

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40

**CITY OF HOMER  
HOMER, ALASKA**

Aderhold

**ORDINANCE 17-06**

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, AMENDING HOMER CITY CODE 2.80 AND HOMER CITY CODE 1.18.050 TO APPOINT A HEARING OFFICER TO HEAR ETHICS COMPLAINTS AGAINST CITY COUNCIL MEMBERS AND THE MAYOR AND TO AMEND HOMER CITY CODE SECTION 2.08.050 TO PERMIT THE BOARD OF ETHICS OR HEARING OFFICER TO DISMISS WITNESSES PRIOR TO THE ADMINISTRATIVE HEARING AND CLARIFY THE INVESTIGATIVE AND HEARING PROCESS.

WHEREAS, The City Council highly values the public's confidence in the propriety and fairness of City of Homer ("City") administrative hearings and appeals; and

WHEREAS, It is in the City's best interest to designate a hearing officer to decide ethics complaints filed against City Council members or the Mayor, preserving the ability of Council members to work collaboratively and respectfully with one another while maintaining the accountability and responsible governance of each member; and

WHEREAS, Permitting the Board of Ethics or a hearing officer to utilize witness testimony in a manner that preserves the confidentiality of the Board's or the officer's investigation and review.

NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. Section 1.18.050 entitled "Procedures for violation reporting" is amended to read as follows:

a. Any person who believes that a violation of any portion of this chapter has occurred may file a written complaint of potential violation with the City Clerk's office.

b. All written complaints of potential violation submitted under this chapter shall be signed by the person submitting the complaint. A written complaint of potential violation shall state the address and telephone number of the person filing the complaint, identify the respondent, and affirm to the best of the person's knowledge and belief the facts alleged in the complaint of potential violation signed by the person are true. The person filing the complaint of

41 potential violation shall identify the section of this chapter the person believes  
42 was violated, state why the person signing the complaint of potential violation  
43 believes the facts alleged constitute a violation of that section, and identify any  
44 documentary or testimonial evidence the person filing the complaint believes is  
45 in support of the notification of potential violation.

46 c. Written complaints of potential violations filed with the City Clerk's office shall  
47 be forwarded to the Board of Ethics under Chapter 2.80HCC. Except as otherwise  
48 provided in this section, the Board of Ethics has sole jurisdiction to decide the  
49 merits of the complaint filed under this chapter.

50 d. The City Clerk shall appoint a hearing officer to decide and investigate  
51 properly filed written complaints against City Council members or the Mayor  
52 and shall have sole jurisdiction to decide the merits of the complaint filed under  
53 this section.

54  
55

56 Section 2. Section 2.80.010 is repealed and replaced as follows:

57

58 a. There is hereby established a Board of Ethics.

59 b. The Board shall be comprised of all members of the City Council and the  
60 Mayor. The Mayor, or the Mayor Pro Tem in the Mayor's absence, will serve as  
61 presiding officer of the Board. In the absence of both, the members of the Board  
62 shall elect a presiding officer from among its members.

63 c. The City Attorney or other legal counsel for the Board may assist the Board at  
64 every stage of the proceedings, but shall have no vote.

65 d. A quorum of the Board shall be a majority of all members who are not excused  
66 for cause, such as being the complainant, the respondent, a witness, having a  
67 conflict of interest, or other cause for recusal. However, in no event may a  
68 quorum be less than three.

69 e. Decisions of the Board shall be adopted by a majority of the members who are  
70 qualified to act on the matter, where a quorum is present.

71 f. Unless the Board delegates such authority to another member or decides that  
72 no one shall have such authority, and except as provided for hearing officers in  
73 subsection (h) of this section, the presiding officer shall have authority to make  
74 procedural decisions between Board meetings on behalf of the Board.

75 Examples of matters that may be decided by such delegate include scheduling  
76 hearings and other matters, establishing pre-hearing requirements and filing  
77 deadlines for motions, exhibits, witness lists, hearing briefs, and deciding other  
78 procedural matters.

79 g. The presiding officer shall vote on every question, unless required to abstain  
80 for cause, and shall not have power to veto any action of the Board.

81 h. A hearing officer designated by the City Clerk under HCC 1.18.050 shall have  
82 sole authority to investigate the complaint they have been retained to hear and  
83 to make procedural decisions regarding the investigation and hearing of that  
84 complaint. The designated hearing officer shall be the sole decision-maker and  
85 shall comply with the procedures and requirements of this chapter provided for  
86 the Board and its members.

87

88 Section 3. Section 2.80.020 is amended to read as follows:

89

90 2.80.020 Function and authority.

91

92 The Board of Ethics or a hearing officer appointed under this chapter has  
93 authority to perform the following functions:

94

95 a. Investigate reported violations of Chapter 1.18 HCC.

96

97 b. Hear and decide written complaints of violations of Chapter 1.18 HCC.

98

99 c. Hear and decide on requests for exceptions as specified in Chapter 1.18 HCC.

100

101 d. Make findings and recommendations concerning sanctions, civil penalties  
102 and remedies for violations as provided in the code.

103

104 e. Adopt recommended policies and procedures governing the Board's conduct  
105 of business.

106

107 f. Upon application of the complainant, respondent, or at the Board's or hearing  
108 officer's discretion, compel by subpoena the appearance and sworn testimony,  
109 at a specified time and place, of a person the Board or hearing officer reasonably  
110 believes may be able to provide information relating to a matter under  
111 investigation by the Board or hearing officer or the production of documents,  
112 records or other items the Board or hearing officer reasonably believes may  
113 relate to the matter under consideration.

- 114 g. Administer oaths and receive testimony from witnesses appearing before the
- 115 Board or hearing officer.
- 116
- 117 h. Request City agencies to cooperate with the Board or hearing officer in the
- 118 exercise of the Board's or hearing officer's jurisdiction.
- 119
- 120 i. Request the advising attorney to seek assistance of the Superior Court to
- 121 enforce the Board's or hearing officer's subpoena.
- 122
- 123 j. Conduct investigative hearings in executive session, pursuant to notifications
- 124 alleging violations of matters within the authority of the Board or hearing officer.
- 125

126 Section 4. Section 2.80.030 is amended to read as follows:

127  
128 2.80.030 Confidentiality – Initial review.

129  
130 a. Each written complaint of a violation of Chapter 1.18 HCC received by the City  
131 Clerk's office shall be assigned an identification number, which shall be used in  
132 lieu of names when referring to the complaint to maintain confidentiality. The  
133 City Clerk and the Board or hearing officer shall keep all written complaints of  
134 potential violation confidential during investigation and the Board's or hearing  
135 officer's deliberative process. Complaints of potential violation may be  
136 disclosed only to the staff member of the City Clerk's office providing  
137 administrative support to the Board or hearing officer, members of the Board  
138 except when a hearing officer has been appointed, and legal counsel. Upon  
139 receipt of a notification of potential violation, the Board or hearing officer shall,  
140 at its next scheduled meeting or earlier, as determined by the Board Chair or  
141 hearing officer, review the complaint of potential violation and determine if  
142 further action on the notification of potential violation is warranted. The Board  
143 shall review the complaint of potential violation in executive session. A hearing  
144 officer appointed under this chapter shall review the complaint in a confidential  
145 manner.

146  
147 b. If the Board or hearing officer determines the facts alleged in the notification  
148 of potential violation, even if proven, do not constitute a violation, or that the  
149 Board or hearing officer lacks jurisdiction to address the complaint of potential  
150 violation, the Board or hearing officer shall return the complaint of potential  
151 violation to the complaining party or it may recommend to the person filing the  
152 complaint that it be amended and re-filed. Notifications of potential violation  
153 returned without further action shall remain confidential.

154  
155 c. If the Board or hearing officer determines the allegation in a complaint of

156 potential violation, if proven, may constitute a violation of a matter within the  
157 Board's or hearing officer's jurisdiction, the Board or hearing officer shall:

158  
159 1. Give the respondent a copy of the complaint of potential violation,  
160 along with a copy of the outline of the Board's process under this chapter,  
161 including notice that the respondent may choose to hold the proceeding in  
162 public and may be represented by legal counsel of respondent's choosing and  
163 at respondent's own expense; and

164  
165 2. Notify both the person submitting the complaint of potential violation  
166 and respondent of the date(s) on which each may be requested to meet with the  
167 Board or hearing officer, present documentary or testimonial evidence, and  
168 assist the Board or hearing officer in resolving the potential violation.  
169

170 Section 5. Section 2.80.040 is amended to read as follows:

171  
172 2.80.040 Disclosure of complaint of potential violation prohibited.

173  
174 a. A complaint of potential violation of Chapter 1.18 HCC is confidential until the  
175 Board or hearing officer completes a written report for distribution as a public  
176 record.  
177

178 1. No person, including the complainant, shall knowingly disclose to  
179 another person, or otherwise make public in violation of this chapter, the  
180 contents of a complaint of potential violation filed with the Board or hearing  
181 officer, unless:

182  
183 i. The respondent elects to proceed in public; or

184  
185 ii. The written report of the Board or hearing officer is  
186 electronically published by the City Clerk.  
187

188 2. Breach of confidentiality required by any provision of this chapter is a  
189 violation of this chapter subject to punishment.  
190

191 3. A person filing a complaint of potential violation shall keep  
192 confidential the fact that the person has filed the complaint with the City, as well  
193 as the contents of the complaint of potential violation. If the Board or hearing  
194 officer finds probable cause to believe that the person filing the notice of  
195 complaint violation has violated confidentiality under this chapter, the Board or  
196 hearing officer shall immediately dismiss the complaint of violation. Dismissal  
197 under this subsection does not affect the right of the Board or hearing officer or

198 another person to initiate a proceeding on the same factual allegations by filing  
199 a complaint of potential violation.

200  
201 4. Public disclosure resulting from corrective action under this chapter is  
202 not a violation of this section.

203  
204 Section 6. Section 2.80.050 is amended to read as follows:

205  
206 2.80.050 Conduct of investigation and standard of proof.

207 a. The Board's investigation shall be conducted in executive session, unless  
208 the respondent requests to hold the Board's investigation on the  
209 notification of potential violation in public. The hearing officer's  
210 investigation shall be conducted in a manner to maintain confidentiality  
211 unless the respondent requests to hold the hearing officer's investigation on  
212 the notification of potential violation in public.

213 1. The respondent and the person who filed the notification of  
214 potential violation may identify other individuals and documents that each  
215 would like the Board or hearing officer to interview and review.

216 2. If an individual with information bearing on the notification of  
217 potential violation is unwilling to come forward with information, the  
218 respondent and the person who filed the notification of potential violation  
219 may each request the Board or hearing officer to subpoena the person and  
220 any documentary evidence.

221 3. Persons appearing before the Board or hearing officer may be  
222 represented by counsel or other person serving in a representative capacity.

223 4. The Board or hearing officer may question the respondent, the  
224 person who filed the notification of potential violation, and other persons  
225 appearing before the Board or hearing officer.

226 5. The Board or hearing officer may solicit questions and testimony  
227 from the person filing the notification of potential violation, the respondent  
228 and other persons appearing for the purpose of providing information to the  
229 Board or hearing officer. The Board or hearing officer may solicit questions  
230 from counsel present to represent persons appearing before the Board or  
231 hearing officer, but all questions during the Board's or hearing officer's

232 investigation shall be posed through and by a member of the Board or the  
233 hearing officer. Consistent with due process, the Board or hearing officer  
234 may limit or prohibit questions suggested to the Board or hearing officer by  
235 or on behalf of persons appearing before the Board or hearing officer.

236 6. The standard of proof to be applied by the Board or hearing officer  
237 in determining a violation under this chapter is proof by a preponderance of  
238 the evidence.

239 7. Technical rules of evidence do not apply, but the findings of the  
240 Board shall be based upon reliable and relevant information presented to  
241 the Board.

242 8. The Board's or hearing officer's finding of a violation of this chapter  
243 must be supported by substantial evidence.

244 9. The Board's or hearing officer's findings shall not be binding in a  
245 subsequent sanctions proceeding.

246 10. When the Board's or hearing officer's investigation is conducted  
247 in executive session or confidentially, the public shall be excluded but an  
248 executive session of the Board shall be electronically recorded. The  
249 recording shall be available for access as a public record after publication by  
250 the municipal clerk of the proposed resolution and settlement.

251  
252 Section 7. Section 2.80.060 is amended to read as follows:

253  
254 2.80.60 Board member and hearing officer disclosures.

- 255
- 256 a. When an investigation is convened in executive session to determine whether the  
257 respondent has violated Chapter 1.18 HCC, the Board members will be requested to  
258 disclose any conflict of interest, ex parte communications, or other facts that may  
259 affect their qualification to hear the matter. After such a disclosure, the other  
260 members of the Board shall determine whether a member shall be excused for  
261 cause.
  - 262
  - 263 b. A hearing officer shall disclose any conflict of interest or ex parte communications  
264 with the complainant or respondent before conducting an investigation or holding  
265 a hearing under this chapter. The complainant and the respondent have ten days  
266 from the date the written disclosure is sent to the parties to file an objection to the

267 hearing officer with the City Clerk. Upon receiving an objection, the City Clerk shall  
268 appoint a new hearing officer.

269  
270 Section 8. Section 2.80.061 is amended to read as follows:

271  
272 2.80.061 Duty of cooperation.

273  
274 A City official or the City Manager subject to a complaint of a violation shall work  
275 cooperatively with the City Clerk to establish a hearing date and shall appear at  
276 the place and time set for the hearing, regardless of the respondent's intentions  
277 concerning defense or exercise of other rights. Failure to appear, except when  
278 failure results from a serious condition or event that prevented the respondent's  
279 appearance, is a breach of respondent's duties under this chapter and in itself  
280 may result in a summary finding of violation by the Board or hearing officer and  
281 imposition of remedies, penalties and disciplinary action under HCC 2.80.070.  
282 For the purposes of this section, a "serious condition or event" may include a  
283 serious medical condition, a serious family emergency requiring the presence of  
284 the party, a death in the family, or other similar cause that prevents the  
285 respondent's attendance at the hearing. Nothing in this section shall prevent the  
286 rescheduling of a hearing for cause upon request of the respondent or the  
287 complainant.

288  
289 Section 9. Section 2.80.065 is amended to read as follows:

290  
291 2.80.065 Decisions on the record.

292  
293 Using the identification number of the complaint of potential violation to  
294 protect confidentiality, the Board shall vote or hearing officer shall determine in  
295 open session on these questions:

296  
297 a. Whether the Board or hearing officer finds by a preponderance of the evidence  
298 one or more violations within the jurisdiction of the Board or hearing officer; and

299  
300 b. Whether the Board or hearing officer recommends further administrative or  
301 remedial actions; and

302  
303 c. What specific sanctions, corrective actions or referrals, if any, the Board or  
304 hearing officer recommends pursuant to 2.80.070.

305  
306 d. If the Board or hearing officer does not find a violation under Chapter 1.18  
307 HCC, the Board or hearing officer shall prepare a confidential statement of  
308 closure listing the complainant and respondent, the assigned identification



309 number, the allegations, the hearing date, and the finding that no allegation was  
310 substantiated by the Board or hearing officer in whole or in part, and the date of  
311 Board or hearing officer closure. At the sole discretion of the respondent, the  
312 Board or hearing officer may release the statement of closure as a public  
313 document.

314  
315 Section 10. Section 2.80.067 is amended to read as follows:  
316

317 2.80.067 Timely completion.  
318

319 The Board or hearing officer shall complete action on a complaint of potential  
320 violation and investigations within 90 days of the filing of the complaint of  
321 potential violation. By a majority vote, the Board or hearing officer may extend  
322 the completion date for up to an additional 90 days, or longer for good cause  
323 shown.

324  
325 Section 11. Section 2.80.070 shall be amended to read as follows:  
326

327 2.80.070 Sanctions, civil penalties and remedies.  
328

329 a. Upon conviction for any violation of Chapter 1.18 HCC under criminal  
330 procedures or upon a determination of any violation of Chapter 1.18 HCC after  
331 an investigation conducted by the Board or hearing officer under this chapter,  
332 the Board or hearing officer may impose (or recommend in the case of  
333 subsection (a)(1) of this section) as a sanction, penalty, or remedy any or all of  
334 the following, as appropriate to the seriousness of the violation:  
335

336 1. A recommendation to the City Council that the office of a City Council  
337 member or the position of City Manager be declared vacant for a serious  
338 violation that is (a) flagrant or (b) willful and knowing. A recommendation that  
339 the office of the Mayor be declared vacant may be made only if the violation  
340 justifies a declaration of vacancy under AS 29.20.280. Only the City Council may  
341 actually declare any of these positions vacant.  
342

343 2. A member of a board or commission may be removed from the board  
344 or commission.  
345

346 3. A public or private reprimand may be given to the official.  
347

348 4. The official may be ordered to refrain from voting, deliberating, or  
349 participating in any matter in violation of Chapter 1.18 HCC.  
350

351 5. The committee assignments of an official may be revoked.

352  
353 6. An official's privilege to travel at City expense on City business may be  
354 revoked or restricted.

355  
356 7. A contract, transaction or appointment, which was the subject of an  
357 official act or action of the City that involved the violation of a provision of  
358 Chapter 1.18 HCC, may be voided.

359  
360 8. The official must forfeit or make restitution of any financial benefit  
361 received as a consequence of a violation of Chapter 1.18 HCC.

362  
363 9. A civil fine of not more than \$1,000 per violation may be imposed.

364  
365 Section 12. Section 2.80.080 shall be amended to read as follows:

366  
367 2.80.080 Record of proceedings and public record.

368  
369 Permanent records and minutes shall be kept of Board's or hearing officer's  
370 proceedings. Such minutes shall record the vote of each member upon every  
371 question decided in public. Every decision or finding shall immediately be filed  
372 in the office of the City Clerk, and shall be a public record open to inspection by  
373 any person. Every finding and recommendation shall be directed to the City  
374 Council at the earliest possible date.

375  
376 Section 13. Section 2.80.090 is amended to read as follows:

377  
378 2.80.090 Settlement of complaints.

379  
380 a. The respondent in any case accepted for investigation may propose a  
381 resolution and settlement of the complaint. A proposed resolution and  
382 settlement will include the admitted violation of Chapter 1.18 HCC; the remedial  
383 actions agreed to by the respondent subject to the City Council's concurrence;  
384 any proposed preventive actions to be undertaken to avoid similar violation by  
385 respondent or others in the future; and other matters required by the Board or  
386 hearing officer.

387  
388 b. A proposed resolution and settlement is subject to approval by the Board or  
389 hearing officer and has no effect unless approved by the Board or hearing officer.  
390 The Board or hearing officer will give the complaining person the opportunity to  
391 review and comment on the proposed resolution and settlement prior to

392 approving it. Until approved by the Board or hearing officer, a proposed  
393 resolution and settlement must be kept confidential.

394  
395 c. The proposed resolution and settlement becomes public record upon final  
396 approval by the Board or hearing officer.

397  
398 Section 14. Section 2.80.100 is amended to read as follows:

399  
400 2.80.100 Limitation period.

401  
402 a. Notwithstanding any other section of this chapter or Chapter 1.18 HCC, and  
403 subject to subsection (b) of this section, the Board or hearing officer only may  
404 investigate or otherwise act upon a complaint of a potential violation of Chapter  
405 1.18 HCC that is received by the City Clerk's office within five years after the date  
406 of the alleged violation.

407  
408 b. After the time limitation in subsection (a) of this section has expired, the Board  
409 or hearing officer may investigate or otherwise act upon a complaint of a  
410 potential violation of Chapter 1.18 HCC that is received by the City Clerk's office  
411 within one year after the date of discovery of the alleged violation, but in no case  
412 shall this subsection extend the period of limitation in subsection (a) of this  
413 section by more than three years.

414  
415 Section 15. This ordinance shall take effect upon its adoption by the Homer City Council.

416  
417 Section 16. This ordinance is of a permanent and general character and shall be  
418 included in the City Code.

419  
420 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this 13<sup>th</sup> day of February, 2017.

421

422

423

424

425

426

427

428

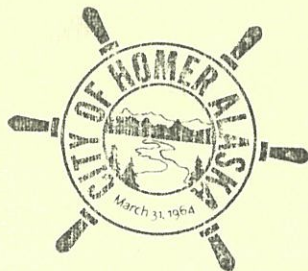
429

430


431

432

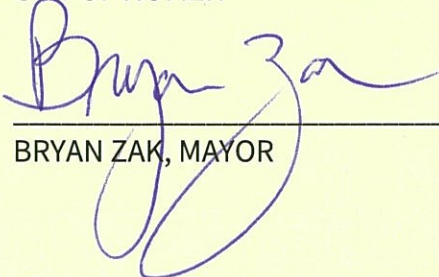
433



ATTEST:

  
JO JOHNSON, MMC, CITY CLERK

CITY OF HOMER

  
BRYAN ZAK, MAYOR

434 YES: 6  
435 NO: 0  
436 ABSTAIN: 0  
437 ABSENT: -0

438  
439  
440

441 First Reading: 1/23/17  
442 Public Hearing: 2/13/17  
443 Second Reading: 2/13/17  
444 Effective Date: 2/14/17

445

446 Reviewed and approved as to form.

447

448 Mary K Koester  
449 Mary K. Koester, City Manager

450

451 Date: 2.15.17

452

453

454 Fiscal Note: NA

Holly C Wells  
Holly C. Wells, City Attorney

Date: 3.1.17