



## City of Homer

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# Memorandum

## Agenda Changes/Supplemental Packet

TO: MAYOR ZAK AND HOMER CITY COUNCIL

FROM: JO JOHNSON, MMC, CITY CLERK

DATE: JANUARY 23, 2017

SUBJECT: AGENDA CHANGES AND SUPPLEMENTAL PACKET

### **CONSENT AGENDA**

**Ordinance 17-07(S)**, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 4.10.040, 8.08.120, 14.05.425, 21.93.060, 21.93.070, 21.93.100, 21.93.110, 21.93.500, 21.93.540, 21.93.550, 21.93.560, 21.93.570, 21.93.700, and 21.93.710 to Replace the Board of Adjustment With a Hearing Officer to Decide Administrative Appeals Under the Homer City Code, Including But Not Limited to, the Use of a Hearing Officer to Order Impoundment of Dangerous Animals, Decide Disputes Regarding Itinerant Merchant Licenses, and Decide Disputes Regarding Qualifications of a Candidate for Office. Aderhold. Page 3

### RECOMMENDATION:

Voice consensus to changes under Agenda Approval.

Fiscal Note: N/A



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

Aderhold

3  
4 **ORDINANCE 17-07(S)**  
5

6 AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA,  
7 AMENDING HOMER CITY CODE 4.10.040, 8.08.120, 14.05.425,  
8 21.93.060, 21.93.070, 21.93.100, 21.93.110, 21.93.500, 21.93.540,  
9 21.93.550, 21.93.560, 21.93.570, 21.93.700, AND 21.93.710 TO  
10 REPLACE THE BOARD OF ADJUSTMENT WITH A HEARING OFFICER  
11 IN APPEALS OF PLANNING COMMISSION DECISIONS AND PERMIT  
12 THE USE OF A HEARING OFFICER TO DECIDE ADMINISTRATIVE  
13 APPEALS UNDER THE HOMER CITY CODE, INCLUDING BUT NOT  
14 LIMITED TO, THE USE OF A HEARING OFFICER TO ORDER  
15 IMPOUNDMENT OF DANGEROUS ANIMALS, DECIDE DISPUTES  
16 REGARDING ITINERANT MERCHANT LICENSES, AND DECIDE  
17 DISPUTES REGARDING QUALIFICATIONS OF A CANDIDATE FOR  
18 OFFICE.  
19

20 WHEREAS, It is in the City's best interest to have the flexibility and authority to use the  
21 most cost-effective and knowledgeable decision-maker in the administrative appeals  
22 processes offered by the City; and  
23

24 WHEREAS, The use of experienced hearing officers that do not otherwise advise the City  
25 on legislative land use matters promotes public confidence in the City of Homer's  
26 administrative appeals process in the land use arena,  
27

28 NOW, THEREFORE, THE CITY OF HOMER ORDAINS:  
29

30 Section 1. Section 4.10.040 is amended to read as follows:  
31

32 The Clerk shall determine whether each candidate for municipal office is qualified as  
33 provided by law. At any time before the election the Clerk may disqualify any candidate  
34 whom the Clerk finds is not qualified and immediately notify that candidate by certified  
35 mail. A candidate who is disqualified may request a hearing before the Clerk within five  
36 days of receiving the notice. **The Clerk may appoint a hearing officer to conduct the**  
37 **hearing and determine whether or not the Clerk's disqualification of the candidate**  
38 **was supported by the evidence.** The hearing shall be held no later than five days after  
39 the request unless the candidate agrees in writing to a later date.  
40

41 Section 2. Section 8.08.120 is amended to read as follows:  
42

**[Bold and underlined added. Deleted language stricken through.]**

- 43           **a.** Any person aggrieved by the action of the Chief of Police in the denial of an  
44 application for a permit or license as provided in HCC 8.08.040, or in the decisions  
45 with reference to the revocation of license as provided in HCC 8.08.050, shall have  
46 the right of appeal to **a hearing officer appointed by the City Manager**~~the City~~  
47 ~~Council~~. Such appeal shall be taken by filing with the **City Clerk**~~City Council~~, within  
48 14 days after the action of the Chief of Police, a written statement setting forth fully  
49 the grounds for appeal. The **City Clerk**~~City Council~~ shall set a time and place for a  
50 hearing on such appeal, and notice of such hearing shall be mailed to the appellant  
51 postage prepaid at his **or her** last known address at least five days prior to the date  
52 set for the hearing. The decision and order of the **hearing officer**~~City Council~~ on  
53 such appeal shall be final and conclusive.
- 54           **b.** **The hearing officer shall be identified in the notice of hearing. The appellant**  
55 **may object to the hearing officer by providing the City Clerk a written objection**  
56 **no more than ten days after the date of the notice of hearing. If the appellant**  
57 **does not file an objection, any right to object to the hearing officer shall be**  
58 **deemed waived.**
- 59           **c.** **The hearing officer shall disclose any conflict of interest or personal bias as**  
60 **soon as he or she is aware of such conflicts or bias and shall refrain from acting**  
61 **as the hearing officer if he or she has a conflict of interest or personal bias.**

62  
63           Section 3. Section 14.05.425 is amended to read as follows:

64  
65           If a violation of this chapter is not corrected by administrative adjustment under  
66 HCC 14.05.420, then the City Manager shall order the user to show cause why  
67 service should not be terminated or other enforcement action, including  
68 imposition of a civil penalty, should not be taken. A written notice shall be served  
69 on the user by personal service, or by certified or registered mail, return receipt  
70 requested, specifying the time and place of the hearing to show cause. The  
71 notice of the hearing shall be served no less than 10 days before the hearing.  
72 Service may be made on any agent, officer or authorized representative of the  
73 discharger. **The hearing shall be before the City Manager or his or her**  
74 **designee.** After the hearing, the City Manager **or his or her designee** shall issue  
75 a written decision which may include appropriate orders with respect to the  
76 violations of the chapter and may include a civil penalty in accordance with HCC  
77 14.05.435. The ~~City Manager's~~ decision **of the City Manager or his or her**  
78 **designee** constitutes final administrative action for purposes of judicial review.

79  
80           Section 4. Section 20.20.040 is amended to read as follows:

81  
82           All animals seized pursuant to HCC 20.20.030 shall be held in impound pending  
83 an administrative hearing concerning their potential destruction. The  
84 administrative hearing shall be conducted as follows:

**[Bold and underlined added.] Deleted language stricken through.**

85 a. An administrative ~~h~~**Hearing officer** Board shall be **appointed by the**  
86 **City Manager** ~~convened consisting of the City Manager (who shall chair~~  
87 ~~the proceedings), the Chief of Police, and one member of the City Council~~  
88 ~~(selected by the City Manager).~~

89  
90 b. A notice of administrative hearing shall be served upon the animal's  
91 owner or his designee under the procedures set for service of summons  
92 in a civil action. The notice shall specify the date, time, and location of  
93 the hearing. The hearing may not be less than three days following the  
94 service of the hearing notice on the animal owner or his designee.

95  
96 c. The hearing shall consider all information pertinent to the specific  
97 violation of HCC 20.20.030 which initiated the impoundment and hearing  
98 process, and may additionally consider any information concerning prior  
99 violations or incidents with this same animal, as well as any information  
100 concerning the animal owner's or his designee's prior violations of the  
101 Homer animal ordinances with any other animal.

102  
103 d. The hearing shall address and enter its formal findings as to whether:  
104 1. The animal is a vicious animal under HCC 20.04.020;  
105  
106 2. The owner or designee thereof failed to use all reasonable  
107 precautions to control his animal and protect the public;  
108  
109 3. The circumstances of this incident under consideration  
110 constitute a danger to the public.

111 e. If **the hearing officer** ~~a majority of Board members~~ finds in the  
112 affirmative as to all three of the provisions of subsection (d) of this  
113 section, the ~~h~~**Hearing officer** Board shall order the animal destroyed. The  
114 owner or designee, if present at the hearing, shall be verbally notified of  
115 the findings and order at the conclusion of the hearing. Written findings  
116 shall also be prepared and served upon the owner or designee. If the  
117 owner or designee is not present at the hearing, written findings and  
118 destruction order shall be served on that person as soon as possible  
119 following the hearing.

120  
121 f. Absent an affirmative finding by the **hearing officer** ~~Hearing Board~~ as  
122 to one or more of the provisions of subsection (d) of this section, the  
123 animal shall be immediately released to its owner or designee. The  
124 **hearing officer** ~~Hearing Board~~ shall, in the event of release under this  
125 provision, prepare a written notice which shall be delivered or mailed to  
126 the animal's owner, outlining the **hearing officer's** ~~Hearing Board's~~

**[Bold and underlined added. Deleted language stricken through.]**

127 recommendations as to actions that owner should take to prevent future  
128 incidents and to protect the public.

129  
130 g. Any appeal of the ~~hearing officer's~~**hearing officer's** Hearing Board's finding and  
131 destruction order shall be taken through the Alaska Court System within  
132 10 days of the receipt of said findings and order by the owner. The filing  
133 of an appeal will automatically stay the order of destruction pending  
134 resolution of the appeal. The animal shall remain in impound at the  
135 owner's expense pending resolution of the appeal.

136  
137 Section 5. Section 20.20.050 shall be amended to read as follows:

138  
139 Vicious animals to be destroyed upon administrative ~~hearing officer~~**hearing officer**  
140 ~~Board~~ order shall be destroyed as follows:

141  
142 a. The animal shall remain in impound for 10 days following the date the  
143 owner (or his designee) is verbally notified of the ~~hearing~~**hearing**  
144 ~~officer's~~**officer's** Hearing Board's decision, or the date that a written finding and  
145 destruction order is served on the owner (or his designee) to allow that  
146 person to appeal the destruction order through the courts.

147  
148 b. If the City is not served with a notice of appeal of the destruction order  
149 within the 10-day holding period outlined in subsection (a) of this  
150 section, the City shall immediately proceed to humanely destroy the  
151 animal.

152  
153 Section 6. Section 21.41.400 shall be amended to read as follows:

154  
155 a. The Planning Commission shall hear and decide appeals when it is alleged  
156 there is an error in any requirement, decision, or determination made by the  
157 Planning Department.

158  
159 b. A ~~hearing officer appointed by the City Manager~~**hearing officer appointed by the City Manager** shall hear and decide  
160 appeals when it is alleged there is an error in any requirement, decision, or  
161 determination made by the Planning Commission.

162  
163 Section 7. Article II of Section 21.91 shall be amended to read as follows:

164  
165 Article II. ~~Board of Adjustment~~**Appeals of Planning Decisions.**

166  
167 Section 8. Section 21.91.100 shall be repealed in its entirety.

168  
**[Bold and underlined added. Deleted language stricken through.]**

169 Section 9. Section 21.91.110 shall be renumbered 21.91.100 and amended to read as  
170 follows:

- 171  
172 a. ~~The Board of Adjustment shall hear and decide appeals pursuant to the~~  
173 ~~provisions of the code, zoning code.~~ **A hearing officer appointed by the City**  
174 **Manager shall hear and decide appeals pursuant to the provisions of the**  
175 **zoning code.**  
176  
177 b. **A hearing officer appointed by the City Manager to act as the decision maker**  
178 **in appeals of decisions made by the Planning Commission must have at least**  
179 **five years experience acting as an administrative law judge or**  
180 **administrative hearing officer and must be licensed to practice law in the**  
181 **State of Alaska and in good standing.**  
182

183 Section 10. Section 21.91.120 shall be renumbered 21.91.110 and amended as follows:

184  
185 Appeals heard by the hearing officer shall be conducted according to applicable  
186 procedures specified in Chapter 21.93 HCC.  
187

188 Section 11. Section 21.91.130 shall be renumbered 21.91.120 and amended as follows:

- 189  
190 a. An appeal from a final decision of the ~~Board of Adjustment~~ **hearing officer**  
191 may be taken directly to the Superior Court by a party who actively and  
192 substantively participated in the proceedings before the ~~Board of Adjustment~~  
193 **hearing officer** or by the City Manager or City Planner or any governmental  
194 official, agency, or unit.  
195  
196 b. An appeal to the Superior Court shall be filed within 30 days of the date of  
197 distribution of the final decision to the parties appearing before the ~~Board of~~  
198 **Adjustment hearing officer.**  
199  
200 c. An appeal from a final decision of the ~~Board of Adjustment~~ **hearing officer** to  
201 the Superior Court is governed by court rules.  
202

203 Section 12. Section 21.93.030 shall be amended to read as follows:

204  
205 21.93.030 Decisions subject to appeal to **a hearing officer.**~~Board of Adjustment.~~

206  
207 The following acts or determinations of the Commission, when final, may be  
208 appealed to the **a hearing officer appointed by the City Manager**~~Board of~~  
209 ~~Adjustment~~ by a person with standing:  
210

**[Bold and underlined added.** Deleted language stricken through.]

- 211 a. Grant or denial of a conditional use permit.  
212  
213 b. Grant or denial of a variance.  
214  
215 c. Grant or denial of formal recognition of a nonconforming use or structure, or  
216 a decision terminating a nonconforming use or structure.  
217  
218 d. Grant or denial of a conditional fence permit.  
219  
220 e. A decision by the Commission in a matter appealed to the Commission under  
221 HCC 21.93.020.  
222  
223 f. Any other final decision that is expressly made appealable to ~~the Board of~~  
224 ~~Adjustment~~ **a hearing officer** by other provisions of the code.  
225

226 Section 13. Section 21.93.060 shall be amended to read as follows:  
227

228 21.93.060 Standing – Appeal to ~~Board of Adjustment~~ **Hearing Officer**.  
229

230 Only the following have standing to appeal an appealable action or  
231 determination of the Planning Commission to the ~~Board of Adjustment~~ **hearing**  
232 **officer**:  
233

- 234 a. Applicant for the action or determination, or the owner of the property that is  
235 the subject of the action or determination under appeal.  
236  
237 b. The City Manager, the City Planner or the City Planner’s designee, or any  
238 governmental official, agency, or unit.  
239  
240 c. Any person who actively and substantively participated in the proceedings  
241 before the Commission and is aggrieved by the action or determination.  
242  
243 d. Any person who actively and substantively participated in the proceedings  
244 before the Commission and would be aggrieved if the action or determination  
245 being appealed were to be reversed on appeal.  
246

247 Section 14. Section 21.93.070 shall be amended to read as follows:  
248

- 249 a. An appeal to the Planning Commission must be filed within 30 days after the  
250 date of distribution of the final action or determination to the applicant or other  
251 person whose property is the subject of the matter being appealed.  
252

**[Bold and underlined added. Deleted language stricken through.]**



253 b. An appeal to **a hearing officer**~~the Board of Adjustment~~ must be filed within  
254 30 days after the date of distribution of the final action or determination to the  
255 applicant and other parties, if any.

256  
257 Section 15. Section 21.93.100 shall be amended to read as follows:

258  
259 a. All appeals must be heard within 60 days after the appeal record has been  
260 prepared. The body **or officer** hearing the appeal may for good cause shown  
261 extend the time for hearing. The decision on appeal must be rendered within 60  
262 days after the appeal hearing.

263  
264 b. The appellant, the applicant for the action or determination that is the subject  
265 of the appeal, the owner of the property that is the subject of the action or  
266 determination, and all parties who have entered an appearance shall be  
267 provided not less than 15 days' written notice of the time and place of the appeal  
268 hearing. Neighboring property owners shall be notified as set forth in HCC  
269 21.94.030.

270  
271 **c. A notice identifying the hearing officer shall be filed with the notice of the**  
272 **hearing. All parties shall have ten days from the date of the notice to object**  
273 **to the hearing officer based upon conflicts of interest, personal bias or ex**  
274 **parte contacts. Failure to file an objection to the hearing officer within the**  
275 **ten days shall waive any objection to the hearing officer.**

276  
277 **d.** An electronic recording shall be kept of the entire proceeding. Written  
278 minutes shall be prepared. The electronic recording shall be preserved for one  
279 year unless required for further appeals. No recording or minutes shall be kept  
280 of deliberations that are not open to the public.

281  
282 Section 16. Section 21.93.110 shall be amended to read as follows:

283  
284 a. All final decisions on appeals shall be in writing, and shall state the number of  
285 members of the body **or officer** hearing the appeal who participated in the  
286 appeal, number voting in favor of the decision, and the number voting in  
287 opposition to the decision.

288  
289 b. A decision shall include an official written statement of findings and reasons  
290 supporting the decision. This statement shall refer to specific evidence in the  
291 record and to the controlling sections of the zoning code. Upon express vote, the  
292 body may adopt, as its statement of findings and reasons, those findings and  
293 reasons officially adopted by the body or officer below from which the appeal  
294 was taken.

**[Bold and underlined added. Deleted language stricken through.]**

295 c. Copies of the written decision shall be promptly mailed to the appellant, the  
296 applicant for the action or determination that is the subject of the appeal, the  
297 owner of the property that is the subject of the action or determination, and all  
298 parties who entered a written notice of appearance in the appeal proceeding.  
299

300 Section 17. Section 21.93.500 shall be amended to read as follows:

301  
302 21.93.500 Parties eligible to appeal **Planning Commission decision to a**  
303 **hearing officer**~~to Board of Adjustment~~ – Notice of appearance.

304 a. Only persons who actively and substantively participated in the matter before  
305 the Commission and who would be qualified to appeal under HCC 21.93.060 may  
306 participate as parties in an appeal from the Commission to **a hearing officer** ~~the~~  
307 ~~Board of Adjustment.~~

308  
309 b. Any person so qualified who desires to participate in the appeal as a party,  
310 other than the appellant, the City Planner or the City Planner’s designee, the  
311 applicant for the action or determination that is the subject of the appeal and  
312 the owner of the property that is the subject of the action or determination,  
313 must, not less than 14 days before the date set for the appeal hearing, file with  
314 the City Clerk a written and signed notice of appearance containing that party’s  
315 name and address, and proof that the person would be qualified under HCC  
316 21.93.060 to have filed an appeal.  
317

318 Section 18. Section 21.93.510 shall be amended to read as follows:

319  
320 a. Except as provided in subsections (b) and (c) of this section, **the hearing**  
321 **officer**~~the Board of Adjustment~~ shall not consider allegations of new evidence  
322 or changed circumstances and shall make **his or her**~~its~~ decision based solely on  
323 the record. If new evidence or changed circumstances are alleged, the **hearing**  
324 **officer**~~Board~~ may, in **his or her**~~its~~ discretion, either hear the appeal without  
325 considering the allegations or may remand the matter to the appropriate lower  
326 administrative body or official to rehear the matter, if necessary.  
327

328 b. When the standing of a person is in issue, the **hearing officer** ~~Board of~~  
329 ~~Adjustment~~ may take additional evidence for the limited purpose of making  
330 findings on the question of the person’s standing. No evidence received under  
331 this subsection shall be considered for purposes other than determining  
332 standing.  
333

334 c. ~~When the disqualification of a member of the Board of Adjustment for conflict~~  
335 ~~of interest, ex parte contact, partiality or other cause is in issue, the Board of~~  
336 ~~Adjustment may take additional evidence for the limited purpose of making~~

**[Bold and underlined added. Deleted language stricken through.]**

337 findings on the question of disqualification. No evidence received under this  
338 subsection shall be considered for purposes other than determining  
339 disqualification.

340  
341 Section 19. Section 21.93.520 shall be amended to read as follows:

342  
343 a. The appeal record shall be completed within 30 days after receipt of a timely  
344 and complete notice of appeal to the ~~Board of Adjustment~~ **hearing officer**, shall  
345 consist of the items, and shall be prepared in the manner, described in this  
346 subsection.

347  
348 1. The Clerk will assemble and paginate all relevant documents involved  
349 in the original decision, including any staff reports, minutes, exhibits, notices,  
350 and other documents considered in making the original decision.

351  
352 2. A party may elect to include a verbatim transcript of the testimony  
353 before the Planning Commission in the appeal record by making a written  
354 request to the City Clerk for a recording of the testimony within 14 days after the  
355 Clerk mails copies of the notice of appeal to the parties pursuant to HCC  
356 21.93.080(d). The requesting party shall arrange and pay for the preparation of  
357 the transcript. Only a transcript prepared and certified as accurate by a qualified  
358 court reporter shall be accepted. The original transcript must be filed with the  
359 City Clerk to be provided to the ~~Board of Adjustment~~ **hearing officer** with the  
360 record on appeal.

361  
362 b. The appellant, the applicant for the action or determination that is the subject  
363 of the appeal, the owner of the property that is the subject of the action or  
364 determination, and other parties who have entered an appearance shall be  
365 notified by mail when the record and transcript, if ordered, are complete. Any  
366 person may obtain a copy upon payment of the costs of reproduction and any  
367 applicable mailing costs.

368  
369 Section 20. Section 21.93.540 shall be amended to read as follows:

370  
371 a. ~~The meeting at which the Board of Adjustment hears an appeal~~ **before the**  
372 **hearing officer** shall be open to the public. ~~The City Attorney or another~~  
373 ~~attorney acting as legal counsel to the Board shall be present.~~

374  
375 b. Each party (each appellant, cross-appellant, and respondent) may present  
376 oral argument at the appeal hearing, subject to the order of presentation and  
377 time limitations that the **hearing officer** ~~chair~~ adopts at the commencement of

**[Bold and underlined added. Deleted language stricken through.]**

378 the hearing. The taking of testimony or other evidence is limited by HCC  
379 21.93.510.

380  
381 c. The **hearing officer**~~Board of Adjustment~~ may undertake deliberations  
382 immediately upon the conclusion of the hearing on appeal or may take the  
383 matter under advisement and meet at such other time as is convenient for  
384 deliberations until a decision is rendered. Deliberations need not be public, ~~and~~  
385 ~~may be in consultation with the legal counsel to the Board.~~

386  
387 d. The **hearing officer**~~Board of Adjustment~~ may exercise **his or her**its  
388 independent judgment on legal issues raised by the parties. “Legal issues” as  
389 used in this section are those matters that relate to the interpretation or  
390 construction of the zoning code, ordinances or other provisions of law.

391  
392 e. The **hearing officer**~~Board of Adjustment~~ shall defer to the findings of the  
393 lower administrative body regarding disputed issues of fact. Findings of fact  
394 adopted expressly or by necessary implication by the lower body shall be  
395 considered as true if they are supported by substantial evidence. But findings of  
396 fact adopted by less than a majority of the lower administrative body shall not  
397 be given deference, and when reviewing such findings of fact the Board of  
398 Adjustment shall exercise independent judgment and may make its own  
399 findings of fact. If the lower administrative body fails to make a necessary finding  
400 of fact and substantial evidence exists in the record to enable the **hearing**  
401 **officer**~~Board~~ to make the finding of fact, **he or she** ~~the Board~~ may do so in the  
402 exercise of **his or her**its independent judgment, or, in the alternative, the  
403 **hearing officer**~~Board~~ may remand the matter for further proceedings.  
404 “Substantial evidence,” as used in this section, means such relevant evidence as  
405 a reasonable mind might accept as adequate to support a conclusion.

406  
407 Section 21. Section 21.93.550 shall be amended to read as follows:

408  
409 21.93.550 **Hearing Officer**~~Board of Adjustment~~ Decision

410  
411 The **hearing officer**~~Board of Adjustment~~ may affirm or reverse the decision of  
412 the lower administrative body in whole or in part. ~~A majority vote of the fully~~  
413 ~~constituted Board is required to reverse or modify the action or determination~~  
414 ~~appealed from. For the purpose of this section the fully constituted Board shall~~  
415 ~~not include those members who do not participate in the proceedings due to a~~  
416 ~~conflict of interest or disqualifying ex parte contacts, disqualifying partiality, or~~  
417 ~~other disqualification for cause.~~ A decision affirming, reversing, or modifying the  
418 decision appealed from shall be in a form that finally disposes of the case on  
419 appeal, except where the case is remanded for further proceedings.

**[Bold and underlined added. Deleted language stricken through.]**

420                   b. ~~The Board may seek the assistance of legal counsel, City staff, or parties in the~~  
421                   ~~preparation of a decision or proposed findings of fact.~~

422

423                   Section 22. Section 21.93.560 shall be amended to read as follows:

424

425                   a. The **hearing officer**~~Board of Adjustment~~ may remand the appeal to the lower  
426                   administrative body when **he or she**~~the Board~~ determines that:

427

428                                 1. There is insufficient evidence in the record on an issue material to the  
429                                 decision of the case;

430

431                                 2. There has been a substantial procedural error that requires further  
432                                 consideration by the lower administrative body; or

433

434                                 3. There is other cause requiring further proceedings by the lower  
435                                 administrative body.

436                   b. A decision remanding a case shall describe any issue upon which further  
437                   evidence should be taken, and shall set forth any further directions the **hearing**  
438                   **officer**~~Board~~ deems appropriate for the guidance of the lower administrative  
439                   body.

440                   c. The lower administrative body shall promptly act on the case upon remand in  
441                   accordance with the decision of the **hearing officer**~~Board of Adjustment~~. A case  
442                   on remand has priority on the agenda of the lower administrative body, except  
443                   cases remanded under HCC 21.93.510(a) are not entitled to priority. The  
444                   applicant or owner of the property in question may waive the priority given by  
445                   this subsection.

446

447                   Section 23. Section 21.93.570 shall be amended to read as follows:

448

449                   If no specific procedure is prescribed by the code, the **hearing officer**~~Board of~~  
450                   ~~Adjustment~~ may proceed in an administrative appeal in any lawful manner not  
451                   inconsistent with this title, statutes, and the Constitution.

452

453                   Section 24. Section 21.93.700 shall be amended to read as follows:

454

455                   a. A member of the Planning Commission or **a hearing officer appointed to**  
456                   **hear an appeal from a Planning Commission decision**~~Board of Adjustment~~  
457                   may not participate in the deliberation or voting process of an appeal if,  
458                   following the procedures set forth in this chapter, the Commission or **hearing**  
459                   **officer**~~Board member~~ is determined to have a substantial financial interest in  
460                   the official action, as defined in Chapter 1.18 HCC. In the absence thereof, all

**[Bold and underlined added. Deleted language stricken through.]**

461 Commission ~~or Board~~ members shall participate in the deliberation and voting  
462 process unless excused pursuant to other provisions of this chapter.

463  
464 b. When a financial interest of a member of the Planning Commission ~~or Board~~  
465 ~~of Adjustment~~ is disclosed on the record, the remainder of the Commission ~~or~~  
466 ~~Board, respectively,~~ shall determine whether the member should participate in  
467 the matter. If it is determined the member should participate, any action taken  
468 thereafter by the Commission~~body~~ shall be valid notwithstanding a later  
469 determination by a court, ~~or an~~ appellate tribunal, **or the hearing officer** that  
470 the member should have been disqualified from participation because of a  
471 substantial financial interest in the matter; except the action shall be invalidated  
472 when the disqualified member's vote was necessary to establish the required  
473 majority to approve the decision of the Commission~~body~~. When a Commission  
474 ~~or Board~~ decision is invalidated because such vote was necessary to establish  
475 the required majority, the Commission~~body~~ shall commence new  
476 consideration of the matter beginning at the point where the Commission~~or~~  
477 ~~Board, respectively,~~ determines it is necessary to do so to eliminate the effect of  
478 the member's improper participation.

479  
480 **c. A hearing officer shall disclose any substantial financial interest, personal**  
481 **bias or ex parte contact immediately upon being appointed by the City**  
482 **Manager and shall refrain from accepting the appointment if a substantial**  
483 **financial interest, personal bias or ex parte contact exists. If the substantial**  
484 **financial interest, personal bias or ex parte contact arises after the hearing**  
485 **officer's appointment, he or she shall disclose his or her interest and shall**  
486 **be disqualified from serving as the hearing officer unless all parties waive**  
487 **any objection to the hearing officer.**

488  
489 **d.** For purposes of hearing an appeal, a quorum of the Commission is four  
490 members and a quorum of the ~~Board is four members, one of whom may be the~~  
491 ~~Mayor~~. If it is not possible to obtain a quorum of the Planning Commission ~~or~~  
492 ~~Board of Adjustment~~ to hear an appeal without the participation of members  
493 disqualified by reason of a substantial financial interest, then all members who  
494 would be so disqualified shall nevertheless participate in the appeal, including  
495 deliberations and voting, and the decision rendered in such a case shall be valid  
496 notwithstanding the participation of such members. This subsection shall not  
497 apply if the matter can be postponed to a later date (not later than 75 days after  
498 the appeal record is prepared) when the Commission~~body~~ can obtain a quorum  
499 of members who are not disqualified by a substantial financial interest.

500  
501 Section 24. Section 21.93.710 shall be amended to read as follows:  
502

**[Bold and underlined added.** Deleted language stricken through.]

503 a. No member of the Commission or **a hearing officer appointed by the City**  
504 **Manager to review a decision issued by the Commission**~~Board of Adjustment~~  
505 shall have ex parte communication with any person. “Ex parte communication”  
506 means to communicate, directly or indirectly, with the appellant, other parties  
507 or persons affected by the appeal, or members of the public concerning an  
508 appeal or issues specifically presented in the notice of appeal, either before the  
509 appeal hearing or during any period of time the matter is under consideration or  
510 subject to reconsideration, without notice and opportunity for all parties to  
511 participate in the communication.

512  
513 b. This section does not prohibit:

514  
515 1. **Commission** Members from discussing matters relating to the appeal  
516 among themselves.

517  
518 2. Communications between municipal staff and Commission ~~or Board~~  
519 members **or the hearing officer** where:

520  
521 a. Such staff members are not themselves parties to the appeal;

522 and

523 b. Such communications do not furnish, augment, diminish, or  
524 modify the evidence in the record on appeal.

525  
526 3. Communications between the Commission ~~or Board~~ and its legal  
527 counsel.

528  
529 c. If, before an appeal commences, a member of the Commission ~~or Board~~  
530 receives an ex parte communication of a type that could not properly be  
531 received while an appeal is pending, the member shall disclose the  
532 communication in the manner prescribed in subsection (d) of this section at the  
533 first meeting of the Commission ~~or Board~~ at which the appeal is addressed.

534  
535 d. A member of the Commission ~~or Board~~ who receives an ex parte  
536 communication at any time shall, at the first opportunity after the  
537 communication, place on the record of the pending matter all written  
538 communications received, all written responses to the communications, and a  
539 memorandum stating the substance of all oral communications received, all  
540 responses made, and the identity of each person from whom the member  
541 received an ex parte communication. Any party to the appeal desiring to rebut  
542 the ex parte communication must be granted a reasonable opportunity to do so  
543 if a request is promptly made.

544

**[Bold and underlined added. Deleted language stricken through.]**

545 e. If the Commission ~~or Board~~ determines in its discretion it is necessary to  
546 eliminate the harmful effect of an ex parte communication received in violation  
547 of this section, the Commission ~~or Board~~ may disqualify the member who  
548 received the communication from participation in the appeal. In addition, the  
549 Commission ~~or Board~~ may impose appropriate sanctions, including default,  
550 against a party to the appeal for any violation of this section.

551  
552 f. It is a violation, subject to penalties and other enforcement remedies under  
553 this title:

554  
555 1. For any person to knowingly have or attempt to have ex parte  
556 communication with a Commission or a hearing officer~~or Board~~  
557 ~~member~~ in violation of subsection (a) of this section.

558  
559 2. For any Commission ~~or Board~~ member or the hearing officer to  
560 knowingly receive an ex parte communication in violation of subsection  
561 (a) of this section.

562  
563 3. For any Commission ~~or Board~~ member to knowingly fail to place on the  
564 record any matter when and as required under subsections (c) and (d) of  
565 this section.

566  
567 Section 25. This ordinance shall take effect upon its adoption by the Homer City  
568 Council.

569  
570 Section 26. This ordinance is of a permanent and general character and shall be  
571 included in the City Code.

572  
573 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this \_\_\_\_\_ day of  
574 \_\_\_\_\_, 2017.

575  
576 CITY OF HOMER

577  
578  
579 \_\_\_\_\_  
580 BRYAN ZAK, MAYOR

581  
582 ATTEST:  
583  
584  
585 \_\_\_\_\_  
586 JO JOHNSON, MMC, CITY CLERK



587 YES:  
588 NO:  
589 ABSTAIN:  
590 ABSENT:  
591  
592  
593  
594 First Reading:  
595 Public Hearing:  
596 Second Reading:  
597 Effective Date:

598  
599  
600  
601

602 Reviewed and approved as to form.

603  
604

\_\_\_\_\_  
605 Mary K. Koester, City Manager

606  
607

Date: \_\_\_\_\_

608  
609

610 Fiscal Note: NA

\_\_\_\_\_  
Holly C. Wells, City Attorney

Date: \_\_\_\_\_