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**CITY OF HOMER
HOMER, ALASKA**

City Attorney

ORDINANCE 10-41(A)

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, AMENDING THE FOLLOWING SECTIONS OF THE HOMER CITY CODE REGARDING APPEALS OF PLANNING ADMINISTRATIVE DECISIONS: 21.93.100, GENERAL APPEAL PROCEDURE; 21.93.110, APPEAL DECISIONS; 21.93.300, APPEALS TO THE PLANNING COMMISSION; 21.93.500, PARTIES ELIGIBLE TO APPEAL TO BOARD OF ADJUSTMENT; NOTICE OF APPEARANCE; 21.93.510, NEW EVIDENCE OR CHANGED CIRCUMSTANCES; 21.93.520, PREPARATION OF RECORD; 21.93.530, WRITTEN BRIEFS; AND 21.93.540, APPEAL HEARING.

WHEREAS, HCC Chapter 21.93 provides procedures for appeals to the Homer Advisory Planning Commission and the Board of Adjustment; and

WHEREAS, Experience has demonstrated the need to improve and clarify certain appeal procedures to support the fair and expeditious processing of appeals.

NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code 21.93.100, General appeals procedure, is amended to read as follows:

21.93.100 General appeals procedure. a. All appeals must be heard within 60 days after the appeal record has been prepared. The body hearing the appeal may for good cause shown extend the time for hearing. The decision on appeal must be rendered within 60 days after the appeal hearing.

b. The appellant, the applicant for the action or determination that is the subject of the appeal, the owner of the property that is the subject of the action or determination, and all parties who have entered an appearance shall be provided not less than 15 days written notice of the time and place of the appeal hearing. Neighboring property owners shall be notified as set forth in HCC § 21.94.030.

c. An electronic recording shall be kept of the entire proceeding. Written minutes shall be prepared. The electronic recording shall be preserved for one year unless required for further appeals. No recording or minutes shall be kept of deliberations that are not open to the public.

Section 2. Homer City Code 21.93.110, Appeal decisions, is amended to read as follows:

21.93.110 Appeal decisions. a. All final decisions on appeals shall be in writing, and shall state the number of members of the body hearing the appeal who participated in the appeal, number voting in favor of the decision, and the number voting in opposition to the decision.

45 b. A decision shall include an official written statement of findings and reasons
46 supporting the decision. This statement shall refer to specific evidence in the record and to the
47 controlling sections of the zoning code. Upon express vote, the body may adopt, as its statement
48 of findings and reasons, those findings and reasons officially adopted by the body or officer
49 below from which the appeal was taken.

50 c. Copies of the written decision shall be promptly mailed to the appellant, the
51 applicant for the action or determination that is the subject of the appeal, the owner of the
52 property that is the subject of the action or determination, and all parties who entered a written
53 notice of appearance in the appeal proceeding.

54
55 Section 3. Homer City Code 21.93.300, Appeals to the Planning Commission, is
56 amended to read as follows:

57
58 21.93.300 Appeals to the Planning Commission. a. Within 30 days after receipt of a
59 timely notice of appeal to the Planning Commission, the City Planner will prepare an appeal
60 record consisting of all relevant documents submitted to or used by the Planning Department in
61 making the decision under appeal, including any staff reports, correspondence, applications, or
62 other documents. The appeal record shall be paginated. The appellant shall be notified by mail
63 when the appeal record is complete. Any person may obtain a copy of the appeal record from
64 the Planning Department upon payment of the costs of reproduction.

65 b. An appeal hearing shall be scheduled within the time specified in HCC §
66 21.93.100. The hearing will be open to the public.

67 c. The Commission may prescribe rules of procedure for additional public
68 notification in cases where the Commission determines its decision would have a substantial
69 effect on the surrounding neighborhood.

70 d. The Commission may accept new testimony and other evidence, including public
71 testimony, and hear oral arguments as necessary to develop a full record upon which to decide an
72 appeal from an act or determination of the City Planner. Any person may file a written brief or
73 testimony in an appeal before the Commission.

74 e. The Commission may undertake deliberations immediately upon the conclusion
75 of the hearing on appeal or may take the matter under advisement and meet at such other time as
76 is convenient for deliberations until a decision is rendered. Deliberations need not be public and
77 may be in consultation with an attorney acting as legal counsel to the Commission.

78 f. The Commission may affirm or reverse the decision of the City Planner in whole
79 or in part. A majority vote of the fully constituted Commission is required to reverse or modify
80 the action or determination appealed from. For the purpose of this section the fully constituted
81 Commission shall not include those members who do not participate in the proceedings due to a
82 conflict of interest or disqualifying ex parte contacts, disqualifying partiality, or other
83 disqualification for cause. A decision affirming, reversing, or modifying the decision appealed
84 from shall be in a form that finally disposes of the case on appeal, except where the case is
85 remanded for further proceedings.

86 g. The Commission may seek the assistance of legal counsel, city staff, or parties in
87 the preparation of a decision or proposed findings of fact.

88
89 Section 4. Homer City Code 21.93.500, Parties eligible to appeal to Board of Adjustment;
90 notice of appearance, is amended to read as follows:

91
92 21.93.500 Parties eligible to appeal to Board of Adjustment; notice of appearance. a.
93 Only persons who actively and substantively participated in the matter before the Commission
94 and who would be qualified to appeal under HCC § 21.93.060 may participate as parties in an
95 appeal from the Commission to the Board of Adjustment.

96 b. Any person so qualified who desires to participate in the appeal as a party, other
97 than the appellant, the applicant for the action or determination that is the subject of the appeal
98 and the owner of the property that is the subject of the action or determination, must, not less
99 than 14 days before the date set for the appeal hearing, file with the City Clerk a written and
100 signed notice of appearance containing that party's name and address, and proof that the person
101 would be qualified under HCC § 21.93.060 to have filed an appeal.

102
103 Section 5. Homer City Code 21.93.510, New evidence or changed circumstances, is
104 amended to read as follows:

105
106 21.93.510 New evidence or changed circumstances. a. Except as provided in
107 subsections (b) and (c) of this section, the Board of Adjustment shall not consider allegations of
108 new evidence or changed circumstances and shall make its decision based solely on the record.
109 If new evidence or changed circumstances are alleged, the Board may, in its discretion, either
110 hear the appeal without considering the allegations or may remand the matter to the appropriate
111 lower administrative body or official to rehear the matter, if necessary.

112 b. When the standing of a person is in issue, the Board of Adjustment may take
113 additional evidence for the limited purpose of making findings on the question of the person's
114 standing. No evidence received under this subsection shall be considered for purposes other than
115 determining standing.

116 c. When the disqualification of a member of the Board of Adjustment for conflict of
117 interest, ex parte contact, partiality or other cause is in issue, the Board of Adjustment may take
118 additional evidence for the limited purpose of making findings on the question of
119 disqualification. No evidence received under this subsection shall be considered for purposes
120 other than determining disqualification.

121
122 Section 6. Homer City Code 21.93.520, Preparation of record, is amended to read as
123 follows:

124
125 21.93.520 Preparation of record. a. The appeal record shall be completed within 30 days
126 after receipt of a timely and complete notice of appeal to the Board of Adjustment, shall consist
127 of the items, and shall be prepared in the manner, described in this subsection.

128 1. The Clerk will assemble and paginate all relevant documents involved in
129 the original decision, including any staff reports, minutes, exhibits, notices, and other documents
130 considered in making the original decision.

131 2. A party may elect to include a verbatim transcript of the testimony before
132 the Planning Commission in the appeal record by making a written request to the City Clerk for a
133 recording of the testimony within 14 days after the clerk mails copies of the notice of appeal to
134 the parties pursuant to HCC § 23.90.080(d). The requesting party shall arrange and pay for the
135 preparation of the transcript. Only a transcript prepared and certified as accurate by a qualified
136 court reporter shall be accepted. The original transcript must be filed with the City Clerk to be
137 provided to the Board of Adjustment with the record on appeal.

138 b. The appellant, the applicant for the action or determination that is the subject of
139 the appeal, the owner of the property that is the subject of the action or determination, and other
140 parties who have entered an appearance shall be notified by mail when the record and transcript,
141 if ordered, are complete. Any person may obtain a copy upon payment of the costs of
142 reproduction and any applicable mailing costs.

143
144 Section 7. Subsection (a) of Homer City Code 21.93.530, Written briefs, is amended to
145 read as follows:

146
147 21.93.530 Written briefs. a. Each party to the appeal (each appellant, cross-appellant,
148 and respondent) may file with the City Clerk one opening brief not later than twenty days after
149 the date of mailing the notice of the completion of the record on appeal. The brief shall be typed
150 on 8 1/2 x 11 inch paper and shall include a statement of relevant facts contained in the record on
151 appeal, with citations to the page numbers in the record, a clear statement of the party's position
152 regarding the allegations of error specified in the notice of appeal, and arguments citing points
153 and legal authorities in support of such position.

154
155 Section 8. Homer City Code 21.93.540, Appeal hearing, is amended to read as follows:

156
157 21.93.540 Appeal hearing. a. The meeting at which the Board of Adjustment hears an
158 appeal shall be open to the public. The City Attorney or another attorney acting as legal counsel
159 to the Board shall be present.

160 b. Each party (each appellant, cross-appellant, and respondent) may present oral
161 argument at the appeal hearing, subject to the order of presentation and time limitations that the
162 chair adopts at the commencement of the hearing. The taking of testimony or other evidence is
163 limited by HCC § 21.93.510.

164 c. The Board of Adjustment may undertake deliberations immediately upon the
165 conclusion of the hearing on appeal or may take the matter under advisement and meet at such
166 other time as is convenient for deliberations until a decision is rendered. Deliberations need not
167 be public and may be in consultation with the legal counsel to the Board.

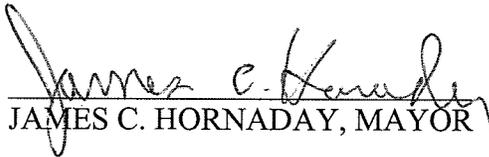
168 d. The Board of Adjustment may exercise its independent judgment on legal issues
169 raised by the parties. "Legal issues" as used in this section are those matters that relate to the
170 interpretation or construction of the zoning code, ordinances or other provisions of law.

171 e. The Board of Adjustment shall defer to the findings of the lower administrative
172 body regarding disputed issues of fact. Findings of fact adopted expressly or by necessary
173 implication by the lower body shall be considered as true if they are supported by substantial
174 evidence. But findings of fact adopted by less than a majority of the lower administrative body
175 shall not be given deference, and when reviewing such findings of fact the Board of Adjustment
176 shall exercise independent judgment and may make its own findings of fact. If the lower
177 administrative body fails to make a necessary finding of fact and substantial evidence exists in
178 the record to enable the Board to make the finding of fact, the Board may do so in the exercise of
179 its independent judgment, or, in the alternative, the Board may remand the matter for further
180 proceedings. "Substantial evidence", as used in this section, means such relevant evidence as a
181 reasonable mind might accept as adequate to support a conclusion.

182
183 Section 9. This Ordinance is of a permanent and general character and shall be included
184 in the City Code.

185
186 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this 23rd day of
187 August 2010.

188
189 CITY OF HOMER

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193 JAMES C. HORNADAY, MAYOR

194
195 ATTEST:

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199 JO JOHNSON, CMC, CITY CLERK

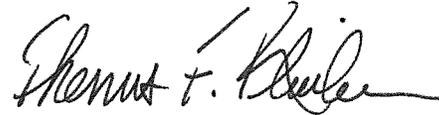
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202 YES: 6
203 NO: 0
204 ABSTAIN: 0
205 ABSENT: 0
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210 First Reading: 8/09/10
211 Public Hearing: 8/23/10
212 Second Reading: 8/23/10
213 Effective Date: 8/24/10
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215
216 Reviewed and approved as to form:

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218 
219 Walt E. Wrede, City Manager

220
221
222 Date: 8/8/10


Thomas F. Klinkner, City Attorney

Date: 9-20-10