



# City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Planning

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

(p) 907-235-3106

(f) 907-235-3118

### Staff Report PL 20-06

TO: Homer Planning Commission  
THROUGH: Rick Abboud, City Planner  
FROM: Julie Engebretsen, Deputy City Planner  
DATE: January 15, 2020  
SUBJECT: Amending the Homer Planning Commission Policies & Procedures Manual

---

#### Introduction

Periodically, the Commission reviews the Policies and Procedures Manual (PPM), and recommends changes. Amendments are discussed at one meeting, and approved at a following meeting. The City Council then approves the changes by resolution.

The PPM acts in conjunction with the bylaws as a guideline on how the Commission conducts business. The PPM was last reviewed and updated in 2014. Staff proposes to update the document with the recent name change for the Commission (striking "Advisory") and also to clarify the process for deliberations and decisions and findings documents.

The City Clerk's Office has been systematically updating all Commission bylaws, so they are more consistent and uniform. The Planning Commission's duties are a little different and as of yet no changes are being proposed. Staff will be adding bylaw amendments to the Commission work list, as an item staff will bring forward in the next several months. For now, some minor amendments to the PPM is the only change before the Commission.

#### Analysis

*(Items that have ~~strikeout~~ would be deleted. Items that are underlined are new proposed language.)*

1. Lines 91-94 have revised language regarding deliberations.
2. Lines 106-112 has revised language on appeals.

Please bring any questions with you to the meeting.

#### Staff Recommendation

1. Move to recommend adoption of the changes in the draft document.
2. Ask staff any additional questions.
3. Postpone to the following meeting, when the item can acted upon, (likely on the consent agenda.)

## **Attachments**

Draft Policies and Procedures

1

2

3 Policies and Procedures

4 Homer ~~Advisory~~ Planning Commission

5



9 ~~2014~~2020

10

11

12 **QUALIFICATION STATEMENT**

13 Nothing in this chapter should be considered in lieu of any applicable laws and procedures found

14 in the Alaska State Statutes, the Kenai Peninsula Borough Code of Ordinances, where

15 applicable, or the Homer City Code.

16

17

18

19 **INDEX**

	Page
<u>Introduction</u>	<u>2</u>
<u>Public Testimony and Comment</u>	<u>2</u>
<u>Deliberations</u>	<u>3</u>
<u>Appeals</u>	<u>3</u>
<u>Bridge Creek Watershed</u>	<u>4</u>
<u>Conditional Use Permits</u>	<u><del>4</del>5</u>
<u>Nonconformity</u>	<u>6</u>
<u>Preliminary Plats</u>	<u>7</u>
<u>Zoning Ordinance Amendments</u>	<u>8</u>
<u>Variance</u>	<u>9</u>

31

32

33

## INTRODUCTION

The purpose of this policy manual is to clarify the role of the Homer ~~Advisory~~ Planning Commission ("Commission") in administration of the Homer Zoning Ordinance, Title 21, and Subdivisions, Title 22. Further, this manual describes policies for the Commission that are supplementary or explanatory to the requirements of Homer City Code.

This manual is divided into sections, which explain the policies for administering and implementing the land use permitting ordinances and the zoning ordinance.

The policy and procedure manual will be endorsed by resolution of the City Council and may be amended at any meeting of the Commission by a majority plus one of the members, provided that notice of the proposed amendment is given to each member in writing. Proposed amendments to the procedure manual shall be introduced at one meeting and action shall be taken at a subsequent Commission meeting.

## PUBLIC TESTIMONY AND COMMENT

The Commission invites citizen participation regarding matters brought before it for consideration.

For any public participation before the Commission, the citizen should walk to the microphone located at the rostrum directly in front of the Commission podium, sign in, and after receiving recognition from the Chair, state his/her name and address and purpose for appearing. Comments are limited to three minutes. In special circumstances, this time limit may be extended by two minutes by the Chair with concurrence of the body. Items that generate a large amount of citizen interest may be taken out of their regular position on the agenda at the discretion of the Commission as an accommodation to the public. Moving these items on a published agenda will be done at the beginning of the meeting, during the adoption of the agenda.

### Comment time limits

Comments and testimony are limited to three minutes. In special circumstances, this time limit may be adjusted by two minutes up or down by the Chair with concurrence of the body.

### Public Comment

Any citizen desiring to speak on any matter other than public hearing items or preliminary plats on the agenda may do so under "Public Comments." After the public comment period is introduced, the Chair may recognize any member of the public who wishes to address the Commission. No official action will be taken by the Commission under this item.

## Public Hearings and Plats

The public may comment on public hearing items and preliminary plats when those agenda items are addressed by the commission. ~~These are generally items eight and nine on the regular agenda.~~

## Comments on topics not on the agenda

Any citizen desiring to speak on a matter not on the agenda may do so under "Comments of the Audience," ~~item number thirteen on the regular agenda.~~

# DELIBERATION of QUASI-JUDICIAL DECISIONS

When making a quasi-judicial decision, the Commission may choose to deliberate at an open meeting, or may choose to meet at a time, date and location set by the Commission. Such a meeting for deliberations only is not subject to the Open Meetings Act and is not required to be open to the public. When a decision is reached, the Commission will provide staff with findings to support the decision, and number of Commissioners that were in support or against the action. Staff will draft a decision and findings document for Commission approval on the next available consent agenda.

## APPEALS (Quasi-judicial)

### PURPOSE

The purpose of review of appeals before the Commission is to ascertain that errors of fact or interpretation have not been made pertaining to zoning matters. Generally, appeals to the Commission will be appeals of a determination, decision, or permitting matter decided upon by the City Planner.

Appeals of Planning Commission decisions can be considered by The the City Council, sitting as the Board of Adjustment, or a hearing officer. hears appeals of decisions made by the Commission. Some examples of Commission decisions subject to appeal include For example, conditional use permits, variance, etc, can be appealed to the Board of Adjustment, or a matter that was appealed to the Commission can be further appealed to the Board of Adjustment. HCC 21.91 addresses appeal procedures.

### Public Hearing

Appeals before the Commission require a public hearing. Notice of the public hearing will be in accordance with HCC 21.93 and HCC 21.94.

### Review Standards

In reviewing an appeal request, the Commission will consider:

1. Documentation of evidence;
2. The Record of Appeal; and
3. Controlling sections of Chapter 21 Homer City Code;
4. Any new evidence or testimony presented during the public hearing.

Once the public hearing is closed, the Commission cannot hear additional comments on the topic.

### **Determination**

All decisions will be in writing. The officially adopted minutes shall be made part of the decision. A specific statement of findings and reasons supporting the decision shall be made. Copies of the decision will be promptly mailed to the persons participating in the appeal.

An appeal from an action or determination of the Commission is to be filed with the city clerk within thirty days of the distribution of the decision document.

## **REVIEW OF BRIDGE CREEK WATERSHED PROTECTION DISTRICT**

### **PURPOSE**

The Commission may approve development within the Bridge Creek Watershed Protection District (BCWPD) subject to the standards provided in the zoning ordinance and in compliance with the Comprehensive Plan, for those uses or structures specified within the Bridge Creek Watershed Protection District ordinance. The purpose is to prevent the degradation of the water quality and protect the Bridge Creek Watershed to ensure its continuing suitability as a water supply source for the City's public water utility. These provisions benefit the public health, safety, and welfare of the residents of the City of Homer and other customers of the city's water system by restricting land use activities that would impair the water quality, or increase the cost for treatment.

### **Conditional Use**

A conditional use permit may be issued in accordance with Chapter 21.61 and subject to the requirements of the Bridge Creek Watershed Protection District Chapter 21.40.060 Conditional uses and structures, and/or Chapter 21.40.080 Erosion sediment control, Chapter 21.40.090 Agricultural activity, Chapter 21.40.100 Timber growing and harvesting operations, Chapter 21.40.110 Stream buffers, and Chapter 21.40.130 Exceptions to buffers.

### **Preliminary Plats**

The Commission will review and comment on all subdivision proposals within the Bridge Creek Watershed Protection District.

## REVIEW POLICIES FOR CONDITIONAL USE PERMITS (Quasi-judicial)

### PURPOSE

It is recognized that there are certain uses which are generally considered appropriate in a district, provided that controls and safeguards are applied to ensure their compatibility with permitted principal uses. The conditional use permit procedure is intended to allow Commission consideration of the impact of the proposed conditional use on surrounding property and the application of controls and safeguards. This procedure assures that the conditional use will be compatible with the surrounding area and in keeping with the character and integrity of the neighborhood.

### Public Hearing

A public hearing before the Commission is required before a conditional use permit may be granted. Notice of the public hearing will be in accordance with HCC 21.94.

### Review Standards

The Commission has 45 days from the close of the public hearing to make a decision on a conditional use permit application. The applicant may agree, in writing, to the extension of the 45 day time period for Commission action.

The Commission may approve, approve with conditions, or disapprove an application. The Commission must prepare written findings and reasons supporting its decision. If a conditional use permit is denied, the written findings and reasons for that decision will be approved by those who voted against the permit, even if the number against is less than a majority of the Commission.

**Specific conditions may be required.** Such conditions will be part of the terms under which the conditional use permit is granted and violations of such terms shall be deemed a violation of this ordinance. Failure to meet any time limitations imposed by the conditional use permit ~~shall void the permit~~ is grounds for revocation of the conditional use permit per HCC 21.71.070. An extension may be granted following a public hearing on the matter. ~~Extensions will be granted for good cause only.~~ for any cause deemed sufficient by the Commission.

The development of the conditional use project or site, following issuance of the permit, will be in accordance with the conditions of the permit, standards of the zoning regulations and/or the approved site plan. Failure to observe any conditions or standards will be deemed a violation.

### Determination

The Commission must make findings of fact sufficient to support its decision. Upon determination the Commission will document the decision and the basis for decision. The petitioner will be notified by mail by a copy of the meeting minutes and the decision documentation.

## **Appeals**

The Commission Chair will alert the petitioner and other interested parties in attendance that an appeal of the Commission's decision is possible and that the appeal must be filed within thirty days of the distribution of the decision document.

## **NONCONFORMITY REVIEW POLICIES (Quasi -judicial)**

### **PURPOSE**

The Commission shall review and determine the nonconformity of certain structures and uses. The purpose of review is to establish the commencement date of use, establish the effective date of applicable regulations, and formally accept the nonconformity.

City code states which nonconformities are reviewed by the City Planner and which are reviewed by the Commission. Generally, the Commission will be reviewing nonconforming uses within the city, excluding the areas annexed on March 20, 2002.

### **Public Hearing**

The Commission shall conduct a public hearing per HCC 21.94.

### **Review Standards**

It shall be the responsibility of the owner to show proof of continuing nonconformity of any property, use or structure.

Prior to determining the nonconformity of a use or structure, the Commission will determine:

1. The commencement date of use;
2. The effective date of applicable regulations.

There may exist uses, or structures which were legal before the effective date of the controlling regulation, but which are now prohibited under the terms of the existing ordinance. See HCC 21.61.040.

To avoid undue hardships, actual construction lawfully begun prior to the effective date of the zoning ordinance will be allowed to continue provided the work will be carried on diligently. Actual construction is defined as the placement of materials in a permanent position and fastened to produce a product.

### **Nonconforming Uses of Land/Structures**

When a lawful structure exists prior to September 28, 1982, or March 20, 2002 for annexed areas, but does not meet the district or ordinance requirements, it shall be considered nonconforming.



Nonconforming structures may be continued and/or expanded only if the nonconformity of the structure does not increase.

Legally existing structures are those that:

1. Exist prior to effective date of Ordinance 4-300-2 (Interim Zoning Ordinance) dated June 13, 1966.
2. Exist prior to effective date of Ordinance No. 33 (Kenai Peninsula Borough) dated May 2, 1967 and are in compliance with Ordinance 4-300-2.
3. Exist prior to effective date of Ordinance 78-13 (Kenai Peninsula Borough) dated May 16, 1978 and are in compliance with Kenai Peninsula Borough Ordinance No. 33 and Homer Ordinance 4-300-2.
4. Exist prior to effective date of Ordinance 82-15 (Homer Zoning Ordinance) dated September 28, 1982 and are in compliance with previous zoning ordinance requirements.

Once a structure made nonconforming by this title is abandoned or brought into conformity with this title, the structure shall thereafter conform to the regulations of the zone in which it is located, and the nonconformity shall not be allowed to continue.

A lawful nonconforming use may continue so long as it remains lawful. No nonconforming use may be enlarged to occupy a greater area of land than was occupied as of the date it became nonconforming, or August 12, 2008, whichever is later. Once a use made nonconforming by this title is abandoned, changed, discontinued, or ceases to be the primary use of a lot, the use of that lot shall thereafter conform to the regulations of the zone which the lot is located, and the nonconformity shall not thereafter be resumed or allowed to continue.

### **Determination**

Upon presentation of such proof that establishes the continuing nonconformity of any use or structure, the Commission shall formally accept the nonconformity, as a valid use or structure until such time as the use ceases. Upon determination by the ~~Planning~~ Commission, staff will document the decision and basis for decision. The petitioner will be notified by mail by a copy of the relevant meeting minutes and the decision documentation.

### **Appeals**

The Commission Chair will alert the petitioner and other interested parties that an appeal of the Commission's decision is possible. The appeal must be filed within thirty days of the distribution of the decision document. The City Clerk will process all appeals.

## PRELIMINARY PLAT REVIEW POLICIES

### PURPOSE

The purpose of this policy statement is to clarify the position of the Commission with regard to their recommendations of acceptance or denial of preliminary plats. This review provides the opportunity for the City to make comments and recommendations to the Kenai Peninsula Borough Planning Commission. The Kenai Peninsula Borough holds platting powers for the entire borough, both inside and outside the city limits. The Homer ~~Advisory~~ Planning Commission acts as an advisory body to the Borough Planning Commission on plat matters inside city limits and within the Bridge Creek Watershed Protection District.

The preliminary plat process allows an exchange of information between the subdivider, the Planning and Zoning Office, and the Commission. Proper utilization of the preliminary process should result in a recommendation of approval for the majority of the plats.

### Procedures

**General.** Kenai Peninsula Borough Code 20.4225.050 governs subdivisions in first class cities. A surveyor will submit one full size copy and a 11" x 17" reduced copy of the preliminary plat to the Planning Director when subdividing land in the City of Homer or the Bridge Creek Watershed Protection District. The Commission shall review the plat and take action within forty-nine days of the date of receipt unless the applicant agrees to an extension. Recommendations of the Commission based upon lawful ordinances shall be incorporated in the final plat.

The Commission will consider plats and make recommendations. The staff report and minutes are then forwarded to the borough planning department.

The borough planning commission makes the final determination. Once the preliminary plat has been accepted, the final plat is submitted to the borough for either administrative approval or approval by the borough planning commission.

## ZONING ORDINANCE AMENDMENTS

### PURPOSE

The Commission will review all proposals to amend the zoning ordinance or zoning map and make recommendations to the City Council per HCC 21.95. Neither the Commission nor City Council may consider a zoning ordinance request which is substantially the same as any other amendment submitted within the previous nine months and which was rejected.

### Initiation/Application

Amendments to the zoning ordinance will be made in accordance with HCC 21.95. When the amendment request is accepted as complete by the Planning Department, the matter will be presented within 30 days to the ~~Planning~~ Commission, according to the Commission meeting schedule and due dates.

338  
339 **Public Hearing**

340 A public hearing before the Commission is required. Notice of the public hearing will be in  
341 accordance with HCC 21.94. In the case of a zoning ordinance amendment or major district  
342 boundary change, no notification of neighboring property will be required, but notices will be  
343 posted in at least three public places.  
344  
345

346 **Review Standards**

347 Zoning text and zoning map amendments shall be reviewed according to HCC 21.95.  
348

349 **Determination**

350 The Planning Commission shall submit to the City Council its written recommendations per  
351 21.95.060(d) regarding the amendment proposal along with the Planning Department's report  
352 on the proposal, all written comments on the proposal, and an excerpt from its minutes showing  
353 its consideration of the proposal and all public testimony on the proposal. Such  
354 recommendations of the Commission shall be advisory only and shall not be binding on the City  
355 Council.  
356  
357

358 **POLICY FOR REVIEW OF ZONING VARIANCES**  
359 **(Quasi-judicial)**  
360

361 **PURPOSE**

362 The Commission may grant a variance to provide relief when a literal enforcement of the  
363 regulations and standards of the zoning ordinance, Chapter 21, would deprive a property owner  
364 of the reasonable use of his real property.  
365

366 The purpose of review is to ascertain that those conditions specified as necessary to granting a  
367 variance shall be satisfied; that the variance will be the minimum necessary to permit the  
368 reasonable use of land or structure, and that the variance will not be granted which will permit a  
369 land use in a district in which that use is otherwise prohibited.  
370

371 **Public Hearing**

372 A public hearing before the Commission is required before a variance may be granted. Notice  
373 of the public hearing will be in accordance with HCC 21.94.  
374

375 **Review Standards**

376 In reviewing a variance request and prior to granting a variance, the Commission must consider  
377 the standards of review as established in HCC 21.72. All of the conditions must exist before a  
378 variance can be granted.  
379

380 **Determination**

381 The Commission must prepare written findings and reasons supporting its decision. If a variance  
382 is denied, the written findings and reasons for that decision will be approved by those who voted

383 against the permit, even if the number against is less than a majority of the Commission. Upon  
384 determination, staff will document the decision and the basis for decision. The petitioner will  
385 be notified by mail with a copy of the meeting minutes (those portions that apply to the petition)  
386 and the decision documentation. The Commission Chair will alert the petitioner and other  
387 interested parties that an appeal of the Commission's decision is possible. The appeal must be  
388 filed within thirty days of the distribution of the decision document. The City Clerk will process  
389 all appeals.