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CITY OF HOMER  
HOMER, ALASKA

ORDINANCE 99-8(A)

AN ORDINANCE OF THE CITY OF HOMER AMENDING ZONING CODE  
PROVISIONS RELATING TO THE BOARD OF ADJUSTMENT, APPEALS, AND  
PUBLIC HEARINGS

THE CITY OF HOMER HEREBY ORDAINS:

Section 1. Homer City Code Chapter 21.67, pertaining to the Board of Adjustment,  
is hereby amended to read as follows:

Sections:

- 21.67.010 Board of adjustment established.
- 21.67.020 Powers and duties.
- 21.67.030 Procedures.
- 21.67.040 Appeals to Superior Court.

21.67.010 Board of adjustment established. The Homer City  
Council is declared to be the Board of Adjustment. The mayor  
shall preside over the Board of Adjustment and participate in the  
deliberations. The mayor shall not vote except in the case of a  
tie.

21.67.020 Powers and duties. The Board of Adjustment shall

32 hear and decide appeals consistent with the other sections of  
33 Chapters 21.28 through 21.70 and AS 29.40.050 through  
34 29.40.060.

35  
36 21.67.030 Procedures. Appeals heard by the Board of  
37 Adjustment shall be conducted according to Chapter  
38 21.68.~~consistent with Section 21.68.060~~ and the rules and  
39 ~~regulations governing City Council activity as specified in the~~  
40 ~~Homer City Code.~~

41  
42 21.67.040 Appeals to Superior Court. An appeal from a final  
43 decision of the~~All appeals from any actions of the City Council~~  
44 ~~sitting as a Board of Adjustment~~ mayshall be taken directly to the  
45 Superior Court for the State. ~~The costs of defending an action~~  
46 ~~taken by the City Council sitting as the Board of Adjustment shall~~  
47 ~~be borne by the City.~~ by a party who entered a notice of  
48 appearance in the proceedings before the Board of Adjustment or  
49 by the Administrative Official or Planning Director or any  
50 governmental official, agency, or unit. An appeal to the Superior  
51 Court shall be filed within 30 days of the date that the decision  
52 appealed from is mailed or otherwise distributed to the parties  
53 appearing before the Board of Adjustment.

54  
55  
56 Section 2. Homer City Code Chapter 21.68, pertaining to appeals, is hereby  
57 amended to read as follows:

58  
59 Sections:

60  
61 21.68.010 Purpose.

62 21.68.020 Who may appeal: appellees.~~21.68.020 Who~~

Planning Commission

- 63 may appeal:
- 64 21.68.030 Time for appeal.
- 65 21.68.040 Notice of appeal.~~21.68.040 Appeal~~
- 66 application:
- 67 21.68.060 General appeals procedure.
- 68 21.68.065 Appeal to Board of Adjustment -- New
- 69 evidence or changed circumstances
- 70 21.68.070 Appeal to the Board of Adjustment -- Preparation of
- 71 record.~~21.68.070 Appeal to the Board of Adjustment.~~
- 72 21.68.072 Appeal to the Board of Adjustment -- Briefs.
- 73 21.68.074 Appeal to the Board of Adjustment -- Appeal
- 74 hearing.
- 75 21.68.076 Appeal to the Board of Adjustment -- Decision.
- 76
- 77 21.68.078 Appeal to the Board of Adjustment -- Remand.
- 78
- 79 21.68.080 Appeals to the Homer Advisory Planning
- 80 Commission.
- 81 21.68.090 Appeal -- Conflict of interest.
- 82 21.68.100 Appeal -- Ex parte contacts prohibited.
- 83 21.68.110 Other procedures.
- 84
- 85
- 86 21.68.010 Purpose. a. This chapter governs appeals to the
- 87 Homer Advisory Planning Commission and the Board of
- 88 Adjustment from~~all~~ appellate actions and determinations taken
- 89 under the Homer City Zoning Ordinance.
- 90
- 91 b. An appeal may be taken from a final decision of the
- 92 Board of Adjustment to the Superior Court pursuant to Section
- 93 21.67.040.

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21.68.020 Who may appeal; appellees. a. Any person or persons with interests in land which is affected by an action or determination taken under Chapters 21.28 through 21.70, may be appealed by only: appeal the action or determination.

1. the applicant for the action or determination.
2. the Administrative Official or Planning Director or any governmental official, agency, or unit.
3. any person or persons with interests in land that is affected by the action or determination.
4. any competent taxpayer-citizen that is adversely affected by the action or determination.

b. If an action or determination of the Planning Commission is appealed to the Board of Adjustment, the following may file a written notice of appearance as provided in Section 21.68.040 to participate as a party to the appeal and file an appellee brief as provided in Section 21.68.070:

1. the party in whose favor the Planning Commission's decision was rendered.
2. the Administrative Official or Planning Director or any governmental official, agency, or unit.
3. any person or persons with interests in land that would be adversely affected if the decision of the Planning Commission were reversed by the Board of Adjustment.
4. any competent taxpayer-citizen that is adversely affected by the action or determination.

## Planning Commission

125                    c. For purposes of this section, any person who was  
 126                    entitled under Section 21.69.030 to notice by mail of a public  
 127                    hearing on an application for the action or determination  
 128                    appealed from is irrebuttably presumed to be a person with  
 129                    interests in land that is affected by the action or determination.  
 130

131  
 132                    21.68.030 TimePeriod for appeal. An appeal to the Planning  
 133                    Commission or Board of Adjustment~~City Council~~ must be filed  
 134                    within ~~fifteen~~ thirty days of the action or determination being  
 135                    appealed.~~Any party participating in an appeal to the court shall~~  
 136                    ~~have thirty days to appeal the decision. Any decision not~~  
 137                    ~~appealed within that period shall become final.~~  
 138

139  
 140                    21.68.040 Notice of appeal.~~Appeal application:~~ a. A notice of  
 141                    appeal from an action or determination of the Planning Director  
 142                    or Administrative Official~~All applications for an administrative~~  
 143                    ~~appeal shall be filed with the City Manager.;~~ A notice of appeal  
 144                    from an action or determination of~~all applications for appeals~~  
 145                    ~~from the Planning Commission shall~~will be filed with the City  
 146                    Clerk.  
 147

148                    b. A notice of appeal~~All appeals~~ shall be in writing and  
 149                    shall contain, but ~~is~~ are not limited to, the following information:  
 150

- 151                    1. The name and address of the appellant~~applicant~~;
- 152                    2. A description of the action or determination from  
 153                    which the appeal is sought;
- 154                    3. The street address and legal description of the property  
 155                    directly affected by the action or determination, and the

## Planning Commission

156 name and address of the property owner(s);  
 157 ~~43. The reason for the appeal which must include a~~  
 158 ~~description of detailed Detailed and specific allegations of~~  
 159 ~~error, including reference to applicable provisions of the~~  
 160 ~~zoning code or other law;-~~  
 161 5. A statement of whether the action or determination  
 162 should be reversed, modified, or remanded for further  
 163 proceedings, or any other desired relief.  
 164

165 The City Manager or City Clerk shall reject any notice of appeal  
 166 that does not comply with this subsection and notify the appellant  
 167 of the reasons for rejection. If a notice of appeal is rejected for  
 168 reasons other than timeliness, a corrected notice of appeal that  
 169 complies with this subsection will be accepted as timely if filed  
 170 within seven days of the date of mailing the notice of rejection.  
 171

172 ~~\_\_\_\_\_ b. The period for decisions specified in Section~~  
 173 ~~21.68.060a shall begin immediately upon receipt of the appeal by~~  
 174 ~~the City Manager or City Clerk.~~  
 175

176 c. The Planning Director or City Clerk shall mail copies  
 177 of the notice of appeal to all parties of record in the proceeding  
 178 appealed from within seven days of the date of receipt of the  
 179 notice of appeal. Any party desiring to participate in the appeal  
 180 must file with the City Clerk a written notice of appearance  
 181 containing that party's name and address, and the name and  
 182 address of the party's representative, if any.  
 183

184 d. Any additional party filing a notice of appearance may,  
 185 within 7 days after the date of filing of the initial notice of  
 186 appeal, file notice of cross appeal complying with subsection b.

187                    The Planning Director or City Clerk shall promptly give notice of  
 188                    the cross appeal to the appellant and all other parties who have  
 189                    filed a written notice of appearance.

190  
 191  
 192                    21.68.060 General appeals procedure. a. All appeals must be  
 193                    heard~~decided~~ by the agency with whom the appeal has been filed  
 194                    within sixty days after the appeal record has been prepared. filed  
 195                    with that agency. The agency hearing the appeal may for good  
 196                    cause shown extend the time for the hearing. The decision on  
 197                    appeal must be rendered within sixty days a reasonable time after  
 198                    the hearing.

199  
 200                                       b. The appellant and all parties who have entered an  
 201                    appearance~~participated in the decision~~ shall be provided not less  
 202                    than with fifteen days' written notice of these ~~scheduling of the~~  
 203                    appeal hearing. Neighboring ~~Affected~~ property owners shall be  
 204                    notified as set forth in Section 21.69.030.

205  
 206                                       c. An electronic recording shall be kept of all public~~the~~  
 207                    entire proceedings and shall be reduced to written minutes. The  
 208                    electronic recording shall be preserved for one year unless  
 209                    required for further appeals. No recording or minutes shall be  
 210                    kept of deliberations that are not open to the public.

211  
 212                                       d. All decisions shall be in writing. ~~and made solely upon~~  
 213                    ~~the record before the agency hearing the appeal and shall make~~  
 214                    ~~reference to evidence contained in the record. The agency shall~~  
 215                    ~~include in its record the officially adopted minutes and decisions~~  
 216                    ~~of the agency from which the appeal was taken.~~

217                                       e. A decision shall include ~~The agency deciding an appeal~~

## Planning Commission

218 ~~shall adopt as part of its decision~~ an official written statement of  
 219 findings and reasons supporting ~~theits~~ decision. This statement  
 220 shall refer to specific evidence in the record and to the controlling  
 221 sections of Chapters 21.28 through 21.70. Upon express vote, the  
 222 agency may adopt, as its statement of findings and reasons, those  
 223 findings and reasons officially adopted by the agency below from  
 224 which the appeal was taken.

225  
 226 f. Copies of the agency's decision ~~and official statement~~  
 227 shall be promptly mailed to all parties who entered a written  
 228 notice of appearance ~~participating~~ in the appeal  
 229 proceeding ~~hearing~~.

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 232 21.68.065 Appeal to Board of Adjustment -- New evidence or  
 233 changed circumstances. a. Except as provided in subsection b.,  
 234 the Board of Adjustment shall not consider allegations of new  
 235 evidence or changed circumstances and shall make its decision  
 236 based solely on the record. If new evidence or changed  
 237 circumstances are alleged, the Board shall, in its discretion, either  
 238 hear the appeal without considering the allegations or shall  
 239 remand the matter forthwith to the appropriate lower  
 240 administrative body or official, which shall determine whether to  
 241 rehear the matter.

242  
 243 b. When the standing of a party is in issue, the Board of  
 244 Adjustment may, after notice to the parties to the appeal, take  
 245 additional evidence for the limited purpose of making findings on  
 246 the question of the party's standing. No evidence received under  
 247 this subsection shall be considered for purposes other than  
 248 determining standing.

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21.68.070 Appeal to the Board of Adjustment --

Preparation of record. ~~a. New Evidence. Appeals alleging new evidence or changed circumstances shall not be heard but will be remanded by the Board of Adjustment forthwith to the lower administrative body.~~

~~b. Preparation of Record.~~

a. Upon receipt of a timely notice of timely submittal of an appeal to the Board of Adjustment, the Clerk shall:

1. Prepare an appeal record consisting of all relevant documents involved in the original decision, including any staff reports, minutes, exhibits, notices, and other appellant documents utilized in the original decision. The appeal record shall be paginated.

b. A verbatim transcript of the testimony before the Planning Commission will be included only if a party makes a written request to the City Clerk within 10 days after the filing of the notice of appeal or notice of cross appeal, if any is filed. The requesting party shall pay the full cost of the transcript. All arrangements for preparation the transcript are the responsibility of the party desiring the transcript, and are subject to the prior approval of the City Clerk. Only a transcript prepared and certified as accurate by the City Clerk's office or a qualified court reporter shall be accepted. The original transcript must be filed with the City Clerk to be included as part of the record on appeal. Any person may obtain a copy of the transcript upon payment of the cost of reproduction and any applicable mailing costs.

c. The appellant and other parties who have entered an appearance shall be notified by mail when the record is complete.

280 Any person may obtain a copy of the appeal record upon  
281 payment of the costs of reproduction and any applicable mailing  
282 costs.

283 ~~2. Allow an additional written brief from the appellant~~  
284 ~~and/or appellee in support of or denying those allegations of error~~  
285 ~~specified in the notice of appeal, without introducing any new~~  
286 ~~evidence or change of circumstance;~~

287 ~~3. Notify the Board of Adjustment immediately of~~  
288 ~~the intent to appeal.~~

289  
290  
291 21.68.072 Appeal to the Board of Adjustment -- Briefs. a. Each  
292 party to the appeal shall file with the City Clerk an opening brief  
293 not later than 20 days after the date of notice of the completion of  
294 the record on appeal. The brief shall be typed on 8½ by 11 inch  
295 paper and shall include a statement of facts with citations to the  
296 record on appeal, a clear statement of the party's position  
297 regarding the allegations of error specified in the notice of  
298 appeal, and points and legal authorities in support in support of  
299 such position.

300  
301 b. Each party may submit a reply brief within 14 days  
302 after the date opening briefs are due. A reply brief shall be  
303 limited to a response to matters specifically raised in the brief  
304 responded to.

305  
306 c. Upon request, any person may obtain a copy of any  
307 brief upon payment of reproduction charges and any applicable  
308 cost of mailing.

309  
310 d. Upon written request, and for good cause shown and

280 Any person may obtain a copy of the appeal record upon  
281 payment of the costs of reproduction and any applicable mailing  
282 costs.

283 ~~2. Allow an additional written brief from the appellant~~  
284 ~~and/or appellee in support of or denying those allegations of error~~  
285 ~~specified in the notice of appeal, without introducing any new~~  
286 ~~evidence or change of circumstance;~~

287 ~~3. Notify the Board of Adjustment immediately of~~  
288 ~~the intent to appeal.~~

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291 21.68.072 Appeal to the Board of Adjustment -- Briefs. a. Each  
292 party to the appeal shall file with the City Clerk an opening brief  
293 not later than 20 days after the date of notice of the completion of  
294 the record on appeal. The brief shall be typed on 8½ by 11 inch  
295 paper and shall include a statement of facts with citations to the  
296 record on appeal, a clear statement of the party's position  
297 regarding the allegations of error specified in the notice of  
298 appeal, and points and legal authorities in support in support of  
299 such position.

300

301 b. Each party may submit a reply brief within 14 days  
302 after the date opening briefs are due. A reply brief shall be  
303 limited to a response to matters specifically raised in the brief  
304 responded to.

305

306 c. Upon request, any person may obtain a copy of any  
307 brief upon payment of reproduction charges and any applicable  
308 cost of mailing.

309

310 d. Upon written request, and for good cause shown and

311 when it appears to the City Clerk that other parties will not be  
312 unduly prejudiced by the delay, the City Clerk may grant an  
313 extension of time not to exceed five days for the filing of any  
314 brief.

315  
316  
317 21.68.074 Appeal to the Board of Adjustment -- Appeal hearing.

318 c. Appeal Hearing.

319 a. —1. The meeting at which the Board of Adjustment  
320 hearsdeliberates and decides an appeal shall be open to the  
321 public.; The City Attorney shall be present.

322  
323 — b. — 2. The Board of Adjustment may, in its  
324 discretion, shall not hear oral arguments from any party who has  
325 filed a written brief. If granted, oral argument shall not exceed  
326 30 minutes per party, provided that the appellant may divide its  
327 time between an initial presentation and a rebuttal. Extra time for  
328 oral argument shall be granted only for exceptional cause shown.  
329 Oral argument shall be conducted in the following order:

- 330  
331 1. Appellant (the party who filed the notice of appeal);  
332 2. Appellees (responding parties);  
333 3. Appellant (if appellant reserved time from the initial  
334 presentation);

335  
336 b. The taking ofnor-take testimony or other evidence shall  
337 be governed by Section 21.68.065. It may consider only the  
338 material contained in the record prepared by the Clerk;

339  
340 d. The Board of Adjustment may undertake deliberations  
341 immediately upon the conclusion of the hearing on appeal or may

342 take the matter under advisement and meet at such other time as  
 343 is convenient for deliberations until a decision is rendered.  
 344 Deliberations need not be public and may be in consultation with  
 345 the City Attorney.

346  
 347 ~~d~~—3. The Board of Adjustment may exercise its  
 348 independent judgment on legal issues raised by the parties  
 349 ~~appellant. The City Attorney shall be present at all Board of~~  
 350 ~~Adjustment proceedings.~~ "Legal issues" as used in this section  
 351 are those matters that relate to the interpretation or construction  
 352 of ordinances or other provisions of law.;

353  
 354 — f. — ~~4. f.~~ The Board of Adjustment shall defer to  
 355 the judgment of the lower administrative body regarding disputed  
 356 issues of fact. Findings of fact adopted expressly or by necessary  
 357 implication by the lower body shall be considered as true if they  
 358 are supported by substantial evidence. **However, findings of**  
 359 **fact adopted by less than a majority of the lower**  
 360 **administrative body shall not be given deference and the**  
 361 **Board of Adjustment shall exercise independent judgment**  
 362 **when reviewing such findings of fact.** "Substantial evidence."  
 363 as used in this section, means such relevant evidence as a  
 364 reasonable mind might accept as adequate to support a  
 365 conclusion.—

366  
 367 21.68.076 Appeal to the Board of Adjustment -- Decision. a.  
 368 The Board of Adjustment may affirm or reverse the decision of  
 369 the lower administrative body in whole or in part. A majority  
 370 vote of the fully constituted Board is required to reverse or  
 371 modify the action or determination appealed from. For the  
 372 purpose of this section the fully constituted board shall not

373 include those members who do not participate in the proceedings  
374 due to a conflict of interest or disqualifying ex parte contacts. A  
375 decision affirming, reversing, or modifying the decision appealed  
376 from shall be in a form that finally disposes of the case on appeal,  
377 except where the case is remanded for further proceedings.

378  
379 b. The Board may seek the assistance of the City  
380 Attorney, city staff, or the parties in the preparation of a decision  
381 or proposed findings of fact.

382  
383  
384 21.68.078 Appeal to the Board of Adjustment -- Remand. a.  
385 The Board of Adjustment shall ~~may~~ remand the appeal to the  
386 lower administrative body when the Board determines that:

- 387  
388 1. There is insufficient evidence in the record on an issue  
389 material to the decision of the case; or  
390 2. There has been a substantial procedural error that  
391 requires further consideration by the lower administrative  
392 body; or  
393 3. There is other cause requiring further proceedings by  
394 the lower administrative body.

395  
396 A decision remanding a case shall describe any issue upon which  
397 further evidence should be taken, and shall set forth any further  
398 directions the Board deems appropriate for the guidance of the  
399 lower administrative body.

400  
401 b. The lower administrative body shall act on the case  
402 upon remand in accordance with the decision of the Board of  
403 Adjustment in the minimum time allowed by the circumstances.

## Planning Commission

404 Cases on remand following a decision of the Board shall take  
405 precedence over all other matters on the agenda of the lower  
406 administrative body, except cases remanded under Subsection  
407 21.68.065(a) are not entitled to such precedence.  
408  
409

410 21.68.080 Appeals to the Homer Advisory Planning  
411 Commission. a. An appeal may be filed by any party adversely  
412 affected by any action of the Administration.

413 a. Upon receipt of a timely notice of appeal to the  
414 Planning Commission, the Planning Director shall prepare an  
415 appeal record consisting of all relevant documents involved in the  
416 original decision, including any staff reports, correspondence,  
417 applications, or other documents utilized in the original action or  
418 determination. The appeal record shall be paginated. The  
419 appellant and parties who have entered an appearance shall be  
420 notified by mail when the appeal record is complete. A copy of  
421 the appeal record may be obtained from the Planning Department  
422 upon payment of the costs of reproduction.  
423

424 b. A public hearing shall be scheduled as per Section  
425 21.68.060.  
426

427 c. The Commission may prescribe rules of procedure for  
428 additional public notification in cases where a decision of the  
429 CommissionBoard would have a substantial effect on the  
430 surrounding neighborhood.  
431

432 d. The Commission may accept new testimony and other  
433 evidence, including public testimony, and hear oral arguments as  
434 necessary to develop a full record upon which to decide an appeal

435 from an act or determination of the Administrative Official or  
436 Planning Director. Any person may file a written brief or  
437 testimony in an appeal before the Commission.

438  
439 e. The Commission may undertake deliberations  
440 immediately upon the conclusion of the hearing on appeal or may  
441 take the matter under advisement and meet at such other time as  
442 is convenient for deliberations until a decision is rendered.  
443 Deliberations need not be public and may be in consultation with  
444 the City Attorney.

445  
446  
447 21.68.090 Appeals -- Conflict of interest. a. A member of the  
448 Planning Commission or Board of Adjustment may not  
449 participate in the deliberation or voting process of an appeal if:

- 450  
451 1. The commission or board member has a substantial  
452 financial interest in the official action according to  
453 Chapter 1.12, or  
454 2. Other legal grounds for disqualification are established.

455  
456 Otherwise, all commission or board members shall participate in  
457 the deliberation and voting process.

458  
459 b. If a financial interest or other potential grounds for  
460 legal disqualification of a member of the Planning Commission  
461 or Board of Adjustment is disclosed on the record, and the  
462 Commission or Board determines that the member should  
463 participate because there is no substantial financial interest in the  
464 action or other legal grounds for disqualification, any Board or  
465 Commission action taken thereafter shall be invalid if a later

## Planning Commission

466 determination by a court or appellate tribunal that the member  
467 should have been disqualified from participation because of a  
468 substantial financial interest in the action or other legal grounds  
469 for disqualification. When an action is invalidated, the  
470 Commission or Board shall undertake de novo reconsideration of  
471 the appeal beginning at the stage where the disqualified member's  
472 participation began.

473  
474 c. If it is not possible to obtain a quorum of the Planning  
475 Commission or Board of Adjustment to hear an appeal without  
476 the participation of members disqualified under Subsection  
477 21.68.090(a), then all members who would be so disqualified  
478 shall nevertheless participate in the appeal, including  
479 deliberations and voting, and the decision rendered in such a case  
480 shall be valid notwithstanding the participation of such members.  
481 This subsection shall not apply if the matter can be laid aside  
482 until a later date when the agency can obtain a quorum of  
483 members who do not have a substantial financial interest or other  
484 disqualification.

485  
486 21.68.100 Appeals -- Ex parte contacts prohibited. a. Planning  
487 Commission and Board of Adjustment members shall be  
488 impartial in all appeal matters, both in fact and in appearance.  
489 No member shall communicate, directly or indirectly, with the  
490 appellant, other parties or persons affected by the appeal, or  
491 members of the public concerning the appeal or issues  
492 specifically presented in the notice of appeal, either before the  
493 appeal hearing or during any period of time the matter is under  
494 consideration or subject to reconsideration, without notice and  
495 opportunity for all parties to participate in the communication.  
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b. This section shall not be deemed to prohibit:

1. members from discussing matters relating to the appeal among themselves.

2. communications between municipal staff and Commission or Board members where (a) such staff members are not themselves parties to the appeal and (b) such communications do not furnish, augment, diminish, or modify the evidence in the record on appeal

3. communications between the Commission or Board and its legal counsel.

c. If, before an appeal commences, a member of the Commission or Board receives an ex parte communication of a type that could not properly be received while an appeal is pending, the member shall disclose the communication in the manner prescribed in subsection d at the first meeting of the Commission or Board at which the appeal is addressed.

d. A member of the Commission or Board who receives an ex parte communication in violation of this section shall, at the first opportunity after the communication, place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the member received an ex parte communication, and shall advise all parties that these matters have been placed on the record. Any party desiring to rebut the ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal within ten days after notice on the record of the communication.

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e. If the Commission or Board determines in its discretion it is necessary to eliminate the harmful effect of an ex parte communication received in violation of this section, the Commission or Board may disqualify the member who received the communication from participation in the appeal, and it may order that the portions of the record pertaining to the communication be sealed by protective order. In addition, the Commission or Board may provide for appropriate sanctions, including default, for any violation of this section.

f. It is a violation, subject to applicable penalties and other enforcement remedies under this code:

1. for any person to knowingly communicate or attempt to communicate with a Commission or Board member in violation of subsection a.
2. for any Commission or Board member to knowingly receive a communication in violation of subsection a.
3. for any Commission or Board member to knowingly fail to place on the record any matter when and as required under subsections c and d.

21.68.110 Other procedures. If no specific procedure is prescribed by the code, the Planning Commission or Board of Adjustment may proceed in any lawful manner not inconsistent with this code, statutes, and the constitution.

Section 3. Homer City Code Chapter 21.69, pertaining to public hearings, is

559 hereby amended to read as follows:

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561

Sections:

562

563

21.69.010 Purpose.

564

21.69.020 Public hearing procedures.

565

21.69.030 Notification of neighboring property owners.

566

~~21.69.040 Procedures.~~

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21.69.010 Purpose. This chapter governs all public hearings held under the authority of the Homer City Zoning Ordinance.

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21.69.020 Public hearing procedures. a. Notice of the public hearing shall be published at least twice in a paper of general circulation within the City. The notice shall be published during each of the two calendar weeks prior to the public hearing date.

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b. The notice shall contain at least the following information:

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1. A brief description of the proposal on which the public body is to act;

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2. A legal or common description of the property involved;

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3. Date, time and place of the public hearing;

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4. Person and place to contact for more detailed information.

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c. The rules of order of the body holding the hearing shall prevail.

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21.69.030 Notification of neighboring property owners. A copy of the aforementioned newspaper notification shall be mailed to real property owners on record on the Borough Assessor's records within a three-hundred-foot periphery of the parcel affected by the proposed action. When a public hearing is to be held about a zoning ordinance amendment involving a change in the text or major district boundary changes, no notification of neighboring property owners shall be required, but notices shall be displayed in at least three public places.

~~21.69.040~~ Procedures. If the purpose of the public hearing is to take testimony and evidence bearing upon a current application or appeal, the hearing body shall adhere to the procedures set forth in Section 21.68.060.

Section 4. This ordinance is of a permanent and general character and shall be included in the City code

ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER,  
ALASKA, this 10<sup>th</sup> day of May, 1999.

CITY OF HOMER

Jack Cushing  
Jack Cushing, Mayor

ATTEST:

Mary L. Calhoun  
Mary L. Calhoun, CMC, City Clerk

Planning Commission

621 AYES: 4  
622 NOES: 0  
623 ABSTAIN: 0  
624 ABSENT: 2  
625  
626 First Reading: 4/12/99  
627 Public Hearing: 4/26/99  
628 Second Reading: 5/10/99  
629 Effective Date: 5/11/99

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631 Reviewed and approved as to form:

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\_\_\_\_\_  
Robert Purcell  
Acting City Manager

  
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Gordon J Tans  
City Attorney