

CITY OF HOMER
HOMER, ALASKA

City Manager

ORDINANCE 25-12(A)

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA,
AMENDING HOMER CITY CODE CHAPTER 1.04, GENERAL
PROVISIONS, TO CREATE A HEARING OFFICER APPOINTMENT
PROCEDURE.

WHEREAS, The City of Homer hereby ~~wishes to~~ reassigns responsibility for all **City**
administrative appeals ~~from City staff to the State of Alaska Office of Administrative Hearings,~~
~~but to retain authority to appoint hearing officers outside of the Office of Administrative~~
~~Hearings if desired.~~

NOW, THEREFORE, The City of Homer Ordains:

Section 1: The Homer City Council hereby amends Homer City Code Chapter 1.04,
General Provisions, as follows:

1.04.020 Definitions.

The following words and phrases, whenever used in this code or the ordinances of the City of
Homer, Alaska, shall be construed as defined in this section unless from the context a different
meaning is intended or unless a different meaning is specifically defined and more particularly
directed to the use of such words or phrases:

“City” means the City of Homer, Alaska, or the area within the territorial limits of the City of
Homer, and such territory outside of the City over which the City has jurisdiction or control by
virtue of any constitutional or statutory provision.

“City Attorney” means the City Attorney of Homer.

“City Clerk” means the City Clerk of Homer.

“City Council” or “Council” means the City Council of Homer.

“City Manager” means the City Manager of Homer.

“Computation of time” means whenever a notice is required to be given or an act to be done
within a certain length of time before any proceedings shall be had, the day on which such

notice is given or such act is done shall be counted in computing the time, but the day on which such proceedings are to be had shall not be counted.

“Law” denotes applicable Federal law, the Constitution and statutes of the State of Alaska, this code and the ordinances of the City and, when applicable, any and all rules and regulations which may be promulgated thereunder.

“Mayor” means the Mayor of Homer.

~~“Municipal Judge” or “Municipal Magistrate” means the Municipal Judge or Municipal Magistrate of Homer.~~

“Oath” includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases, the words “swear” and “sworn” shall be equivalent to the words “affirm” and “affirmed.”

“Or” may be read “and,” and “and” may be read “or” if the sense requires it.

“Owner,” applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant or tenant of the entirety, or agent in charge for any of the foregoing, of the whole or a part of such building or land.

“Person” includes a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.

“Personal property” includes every species of property except real property.

“Preceding” and “following” mean next before and next after, respectively.

“Real property” includes lands, tenements and hereditaments.

“Sidewalk” means that portion of a street between the curb line and the adjacent property line intended for the use of pedestrians.

“State” means the State of Alaska.

“Tenant” and “occupant,” applied to a building or land, include any person who occupies the whole or a part of such building or land, whether alone or with others.

“Year” means a calendar year. [Ord. 80-3 § 2, 1980. Code 1967 § 1-100.2].

62 | **1.04.030 Grammatical interpretation.**

63 The following grammatical rules shall apply in the City Code and the ordinances of the City:

64 a. Any gender includes the other genders;

65 b. The singular number includes the plural and the plural includes the singular;

66 c. Words used in the present tense include the past and the future tenses and vice versa, unless
67 manifestly inapplicable;

68 d. Words and phrases not specifically defined shall be construed according to the context and
69 approved usage of the language;

70 e. All words and phrases shall be construed and understood according to the common and
71 approved usage of the language; but technical words and phrases and such others as may have
72 acquired a peculiar and appropriate meaning in the law shall be construed and understood
73 according to such peculiar and appropriate meaning. [Ord. 80-3 § 3, 1980. Code 1967 § 1-
74 100.3].

75 | **1.04.040 Section catchlines.**

76 The words printed at the beginning of the several sections of this code are intended as mere
77 catchlines or catchwords to indicate the general content of the particular section, and shall
78 not be deemed or taken to be the titles of such section nor as any part of the section, nor shall
79 they be so deemed when any of the sections, including the catchlines, are amended or
80 reenacted unless expressly so provided. [Ord. 80-3 § 3, 1980. Code 1967 § 1-100.4].

81 | **1.04.050 Effect of repeal of ordinances.**

82 The repeal of any prior ordinance of the City by any subsequent ordinance shall not operate to
83 revive the provisions of any ordinance which may be repealed by such prior ordinance, unless
84 such revival shall be expressly provided for. Ordinances repealed remain in force for the trial
85 and punishment of all past violations of them, and for the recovery of penalties and forfeitures
86 already incurred, and for the preservation of all rights and remedies existing by them and so
87 far as they apply to any office, trust, proceedings, right, contract or event already affected by
88 them. [Ord. 80-3 § 3, 1980. Code 1967 § 1-100.5].

89 | **1.04.055 Amendments to code.**

90 a. All ordinances enacted by the City Council that add to, amend, or repeal provisions of the
91 Homer City Code shall be deemed to be incorporated in such code as of the effective date of

each ordinance so that reference to this code shall be understood and intended to include such ordinances.

b. All ordinances enacted subsequent to adoption of this code that add to, amend, or repeal provisions of this code may be numbered in accordance with the numbering system of this code and printed in supplemental form for inclusion herein. In the case of repealed titles, chapters, articles, sections, subsections, or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the code by omission from reprinted pages affected thereby. [Ord. 92-24 § 2, 1992; Ord. 82-2, 1982].

1.04.060 Severability of parts of code.

The sections, subsections, sentences, clauses, phrases and words of this code are severable, and if any part of this code is declared unconstitutional, invalid, or ineffective for any reason by a valid judgment or decree of any court of competent jurisdiction, such unconstitutionality, invalidity or ineffectiveness shall not affect any of the remaining parts of the sections, subsections, sentences, clauses, phrases and words of this code. [Ord. 89-12 § 1, 1989; Ord. 82-2 § 5, 1982; Ord. 80-3 § 3, 1980. Code 1967 § 1-100.6].

1.04.065 Altering code.

No person shall change or amend by additions or deletions any part or portion of this code or insert or delete pages, or portions thereof, or alter or tamper with such code in any manner whatsoever except by ordinance or resolution or other official act of the City Council, which will cause the law of the City to be misrepresented thereby. A person violating this section shall be subject to the penalty provisions of HCC 1.16.010. [Ord. 90-21 § 1, 1990].

1.04.070 Laws of the State of Alaska applicable – Violation of State law.

No person shall violate any law of the State of Alaska nor any rule or regulation adopted by any duly authorized agency of the State of Alaska. Violations of the foregoing shall be violations of this code except where jurisdiction of the offense is reserved to the State of Alaska. [Ord. 80-3 § 3, 1980. Code 1967 § 1-100.8].

1.04.080 Hearing Officer Appointment for Administrative Appeals.

a. Unless otherwise provided for in this Code, any appeal taken from any decision, action, or judgment of the City of Homer or its officials, if appealable, shall be appealed to the State of Alaska Office of Administrative Hearings. Alternatively, a hearing officer may be appointed by the City Manager to hear and decide any properly raised appeal.

~~b. A hearing officer appointed by the City Manager as allowed under subsection a., must have experience acting as an administrative law judge or administrative hearing officer, and must be licensed to practice law in the State of Alaska, and such license must be in good standing.~~

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.

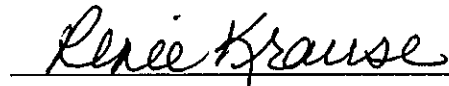
ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this 24th day of February, 2025.

CITY OF HOMER



RACHEL LORD, MAYOR

ATTEST:



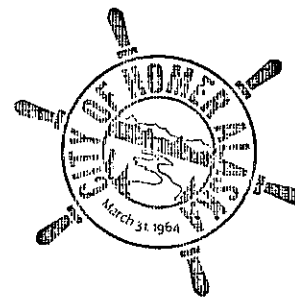
RENEE KRAUSE, MMC, CITY CLERK

YES: 5

NO: 0

ABSTAIN: 0

ABSENT: 1



First Reading: 2/10/25
Public Hearing: 2/24/25
Second Reading: 2/24/25
Effective Date: 2/25/25



MEMORANDUM

Ordinance 25-12, An Ordinance of the City Council of Homer, Alaska Amending Homer City Code Chapter 1.04, General Provisions, to Create a Hearing Officer Procedure. 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 25-12 amends HCC 1.04 General Provisions to address Hearing Officer Appointment Procedures. 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).

If Council wants to stick with just the OAH for appeals, and for clarity, the following amendments would be needed to the ordinance:

1. Amend the Ordinance Title, lines 8 and 9, to read:

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, AMENDING HOMER CITY CODE CHAPTER 1.04, GENERAL PROVISIONS, TO ~~CREATE A HEARING OFFICER APPOINTMENT PROCEDURE.~~ **CLARIFY THE STATE OF ALASKA OFFICE OF ADMINSTRATIVE APPEALS SHALL HEAR APPEALS FOR ALL APPEALABLE ACTIONS.**

2. Amend the WHEREAS clause, Lines 11-13 to read:

WHEREAS, The City of Homer hereby ~~wishes to~~ reassigns responsibility for all **City** administrative appeals ~~from City staff to the State of Alaska Office of Administrative Hearings, but to retain authority to appoint hearing officers outside of the Office of Administrative Hearings if desired.~~

3. Strike lines 123 through 129

The thought behind allowing the City Manager to appoint a hearing officer is that at times the OAH is very busy and it can take a while for appeals to be scheduled. The ability to hire an independent hearing officer could speed up the decision timeline for the parties involved.

City Council and the public expressed concerns on the process to hire a hearing officer. To clarify, the City would issue a Request for Qualifications. Firms would provide proposals on qualified lawyers and fees. Council would then approve (by resolution) term contracts for a short list of these firms. In the

future when a hearing officer is needed, the City Manager would be able to use any of the firms that had been approved, to schedule appeal work. Not all companies would likely be available at any given time, which is why more than one firm would be important. There would likely be increased legal costs for the City – the OAH has a moderate cost rate with the City, and a private firm is likely to be more expensive.

If the City Council would like to keep the option allowing the City Manager to appoint a Hearing Officer when appropriate, the City Attorney has recommended to amend the ordinance Whereas clause as follows for clarity:

WHEREAS, The City of Homer hereby ~~wishes to~~ reassigns responsibility for all **City** administrative appeals ~~from City staff~~ to the State of Alaska Office of Administrative Hearings, but to retain authority to appoint hearing officers outside of the Office of Administrative Hearings if desired.

Recommendation:

City Council Review Ordinance 25-12 and discuss options to appoint a Hearing Officer and make appropriate amendments.



MEMORANDUM

Ordinance 25-12, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code Chapter 1.04, General Provisions, to Create a Hearing Officer Appointment Procedure. 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 1.04 provides for General Provisions. The proposed code provides new code language to specify how a hearing office is appointed for administrative appeals. The City has been using the State of Alaska Office of Administrative Hearings (OAH). While the services of the OAH do work well, at times they are very busy and not able to take on new matters expeditiously. The City finds it desirable for the City Manager to have the ability to hire a qualified hearing officer.

RECOMMENDATION:

Adopt Ordinance 25-12 amending HCC 1.04.