



# City of Homer

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

Office of the City Clerk

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Homer, Alaska 99603

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## Memorandum Agenda Changes/Supplemental Packet

TO: MAYOR ZAK AND HOMER CITY COUNCIL

FROM: JO JOHNSON, MMC, CITY CLERK

DATE: MARCH 28, 2017

SUBJECT: AGENDA CHANGES AND SUPPLEMENTAL PACKET

### PUBLIC HEARINGS

**Ordinance 17-05(A)**, An Ordinance of the City Council of Homer, Alaska, Amending the 2017 Operating Budget by Appropriating \$671,053 From the Homer Accelerated Roads/Trails Program (HART) for the Greatland Street Improvements (Option A) Project, and Authorizing the City Manager to Execute All Appropriate Documents. Erickson.

Written public comments

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**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.

Written public comments

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### RECOMMENDATION:

Voice consensus to changes under Agenda Approval.

Fiscal Note: N/A



**From:** Mary Griswold  
**To:** [Bryan Zak](#); [Catriona Reynolds](#); [David Lewis](#); [Donna Aderhold](#); [Heath Smith](#); [Shelly Erickson](#); [Tom Stroozas](#); [Jo Johnson](#); [Carey Meyer](#)  
**Subject:** Ord 17-05 (A) Greatland extension  
**Date:** Sunday, March 26, 2017 4:50:01 PM

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I am a long-time fan of extending Greatland Street straight north to Pioneer Avenue- Option A. I do not understand why the Planning Commission recommended no action. This extension would provide an essential downtown connector. It would relieve a lot of difficult left turns at the lower end to the Bypass for drivers trying to get to other downtown businesses.

I much prefer an intersection as in Option A to one at Bartlett. I also support a right turn only at the north end of the extension. Please approve this ordinance as amended for Option A.



**From:** Valentin Caspaar  
**To:** [Carey Meyer](#); [Department Clerk](#); [Angie Newby](#); [Mark Hemstreet](#); [Brian Nahmis](#); [Zack Wallace](#); [R. Angie R. Newby](#)  
**Cc:** [michaelarmstrong@homernews.com](mailto:michaelarmstrong@homernews.com)  
**Subject:** Save-U-More, Greatland Street  
**Date:** Monday, March 27, 2017 9:11:22 PM

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Hi

**To decide on the future, you must understand the past:**

While the people in Homer are great and I hope we provide an excellent service to them,  
my interaction with the city have been less than good:

**A: 16 years** ago, instead of building a drive way over my own land, **I was forced to build a \$500,000+ road, on city property and gift it to the city to open my new store.** Because of an eviction case by a greedy ex-landlord who doubled our rent, we had no time to argue. Having such an extra expense, we then could not be as inexpensive as we wanted to be for our Homer customers.

**B: Then the City** passed a law, trying to retro-actively restrict the size of my under-construction building.

But when Fred Meyer wanted to come, they allowed a much bigger store, funny!

**C: Half way finished**, the then city manager shows me a picture of a shopping mall in Ft. Collins, that he wants me to rather build.

**D: Then the city** doesn't want us to put a pole sign up for the 18 lot business park, so we can be found by customers and tourist.

**E: Just last month**, the city stated to U-Haul that my land doesn't qualify to have rentals.

My parking lot is full of 50 cars, campers and RVs everyday, but we can't part 5 uHaul's in the corner?!

Make sense?

One street further, on main street, it was zoned for that, to "protect Gay Rosey's" property, as someone put it.

Doing business in Homer has been educational!

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Now to the Greatland Road expansion:

It's difficult to have an opinion on a moving target with that many unknowns.

This project is old and different people pull it into different direction, depending who runs the city.

Because of the above issues, you have to excuse me for being caution dealing with the city!

**F: The Plan "A"** states that you will only be able to turn right at pioneer.? Will you also restrict SAFEWAY's customer to only turn RIGHT? Fair is fair! We be the only major road with right turns only!

I don't know what assessments there will be for access that I don't need?! Lot 23/24/25, if used together for a hotel, can be accesses from current Greatland street.  
Lot 8 can be accessed from existing Greatland street  
Lot 5 & 6 , depends if they will developed together, have current access from above.

**Do I get reimbursed or get credit for having build-out the lower Greatland city road?**

You may as well create a SAD for the whole road!  
If I get reimbursed for the 75% I paid, then yes I am willing to pay 25% for the rest of Greatland.

**NOTE:**

The City owns the plotted un-build road, they certainly don't need my permission to build it !!!

**I would be for Plan "A", and will want both turns on top to Pioneer, just like at the bottom to the Bypass.**

**Traffic doesn't allow that? Seriously , what Traffic in Homer? Try Anchorage.**

**G: Plan B/C**

Especially as I don't know what the city will pay for my land and it would destroy a 3 lot large piece for a larger development. I don't want it cut up into 2 little pieces that have no value and because of set backs, fire and "whatever else you guys come up with later"..... can't be build on.

You may as well buy all 3 lots (23/24/25) at full price for Plan "B", then I don't care. For any option B/C, you have not allocated enough money in your proposal.

**Too many unknowns to be for B/C and not enough trust that it will be done right.**

**H: Save-U-More** collects millions of sales tax for the city, so keeping us in the city would benefit us both.

So it may be wise not to cut off our access by right turns only.

Better traffic flow and access should be made available to the citizen of Homer and I think they demand it.

**I: It would be** nice to work on projects a little more organized, rather than to throw out 20 year old ideas ever so often and without disclosing details, asking the property owners if they want to pay for it?

Politicians in DC do that, but does everybody have to do that?

We can't just raise prices whenever the city feels like spending money on an a grand

master plan.

The Sales Tax and other taxes should really be enough of a tax base.

Valentin Caspaar  
Save-U-More





Ord 17-07(5)  
Submitted by  
Frank Griswold

From: **Mary (Beth) E. Wythe** BethWythe@ci.homer.ak.us  
Subject: Fwd: Hearing Officer Code Provisions  
Date: October 2, 2014 at 8:42 PM  
To: Walt Wrede wwrede@ci.homer.ak.us

FYI

MAR 16 2017 PM 12:43

Sent from my iPad



Begin forwarded message:

**From:** Jo Johnson <JJohnson@ci.homer.ak.us>  
**Date:** October 2, 2014 at 10:45:50 AM AKDT  
**To:** "Mary (Beth) E. Wythe " <BethWythe@ci.homer.ak.us>  
**Subject:** FW: Hearing Officer Code Provisions

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**From:** Joe Levesque [ <mailto:joe@levesquelawgroup.com> ]  
**Sent:** Tuesday, September 30, 2014 10:14 AM  
**To:** Department Clerk  
**Cc:** Jo Johnson  
**Subject:** FW: Hearing Officer Code Provisions

Madame Mayor:

I have attached versions of code provisions authorizing the appointment of a hearing officer for the: (1) City of Homer; (2) City of Palmer; (3) City of Wasilla; and, (4) North Slope Borough.

**Homer**

It appears that the City of Homer already has some codified authority to appoint hearing officers with respect to the approval of water permits and for the determination of nuisances in conjunction with the City Harbor.

**Palmer**

It seems that the City of Palmer appoints a hearing officer to hear all appeals from land use decisions.

**Wasilla**

I have included two separate sections that address the appointment of hearing officers for the City of Wasilla. The first is a general grant of authority to appoint, which includes qualifications and appointment procedures, and identifies the instances in which they may be appointed. I have also included the section addressing the appointment and responsibilities of hearing officers with respect to land use decisions.

**North Slope Borough**

The North Slope Borough has a general grant of authority to appoint hearing officer.

**Joseph N. Levesque**

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North Slope  
Boroug...rs.docx



Untitled  
attach...40.htm



Palmer Hearing  
Officer.pdf



Untitled  
attach...43.htm



Wasilla Hearing  
Officer...ns.pdf



Untitled  
attach...46.htm



Homer Hearing  
Officer...ns.pdf



Untitled  
attach...49.htm

TITLE 2: - ADMINISTRATION AND HUMAN RESOURCES

CHAPTER 2.28: - ADMINISTRATIVE PROCEEDINGS\*

ARTICLE II. ACTIONS

**ARTICLE II. ACTIONS**

§ 2.28.030 COMMENCEMENT OF ACTION.

§ 2.28.040 APPOINTMENT OF HEARING OFFICERS.

§ 2.28.050 ACCUSATION.

§ 2.28.060 STATEMENT OF ISSUES.

§ 2.28.070 TIME FOR FILING A STATEMENT OF ISSUES.

§ 2.28.080 SERVICE OF ACCUSATION.

§ 2.28.090 NOTICE OF DEFENSE.

§ 2.28.100 AMENDED OR SUPPLEMENTAL ACCUSATION.

§ 2.28.110 FORM OF NOTICE OF HEARING.

**§ 2.28.030 COMMENCEMENT OF ACTION.**

- (A) *Forfeiture of Assembly office.* Upon introduction of a resolution of forfeiture by an Assemblyman, the Assembly shall cause written notice of the specific grounds for the resolution to be delivered, either personally or by mail, to his last known address, to the Assemblyman against whom the resolution is directed. The notice shall state the time and place where the resolution will be considered by the Assembly and shall be delivered at least 14 days prior to Assembly consideration of the resolution.
- (1) The Assemblyman against whom the resolution is directed may, at or before the meeting at which the resolution is to be considered, demand in writing, a hearing by the Assembly on the resolution prior to its adoption. Upon receiving such written demand, the Assembly shall set a date, time and place for the hearing. If the demand is for a public hearing, the Assembly shall cause notice of the time, place and subject of the hearing to be published at least once in a newspaper of general circulation in the Borough, that publication to be made at least seven days prior to the date of the hearing.
  - (2) Upon demand for a hearing, whether for a public hearing or not, the Assembly shall cause notice of the hearing be delivered or mailed to the Assemblyman against whom the forfeiture is directed. The notice shall be in the form, and delivered, substantially as provided in § 2.28.050 except that the time requirements of division (A)(1) of this section shall apply, and the notice of the grounds for the resolution in division (A) of this section shall constitute the accusation.
  - (3) The hearing and prehearing procedures shall be as provided in Articles III through VI of this chapter, except that Assembly decision on the matter shall be rendered by the Assembly taking action on the resolution of forfeiture.
- (B) *Revocation of a right.* An agency which is authorized to revoke a right may do so summarily unless specifically provided that such action may be taken only after a hearing on the matter. Unless otherwise provided, when an action revoking a right may be taken only after a hearing, such action is initiated by the agency by filing an accusation with the Clerk as provided in § 2.28.050 and proceeding as provided herein.
- (C) *Other appeals or challenges.* All other authorized challenges or appeals of an action taken by a Borough agency shall be initiated by filing a statement of issues as provided in § 2.28.060:

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- (1) When the challenge is to the agency which is to take or has taken an action granting or denying a right and the challenge is by a person other than the one who has applied for the right or the one who holds the right, then the applicant or holder is the respondent.
  - (2) When the challenge is an appeal to a higher or different agency and is made by a person other than the one who has applied for or holds the right, the applicant or holder shall be the respondent, but the agency whose action is being challenged may, on its own initiative, join as correspondent, or be joined by the agency hearing the appeal.
  - (3) When the challenge is by the person who applied for or holds the right, the agency whose action is being challenged shall be the respondent, except that when the appeal is to the agency whose action is being appealed, the applicant shall be the respondent.
- (D) *Action by Clerk.* Unless otherwise provided in the code, ordinance, rule, regulation or other provision, upon receiving an accusation or statement of issues, the Clerk shall immediately deliver copies of such accusation or statement to the Mayor, Attorney, the agency whose action is being challenged and the agency which is the proper one to hear the appeal. When the agency to hear the appeal or charges is a body which is not in session when the accusation or statement is received by the Clerk, a copy shall be immediately delivered to the head of the department which provides staff assistance to the body and the Clerk shall also deliver, in a timely manner, a copy to the presiding officer of the body.
- (E) *Action by agency hearing the appeal.* Unless otherwise provided in the code, ordinance, order, regulation or other provision, upon receipt of an accusation or statement of issues, the agency to hear the appeal shall determine whether it will hear the appeal de novo, on the record, or on the record augmented by additional testimony, and shall immediately notify all parties to the appeal of its determination.
- (F) *Sufficiency of statement of issues.* Unless otherwise provided, a liberal interpretation of the statement of issues will be made in order to preserve and insure the rights of the appellant; however, the agency to hear the appeal may dismiss the appeal if the statement of issues does not sufficiently state a cause of action.

('75 Code, § 2.28.030)(Ord. 72-9, passed 5-1-73)

**§ 2.28.040 APPOINTMENT OF HEARING OFFICERS.**

The Assembly may assign a qualified, unbiased and impartial hearing officer, with experience in the general practice of law, to conduct hearings under this chapter. The hearing officer may perform other duties in connection with the administration of this chapter and other ordinances. The actions to be heard by a hearing officer shall be only those where a hearing by a hearing officer is permitted by the act or provision that creates the right to a hearing, but this limitation shall not prevent the retention by any agency of the Borough Attorney or other person to advise the officer presiding at the hearing.

('75 Code, § 2.28.040)(Ord. 72-9, passed 5-1-73)

**§ 2.28.050 ACCUSATION.**

(A) A hearing to determine whether a right authority because of privilege should be revoked, suspended, limited or conditioned, is initiated by filing an accusation on forms provided by the Clerk for that purpose. The accusation shall:

- (1) Be a written statement of charges setting out in ordinary and concise language the acts or omissions with which the respondent is charged, so that the respondent is able to prepare his

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defense, but may not consist merely of charges phrased in the language of the statute, ordinance or rule;

- (2) Specify the statute, code, section, ordinance or rule which the respondent is alleged to have violated; and
- (3) Be verified, unless made by a public officer acting in his official capacity or by an employee of the agency on whose behalf the proceeding is to be held; the verification may be on information and belief.

('75 Code, § 2.28.050)(Ord. 72-9, passed 5-1-73)

**§ 2.28.060 STATEMENT OF ISSUES.**

- (A) A hearing to determine whether a right, authority, license or privilege should be granted, issued or renewed is initiated by filing with the Clerk a statement of issues which shall contain, where applicable:
  - (1) The statute, rule or code section with which the respondent must show compliance by producing proof at the hearing; and
  - (2) A written statement of allegations setting out in ordinary and concise language the acts or omissions with which the respondent is charged so that the respondent is able to prepare a defense, but such allegations may not merely be phrased in the language of the statute, rule or code section; or
  - (3) The particular matters which have come to the attention of the initiating party and which would authorize the agency action sought or a reversal of the agency action taken.
- (B) The statement of issues shall be verified unless made by a municipal officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.
- (C) The statement of issues shall be served as provided in this chapter, except that if the hearing is held at the request of the respondent:
  - (1) Sections 2.28.080 and 2.28.090 do not apply; and
  - (2) The statement of issues together with the notice of hearing shall be delivered or mailed to the parties as provided in § 2.28.120.

('75 Code, § 2.28.060)(Ord. 72-9, passed 5-1-73)

**§ 2.28.070 TIME FOR FILING A STATEMENT OF ISSUES.**

- (A) Unless otherwise provided in the code, ordinance, rule, regulation or other provision which creates the right of appeal or hearing, no person shall be entitled to a hearing who fails to file a proper and sufficient statement of issues with the Clerk within 20 days, or whichever is the shortest period of time, of:
  - (1) The date the decision is filed with the Clerk when the decision is one which is required to be so filed;
  - (2) The date of the first public action of the action in a newspaper of general circulation within the Borough, whether publication is required or not;
  - (3) The date the appellant first learned of the action;

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- (4) The date the decision is mailed to the party appealing; or
- (5) The date the decision is received by the party appealing when the decision is delivered personally to the party appealing.

('75 Code, § 2.28.070)(Ord. 72-9, passed 5-1-73)

**§ 2.28.080 SERVICE OF ACCUSATION.**

(A) Upon filing an accusation, the agency:

- (1) Shall issue a copy of the accusation to the respondent as provided in division (C) of this section;
- (2) Shall include with the accusation a postcard or other form entitled "Notice of Defense" which, when signed by or on behalf of the respondent and returned to the agency, acknowledges service of the accusation and constitutes a notice of defense under § 2.28.090;
- (3) Shall include in or with the copy of the accusation a statement that respondent may request a hearing by filing a notice of defense as provided in § 2.28.090 within 15 days after the accusation is served on him and that failure to do so constitutes a waiver of his right to a hearing;
- (4) May include with the accusation any information which it considers appropriate.

(B) The statement to respondent shall be substantially in the following form:

"Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the agency within 15 days after the accusation was personally served on you or mailed to you, (here insert name of agency) may proceed upon the accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled "Notice of Defense" or by delivering or mailing a notice of defense as provided by § 2.28.090, North Slope Borough Code, to: (here insert name and address of agency)."

(C) The accusation and all accompanying information may be sent to the respondent by any means selected by the agency. However, no order adversely affecting the rights of the respondent may be made by the agency unless the respondent is served personally or by registered mail or files a notice of defense, or otherwise appears. Service may be proved in the manner authorized in civil actions. Service by registered mail is effective if an agency rule requires the respondent to file his address with the agency and to notify the agency of a change, and if a registered letter containing the accusation and accompanying material is mailed, addressed to respondent at the latest address on file with the agency.

('75 Code, § 2.28.080)(Ord. 72-9, passed 5-1-73)

**§ 2.28.090 NOTICE OF DEFENSE.**

(A) Within 14 days after service upon him of the accusation, the respondent may file with the agency a notice of defense. In the notice he may:

- (1) Request a hearing;
- (2) Object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed;
- (3) Object to the form of the accusation on the ground that it is so indefinite or uncertain that he cannot identify the transaction or prepare his defense;

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- (4) Admit the accusation in whole or in part; or
- (5) Present new matter by way of defense.
- (B) Within the time specified, the respondent may file one or more notices of defense upon any or all of the grounds set out in division (A) of this section but all of the notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.
- (C) The respondent is entitled to a hearing on the merit if he files a notice of defense, and the notice of defense is considered a specific denial of all parts of the accusation not expressly admitted. Failure to file the notice constitutes a waiver of the respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in division (A)(3) of this section, all objections to the form of the accusation are waived.
- (D) The notice of defense shall be in writing, signed by or on behalf of the respondent, and shall state his mailing address. It need not be verified or follow a particular form.

('75 Code, § 2.28.090)(Ord. 72-9, passed 5-1-73)

**§ 2.28.100 AMENDED OR SUPPLEMENTAL ACCUSATION.**

At any time before the matter is submitted for decision the agency may file or permit the filing of an amended or supplemental accusation. All parties shall be notified of the filing. If the amended or supplemental accusation presents new charges, the agency shall give the respondent a reasonable opportunity to prepare his defense to it, but he is not entitled to file a further pleading unless the agency in its discretion so orders. New charges are considered controverted. Objections to the amended or supplemental accusation may be made orally and shall be noted in the record.

('75 Code, § 2.28.100)(Ord. 72-9, passed 5-1-73)

**§ 2.28.110 FORM OF NOTICE OF HEARING.**

- (A) The agency shall deliver or mail a notice of hearing to all parties at least ten days before the hearing. The hearing shall not be held before the expiration of the time within which the respondent is entitled to file a notice of defense.
- (B) The notice to respondent shall be substantially in the following form, but may include other information:

"You are notified that a hearing will be held before (here insert name of agency) at (here insert place of hearing) upon the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_ at the hour of \_\_\_\_\_ upon the charges made in the accusation served upon you. You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You may have subpoenas issued to compel the attendance of witnesses and the producing of books, documents or other things applying to (here insert appropriate office or agency)."

('75 Code, § 2.28.110)(Ord. 72-9, passed 5-1-73)



**Chapter 17.98  
APPEALS TO HEARING OFFICER**

Sections:

- 17.98.005 Definitions.
- 17.98.010 Hearing officer.
- 17.98.015 Stay on appeal.
- 17.98.020 Notice of appeal – Appeal fee.
- 17.98.030 Preparation of appeal record.
- 17.98.040 Written arguments.
- 17.98.050 Distribution of appeal packet – Notice of hearing.
- 17.98.060 Conduct of hearing.
- 17.98.070 Scope of review.
- 17.98.080 Decision.
- 17.98.090 Remedies.

**17.98.005 Definitions.**

“Appeal packet” means the packet which contains the notice of hearing date, appeal letter, the appeal record and briefs.

“Appeal record” consists of the entire community development file pertaining to the case under appeal, including all original papers and exhibits, and the transcript of the proceedings before the commission.

“Appellant” means the party who files an appeal application pursuant to this title.

“Appellee” means the party responding to the appeal application.

Interested persons means any person who would be adversely affected by the decision. (Ord. 07-018 § 5, 2007)

**17.98.010 Hearing officer.**

A. To be appointed as a hearing officer, a person must be an attorney at law in the state of Alaska who possesses knowledge of this title, general land use regulations, and principles of due process. An attorney may not act as hearing officer in any case in which he or she has any direct or indirect financial interest, and must certify to the absence of any such interest before receiving the appeal record on a form provided by the clerk. A hearing officer may not be a current city employee or a current member of the council or commission.

B. A hearing officer shall be impartial in all decisions, both in fact and in appearance. The hearing officer shall not engage in ex parte contact with any person concerning the appeal either before or after the appeal hearing.

C. The manager or clerk shall solicit persons who are willing to serve as hearing officers, and shall maintain a list of interested persons determined to be qualified.

D. Upon an appeal being filed, the manager shall appoint the hearing officer and shall report the appointment to the council.

E. Compensation of the hearing officer shall be determined by council legislation prior to the hearing. (Ord. 07-018 § 5, 2007)

#### **17.98.015 Stay on appeal.**

An appeal stays the decision or order appealed until a written decision is rendered by the hearing officer, provided, that the hearing officer may, upon motion, vacate the stay if it is determined to protect the public's health, safety and welfare. (Ord. 07-018 § 5, 2007)

#### **17.98.020 Notice of appeal – Appeal fee.**

A. As set forth in this title, a decision of the commission may be appealed by filing an appeal application with the clerk on a form provided by the clerk. The appeal application shall clearly state the grounds of the appeal, and include the appellant's mailing address or that of the appellant's representative.

B. Except as provided in subsection (C) of this section:

1. An appeal application shall include a nonrefundable filing fee, established in the current, adopted budget, and a deposit, established in the current, adopted budget, for preparation of the appeal record, advertising and mailing costs.
2. Upon receipt of the appeal record, the clerk shall reasonably determine the cost of preparation of the appeal record, advertising and mailing costs. If the costs exceed the amount of the deposit, the clerk shall invoice the appellant for the excess. The invoice shall be paid within 15 business days of receipt of the invoice by the appellant or the appeal will be dismissed. The clerk shall return to the appellant all amounts in excess of the actual costs of preparing the appeal record, advertising and mailing.

C. Within the time frame for filing the appeal application, an appellant may request the city waive payment of part or all of the fee and costs described in subsection (B) of this section because of the appellant's indigence. The request shall include a sworn financial statement in

a form approved by the clerk. The clerk will grant or deny the request based on a determination of whether the appellant is indigent. (Ord. 07-029 § 34, 2007; Ord. 07-018 § 5, 2007)

#### **17.98.030 Preparation of appeal record.**

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A. Upon the timely filing of an appeal, the clerk shall request the record from the city staff. The city staff shall provide the record to the clerk within 30 calendar days of the request. The record shall contain all pertinent records including:

1. A verbatim transcript of the proceedings before the commission from which the appeal has been taken.
2. Copies of all documentary evidence, memoranda and exhibits, correspondence and other written material submitted to the commission prior to the decision from which the appeal is taken.
3. A copy of the written decision of the commission, including its findings and conclusions.

B. Upon completion of the record, the clerk shall mail or personally serve the appeal record on the hearing officer, the appellant, the applicant, if not the appellant, and each other interested person who has submitted a written request for a copy of the appeal record. Interested persons requesting a copy of the record shall be charged on a per page basis. (Ord. 07-018 § 5, 2007)

#### **17.98.040 Written arguments.**

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A. Brief of Appellant. The appellant may file a written brief of points and authorities in support of those allegations of error specified in the appeal letter with the clerk's office not later than 15 calendar days after service of the appeal record. The clerk shall mail or otherwise deliver a copy of the appellant's brief to the city staff and hearing officer assigned responsibility for the appeal.

B. Brief of Appellee. The appellee may submit to the clerk a written reply to the appeal letter and any brief no later than 30 calendar days after service of the appeal record. The clerk shall mail or otherwise deliver a copy of the appellee's brief to the appellant, city staff and hearing officer assigned responsibility for the appeal.

C. Reply Brief. The appellant may file a written reply brief to appellee briefs submitted pursuant to subsection (B) of this section. The appellant's reply brief is due no later than 10 calendar days after service of notice that the appellee briefs have been filed.

D. Form of Briefs. All briefs shall be typewritten on eight-and-one-half-inch by 11-inch pages. The text of the brief shall be double-spaced other than quotations from the record, case law or other applicable law or exhibits which cannot be retyped on eight-and-one-half-inch by 11-inch pages. The brief of the appellant is limited to 25 pages exclusive of exhibits. The brief of the appellee is limited to 25 pages exclusive of exhibits. The reply brief is limited to 10 pages exclusive of exhibits. The clerk shall not accept a brief unless it is in the form prescribed by this section and filed within the time prescribed by this section. (Ord. 07-018 § 5, 2007)

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**17.98.050 Distribution of appeal packet – Notice of hearing.**

Following the time set for receipt of written arguments from the appellant and appellee, the clerk shall prepare and distribute to the hearing officer an appeal packet containing the notice of appeal, the appeal record, written comments by interested parties, and any briefs filed in accordance with PMC 17.98.040. Notice of the hearing date shall be published in a newspaper of general circulation and shall be mailed or personally served to the appellant and appellee. Interested persons requesting a copy of the record shall be charged on a per page basis. (Ord. 07-018 § 5, 2007)

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**17.98.060 Conduct of hearing.**

A. The meeting at which the hearing officer hears an appeal shall be open to the public and a record of the hearing shall be made.

B. The hearing shall be subject to the following order and time limitations:

1. City staff: 10 minutes to present the decision of the commission;
2. Appellant: 15 minutes;
3. Appellee: 15 minutes;
4. Interested persons: three minutes each;
5. Appellant, for rebuttal: five minutes.

C. The hearing officer may question each of the parties listed under subsection (B) of this section.

D. The hearing officer may adjourn the hearing for deliberative purposes. (Ord. 07-018 § 5, 2007)

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**17.98.070 Scope of review.**

- A. The hearing officer shall hear an appeal solely on the basis of the appeal packet and oral testimony as described in PMC 17.98.060(B).
- B. The hearing officer may exercise his or her independent judgment on legal issues raised by the appellant. The term "legal issues," as used in this section, means those matters that relate to the interpretation or construction of ordinances or other provisions of law.
- C. The hearing officer shall defer to the judgment of the commission regarding disputed issues or findings of fact unless a substitution of his or her independent judgment pursuant to subsection (D) of this section is made. Findings of fact adopted expressly or by necessary implication by the commission may be considered as true if they are supported in the record by substantial evidence. The term "substantial evidence," for the purpose of this section, means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. If the record affords a substantial basis of fact from which the fact in issue may be reasonably inferred, it shall be considered that the fact is supported by substantial evidence.
- D. Notwithstanding the provisions of subsection (C) of this section, the hearing officer may substitute his or her independent judgment for that of the commission on any disputed issues or findings of fact. Such judgment must be supported on the record by substantial evidence. (Ord. 07-018 § 5, 2007)

**17.98.080 Decision.**

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- A. The hearing officer shall decide an appeal on the basis of the appeal packet, in accordance with the standards of PMC 17.98.070.
- B. The hearing officer may affirm or reverse the decision of the commission in whole or in part. A decision reversing or modifying the decision appealed from shall be in a form which finally disposes of the case on appeal except where the case is remanded in accordance with PMC 17.98.090(A).
- C. Every decision of the hearing officer to affirm or reverse the decision of the commission pursuant to subsection (A) of this section shall be in writing and shall be based upon and include findings and conclusions adopted by the hearing officer. Such findings must be reasonably specific so as to provide the community, and, where appropriate, reviewing authorities, a clear and precise understanding of the reason for the hearing officer's decision. The hearing officer may seek the assistance of the city staff in the preparation of findings.
- D. Every final decision of the hearing officer shall clearly state it is a final decision with respect to all issues involved in the case, and that the parties have 30 days from the date of mailing, or

other distribution of the decision, to file an appeal to the superior court.

E. A decision by the hearing officer to remand the case on one or more issues, in accordance with PMC 17.98.090(A), is not a final decision with respect to any issue involved in the appeal. Notwithstanding the foregoing, all matters decided by the hearing officer (except those remanded pursuant to PMC 17.98.090) will be deemed a final decision following the lower administrative body's decision, provided no appeal is perfected within the time period specified in PMC 17.72.080.

F. A hearing officer's decision remanding a case on one or more issues, in accordance with PMC 17.98.090(A), will include the following statements:

1. The decision is the final decision with respect to all matters resolved therein when, following the lower administrative body's decision on remand, no appeal is perfected within the time period specified in this section; and
2. The parties have 30 calendar days from the expiration of said time period to appeal to the superior court. (Ord. 07-018 § 5, 2007)

#### **17.98.090 Remedies.**

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A. Where the hearing officer reverses or modifies a decision of the commission in whole or in part, its decision shall finally dispose of the matter on appeal, except that the case shall be remanded to the commission where the hearing officer determines either that:

1. There is insufficient evidence in the record on an issue material to the decision of the case; or
2. There has been a substantial procedural error which requires further public hearing.

A decision remanding a case shall describe any issue on which further evidence should be taken, and shall set forth any further directions the hearing officer deems appropriate for the guidance of the commission.

B. The commission shall act on the case upon remand in accordance with the decision of the hearing officer in the minimum time allowed by the circumstances. Cases on remand following a decision of the hearing officer shall take precedence over all other matters on the commission's agenda. (Ord. 07-018 § 5, 2007)

Chapter 2.76  
ADMINISTRATIVE HEARING OFFICERS

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Sections:

- 2.76.010 Appointment.
- 2.76.020 Qualifications.
- 2.76.030 Compensation.
- 2.76.040 Duties.
- 2.76.050 Conflict of interest.
- 2.76.060 Ex parte contacts prohibited.
- 2.76.070 Appeal procedures.

**2.76.010 Appointment.**

- A. Administrative hearing officers shall be appointed by the mayor and confirmed by the council. If possible, there shall be five administrative hearing officers appointed in order to maintain a rotating list of available officers.
- B. An administrative hearing officer shall be appointed to a three-year term. There is no limit to the number of terms an administrative hearing officer may serve. An administrative hearing officer may be removed for cause by the mayor with the approval of the council or by a two-thirds majority vote of the council.
- C. Once approved by the council, the city clerk shall maintain a list of administrative hearing officers and shall rotate appointments. An administrative hearing officer who is not available for service, or otherwise cannot serve, shall be the first contacted for service at the next appeal. (Ord. 09-67(AM) § 2 (part), 2009)

**2.76.020 Qualifications.**

An administrative hearing officer shall be an attorney duly licensed to practice law in the state of Alaska, or have training and experience in arbitration, mediation, contract law, and Title 7 and/or 16. An administrative hearing officer shall hold no other appointed or elected office or position with the city. (Ord. 09-67(AM) § 2 (part), 2009)

**2.76.030 Compensation.**

An administrative hearing officer shall receive compensation on an hourly rate as set by council resolution. An administrative hearing officer shall also receive compensation for reasonable expenses incurred in carrying out of the duties of the office. (Ord. 09-67(AM) § 2 (part), 2009)

**2.76.040 Duties.**

- A. Administrative hearing officers shall have jurisdiction over the following:
  - 1. Appeals of a planning commission decision pursuant to Title 16;

**76.050 Conflict of interest.**

An administrative hearing officer shall not hear a case in which the officer has a conflict of interest. (Ord. 09-67(AM) § 2 (part), 2009)

**76.060 Ex parte contacts prohibited.**

A. An administrative hearing officer acts in a quasijudicial capacity and shall not engage in ex parte communications concerning the appeal with city employees, interested persons, members of the council, the appellant, or any parties associated with the decision pertaining to the appeal.

B. If an ex parte communication occurs, the administrative hearing officer shall disclose the communication on the record prior to rendering a decision. The administrative hearing officer shall only take information brought forward in an appropriate manner into consideration. (Ord. 09-67(AM) § 2 (part), 2009)

**76.070 Appeal procedures.**

A. The procedures defined in:

1. Chapter 16.36 shall govern appeals pursuant to Title 16; and
2. Chapter 7.08 shall govern appeals pursuant to Title 7. (Ord. 09-67(AM) § 2 (part), 2009)



**10.04.134 Nuisances – Post-removal hearing.**

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- a. If demand is timely made, the owner or person entitled to possession of the vessel is entitled to an administrative hearing to determine whether there was a sufficient factual and legal basis for the action to impound, remove, or otherwise abate the vessel. To be entitled to such a hearing, a written demand must be filed with the City Clerk (1) within five workdays after the owner or other person entitled to possession learned that the vessel was impounded, removed, or otherwise abated, or (2) within 15 workdays after the City mailed the notice required by HCC 10.04.132(c) to the vessel owner, whichever is earlier. If no timely request for a hearing is made, the factual and legal basis for the action taken will be conclusively deemed sufficient for all purposes.
- b. The hearing will be held within 48 hours after the filing of a written demand, not including Saturdays, Sundays and City holidays, unless the person demanding the hearing waives a speedy hearing.
- c. The hearing officer shall not be bound by formal rules of evidence. A copy of the Harbormaster's written determination that a public nuisance exists will constitute prima facie proof of a sufficient factual and legal basis for the action. The burden will be on the vessel owner to prove by a preponderance of the evidence that there was not sufficient factual or legal basis for impounding, removing, or otherwise abating the vessel.
- d. At the conclusion of the hearing, the hearing officer shall prepare a written decision, including the reasons for the decision. A copy of such decision shall be provided to the person demanding the hearing and the owner of the vessel. The hearing officer's decision in no way affects any criminal charges that may be pending. The decision of the hearing officer is final and may only be appealed to the Superior Court.
- e. A determination by the hearing officer that there was not a sufficient factual or legal basis for the action taken will require the release of the vessel to the owner or other person entitled to possession without payment of the towing, storage, or the accrued charges, or will entitle the person to a refund or reimbursement by the City if the charges have already been paid. If the hearing officer determines there was a sufficient factual and legal basis for the action taken, the Harbormaster may proceed to dispose of the vessel by sale according to HCC 10.04.120(e) through (g), or the Harbormaster may destroy or otherwise dispose of the vessel without sale if he makes a good faith determination that the value of the vessel does not exceed the costs of towing, storage, sale, and other harbor charges accrued against the vessel. [Ord. 95-28 § 3, 1995].

**10.04.135 Nuisances – Form of demand for hearing – Hearing officer.**

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- a. The City Clerk shall prepare and make available a form of demand for a hearing pursuant to HCC 10.04.134. Upon receipt of a demand for a hearing the City Clerk shall immediately forward the demand to the City Manager or his designee, who shall schedule an administrative hearing and notify all parties.
- b. The City Manager shall appoint a hearing officer to conduct hearings pursuant to HCC 10.04.134. No person with the authority to impound, remove, or otherwise abate a nuisance vessel shall be eligible to serve as a hearing officer. [Ord. 95-28 § 4, 1995].

**14.08.130 Permit suspension, revocation.**

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- a. The City Manager may suspend or revoke any permit issued under this chapter for cause including, but not limited to:
1. The application for any permit under this chapter contained any error, misstatement, omission, or misrepresentation of material fact, either with or without intention on the part of the applicant, such as might or would have caused a denial of the permit;
  2. Material breach of the terms or conditions of any permit issued under this chapter;
  3. Violation of any applicable provision of this chapter;
  4. Violation of any other applicable law, ordinance, or regulation relating to water quality, public health, or safety governing the permittee's water-related facilities or operations;
  5. Delinquency in payment of water utility charges or permit fees owed to the City;
  6. Conducting operations or maintaining facilities in such a manner that public health or safety is endangered.
- b. Except as provided in subsection (c) of this section, when there is a reasonable basis to believe there is cause to suspend or revoke a permit, the City Manager shall give the permittee reasonable notice and a meaningful opportunity to be heard concerning such cause prior to suspension or revocation of the permit. If after such a hearing the City Manager finds that the permit should be suspended or revoked for cause, the City Manager will issue and promptly deliver to the permittee a written decision stating the grounds for revocation and the City Manager's findings. The City Manager may designate a hearing officer or other official to conduct the hearing and prepare a recommended decision, which will not be final until approved, with or without changes, by the City Manager.

c. The City Manager may by written order suspend any permit issued under this chapter without prior notice or opportunity to be heard when the City Manager has a reasonable basis to believe that (1) the permittee's permitted facilities or operations are endangering public health or safety, or (2) permittee is delinquent in the payment of water charges or permit fees owed to the City. If a suspension is imposed under this subsection, the permittee must be notified at the time of suspension and in writing by the City Manager or designee of the opportunity for a hearing as provided in subsection (b) of this section. The hearing must be provided to the permittee within three business days after the date the suspension is effective. A suspension imposed under this subsection may be effective up to one business day after the hearing, or if the permittee requests and is granted a delayed hearing date, until the decision is rendered after the hearing is held.

d. Nothing in this section or in any permit issued under this chapter shall be construed to prohibit or limit the City's authority to restrict, interrupt, decrease, or terminate the sale of water under HCC 14.08.074 through 14.08.077 or any other provision of law.

e. The permittee whose permit remains suspended or revoked following the hearing process as identified in subsection (b) of this section will be provided written notice by the City Manager or designee of the appeal process as stated in HCC 14.08.140, 14.08.150, and 14.08.160. [Ord. 01-03(A) § 4, 2001].

From: **Walt Wrede** wwrede@ci.homer.ak.us  
Subject: FW: Hearing Officer Code Provisions  
Date: October 3, 2014 at 10:59 AM  
To: Mary (Beth) E. Wythe BethWythe@ci.homer.ak.us, Jo Johnson JJohnson@ci.homer.ak.us

Jo:

I brought Tom in on the hearing officer conversation. Here is his response.

Walt

**From:** Thomas Klinkner [mailto:tklinkner@BHB.com]  
**Sent:** Friday, October 03, 2014 10:05 AM  
**To:** Walt Wrede  
**Subject:** RE: Hearing Officer Code Provisions

Walt,

Thanks. Under statute, the City has four options for appeals from administrative land use decisions: hearing officer, court, board of adjustment, or "other body." I have worked with the hearing officer procedure in Wasilla, and it worked well.

\*\*\*\*\*  
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**From:** Ann and Ron Keffer  
**To:** [Tom Stroozas](#); [Catriona Reynolds](#); [David Lewis](#); [Donna Aderhold](#); [Shelly Erickson](#); [Heath Smith](#); [Mayor Email](#); [Department Clerk](#)  
**Subject:** Ordinance 17-07(S)  
**Date:** Monday, March 27, 2017 12:37:21 PM

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Homer City Council members, and Mayor Zak,

I am writing to express my strong support for Ordinance 17-07(S). In my years of experience as an administrator in public schools, I observed and participated in the movement from employing various types of committees to hear and decide different sorts of cases within schools and within school districts. By moving to a hearing officer approach, much time and money was saved, and proceedings occurred more quickly. Since, under such an arrangement, only the hearing officer's schedule must be taken into account, instead of those of several committee members, the entire process can be speeded up and fewer people will find their schedules disrupted. Making this change will improve efficiency and may save money as well.

Thanks for your kind attention to my thoughts on this matter.

Ron Keffer

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