

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

Aderhold

3
4 **ORDINANCE 17-07**

5
6 AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA,
7 AMENDING HOMER CITY CODE 4.10.040, 8.08.120, 14.05.425,
8 21.93.060, 21.93.070, 21.93.100, 21.93.110, 21.93.500, 21.93.540,
9 21.93.550, 21.93.560, 21.93.570, 21.93.700, AND 21.93.710 TO
10 REMOVE THE BOARD OF ADJUSTMENT AS THE DECISION MAKING
11 BODY IN APPEALS OF PLANNING COMMISSION DECISIONS,
12 REMOVE THE CITY MANAGER AS THE DECISION MAKER
13 REGARDING THE IMPOUNDMENT OF DANGEROUS ANIMALS,
14 REMOVE THE POLICE CHIEF AS THE DECISION MAKER REGARDING
15 MERCHANT LICENSES, AND PERMIT THE CITY CLERK TO
16 DESIGNATE A HEARING OFFICER TO DETERMINE THE
17 QUALIFICATIONS OF A CANDIDATE FOR OFFICE.
18

19 WHEREAS, The City Council highly values the public's confidence in the propriety and
20 fairness of City of Homer ("City") administrative hearings and appeals; and
21

22 WHEREAS, The City Council believes that the use of hearing officers who are not
23 employed by the City or designated as the City Attorney may provide appellants and hearing
24 parties with greater confidence in the objectivity of the administrative hearing or appeal in
25 which they are participating; and
26

27 WHEREAS, The costs associated with hearing officers are generally less than or equal to
28 hourly rates for City legal counsel; and
29

30 WHEREAS, The use of hearing officers permits the City Attorney to represent the City
31 and advise it on both substantive and procedural matters,
32

33 NOW, THEREFORE, THE CITY OF HOMER ORDAINS:
34

35 Section 1. Section 4.10.040 is amended to read as follows:
36

37 The Clerk shall determine whether each candidate for municipal office is qualified as
38 provided by law. At any time before the election the Clerk may disqualify any candidate
39 whom the Clerk finds is not qualified and immediately notify that candidate by certified
40 mail. A candidate who is disqualified may request a hearing before the Clerk within five
41 days of receiving the notice. **The Clerk may appoint a hearing officer to conduct the**
42 **hearing and determine whether or not the Clerk's disqualification of the candidate**

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

43 **was supported by the evidence.** The hearing shall be held no later than five days after
44 the request unless the candidate agrees in writing to a later date.

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46 Section 2. Section 8.08.120 is amended to read as follows:

47
48 **a.** Any person aggrieved by the action of the Chief of Police in the denial of an
49 application for a permit or license as provided in HCC 8.08.040, or in the decisions
50 with reference to the revocation of license as provided in HCC 8.08.050, shall have
51 the right of appeal to **a hearing officer appointed by the City Manager**~~the City~~
52 ~~Council.~~ Such appeal shall be taken by filing with the **City Clerk**~~City Council,~~ within
53 14 days after the action of the Chief of Police, a written statement setting forth fully
54 the grounds for appeal. The **City Clerk**~~City Council~~ shall set a time and place for a
55 hearing on such appeal, and notice of such hearing shall be mailed to the appellant
56 postage prepaid at his **or her** last known address at least five days prior to the date
57 set for the hearing. The decision and order of the **hearing officer**~~City Council~~ on
58 such appeal shall be final and conclusive.

59 **b. The hearing officer shall be identified in the notice of hearing. The appellant**
60 **may object to the hearing officer by providing the City Clerk a written objection**
61 **no more than ten days after the date of the notice of hearing. If the appellant**
62 **does not file an objection, any right to object to the hearing officer shall be**
63 **deemed waived.**

64 **c. The hearing officer shall disclose any conflict of interest, personal bias as soon**
65 **as he or she is aware of such conflicts or bias and shall refrain from acting as**
66 **the hearing officer if he or she has a conflict of interest or personal bias.**

67
68 Section 3. Section 14.05.425 is amended to read as follows:

69
70 If a violation of this chapter is not corrected by administrative adjustment under
71 HCC 14.05.420, then the City Manager shall order the user to show cause why
72 service should not be terminated or other enforcement action, including
73 imposition of a civil penalty, should not be taken. A written notice shall be served
74 on the user by personal service, or by certified or registered mail, return receipt
75 requested, specifying the time and place of the hearing to show cause. The
76 notice of the hearing shall be served no less than 10 days before the hearing.
77 Service may be made on any agent, officer or authorized representative of the
78 discharger. **The hearing shall be before the City Manager or his or her**
79 **designee.** After the hearing, the City Manager **or his or her designee** shall issue
80 a written decision which may include appropriate orders with respect to the
81 violations of the chapter and may include a civil penalty in accordance with HCC
82 14.05.435. The ~~City Manager's~~ decision **of the City Manager or his or her**
83 **designee** constitutes final administrative action for purposes of judicial review.

85 Section 4. Section 20.20.040 is amended to read as follows:
86

87 All animals seized pursuant to HCC 20.20.030 shall be held in impound pending
88 an administrative hearing concerning their potential destruction. The
89 administrative hearing shall be conducted as follows:

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

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

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

107
108 d. The hearing shall address and enter its formal findings as to whether:

109 1. The animal is a vicious animal under HCC 20.04.020;

110
111 2. The owner or designee thereof failed to use all reasonable
112 precautions to control his animal and protect the public;

113
114 3. The circumstances of this incident under consideration
115 constitute a danger to the public.

116 e. If ~~the hearing officer~~ **a majority of Board members** ~~finds~~ in the
117 affirmative as to all three of the provisions of subsection (d) of this
118 section, the ~~h~~Hearing ~~officer Board~~ shall order the animal destroyed. The
119 owner or designee, if present at the hearing, shall be verbally notified of
120 the findings and order at the conclusion of the hearing. Written findings
121 shall also be prepared and served upon the owner or designee. If the
122 owner or designee is not present at the hearing, written findings and
123 destruction order shall be served on that person as soon as possible
124 following the hearing.
125

126 f. Absent an affirmative finding by the ~~hearing officer~~**hearing officer** ~~Hearing Board~~ as
127 to one or more of the provisions of subsection (d) of this section, the
128 animal shall be immediately released to its owner or designee. The
129 ~~hearing officer~~**hearing officer** ~~Hearing Board~~ shall, in the event of release under this
130 provision, prepare a written notice which shall be delivered or mailed to
131 the animal's owner, outlining the ~~hearing officer's~~ **hearing officer's** ~~Hearing Board's~~
132 recommendations as to actions that owner should take to prevent future
133 incidents and to protect the public.

134
135 g. Any appeal of the ~~hearing officer's~~ **hearing officer's** ~~Hearing Board's~~ finding and
136 destruction order shall be taken through the Alaska Court System within
137 10 days of the receipt of said findings and order by the owner. The filing
138 of an appeal will automatically stay the order of destruction pending
139 resolution of the appeal. The animal shall remain in impound at the
140 owner's expense pending resolution of the appeal.

141
142 Section 5. Section 20.20.050 shall be amended to read as follows:

143
144 Vicious animals to be destroyed upon administrative ~~hearing officer~~**hearing officer**
145 ~~Board~~ order shall be destroyed as follows:

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

152
153 b. If the City is not served with a notice of appeal of the destruction order
154 within the 10-day holding period outlined in subsection (a) of this
155 section, the City shall immediately proceed to humanely destroy the
156 animal.

157
158 Section 6. Section 21.41.400 shall be amended to read as follows:

159
160 a. The Planning Commission shall hear and decide appeals when it is alleged
161 there is an error in any requirement, decision, or determination made by the
162 Planning Department.

163
164 b. A hearing officer appointed by the City Manager shall hear and decide
165 appeals when it is alleged there is an error in any requirement, decision, or
166 determination made by the Planning Commission.

167
[Bold and underlined added. Deleted language ~~stricken through.~~]

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

169

170 Article II. ~~Board of Adjustment~~ **Appeals of Planning Decisions.**

171

172 Section 8. Section 21.91.100 shall be repealed in its entirety.

173

174 Section 9. Section 21.91.110 shall be renumbered 21.91.100 and amended to read as
175 follows:

176

177 a. ~~The Board of Adjustment shall hear and decide appeals pursuant to the~~
178 ~~provisions of the code, zoning code.~~ **A hearing officer appointed by the City**
179 **Manager shall hear and decide appeals pursuant to the provisions of the**
180 **zoning code.**

181

182 b. **A hearing officer appointed by the City Manager to act as the decision maker**
183 **in appeals of decisions made by the Planning Commission must have at least**
184 **five years experience acting as an administrative law judge or**
185 **administrative hearing officer and must be licensed to practice law in the**
186 **State of Alaska and in good standing.**

187

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

189

190 Appeals heard by the hearing officer shall be conducted according to applicable
191 procedures specified in Chapter 21.93 HCC.

192

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

194

195 a. An appeal from a final decision of the ~~Board of Adjustment~~ **hearing officer**
196 may be taken directly to the Superior Court by a party who actively and
197 substantively participated in the proceedings before the ~~Board of Adjustment~~
198 **hearing officer** or by the City Manager or City Planner or any governmental
199 official, agency, or unit.

200

201 b. An appeal to the Superior Court shall be filed within 30 days of the date of
202 distribution of the final decision to the parties appearing before the ~~Board of~~
203 ~~Adjustment~~ **hearing officer.**

204

205 c. An appeal from a final decision of the ~~Board of Adjustment~~ **hearing officer** to
206 the Superior Court is governed by court rules.

207

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

209

210 21.93.030 Decisions subject to appeal to **a hearing officer**.~~Board of Adjustment.~~

211
212 The following acts or determinations of the Commission, when final, may be
213 appealed to ~~the~~ **a hearing officer appointed by the City Manager**~~Board of~~
214 ~~Adjustment~~ by a person with standing:

- 215
216 a. Grant or denial of a conditional use permit.
217
218 b. Grant or denial of a variance.
219
220 c. Grant or denial of formal recognition of a nonconforming use or structure, or
221 a decision terminating a nonconforming use or structure.
222
223 d. Grant or denial of a conditional fence permit.
224
225 e. A decision by the Commission in a matter appealed to the Commission under
226 HCC 21.93.020.
227
228 f. Any other final decision that is expressly made appealable to ~~the Board of~~
229 ~~Adjustment~~ **a hearing officer** by other provisions of the code.

230
231 Section 13. Section 21.93.060 shall be amended to read as follows:

232
233 21.93.060 Standing – Appeal to ~~Board of Adjustment~~ **Hearing Officer**.

234
235 Only the following have standing to appeal an appealable action or
236 determination of the Planning Commission to the ~~Board of Adjustment~~ **hearing**
237 **officer**:

- 238
239 a. Applicant for the action or determination, or the owner of the property that is
240 the subject of the action or determination under appeal.
241
242 b. The City Manager, the City Planner or the City Planner’s designee, or any
243 governmental official, agency, or unit.
244
245 c. Any person who actively and substantively participated in the proceedings
246 before the Commission and is aggrieved by the action or determination.
247
248 d. Any person who actively and substantively participated in the proceedings
249 before the Commission and would be aggrieved if the action or determination
250 being appealed were to be reversed on appeal.
251

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

253
254 a. An appeal to the Planning Commission must be filed within 30 days after the
255 date of distribution of the final action or determination to the applicant or other
256 person whose property is the subject of the matter being appealed.

257
258 b. An appeal to **a hearing officer**~~the Board of Adjustment~~ must be filed within
259 30 days after the date of distribution of the final action or determination to the
260 applicant and other parties, if any.

261
262 Section 15. Section 21.93.100 shall be amended to read as follows:

263
264 a. All appeals must be heard within 60 days after the appeal record has been
265 prepared. The body **or officer** hearing the appeal may for good cause shown
266 extend the time for hearing. The decision on appeal must be rendered within 60
267 days after the appeal hearing.

268
269 b. The appellant, the applicant for the action or determination that is the subject
270 of the appeal, the owner of the property that is the subject of the action or
271 determination, and all parties who have entered an appearance shall be
272 provided not less than 15 days' written notice of the time and place of the appeal
273 hearing. Neighboring property owners shall be notified as set forth in HCC
274 21.94.030.

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

281
282 ~~d.~~ An electronic recording shall be kept of the entire proceeding. Written
283 minutes shall be prepared. The electronic recording shall be preserved for one
284 year unless required for further appeals. No recording or minutes shall be kept
285 of deliberations that are not open to the public.

286
287 Section 16. Section 21.93.110 shall be amended to read as follows:

288
289 a. All final decisions on appeals shall be in writing, and shall state the number of
290 members of the body **or officer** hearing the appeal who participated in the
291 appeal, number voting in favor of the decision, and the number voting in
292 opposition to the decision.

293

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

300
301 c. Copies of the written decision shall be promptly mailed to the appellant, the
302 applicant for the action or determination that is the subject of the appeal, the
303 owner of the property that is the subject of the action or determination, and all
304 parties who entered a written notice of appearance in the appeal proceeding.
305

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

307
308 21.93.500 Parties eligible to appeal **Planning Commission decision to a**
309 **hearing officer**~~to Board of Adjustment~~ – Notice of appearance.

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

314
315 b. Any person so qualified who desires to participate in the appeal as a party,
316 other than the appellant, the City Planner or the City Planner's designee, the
317 applicant for the action or determination that is the subject of the appeal and
318 the owner of the property that is the subject of the action or determination,
319 must, not less than 14 days before the date set for the appeal hearing, file with
320 the City Clerk a written and signed notice of appearance containing that party's
321 name and address, and proof that the person would be qualified under HCC
322 21.93.060 to have filed an appeal.
323

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

325
326 a. Except as provided in subsections (b) and (c) of this section, **the hearing**
327 **officer**~~the Board of Adjustment~~ shall not consider allegations of new evidence
328 or changed circumstances and shall make **his or her**~~its~~ decision based solely on
329 the record. If new evidence or changed circumstances are alleged, the **hearing**
330 **officer**~~Board~~ may, in **his or her**~~its~~ discretion, either hear the appeal without
331 considering the allegations or may remand the matter to the appropriate lower
332 administrative body or official to rehear the matter, if necessary.
333

334 b. When the standing of a person is in issue, the **hearing officer** ~~Board of~~
335 ~~Adjustment~~ may take additional evidence for the limited purpose of making

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

336 findings on the question of the person's standing. No evidence received under
337 this subsection shall be considered for purposes other than determining
338 standing.

339
340 ~~c. When the disqualification of a member of the Board of Adjustment for conflict~~
341 ~~of interest, ex parte contact, partiality or other cause is in issue, the Board of~~
342 ~~Adjustment may take additional evidence for the limited purpose of making~~
343 ~~findings on the question of disqualification. No evidence received under this~~
344 ~~subsection shall be considered for purposes other than determining~~
345 ~~disqualification.~~
346

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

348
349 a. The appeal record shall be completed within 30 days after receipt of a timely
350 and complete notice of appeal to the ~~Board of Adjustment~~**hearing officer**, shall
351 consist of the items, and shall be prepared in the manner, described in this
352 subsection.

353
354 1. The Clerk will assemble and paginate all relevant documents involved
355 in the original decision, including any staff reports, minutes, exhibits, notices,
356 and other documents considered in making the original decision.

357
358 2. A party may elect to include a verbatim transcript of the testimony
359 before the Planning Commission in the appeal record by making a written
360 request to the City Clerk for a recording of the testimony within 14 days after the
361 Clerk mails copies of the notice of appeal to the parties pursuant to HCC
362 21.93.080(d). The requesting party shall arrange and pay for the preparation of
363 the transcript. Only a transcript prepared and certified as accurate by a qualified
364 court reporter shall be accepted. The original transcript must be filed with the
365 City Clerk to be provided to the ~~Board of Adjustment~~ **hearing officer** with the
366 record on appeal.

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

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

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

b. Each party (each appellant, cross-appellant, and respondent) may present oral argument at the appeal hearing, subject to the order of presentation and time limitations that the **hearing officer** chair adopts at the commencement of the hearing. The taking of testimony or other evidence is limited by HCC 21.93.510.

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

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

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

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

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

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

429
430 b. The ~~Board~~ may seek the assistance of legal counsel, City staff, or parties in the
431 preparation of a decision or proposed findings of fact.

432
433 Section 24. Section 21.93.560 shall be amended to read as follows:

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

436
437 1. There is insufficient evidence in the record on an issue material to the
438 decision of the case;

439
440 2. There has been a substantial procedural error that requires further
441 consideration by the lower administrative body; or

442
443 3. There is other cause requiring further proceedings by the lower
444 administrative body.

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

449
450 c. The lower administrative body shall promptly act on the case upon remand in
451 accordance with the decision of the **hearing officer**~~Board of Adjustment~~. A case
452 on remand has priority on the agenda of the lower administrative body, except
453 cases remanded under HCC 21.93.510(a) are not entitled to priority. The
454 applicant or owner of the property in question may waive the priority given by
455 this subsection.

456
457 Section 25. Section 21.93.570 shall be amended to read as follows:

458
459 If no specific procedure is prescribed by the code, the **hearing officer**~~Board of~~
460 ~~Adjustment~~ may proceed in an administrative appeal in any lawful manner not
461 inconsistent with this title, statutes, and the Constitution.

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

462 Section 26. Section 21.93.700 shall be amended to read as follows:

463
464 a. A member of the Planning Commission or **a hearing officer appointed to**
465 **hear an appeal from a Planning Commission decision**~~Board of Adjustment~~
466 may not participate in the deliberation or voting process of an appeal if,
467 following the procedures set forth in this chapter, the Commission or **hearing**
468 **officer**~~Board member~~ is determined to have a substantial financial interest in
469 the official action, as defined in Chapter 1.18 HCC. In the absence thereof, all
470 Commission ~~or Board~~ members shall participate in the deliberation and voting
471 process unless excused pursuant to other provisions of this chapter.

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

488
489 **c. A hearing officer shall disclose any substantial financial interest, personal**
490 **bias or ex parte contact immediately upon being appointed by the City**
491 **Manager and shall refrain from accepting the appointment if a substantial**
492 **financial interest, personal bias or ex parte contact exists. If the substantial**
493 **financial interest, personal bias or ex parte contact arises after the hearing**
494 **officer's appointment, he or she shall disclose his or her interest and shall**
495 **be disqualified from serving as the hearing officer unless all parties waive**
496 **any objection to the hearing officer.**

497
498 **d**e. For purposes of hearing an appeal, a quorum of the Commission is four
499 members and a quorum of the ~~Board is four members, one of whom may be the~~
500 ~~Mayer.~~ If it is not possible to obtain a quorum of the Planning Commission ~~or~~
501 ~~Board of Adjustment~~ to hear an appeal without the participation of members
502 disqualified by reason of a substantial financial interest, then all members who
503 would be so disqualified shall nevertheless participate in the appeal, including

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

504 deliberations and voting, and the decision rendered in such a case shall be valid
505 notwithstanding the participation of such members. This subsection shall not
506 apply if the matter can be postponed to a later date (not later than 75 days after
507 the appeal record is prepared) when the **Commission**~~body~~ can obtain a quorum
508 of members who are not disqualified by a substantial financial interest.

509
510 Section 27. Section 21.93.710 shall be amended to read as follows:

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

521
522 b. This section does not prohibit:

523
524 1. **Commission** Members from discussing matters relating to the appeal
525 among themselves.

526
527 2. Communications between municipal staff and Commission ~~or Board~~
528 members **or the hearing officer** where:

529
530 a. Such staff members are not themselves parties to the appeal;
531 and

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

534
535 3. Communications between the Commission ~~or Board~~ and its legal
536 counsel.

537
538 c. If, before an appeal commences, a member of the Commission ~~or Board~~
539 receives an ex parte communication of a type that could not properly be
540 received while an appeal is pending, the member shall disclose the
541 communication in the manner prescribed in subsection (d) of this section at the
542 first meeting of the Commission ~~or Board~~ at which the appeal is addressed.

543
544 d. A member of the Commission ~~or Board~~ who receives an ex parte
545 communication at any time shall, at the first opportunity after the

546 communication, place on the record of the pending matter all written
547 communications received, all written responses to the communications, and a
548 memorandum stating the substance of all oral communications received, all
549 responses made, and the identity of each person from whom the member
550 received an ex parte communication. Any party to the appeal desiring to rebut
551 the ex parte communication must be granted a reasonable opportunity to do so
552 if a request is promptly made.

553
554 e. If the Commission ~~or Board~~ determines in its discretion it is necessary to
555 eliminate the harmful effect of an ex parte communication received in violation
556 of this section, the Commission ~~or Board~~ may disqualify the member who
557 received the communication from participation in the appeal. In addition, the
558 Commission ~~or Board~~ may impose appropriate sanctions, including default,
559 against a party to the appeal for any violation of this section.

560
561 f. It is a violation, subject to penalties and other enforcement remedies under
562 this title:

563
564 1. For any person to knowingly have or attempt to have ex parte
565 communication with a Commission **or a hearing officer**~~or Board~~
566 ~~member~~ in violation of subsection (a) of this section.

567
568 2. For any Commission ~~or Board~~ member **or the hearing officer** to
569 knowingly receive an ex parte communication in violation of subsection
570 (a) of this section.

571
572 3. For any Commission ~~or Board~~ member to knowingly fail to place on the
573 record any matter when and as required under subsections (c) and (d) of
574 this section.

575
576 Section 28. Section 21.95.060 Review by Planning Commission shall be amended as
577 follows:

578
579 a. The Planning Commission shall review each proposal to amend this title or to amend
580 the official zoning map, **except an ordinance to amend chapter 21.93 of this title,**
581 before it is submitted to the City Council. **Amendments to chapter 21.93 of this title**
582 **revising the administrative appeals processes and procedures shall be made by**
583 **ordinance and shall be submitted directly to the City Council.**

584
585 b. Within 30 days after determining that an amendment proposal is complete and
586 complies with the requirements of this chapter, the Planning Department shall present
587 the amendment to the Planning Commission with the Planning Department's

588 comments and recommendations, accompanied by proposed findings consistent with
589 those comments and recommendations.

590
591 c. The Planning Department shall schedule one or more public hearings before the
592 Planning Commission on an amendment proposal, and provide public notice of each
593 hearing in accordance with Chapter 21.94 HCC.

594
595 d. After receiving public testimony on an amendment proposal and completing its
596 review, the Planning Commission shall submit to the City Council its written
597 recommendations regarding the amendment proposal along with the Planning
598 Department's report on the proposal, all written comments on the proposal, and an
599 excerpt from its minutes showing its consideration of the proposal and all public
600 testimony on the proposal.

601
602 Section 29. This ordinance shall take effect upon its adoption by the Homer City
603 Council.

604
605 Section 30. This ordinance is of a permanent and general character and shall be
606 included in the City Code.

607
608 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this _____ day of
609 _____, 2017.

610
611 CITY OF HOMER

612
613
614
615 _____
616 BRYAN ZAK, MAYOR

617 ATTEST:
618
619
620 _____
621 JO JOHNSON, MMC, CITY CLERK

622
623
624
625
626 YES:
627 NO:
628 ABSTAIN:
629 ABSENT:

630 First Reading:
631 Public Hearing:
632 Second Reading:
633 Effective Date:

634
635
636
637

638 Reviewed and approved as to form.

639
640

641 _____
Mary K. Koester, City Manager

642

643 Date: _____

644

645

646 Fiscal Note: NA

Holly C. Wells, City Attorney

Date: _____