

MEMORANDUM 14-123

**TO: MAYOR AND CITY COUNCIL MEMBERS
CITY OF HOMER**

FROM: THOMAS F. KLINKNER

**RE: PARTICIPATION OF CITY PLANNER AND PLANNING DEPARTMENT
EMPLOYEES IN APPEALS TO BOARD OF ADJUSTMENT**

FILE NO.: 506,742.563

DATE: JULY 30, 2014

In recent appeals from the Homer Advisory Planning Commission ("Commission") to the Board of Adjustment ("Board"), either the City Planner or another Planning Department employee has filed a brief and appeared at the appeal hearing before the Board to provide information to the Board regarding the Commission's decision. I have been asked to draft an amendment to the Homer City Code to sanction this practice. This memorandum accompanies the ordinance that I have prepared for that purpose, and explains the Code amendments in the ordinance.

HCC 21.93.500(a) authorizes the City Planner to participate *as a party* in all appeals to the Board from decisions of the Commission. HCC 21.93.500(a) provides, "Only persons who actively and substantively participated in the matter before the Commission and who would be qualified to appeal under HCC 21.93.060 may participate as parties in an appeal from the Commission to the Board of Adjustment." Under HCC 21.93.500(a), one must meet two qualifications to participate as a party in an appeal from the Commission to the Board: (i) active and substantive participation in the matter before the Commission, and (ii) having standing to appeal under HCC 21.93.060. The City Planner or another Planning Department employee will actively and substantively participate in each matter before the Commission that is subject to appeal to the Board. The City Planner also is designated in HCC 21.93.060(b) as a person who has standing to appeal a decision of the Commission to the Board. Since the City Planner may designate another Planning Department employee to present recommendations to the Commission in a matter that may be appealed to the Board, other Planning Department employees also should be authorized to participate as parties before the Board. Section 1 of the accompanying ordinance amends HCC 21.93.060(b) to make this change.

HCC 21.93.500(b) requires that any person desiring to participate as a party in an appeal to the Board, other than the appellant, the applicant for the action or

determination that is the subject of the appeal and the owner of the property that is the subject of the action or determination, must file an entry of appearance with the City Clerk. Since the City Planner or other Planning Department employee who participates in a matter before the Commission automatically becomes a party to an appeal of the Commission decision to the Board, efficiency would be served by exempting them from this requirement. Section 2 of the accompanying ordinance amends HCC 21.93.500(b) to make this change.

HCC 21.93.090 provides, "No person may **represent a party** to an appeal without filing with the City Clerk written authorization, which shall be signed by the party so represented and provide the name and address of the party's representative" (emphasis added). There has been some confusion regarding whether the City Planner or another Planning Department employee participates in an appeal to the Board in a representative capacity (e.g., as a representative of the City), and therefore is subject to the written authorization requirement in HCC 21.93.090. As the discussion in the preceding paragraphs indicates, the City Planner (or with the proposed Code amendment discussed therein, another Planning Department employee) participates in an appeal to the Board as a party, and not as a representative of a party. Thus, the written authorization requirement in HCC 21.93.090 does not apply to such participation.

TFK/TFK