

**CITY OF HOMER  
HOMER, ALASKA**

Aderhold

**ORDINANCE 18-14(A)**

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA AMENDING HOMER CITY CODE 1.18.020 TO DEFINE THE TERM "IMPARTIAL," AMENDING HOMER CITY CODE 1.18.030 BY REQUIRING CITY COUNCIL MEMBERS TO COMPLY WITH HOMER WORKPLACE POLICIES AND PROCEDURES, REPEALING 1.18.050 AND INCORPORATING IT UNDER THE NEWLY ENACTED HOMER CITY CODE CHAPTER 1.19, BOARD OF ETHICS- COMPLAINTS, TO CLARIFY THE PRELIMINARY REVIEW PROCESS FOR ETHICS COMPLAINTS BY THE CITY CLERK AND CITY ATTORNEY PRIOR TO THEIR TRANSFER TO THE BOARD OF ETHICS OR A HEARING OFFICER, AMENDING HOMER CITY CODE 1.18.060 TO PROHIBIT ETHICS COMPLAINTS BASED UPON ACTIONS TAKEN IN ACCORDANCE WITH ADVICE FROM CITY ATTORNEY, AND REPEALING HOMER CITY CODE CHAPTER 2.80.

WHEREAS, The City of Homer, Alaska ("City") adopted a comprehensive Ethics Code over ten years ago that identified acts prohibited by City officials and expectations that governed conduct by such officials; and

WHEREAS, The City also adopted an ethics complaint process that ensured individuals had the ability to challenge the conduct of its officials; and

WHEREAS, Changes in the City's personnel policies and its ethics complaint process warrant updates to the City Code of Ethics and its ethics complaint process; and

WHEREAS, The City recently updated its workplace safety, harassment prevention, and respectful workplace policies that are distributed to all City employees in the City of Homer Personnel Regulations; and

WHEREAS, It is in the City's best interest to ensure that the City's officials, like its employees and volunteers, are held to high ethical standards; and

WHEREAS, it is in the City's best interest to consolidate the Code of Ethics and the Board of Ethics complaint process to ensure that the intended steps of review and consideration are clear and precisely followed; and

41 WHEREAS, it is in the City's best interest to expressly provide protection from ethics  
42 complaints to City Council members for acts or omissions taken in reliance on the City  
43 Attorney's advice.

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45 NOW THEREFORE, The City of Homer Ordains:

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47 Section 1. Homer City Code Section 1.18.020 entitled "Definitions" is amended to read  
48 as follows:

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

52  
53 "Applicant" means any person that is applying for an official action by any official,  
54 employee, or body of the City including but not limited to:

55  
56 1. Any person authorized to act for the applicant;

57  
58 2. If the applicant is an organization, any person who has an ownership interest in the  
59 organization or serves as an officer, director or manager of the organization.

60  
61 "Body of the City" means the City Council and the boards, commissions, committees  
62 and task forces appointed by the City Council or the Mayor.

63  
64 "City Manager" means the person who is hired by the City Council to manage the City  
65 of Homer.

66  
67 "City official" means a person who holds elective office under the ordinances of the City,  
68 or who is a member of a board or commission whose appointment is subject to confirmation  
69 by the City Council.

70  
71 "Financial interest" means:

72  
73 1. An interest currently held by that person or an immediate family member including:

74  
75 a. Involvement or ownership in a business; or

76  
77 b. Property ownership, or a professional or private relationship, that is a source of  
78 income, or from which, or as a result of which, a person receives a financial benefit; or

79  
80 c. An affiliation with an organization in which the person holds a position of  
81 management, or is an officer, director, trustee, employee, or the like.

82

83 2. Financial interest does not include:

84

85 a. Affiliation as unpaid volunteer with a legally recognized nonprofit organization; or

86

87 b. Financial interests of a type which are generally possessed in common with all other  
88 citizens or a large class of citizens.

89

90 "Gratuity" means a thing having value given voluntarily or beyond lawful obligation.

91

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

94

95 "Immediate family member" means:

96

97 1. The spouse of the person;

98

99 2. A life partner or person cohabiting with the person;

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101 3. A child, including a stepchild and an adoptive child, of the person;

102

103 4. A parent, sibling, or grandparent of the person; and

104

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

106

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

109

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

112

113 "Large class of citizens" does not include:

114

115 1. A single profession, regardless of the number of persons.

116

117 2. An individual business or organization regardless of the number of citizens it  
118 contains.

119

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

124

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

127

128           “Partiality” applies only in quasi-judicial proceedings and means:

129

130           1. The ability of a member of the quasi-judicial body to make an impartial decision is  
131 actually impaired; or

132

133           2. The circumstances are such that reasonable persons would conclude the ability of  
134 the member to make an impartial decision is impaired and includes, but is not limited to,  
135 instances in which:

136

137           a. The member has a personal bias or prejudice for or against a party to the proceeding  
138 including a party’s lawyer;

139

140           b. The member or an immediate family member is a party, material witness to the  
141 proceeding or represents a party in the proceeding.

142

143           “Person” means a natural person or an organization.

144

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

150

151           “Subject of the action” means anything under consideration for official action including  
152 but not limited to:

153

154           1. Appointments to any office or position of employment;

155

156           2. Any contract, project, property, or transaction subject to the action;

157

158           3. A platting, vacation or subdivision action;

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160           4. An application for or other consideration of a license, permit, appeal, approval,  
161 exception, variance, or other entitlement;

162

163           5. A rezoning; and

164

165           6. Appeals and quasi-judicial proceedings.

166

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

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171           Section 2. Homer City Code Section 1.18.030 entitled “Standards and prohibited acts”  
172 is amended to read as follows:

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

176

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

179

180           1. The person is the applicant, a party or has a substantial financial interest in the  
181 subject of the official action.

182

183           2. Within a period of one year after the action the person will have a substantial financial  
184 interest in the subject of the official action.

185

186           3. The person resides or owns land within a 300-foot periphery of any property that is  
187 the subject of any action.

188

189           4. The person does or will recognize a substantial financial interest as a result of the  
190 action.

191

192           5. Exceptions.

193

194           a. This subsection does not prohibit a person from acquiring a substantial financial  
195 interest in the subject of the action after the longer of 12 months after the official action is  
196 approved, or 12 months after the person’s term or employment ends.

197

198           b. This section does not prohibit any gain or loss that would generally be in common  
199 with all other citizens or a large class of citizens.

200

201           c. This section does not prohibit any gain or loss that would generally be in common  
202 with other property owners on property that is further than 300 feet from the periphery of any  
203 property that is the subject of an action.

204

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

208

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

216  
217 e. Participation in Appointments. No City official shall participate in, vote on, or attempt  
218 to influence the selection of an appointee to any board, commission or committee (1) having  
219 authority to take official action on any pending matter or application in which that official has  
220 a substantial financial interest or (2) if that official has a substantial financial interest with a  
221 nominee for the appointment.

222  
223 f. No official shall participate in, vote on, or attempt to influence the selection of an  
224 appointee to the Homer Advisory Planning Commission if that official has, or could reasonably  
225 be expected to have within one year after the date of the appointment:

- 226  
227 1. A rezoning, quasi-judicial or platting action pending before the Commission; or  
228  
229 2. An application that would require approval by a quasi-judicial or platting action of  
230 the Commission.

231  
232 In the case of the reappointment of an incumbent to another term, the prohibition  
233 above also applies to an official who had such a matter pending before the Homer Advisory  
234 Planning Commission within one year before the date of the reappointment. The Board of  
235 Ethics may, upon written request, grant an exception to this one-year period when it  
236 determines the public interest does not require continuing enforcement of the prohibition.

237  
238 g. Use of Office for Personal Gain. No City official or the City Manager shall seek office or  
239 position or use their office or position for the purpose of obtaining anything of value for  
240 themselves, an immediate family member or a business that they own or in which they hold an  
241 interest, or for the purpose of influencing any matter in which they have a financial interest.  
242 This subsection does not prohibit the receipt of authorized remuneration for the office or  
243 position.

244  
245 h. Inappropriate Use of Office Title or Authority. No City official or the City Manager shall  
246 use the implied authority of office or position for the purposes of unduly influencing the  
247 decisions of others, or promoting a personal interest within the community. City officials and  
248 the City Manager will refrain from using their title except when duly representing the City in an  
249 authorized capacity. Unless duly appointed by the Mayor or Council to represent the interests

250 of the full Council, Council members shall refrain from implying their representation of the  
251 whole by the use of their title.

252

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

260

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

265

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

272

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

278

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

283

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

289

290 1. A meal of reasonable value;

291

292 2. Discounts or prizes that are generally available to the public or large sections thereof;

293

294 3. Gifts presented by an employer to its employees in recognition of meritorious service,  
295 or civic or public awards;

296

297 4. A lawful campaign contribution made to a candidate for public office;

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299 5. An occasional nonpecuniary gift insignificant in value;

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301 6. Any gift which would have been offered or given to them if they were not a City official  
302 or the City Manager.

303

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

309

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

315

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

319

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

322

323 1. They or the City is the applicant; or

324

325 2. They fully and publicly disclose the nature of their interest in the subject of the action.

326

327 q. No City official may violate HCC 2.04.030.

328

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

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



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Section 3. Homer City Code Section 1.18.050 entitled “Procedures for violation reporting” is repealed.

Section 4. Homer City Code Section 1.18.060 entitled “Advisory opinions” is amended to read as follows:

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 Chapter 1.18 HCC.

Section 5. Homer City Code Chapter 1.19 entitled “Board of Ethics- complaints” is enacted to read as follows:

Sections:

- 1.19.010 Board of Ethics established – General provisions.
- 1.19.020 Function and authority.
- 1.19.030 Procedures for violation reporting.
- 1.19.040 Confidentiality – Initial review.
- 1.19.050 Disclosure of complaint of potential violation prohibited.
- 1.19.060 Conduct of investigation and standard of proof.
- 1.19.070 Deliberations of the Board.
- 1.19.080 Decisions on the record.
- 1.19.090 Timely completion.
- 1.19.100 Sanctions, civil penalties and remedies.
- 1.19.110 Board member and hearing officer disclosures.

- 376 1.19.120 Duty of cooperation.
- 377 1.19.130 Settlement of complaints.
- 378 1.19.140 Record of proceedings and public record.
- 379 1.19.150 Limitation period.

380

381 1.19.010 Board of Ethics established – General provisions.

382

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

384

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

389

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

392

393 d. A quorum of the Board shall be a majority of all members who are not excused for  
394 cause, such as being the complainant, the respondent, a witness, having a conflict of interest,  
395 or other cause for recusal. However, in no event may a quorum be less than three. If no quorum  
396 of the Board can be established due to conflicts of interest or other cause of recusal, the  
397 present members of the Board shall direct the clerk to transfer the complaint to a hearing  
398 officer.

399

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

402

403 f. Unless the Board delegates such authority to another member or decides that no one  
404 shall have such authority, and except as provided for hearing officers in subsection (h) of this  
405 section, the presiding officer shall have authority to make procedural decisions between Board  
406 meetings on behalf of the Board. Examples of matters that may be decided by such delegate  
407 include scheduling hearings and other matters, establishing pre-hearing requirements and  
408 filing deadlines for motions, exhibits, witness lists, hearing briefs, and deciding other  
409 procedural matters.

410

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

413

414 h. A hearing officer designated by the City Clerk under section 1.19.030(d) shall have  
415 sole authority to investigate the complaint they have been retained to hear and to make  
416 procedural decisions regarding the investigation and hearing of that complaint. Except as

417 otherwise provided in section 1.19.030, the designated hearing officer shall be the sole  
418 decision-maker and shall comply with the procedures and requirements of this chapter.

419  
420

421 1.19.020 Function and authority.

422

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

425

426 a. Investigate reported violations of Chapter 1.18 HCC.

427

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

429

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

431

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

434

435 e. Adopt recommended policies and procedures governing the Board's conduct of  
436 business.

437

438 f. Upon application of the complainant, respondent, or at the Board's or hearing  
439 officer's discretion, compel by subpoena the appearance and sworn testimony, at a specified  
440 time and place, of a person the Board or hearing officer reasonably believes may be able to  
441 provide information relating to a matter under investigation by the Board or hearing officer or  
442 the production of documents, records or other items the Board or hearing officer reasonably  
443 believes may relate to the matter under consideration.

444

445 g. Administer oaths and receive testimony from witnesses appearing before the Board  
446 or hearing officer.

447

448 h. Request City agencies to cooperate with the Board or hearing officer in the exercise  
449 of the Board's or hearing officer's jurisdiction.

450

451 i. Request the advising attorney to seek assistance of the Superior Court to enforce the  
452 Board's or hearing officer's subpoena.

453

454 j. Conduct investigative hearings in executive session, pursuant to notifications alleging  
455 violations of matters within the authority of the Board or hearing officer.

456

457 1.19.030 Procedures for violation reporting.

458

459 a. Any person who believes that a violation of any portion of chapter 1.18 has occurred  
460 may file a written complaint of potential violation with the City Clerk's office.

461  
462 b. All written complaints of potential violation submitted under this chapter shall be  
463 signed by the person submitting the complaint. A written complaint of potential violation shall  
464 state the address and telephone number of the person filing the complaint, identify the  
465 respondent, and affirm to the best of the person's knowledge and belief the facts alleged in the  
466 complaint of potential violation signed by the person are true. The person filing the complaint  
467 of potential violation shall identify the section of chapter 1.18 the person believes was violated,  
468 state why the person signing the complaint of potential violation believes the facts alleged  
469 constitute a violation of that section, and identify any documentary or testimonial evidence  
470 the person filing the complaint believes is in support of the notification of potential violation.

471  
472 c. Written complaints of potential violations filed with the City Clerk's office shall be  
473 reviewed in accordance with section 1.19.040. Except as otherwise provided in section  
474 1.19.040, the Board of Ethics shall have sole jurisdiction to decide the merits of the complaint  
475 filed under this chapter.

476  
477 d. The City Clerk shall appoint a hearing officer to decide and investigate properly filed  
478 written complaints against City Council members or the Mayor. Except as provided in section  
479 1.19.040, the hearing officer shall have sole jurisdiction to decide the merits of a complaint  
480 under this chapter.

481  
482 1.19.040 Confidentiality- Initial review

483  
484 a. Each written complaint of a violation of Chapter 1.18 HCC received by the City Clerk's  
485 office shall be assigned an identification number, which shall be used in lieu of names when  
486 referring to the complaint to maintain confidentiality. The City Clerk, City Attorney, and the  
487 Board or hearing officer shall keep all written complaints of potential violation confidential  
488 during investigation and the Board's or hearing officer's deliberative process. Complaints of  
489 potential violation may be disclosed only to the staff member of the City Clerk's office  
490 providing administrative support to the Board or hearing officer, members of the Board except  
491 when a hearing officer has been appointed, and legal counsel.

492  
493 b. Upon receipt of a notification of potential violation, the City Clerk shall review the  
494 complaint for completeness and inclusion of the information required in HCC 1.19.030(b). If the  
495 City Clerk determines that the complaint is not complete and lacks information required by  
496 1.19.030(b), the City Clerk shall return the complaint and identify in writing the deficiencies on  
497 which the return is based. The City Clerk shall notify the complainant of the return and the  
498 reasons for it. A person may amend and re-file a complaint but a complaint filed by the same  
499 complainant with the same deficiencies shall not be accepted. The City Clerk may recommend

500 to the person filing the complaint that it be amended and re-filed. Notifications of potential  
501 violation returned without further action shall remain confidential.

502

503 c. The City Attorney shall review the sufficiency of the statement of violation in the  
504 complaint. If the City Attorney determines the facts alleged in the notification of potential  
505 violation, even if proven, do not constitute a violation, or that the Board or hearing officer lacks  
506 jurisdiction to address the complaint of potential violation, the City Attorney shall instruct the  
507 City Clerk to return the complaint and identify in writing the deficiencies on which the return  
508 is based. The City Clerk shall notify the complainant of the return and the reasons for it. A  
509 person may amend and re-file a complaint but a complaint filed by the same complainant with  
510 the same deficiencies shall not be accepted. The City Clerk may recommend to the person filing  
511 the complaint that it be amended and re-filed. Notifications of potential violation returned  
512 without further action shall remain confidential.

513

514 d. If the City Attorney determines the allegations in a complaint of potential violation,  
515 if proven, may constitute a violation of a matter within the Board or hearing officer's  
516 jurisdiction, the City Attorney shall provide written notice to the City Clerk.

517

518 e. If the City Attorney and City Clerk find the complaint sufficient under this section, the  
519 City Clerk shall:

520

521 1. Retain a hearing officer as required under section 1.19.030(d) and provide that officer  
522 with a copy of the complaint of potential violation, a copy of the outline of the hearing officer  
523 process under this chapter, including notice that the respondent may choose to hold the  
524 proceeding in public and may be represented by legal counsel of respondent's choosing and  
525 at respondent's own expense; or

526

527 2. Provide the Board with a copy of the complaint of potential violation, a copy of the  
528 outline of the Board's process under this chapter, including notice that the respondent may  
529 choose to hold the proceeding in public and may be represented by legal counsel of  
530 respondent's choosing and at respondent's own expense;

531

532 3. Give the respondent a copy of the complaint of potential violation, along with a copy  
533 of the outline of the Board's process under this chapter, including notice that the respondent  
534 may choose to hold the proceeding in public and may be represented by legal counsel of  
535 respondent's choosing and at respondent's own expense; and

536

537 4. Notify both the person submitting the complaint of potential violation and  
538 respondent of the date(s) on which each may be requested to meet with the Board or hearing  
539 officer, present documentary or testimonial evidence, and assist the Board or hearing officer  
540 in resolving the potential violation.

541

542 1.19.050 Disclosure of complaint of potential violation prohibited.

543

544 a. A complaint of potential violation of Chapter 1.18 HCC is confidential until the Board  
545 or hearing officer completes a written report for distribution as a public record.

546

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

550

551 a. The respondent elects to proceed in public; or

552

553 b. The written report of the Board or hearing officer is electronically published by the  
554 City Clerk.

555

556 2. Breach of confidentiality required by any provision of this chapter is a violation of this  
557 chapter subject to punishment.

558

559 3. A person filing a complaint of potential violation shall keep confidential the fact that  
560 the person has filed the complaint with the City, as well as the contents of the complaint of  
561 potential violation. If the Board or hearing officer finds probable cause to believe that the  
562 person filing the notice of complaint violation has violated confidentiality under this chapter,  
563 the Board or hearing officer shall immediately dismiss the complaint of violation. Dismissal  
564 under this subsection does not affect the right of the Board or hearing officer or another person  
565 to initiate a proceeding on the same factual allegations by filing a complaint of potential  
566 violation.

567

568 4. Public disclosure resulting from corrective action under this chapter is not a violation  
569 of this section.

570

571 1.19.060 Conduct of investigation and standard of proof.

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573 The Board's investigation shall be conducted in executive session, unless the  
574 respondent requests to hold the Board's investigation on the notification of potential violation  
575 in public. The hearing officer's investigation shall be conducted in a manner to maintain  
576 confidentiality unless the respondent requests to hold the hearing officer's investigation on  
577 the notification of potential violation in public.

578

579 a. The respondent and the person who filed the notification of potential violation may  
580 identify other individuals and documents that each would like the Board or hearing officer to  
581 interview and review.

582

583           b. If an individual with information bearing on the notification of potential violation is  
584 unwilling to come forward with information, the respondent and the person who filed the  
585 notification of potential violation may each request the Board or hearing officer to subpoena  
586 the person and any documentary evidence.

587  
588           c. Persons appearing before the Board or hearing officer may be represented by counsel  
589 or other person serving in a representative capacity.

590  
591           d. The Board or hearing officer may question the respondent, the person who filed the  
592 notification of potential violation, and other persons appearing before the Board or hearing  
593 officer.

594  
595           e. The Board or hearing officer may solicit questions and testimony from the person  
596 filing the notification of potential violation, the respondent and other persons appearing for  
597 the purpose of providing information to the Board or hearing officer. The Board or hearing  
598 officer may solicit questions from counsel present to represent persons appearing before the  
599 Board or hearing officer, but all questions during the Board's or hearing officer's investigation  
600 shall be posed through and by a member of the Board or the hearing officer. Consistent with  
601 due process, the Board or hearing officer may limit or prohibit questions suggested to the  
602 Board or hearing officer by or on behalf of persons appearing before the Board or hearing  
603 officer.

604  
605           f. The standard of proof to be applied by the Board or hearing officer in determining a  
606 violation under this chapter is proof by a preponderance of the evidence.

607  
608           g. Technical rules of evidence do not apply, but the findings of the Board shall be based  
609 upon reliable and relevant information presented to the Board.

610  
611           h. The Board's or hearing officer's finding of a violation of this chapter must be  
612 supported by substantial evidence.

613  
614           i. The Board's or hearing officer's findings shall not be binding in a subsequent  
615 sanctions proceeding.

616  
617           j. When the Board's or hearing officer's investigation is conducted in executive session  
618 or confidentially, the public shall be excluded but an executive session of the Board shall be  
619 electronically recorded. The recording shall be available for access as a public record after  
620 publication by the municipal clerk of the proposed resolution and settlement.

621  
622 1.19.070 Deliberations of the Board.

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624           Deliberations of the Board shall be conducted in executive session.

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a. The deliberations of the Board shall not be recorded.

b. The respondent, the person filing the complaint, and their counsel shall be excluded from the deliberations. The Board’s legal counsel may attend the deliberations.

c. The Board shall reconvene in open session when deliberations are complete.

1.19.080 Decisions on the record.

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

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

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

c. What specific sanctions, corrective actions or referrals, if any, the Board or hearing officer recommends pursuant to HCC 1.19.110.

d. If the Board or hearing officer does not find a violation under Chapter 1.18 HCC, the Board or hearing officer shall prepare a confidential statement of closure listing the complainant and respondent, the assigned identification number, the allegations, the hearing date, and the finding that no allegation was substantiated by the Board or hearing officer in whole or in part, and the date of Board or hearing officer closure. At the sole discretion of the respondent, the Board or hearing officer may release the statement of closure as a public document.

1.19.090 Timely completion.

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

1.19.100 Sanctions, civil penalties and remedies.

a. Upon conviction for any violation of Chapter 1.18 HCC under criminal procedures or upon a determination of any violation of Chapter 1.18 HCC after an investigation conducted by



667 the Board or hearing officer under this chapter, the Board or hearing officer may impose (or  
668 recommend in the case of subsection (a)(1) of this section) as a sanction, penalty, or remedy  
669 any or all of the following, as appropriate to the seriousness of the violation:

670

671 1. A recommendation to the City Council that the office of a City Council member or the  
672 position of City Manager be declared vacant for a serious violation that is (a) flagrant or (b)  
673 willful and knowing. A recommendation that the office of the Mayor be declared vacant may  
674 be made only if the violation justifies a declaration of vacancy under AS 29.20.280. Only the  
675 City Council may actually declare any of these positions vacant.

676

677 2. A member of a board or commission may be removed from the board or commission.

678

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

680

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

683

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

685

686 6. An official's privilege to travel at City expense on City business may be revoked or  
687 restricted.

688

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

691

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

694

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

696

697 1.19.110 Board member and hearing officer disclosures.

698

699 a. When an investigation is convened in executive session to determine whether the  
700 respondent has violated Chapter 1.18 HCC, the Board members will be requested to disclose  
701 any conflict of interest, ex parte communications, or other facts that may affect their  
702 qualification to hear the matter. After such a disclosure, the other members of the Board shall  
703 determine whether a member shall be excused for cause.

704

705 b. A hearing officer shall disclose any conflict of interest or ex parte communications  
706 with the complainant or respondent before conducting an investigation or holding a hearing  
707 under this chapter. The complainant and the respondent have 10 days from the date the

708 written disclosure is sent to the parties to file an objection to the hearing officer with the City  
709 Clerk. Upon receiving an objection, the City Clerk shall appoint a new hearing officer.

710

711 1.19.120 Duty of cooperation.

712

713 A City official or the City Manager subject to a complaint of a violation shall work  
714 cooperatively with the City Clerk to establish a hearing date and shall appear at the place and  
715 time set for the hearing, regardless of the respondent's intentions concerning defense or  
716 exercise of other rights. Failure to appear, except when failure results from a serious condition  
717 or event that prevented the respondent's appearance, is a breach of respondent's duties under  
718 this chapter and in itself may result in a summary finding of violation by the Board or hearing  
719 officer and imposition of remedies, penalties and disciplinary action under HCC 1.19.110. For  
720 the purposes of this section, a "serious condition or event" may include a serious medical  
721 condition, a serious family emergency requiring the presence of the party, a death in the family,  
722 or other similar cause that prevents the respondent's attendance at the hearing. Nothing in  
723 this section shall prevent the rescheduling of a hearing for cause upon request of the  
724 respondent or the complainant.

725

726 1.19.130 Settlement of complaints.

727

728 a. The respondent in any case accepted for investigation may propose a resolution and  
729 settlement of the complaint. A proposed resolution and settlement will include the admitted  
730 violation of Chapter 1.18 HCC; the remedial actions agreed to by the respondent subject to the  
731 City Council's concurrence; any proposed preventive actions to be undertaken to avoid similar  
732 violation by respondent or others in the future; and other matters required by the Board or  
733 hearing officer.

734

735 b. A proposed resolution and settlement is subject to approval by the Board or hearing  
736 officer and has no effect unless approved by the Board or hearing officer. The Board or hearing  
737 officer will give the complaining person the opportunity to review and comment on the  
738 proposed resolution and settlement prior to approving it. Until approved by the Board or  
739 hearing officer, a proposed resolution and settlement must be kept confidential.

740

741 c. The proposed resolution and settlement becomes public record upon final approval  
742 by the Board or hearing officer.

743

744 1.19.140 Record of proceedings and public record.

745

746 Permanent records and minutes shall be kept of Board's or hearing officer's  
747 proceedings. Such minutes shall record the vote of each member upon every question decided  
748 in public. Every decision or finding shall immediately be filed in the office of the City Clerk, and

749 shall be a public record open to inspection by any person. Every finding and recommendation  
750 shall be directed to the City Council at the earliest possible date.

751

752 1.19.150 Limitation period.

753

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

758

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

764

765 Section 6. Homer City Code Chapter 2.80 entitled Board of Ethics is repealed.

766

767 Section 7. This ordinance shall take effect upon its adoption by the Homer City Council.

768

769 Section 8. This ordinance is of a permanent and general character and shall be included  
770 in the City Code.

771

772 ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER THIS 27 DAY OF March,  
773 2018.

774

775

CITY OF HOMER

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BRYAN ZAK, MAYOR

780

781 ATTEST:

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783

784

Melissa Jacobsen  
MELISSA JACOBSEN, MMC, CITY CLERK

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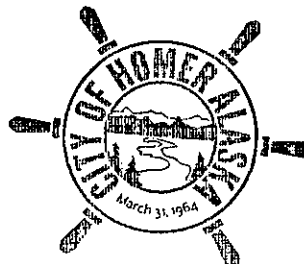
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787

788 YES: 6

789 NO: 0

790 ABSTAIN: 0



791 ABSENT: 6

792

793 First Reading: 3.12.18

794 Public Hearing: 3.27.18

795 Second Reading: 3.27.18

796 Effective Date: 3.28.18

797

798 Reviewed and approved as to form:

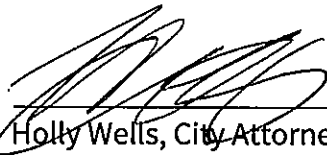
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800 

801 Katie Koester, City Manager

802

803 Date: 4.2.18

  
\_\_\_\_\_  
Holly Wells, City Attorney

Date: 4.11.18