

CHANDLER, FALCONER, MUNSON & CACCIOLA, LLP

Attorneys At Law
Suite 302
911 West Eighth Avenue
Anchorage, Alaska 99501
Telephone: (907) 272-8401
Facsimile: (907) 274-3698
bcf@bcf.us.com

MEMORANDUM

TO: Glenn Steckman, City Manager



FROM: Brooks Chandler, City Attorney

DATE: April 26, 2022

SUBJECT: Housing Incentive Ordinances

This memorandum summarizes three ordinances intended to provide economic incentives for the construction of new residential housing in Nome. Two of the ordinances are property tax exemption ordinances. The third ordinance is an exemption from permit fees. As explained in greater detail below Nome's ability to provide property tax exemptions is limited by state law.

Dilapidated Property Tax Exemption. This exemption is allowed with conditions by AS 29.45.050(o). To qualify the building being improved or replaced must be in a designated area of the City. The exact area is to be described in subsection (h). And the building must have previously been identified on a list of dilapidated buildings maintained by the City. It is our understanding the City has an existing list of such structures that are subject to abatement as a public nuisance. Council could change this qualification but this seemed the easiest to administer and targets the incentive to improvement of those structures most in need of demolition and replacement.

The anticipated sequence of events begins with the property owner obtaining a building permit for a replacement or renovation project. Then the property owner submits an exemption application. The assessor then verifies the project qualifies for the exemption. The exemption would begin before the project is completed. This is done based on an assumption that any entity

financing the project would want to know if the project qualified for a tax exemption before approving a loan. But if the project is not completed within three years or loses eligibility for the exemption taxes previously avoided must be repaid.

The exemption applies to the entire tax due and lasts for 10 years. This is the maximum period allowed by state law. Council could consider a lesser exemption (for a portion of property tax) or a shorter exemption period.

Since the purpose of the exemption is to incentivize construction of residential housing section (d)(iii) allows the exemption to be denied if the building once constructed is not being used as a primary residence. The exemption is NOT designed to provide incentives for short term rental projects. Council may want to consider whether houses used as a secondary residence for school district or city employees would also qualify.

Similar to senior citizen tax exemptions an annual exemption application is required. This will provide an opportunity for the city to continue to verify eligibility for the tax exemption. Subsection (e)(v) allows the assessor to require additional information such as proof of occupancy as a primary place of residence. Appeals from denial or revocation of an exemption are to follow the same process as other property tax appeals.

Economic Development Property. This exemption is allowed with conditions by AS 29.45.050(m) as long as a residential housing project qualifies as “physical infrastructure”. In our opinion residential housing can certainly be considered part of the infrastructure of the City of Nome. This is especially true if the housing being built is a significant multi-unit housing project.

The sequence for qualifying for the exemption and administration of the exemption is similar to the dilapidated property exemption including the continuing requirement that the property be used as a primary place of residence by all occupants. But because state law limits this type of exemption to projects that represent a “significant capital investment” not every residential building project will qualify. Only those that result in at least six new dwelling units. Council could select a higher or lower number, however, in our opinion there is a significant risk the state assessor would frown on exemptions for construction of a triplex.

For the same reason, a renovation project must also increase the assessed value from that of the existing structure by fifty percent. Council could select a different percentage increase. This requirement is intended to comply with the state mandated condition that limit economic development tax exemptions for non-business projects to those that “expand the tax base”. Simply converting a \$1,000,000 commercial structure to a \$1,000,000 residential structure will not expand the tax base.

The draft ordinance establishes a 15 year tax exemption. Council could choose a longer or shorter period. But there must be some time limit. State law requires the “significant capital investment” to “generate property tax revenue after the exemption expires”.

The amount of the exemption is limited to the portion of the property tax bill that exceeds the minimum required local contribution for education. The Finance Department could provide a current estimate of what portion of the current property tax equals the required minimum contribution to education. The references to a voter referendum in this ordinance are specifically required by AS 29.45.050(m).

Both ordinances have a January 1, 2023 effective date because January 1 is when the tax status of real property is established for any particular tax year. This means the first applications for either of the new exemptions would be due February 1, 2023. It also means that to qualify a building permit must have been obtained no later than February 1, 2023.

Permit Fee Rebate. The third ordinance provides for a rebate of building permit fees for projects that qualify for either of the new property tax exemptions. Because both exemptions require the applicant to obtain a building permit before applying for the exemption the rebate will not be made until after the project has been constructed and a certificate of occupancy issued by the City. It is possible property ownership will change between the time the permit fee is paid and when the fees are rebated. The draft ordinance specifies that the rebate goes to the person that owns the property at the time the rebate is issued.

If you or the City Council have any questions about the draft ordinances please let me know.