, provides only the administrative function in support of the process, and takes no action to support the actual recall effort. While the certification of a recall petition under AS 29.26.290 allows the petition to move forward, the process of approving or rejecting the petition does not make the City the acting party for purposes of this matter. The activity in

support of recall remains with the public sponsors, and the decision to recall remains with the voting public.

As such, the act of certifying the Recall Petition under the applicable statutes is a limited procedural function and did not restrict any right of the Plaintiffs to speak freely. The City of Homer has taken no action against the officials. The certification made no finding of truth or falsity, nor did it act as a City endorsement of the effort. The City merely determined the facial validity of the Petition, and is preparing to submit the content to the voters for consideration. Any action to remove the officials from office would be that of the voter. Moreover, not only was the certification not in violation of the Constitution, as Plaintiffs have asserted, it explicitly complies with the constitutional prescription for recall requiring the City of Homer to set procedures in place to support the public's right to recall. The act of recalling remains with the public, and as such, the City's certification constituted no such action in violation of Plaintiffs' rights.

- ii. The recall process is not a governmental action restricting speech, but the will of the voters in selecting who can adequately and ethically represent their interests.

The Alaska Constitution protects speech from government regulation. Recall, together with initiative and referendum, "give voters a check on the activities of their elected officials above and beyond their power to elect another candidate when the incumbent's term expires."<sup>50</sup> It is the constitutionally-prescribed right of the voters to remove public officials from office in accordance with the procedures and grounds set forth by the State.<sup>51</sup> The recall

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<sup>50</sup> *Id.* at 294 (emphasis added).

<sup>51</sup> Alaska Const. art. XI, § 8.

statutes are liberally construed so that the *people* are permitted to vote and express their will. The process is, by its very character, the action of the public, not the government, against the public official. And the Alaska Supreme Court has recognized the fundamental nature inherent in such process. Therefore, this argument fails as this is not the government in any fashion restricting any First Amendment rights. Indeed, if recall actions could not be granted in cases involving speech and expression, then such actions could never occur.

This matter concerns a recall petition brought by the public to remove the officials from elected office due to misconduct and violations of their oath and prescribed duties. The will of the public to remove an official from office for cause is not a government act regulating the officials' speech. Accordingly, the constitutional protections do not apply. Plaintiffs' emphasis on the review and certification of a recall petition as the significant act in the process is misplaced. The right of recall belongs to the people, and all action in support of recall has been undertaken by the people. Plaintiffs should not be permitted to bar a public vote on recall pursuant to their right of free speech.

- iii. The Recall Petition does not implement restrictions itself, but merely seeks to remove the officials for violating restrictions already in place.

The Alaska Constitution provides that “[e]very person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.”<sup>52</sup> Despite Plaintiffs' contention otherwise, the content of the Recall Petition and its stated grounds in support of removal do not place any restrictions on Plaintiffs' right to speak freely. The recall process is

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<sup>52</sup> Alaska Const. art. I, § 5; *Alaskans for a Common Language, Inc. v. Kritz*, 170 P.3d 183, 197 (Alaska 2007).



not itself a restriction, but rather, a consequence of failing to abide by the preexisting rules and regulations enumerated for public officials.

As elected officials, Plaintiffs are subject to certain rules and regulations of conduct and activity, prescribed by the legislature to serve the public and government interest of maintaining impartiality and integrity in the public office. The City Council interprets the Code to “promote fair, honest, and impartial dealings with members of the public, to ensure proper use of City resources, and to avoid conflicts of interest.”<sup>53</sup> Inter alia, the Homer City Code provides the following restriction for elected officials.

n. Political Activities – Limitations of Individuals. A City official may not take an active part in a political campaign or other political activity when on duty. Nothing herein shall be construed as preventing such officials from exercising their voting franchise, contributing to a campaign or candidate of their choice, or expressing their political views when not on duty or otherwise conspicuously representing the City.<sup>54</sup>

The City of Homer further maintains a Homer City Council Operating Manual, updated on January 27, 2017 (“Operating Manual”), which sets forth the governing policies and procedures of the City Council in representing the interests of the public.<sup>55</sup> Pursuant to the Operating Manual, “[t]he City Council is a body of six elected officials empowered by State Statute and Homer City Code to represent the citizenry in decisions on their behalf.”<sup>56</sup> It is also the policy of the City Council that a member “takes no position in the endorsement of any political race.”<sup>57</sup>

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<sup>53</sup> HCC 1.18.010(e).

<sup>54</sup> HCC 1.18.030(n).

<sup>55</sup> Exhibit C.

<sup>56</sup> *Id.* at 2.

<sup>57</sup> *Id.* at 5.

The Code of Ethics,<sup>58</sup> set forth in the Operating Manual, prohibits the following:

Political Activities, Limitations of Individuals. Appointed officials may not take an active part in a political campaign or other matter to be brought before the voters when on duty. Nothing herein shall be construed as preventing appointed officials from exercising their voting franchise, contributing to a campaign or candidate of their choice, or expressing their political views when not on duty or otherwise conspicuously representing the city.

Accordingly, by accepting the election as a voting public official on the City Council, Plaintiffs have agreed to abide by the legislature's restrictions on their political activities.

The City of Homer has undertaken no action to restrict Plaintiffs from speaking out about their political beliefs here. Nor does the Recall Petition seek to establish any restrictions on Plaintiffs' speech. Rather, the Petition seeks to recall the officials for violating the behavioral restrictions already set forth in the Alaska Statutes and in the City Council's own Operating Manual and Code of Ethics. The Recall Petition set forth in requisite detail that the officials engaged in misconduct related to Resolution 17-019 which has resulted in economic harm to the City, and violated their Oaths of Office pursuant to Resolutions 16-121 and 17-019. While Plaintiffs, and/or their counsel, may take issue with word choice and assert that the Petition could have included a more eloquent description, Alaska courts do not review recall petitions according to such strict and artificial technical hurdles. By its own language, the Recall Petition seeks to remove the officials for misconduct and failing to fulfill their official prescribed duties. The Petition applies no restraint on the officials' conduct which does not already exist, but merely holds the officials accountable for their failures.

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<sup>58</sup> *Id.* at 37-49.

Plaintiffs seek to characterize the recall sought in this matter as an unconstitutional restriction on their speech. But, in reality, the Recall Petition seeks only to enforce the legislative prescriptions already set forth in the Alaska Statutes to regulate the political conduct of public officials while in office. Plaintiffs do not question the government's interest in such regulation, nor do Plaintiffs argue that a restriction against political activism while in office is an unconstitutional restriction of their freedom of speech. Rather, Plaintiffs have narrowly construed their constitutional challenge in this matter, and directed the same at the recall process, which is itself a constitutional right enjoyed by the people. The recall of an official is not an unconstitutional restriction against speech, nor do Plaintiffs provide any case precedent or legal basis to argue the same. It is the will of the public, exercising their constitutional right to remove a public official from elected office for cause. Characterizing the recall process as somehow punishing the official for exercising their right to speak is a manipulation of the plain language of the recall statutes, and fails to account for the action as that of the people, not the government.

Accordingly, insofar as Plaintiffs have alleged this Recall Petition is a restraint on protected speech, it should fail.

**i. CONCLUSION.**

Plaintiffs seek to enjoin the City from placing the content of the Recall Petition on a ballot for public vote, though have failed to provide the legal and factual basis necessary to show that the Petition is legally insufficient and certification thereof was in violation of the Constitution. There is no irreparable harm in submitting the Recall Petition to a public vote, as the effected officials have the opportunity to rebut the Petition's allegations and speak on

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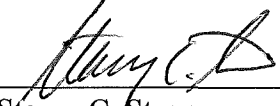
their behalf. The recall process is a constitutionally protected right of the public to remove public officials from elected office for cause, and petitions which set forth sufficient detail concerning the grounds for recall shall be submitted to the voter for consideration.

The Recall Petition here set forth the pertinent detail to support a finding of misconduct in office and failure to perform legally prescribed duties, and was properly certified by the City Clerk on April 5, 2017. The Clerk made no error in certifying the Recall Petition and scheduling the special election to submit the content to a public vote. Accordingly, Intervenor respectfully requests that the Motion for Declaratory and Injunctive Relief be denied.

DATED this 17<sup>th</sup> day of May, 2017, at Anchorage, Alaska.

HOLMES WEDDLE & BARCOTT, P.C.  
Attorneys for Intervenor

By: \_\_\_\_\_

  
Stacey C. Stone  
Alaska Bar No. 1005030

**HOLMES WEDDLE & BARCOTT, PC**  
701 WEST EIGHTH AVENUE, SUITE 700  
ANCHORAGE, AK 99501-3408  
TELEPHONE (907) 274-0666  
FACSIMILE (907) 277-4657

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 17<sup>th</sup> day of May, 2017, a true and correct copy of the foregoing document was served via:

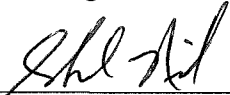
- E-Mail
- U.S. Mail
- Facsimile
- Hand-Delivery

to:

Joshua A. Decker  
Eric G. Glatt  
Tara A. Rich  
ACLU of Alaska Foundation  
1057 W. Fireweed Lane, Suite 207  
Anchorage, AK 99503

Holly C. Wells  
Jack R. McKenna  
Birch Horton Bittner & Cherot  
510 L Street, Suite 700  
Anchorage, AK 99501

Eric T. Sanders  
Law Office of Eric Sanders  
510 L Street, Suite 700  
Anchorage, AK 99501

By:   
Legal Assistant  
Holmes Weddle & Barcott, P.C.

3/6/2017

Alaska Statutes Sec. 29.26.260. Application for recall petition

Request for petition for recall of Homer City Council members Donna Aderhold, David Lewis and Catriona Reynolds.

Contact person: Michael Fell, Box 149 Homer Alaska 99603 907-299-2800

Sec. 29.26.250. Grounds for recall are misconduct in office which has adversely affected the public; conduct which has violated the oath of office; and failure to perform duties prescribed by law. .

Statement for recall:

Be here advised that Homer City Council members Aderhold, Lewis and Reynolds are each proven unfit for public office, as evident by their individual efforts in preparation of Resolution 16-121 and 17-019, the text of which stands in clear and obvious Violation of Homer City Code, Title 1:

**1.18.030 Standards and prohibited acts.**

n. Political Activities – Limitations of Individuals. A City official may not take an active part in a political campaign or other political activity when on duty. Nothing herein shall be construed as preventing such officials from exercising their voting franchise, contributing to a campaign or candidate of their choice, or expressing their political views when not on duty or otherwise conspicuously representing the City.

§ 5. Oath of Office All public officers, before entering upon the duties of their offices, shall take and subscribe to the following oath or affirmation: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as . . . to the best of my ability." The legislature may prescribe further oaths or affirmations.

Whereas the use of City Council office as a platform for broadcasting political activism is unlawful, unethical, and outside the bounds of



permissible conduct in public service..

Misconduct in office is further claimed by the irreparable damage done by draft Resolution 17-019 being made public and widely distributed on social and news media, and publicly promoted as conspicuously drafted by and representing the city of Homer. This action has further caused economic harm and financial loss to the city of Homer.

Signed:

Printed Name	Address	Signature
1. MICHAEL FELL	Box 149 Homer	<i>Michael Fell</i>
2. LARRY ZUCCARO	Box 340 HOMER	<i>Larry Zuccaro</i>
3. LARRI FANCHER	P.O. Box 340 HOMER AK	<i>Larri Fancher</i>
4. JOE SINGLETON	1895 MISSION Rd HOMER, AK 1625 MISSION Rd	<i>Joe Singleton</i>
5. <del>TERRY SINGLETON</del>	<del>1625 MISSION Rd</del>	<del><i>Terry Singleton</i></del>
6. <del>ALAN DAHLHAGER</del>	<del>1945 MISSION Rd</del>	<del><i>Alan Dahlhager</i></del>
7. JACK NIEMI	P.O. Box 1582 Homer AK 99603	<i>Jack Niemi</i>
8. BETTY L. SNOW	4013 SVEDLUND ST #3, HOMER, AK, 99603	<i>Betty L. Snow</i>
9. JACK PACKER	4013 SVEDLUND APT 3 HOMER, AK 99603	<i>Jack Packer</i>
10. Justin Wickstrom	4253 Svedlund Cir, Homer, AK 99603	<i>Justin Wickstrom</i>
11. Mark Zeiset	4406 Homer Spit Rd Homer, AK 99603	<i>Mark Zeiset</i>
12. Randall Parrett	1201 Jeffery, Homer AK 99603	<i>Randall Parrett</i>
13. Cindy Frazier	168 Skyline Dr Homer, AK 99603	<i>Cindy Frazier</i>

REDACTED



## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Office of the City Clerk

491 East Pioneer Avenue  
Homer, Alaska 99603

[clerk@cityofhomer-ak.gov](mailto:clerk@cityofhomer-ak.gov)

(p) 907-235-3130

(f) 907-235-3143

### Memorandum 17-057

TO: MAYOR ZAK AND HOMER CITY COUNCIL  
FROM: JO JOHNSON, MMC, CITY CLERK  
DATE: APRIL 5, 2017  
SUBJECT: RECALL PETITION – COUNCILMEMBERS ADERHOLD, LEWIS, AND REYNOLDS

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On March 31, 2017 sponsors filed petitions to recall Homer City Council members Aderhold, Lewis, and Reynolds. Pursuant to AS 29.26.270, once a timely recall petition has been filed, the City Clerk has ten days to determine whether or not the petition is sufficient. In determining the sufficiency of a recall petition, the Clerk must confirm that sufficient signatures have been submitted and that the statement for recall is sufficient. After reviewing the petitions, and consulting with the City Attorney, I have determined that sufficient signatures have been submitted for each of the petitions. I have also found that some of the allegations in the statements for recall were sufficient. As a result, I certified the petitions on April 5, 2017. Please be aware that my determination that the petitions are sufficient and thus subject to certification in no way reflects the merits of the statement of recall in the petitions, as the City Clerk is prohibited from considering the truth or falsity of the allegations contained in a recall petition.

#### Sufficiency of Signatures

The petitions for recall were filed timely on March 31, 2017 by sponsors Michael Fell, Larry Zuccaro, and Larri Fancher. In all, 15 booklets were received for Aderhold, 15 for Lewis, and 15 for Reynolds. The number of names on the sufficient booklets totaled 437 for Aderhold, 436 for Lewis, and 436 for Reynolds.

A current list of registered voters within the City of Homer ("City") limits was requested by the City Clerk's office on March 14, 2017. I reviewed the names on each petition and determined the following:

For Councilmember Aderhold, 24 signatures were insufficient because the name was not listed on the current voter roll, the name was illegible, a signature was not included, or the person signed the petition more than once.

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For Councilmember Lewis, 23 signatures were insufficient because the name was not listed on the current voter roll, the name was illegible, a signature was not included, or the person signed the petition more than once.



For Councilmember Reynolds, 27 signatures were insufficient because the name was not listed on the current voter roll, the name was illegible, a signature was not included, or the person signed the petition more than once.

Pursuant to AS 29.26.280(b), the petition must bear a number of voter signatures equal to 25 percent of the number of votes cast in the October 4, 2016 regular City election which is 373. I find the petitions proposing the recall of Councilmembers Aderhold, Lewis, and Reynolds all bear sufficient signatures.

### **Relevant Laws in Determining the Sufficiency of the Statement of Recall**

Given the sufficiency of the signatures, I next examined the sufficiency of the statement for recall, with substantial assistance from the City Attorney in interpreting the relevant statutes and common law principles. In the State of Alaska, there are three grounds for recall, 1) misconduct in office; 2) incompetence; and 3) failure to perform prescribed duties.<sup>1</sup>

A sufficient statement for recall must state one of the three grounds for recall with sufficient particularity. The right to recall in Alaska is limited to recall for cause.<sup>2</sup> However, the grounds for recall prescribed by statute are to be liberally construed, in favor of access to the recall process. Taking into account that the recall should be accessible to citizens who cannot afford the assistance of a lawyer in drafting a statement of grounds for recall, the Alaska Supreme Court has stated:

Taking all these factors into account, we conclude that statutes relating to the recall, like those relating to the initiative and referendum, "should be liberally construed so that 'the people [are] permitted to vote and express their will...'" Like the initiative and referendum, the recall process is fundamentally a part of the political process. The purposes of recall are therefore not well served if artificial technical hurdles are unnecessarily created by the judiciary as parts of the process prescribed by statute.<sup>3</sup>

Thus, it is not necessary that a recall application cite the specific laws that it alleges an official violated, provided that the allegations are clear enough so that the legal provisions at issue may be identified.<sup>4</sup> Moreover, while the legal duty allegedly violated must actually exist, where interpretation of the parameters of that duty is debatable, the allegation should be presented to the voters:

Finally, and perhaps most importantly, the statutes offer the targeted official an opportunity to make a rebuttal, which will be placed on the ballot alongside the petitioners' statement of charges. This rebuttal statement is the proper forum in which accused officials may defend against the charges. Where the petition merely characterizes the law in a way different than the



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<sup>1</sup> AS 29.26.250

<sup>2</sup> *Von Stauffenberg v. Committee for Honest and Ethical School Board*, 903 P.2d 1055, 1059 (Alaska 1995).

<sup>3</sup> *Meiners v. Bering Strait School District*, 687 P.2d 287, 296 (Alaska 1984) (citations and footnote omitted).

<sup>4</sup> *Meiners*, 687 P.2d at 300-301.

official (or his or her attorney) would prefer, he or she has an opportunity to put his or her rebuttal before the voters, alongside the charges contained in the petition. It is not the place of the municipal clerk...to decide legal questions of this kind.<sup>5</sup>

In reviewing the legal sufficiency of the grounds for recall, clerks must take the facts alleged in the statement for recall as true, and determine whether those facts, if true, "constitute a prima facie showing" of misconduct in office, incompetence, or failure to perform prescribed duties.<sup>6</sup> In addition, an application must state grounds for recall "with particularity."

### **Examining the Statement of Recall in the Petitions**

The statement for recall at issue is as follows:

Statement for Recall: Be here advised that Homer City Council Members Aderhold, Lewis and Reynolds are each proven unfit for public office, as evident by their individual efforts in preparation of Resolution 16-121 and 17-019, the text of which stands in clear and obvious Violation of Homer City Code, Title 1: 1.18.030 Standards and prohibited acts. n. Political Activities; §5. Oath of Office. Whereas the use of City Council office as a platform for broadcasting political activism is unlawful, unethical, and outside the bounds of permissible conduct in public service.

Misconduct in office is further claimed by the irreparable damage done by draft Resolution 17-019 being made public and widely distributed on social and news media, and publicly promoted as conspicuously drafted by and representing the city of Homer. This action has further caused economic harm and financial loss to the city of Homer.

This statement for recall includes several allegations, each of which I reviewed separately for sufficiency. In essence, the statement alleges:

- 1) Council members at issue are unfit because they violated HCC 1.18 in sponsoring Resolutions 16-121 and 17-019 ("Allegation 1");
- 2) Council members are unfit because they violated their oaths of office in sponsoring Resolutions 16-121 and 17-019 ("Allegation 2"); and
- 3) Council members at issue engaged in misconduct surrounding draft resolution 17-019 due, in part, to the irreparable economic harm it caused the City ("Allegation 3").

I find that Allegation 2 and Allegation 3 are sufficient but Allegation 1 is not sufficient and fails to state grounds for recall with particularity. I discuss each of these allegations in turn.

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<sup>5</sup> *Meiners*, 687 P.2d at 301.

<sup>6</sup> *Von Stauffenberg*, 903 P.2d at 1059-1060.



Allegation 1

Allegation 1 accuses the targeted Council members of violating a legal duty that does not exist. Thus, that allegation is not sufficient. More specifically, Allegation 1 asserts that the Council members were unfit for office because they violated HCC 1.18, which prohibits “political activity” and the oath requirements under the Alaska Constitution. Homer City Code 1.18 states that:

A City official may not take an active part in a political campaign or other *political activity* when on duty. Nothing herein shall be construed as preventing such officials from exercising their voting franchise, contributing to a campaign or candidate of their choice, or expressing their political views when not on duty or otherwise conspicuously representing the City. (emphasis added).

Presumably, the Recall Petition Application sponsors are alleging that the accused Council Members have engaged in prohibited “political activity.” However, Homer City Code 1.18.020 defines “political activity” as:

any act for the purpose of influencing the *nomination or election of any person to public office, or for the purpose of influencing the outcome of any ballot proposition or question*. Informing the public about a ballot proposition or question without attempting to influence the outcome of the ballot proposition or question is not political activity. (emphasis added).

The resolutions at issue were drafted and presented after the certification of the national election and were not directed at any candidate or pending ballot proposition or question. The Code does not prohibit speech on federal policies, elected politicians, politics, or any other type of policy-based or political commentary outside the election/campaign realm. Thus, there is no violation of HCC 1.18.

Allegation 2

Allegation 2 asserts that the targeted Council members are unfit because they violated the oath of office by drafting Resolutions 16-121 and 17-019. The oaths of office mandated under the Homer City Code and Alaska Statute requires officials to “honestly, faithfully, and impartially” perform their duties.<sup>7</sup> Based upon the allegations in the statement of recall, it appears that petitioners are accusing Council members of acting partially rather than impartially in supporting the resolutions.

There is no legal definition for impartial that would clarify the scope of the Council member’s oath. The City Attorney advised that the definition of “impartially” likely requires officials to perform their official duties without regard to their own personal interests but does not require officials to legislate “neutrally.” The City Attorney argued

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<sup>7</sup> HCC 4.01.110; AS 29.20.600.



that defining “impartially” to require Council members to act “neutrally” makes little sense given that council members are elected precisely to advocate for and/or fight against laws and policies on behalf of their constituents. Despite the City Attorney’s interpretation of “impartially,” she acknowledged that there was no clear definition of “impartially” in the oath of office provisions and if the oath was interpreted to require neutral governance, the statement of recall would be sufficiently particular. Thus, construing the allegation liberally in favor of certification, I find Allegation 2 sufficient.

### Allegation 3

Allegation 3 states that the council members committed "misconduct in office" through the "irreparable damage done by draft Resolution 17-019 being made public and widely distributed on social and news media, and publicly promoted as conspicuously drafted by and representing the City of Homer." It further alleges that such action caused economic harm and financial loss to the City of Homer.

"Misconduct in office" is not defined in the recall statutes. Black’s Law defines “misconduct” as “[a] dereliction of duty; unlawful or improper behavior;” and “official misconduct” as “[a] public officer’s corrupt violation of assigned duties by malfeasance, misfeasance, or nonfeasance.” The term “embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.” See 1988 Inf. Op. Att’y Gen. at 3 (Apr. 22; 663-88-0462) (quoting Black’s Law Dictionary (5th ed. 1979)) (recall of Copper River School District Board Chairman). Homer City Code 1.18.030(h) which prohibits Council members from “implying their representation of the whole [Council] by the use of their title.” Thus, if the allegations are taken as true, the members may have violated HCC 1.18.030(h) and thus engaged in misconduct. Although the City Attorney advised that there was no evidence the targeted Council members ever represented that the draft resolution reflected Council’s position as a whole, the attorney reiterated that the voters, and not the City Clerk, are tasked with determining the truth or falsity of petition allegations. Thus, I find Allegation 3 sufficient.

Based upon the above analysis, the statement of recall will be revised to remove the insufficient allegations identified in this memorandum.

### Scheduling a Special Election

Pursuant to AS 29.26.320, a Special Election will be held Tuesday, June 13, 2017. The Election Canvass Board will meet on Friday, June 16, 2017, and a Special Meeting of the City Council will be scheduled on June 19, 2017 to certify the election results.

As outlined in the attachment in the March 28<sup>th</sup> City Attorney’s report titled “Understanding the Recall Petition Process,” if majority vote favors recall, the office becomes vacant upon certification of the recall election. (AS §29.26.350(a))

Further, the process for filling a vacant office is as follows:

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- 1) Nominations for successors or appointees can be filed only after certification of the recall election. (AS 29.26.350(a))
- 2) Remaining members shall appoint a qualified person to fill vacancy within 30 days of recall election certification.
- 3) If membership is reduced to fewer number required for a quorum, remaining members shall appoint qualified person(s) to constitute a quorum within 7 days (AS 29.20.180)

Recommendation: Information only.

REDACTED

# **HOMER CITY COUNCIL OPERATING MANUAL**



January 2017

## **POLICIES OF THE HOMER CITY COUNCIL**

In 1983 the Homer City Council directed that policy directives be drafted to promote routine handling of various categorical business practices. Personnel policies were amended in accordance with policy directives dealing specifically with personnel matters and are found in the City of Homer Personnel Regulations Manual. The balance of these policies are as follows and will be updated regularly.

### **General Statements**

The City of Homer is a first class general law city incorporated March 31, 1964. Homer has a City Manager form of government.

Mayor and Council are elected officials. The Mayor is not a member of the Council and may vote only in the case of a tie vote.

The Mayor of the City of Homer presides over meetings of the City Council, has the power to veto action of the Council (which may be overridden with a 2/3 vote of the Council), and acts in an official capacity to the City Clerk.

The City Council is a body of six elected officials empowered by State Statute and Homer City Code to represent the citizenry in decisions on their behalf. Four members of the Council constitute a majority for quorum and voting purposes.

### **Policy Directives**

#### **Council Relations with Employees & Department Heads:**

"The Council acts as a whole, not as individuals, when interacting with employees regarding City business."

#### **Council Relation with City Attorney**

"Contact with the Attorney by individual Councilmembers is expected to be judicious, always considering the fiscal impact. Specific information requested from the City Attorney by an individual must be in writing to the City Attorney and copied to each Councilmember. Legal opinions on sensitive, controversial, or potentially costly matters will be brought before the full Council for action and should be in written form whenever possible. "Legal Opinions" are defined as paper products and not intended to include advice/information provided verbally. Legal opinions will be given to all members at the same time it is given to the individual member."

"When more than one solicited legal opinion exists on the same subject, the City Attorney's opinion overrides."

#### Council Conduct - Statement of Mayor and Council on Behalf of the City of Homer

"Statements of the Mayor and Council on behalf of the City are based on consensus and resolve of the Council body and substantiated by official record."

#### Councilmember/Mayor Absences

"Every effort should be made to give advance notice of absences. Absences should be coordinated in order to provide the highest possible attendance at Council Meetings."

#### City Council and Commission and Board Minutes

"It is a general consensus that the official record of proceedings, the minutes of City Council and Commission meetings, will be in the "action" format which state clearly the subject considered and the action. Points made in deliberation shall be reflected only. Individual comments of the Council, Commissions and Board are summarized under "Council Comments", "Commission Comments" or "Board Comments". Statements for the record are prefaced with a directive that the comment "is for the record." Public Comments, Public Testimony on Public Hearing Items and Audience Comments shall reflect the subject of the comment or testimony, whether the commenter/testifier is for or against the subject of his/her comments/testimony and shall reflect, in synopsis format, any historical perspective. (Reso 06-115(A), 08/28/06).

#### CITY COUNCIL AND COMMISSION, BOARD MEETING PUBLIC COMMENT/TESTIMONY AND AUDIENCE COMMENT TIME LIMITS

The meeting chairperson shall note for the audience's benefit that there is a three minute time limit each time there is a place in the agenda for public comment/testimony or audience comments. Any individual wishing to address the City Council or any of its Advisory Bodies shall adhere to a three minute time limit. It is the responsibility of the Chair to announce under Public Comments, Public testimony on public hearing items and Audience Comments that there is a 3 minute time limit. Time limits may be adjusted by the 2 minutes up or down with the concurrence of the body in special circumstances only such as agenda content and public attendance. (Reso 06-115(A), 08/28/06).

#### City Council and Commission, Board Agenda Guidelines

Agenda and Meeting Conduct Guidelines are as illustrated in Section 6.



### City Council Meetings

It is the policy of the City Council to avoid holding regular or special meetings on State and Federal holidays. It is the custom of the Homer City Council to cancel the second regular meeting in December.

### Mayor Pro Tem

A Mayor Pro Tem shall be elected by the majority of the Homer City Council. The term of the Mayor Pro Tem shall be until the call for election by the Homer City Council of a New Mayor Pro Tem. The Mayor Pro Tem shall, in the absence of the Mayor, act as Mayor of the City of Homer as though they themselves had taken the Oath of Office of Mayor with all duties, responsibilities and powers of the Office of the Mayor of the City of Homer.

By tradition the Council has elected a New Mayor Pro Tem at the same annual meeting when newly elected officials are sworn in. The Mayor Pro Tem, when acting in that capacity, does not lose the privilege or duty to vote as a Councilmember.

### Appointment to Board & Commissions

City Advisory board and commission appointments are made by the Mayor upon confirmation by the Council. Appointment of a City representative on a board, commission, etc., that is not advisory to the City is made by the Council. The Mayor will notify Council of vacancy and appointment at the next regular meeting if not sooner. Data information sheets will be on file in the City Clerk's office for those considered for appointment. The Mayor will submit a list the names of those considered to the City Council. Representation of a wide community cross-section is desirable on the commissions and boards. Replacements for vacancies may be recommended by the appropriate Commission or Board. Economic Development Commissioners are nominated by the Mayor and confirmed by the Council for appointment.

### Orientation of New Councilmembers

"A general orientation to municipal government, Council conduct and expectations will take place in close proximity to being sworn into office." The Mayor is responsible for providing the orientation program.

### Release of Telephone, Mailing Address and Location of City Council and Commissions

"It is the policy of the City of Homer to release all available information on any official unless otherwise directed by the individual official."

### New Liquor License Applications

"All applications for new liquor licenses will be subject first to a public hearing, duly notified and that issuance of the license may be protested for cause pursuant to AS 4.11.480."

### Fiscal Notes

December 10, 1990 via Memorandum 90-239, to begin January 1, 1991 every action item on Council's Agenda is to include both negative and/or positive financial impact. If a fiscal note is not required or not applicable the action item is to be so marked.

### Use of City Letterhead

"Any letter being sent out from the Council, using City letterhead, should first come before the Council."

### Political Endorsement

"The Homer City Council takes no position in the endorsement of any political race." "Since the Mayor is not a member of the voting body and is an elected official, there is nothing to prohibit his using his title to endorse a political candidate."

### Lobbying Activities

Pursuant to Resolution 96-10, the City Manager will create and deliver to Councilmembers' and the Mayor's mailboxes an initial list of legislation and issues important to the City.

Each Council member and the Mayor will choose the issue(s) and the bill(s) s/he wishes to be responsible for and will indicate how much time s/he is willing to spend on those items.

Where necessary, City Council will develop formal, written positions on issues to be voted on outside the CIP list.

When working with a contract lobbyist or lobbying on behalf of the City, the Mayor, City Manager and Council will be guided by the above-mentioned process. Toward the end of the session, when legislation moves quickly, the City Manager, Mayor or Council members responsible for specific issues may draft a position document and send it to the appropriate players. In that case, a hard copy of the transmittal will be distributed to Council, Mayor, and City Manager immediately thereafter in their mailboxes, with a copy placed in Council packets under Announcements/Presentations/Borough and Commission Reports, thereby ensuring public involvement. (Reso 06-54, 05/22/06).