



AGENDA

City Council Joint Work Session with the Port & Harbor Advisory Commission

Monday April 17, 2022 at 5:00 PM

City Hall Cowles Council Chambers In-Person & Via Zoom Webinar

Homer City Hall

491 E. Pioneer Avenue
Homer, Alaska 99603
www.cityofhomer-ak.gov

Zoom Webinar ID: 965 8631 4135 Password: 792566

<https://cityofhomer.zoom.us>
Dial: 346-248-7799 or 669-900-6833;
(Toll Free) 888-788-0099 or 877-853-5247

1. **CALL TO ORDER, 5:00 P.M.**
2. **AGENDA APPROVAL** (Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual)
3. **DISCUSSION TOPIC(S)**
 - 5.A. Council and Commission Training Page 2
 - 5.B. Port & Harbor Advisory Commission Strategic Plan Page 44
4. **COMMENTS OF THE AUDIENCE** (3 minute time limit)
5. **ADJOURNMENT** Next Regular Meeting is Monday, April 24, 2023 at 6:00 p.m., Work Session at 4:00 p.m. Committee of the Whole at 5:00 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska



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CITY COUNCIL AND PORT & HARBOR ADVISORY COMMISSION WORKSESSION

DUTIES & RESPONSIBILITIES PORT & HARBOR COMMISSION

The Port & Harbor Advisory Commission (PHC) was established by the Homer City Council with Ordinance 73-1. Homer City Code (HCC) 2.64 governs the Commission and their duties and responsibilities are found in Section 2.64.040 and read as follows:

a. It shall be the duty of the Commission to act in an advisory capacity to the City Manager and the City Council on the problems and development of the City port and harbor facilities. Consideration may include the physical facilities, possible future development and recommendations on land use within the port and harbor areas.

b. The daily operation and maintenance of the port and harbor are the direct responsibility of the Port Manager and the Harbormaster, under the direction of the City Manager. Any recommendation the Commission or a Commission member may have regarding the operation and maintenance of the facilities is to be directed to the City Manager, not a port or harbor employee. The City Manager will study the recommendation and refer it to the Council, or the recommendations of the Commission concerning policy issues shall be sent directly to the Council upon the request of the Commission.

c. The Commission shall consider any specific proposal, problem or project as directed by the City Council and any report or recommendations thereon shall be made directly to the Council, unless otherwise directed by the Council.

d. The City Council may at a future date expand or withdraw duties and responsibilities of the Commission.

Article II of the Commission's bylaws is consistent with City Code.

The PHC also has a role regarding making recommendations regarding new leases in HCC Title 18 City Property Leases. Specific instances read as follows:

HCC 18.08.020 Land Allocation Plan

e. Prior to the adoption of the land allocation plan, Council shall hold a work session. Commission members and City staff may provide recommendations to Council during the work session regarding City-owned property available for lease and the terms of such leases.

In line with sections regarding new leases-

HCC 18.08.070 Notice to Award

- a. Upon a determination that a proposal meets the criteria under HCC [18.08.060](#), the City Manager shall recommend the proposal to Council for acceptance. If Council approves the recommendation, the City Manager shall issue a notice to award the lease to the successful proposer. The City Manager's recommendation shall be presented to Council in a written memorandum identifying the recommended winning proposer, the property description, the essential terms of the proposed lease, and the reasons the City Manager recommended the award.
- b. The City Manager shall submit any recommendation for approval of a proposal under this chapter for property located on the Homer Spit to the Port and Harbor Advisory Commission for review and comment prior to recommending a proposal to Council.
- c. If the Council adopts the City Manager's recommendation, the City Manager shall negotiate with the selected proposer and present a final lease to the Council for approval. A notice of tentative award is conditional upon the City Manager's successful negotiation of a final written lease consistent with the terms upon which the award was based.
- d. The City Manager may rescind a notice to award. A notice to award becomes void on the date the City Manager provides written notice to the proposer that the award has been rescinded.

18.08.120 Improvements

- a. Except as otherwise provided in the lease agreement, construction of improvements shall take place only after review and approval of the construction plans by the City Manager and only after all applicable permits have been secured and legal requirements met.
- b. Improvements not included in the lease agreement or improvements that are inconsistent with or deviate from those permitted in the lease agreement must be approved by Council via resolution. Council shall only approve such improvements upon recommendation by the City Manager and after review by the Port and Harbor Commission, the Homer Advisory Planning Commission, and any other commission determined to be appropriate by the City Manager. Inconsistent improvements may be approved if the proposed changes to the improvements serve the City's best interest and/or when changes are necessary due to relevant changes in industry or the local economy.
- c. All improvements constructed upon leased property become the property of the City upon termination of the lease unless otherwise provided in the lease agreement or agreed to by the parties in writing.
- d. Lessee shall be responsible for all taxes, including property taxes on the leasehold interest in the real property and improvements and any sales tax on rent payments.

18.08.160 Assignment

a. Except as provided in the lease agreement, Council must approve the assignment of a lease to another party.

b. Except as otherwise provided in this section or the lease agreement, the City Manager must make a determination that a lessee is in full compliance with a lease before an assignment will be effective. The City Manager may, in his or her sole discretion, consent to assignment of a lease where lessee is in full compliance with the lease terms except for payments owed so long as assignor and/or assignee agree in writing to pay the full amount owed within 90 days of the assignment. An assignment shall not be effective and shall constitute default by lessee if full payment is not received within 90 days of the assignment.

c. Except as otherwise provided in the lease agreement, if the lessee is in good standing and eligible to assign the lease, the following procedures apply:

1. The lessee shall file a written request for assignment and a complete new lease application to the City Manager;
2. The City Manager shall review the request and new lease application and determine whether the proposed assignee can fulfill the terms of the lease and the requirements of this chapter and is in the City's best interests;
3. The City Manager shall make a recommendation on the assignment to Council for final action; and
4. Council shall approve or deny the request for assignment via resolution.
5. Assignment of long-term leases on the Homer Spit shall be reviewed by the Port and Harbor Advisory Commission prior to submission to Council for approval.

d. Council may approve assignment of a lease to a bank or other financial institution if it determines the assignment is in the best interest of the City and the City Manager recommends approval.

e. Where a lessee intends to assign the lease as part of a sale of the business located on the leased lot, the person who intends to purchase the business may apply to extend the lease term to allow the continuation of the business and to secure financing for the purchase of that business. Any significant changes in the terms (use) of the existing lease must be reviewed by the Port and Harbor Commission and approved by City Council by resolution as an amendment to the lease.

There are no references to PHC action in sections regarding lease renewals, early termination, or subleases.

CITY COUNCIL'S ROLE RELATED TO COMMISSIONS

Council shall create or abolish boards and commissions via ordinance. Council shall establish the number of members of each board or commission, their terms of office, and the purpose for which the board or commission is created via ordinance. HCC 2.58.010

Alaska Statutes (AS) Sec. 29.20.320. Other boards and commissions.

(a) The governing body may by ordinance establish advisory, administrative, technical, or quasi-judicial boards and commissions.

(b) Members of boards and commissions, except for members of the board of adjustment and assembly members serving on the board of equalization, are appointed by the mayor and confirmed by the governing body.

City Council may direct the Commission to consider any specific proposal, problem or project. Direction comes from Council as a body, by memorandum or resolution.

REPORTING STRUCTURE

Commissions have the opportunity to provide written or verbal reports to City Council at the Council's regular meeting following the Commission's regular meeting.

Direct recommendations regarding the operation and maintenance of the facilities are submitted to the City Manager by Memorandum from the PHC.

Recommendations on specific direction from City Council or recommendations of the Commission concerning policy issues shall be sent directly to the Council upon the request of the Commission by Memorandum from the PHC. The Memorandum will be placed on the Council's agenda under PHC report.

CHAIR RESPONSIBILITIES

The Chair's responsibilities include presiding at the meetings and maintaining order, working with the staff liaison to develop agendas, conducting the meetings in a fair manner, keeping the commission/board discussion on track and germane to the subject, and rules on recusals. When the Chair is absent, the Vice-Chair carries out the duties of the Chair. Robert's Rules of Order outlines the responsibilities of the Chair are to-

- Open the meeting
- Announce agenda items as they come up
- Recognize members
- State questions and put them to vote
- Refuse to recognize dilatory motions
- Enforce order and decorum
- Expedite business
- Decide questions of order
- Respond to inquiries (*i.e. requesting chair's opinion on a matter of parliamentary procedure*)
- Authenticate documents (*not applicable to city advisory bodies*)
- Close the meeting

The Chair is a member of the body and has the same voting and discussion rights as the other members and it is recommended that the Chair speak last.

The Chair can make motions in a small board/commission, but it's suggested that the other members make motions, and the Chair state the question and put it to a vote.

COMMISSION RESPONSIBILITIES

While the meeting is in session, members should not interrupt the proceedings or any member that has the floor. A member, once recognized, should not be interrupted when speaking unless it is to call them to order. If a member is called to order, they should cease speaking until the question of order can be determined. If determined to be in order by the Chair, the member should be permitted to proceed.

After being recognized by the Chair, members may briefly question individuals speaking during audience participation or testifying during a public hearing, but may not enter into a discussion with the individual.

Like the City Council, PH Commissioners can't act independently they only act as a body.

The PHC has no decision making authority or authority to direct, but can make recommendations to the City Manager or City Council as outlined in City Code.

STAFF RESPONSIBILITIES

Staff liaisons are staff professionals with significant work responsibilities in addition to their commission/board liaison activities. In general, the liaisons are individuals whose work responsibilities relate to that of the commission/board. Liaisons do not work for or at the direction of the commission or board; they are assigned by the City Manager and follow the direction of the City Manager. They are professionals who provide guidance, issue analysis, and recommendations, and ensure the intent of the commission or board is relayed to administration and the City Council in a timely manner. *HCC 2.58.050(b) and PHC Bylaws Article V Section 1.*

The Recording Clerk is responsible for ensuring timely meeting notifications, taking meeting notes that can be developed into a meeting summary, providing parliamentary assistance, and guidance when needed. *HCC 2.58.050(c) and PHC Bylaws Article V Section 2.*

COMMITTEES/SUBCOMMITTEES

PHC Bylaws Article VIII addresses creation of committees.

Section 1. Committees of one or more members for such specific purposes as the business of the Commission will only become active upon approval of Council. A memorandum and resolution will go before Council outlining the reason, tasks assigned and termination date. Committees shall be considered to be discharged upon completion of the purpose for which it was appointed, and after its final report is made to and approved by the Commission.

Section 2. All committees shall make a progress report to the Commission at each of its meetings.

SPEAKING ON BEHALF OF THE COMMISSION OR THE PORT & HARBOR ENTERPRISE

The Commission acts as a body and speaks in the same manner. If the Commission is preparing a point of view statement or a member is speaking at a community event (Rotary, Chamber) on behalf of the Commission, they should keep their comments specific to messaging the body has agreed to.

If a member is speaking on their own behalf, they should preface that at the beginning of the comments.

If a Commissioner is approached by someone with questions or concerns about port and harbor operations, the Commissioner should direct them to Port and Harbor staff. Inviting them to attend a Commission meeting provides an opportunity for them to share their comments and/or concerns to the entire body.

SIDEBAR CONVERSATIONS, TEXTING, AND PASSING NOTES

Sidebar conversations at the dais are inappropriate. It's disrespectful to the Commissioner or public member that has the floor. If the Chair or another member observes a sidebar occurring they should ask for a point of order and request the sidebar discussions stop.

Texts that are exchanged and notes passed during a meeting are considered public records and could be requested by a member of the public who observes the activity happening.

CONFLICT OF INTEREST & STANDARD AND PROHIBITED ACTS

HCC 1.18 addresses Conflicts of Interest, Partiality and Code of Ethics. The section of code applies to all City Officials, including Board and Commission members. HCC 1.18.045 addresses procedure and the following excerpts apply to Board and Commission members-

a. A City official who has or may have a substantial financial interest in an official action shall disclose the facts concerning that interest to the body of the City of which the official is a member prior to the body taking any official action. Any member of the body may raise a question concerning another member's financial interests, in which case the member in question shall disclose relevant facts concerning the official's financial interests in the subject of the action.

c. If the official is not a City Council member, the official may excuse themselves without a vote for conflict of interest, otherwise the board, commission, or other body of which the official is a member shall by majority vote rule on whether the member must be excused from participation, which must be the ruling when the body determines the official has a substantial financial interest in the official action. There is no appeal from the ruling of the body.

d. The official shall abide by the ruling. If the official is not a City Council member, the ruling applies (without the need for further disclosures and rulings) to all subsequent occasions on which the same official action comes before the same body, unless there has been a material change of circumstances. On each such subsequent occasion, the presiding officer shall note for the minutes that the ruling previously made continues in effect.

"Financial interest" means:

1. An interest currently held by that person or an immediate family member including:
 - a. Involvement or ownership in a business; or
 - b. Property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person receives a financial benefit; or
 - c. An affiliation with an organization in which the person holds a position of management, or is an officer, director, trustee, employee, or the like.

2. Financial interest does not include:

- a. Affiliation as unpaid volunteer with a legally recognized nonprofit organization; or
- b. Financial interests of a type which are generally possessed in common with all other citizens or a large class of citizens.

“Substantial financial interest” means a financial interest that would result in a pecuniary gain or loss exceeding \$1,000 in a single transaction or more than \$5,000 in the aggregate in 12 consecutive months.

1.18.080 – Standards and prohibited acts.

a. City officials, the City Manager, and City hired consultants and contractors, while acting in such capacity, shall not knowingly make false statements to influence official action.

b. Official Action. No City official or the City Manager shall participate in any official action in which:

- 1. The person is the applicant, a party or has a substantial financial interest in the subject of the official action.
- 2. Within a period of one year after the action the person will have a substantial financial interest in the subject of the official action.
- 3. The person resides or owns land within a 300-foot periphery of any property that is the subject of any action.
- 4. The person does or will recognize a substantial financial interest as a result of the action.
- 5. Exceptions.
 - a. This subsection does not prohibit a person from acquiring a substantial financial interest in the subject of the action after the longer of 12 months after the official action is approved, or 12 months after the person’s term or employment ends.
 - b. This section does not prohibit any gain or loss that would generally be in common with all other citizens or a large class of citizens.
 - c. This section does not prohibit any gain or loss that would generally be in common with other property owners on property that is further than 300 feet from the periphery of any property that is the subject of an action.

c. City officials and the City Manager acting in the course of their official duties are allowed to participate in official actions on behalf of the City or when the City itself is the applicant or subject of the action.

d. Undue Influence. No City official or the City Manager shall attempt to influence the City’s selection of any bid or proposal, or the City’s conduct of business, in which the City official or the City Manager has a substantial financial interest. This subsection does not prohibit a City official or the City Manager from being an applicant while holding City office or City position, if the person takes no official action concerning his or her own application. A City official or City Manager may give testimony and make appearances before City bodies on his or her own behalf.

e. Participation in Appointments. No City official shall participate in, vote on, or attempt to influence the selection of an appointee to any board, commission or committee (1) having authority to take official action on any pending matter or application in which that official has a substantial financial interest or (2) if that official has a substantial financial interest with a nominee for the appointment.

f. No official shall participate in, vote on, or attempt to influence the selection of an appointee to the Homer Advisory Planning Commission if that official has, or could reasonably be expected to have within one year after the date of the appointment:

1. A rezoning, quasi-judicial or platting action pending before the Commission; or
2. An application that would require approval by a quasi-judicial or platting action of the Commission.

In the case of the reappointment of an incumbent to another term, the prohibition above also applies to an official who had such a matter pending before the Homer Advisory Planning Commission within one year before the date of the reappointment. The Board of Ethics may, upon written request, grant an exception to this one-year period when it determines the public interest does not require continuing enforcement of the prohibition.

g. Use of Office for Personal Gain. No City official or the City Manager shall seek office or position or use their office or position for the purpose of obtaining anything of value for themselves, an immediate family member or a business that they own or in which they hold an interest, or for the purpose of influencing any matter in which they have a financial interest. This subsection does not prohibit the receipt of authorized remuneration for the office or position.

h. Inappropriate Use of Office Title or Authority. No City official or the City Manager shall use the implied authority of office or position for the purposes of unduly influencing the decisions of others, or promoting a personal interest within the community. City officials and the City Manager will refrain from using their title except when duly representing the City in an authorized capacity. Unless duly appointed by the Mayor or Council to represent the interests of the full Council, Council members shall refrain from implying their representation of the whole by the use of their title.

i. Representing Private Interests. No City official shall, for compensation, represent or assist those representing private business or personal interests before the City Council, administration, or any City board, commission or agency. Nothing herein shall prevent an official from making verbal or written inquiries on behalf of constituents or the general public to elements of City government or from requesting explanations or additional information on behalf of such constituents. No official may solicit or accept a benefit or anything of value from any person for having performed this service.

j. Confidential Information. No City official or the City Manager may disclose information they know to be confidential concerning employees of the City, City property, City government, or other City affairs, including but not limited to confidential information disclosed during an executive session, unless authorized or required by law to do so.

k. Outside Activities. A City official or the City Manager may not engage in business or accept employment with, or render services for, a person other than the City or hold any office or position where that activity, office, or position is incompatible with the proper discharge of the official's or City Manager's City duties or would tend to impair the official's or the City Manager's independence of judgment in performing City duties. This prohibition shall include but not be limited to the following activities:

1. A person who holds an appointed City office on a board or commission shall not be eligible for employment with the City in the department related to the board or commission during the

official's term of office and until one year has elapsed following the period of service. An exception may be made on a case-by-case basis with the express authorization of the City Council.

2. A person who holds or has held an elective City office shall not be eligible for appointment to an office or for employment with the City during the official's period of service and until one year has elapsed following the period of service. An exception may be made on a case-by-case basis with the express authorization of the City Council.

l. Gratuities. No City official or the City Manager shall accept a gratuity from any person engaging in business with the City or having a financial interest in a decision pending with the City. No City official or the City Manager shall give a gratuity to another City official for the purpose of influencing that person's opinion, judgment, action, decision or exercise of discretion as a City official. This subsection does not prohibit accepting:

1. A meal of reasonable value;
2. Discounts or prizes that are generally available to the public or large sections thereof;
3. Gifts presented by an employer to its employees in recognition of meritorious service, or civic or public awards;
4. A lawful campaign contribution made to a candidate for public office;
5. An occasional nonpecuniary gift insignificant in value;
6. Any gift which would have been offered or given to them if they were not a City official or the City Manager.

m. Use of City Property. No City official, the City Manager, or City hired consultant or contractor may use, request or permit the use of City vehicles, equipment, materials or property for any non-City purpose, including but not limited to private financial gain, unless that use is available to the general public on the same terms or unless specifically authorized by the City Council. This subsection does not prohibit de minimis personal use.

n. Political Activities – Limitations of Individuals. A City official may not take an active part in a political campaign or other political activity when on duty. Nothing herein shall be construed as preventing such officials from exercising their voting franchise, contributing to a campaign or candidate of their choice, or expressing their political views when not on duty or otherwise conspicuously representing the City.

o. Influencing Another City Official's Vote. A City official may not attempt to influence another City official's vote or position on a particular item through contact with the City official's employer or by threatening financial harm to another City official.

p. City officials or the City Manager shall not participate in public testimony before any City body in any matter in which they have a substantial financial interest unless:

1. They or the City is the applicant; or
2. They fully and publicly disclose the nature of their interest in the subject of the action.

q. No City official may violate HCC [2.04.030](#).

r. City officials shall act impartially when conducting City business.

s. At all times during performance of their official duties, Council members shall comply with the City's workplace safety policies, harassment prevention, and respectful workplace policies as set forth in the employee policy manual.

HOW THE OMA APPLIES TO A COMMISSION/BOARD

The OMA applies to every "governmental body", which includes "an assembly, council, board, commission, committee, or other similar body of a public entity" that has the authority to establish policies or make decisions for a public entity or to advise or make recommendations to the public entity. Although both decision-making bodies and advisory bodies are included under the OMA, the repercussions for violations of the OMA differ depending on the nature of the body.

Legislative Capacity – When a City governing body is called upon to institute or remark upon policy and procedure, it is acting in its legislative capacity and is subject to the OMA. For example, a commission/board is acting legislatively when it conducts acts such as recommending changes to Homer City Code or plans/policies.

Advisory-Only "Meetings" – A body with only the power to advise or make recommendations, but has no authority to establish policies or make decisions for the public entity, has a "meeting" when:

- More than three members or a majority of the members, whichever is less, are present;
- There is a gathering of governmental body members; and
- This gathering is "prearranged for the purpose of considering a matter upon which the governmental body is empowered to act." AS 44.62.310(h)(2)(b).

Considerations To What Constitutes An Advisory-Only "Meeting":

- Meeting must be prearranged for the purpose of considering matter upon which the body is empowered to act. Chance encounters will not constitute a meeting, even if the members discuss a matter on which they could advise or make a recommendation.
- A matter on which the body is permitted to act includes every step of the deliberative process, from brainstorm sessions to fine-tuning a proposal.
- At least four members or a majority of members, whichever is a smaller amount, must be present for a meeting to occur.
- A social gathering arranged for a given social purpose and not prearranged to discuss matters on which the body can act is not a meeting.

Teleconference Meetings – The OMA expressly permits meetings via teleconference. When voting in a teleconference meeting, all votes should be taken via roll call so the public can identify how each member voted. Although Homer City Code provisions regarding teleconference participation only applies to City Council members, the OMA grants the same convenience to other commission and board members (which are outlined in commission/board bylaws).

Serial Communications – If four of the members email each other (such as selecting "reply all") about a matter that the body is authorized to collectively act on, a meeting could occur. Similarly, if a majority of the members of a subcommittee that consists of two or more members email each other (such as 2-3 commissioners/board members working on a project together) about the same kind of matter, a meeting could occur. See AS 44.62.310(h)(2)(A).

Open Meetings Act FAQ:

Q: *Can two commissioners get together to work on something to bring back to the body to discuss?*

A: No. Two or more members gathering for the purpose of advising or making recommendations is considered a subcommittee, which falls under the description of a governmental body, as noted in the second bullet point above.

Q: *Can commissioners email each other with questions about Commission business?*

A: No. A serial meeting is one in which a quorum of the body communicates with each other, directly or indirectly, through whatever medium, to develop collective concurrence. Serial meetings are in violation of the Open Meetings Act. Commissioners should be aware of the potential for serial meetings and never hit “reply all” when responding by email.

Chapter 1.18

CONFLICTS OF INTEREST, PARTIALITY AND CODE OF ETHICS¹

Sections:

- 1.18.010 Purpose.
- 1.18.020 Definitions.
- 1.18.025 Scope and duration.
- 1.18.030 Standards and prohibited acts.
- 1.18.040 Business dealings with City.
- 1.18.043 Public disclosure.
- 1.18.045 Procedure for declaring potential conflict of interest – City officials.
- 1.18.047 Procedure for declaring potential conflicts of interest – City Manager.
- 1.18.048 Procedure for declaring and ruling on partiality in quasi-judicial matters.
- 1.18.050 *Repealed.*
- 1.18.060 Advisory opinions.
- 1.18.070 Violation and penalty.
- 1.18.090 Distribution of code.
- 1.18.100 Application of State statutes.

Prior legislation: Ord. 06-68(S)(A).

1.18.010 Purpose.

- a. The proper functioning of democratic government requires ethical behavior by public officials. Ethics involves the commitment to take individual responsibility in creating a government that has the trust and respect of its citizens. The purpose of this chapter is to set reasonable standards of conduct for City officials and the City Manager so that the public may be assured that its trust in such persons is well placed and that the City officials and the City Manager themselves are aware of the standards of conduct demanded.
- b. However, recognizing that Homer is a small community, with a limited number of people interested in serving as community leaders, it is not the intent of this chapter to set unreasonable barriers that will serve only to deter aspirants from public service.
- c. This chapter also defines conflict of interest and partiality, the standards stating when and to whom it applies, and the procedures for declaration and the proper action of the body when possible conflicts and partiality arise.
- d. This chapter is also intended to establish a process which will ensure that complaints or inquiries regarding the conduct of City officials and the City Manager are resolved in the shortest practicable time in order to protect the rights of the public at large and the rights of the City and the City Manager.
- e. The City Council intends this code to be interpreted to promote fair, honest, and impartial dealings with members of the public, to ensure proper use of City resources, and to avoid conflicts of interest.
- f. This chapter does not create or prevent a private cause of action against any person, City official, or the City Manager. [Ord. 08-24(S-2)(A), 2008].

1.18.020 Definitions.

As used in this chapter and unless otherwise provided or the context otherwise requires, the following terms shall have the meanings set forth in this section:

“Applicant” means any person that is applying for an official action by any official, employee, or body of the City including but not limited to:

1. Any person authorized to act for the applicant;
2. If the applicant is an organization, any person who has an ownership interest in the organization or serves as an officer, director or manager of the organization.

“Body of the City” means the City Council and the boards, commissions, committees and task forces appointed by the City Council or the Mayor.

“City Manager” means the person who is hired by the City Council to manage the City of Homer.

“City official” means a person who holds elective office under the ordinances of the City, or who is a member of a board or commission whose appointment is subject to confirmation by the City Council.

“Financial interest” means:

1. An interest currently held by that person or an immediate family member including:
 - a. Involvement or ownership in a business; or
 - b. Property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person receives a financial benefit; or
 - c. An affiliation with an organization in which the person holds a position of management, or is an officer, director, trustee, employee, or the like.
2. Financial interest does not include:
 - a. Affiliation as unpaid volunteer with a legally recognized nonprofit organization; or
 - b. Financial interests of a type which are generally possessed in common with all other citizens or a large class of citizens.

“Gratuity” means a thing having value given voluntarily or beyond lawful obligation.

“Hired consultants and contractors” means a person or organization hired by the City as an independent contractor and not as an employee.

“Immediate family member” means:

1. The spouse of the person;
2. A life partner or person cohabiting with the person;
3. A child, including a stepchild and an adoptive child, of the person;
4. A parent, sibling, or grandparent of the person; and

5. A parent or sibling of the person's spouse.

"Impartial" means acting in a manner that the City official believes is in the public's best interest and not acting to benefit a financial or personal interest of the City official.

"Large class of citizens" means a substantially large group of citizens as decided by official decision of the City Council made prior to the official action in question.

"Large class of citizens" does not include:

1. A single profession, regardless of the number of persons.
2. An individual business or organization regardless of the number of citizens it contains.

"Official action" means a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction (when it is the equivalent of decision to take negative action), made while serving in the capacity of City official or City Manager, whether such action or inaction is administrative, legislative, quasi-judicial, advisory, or otherwise.

"Organization" means any business, corporation, partnership, firm, company, trust, association, or other entity, whether organized for profit or nonprofit.

"Partiality" applies only in quasi-judicial proceedings and means:

1. The ability of a member of the quasi-judicial body to make an impartial decision is actually impaired; or
2. The circumstances are such that reasonable persons would conclude the ability of the member to make an impartial decision is impaired and includes, but is not limited to, instances in which:
 - a. The member has a personal bias or prejudice for or against a party to the proceeding including a party's lawyer;
 - b. The member or an immediate family member is a party, material witness to the proceeding or represents a party in the proceeding.

"Person" means a natural person or an organization.

"Political activity" means any act for the purpose of influencing the nomination or election of any person to public office, or for the purpose of influencing the outcome of any ballot proposition or question. Informing the public about a ballot proposition or question without attempting to influence the outcome of the ballot proposition or question is not political activity.

"Subject of the action" means anything under consideration for official action including but not limited to:

1. Appointments to any office or position of employment;
2. Any contract, project, property, or transaction subject to the action;
3. A platting, vacation or subdivision action;

4. An application for or other consideration of a license, permit, appeal, approval, exception, variance, or other entitlement;
5. A rezoning; and
6. Appeals and quasi-judicial proceedings.

“Substantial financial interest” means a financial interest that would result in a pecuniary gain or loss exceeding \$1,000 in a single transaction or more than \$5,000 in the aggregate in 12 consecutive months. [Ord. 18-14(A) § 1, 2018; Ord. 08-24(S-2)(A), 2008].

1.18.025 Scope and duration.

- a. Except as otherwise provided in this chapter, this chapter applies to the conduct of City officials and the City Manager.
- b. Enforcement proceedings may be commenced and continue to completion after a person is no longer a City official or City Manager for conduct that occurred during the time the person was serving or engaged in such a capacity for the City. [Ord. 08-24(S-2)(A), 2008].

1.18.030 Standards and prohibited acts.

- a. City officials, the City Manager, and City hired consultants and contractors, while acting in such capacity, shall not knowingly make false statements to influence official action.
- b. Official Action. No City official or the City Manager shall participate in any official action in which:
 1. The person is the applicant, a party or has a substantial financial interest in the subject of the official action.
 2. Within a period of one year after the action the person will have a substantial financial interest in the subject of the official action.
 3. The person resides or owns land within a 300-foot periphery of any property that is the subject of any action.
 4. The person does or will recognize a substantial financial interest as a result of the action.
5. Exceptions.
 - a. This subsection does not prohibit a person from acquiring a substantial financial interest in the subject of the action after the longer of 12 months after the official action is approved, or 12 months after the person’s term or employment ends.
 - b. This section does not prohibit any gain or loss that would generally be in common with all other citizens or a large class of citizens.
 - c. This section does not prohibit any gain or loss that would generally be in common with other property owners on property that is further than 300 feet from the periphery of any property that is the subject of an action.
- c. City officials and the City Manager acting in the course of their official duties are allowed to participate in official actions on behalf of the City or when the City itself is the applicant or subject of the action.

d. Undue Influence. No City official or the City Manager shall attempt to influence the City's selection of any bid or proposal, or the City's conduct of business, in which the City official or the City Manager has a substantial financial interest. This subsection does not prohibit a City official or the City Manager from being an applicant while holding City office or City position, if the person takes no official action concerning his or her own application. A City official or City Manager may give testimony and make appearances before City bodies on his or her own behalf.

e. Participation in Appointments. No City official shall participate in, vote on, or attempt to influence the selection of an appointee to any board, commission or committee (1) having authority to take official action on any pending matter or application in which that official has a substantial financial interest or (2) if that official has a substantial financial interest with a nominee for the appointment.

f. No official shall participate in, vote on, or attempt to influence the selection of an appointee to the Homer Advisory Planning Commission if that official has, or could reasonably be expected to have within one year after the date of the appointment:

1. A rezoning, quasi-judicial or platting action pending before the Commission; or
2. An application that would require approval by a quasi-judicial or platting action of the Commission.

In the case of the reappointment of an incumbent to another term, the prohibition above also applies to an official who had such a matter pending before the Homer Advisory Planning Commission within one year before the date of the reappointment. The Board of Ethics may, upon written request, grant an exception to this one-year period when it determines the public interest does not require continuing enforcement of the prohibition.

g. Use of Office for Personal Gain. No City official or the City Manager shall seek office or position or use their office or position for the purpose of obtaining anything of value for themselves, an immediate family member or a business that they own or in which they hold an interest, or for the purpose of influencing any matter in which they have a financial interest. This subsection does not prohibit the receipt of authorized remuneration for the office or position.

h. Inappropriate Use of Office Title or Authority. No City official or the City Manager shall use the implied authority of office or position for the purposes of unduly influencing the decisions of others, or promoting a personal interest within the community. City officials and the City Manager will refrain from using their title except when duly representing the City in an authorized capacity. Unless duly appointed by the Mayor or Council to represent the interests of the full Council, Council members shall refrain from implying their representation of the whole by the use of their title.

i. Representing Private Interests. No City official shall, for compensation, represent or assist those representing private business or personal interests before the City Council, administration, or any City board, commission or agency. Nothing herein shall prevent an official from making verbal or written inquiries on behalf of constituents or the general public to elements of City government or from requesting explanations or additional information on behalf of such constituents. No official may solicit or accept a benefit or anything of value from any person for having performed this service.

j. Confidential Information. No City official or the City Manager may disclose information they know to be confidential concerning employees of the City, City property, City government, or other City affairs,

including but not limited to confidential information disclosed during an executive session, unless authorized or required by law to do so.

k. Outside Activities. A City official or the City Manager may not engage in business or accept employment with, or render services for, a person other than the City or hold any office or position where that activity, office, or position is incompatible with the proper discharge of the official's or City Manager's City duties or would tend to impair the official's or the City Manager's independence of judgment in performing City duties. This prohibition shall include but not be limited to the following activities:

1. A person who holds an appointed City office on a board or commission shall not be eligible for employment with the City in the department related to the board or commission during the official's term of office and until one year has elapsed following the period of service. An exception may be made on a case-by-case basis with the express authorization of the City Council.
2. A person who holds or has held an elective City office shall not be eligible for appointment to an office or for employment with the City during the official's period of service and until one year has elapsed following the period of service. An exception may be made on a case-by-case basis with the express authorization of the City Council.

l. Gratuities. No City official or the City Manager shall accept a gratuity from any person engaging in business with the City or having a financial interest in a decision pending with the City. No City official or the City Manager shall give a gratuity to another City official for the purpose of influencing that person's opinion, judgment, action, decision or exercise of discretion as a City official. This subsection does not prohibit accepting:

1. A meal of reasonable value;
2. Discounts or prizes that are generally available to the public or large sections thereof;
3. Gifts presented by an employer to its employees in recognition of meritorious service, or civic or public awards;
4. A lawful campaign contribution made to a candidate for public office;
5. An occasional nonpecuniary gift insignificant in value;
6. Any gift which would have been offered or given to them if they were not a City official or the City Manager.

m. Use of City Property. No City official, the City Manager, or City hired consultant or contractor may use, request or permit the use of City vehicles, equipment, materials or property for any non-City purpose, including but not limited to private financial gain, unless that use is available to the general public on the same terms or unless specifically authorized by the City Council. This subsection does not prohibit de minimis personal use.

n. Political Activities – Limitations of Individuals. A City official may not take an active part in a political campaign or other political activity when on duty. Nothing herein shall be construed as preventing such officials from exercising their voting franchise, contributing to a campaign or candidate of their choice, or expressing their political views when not on duty or otherwise conspicuously representing the City.

o. Influencing Another City Official's Vote. A City official may not attempt to influence another City official's vote or position on a particular item through contact with the City official's employer or by threatening financial harm to another City official.

p. City officials or the City Manager shall not participate in public testimony before any City body in any matter in which they have a substantial financial interest unless:

1. They or the City is the applicant; or
2. They fully and publicly disclose the nature of their interest in the subject of the action.

q. No City official may violate HCC 2.04.030.

r. City officials shall act impartially when conducting City business.

s. At all times during performance of their official duties, Council members shall comply with the City's workplace safety policies, harassment prevention, and respectful workplace policies as set forth in the employee policy manual. [Ord. 18-14(A) § 2, 2018; Ord. 16-48(S)(A) § 1, 2016; Ord. 08-24(S-2)(A), 2008].

1.18.040 Business dealings with City.

a. Not less than 10 days before the date when official action may be taken by the Council or by any officer, the City Manager, commission or other agency of the City upon business dealings between the City and a City official or an organization in which the City official has a substantial financial interest, the City official shall file a statement with the City Clerk. The statement shall set forth the nature of such business dealings and the City official's interest therein. This statement is only required when the person receives a beneficial substantial financial interest. If all other provisions of this chapter are complied with, the statement shall be sufficient for continuing transactions of a similar or like nature for one year from the date of its filing. However, if an official has violated any of the provisions of this chapter, he shall be precluded from engaging in business with the City on that particular matter for one year.

b. Upon taking office or upon subsequently acquiring the interest, an official shall, within 10 days, file with the City Clerk a statement disclosing any substantial financial interests of the official or the City Manager in any existing business with the City, including those of any organization in which the official or the City Manager has a substantial financial interest.

c. The City Manager shall not engage in business with the City outside the duties of City Manager. [Ord. 08-24(S-2)(A), 2008].

1.18.043 Public disclosure.

a. City officials and the City Manager must annually file the following financial interest disclosure on forms prepared by the City Clerk:

1. For each City official and the City Manager the information that is required on the following selected schedules from the Alaska Public Offices Commission Public Official Financial Disclosure Statement: Schedules B (business interests), C (real property interests/rent to own), E (the portion relating to natural resource leases only), F (government contracts and leases) and G (close economic associations); and

2. For each elected City official a list of each business in which an immediate family member is a partner, proprietor or employee to the extent not provided in response to subsection (a)(1) of this section.

b. The financial interest disclosure must be filed by November 1st each year. A newly appointed official must file a statement within 30 days after taking office. Each candidate for elected City office must file a disclosure statement at the time he or she files a declaration of candidacy, except an incumbent seeking reelection with a current disclosure statement on file. Refusal or failure of a candidate to file the required disclosure statement before the end of the time period for filing declarations of candidacy shall require that the candidate's declaration of candidacy be rejected and the candidate disqualified.

c. The disclosure statement must be true, correct and complete and shall be signed under oath or affirmation, or certified to be true under penalty of perjury. Not filing a statement within the stipulated period is a violation of this chapter.

d. The disclosure statement shall be filed with the City Clerk and shall be open to public inspection and copying at the office of the City Clerk. The disclosure statement will not be sent to the Alaska Public Offices Commission. [Ord. 16-26 § 1, 2016; Ord. 08-24(S-2)(A), 2008].

1.18.045 Procedure for declaring potential conflict of interest – City officials.

a. A City official who has or may have a substantial financial interest in an official action shall disclose the facts concerning that interest to the body of the City of which the official is a member prior to the body taking any official action. Any member of the body may raise a question concerning another member's financial interests, in which case the member in question shall disclose relevant facts concerning the official's financial interests in the subject of the action.

b. If the official is a City Council member, the Mayor, or the Mayor Pro Tem in the absence of the Mayor, shall rule on whether the Council member must be excused from participation or must vote. The ruling may be immediately overridden by a majority vote of the City Council. There is no appeal from the action or inaction of the City Council to override or not override the ruling of the Mayor.

c. If the official is not a City Council member, the official may excuse themselves without a vote for conflict of interest, otherwise the board, commission, or other body of which the official is a member shall by majority vote rule on whether the member must be excused from participation, which must be the ruling when the body determines the official has a substantial financial interest in the official action. There is no appeal from the ruling of the body.

d. The official shall abide by the ruling. If the official is not a City Council member, the ruling applies (without the need for further disclosures and rulings) to all subsequent occasions on which the same official action comes before the same body, unless there has been a material change of circumstances. On each such subsequent occasion, the presiding officer shall note for the minutes that the ruling previously made continues in effect.

e. An official who is ruled to be excused from participation shall leave the official table and not vote, debate, testify, or otherwise take part in the official action, except an official who is an applicant may testify on his or her own behalf from the public testimony area.

f. Rule of Necessity. Exceptions to a ruling excusing a member from participation shall be made in cases where:

1. By reason of being excused for conflicts of interest the number of members of the Council or other body eligible to vote is reduced to less than the minimum number required to approve the official action;

2. No other body of the City has jurisdiction and authority to take the official action on the matter;
and
3. The official action cannot be set aside to a later date, within a reasonable time, when the body could obtain the minimum number of members to take action who are not excused for conflicts of interest.

When the body determines this exception applies, then all members, except the applicant when the applicant is a member of the body, shall participate in the official action. [Ord. 08-24(S-2)(A), 2008].

1.18.047 Procedure for declaring potential conflicts of interest – City Manager.

The City Manager who has or may have a substantial financial interest in an official action shall disclose the facts concerning the Manager's financial interests to the City Council prior to taking any official action. If the City Council determines the Manager has a substantial financial interest in the action, the City Council shall excuse the Manager and assign another City employee to the matter. [Ord. 08-24(S-2)(A), 2008].

1.18.048 Procedure for declaring and ruling on partiality in quasi-judicial matters.

- a. A City official or the City Manager who has partiality concerning a quasi-judicial matter shall not advise on matter, adjudicate the matter or serve as a member of a body adjudicating the matter.
- b. A City official who is a member of a quasi-judicial body and who has or may have partiality concerning a matter to be adjudicated shall disclose the facts concerning the official's possible partiality to the body to the parties to the matter prior to the commencement of proceedings by the body. Any member of the body, and any party to a matter before the body, may raise a question concerning a member's partiality, in which case the member in question shall disclose facts concerning the official's possible partiality in the matter.
- c. After such disclosure, the City official may excuse themselves for partiality without a vote of the body, otherwise the body (including a body comprised of City Council members when serving in a quasi-judicial capacity) shall by majority vote rule on whether the member must be excused from participation, which must be the ruling when the body determines the official has partiality concerning the matter.
- d. Rule of Necessity. Exceptions to a ruling excusing a member from participation shall be made in cases where:
 1. By reason of being excused for partiality the number of members of the Council or other body eligible to vote is reduced to less than the minimum number required to approve the official action;
 2. No other body of the City has jurisdiction and authority to take the official action on the matter;
and
 3. The official action cannot be set aside to a later date, within a reasonable time, when the body could obtain the minimum number of members to take action who are not excused for partiality.

When the body determines this exception applies, then all members, except the applicant when the applicant is a member of the body, shall participate in the official action.

- e. The City Manager who has or may have partiality concerning a quasi-judicial matter over which the Manager has decision-making authority shall either (1) appoint another City employee to make the

decision or (2) disclose the facts concerning the possible partiality to the City Council and to the parties to the matter prior to taking any official action. If referred to the City Council and the City Council determines the Manager has partiality concerning the matter, the City Council shall excuse the Manager and cause another City employee to be assigned to decide the matter. [Ord. 08-24(S-2)(A), 2008].

1.18.050 Procedures for violation reporting.

Repealed by Ord. 18-14(A). [Ord. 17-06 § 1, 2017; Ord. 08-24(S-2)(A), 2008].

1.18.060 Advisory opinions.

a. Where any City official or the City Manager has a doubt as to the applicability of any provision of this chapter to a particular situation, or as to the definition of terms used herein, he may apply in writing to the City Attorney for an advisory opinion. The City official or City Manager shall have the opportunity to present his interpretation of the facts at issue and of the applicability of provisions of the chapter before such advisory opinion is made. The request must clearly state it is a request for an advisory opinion under this section of the ethics code.

b. Such opinion, until amended or revoked, shall be binding on the City in any subsequent actions concerning the public official who sought the opinion and acted on it in good faith, unless material facts were omitted or misstated in the request for the advisory opinion. An advisory opinion shall be applicable and binding only to the particular set of facts and instances of conduct for which it was requested and shall have no force or effect for purposes of general application. Such opinion shall not be binding or admissible in evidence in any action initiated by any private citizen.

c. Any act or omission taken by any City official or the City Manager in their official capacity based upon the advice of the City Attorney provided in writing, during a Councilor Commission meeting or acknowledged by the City Attorney in response to a complaint shall not be subject to an ethics complaint under this chapter. [Ord. 18-14(A) § 4, 2018; Ord. 08-24(S-2)(A), 2008].

1.18.070 Violation and penalty.

Any official who violates any of the provisions of this chapter shall be guilty of a violation subject to punishment pursuant to Chapter 1.16 HCC. [Ord. 08-24(S-2)(A), 2008].

1.18.090 Distribution of code.

The City Clerk shall cause a copy of this chapter to be distributed to each City official elected or appointed before entering upon the duties of his office and to the City Manager upon employment. [Ord. 08-24(S-2)(A), 2008].

1.18.100 Application of State statutes.

a. Nothing in this chapter is intended to curtail, modify, or otherwise circumvent the application of the Alaska Statutes to any conduct involving bribery or other offenses against public administration.

b. All municipal officers as defined by AS 39.50 are exempt from the provisions of AS 39.50 relating to conflicts of interest or financial disclosures. [Ord. 08-24(S-2)(A), 2008].

¹ Ordinance 08-24(S-2)(A) repealed and reenacted Chapter 1.18 HCC.

Chapter 2.58

BOARDS AND COMMISSIONS

Sections:

- 2.58.010 Boards and commissions.
- 2.58.020 Creation of City boards and commissions.
- 2.58.030 Applicability.
- 2.58.035 Commission and board member terms.
- 2.58.040 Commission and board bylaws.
- 2.58.050 Required procedures.
- 2.58.060 Teleconferencing.

2.58.010 Boards and commissions.

City Council may create or abolish boards and commissions. Council shall create or abolish boards and commissions via ordinance. Council shall establish the number of members of each board or commission, their terms of office, and the purpose for which the board or commission is created via ordinance. [Ord. 18-38(S) § 2, 2018].

2.58.020 Creation of City boards and commissions.

The following boards and commissions have been created by City Council and are subject to this chapter unless otherwise provided in this title:

- a. Library Advisory Board;
- b. Parks, Art, Recreation, and Culture Advisory Commission;
- c. Port and Harbor Advisory Commission;
- d. Planning Commission;
- e. Economic Development Advisory Commission;
- f. Americans with Disabilities Act Advisory Board. [Ord. 22-53(A) § 1, 2022; Ord. 18-38(S) § 2, 2018].

2.58.030 Applicability.

Except as otherwise provided within this title, this chapter applies to all boards and commissions created by City Council which exercise powers vested in the City or which serve as an advisory body of the City. This chapter does not apply to standing committees, special committees, work groups or task forces which are created jointly with other governing bodies, City staff or which do not exercise powers vested in the City. [Ord. 18-38(S) § 2, 2018].

2.58.035 Commission and board member terms.

Appointment and removal of the members of City boards and commissions shall be by recommendation of the Mayor and confirmation of such action by the Council, except as specifically provided otherwise in the Alaska Statutes and/or under other provisions of the code. In addition to the voting members of the board or commission, the Mayor may appoint honorary members of a board or commission, subject to confirmation by Council. The honorary members' terms are to be determined at the time of appointment. Honorary members of a board or commission may participate in the deliberations of the

board or commission, but may not vote, nor shall they be counted in determining whether a quorum is present. [Ord. 18-38(S) § 2, 2018].

2.58.040 Commission and board bylaws.

a. Except as otherwise provided in this title, all boards and commissions created by Council shall draft and approve proposed bylaws governing the operations of their respective areas of authority, subject to review by the City Attorney. Once approved by the board or commission, the proposed bylaws shall be submitted to Council for approval via resolution.

b. Except as otherwise provided in this title, the City Clerk shall file the bylaws and the resolution approving them. The City Clerk shall make the bylaws available to the public upon request.

c. A commission or board may recommend an amendment to its bylaws to Council after considering any amendments at two separate meetings. Amendments to bylaws of any City commission or board shall be effective upon approval of the amendments by Council via resolution. [Ord. 18-38(S) § 2, 2018].

2.58.050 Required procedures.

Except as otherwise provided in this title, bylaws for boards and commissions shall contain:

a. Presiding Officer. The presiding officer of the board or commission shall be the chairperson. In the chairperson's absence, the vice-chairperson shall be the presiding officer. In all other circumstances, the most senior member shall preside. The presiding officer shall preserve order and decorum at all meetings of the board or commission, while promoting discussion by all members in deliberations unless otherwise prohibited by law.

b. Staff Liaison. The City Manager shall designate an employee to serve as a staff liaison to each board or commission. The staff liaison shall assist the chairperson in setting meetings, preparing agendas, and other documentary material, and coordinating the acquisition of needed materials and training.

c. Recording Clerk. The City Clerk shall designate a recording clerk to take minutes for each board and commission and that designee shall serve as the board's or commission's parliamentary advisory pursuant to AS 29.20.380(10) and HCC 2.12.010 and assist the chairperson with the conduct of the meeting.

d. Quorum. Four commission or board members shall constitute a quorum of seven members; and five commission or board members shall constitute a quorum of eight members.

e. Voting. Each member, including the chairperson, shall vote, and shall not abstain from voting, unless such member claims a conflict of interest, or has an excused absence, in which event the member shall be excused from voting. The member shall then state for the record the basis for the abstention.

1. Four affirmative votes of seven members and five affirmative votes of eight members are required to pass a motion.

2. Voting will be by a roll call vote, the order to be rotated; or by unanimous consent if no objection is expressed.

3. Voting by proxy or absentee is prohibited.

f. Staff Reports and Recommendations. The staff liaison shall submit reports and recommendations for those agenda items requiring decisions or recommendations by any board or commission. Other staff

having experience, education, and professional training in the subject matter may provide input into the reports and recommendations, or may provide supplemental information. The information submitted may be oral, written or graphic, or some combination of all. Except as otherwise provided in this code, the reports and recommendations shall be accepted as evidence of record to the same extent as oral testimony and exhibits accepted from applicants, opponents, persons who are subjects of an inquiry, expert and lay witnesses, and members of the public who provide information for the record of the proceedings.

g. Attendance. Any member who is unable to attend a meeting, whether regular or special, shall contact the Clerk in advance no later than two hours prior to the scheduled meeting time for excusal.

h. Vacancies. With exception of the Planning Commission, a commission or board member's appointment is vacated under the following conditions:

1. A member fails to qualify to take office within 30 days after their appointment;
2. A member resigns;
3. A member is physically or mentally unable to perform the duties of the office;
4. A member is convicted of a felony or of an offense involving a violation of their oath of office; or
5. A member has three consecutive unexcused absences, or misses half of all meetings within an appointment year, whether excused or unexcused.

Planning Commission vacancy terms are addressed in HCC 2.72.040(c).

i. Rules of Order. Boards and commissions shall abide by the current edition of Robert's Rules of Order insofar as it is consistent with the board's or commission's bylaws, other provisions of the Homer City Code, or standing rules. In all other cases, bylaws, the code, or the standing rule shall prevail.

j. Training and Model Procedures.

1. Training sessions developed or arranged by the City Clerk and approved by the City Manager shall be mandatory unless a member's absence is excused by the chairperson.
2. The City Manager and/or City Clerk, in their discretion and in consultation with the City Attorney as needed, may develop model procedures to be used as a guide for boards and commissions.

k. Teleconferencing. Teleconference participation is allowed with notice to the Clerk no later than two hours prior to the scheduled meeting time. [Ord. 21-50(S)(A) § 1, 2021; Ord. 18-38(S) § 2, 2018].

2.58.060 Teleconferencing.

a. This section governs the teleconference participation of board and commission members at all regular meetings, special meetings, and worksessions.

b. "Teleconference" means remote participation by telephone or web-based format by a member for a meeting of the board or commission which must enable the remote member, for the duration of the meeting, to clearly hear and to be heard by the chairperson, all other members, the staff liaison, the Clerk, and any public in attendance.

c. "Appointment year" means the 12-month period commencing the first day of the first month after expiration of terms.

d. The preferred procedure for all meetings is that all members should make all reasonable effort to be physically present at the designated time, date, and location within the City for the meeting. Teleconference participation is intended for good cause which may include, but is not limited to, absences required for work-related events, family emergencies, medical-related issues, or other good cause. Teleconferencing is not to be used as a regular means of attendance at meetings except during events described in subsection (g) of this section. A board or commission member allowed by this section to participate by teleconference shall, while actually on the teleconference, be deemed present at the meeting for all purposes.

e. Members who cannot be physically present for a meeting shall notify the Clerk in advance no later than two hours prior to the scheduled meeting time of their intent to appear by teleconference.

f. All members teleconferencing will establish a connection by telephone or web-based format and shall make every effort to participate in the entire meeting. If teleconference participation is interrupted due to poor connectivity and hinders the active participation of a member in the meeting, the chairperson will request a brief recess to allow the member to attempt to reestablish a connection. If the member cannot reestablish a connection after a recess and a quorum remains, the chairperson shall proceed with the meeting and the Clerk shall note in the minutes of the meeting the member's inability to participate in the meeting due to technical difficulties. If quorum is lost, the chairperson shall adjourn the meeting and any remaining agenda items will carry over to the next regular or special meeting.

g. Subsection (d) of this section does not apply to meetings held while an emergency disaster declaration is in effect and the nature of the disaster significantly impacts a member's ability to attend a meeting other than by teleconference or other technological means. [Ord. 21-50(S)(A) § 2, 2021].

Chapter 2.64

PORT AND HARBOR ADVISORY COMMISSION

Sections:

- 2.64.010 Commission – Creation and membership.
- 2.64.020 Commission – Terms of members.
- 2.64.030 Proceedings of the Commission.
- 2.64.040 Duties and responsibilities of the Commission.

Prior legislation: Ord. 73-1.

2.64.010 Commission – Creation and membership.

- a. There is created the City of Homer Port and Harbor Advisory Commission, referred to in this chapter as the Commission. Such Commission will be made up of seven members, who shall be nominated by the Mayor and confirmed by the City Council. Not more than two member(s) may be from outside the City limits.
- b. A Chairman and Vice-Chairman of the Commission shall be selected annually and shall be appointed from and by the appointive members.
- c. The Mayor, the City Manager, the Port Manager and the Harbormaster shall serve as consulting members of the Commission in addition to the seven appointive members, and may attend all meetings as consultants, but shall have no vote. [Ord. 84-4 § 1, 1984; Ord. 73-12 § 1, 1973. Code 1967 § 7-400.1; Code 1981 § 1.72.010].

2.64.020 Commission – Terms of members.

- a. Members of the first Commission shall be appointed for the following terms:
 - 1. Three members shall be appointed for three-year terms;
 - 2. Two members shall be appointed for two-year terms;
 - 3. Two members shall be appointed for one-year terms.
- b. At the end of the respective terms set forth in subsection (a) of this section, members shall be appointed for full three-year terms.
- c. Any Commissioner who shall have two successive unexcused absences shall be subject to removal by the Commission by a majority vote of the members present. [Ord. 78-4 § 1, 1978. Code 1967 § 7-400.3; Code 1981 § 1.72.020].

2.64.030 Proceedings of the Commission.

The Commission shall meet regularly once a month, and at the call of the Chairman. Permanent records or minutes shall be kept of Commission proceedings and such minutes shall record the vote of each member upon every question. Every decision or finding shall immediately be filed in the office of the City Clerk, and shall be a public record open to inspection by any person. Every decision or finding shall be directed to the City Council at the earliest possible date. [Code 1967 § 7-400.5; Code 1981 § 1.72.030].

2.64.040 Duties and responsibilities of the Commission.

- a. It shall be the duty of the Commission to act in an advisory capacity to the City Manager and the City Council on the problems and development of the City port and harbor facilities. Consideration may include the physical facilities, possible future development and recommendations on land use within the port and harbor areas.
- b. The daily operation and maintenance of the port and harbor are the direct responsibility of the Port Manager and the Harbormaster, under the direction of the City Manager. Any recommendation the Commission or a Commission member may have regarding the operation and maintenance of the facilities is to be directed to the City Manager, not a port or harbor employee. The City Manager will study the recommendation and refer it to the Council, or the recommendations of the Commission concerning policy issues shall be sent directly to the Council upon the request of the Commission.
- c. The Commission shall consider any specific proposal, problem or project as directed by the City Council and any report or recommendations thereon shall be made directly to the Council, unless otherwise directed by the Council.
- d. The City Council may at a future date expand or withdraw duties and responsibilities of the Commission. [Ord. 89-21(A) § 1, 1989. Code 1967 § 7-400.7; Code 1981 § 1.72.040].

Chapter 18.08

CITY PROPERTY LEASES

Sections:

18.08.005	Purpose.
18.08.010	Definitions.
18.08.020	Land allocation plan – Property available for lease.
18.08.030	Standardized leases.
18.08.040	Council approval of leases.
18.08.045	Lease applications.
18.08.050	Requests for proposals – Competitive bidding process.
18.08.060	Criteria for evaluating and approving proposals and competing lease applications.
18.08.065	Lease application and proposal documents.
18.08.070	Notice to award.
18.08.075	Lease rental rates.
18.08.080	Lease execution and final approval.
18.08.090	Development and use.
18.08.100	Appraisal.
18.08.110	Options to renew.
18.08.120	Improvements.
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18.08.005 Purpose.

The purpose of this chapter is to ensure that the lease of City-owned property maximizes the value of City assets and that the City awards leases that provide the highest and best use of City-owned property. It is the policy of the City to lease its property in a fair and nondiscriminatory way. [Ord. 18-16(S)(A) § 1, 2018].

18.08.010 Definitions.

For the purpose of this chapter, the following words and phrases are defined as set forth in this section:

“Applicant” means a person applying to lease or acquire an interest in City-owned real property and includes bidders and proposers.

“Appraisal” means a valuation or estimation of value of property by an Alaska certified general real estate appraiser or an otherwise qualified appraiser selected by the City Manager.

“Assignment” means a transfer of a leasehold interest or rights to a leasehold interest, in its entirety, in City-owned real property.

“City Manager” means the City of Homer Manager or their designee.

“Fair market rent” means the rental income that a public or private property would most likely command in the open market, indicated by the current rents paid for comparable space as of the date of the appraisal.

“Irregularities” means deviations from the request for proposal that are not substantive in nature and/or typographical or scrivener errors that do not impact the integrity or responsiveness of the proposal.

“Long-term lease” means a written agreement granting exclusive possession or use of City-owned real property for more than one year.

“Short-term lease” means a written agreement granting exclusive possession or use of City-owned real property for one year or less.

“Sublease” means a leasing by a tenant or lessee of part or all of a leased premises to another entity or entities with the original lessee retaining the rights and interest under the original lease.

“Surveyor” means a registered professional land surveyor. [Ord. 21-02 § 2, 2021; Ord. 18-16(S)(A) § 1, 2018].

18.08.020 Land allocation plan – Property available for lease.

a. Unless dedicated or reserved to another purpose, all real property including tide, submerged or shore lands to which the City has a right, title and interest as owner or lessee, or to which the City may become entitled, may be leased as provided in this chapter. In the case of any conflict between this chapter and any local, State or Federal law governing the leasing of City tide and submerged lands, the law governing the leasing of City tide and submerged lands shall prevail.

b. The City administration shall maintain a list of all City-owned properties authorized for lease by Council. This list shall be adopted annually and contain the information required under this chapter. The list may be called the land allocation plan and will be made available to the public.

c. Council shall adopt a land allocation plan that identifies:

1. City-owned property available for lease;
2. The property description, lease rate, preferred length of the lease term for each available parcel; and
3. Any requirements, preferences or restrictions regarding use and/or development.

d. Council may identify property in the land allocation plan that is subject to competitive bidding. Property subject to competitive bidding in the land allocation plan need only identify the property description in the land allocation plan but all other terms required in subsection (c) of this section shall be identified in the request for proposal for such properties.

e. Prior to the adoption of the land allocation plan, Council shall hold a work session. Commission members and City staff may provide recommendations to Council during the work session regarding City-owned property available for lease and the terms of such leases.

f. The City shall provide public notice of the adoption of the land allocation plan and the City-owned real property available for lease no more than 60 days after its adoption.

g. All uses and activities on City-owned real property available for lease are subject to all applicable local, State, and Federal laws and regulations.

h. The Council may restrict specific City-owned properties to certain uses or classes of use that serve the City's best interest. [Ord. 22-49 § 1, 2022; Ord. 18-16(S)(A) § 1, 2018].

18.08.030 Standardized leases.

a. The City Manager shall develop a standardized ground lease that contains provisions generally applicable to the lease of City-owned property and a standardized building lease that contains provisions generally applicable to the lease of space in City-owned buildings. The standard lease documents shall be reviewed by the City Attorney and approved by Council.

b. Lease terms may deviate from the standardized lease terms when the City Manager determines such deviations are reasonable and necessary to protect the City's best interests and Council approves the lease as required in HCC 18.08.040. [Ord. 18-16(S)(A) § 1, 2018].

18.08.040 Council approval of leases.

a. All long-term leases for more than five years shall be approved by Council via ordinance. All long-term leases for five years or less shall be approved by Council via resolution.

b. The City Manager may execute short-term leases without Council approval when the City Manager determines that a short-term lease is in the best interest of the City and notifies the Council in writing of the short-term lease and its essential terms.

c. Short-term leases are not required to go through the competitive bidding process unless the short-term lease would result in the lease of City-owned property to the same lessee for more than one consecutive year.

d. Except as expressly provided in this chapter, property leased by the City from a third party that is available for sublease or the lease of space in City-owned buildings located on real property owned by a third party is exempt from this chapter. [Ord. 18-16(S)(A) § 1, 2018].

18.08.045 Lease applications.

a. Except for property subject to competitive bidding under this chapter, persons interested in leasing City property may submit a lease application to the City Clerk. The City Manager shall consider all applications and determine if an application is complete and meets the criteria identified in the land allocation plan and in HCC 18.08.060.

b. When the City receives more than one lease application for a parcel that meets the criteria established for that parcel in the land allocation plan, the City Manager shall evaluate the applications using the criteria in HCC 18.08.060 and award the lease most advantageous to the City. If both applicants are equally advantageous to the City, the City Manager shall award the lease to the applicant who submitted a completed application first.

c. Applicants may be charged a nonrefundable lease application fee as set forth in the City of Homer fee schedule. [Ord. 22-49 § 2, 2022; Ord. 18-16(S)(A) § 1, 2018].

18.08.050 Requests for proposals – Competitive bidding process.

a. The City Manager may issue a request for proposals to lease specific property identified in the land allocation plan at any time after posting the notice required in HCC 18.08.020(f).

b. A request for proposal advertised by the City must identify the property description of the property available for lease, the time frame for the submission of requests for proposals, any preferred uses or industries, and the overall criteria the City intends to use to score and rank proposals.

c. The City Manager must obtain approval from the Council before requesting proposals to lease property not identified in the land allocation plan as property available for lease.

d. The City Manager shall consider all responses to the City's request for proposals that are timely, responsible and responsive. Untimely submissions shall be rejected. The City Manager reserves the right to reject any and all proposals in the City's best interest.

e. The City Manager may rescind a notice to award at any time prior to the execution of a lease if the proposer can no longer meet the terms of the proposal. If the City Manager rescinds a notice to award, the City Manager may negotiate with the next most responsive proposer and submit a new recommendation for award to Council under HCC 18.08.070 and Council may approve the award of the proposal to that recommended proposer. If negotiations with the next most responsive bidder are unsuccessful, all bids must be rejected and a new request for proposal may be issued.

f. The Council may approve other bidding or proposal procedures or exceptions to these procedures via resolution. [Ord. 22-49 § 3, 2022; Ord. 18-16(S)(A) § 1, 2018].

18.08.060 Criteria for evaluating and approving proposals and competing lease applications.

a. The criteria for evaluating proposals shall include, but are not limited to, the following:

1. Compatibility with neighboring uses and consistency with applicable land use regulations including the Comprehensive Plan;
2. The development plan including all phases and timetables;
3. The proposed capital investment;
4. Experience of the applicant in the proposed business or venture;
5. Financial capability or backing of the applicant including credit history, prior lease history, assets that will be used to support the proposed development;
6. The number of employees anticipated;
7. The proposed rental rate;
8. Other financial impacts such as tax revenues, stimulation of related or spin-off economic development, or the value of improvements left behind upon termination of the lease;
9. Other long-term social economic development; and

10. The residency or licensure of the applicant in the City, Kenai Peninsula Borough, and/or the State of Alaska, as identified in the City's request for proposal and permitted under State and Federal law.

b. Determination of rent shall take into consideration the following factors:

1. Appraisal or tax assessed valuation;
2. Highest and best use of land;
3. Development (existing and planned);
4. Economic development objectives;
5. The location of the property; and
6. Alternative valuation methodologies as negotiated by both parties. [Ord. 18-16(S)(A) § 1, 2018].

18.08.065 Lease application and proposal documents.

Upon request by the City Manager or as required in a request for proposal or the lease allocation plan, an applicant or proposer shall provide, at its sole expense, the following:

- a. A property improvement plan with information regarding planned improvements by lessee, including schedule for commencement and completion of proposed improvements;
- b. A survey of the property subject to the proposed lease; and/or
- c. If only a portion of a lot is to be leased, a subdivision plat. [Ord. 18-16(S)(A) § 1, 2018].

18.08.070 Notice to award.

- a. Upon a determination that a proposal meets the criteria under HCC 18.08.060, the City Manager shall recommend the proposal to Council for acceptance. If Council approves the recommendation, the City Manager shall issue a notice to award the lease to the successful proposer. The City Manager's recommendation shall be presented to Council in a written memorandum identifying the recommended winning proposer, the property description, the essential terms of the proposed lease, and the reasons the City Manager recommended the award.
- b. The City Manager shall submit any recommendation for approval of a proposal under this chapter for property located on the Homer Spit to the Port and Harbor Advisory Commission for review and comment prior to recommending a proposal to Council.
- c. If the Council adopts the City Manager's recommendation, the City Manager shall negotiate with the selected proposer and present a final lease to the Council for approval. A notice of tentative award is conditional upon the City Manager's successful negotiation of a final written lease consistent with the terms upon which the award was based.
- d. The City Manager may rescind a notice to award. A notice to award becomes void on the date the City Manager provides written notice to the proposer that the award has been rescinded. [Ord. 22-49 § 4, 2022; Ord. 18-16(S)(A) § 1, 2018].

18.08.075 Lease rental rates.

- a. Except as otherwise provided in this section, all property shall be leased at no less than “fair market rent.”
- b. Payments of a higher than fair market rent resulting from a proposal or lease application is generally in the public interest and will help to establish fair market rent using current market forces.
- c. The Council may establish a minimum rent or “asking price.” It may set a minimum rent at an amount equal to or higher than the estimated “fair market rent” if it finds that it is in public interest to do so. It may set uniform rental rates for a class of similar properties that remain available for leasing after the conclusion of a competitive lease offering.
- d. Except as otherwise provided in this chapter, Council may approve a lease of City land for less than fair market rent only if the motion approving the lease contains a finding that the lease is for a valuable public purpose or use, and a statement identifying such public purpose or use.
- e. The lease shall provide for payment of interest or a late fee for rent past due, and provide for recovery by the City of attorneys’ fees and costs to the maximum extent allowed by law in the event the City is required to enforce the lease in court, and such additional provisions pertaining to defaults and remedies as the City Manager may determine to be in the City’s interest.
- f. Lease amount to be adjusted annually based on the Anchorage Consumer Price Index. [Ord. 18-16(S)(A) § 1, 2018].

18.08.080 Lease execution and final approval.

- a. After a notice to award a lease is approved by Council or a lease application is approved by the City Manager, the City Manager is responsible for finalizing and executing the lease agreement with the successful applicant or proposer. After Council’s approval of the notice to award but before Council approval under HCC 18.08.040, the City Manager may negotiate nonessential long-term lease terms and make changes necessary to clarify the terms of the long-term lease or correct clerical errors.
- b. The City Manager has authority to negotiate all terms of short-term leases subject to the provisions of this chapter.
- c. After a lease is executed by both parties, the City Manager shall draft and the City Clerk shall record a memorandum of lease. [Ord. 22-49 § 5, 2022; Ord. 18-16(S)(A) § 1, 2018].

18.08.090 Development and use.

- a. All leases must require the lessee to comply with all applicable local, State, and Federal laws.
- b. Except as provided otherwise in the lease agreement, an as-built survey including elevations performed by a surveyor shall be provided to the City within six months of completion of development on the leased property. Each additional structure or significant improvement shall require an updated as-built survey. All surveys are to be provided by lessees at their expense.
- c. Except as provided otherwise in the lease agreement, at the time each as-built survey is submitted, a statement of value including leaseholds and all improvements shall be provided. The statement of value shall be either a letter of opinion or appraisal completed by an appraiser.

d. All development requirements and performance standards contained in the lease shall be strictly enforced and if not complied with or negotiated for modification shall be cause for the lease to be terminated. Failure to enforce the terms of the lease shall not constitute waiver of any such term.

e. The City may require a lease of City-owned property to be secured by any means that meet the City's best interest, including, without limitation, a security deposit, surety bond or guaranty. [Ord. 18-16(S)(A) § 1, 2018].

18.08.100 Appraisal.

a. An appraisal of the fair market rent of the property will be required before final approval of a new lease or the transfer of a lease and within two years prior to the renewal of a lease.

b. The requirement of an appraisal may be waived at the discretion of the City Manager for short-term leases.

c. All leased properties shall be appraised every five years from the effective date of the lease. The City may choose to have the property appraised at less than five-year intervals in order to appraise multiple properties at one time. An increase in rental rates resulting from appraisals occurring in less than five years from the last appraisal shall not be applied prior to date of appraisal permitted under this section or the effective date of the transfer or renewal of a lease.

d. Except as otherwise provided under this section or in a specific lease, lease rates shall be increased on the anniversary of the lease effective date to reflect property appraisal values. A lessee shall be notified of any increase in the appraised value of the property at least 30 days before the increased rental rate becomes effective.

e. In the event an appraisal reports a decrease in fair market rent, a lessee may petition or the City Manager may recommend to Council a reduction in the lease rate. Council may approve a reduction if it determines via resolution that such reduction corresponds with the appraised fair market rent and is in the City's best interest.

f. Each year, the City will select and retain an appraiser to appraise all leased City-owned property due for appraisals in that year. The City will have sole discretion to select the appraiser and bears the cost of the appraisal. [Ord. 18-16(S)(A) § 1, 2018].

18.08.110 Options to renew.

a. Leases may contain no more than two options to renew and each option must not exceed 25 percent of the length of the initial lease term.

b. A lessee may not exercise an option to renew unless the City Manager determines that the lessee is in full compliance with the terms of the lease at the time of renewal.

c. A lessee whose initial lease and all options have expired shall have no automatic right of further renewal or extensions. [Ord. 18-16(S)(A) § 1, 2018].

18.08.120 Improvements.

a. Except as otherwise provided in the lease agreement, construction of improvements shall take place only after review and approval of the construction plans by the City Manager and only after all applicable permits have been secured and legal requirements met.

b. Improvements not included in the lease agreement or improvements that are inconsistent with or deviate from those permitted in the lease agreement must be approved by Council via resolution. Council shall only approve such improvements upon recommendation by the City Manager and after review by the Port and Harbor Commission, the Homer Advisory Planning Commission, and any other commission determined to be appropriate by the City Manager. Inconsistent improvements may be approved if the proposed changes to the improvements serve the City's best interest and/or when changes are necessary due to relevant changes in industry or the local economy.

c. All improvements constructed upon leased property become the property of the City upon termination of the lease unless otherwise provided in the lease agreement or agreed to by the parties in writing.

d. Lessee shall be responsible for all taxes, including property taxes on the leasehold interest in the real property and improvements and any sales tax on rent payments. [Ord. 18-16(S)(A) § 1, 2018].

18.08.130 Lease renewal.

a. Council, upon written recommendation by the City Manager, may exempt the renewal of a lease from competitive bidding if Council finds such exemption serves the City's best interests.

b. A lessee seeking to enter into a new lease with the City exempted from competitive bidding under this section must submit a lease application and a written request for a new lease to the City Manager at least 12 months but no more than 18 months prior to the expiration of the existing lease. The City Manager shall notify Council of new lease requests under this section. The City will review the application but is under no obligation to enter into a new lease.

c. If Council approves the new lease without a competitive process, it must do so by resolution within six months prior to the date of lease termination.

d. Council shall consider the following factors when determining whether to exempt a lease from competitive bidding under this section:

1. Lessee's past capital investment and binding commitment to future capital investment;
2. Lessee's financial condition and prior lease history;
3. The number of persons employed and the prospect for future employment;
4. Tax revenues and other financial benefits to the City anticipated in the future if the lease is renewed;
5. Consistency of past use and intended future use with all applicable laws, including land use codes and regulations, the Comprehensive Plan, and overall economic development plan;
6. Other opportunities for use of the property that may provide greater benefit to the City; and
7. Other social, policy, and economic considerations as determined by Council. [Ord. 22-49 § 6, 2022; Ord. 18-16(S)(A) § 1, 2018].

18.08.140 Sublease.

a. City property may be subleased if expressly permitted in the lease agreement and approved by Council.

- b. Except as provided otherwise in the lease agreement, all subleases must be in writing, executed by the parties, and approved by the City Manager or their designee.
- c. Approval must be granted prior to occupancy of the leased premises by a subtenant.
- d. Subleasing shall not be used to transfer substantially all of a leasehold interest.
- e. All subleases must comply with all applicable Federal, State, and local laws. [Ord. 22-49 § 7, 2022; Ord. 21-02 § 1, 2021; Ord. 18-16(S)(A) § 1, 2018].

18.08.150 Early termination.

Except as provided otherwise in the lease agreement, Council shall approve the termination of a lease for failure to comply with the lease terms. The City Attorney shall be consulted prior to termination of a long-term lease for failure to comply with lease terms. The City Manager may only terminate a lease for failure to comply with the lease terms after receiving Council approval to do so. The City Manager shall seek approval to terminate under this section in executive session. The name of lessee and description of the leased property shall not be included in any public notices or documents circulated by the City unless and until Council approves termination of the lease under this section. The City Manager shall notify a lessee in writing that Council will be considering termination of the lease and provide the date, time, and place of the meeting at which Council will consider such termination. Lessee may waive the right to confidentiality under this section and request Council hold its discussion of termination in public. This section shall not prevent the City from sending lessee, or other parties with an interest in the lease, notifications and/or correspondence related to the lease or lessee's compliance with its terms. [Ord. 18-16(S)(A) § 1, 2018].

18.08.160 Assignment.

- a. Except as provided in the lease agreement, Council must approve the assignment of a lease to another party.
- b. Except as otherwise provided in this section or the lease agreement, the City Manager must make a determination that a lessee is in full compliance with a lease before an assignment will be effective. The City Manager may, in his or her sole discretion, consent to assignment of a lease where lessee is in full compliance with the lease terms except for payments owed so long as assignor and/or assignee agree in writing to pay the full amount owed within 90 days of the assignment. An assignment shall not be effective and shall constitute default by lessee if full payment is not received within 90 days of the assignment.
- c. Except as otherwise provided in the lease agreement, if the lessee is in good standing and eligible to assign the lease, the following procedures apply:
 - 1. The lessee shall file a written request for assignment and a complete new lease application to the City Manager;
 - 2. The City Manager shall review the request and new lease application and determine whether the proposed assignee can fulfill the terms of the lease and the requirements of this chapter and is in the City's best interests;
 - 3. The City Manager shall make a recommendation on the assignment to Council for final action; and
 - 4. Council shall approve or deny the request for assignment via resolution.

5. Assignment of long-term leases on the Homer Spit shall be reviewed by the Port and Harbor Advisory Commission prior to submission to Council for approval.

d. Council may approve assignment of a lease to a bank or other financial institution if it determines the assignment is in the best interest of the City and the City Manager recommends approval.

e. Where a lessee intends to assign the lease as part of a sale of the business located on the leased lot, the person who intends to purchase the business may apply to extend the lease term to allow the continuation of the business and to secure financing for the purchase of that business. Any significant changes in the terms (use) of the existing lease must be reviewed by the Port and Harbor Commission and approved by City Council by resolution as an amendment to the lease. [Ord. 22-49 § 8, 2022; Ord. 18-16(S)(A) § 1, 2018].

18.08.170 Insurance.

a. All lessees shall keep in force for the full term of the lease public liability insurance in the amount of not less than \$1,000,000 coverage per occurrence for bodily injury, including death, and property damage. The City shall be named as an additional insured.

b. Lessees who intend to conduct activities which could potentially have significant risk of environmental contamination shall also obtain not less than \$2,000,000 in environmental impact insurance and/or environmental clean-up policy, or the equivalent subject to review and approval by the City Manager. The City shall be named as an additional insured. The City will determine on a case-by-case basis whether a lease of City property will involve a significant risk of environmental contamination due to the use of the property, the presence of hazardous materials, or the location of the property.

c. Certificates of insurance showing the required insurance is in effect and identifying the City as an additional insured shall be provided to the City at the time a lease becomes effective and annually thereafter, and upon every change in insurance provider or insurance coverage.

d. All insurance policies must be in effect for the duration of the lease term, or longer if stated in the lease, and the City must be notified of any changes to policies.

e. Insurance requirements that exceed those required in this section may be imposed in the terms of a lease agreement. [Ord. 18-16(S)(A) § 1, 2018].

18.08.175 Exception – Leasing to government entities.

a. Except as otherwise prohibited by law, leases to Federal or State government entities or political subdivisions or agencies of the State of Alaska or the United States may be exempted from this chapter upon a finding by Council that it is in the City's best interest to do so.

b. The City may lease real property to the United States, the State of Alaska, a political subdivision of the State, or an agency of any of these entities, for less than fair market rent if Council determines it is in the City's best interest to do so. [Ord. 18-16(S)(A) § 1, 2018].

18.08.180 Assessments – Capital improvement projects.

a. Lessees of City property shall pay all real property special assessments levied and assessed against the property to the full extent of installments billed during the lease term.

b. In the event the City completes a capital improvement project which directly benefits the leasehold property and no local improvement district is formed to pay the cost of that project, the City may, in its sole discretion, impose, and the lessee shall pay as additional rent, the leasehold property's

proportionate share of the cost of the project. The amount of additional rent imposed annually by the City under this subsection shall not exceed the amount which would have been payable annually by the lessee if a local improvement district had been formed which provided for installment payments on a schedule and bearing interest at rates typical of other local improvement districts of the City for that type of capital improvement. [Ord. 18-16(S)(A) § 1, 2018].

18.08.190 Connection to utilities.

Lessees of City real property shall connect to City utilities and bear all costs of connections and adhere to all applicable local, State and Federal regulations. Connections to newly installed City utilities shall be made as soon as possible after completion. [Ord. 18-16(S)(A) § 1, 2018].

18.08.195 Processing and filing fees.

Fees for lease applications, lease, subleases and assignments, and other related fees are contained in the City of Homer fee schedule. Failure to pay required fees may result in the rejection of a lease application or denial of lease renewal, assignment, or sublease. [Ord. 22-49 § 9, 2022; Ord. 18-16(S)(A) § 1, 2018].

18.08.200 Time is of the essence – Lease applications, proposals, and negotiations.

The City Manager may consider all City lease applications and proposals that are responsive, responsible, in compliance with the provisions of this chapter and in the City's best interest. If the City, in its sole discretion, determines that it will be unable to reach an acceptable agreement with a proposer within a reasonable period of time, the City reserves the right to terminate negotiations with any proposer should it be in the City's best interest. [Ord. 22-49 § 10, 2022].

**CITY OF HOMER PORT & HARBOR ADVISORY COMMISSION
BYLAWS**

ARTICLE I – NAME AND AUTHORIZATION

This organization shall be called the Port and Harbor Advisory Commission, established via Ordinance 73-1, existing by virtue of the provisions of Chapter 2.64 of the Homer Municipal Code, and exercising the powers and authority and assuming the responsibilities delegated under said Code. The following bylaws were adopted on November 8, 2021 and shall be in effect and govern the procedures of the Port and Harbor Advisory Commission.

ARTICLE II – PURPOSE

Section 1. Act in an advisory capacity to the City Manager and the City Council on the problems and development of the City port and harbor facilities. Consideration may include the physical facilities, possible future development and recommendations on land use within the port and harbor areas.

Section 2. Direct recommendations regarding the operation and maintenance of the facilities to the City Manager via memorandum from the Port and Harbor Advisory Commission.

Section 3. Consider any specific proposal, problem or project as directed by the City Council and any report or recommendations thereon shall be made directly to the Council, unless otherwise directed by the Council.

ARTICLE III – MEMBERSHIP

Section 1. The Commission shall consist of seven members comprised of at least five (5) members that reside inside city limits. Members shall be nominated by the Mayor and confirmed by City Council to serve for three-year terms to expire on February 1st of designated years.

Section 2. Notice of term expirations will be delivered to members by the City Clerk's Office. Members wishing to continue services upon the completion of a three-year term must submit a reappointment application to the City Clerk's Office, which is subject to review by the Mayor and confirmed by City Council. There are no limits on the number of terms a member may serve.

Section 3. Members may not have alternates. If a position is vacated during a term, it shall be filled for the unexpired term by an appointee selected by the Mayor and confirmed by City Council.

Section 4. A member's appointment is vacated under the following conditions:

- A member fails to qualify to take office within 30 days after their appointment;
- A member resigns;
- A member is physically or mentally unable to perform the duties of the office;
- A member is convicted of a felony or of an offense involving a violation of their oath of office; or
- A member has three consecutive unexcused absences, or misses half of all meetings within an appointment year, whether excused or unexcused.

Section 5. The Mayor may appoint, subject to confirmation by the City Council, one City Council member and one Homer area high school Student Representative to serve as consulting, non-voting

members. The Mayor, City Manager, and Port Director/Harbormaster may serve as non-voting, consulting members.

ARTICLE IV – OFFICERS

Section 1. A Chairperson and Vice-Chairperson shall be elected from among the appointed commissioners at the regular February meeting of the Commission.

Section 2. Officers shall serve a term of one year from the February meeting at which they are elected, and until their successors are duly elected. Officers may be re-elected in subsequent years.

Section 3. The Chairperson shall preside at all meetings of the Commission, authorize calls for any special meetings, execute all documents authorized by the Commission, serve as ex officio/voting member of all committees, and generally perform all duties associated with that office.

Section 4. In the event of the absence, or disability of the Chairperson, the Vice-Chairperson shall assume and perform the duties of the Chair. If both the Chairperson and Vice-Chairperson are absent, and a quorum of four members are present, the senior member shall assume and perform the duties and functions of the Chair.

ARTICLE V – CITY STAFF ROLES

Section 1. The Port Director/Harbormaster shall serve as a staff liaison to the commission. The staff liaison shall assist the Chairperson in setting meetings, preparing agendas, and other documentary material, and coordinating the acquisition of needed materials and training. The staff liaison shall submit reports and recommendations for those agenda items requiring decisions or recommendations by the Commission. Other staff having experience, education, and professional training in the subject matter may provide input into the reports and recommendations, or may provide supplemental information. The information submitted may be oral, written or graphic, or some combination of all.

Section 2. The City Clerk shall designate a recording clerk to take minutes for the Commission and serve as the Commission's parliamentary advisory pursuant to AS 29.20.380(10) and HCC 2.12.010, and assist the Chairperson with the conduct of the meeting.

ARTICLE VI – MEETINGS

Section 1. Regular meetings shall be open to the public and held on the fourth Wednesday of January, February, March, April, September, and October at 5:00 p.m.; the fourth Wednesday of May, June, July, and August at 6:00 p.m.; and the second Wednesday of December at 5:00 p.m. in the designated location and shall be posted for public information as required by Homer City Code and Alaska State Statutes.

Section 2. Special meetings and Worksessions may be called by the Port Director/Harbormaster, Chair, or a majority of the Commission. Notice of such meetings shall be posted in the same manner as that for regular meetings.

Section 3. A quorum for the transaction of business at any meeting shall consist of four members. For purposes of determining the existence of a quorum, consulting members shall not be counted.

Worksessions do not require a quorum, however, no action may be taken at a worksession; items on the agenda are for discussion only.

Section 4. Any member who is unable to attend a meeting, whether regular or special, shall contact the Clerk in advance no later than two hours prior to the scheduled meeting time for excusal.

Section 5. Meeting agenda deadline is at 5:00 p.m. the Wednesday preceding the meeting. Allowances will be made for holidays.

Section 6. The order of business for the regular meetings shall include, but not be limited to, the following items, which shall be covered in the sequence shown, as far as circumstances permit. Agenda shall be posted for public information as required by Homer City Code and Alaska State Statutes.

CITY LOGO	NOTICE OF MEETING	DEPT. CONTACT INFO
	REGULAR MEETING AGENDA	(City Clerk's Office)
	NAME OF BODY	
	DAY OF WEEK, DATE, AND TIME OF MEETING	
	PHYSICAL LOCATION OF MEETING & MEETING ROOM	

1. CALL TO ORDER
2. AGENDA APPROVAL
3. PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA (3 minute time limit)
4. RECONSIDERATION
5. APPROVAL OF MINUTES
6. VISITORS/PRESENTATIONS (Chair set time limit not to exceed 20 minutes. Public may not comment on the visitor or the visitor's topic until audience comments. No action may be taken at this time.)
7. STAFF & COUNCIL REPORT/COMMITTEE REPORTS
8. PUBLIC HEARING (3 minute time limit)
9. PENDING BUSINESS
10. NEW BUSINESS
11. INFORMATIONAL MATERIALS (No action may be taken on these matters, for discussion only.)
12. COMMENTS OF THE AUDIENCE (3 minute time limit)
13. COMMENTS OF THE CITY STAFF
14. COMMENTS OF THE COUNCILMEMBER (If one is assigned)
15. COMMENTS OF THE COMMISSION (includes Comments of the Chair since they are part of the commission.)
16. ADJOURNMENT Next regular meeting is scheduled for _____. (Note any other worksessions, special meetings, committee meetings etc.) All meetings scheduled to be held in the Homer City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska. (The meeting may be scheduled for the Conference Room or virtually.)

Section 7. Per Resolution of the City Council (Resolution 06-115(A)), Public Testimony shall normally be limited to three minutes per person. Exceptions may be provided for at the Chairperson's discretion or by a majority vote of the members in attendance.

Section 8. Recorded minutes shall be made available by the City Clerk's Office to the Commission prior to the next meeting and a record of all voting will be included in the minutes of each meeting. Minutes shall be available to the public as required by Homer City Code and Alaska State Statutes.

Section 9. Teleconference participation is allowed per the rules and limitations set forth in Homer City Code 2.58.060.

ARTICLE VII – GENERAL OPERATING PROCEDURES

Section 1. The Commission shall abide by the current edition of Robert’s Rules of Order insofar as it is consistent with the Commission’s bylaws, other provisions of Homer City Code, or standing rules. In all other cases, bylaws, the code, or the standing rule shall prevail. This includes, but is not limited to, HCC 1.18 Conflicts of Interest, Partiality, and Code of Ethics; HCC 2.58 Boards and Commissions; HCC 2.64 Port and Harbor Advisory Commission; and the Open Meetings Act – AS 44.62.310-312.

Section 2. Each member, including the chairperson, shall vote, and shall not abstain from voting, unless such member claims a conflict of interest, or has an excused absence, in which event the member shall be excused from voting. The member shall then state for the record the basis for the abstention. Four affirmative votes are required to pass a motion. Voting will be by a roll call vote, the order to be rotated; or by unanimous consent if no objection is expressed. Voting by proxy or absentee is prohibited.

Section 3. Any rule or resolution of the Commission, whether contained in these Bylaws or otherwise, may be suspended temporarily in connection with business at hand; and such suspension to be valid; may be taken only at a meeting at which at least four of the members of the Commission shall be present, and two-thirds of those present shall so approve.

Section 4. Training sessions developed or arranged by the City Clerk and approved by the City Manager shall be mandatory unless a member’s absence is excused by the Chairperson. The City Manager and/or City Clerk, in their discretion and in consultation with the City Attorney as needed, may develop model procedures to be used as a guide for the Commission.

ARTICLE VIII – COMMITTEES

Section 1. Committees of one or more members for such specific purposes as the business of the Commission will only become active upon approval of Council. A memorandum and resolution will go before Council outlining the reason, tasks assigned and termination date. Committees shall be considered to be discharged upon completion of the purpose for which it was appointed, and after its final report is made to and approved by the Commission.

Section 2. All committees shall make a progress report to the Commission at each of its meetings.

ARTICLE IX – BYLAW AMENDMENTS

The Bylaws may be amended at any meeting of the Commission by a majority plus one of the members, provided that notice of said proposed amendment is given to each member in writing. The proposed amendment shall be introduced at one meeting and action shall be taken at the next Commission meeting. Amendments to bylaws shall be effective upon approval of the amendments by City Council via resolution.

PORT AND HARBOR ADVISORY COMMISSION
2022-2023 STRATEGIC PLAN
 Approved April 27, 2022

Annually, the PHC prioritizes a list of ongoing, short, medium and long-term goals to aid the commission in charting a general course for the year and keeping on-task.

Ongoing Goals	1. Provide timely, relevant comment to the City Council on Port and Harbor issues.
	2. Harbor Budget: Gain a better understanding of the process, have more communication on budget/projects between City and Harbor Staff, and review it at least annually at meetings.
	3. Establish committees when needed to work on specific tasks.
	4. Maintain the Port and Harbor Marketing Plan, continue lobbying efforts to City Council to maintain marketing funds and working closely with the Homer Marine Trades Association.
	5. Promote and support the new Large Vessel Port Expansion Project.
Short Term Goals By End of 2022	1. Continue working with City Council and City Manager to lower administrative costs to the Harbor Enterprise.
	2. Continue developing more paid parking on the Spit.
	3. Continue identifying other sources of revenue.
	4. Establish a goal for reserves and continue to understand the budget, include setting fees, and dedication of sales tax.
	5. Promote workforce development and housing on the Spit, specifically to seasonal workers.
	6. Develop recommendations to hire a Port and Harbor Project Manager.
Mid Term Goals 1 - 3 Years (2023 – 2025)	1. Create a 5-year Float Replacement Plan for the Small Boat Harbor.
	2. Seek funding to construct the Large Vessel Haul-out and Repair Facility.
	3. Develop a Homer Spit Parking Lot Improvement Plan.
	4. Explore a vessel and vehicle traffic study for the Spit to address congestion issues in the harbor.
	5. Review and provide support on rewriting the Spit Comprehensive Plan.
Long Term Goals 5 Years or More (2027+)	1. Work with Federal and State agencies to develop long-term erosion control measures for the Spit.
	2. Continue to work on overslope opportunities and leasable properties.

OVERALL PHC DUTIES & RESPONSIBILITIES

The purpose of the PHC is to act in an advisory capacity to the City Manager and the City Council on the problems and development of the City's Port and Harbor facilities. Consideration may include the physical facilities, possible future development, and recommendations on land use within the port and harbor areas. Duties and responsibilities are outlined in the PHC's Bylaws and under Homer City Code 2.64.040.

Links to online info:

- Homer City Code 2.64: www.codepublishing.com/AK/Homer
- Homer Port and Harbor Website: www.cityofhomer-ak.gov/port
- Port of Homer Terminal Tariff No. 1: www.cityofhomer-ak.gov/port/port-homer-terminal-tariff-no-1
- City of Homer Adopted Budget: www.cityofhomer-ak.gov/finance/budgets
- Spit Comprehensive Plan: <https://www.cityofhomer-ak.gov/planning/spit-comprehensive-plan-2011>

DUTIES OF COMMISSION/STAFF

Staff Liaison

- Assisting the Chair in setting meetings, preparing agendas, and other documentary material, and coordinating the acquisition of needed materials and training.
- Drafting/submitting reports, memos, and recommendations for those agenda items requiring decisions or recommendations by the Commission to City Council.
- Provide yearly information about the budget.
- Inform the Commission of City Council actions and discussion of harbor-related issues.

Commissioners

- Attend City Council meetings as assigned.
- Attend worksessions and training opportunities.
- Come prepared to make a motion for action at meetings, or ask staff before the meeting for more information.
- Request information from the Staff Liaison or Presiding Clerk.
- Understand their role as an advisory body to City Council; for any change to happen regarding City policies or code usually a council member has to support a PHC's idea and be willing to sponsor a resolution or ordinance to change established City policies or rules.
- How the commission (as a whole) can communicate:
 - Work with the City Manager through the Staff Liaison to keep City Council informed on developing initiatives.
 - Send memos to Council periodically so they have a written report of what's going on; these are written by staff and likely will be part of the City Manager Report or under the PHC Report.
 - Have a Commissioner speak at a Council Meeting under Reports; the PHC is scheduled to give a report at the next City Council meeting following the PHC's regular monthly meeting. It is best to rotate members so Council gets to see and hear from each of you over time. Pay attention to feedback from Council; the Commission may need to change direction, or come up with more support for the topic.

Clerks

- Helps with packet preparation and dissemination
- Records meetings and prepares meeting minutes
- Ensures meetings are properly advertised
- Helps members understand and comply with City policies and procedures governing advisory bodies
- Helps the Commission learn to better communicate with City Council (Memorandums vs Resolutions and Ordinances)