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**CITY OF HOMER
HOMER, ALASKA**

City Clerk

ORDINANCE 22-31

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA
AMENDING HOMER CITY CODE CHAPTER 21.93 ADMINISTRATIVE
APPEALS TO CLARIFY GENERAL APPEAL PROCEDURES AND
RELATED MATTERS.

WHEREAS, Ordinance 22-44(S) was adopted on August 9, 2021 and amended Homer
City Code to establish that administrative appeals from certain final City Planning decisions
shall be filed before a hearing officer; and

WHEREAS, The amendments in this ordinance further clarify the appeal process.

NOW THEREFORE THE CITY OF HOMER ORDAINS

Section 1. Homer City Code Chapter 21.93.020 Decisions subject to appeal is hereby
amended as follows:

21.93.020 Decisions subject to appeal.

a. The following final decisions made under this title by the City Manager, City Planner, City
Planner's designee may be appealed by a person with standing:

1. Approval or denial of a zoning permit.
2. Approval or denial of a sign permit.
3. Approval or denial of any other permit that is within the authority of the City
Planner to approve or deny.
4. An enforcement order issued under HCC 21.90.060.
5. ~~Any other decision that is expressly made appealable to the Commission by other
provisions of the Homer Zoning Code.~~

b. The following final decisions of the Commission may be appealed by a person with
standing:

1. Grant or denial of a conditional use permit.
2. Grant or denial of a variance.
3. Grant or denial of formal recognition of a nonconforming use or structure, or a
decision terminating a nonconforming use or structure.
4. Grant or denial of a conditional fence permit.
5. A decision by the Commission in a matter appealed to the Commission under HCC
21.93.020.

44 6. Any other final decision that is expressly made appealable to a hearing officer by
45 other provisions of the code.

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47 Section 2. Homer City Code Chapter 21.93.100 General appeals procedure is hereby
48 amended as follows:

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50 21.93.100 General appeals procedure.

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52 a. A hearing officer shall be appointed in accordance with HCC 21.91.100.

53
54 **b. The City Clerk shall notify all parties by mail of the appointed hearing officer. All parties**
55 **shall have ten days from the date of mailing of the notice to object in writing to the**
56 **hearing officer based upon conflicts of interest, personal bias or ex parte contacts.**
57 **Failure to file an objection to the hearing officer within the ten days shall waive any**
58 **objection to the hearing officer.**

59
60 ~~b~~ **c.** All appeals must be heard and a decision rendered within 90 days after the appeal record
61 has been prepared. The hearing officer may, for good cause shown, extend the time for
62 hearing.

63
64 **d. The hearing officer will hold a preconference hearing to develop a briefing schedule,**
65 **set a hearing date, and address other matters as needed related to the appeal hearing.**

66
67 ~~e~~ **e.** The appellant, appellee, owner of the property that is the subject of the action or
68 determination, and their representatives shall be provided not less than 15 days' written notice
69 of the time and place of the appeal hearing.

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71 ~~d.~~ The City Clerk shall identify the hearing officer in the notice of hearing. All parties shall have
72 five days from the date of the notice to object to the hearing officer based upon conflicts of
73 interest, personal bias or ex parte contacts. Failure to file an objection to the hearing officer
74 within the 10 days shall waive any objection to the hearing officer.

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76 **f.** A notice of hearing shall be published at least once during the calendar week prior to the
77 appeal hearing date and the notice shall contain:

- 78
79 1. A brief description of the proposal on which the public body is to act;
80 2. A legal or common description of the property involved and a street address;
81 3. Date, time and place of the public hearing;
82 4. A statement that the complete proposal is available for review, specifying the
83 particular City office where the proposal may be examined.

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

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89 **f g.** An electronic recording shall be kept of the entire proceeding. The electronic recording
90 shall be preserved for one year unless required for further appeals. No recording or minutes
91 shall be kept of deliberations that are not open to the public.

92
93 ~~21.93.530 — Prehearing conference.~~

94 ~~The hearing officer will hold a preconference hearing to develop a briefing schedule, set a~~
95 ~~hearing date, and address other matters as needed related to the appeal hearing.~~

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97 Section 3. Homer City Code 21.93.550 Hearing officer decision is hereby amended as
98 follows:

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100 21.93.550 Hearing officer decision.

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102 The hearing officer may affirm or reverse the decision of the lower administrative body in
103 whole or in part. A decision affirming, reversing, or modifying the decision appealed from shall
104 be in a form that finally disposes of the case on appeal, except where the case is remanded for
105 further proceedings. **A decision by the hearing officer is a final administrative decision**
106 **appealable under Homer City Code 21.91.130 and is not subject to reconsideration.**

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108 Section 4. Homer City Code 21.93.710 Ex parte communication prohibited is hereby
109 amended as follows:

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111 21.93.710 Ex parte communication prohibited.

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113 a. The hearing officer appointed to review a decision issued by the Commission shall not have
114 ex parte communication with any person. "Ex parte communication" means to communicate,
115 directly or indirectly, with the appellant, other parties or persons affected by the appeal, or
116 members of the public concerning an appeal or issues specifically presented in the notice of
117 appeal, either before the appeal hearing or during any period of time the matter is under
118 consideration ~~or subject to reconsideration~~, without notice and opportunity for all parties to
119 participate in the communication.

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121 b. This section does not prohibit:

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123 1. Communications between municipal staff and Commission or the hearing officer
124 where:

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

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

2. Communications between the Commission and its legal counsel.

c. Repealed by Ord. 21-44(S).

d. Repealed by Ord. 21-44(S).

e. Repealed by Ord. 21-44(S).

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

1. For any person to knowingly have or attempt to have ex parte communication with a hearing officer in violation of subsection (a) of this section.

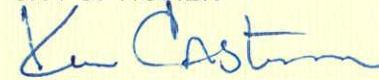
2. For the hearing officer to knowingly receive an ex parte communication in violation of subsection (a) of this section.

3. For the hearing examiner to knowingly fail to place on the record any matter that is an ex parte contact.

Section 5. This Ordinance is of a permanent and general character and shall be included in the City Code.

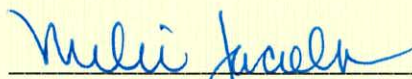
ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this 27th day of June, 2022.

CITY OF HOMER



KEN CASTNER, MAYOR

ATTEST:



MELISSA JACOBSEN, MMC, CITY CLERK

YES: 6

NO: 0

ABSTAIN: 0

ABSENT: 0



- 167 First Reading: 6.13.22
- 168 Public Hearing: 6.27.22
- 169 Second Reading: 6.27.22
- 170 Effective Date: 6.28.22