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**CITY OF HOMER
HOMER, ALASKA**

City Clerk

ORDINANCE 21-44(S)

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA AMENDING HOMER CITY CODE 21.91 PLANNING COMMISSION AND BOARD OF ADJUSTMENT TO REMOVE THE BOARD OF ADJUSTMENT AND 21.93 ADMINISTRATIVE APPEALS ESTABLISHING THAT ADMINISTRATIVE APPEALS FROM CERTAIN FINAL CITY PLANNING DECISIONS SHALL BE FILED BEFORE A HEARING OFFICER AND SUPPLEMENTING NOTICE REQUIREMENTS.

WHEREAS, City Planning Commission quasi-judicial administrative appeals will be most efficiently adjudicated by establishing jurisdiction for such matters before a hearing officer with experience in administrative law.

NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code Chapter 21.91 shall be amended as follows:

Chapter 21.91

PLANNING COMMISSION AND BOARD OF ADJUSTMENT **HEARING OFFICER**

Sections:

Article I. Planning Commission

21.91.010 Planning Commission established.

21.91.020 Powers and functions.

Article II. ~~Board of Adjustment~~ **Hearing officer.**

21.91.100 ~~Board of Adjustment~~ established. **Hearing officer appointment.**

21.91.110 Powers and functions.

21.91.120 Procedures.

21.91.130 Appeals to Superior Court.

Article I. Planning Commission

21.91.010 Planning Commission established.

There shall be a Planning Commission established and functioning pursuant to Chapter 2.72 HCC. [Ord. 08-29, 2008].

43 21.91.020 Powers and functions.

44 In addition to the powers and functions assigned to the Planning Commission in Chapter 2.72
45 HCC, the Commission has all the powers and functions assigned to it in this title. [Ord. 08-29,
46 2008].

47

48 Article II. ~~Board of Adjustment~~ **Hearing officer.**

49

50 21.91.100 ~~Board of Adjustment established.~~ **Hearing officer appointment.**

51

52 There is established a Board of Adjustment comprised of the members of the Homer City
53 Council and the Mayor. The Mayor shall preside over the Board of Adjustment and participate
54 in the deliberations. The Mayor shall not vote except in the case of a tie. [Ord. 08-29, 2008].

55

56 **A hearing officer shall be appointed by the City Manager to hear and decide appeals**
57 **authorized by Chapter HCC 21.93. A hearing officer appointed by the City Manager must**
58 **have at least five years' experience acting as an administrative law judge or**
59 **administrative hearing officer and must be licensed to practice law in the State of Alaska**
60 **and in good standing.**

61

62 21.91.110 Powers and functions.

63 a. ~~Either the Board of Adjustment or a hearing officer appointed by the City Manager shall~~
64 ~~hear and decide appeals authorized by Chapter 21.93 HCC. A decision appealed under~~
65 ~~Chapter 21.93 HCC shall be heard by a hearing officer unless the individual or entity~~
66 ~~appealing the decision selects the Board of Adjustment to hear the appeal in their notice of~~
67 ~~appeal. A **The** hearing officer appointed by the City Manager shall hear and decide appeals~~
68 ~~pursuant to the provisions of the zoning code.~~

69

70 b. A **The** hearing officer appointed by the City Manager to **shall** act as the decision maker in
71 appeals of decisions made by the **City Manager, City Planner, City Planner's designee, or**
72 **the** Planning Commission must have at least five years' experience acting as an
73 administrative law judge or administrative hearing officer and must be licensed to practice
74 law in the State of Alaska and in good standing.

75

76 c. The City Manager, the City Planner or the City Planner's designee, or any City of Homer
77 official, agency, or unit shall appeal to a hearing officer and may not select to appeal to the
78 Board of Adjustment. [Ord. 17-07(S-3)(A) § 2, 2017; Ord. 08-29, 2008].

79

80 21.91.120 Procedures.

81

82 Appeals heard by ~~the Board of Adjustment or a hearing officer~~ shall be conducted according
83 to applicable procedures specified in Chapter HCC 21.93. [Ord. 17-07(S-3)(A) § 3, 2017; Ord.
84 08-29, 2008].

85 21.91.130 Appeals to Superior Court.

86
87 a. An appeal from a final decision of ~~the Board of Adjustment or~~ a hearing officer may be
88 taken directly to the Superior Court by a party who actively and substantively participated in
89 the proceedings before the ~~Board of Adjustment or~~ the hearing officer or by the City Manager
90 or City Planner or any governmental official, agency, or unit.

91
92 b. An appeal to the Superior Court shall be filed within 30 days of the date of distribution of
93 the final decision to the parties appearing before the ~~Board of Adjustment or~~ hearing officer.

94
95 c. An appeal from a final decision of the ~~Board of Adjustment or~~ hearing officer to the
96 Superior Court is governed by court rules. [Ord. 17-07(S-3)(A) § 4, 2017; Ord. 08-29, 2008].

97

98 Section 2. Homer City Code Chapter 21.93 shall be amended as follows:

99

100 Chapter 21.93

101 ADMINISTRATIVE APPEALS

102

103 Sections:

104 ~~Article I. General Provisions~~

105 21.93.010 Appeals, general.

106 21.93.020 Decisions subject to appeal to Planning Commission **by a person with standing.**

107 ~~21.93.030 Decisions subject to appeal to the Board of Adjustment or a hearing officer.~~

108 21.93.040 Decisions not subject to appeal.

109 21.93.050 Standing ~~Appeal to Planning Commission.~~

110 ~~21.93.060 Standing Appeal to hearing officer.~~

111 21.93.070 Time for appeal.

112 21.93.080 Notice of appeal.

113 21.93.090 Authorized representative **Representation.**

114 21.93.100 General appeals procedure.

115 21.93.110 Appeal decisions.

116 ~~Article II. Planning Commission Appeal Procedures~~

117 ~~21.93.300 Appeals to the Planning Commission.~~

118 ~~21.93.310 Other procedures.~~

119 ~~Article III. Board of Adjustment Appeal Procedures~~

120 ~~21.93.500 Parties eligible to appeal Planning Commission decision to the Board of~~

121 ~~Adjustment or a hearing officer Notice of appearance.~~

122 21.93.510 New evidence or changed circumstances.

123 21.93.520 Preparation of record.

124 21.93.530 ~~Written briefs.~~ **Prehearing conference.**

125 21.93.540 Appeal hearing.

126 21.93.550 ~~Board of Adjustment or h~~**H**earing officer decision.

127 21.93.560 Remand.

128 21.93.570 Other procedures.

129 ~~Article IV. Conflicts of Interest and Ex Parte Contacts~~

130 21.93.700 ~~Appeals~~— Conflicts of interest.

131 21.93.710 ~~Appeals~~— Ex parte communication prohibited.

132

133 ~~Article I. General Provisions~~

134

135 21.93.010 Appeals, general.

136 This chapter governs administrative appeals to the ~~Planning Commission and the Board of~~
137 ~~Adjustment~~ **a hearing officer** from actions and determinations taken under the Homer
138 Zoning Code. [Ord. 08-29, 2008].

139

140 21.93.020 Decisions subject to appeal to ~~Planning Commission.~~

141 a. The following acts or determinations **final decisions** made under this title by the City
142 Manager, City Planner, or **City Planner's designee** may, when final, be appealed to the
143 ~~Commission~~ by a person with standing:

- 144 1. Approval or denial of a zoning permit.
- 145 2. Approval or denial of a sign permit.
- 146 3. Approval or denial of any other permit that is within the authority of the City Planner
147 to approve or deny.
- 148 4. An enforcement order issued under HCC 21.90.060.
- 149 5. Any other decision that is expressly made appealable to the Commission by other
150 provisions of the Homer Zoning Code. [Ord. 08-29, 2008].

151

152 ~~21.93.030~~—~~Decisions subject to appeal to the Board of Adjustment or a hearing officer.~~

153

154 **b.** The following acts or determinations **final decisions** of the Commission, when final, may
155 be appealed to the ~~Board of Adjustment or a hearing officer appointed by the City Manager~~
156 by a person with standing:

- 157 1. Grant or denial of a conditional use permit.
- 158 2. Grant or denial of a variance.
- 159 3. Grant or denial of formal recognition of a nonconforming use or structure, or a
160 decision terminating a nonconforming use or structure.
- 161 4. Grant or denial of a conditional fence permit.
- 162 5. A decision by the Commission in a matter appealed to the Commission under HCC
163 21.93.020.
- 164 6. Any other final decision that is expressly made appealable to the ~~Board of Adjustment~~
165 ~~or a hearing officer~~ by other provisions of the code. [Ord. 17-07(S-3)(A) § 5, 2017; Ord.
166 08-29, 2008].

167

168 ~~21.93.040~~—~~Decisions not subject to appeal.~~

169 The following acts or determinations may not be appealed:

- 170 a. A decision to cite or not cite a person for a violation of the code under HCC 21.90.090 or any
171 other provision of the code.
172 b. A decision to not issue an enforcement order under HCC 21.90.060, 21.40.150, or any other
173 provision of the code.
174 c. An order of abatement issued under HCC 21.90.070 after all appeals have been exhausted
175 or the time for appeal has expired.
176 d. Any legislative act or determination, including any recommendations, to approve or reject
177 any proposal or ordinance for the adoption, revision, or amendment of the zoning code, the
178 zoning map, a comprehensive plan or any component thereof, any other plan, a rezoning, or
179 any other legislative matter.
180 e. Any matter not expressly made appealable by this section or another provision of the
181 Homer Zoning Code. [Ord. 08-29, 2008].

182
183 21.93.050 Standing — Appeal to Planning Commission.

184
185 **a.** Only the following have standing to appeal an appealable action or determination of the
186 **City Manager, City Planner, or City Planner's designee to the Commission a hearing**
187 **officer:**

- 188
189 1. The applicant for the action or determination, or the owner of the property that is the
190 subject of the action or determination.
191 2. The City Manager or City Planner or any governmental official, agency, or unit.
192 3. Any person aggrieved **adversely affected** by the action or determination. [Ord. 08-29,
193 2008].

194
195 ~~21.93.060 — Standing — Appeal to hearing officer.~~

196
197 **b.** Only the following have standing to appeal an appealable action or determination of the
198 Planning Commission to the ~~Board of Adjustment~~ or a hearing officer:

- 199
200 1. Applicant for the action or determination, or the owner of the property that is the
201 subject of the action or determination under appeal.
202 2. The City Manager, the City Planner or the City Planner's designee, or any
203 governmental official, agency, or unit.
204 3. Any person who actively and substantively participated in the proceedings before the
205 Commission and is aggrieved by the action or determination.
206 4. Any person who actively and substantively participated in the proceedings before the
207 Commission and would be aggrieved **adversely affected** if the action or
208 determination being appealed were to be reversed on appeal. [Ord. 17-07(S-3)(A) § 6,
209 2017; Ord. 14-45 § 1, 2014; Ord. 08-29, 2008].

210

211 21.93.070 Time for appeal.

212

213 a. An appeal to the Planning Commission must be filed within ~~30~~ **15** days after the date of:

214 **1.** Distribution of the final action or determination **decision of the City Manager, City**
215 **Planner, or planning staff members** to the applicant or other person whose
216 property is the subject of the matter being appealed; or

217

218 ~~b. 2.~~ An appeal to the Board of Adjustment or a hearing officer must be filed within ~~30~~ **15**
219 ~~days after the date of d~~ Distribution of the final action or determination **decision of the**
220 **Planning Commission** to the applicant and other parties, if any.

221

222 21.93.080 Notice of appeal.

223

224 a. A notice of appeal from an action or determination of the City Planner or the Planning
225 Commission shall be filed with the City Clerk **and shall be accompanied by the planning**
226 **appeal fee as established in the City of Homer Fee Schedule.**

227

228 b. A notice of appeal shall be in writing, be signed by the appellant, and shall contain, ~~but is~~
229 ~~not limited to~~, the following information:

230

- 231 1. The name and address of the appellant.
- 232 2. A description of the action or determination from which the appeal is sought and the
233 date upon which the action or determination became final.
- 234 3. The street address and legal description of the property that is the subject of the
235 action or determination being appealed, and the name and address of the owner(s) of
236 that property.
- 237 4. Detailed and specific allegations of error, including reference to applicable provisions
238 of the zoning code or other law.
- 239 5. A statement of whether the action or determination should be reversed, modified, or
240 remanded for further proceedings, or any other desired relief.
- 241 6. Proof showing that the appellant is an aggrieved person with standing to appeal
242 under HCC 21.93.050 or 21.93.060, whichever is applicable.
- 243 ~~7. The appellant's choice of decision maker, which may be either the Board of~~
244 ~~Adjustment or a hearing officer appointed by the City Manager.~~

245

246 c. The City Clerk shall reject any notice of appeal that does not comply with HCC 21.93.070
247 and this section and notify the appellant of the reasons for the rejection. If a notice of appeal
248 is rejected for reasons other than timeliness, a corrected notice of appeal that complies with
249 this section will be accepted as timely if filed within seven days of the date on which the City
250 Clerk mails the notice of rejection.

251

252 d. **Within seven days of the date on which the City Clerk determines the notice of appeal**
253 **complies with HCC 21.93.070**, The City Clerk shall mail copies of the notice of appeal **shall**
254 **be mailed** to all parties of record **the appellant, appellee, owner of the property that is**
255 **the subject of the action or determination, and to neighboring property owners** in the
256 proceeding appealed ~~as set forth in HCC 21.94.030~~ **to owners of record on the Borough**
257 **Assessor's records of real property within a 300-foot periphery of the site that is the**
258 **subject of the proposed action** from within seven days of the date on which the City Clerk
259 determines the notice of appeal complies with HCC 21.93.070 and this section.

260
261 e. Any person with standing under HCC 21.93.050 or 21.93.060, whichever is applicable, may,
262 within seven days after the date the City Clerk mailed copies of an accepted notice of appeal,
263 file notice of cross appeal. Any notice of cross appeal shall, to the extent practical, comply
264 with subsection (b) of this section.

265
266 f. The City Clerk shall promptly give notice of the cross appeal to the appellant and all other
267 parties who have filed a notice of appearance. [Ord. 17-07(S-3)(A) § 8, 2017; Ord. 08-29, 2008].

268
269 21.93.090 Authorized representative **Representation.**

270
271 No person may represent a party to an appeal without filing with the City Clerk written
272 authorization, which shall be signed by the party so represented and provide the name and
273 address of the party's representative. If the person representing another is a lawyer licensed
274 to practice law in Alaska, an entry of appearance signed by the attorney is acceptable in lieu
275 of authorization signed by the person so represented. [Ord. 08-29, 2008].

276
277 **a. A party to an appeal may be represented by an attorney or may be self-represented.**
278 **An agency or entity is self-represented when acting through an authorized employee or**
279 **officer.**

280
281 **b. A party represented by an attorney in the appeal shall file, or cause the attorney to**
282 **file, and serve on the other parties a document that:**

- 283
284 **1. identifies the attorney; and**
285 **2. provides the address, telephone number, facsimile number, and electronic mail**
286 **address for the attorney.**

287
288 21.93.100 General appeals procedure.

289
290 **a. A hearing officer shall be appointed in accordance with HCC 21.91.100.**

291
292 **ab.** All appeals must be heard **and a decision rendered** within ~~60~~ **90** days after the appeal
293 record has been prepared. The body or officer hearing the appeal **hearing officer** may, for

294 good cause shown, extend the time for hearing. ~~The decision on appeal must be rendered~~
295 ~~within 60 days after the appeal hearing.~~

296
297 ~~bc.~~ The appellant, ~~the applicant for the action or determination that is the subject of the~~
298 ~~appeal~~ **appellee**, owner of the property that is the subject of the action or determination,
299 ~~and all parties who have entered an appearance~~ **their representatives** shall be provided not
300 less than 15 days' written notice of the time and place of the appeal hearing. ~~Neighboring~~
301 ~~property owners shall be notified as set forth in HCC 21.94.030.~~

302
303 ~~ed.~~ When an appellant chooses to appeal to a hearing officer, ~~t~~ **The City Clerk shall identify**
304 **the hearing officer in the notice of hearing. All parties shall have 5 days from the date of**
305 **the notice to object to the hearing officer based upon conflicts of interest, personal bias or ex**
306 **parte contacts. Failure to file an objection to the hearing officer within the 5 days shall**
307 **waive any objection to the hearing officer.**

308
309 **e. A notice of hearing shall be published at least once during the calendar week prior to**
310 **the appeal hearing date and the notice shall contain:**

- 311 **1. A brief description of the proposal on which the public body is to act;**
312 **2. A legal or common description of the property involved and a street address;**
313 **3. Date, time and place of the public hearing;**
314 **4. A statement that the complete proposal is available for review, specifying the**
315 **particular City office where the proposal may be examined.**

316
317 **Two weeks prior to the appeal hearing, the notice of hearing discussed in this**
318 **subsection shall be mailed to owners of record on the Borough Assessor's records of real**
319 **property within a 300-foot periphery of the site that is the subject of the proposed**
320 **action.**

321
322 ~~df.~~ An electronic recording shall be kept of the entire proceeding. ~~Written minutes shall be~~
323 ~~prepared. The electronic recording shall be preserved for one year unless required for further~~
324 ~~appeals. No recording or minutes shall be kept of deliberations that are not open to the~~
325 ~~public. [Ord. 17-07(S-3)(A) § 9, 2017; Ord. 10-41(A) § 1, 2010; Ord. 08-29, 2008].~~

326
327 21.93.110 Appeal decisions.

328
329 a. All final decisions on appeals shall be in writing, ~~and shall state the names and number of~~
330 ~~members of the body who participated in the appeal, the names and number voting in favor~~
331 ~~of the decision, and the names and number voting in opposition to the decision. All final~~
332 ~~decisions issued by a hearing officer must state the name of the officer.~~

333
334 b. A decision shall include an official written statement of **factual** findings and reasons **legal**
335 **conclusions** supporting the decision. This statement shall refer to specific evidence in the

336 record and to the controlling sections of the zoning code. ~~Upon express vote, the body~~ **The**
337 hearing officer may adopt, as their statement of findings and reasons, those findings and
338 reasons officially adopted by the body or officer below from which the appeal was taken.

339
340 c. Copies of the written decision shall be promptly mailed to the appellant, ~~the applicant for~~
341 ~~the action or determination that is the subject of the appeal~~ **appellee**, the owner of the
342 property that is the subject of the action or determination, and ~~all parties who entered a~~
343 ~~written notice of appearance in the appeal proceeding~~ **their representatives**. [Ord. 17-07(S-
344 3)(A) § 10, 2017; Ord. 10-41(A) § 2, 2010; Ord. 08-29, 2008].

345
346 **Article II. Planning Commission Appeal Procedures**

347
348 **21.93.300 — Appeals to the Planning Commission.**

349
350 a. ~~Within 30 days after receipt of a timely notice of appeal to the Planning Commission, the~~
351 ~~City Planner will prepare an appeal record consisting of all relevant documents submitted to~~
352 ~~or used by the Planning Department in making the decision under appeal, including any staff~~
353 ~~reports, correspondence, applications, or other documents. The appeal record shall be~~
354 ~~paginated. The appellant shall be notified by mail when the appeal record is complete. Any~~
355 ~~person may obtain a copy of the appeal record from the Planning Department upon payment~~
356 ~~of the costs of reproduction.~~

357
358 b. ~~An appeal hearing shall be scheduled within the time specified in HCC 21.93.100. The~~
359 ~~hearing will be open to the public.~~

360
361 c. ~~The Commission may prescribe rules of procedure for additional public notification in~~
362 ~~cases where the Commission determines its decision would have a substantial effect on the~~
363 ~~surrounding neighborhood.~~

364
365 d. ~~The Commission may accept new testimony and other evidence, including public~~
366 ~~testimony, and hear oral arguments as necessary to develop a full record upon which to~~
367 ~~decide an appeal from an act or determination of the City Planner. Any person may file a~~
368 ~~written brief or testimony in an appeal before the Commission.~~

369
370 e. ~~The Commission may undertake deliberations immediately upon the conclusion of the~~
371 ~~hearing on appeal or may take the matter under advisement and meet at such other time as~~
372 ~~is convenient for deliberations until a decision is rendered. Deliberations need not be public~~
373 ~~and may be in consultation with an attorney acting as legal counsel to the Commission.~~

374
375 f. ~~The Commission may affirm or reverse the decision of the City Planner in whole or in part. A~~
376 ~~majority vote of the fully constituted Commission is required to reverse or modify the action~~
377 ~~or determination appealed from. For the purpose of this section the fully constituted~~

378 Commission shall not include those members who do not participate in the proceedings due
379 to a conflict of interest or disqualifying ex parte contacts, disqualifying partiality, or other
380 disqualification for cause. A decision affirming, reversing, or modifying the decision appealed
381 from shall be in a form that finally disposes of the case on appeal, except where the case is
382 remanded for further proceedings.

383
384 g. The Commission may seek the assistance of legal counsel, City staff, or parties in the
385 preparation of a decision or proposed findings of fact. [~~Ord. 10-41(A) § 3, 2010; Ord. 08-29,~~
386 ~~2008~~].

387
388 ~~21.93.310~~ — Other procedures.

389 If no specific procedure is prescribed by the code, the Planning Commission may proceed in
390 an administrative appeal in any lawful manner not inconsistent with this title, statutes, and
391 the Constitution. [~~Ord. 08-29, 2008~~].

392
393 Article III. Board of Adjustment Appeal Procedures

394
395 ~~21.93.500~~ — Parties eligible to appeal Planning Commission decision to the Board of
396 Adjustment or a hearing officer — Notice of appearance.

397
398 a. Only persons who actively and substantively participated in the matter before the
399 Commission and who would be qualified to appeal under HCC 21.93.060 may participate as
400 parties in an appeal from the Commission to the Board of Adjustment or a hearing officer.

401
402 b. Any person so qualified who desires to participate in the appeal as a party, other than the
403 appellant, the City Planner or the City Planner's designee, the applicant for the action or
404 determination that is the subject of the appeal and the owner of the property that is the
405 subject of the action or determination, must, not less than 14 days before the date set for the
406 appeal hearing, file with the City Clerk a written and signed notice of appearance containing
407 that party's name and address, and proof that the person would be qualified under HCC
408 21.93.060 to have filed an appeal. [~~Ord. 17-07(S-3)(A) § 11, 2017; Ord. 14-45 § 2, 2014; Ord. 10-~~
409 ~~41(A) § 4, 2010; Ord. 08-29, 2008~~].

410
411 21.93.510 New evidence or changed circumstances.

412
413 a. Except as provided in subsections (b) and (c) of this section, the Board of Adjustment or
414 hearing officer shall not consider allegations of new evidence or changed circumstances and
415 shall make their decision based solely on the record. If new evidence or changed
416 circumstances are alleged, the Board of Adjustment or hearing officer may, in their discretion,
417 either hear the appeal without considering the allegations or may remand the matter to the
418 appropriate lower administrative body or official to rehear the matter, if necessary.

419

420 b. When the standing of a person is in issue, the ~~Board of Adjustment~~ or hearing officer may
421 take additional evidence for the limited purpose of making findings on the question of the
422 person's standing. No evidence received under this subsection shall be considered for
423 purposes other than determining standing.

424
425 ~~c. When the disqualification of a member of the Board of Adjustment for conflict of interest,~~
426 ~~ex parte contact, partiality or other cause is in issue, the Board of Adjustment may take~~
427 ~~additional evidence for the limited purpose of making findings on the question of~~
428 ~~disqualification. No evidence received under this subsection shall be considered for purposes~~
429 ~~other than determining disqualification. [Ord. 17-07(S-3)(A) § 12, 2017; Ord. 10-41(A) § 5, 2010;~~
430 ~~Ord. 08-29, 2008].~~

431
432 21.93.520 Preparation of record.

433
434 a. The appeal record shall be completed within ~~30~~ **15** days after receipt of a timely and
435 complete notice of appeal to the ~~Board of Adjustment~~ or hearing officer, and **The appeal**
436 **record** shall consist of the items, and shall be prepared in the manner, described in this
437 subsection.

- 438
- 439 1. The Clerk will assemble and paginate all relevant documents involved in the original
440 decision, including any staff reports, minutes, exhibits, notices, and other documents
441 considered in making the original decision.
 - 442 2. A party may elect to include a verbatim transcript of the testimony before the
443 Planning Commission in the appeal record by making a written request to the City
444 Clerk for a recording of the testimony within 14 days after the Clerk mails copies of the
445 notice of appeal to the parties pursuant to HCC 21.93.080(d). The requesting party
446 shall arrange and pay for the preparation of the transcript. Only a transcript prepared
447 and certified as accurate by a qualified court reporter shall be accepted. The original
448 transcript must be filed with the City Clerk to be provided to the hearing officer with
449 the record on appeal.

450
451 b. The appellant, ~~the applicant for the action or determination that is the subject of the~~
452 ~~appeal~~ **appellee**, the owner of the property that is the subject of the action or determination,
453 **or** other parties who have entered an appearance shall be notified by mail when the record
454 and transcript, if ordered, are complete. A **any** person may obtain a copy **of the record** upon
455 payment of the costs of reproduction and any applicable mailing costs.

456
457 21.93.530 ~~Written briefs.~~ **Prehearing conference.**

458
459 a. ~~Each party to the appeal (each appellant, cross-appellant, and respondent) may file with~~
460 ~~the City Clerk one opening brief not later than 20 days after the date of mailing the notice of~~
461 ~~the completion of the record on appeal. The brief shall be typed on eight and one-half by 11-~~

462 inch paper and shall include a statement of relevant facts contained in the record on appeal,
463 with citations to the page numbers in the record, a clear statement of the party's position
464 regarding the allegations of error specified in the notice of appeal, and arguments citing
465 points and legal authorities in support of such position.

466
467 b. Each party (each appellant, cross-appellant, and respondent) may submit one reply brief
468 within 14 days after the date opening briefs are due. A reply brief shall be limited to a
469 response to matters specifically raised in the opening brief(s) being responded to.

470
471 c. Upon request, any person may obtain a copy of any brief upon payment of reproduction
472 charges and any applicable cost of mailing.

473
474 d. Upon written request, and for good cause shown and when it appears to the City Clerk that
475 other parties will not be unduly prejudiced by the delay, the City Clerk may grant an
476 extension of time not to exceed five days for the filing of any brief. [Ord. 10-41(A) § 7, 2010;
477 Ord. 08-29, 2008].

478
479 **The hearing officer will hold a preconference hearing to develop a briefing schedule, set**
480 **a hearing date, and address other matters as needed related to the appeal hearing.**

481
482 21.93.540 Appeal hearing.

483
484 a. The meeting at which the Board of Adjustment hears an appeal shall be open to the public.
485 An appeal before the hearing officer shall also be open to the public. The City Attorney or
486 another attorney acting as legal counsel to the Board shall be present at appeals before the
487 Board of Adjustment.

488
489 b. Each party (each appellant, cross-appellant, and respondent) may present oral argument
490 at the appeal hearing, subject to the order of presentation and time limitations that the
491 Board of Adjustment or hearing officer adopts at the commencement of the hearing. The
492 taking of testimony or other evidence is limited by HCC 21.93.510.

493
494 c. The Board of Adjustment or hearing officer may undertake deliberations immediately upon
495 the conclusion of the hearing on appeal or may take the matter under advisement and meet
496 at such other time as is convenient for deliberations until a decision is rendered.
497 Deliberations need not be public.

498
499 d. The Board of Adjustment or hearing officer may exercise his or her independent judgment
500 on legal issues raised by the parties. "Legal issues" as used in this section are those matters
501 that relate to the interpretation or construction of the zoning code, ordinances or other
502 provisions of law.

503

504 e. The Board of Adjustment or hearing officer shall defer to the findings of the lower
505 administrative body regarding disputed issues of fact. Findings of fact adopted expressly or
506 by necessary implication by the lower body shall be considered as true if they are supported
507 by substantial evidence. But findings of fact adopted by less than a majority of the lower
508 administrative body shall not be given deference, and when reviewing such findings of fact
509 the Board of Adjustment or hearing officer shall exercise independent judgment and may
510 make their own findings of fact. If the lower administrative body fails to make a necessary
511 finding of fact and substantial evidence exists in the record to enable the Board of
512 Adjustment or hearing officer to make the finding of fact, they may do so in the exercise of
513 their independent judgment, or, in the alternative, the Board of Adjustment or hearing officer
514 may remand the matter for further proceedings. "Substantial evidence," as used in this
515 section, means such relevant evidence as a reasonable mind might accept as adequate to
516 support a conclusion. [Ord. 17-07(S-3)(A) § 14, 2017; Ord. 10-41(A) § 8, 2010; Ord. 08-29, 2008].
517

518 **Unless otherwise established in the prehearing conference an appeal to a hearing**
519 **officer will be conducted as follows:**

520
521 **1. Preliminary Matters**

522 **2. Oral arguments – 20 minutes each for appellant and appellee. The appellant may**
523 **reserve a portion of their time for rebuttal or closing comments.**

524 **3. The hearing officer may question each of the parties**

525 **4. Adjourn for deliberative purposes.**
526

527 21.93.550 Board of Adjustment or ~~h~~ Hearing officer decision.
528

529 a. The Board of Adjustment or hearing officer may affirm or reverse the decision of the lower
530 administrative body in whole or in part. If the appeal is heard by the Board of Adjustment, a
531 majority vote of the fully constituted Board is required to reverse or modify the action or
532 determination appealed from. For the purpose of this section, the fully constituted Board
533 shall not include those members who do not participate in the proceedings due to a conflict
534 of interest or disqualifying ex parte contacts, disqualifying partiality, or other disqualification
535 for cause. A decision affirming, reversing, or modifying the decision appealed from shall be in
536 a form that finally disposes of the case on appeal, except where the case is remanded for
537 further proceedings.
538

539 b. The Board may seek the assistance of legal counsel, City staff, or parties in the preparation
540 of a decision or proposed findings of fact. [Ord. 17-07(S-3)(A) § 15, 2017; Ord. 08-29, 2008].
541

542 21.93.560 Remand.
543

544 a. The Board of Adjustment or hearing officer may remand the appeal to the lower
545 administrative body when the Board or hearing officer determines that:

546

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

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

550 3. There is other cause requiring further proceedings by the lower administrative body.

551

552 b. A decision remanding a case shall describe any issue upon which further evidence should
553 be taken, and shall set forth any further directions the Board or hearing officer deems
554 appropriate for the guidance of the lower administrative body.

555

556 c. The lower administrative body shall promptly act on the case upon remand in accordance
557 with the decision of the Board of Adjustment or hearing officer. A case on remand has priority
558 on the agenda of the lower administrative body, except cases remanded under HCC
559 21.93.510(a) are not entitled to priority. The applicant or owner of the property in question
560 may waive the priority given by this subsection. [Ord. 17-07(S-3)(A) § 16, 2017; Ord. 08-29,
561 2008].

562

563 21.93.570 Other procedures.

564

565 If no specific procedure is prescribed by the code, the Board of Adjustment or hearing officer
566 may proceed in an administrative appeal in any lawful manner not inconsistent with this title,
567 statutes, and the Constitution. [Ord. 17-07(S-3)(A) § 17, 2017; Ord. 08-29, 2008].

568

569 ~~Article IV. Conflicts of Interest and Ex Parte Contacts~~

570

571 21.93.700 Appeals—Conflict of interest.

572

573 ~~a. A member of the Planning Commission, Board of Adjustment or a hearing officer appointed~~
574 ~~to hear an appeal from a Planning Commission decision may not participate in the~~
575 ~~deliberation or voting process of an appeal if, following the procedures set forth in this~~
576 ~~chapter, the Commission, or Board member or hearing officer is determined to have a~~
577 ~~substantial financial interest in the official action, as defined in Chapter 1.18 HCC. In the~~
578 ~~absence thereof, all Commission or Board members or a hearing officer shall participate in~~
579 ~~the deliberation and voting process unless excused pursuant to other provisions of this~~
580 ~~chapter.~~

581

582 ~~b. When a financial interest of a member of the Planning Commission or Board of Adjustment~~
583 ~~is disclosed on the record, the remainder of the Commission or Board, respectively, shall~~
584 ~~determine whether the member should participate in the matter. If it is determined the~~
585 ~~member should participate, any action taken thereafter by the body shall be valid~~
586 ~~notwithstanding a later determination by a court, an appellate tribunal, or a hearing officer~~
587 ~~that the member should have been disqualified from participation because of a substantial~~

588 financial interest in the matter; except the action shall be invalidated when the disqualified
589 member's vote was necessary to establish the required majority to approve the decision of
590 the body. When a Commission or Board decision is invalidated because such vote was
591 necessary to establish the required majority, the body shall commence new consideration of
592 the matter beginning at the point where the Commission or Board, respectively, determines
593 it is necessary to do so to eliminate the effect of the member's improper participation.
594

595 c. A hearing officer shall disclose any substantial financial interest, personal bias or ex parte
596 contact immediately upon being appointed by the City Manager and shall refrain from
597 accepting the appointment if a substantial financial interest, personal bias or ex parte
598 contact exists. If the substantial financial interest, personal bias or ex parte contact arises
599 after the hearing officer's appointment, he or she shall disclose his or her interest and shall
600 be disqualified from serving as the hearing officer unless all parties waive any objection to
601 the hearing officer.
602

603 d. For purposes of hearing an appeal, a quorum of the Commission is four members. If it is
604 not possible to obtain a quorum of the Planning Commission to hear an appeal without the
605 participation of members disqualified by reason of a substantial financial interest, then all
606 members who would be so disqualified shall nevertheless participate in the appeal, including
607 deliberations and voting, and the decision rendered in such a case shall be valid
608 notwithstanding the participation of such members. This subsection shall not apply if the
609 matter can be postponed to a later date (not later than 75 days after the appeal record is
610 prepared) when the body can obtain a quorum of members who are not disqualified by a
611 substantial financial interest.
612

613 e. For purposes of hearing an appeal, a quorum of the Board is four members. If it is not
614 possible to obtain a quorum of the Board to hear an appeal without the participation of
615 members who have chosen to abstain or been disqualified by the Board due to substantial
616 financial interest, bias or partiality, then the hearing shall be postponed and a hearing officer
617 shall be appointed. A hearing officer appointed under this subsection shall conduct the
618 rescheduled hearing no more than 60 days after the original hearing date except that the
619 hearing officer may extend the hearing date for good cause shown. [Ord. 17-07(S-3)(A) § 18,
620 2017; Ord. 08-29, 2008].
621

622 A hearing officer or administrative law judge shall refrain from hearing or otherwise deciding
623 a case presenting a conflict of interest. A conflict of interest may arise from a financial or
624 other personal interest of the hearing officer or administrative law judge, or of an immediate
625 family member. A conflict of interest exists if:

626
627 a. The financial or other personal interest reasonably could be perceived to influence the
628 official action of the hearing officer; or

629 b. A hearing officer previously represented or provided legal advice to a party on a
630 specific subject before the hearing officer or administrative law judge.

631

632 21.93.710 Appeals— Ex parte communication prohibited.

633

634 a. ~~No member of the Commission or Board of Adjustment or any~~ **The** hearing officer
635 ~~appointed by the City Manager~~ to review a decision issued by the Commission shall **not** have
636 ex parte communication with any person. “Ex parte communication” means to
637 communicate, directly or indirectly, with the appellant, other parties or persons affected by
638 the appeal, or members of the public concerning an appeal or issues specifically presented in
639 the notice of appeal, either before the appeal hearing or during any period of time the matter
640 is under consideration or subject to reconsideration, without notice and opportunity for all
641 parties to participate in the communication.

642

643 b. This section does not prohibit:

644 ~~1. Members from discussing matters relating to the appeal among themselves.~~

645 1. Communications between municipal staff and Commission or ~~Board members or the~~
646 hearing officer where:

647 a. Such staff members are not themselves parties to the appeal; and

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

650 2. Communications between the Commission or ~~Board~~ and its legal counsel.

651

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

657

658 ~~d. A member of the Commission or Board who receives an ex parte communication at any~~
659 ~~time shall, at the first opportunity after the communication, place on the record of the~~
660 ~~pending matter all written communications received, all written responses to the~~
661 ~~communications, and a memorandum stating the substance of all oral communications~~
662 ~~received, all responses made, and the identity of each person from whom the member~~
663 ~~received an ex parte communication. Any party to the appeal desiring to rebut the ex parte~~
664 ~~communication must be granted a reasonable opportunity to do so if a request is promptly~~
665 ~~made.~~

666

667 ~~e. If the Commission or Board determines in its discretion it is necessary to eliminate the~~
668 ~~harmful effect of an ex parte communication received in violation of this section, the~~
669 ~~Commission or Board may disqualify the member who received the communication from~~

670 participation in the appeal. In addition, the Commission may impose appropriate sanctions,
671 including default, against a party to the appeal for any violation of this section.

672
673 f. It is a violation, subject to penalties and other enforcement remedies under this title:
674 1. For any person to knowingly have or attempt to have ex parte communication with a
675 Commission or ~~Board~~ or hearing officer in violation of subsection (a) of this section.
676 2. For any Commission or ~~Board~~ member or hearing officer to knowingly receive an ex parte
677 communication in violation of subsection (a) of this section.
678 3. For any Commission or ~~Board~~ member to knowingly fail to place on the record any matter
679 when and as required under subsections (c) and (d) of this section. [Ord. 17-07(S-3)(A) § 19,
680 2017; Ord. 08-29, 2008].

681
682 Section 3. This Ordinance is of a permanent and general character and shall be included
683 in the City Code.

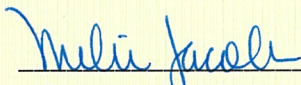
684
685 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this 9th day of August, 2021.

687 CITY OF HOMER

688 

689
690 KEN CASTNER, MAYOR

691 ATTEST:

692 

693
694 MELISSA JACOBSEN, MMC, CITY CLERK

695 YES: 5

696 NO: 0

697 ABSTAIN: 0

698 ABSENT: 0

701 First Reading: 7.26.21

702 Public Hearing: 8.9.21

703 Second Reading: 8.9.21

704 Effective Date: 8.10.21

