

**CITY OF HOMER
HOMER, ALASKA**

City Manager

ORDINANCE 25-11(S)(A-2)

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA,
AMENDING HOMER CITY CODE CHAPTER 21.90, ADMINISTRATION
AND ENFORCEMENT, TO DIRECT APPEALS TO THE OFFICE OF
ADMINISTRATIVE HEARINGS OR A HEARING OFFICER APPOINTED
BY THE CITY MANAGER.

WHEREAS, the City of Homer hereby ~~wishes to~~ reassigns responsibility for
administrative appeals of zoning enforcement orders from the Planning Commission to the
State of Alaska Office of Administrative Hearings or a hearing officer appointed by the City
Manager.

NOW, THEREFORE, The City of Homer Ordains:

Section 1: The Homer City Council hereby amends Homer City Code Chapter 21.90,
Administration and Enforcement, as follows:

Chapter 21.90 Administration and Enforcement

21.90.010 Function of Department of Administration.

The administration and enforcement of the Homer Zoning Code is a function of the
Department of Administration under the supervision of the City Manager. [Ord. 08-29, 2008].

21.90.020 City Planner – Functions and powers.

a. The City Manager may appoint a City Planner and one or more assistants, however
denominated.

b. If appointed by the City Manager, the City Planner shall have all functions and may exercise
all powers necessary to administer and enforce the zoning code. Assistants to the City Planner
may exercise the administration and enforcement functions and powers of the City Planner
under the City Planner's supervision.

c. Administration and enforcement functions and powers of the City Planner include, but are
not limited to, the following:

1. Maintaining records of all zoning text and district changes related to this title.
2. Providing technical assistance upon request by the City Manager.

3. Providing and processing all applications under this title.
4. Interpreting and enforcing this title.
5. Maintaining records of all activity related to this title.
6. Other functions and powers assigned by this title. [Ord. 08-29, 2008].

21.90.030 Invalid land use permits – Correction of violations.

Any permit issued in violation of this title is voidable upon written notice from the City Planner or City Manager. The issuance of a permit under the Homer Zoning Code may be conditioned upon the correction of any or all other violations of the Homer Zoning Code, the regulations promulgated under the Homer Zoning Code, and the terms and conditions of any previously issued permits issued under the Homer Zoning Code on the property that is the subject of the permit. [Ord. 14-56(A) § 2, 2015; Ord. 08-29, 2008].

21.90.040 Inspections – Right of entry.

a. Subject to subsection (b) of this section, at any reasonable time, the City Manager, City Planner, or other City staff member designated in writing by either of them may, upon presentation of proper identification, enter upon and inspect any land, building or premises where he or she has probable cause to believe there exists a violation, or enter upon any land, building or premises to perform a duty of an official under this title.

b. Where the Constitution of the United States or of the State so requires, the official shall obtain an administrative search warrant authorizing an inspection and exhibit the warrant to the person in charge of the premises before conducting the inspection. The official may apply to the trial courts of the State to obtain a warrant, stating in the application the name and address of the premises to be inspected, the authority to conduct the inspection, the nature and extent of the inspection, the facts and circumstances justifying the inspection, and any other information necessary to obtain the warrant. Warrants issued under this section should be returned within 10 days. [Ord. 08-29, 2008].

21.90.050 Evidence of compliance.

Upon request by the City Planner, any person who has obtained a permit under the Homer Zoning Code shall provide evidence showing compliance with the terms of the permit. The obligation to provide evidence of compliance is a condition of every permit granted under the zoning code, whether expressly stated in the permit or not. [Ord. 08-29, 2008].

21.90.060 Enforcement orders.

21.90.060 Enforcement orders.

a. In addition to any other remedy or other method of enforcement available under the Homer Zoning Code or other provision of the Homer City Code or other law, the City Manager or the City Planner may order:

1. The discontinuation of a use of land or a structure that is in violation of the Homer Zoning Code, a regulation or a permit.

2. The abatement or removal of a structure or part of a structure that is in violation of the Homer Zoning Code, a regulation or a permit.

3. The discontinuation of construction or other activity preparatory to a structure or use of real property that is in violation of the Homer Zoning Code, a regulation or a permit.

4. The suspension or revocation of a permit under which a violation of the Homer Zoning Code or regulations is occupied, maintained, constructed or established.

5. The restoration of any structure, vegetation, land, water body or other thing upon the land that is destroyed, damaged, altered or removed in violation of the Homer Zoning Code, regulations or a permit.

6. Any other action necessary to prevent, abate or discontinue a violation of the Homer Zoning Code, a regulation or a permit.

b. An enforcement order issued under subsection (a) of this section may be directed to one or more violators.

c. A written enforcement order issued under subsection (a) of this section that is served on a violator personally or by certified mail is ~~immediately~~ immediately appealable to the Office of Administrative Hearings ~~or the Planning Commission~~ a hearing officer. An appeal must be filed within ~~1030~~ 15 days of service of the written enforcement order. Failure to appeal to the ~~Planning Commission~~ an enforcement order within ~~1030~~ 15 days of service shall constitute a waiver of all rights of appeal from the order. ~~The procedure for appeals is set forth in Chapter 21.93 HCC.~~ **Chapter 21.93 HCC is applicable for appeals filed pursuant to this section.**

d. During such time that an enforcement order is under appeal, no further use or development contrary to the order may continue.

e. Upon correction of the condition or termination of the activity that caused the issuance of an enforcement order under subsection (a) of this section, the officer who issued the order may terminate the order or issue written confirmation of satisfactory compliance with the order.

f. An enforcement order need not be issued before a prosecution or legal action is commenced with respect to a violation of the Homer Zoning Code, a regulation or a permit. The pendency of any proceeding regarding an enforcement order issued under subsection (a) of this section does not stay any prosecution or other legal action with respect to the violation that is the subject of the enforcement order. [Ord. 08-29, 2008].

Section 2. This ordinance shall take effect upon its adoption by the Homer City Council.

Section 3: This ordinance is of a permanent and general character and shall be included in the City Code.

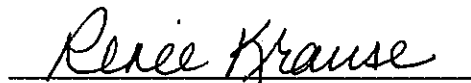
ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this 14th day of April, 2025.

CITY OF HOMER



RACHEL LORD, MAYOR

ATTEST:



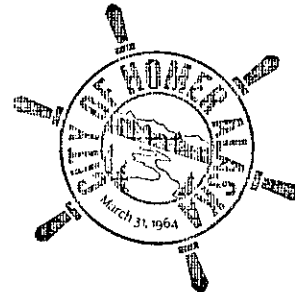
RENEE KRAUSE, MMC, CITY CLERK

YES: 6

NO: 0

ABSTAIN: 0

ABSENT: 0



First Reading: 2/10/25

Public Hearing: 2/24/25

Second Reading: 3/10/25, 4/14/25

Effective Date: 4/15/25



MEMORANDUM

Ordinance 25-11(S)(A) An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code Chapter 21.90 Administration and Enforcement to Direct Appeals to the Office of Administrative Hearings or a Hearing Officer Appointed by the City Manager. City Manager.

Item Type: Backup Memorandum
Prepared For: Mayor Lord and Homer City Council
Date: April 14, 2025
From: Ryan Foster, City Planner
Through: Melissa Jacobsen, City Manager

On February 24, 2025 the Homer City Council referred Ordinance 25-11(S)(A) to the Planning Commission. The Planning Commission held a public hearing on March 19, 2025, and by unanimous consent, recommended City Council adopt Ordinance 25-11(S)(A) with the following amendment: 1. Changing the appeal period referenced on lines 113 and 114 to 30 days from 10 days. Attached are Staff Report 25-16 and the March 19, 2025 Planning Commission Unapproved Meeting Minutes with detailed information on the application and public hearing.

RECOMMENDATION:

City Council adopt Ordinance 25-11(S)(A) with the following amendment: 1. Changing the appeal period referenced on lines 113 and 114 to 30 days from 10 days.

Attachments:

Planning Commission Staff Report 25-16
March 19, 2025 Planning Commission Unapproved Meeting Minutes



City of Homer

www.cityofhomer-ak.gov

Planning

491 East Pioneer Avenue
Homer, Alaska 99603

Planning@ci.homer.ak.us

(p) 907-235-3106

(f) 907-235-3118

Staff Report PL 25-016

TO: Homer Planning Commission
FROM: Ryan Foster, City Planner
DATE: March 19, 2025
SUBJECT: Ordinance 25-11(S) An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code Chapter 21.90 Administration and Enforcement to Direct Appeals to the Office of Administrative Hearings or a Hearing Officer Appointed by the City Manager.

Introduction

On February 24, 2025 the Homer City Council referred Ordinance 25-11(S) to the Planning Commission. The purpose of this ordinance is to ensure consistency across all types of appeals of planning decisions by sending them all to the OAH for review. Under current code, only one type of appeal is heard by the Planning Commission: the appeal of an enforcement order. An enforcement order is generally a certified letter from the City Planner notifying a party of a zoning violation, and the delivery of the letter typically begins a formal appeal period, as well as the levying of fines. This is the only circumstance in Title 21 that an action is appealable to the Planning Commission. Ordinance 25-11(S) would clarify that that appeals of enforcement orders would be heard by the OAH, like all other appeals of planning decisions and actions.

Per HCC 21.95.010 Initiating code amendment

An amendment to this title may be initiated by any of the following:

- a. A member of the City Council;
- b. A member of the Planning Commission;
- c. The City Manager;
- d. The City Planner; or
- e. A petition bearing the signatures, and the printed names and addresses, of not less than 50 qualified City voters. [Ord. [10-58](#), 2011].

Per HCC 21.95.010, an amendment to this title has been initiated by the Homer City Council.

HCC 21.95.040 Planning Department review of code amendment

The Planning Department shall evaluate each amendment to this title that is initiated in accordance with HCC 21.95.010 and qualified under HCC 21.95.030, and may recommend approval of the amendment only if it finds that the amendment:

a. Is consistent with the Comprehensive Plan and will further specific goals and objectives of the plan.

Analysis: There are multiple goals and objectives from the 2018 Comprehensive Plan that support this text amendment to reassign administrative appeals of zoning enforcement orders:

GOAL 1: Guide Homer's growth with a focus on increasing the supply and diversity of housing, protect community character, encouraging infill, and helping minimize global impacts including limiting greenhouse gas emissions.

Objective B: Develop clear and well-defined land use regulations and update the zoning map in support of the desired pattern of growth.

This code amendment helps develop clear and well-defined land use regulations by aligning appeals of enforcement orders with the rest of the Title 21 Planning and zoning code.

GOAL 3: Encourage high quality buildings and site design that complements Homer's beautiful natural setting.

Objective A: Create a clear, coordinated regulatory framework that guides development. Clear, predictable, consistent rules and regulations are key to achieving standard, quality design. These rules and regulations have to fit the context of the marketplace and be accepted by the development community. Overregulation is a disincentive, while under-regulation will achieve less than desired results. Specific policies addressing this topic include:

Implementation Strategies:

- *Review City adopted plans for consistency*
- *Review rules and regulation options with consideration of operational constraints and community acceptance*

This code amendment helps create a clear and coordinated regulatory framework by aligning appeals of enforcement orders with the rest of the Title 21 Planning and zoning code.

Finding: The proposed amendment is consistent with the Comprehensive Plan.

b. Will be reasonable to implement and enforce.

Analysis: The proposed amendment is rather simple and straightforward and is not difficult to implement and enforce, simply a reassignment of responsibility of administrative appeals of zoning enforcement orders from the Planning Commission to the State of Alaska Office of Administrative Hearings.

Finding: The proposed amendment will be reasonable to implement and enforce.

c. Will promote the present and future public health, safety and welfare.

Analysis: The present and future public health, safety, and welfare would be maintained. The zoning enforcement order process remains, the only difference being that the State of Alaska Office of Administrative Hearings would have the responsibility of appeals instead of the Planning Commission.

Finding: The proposed amendment will promote the present and future public health, safety and welfare.

d. Is consistent with the intent and wording of the other provisions of this title.

Analysis: The intent and wording of the other provisions of this title are consistent with the proposed reassignment of administrative appeals of zoning enforcement orders.

Finding: The proposed amendment is consistent with the intent and wording of the other provisions of this title.

Recommendation: *Staff recommends the Planning Commission recommend approval of the proposed text amendment to the Homer City Council.*

Attachments:

Draft Ordinance 25-11(S)

CALL TO ORDER

Session 25-06, a Regular Meeting of the Planning Commission was called to order by Chair Scott Smith at 6:30 p.m. on March 19th, 2025 in the Cowles Council Chambers in City Hall, located at 491 E. Pioneer Avenue, Homer, Alaska, and via Zoom Webinar.

PRESENT: COMMISSIONERS BARNWELL, VENUTI, S. SMITH, CONLEY, SCHNEIDER, STARK & H. SMITH

STAFF: CITY PLANNER FOSTER & DEPUTY CITY CLERK PETTIT

CONSULTANTS: SHELLY WADE, AGNEW::BECK

AGENDA APPROVAL

Chair S. Smith read the supplemental items into the record. He then requested a motion and second to approve the agenda as amended.

BARNWELL/CONLEY MOVED TO APPROVE THE AGENDA.

There was no discussion.

VOTE: NON-OBJECTION: UNANIMOUS CONSENT.

Motion carried.

PUBLIC COMMENTS UPON MATTERS ALREADY ON THE AGENDA

RECONSIDERATION

CONSENT AGENDA

A. Unapproved Regular Meeting Minutes of March 5, 2025

H. SMITH/BARNWELL MOVED TO ADOPT THE CONSENT AGENDA AS PRESENTED.

There was no discussion.

VOTE: NON-OBJECTION: UNANIMOUS CONSENT.

Motion carried.

PRESENTATIONS / VISITORS

REPORTS

A. City Planner's Report, Staff Report 25-015

City Planner Foster reviewed his staff report included in the packet, covering the following:

- Comprehensive Plan Update
- March 10, 2025 Council Meeting Recap
 - Ordinance 25-20, Amending Homer City Code by Adding Studio as a Permitted Use in the Residential Office, General Commercial 1, and General Commercial 2 Districts (approved by City Council)
 - Ordinance 25-27, Amending the Homer City Zoning Map to Rezone a Portion of the Rural Residential Zoning District to East End Mixed Use Zoning District (denied by City Council)
- Next Commission report to City Council is March 24, 2025
- Regular Meeting for April 2, 2025 has been cancelled
- Next Regular Meeting is Wednesday, April 16, 2025
- Potential Special Meeting on Tuesday, April 29, 2025 to discuss the Comprehensive Plan Comments that have been compiled

There was brief discussion among the Commission and Shelly Wade of Agnew::Beck regarding the adoption process for the Comprehensive Plan.

PUBLIC HEARINGS

- A. Ordinance 25-11(S), An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code Chapter 21.90, Administration and Enforcement, to Direct Appeals to the Office of Administrative Hearings of a Hearing Office Appointed by the City Manager, Staff Report 25-016

Chair S. Smith introduced the item by reading of the title and deferred to City Planner Foster, who provided a summary review of his staff report included in the packet.

Chair S. Smith opened the public hearing period. With no one wishing to provide testimony, Chair S. Smith closed the public hearing period. He then opened the floor to comments and questions from the Commission.

Commissioner H. Smith noted that there was no fiscal note attached to the draft ordinance that indicates how much it will cost the City to forward appeals to a hearing officer. He opined that the 10-day time limit seemed short given the transient nature of many Alaskans' work lives.

Commissioner Schneider shared that he doesn't see the need for the Planning Commission to act as a hearing officer. He agreed with Commissioner H. Smith that 10 days doesn't seem like enough time, and questioned what it would cost the City.

Commissioners Conley and Barnwell both agreed that 10-day timeframe seemed unreasonably short.

SCHNEIDER/H. SMITH MOVED TO RECOMMEND CITY COUNCIL ADOPT ORDINANCE 25-11(S)(A) WITH THE FOLLOWING AMENDMENTS:

1. CHANGING THE APPEAL PERIOD REFERENCED ON LINES 113 AND 114 BACK TO 30 DAYS FROM 10 DAYS.

There was no further discussion.

VOTE: NON-OBJECTION: UNANIMOUS CONSENT.

Motion carried.

PLAT CONSIDERATION

PENDING BUSINESS

- A. Draft Comprehensive Plan Review and Comments, Staff Report 25-014
Public Comment Received

NEW BUSINESS

INFORMATIONAL MATERIALS

- A. 2025 Planning Commission Calendar
- B. 2025 Planning Commission Meeting Dates and Submittal Deadlines

COMMENTS OF THE AUDIENCE

COMMENTS OF THE STAFF

COMMENTS OF THE MAYOR/COUNCILMEMBER (If Present)

COMMENTS OF THE COMMISSION

ADJOURN

There being no further business to come before the Commission, Chair S. Smith adjourned the meeting at 11:05 p.m. The next Regular Meeting is scheduled for **Wednesday, April 16th, 2025**. A Worksession is scheduled for 5:30 p.m. All meetings are scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska and via Zoom Webinar. Meetings will adjourn promptly at 9:30 p.m. An extension is allowed by a vote of the Commission.

Zach Pettit, Deputy City Clerk II

Approved: _____



MEMORANDUM

Ordinance 25-11, An Ordinance of the City Council of Homer Alaska, Amending Homer City Code Chapter 21.90 Administration and Enforcement, to Direct Appeals to the Office of Administrative Hearings or a Hearing Officer Appointed by the City Manager. City Manager.

Item Type: Backup Memorandum
Prepared For: Mayor Lord and Homer City Council
Date: February 19, 2025
From: Julie Engebretsen, Acting City Manager
Through: Melissa Jacobsen, City Manager

Ordinance 25-11 amends HCC 21.90, Administration and Enforcement. At the last Council meeting, there was public comment and Council discussion about allowing the City Manager to appoint a hearing officer, rather than having all appeals heard by the State of Alaska Office of Administrative Hearings (OAH). The issue of whether or not the City Council wants to use a City Manager appointed hearing officer will be determined under Ordinance 25-12. Should Council determine to utilize solely the OAH to hear appeals, Ordinance 25-11(S) is provided.

The purpose of Ordinance 25-11(S) is to ensure consistency across all types of appeals of planning decisions by sending them all to the OAH for review. Under current code, only one type of appeal is heard by the Planning Commission: the appeal of an enforcement order. An enforcement order is generally a certified letter from the City Planner notifying a party of a zoning violation, and the delivery of the letter typically begins a formal appeal period as well as the levying of fines. This is the only circumstance in Title 21 that an action is appealable to the Planning Commission. Ordinance 25-11 would clarify that that appeals of enforcement orders would be heard by the OAH, like all other appeals of planning decisions and actions.

Recommendation: Refer Ordinance 25-11 or 25-11(S) to the Planning Commission per HCC 21.95.060.



MEMORANDUM

Ordinance 25-11, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code Chapter 21.90, Administration and Enforcement, to Direct Appeals to the Office of Administrative Hearings or a Hearing Officer Appointed by the City Manager. City Manager.

Item Type: Backup Memorandum
Prepared For: Mayor Lord and Homer City Council
Date: January 30, 2025
From: Julie Engebretsen, Community Development Director
Through: Melissa Jacobsen, City Manager

Last spring, Council voiced concern over the lack of city codes. Staff and the attorney spent some time reviewing sections of code that address code compliance, and recommends amendments to Title 1, Title 5, and Title 21. The amendments to title 5 are still being refined and will be brought forward at the next Council meeting.

HCC Title 21.90 provides for Appeals under the Zoning Code. Ordinance 21-44(S) amended city code so that most administrative appeals were no longer heard by the City Council sitting as the Board of Adjustment, or the Planning Commission. However, there is a section of code that still provides for the Planning Commission to serve as the appeal body. Appeals of zoning code enforcement orders are currently still appealable to the Planning Commission. Staff recommends one enforcement process across all sections of Title 21, and find that the hearing officer process has worked well for all other types of appeals.

RECOMMENDATION:

Introduce Ordinance 25-11 and refer to the Planning Commission for review

2/11/25

Re: Ordinance 25-11 and Ordinance 25-12

Dear Mayor and Council.

The City Council should take steps to insure that all administrative appeals are fairly and impartially adjudicated as guaranteed by the US Constitution. For decades the deadline for filing all appeals was 30 days; Ordinance 25-11 now proposes to reduce the filing deadline from 30 days to just 10 days, presumably to prevent the filing of administrative appeals altogether or to deprive appellants sufficient time to properly develop their points on appeal or to hire legal counsel. Contrary to City Attorney Gatti's statements to the council on February 10, 2025, it is of no consolation to an appellant that he can appeal a biased adverse initial decision to the courts. The party who prevails in the initial appeal proceeding has a monumental advantage in subsequent appeals where deference is usually given to the initial (trial) court. Furthermore, appealing to the superior court and beyond is prohibitively expensive. Ordinance 25-11 and Ordinance 25-12 are not only designed to thwart the filing of appeals but to insure that, if an appeal is filed, the scales of justice tilt heavily in favor the city. The Office of Administrative Hearings (OAH) has a responsibility to timely provide a hearing officer/ALJ when one is requested by any Alaskan municipality. The city's publication of a RFP and ensuing vetting of potential hearing officers who might respond would likely be very time-consuming. The City Manager's vetting process would also be totally subjective because HCC no longer states what constitutes a "qualified" hearing officer; presumably that would be anyone inclined to decide the appeal in favor of the city. Please see my February 10, 2025 email regarding judge shopping.

HCC 21.93.020(a)(1) authorizes the appeal of the approval or denial of a zoning permit. Unlike the procedure for many other zoning permits, HCC does not require a public hearing for an application for a zoning permit. HCC 21.70.050(a), regarding zoning permits, requires as follows: "All permits issued under this chapter, including amendments and extensions, shall be displayed for public inspection in a prominent place, readily viewable from the nearest street, at the site for which the permit was obtained. The permit shall be on display prior to commencement of any

work at the site and remain on display until all work is completed.” However, this zoning code requirement is rarely complied with and never enforced. As a consequence, members of the general public are often unaware that a zoning permit has been issued until construction commences. Furthermore, there is no requirement that a zoning permit be displayed immediately after it is issued so a scofflaw zoning permit recipient can simply wait until the appeal deadline lapses before posting the permit. Public hearings should be required for zoning permit decisions and all other decisions subject to appeal under HCC 21.93.020(a). During the time a zoning permit decision is subject to being appealed, no construction should be allowed. HCC 21.70.010(b) states: "The zoning permit required by this section shall be obtained prior to the commencement of any activity for which the permit is required. Failure to do so is a violation." This zoning code provision is also never enforced. There is no provision in HCC 21.93.020 for appealing the commencement of construction without the issuance of a requisite zoning permit. This should now be addressed by the City Council.

HCC 21.93.020(a)(4) authorizes appeals of enforcement orders issued under HCC 21.90.060. HCC 21.90.060(c) states: "A written enforcement order issued under subsection (a) of this section that is served on a violator personally or by certified mail is immediately appealable to the Planning Commission. An appeal must be filed within 30 days of service of the written enforcement order. Failure to appeal to the Planning Commission within 30 days of service shall constitute a waiver of all rights of appeal from the order. The procedure for appeals is set forth in Chapter 21.93 HCC." HCC 21.90.060(d) states: "During such time that an enforcement order is under appeal, no further use or development contrary to the order may continue."

A 30-day filing deadline is appropriate for all administrative appeals, as is the requirement that no related development activities take place during that 30 days and/or until a timely-filed appeal is fully resolved. Otherwise, the appeal could be rendered mute before it is heard and/or decided.

Fiat justitia ruat caelum.

Frank Griswold