

Title 17

ZONING

Chapters:

Chapter 17.04 GENERAL PROVISIONS

Sections:

17.04.010 Title.

This title may be referred to and cited as the zoning ordinance of the city.
(Ord. 80-14 § 1 (part), 1980: prior code § 13.05.010).

17.04.020 Purpose.

A. The purposes of this title are:

1. To accept the delegation pursuant to AS 29.40.010 et seq. of planning, platting and land use regulations authority from the Northwest Arctic Borough as set forth in Northwest Arctic Borough Ordinance 89-21 AM1 and codified in Northwest Arctic Borough Code Section 8.12.030;
2. To implement the city's planning, platting, and land use regulation powers to the greatest extent possible under the borough delegation and state law; and
3. To promote the public health, safety and welfare; to protect the city's watershed; to provide for adequate light, pure air and pure water; to provide safety from fire and other hazards; and, to provide planning, platting and land use regulation for the city of Kotzebue to the greatest extent possible consistent with local, state and federal laws.

B. This chapter shall be interpreted in accordance with the purposes stated in subsection A of this section.

(Ord. 01-2 § 1, 2000: Ord. 80-14 § 1 (part), 1980: prior code § 13.05.020).

17.04.030 Applicability.

This chapter governs all structures and uses of land and structures within the city. Where this chapter restricts structures, or uses of land or structures, to a greater degree than other statutes, ordinances, or private agreements, conveyances, covenants, conditions or restrictions, this chapter shall govern. Except as otherwise provided by law, this chapter governs structures and land owned by the city, the state and its instrumentalities and political subdivisions in the same manner as it governs structures and land owned by private persons.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.05.030).

17.04.040 Compliance required.

Unless otherwise provided by law, no person may construct, erect, maintain, use, alter, repair or move any structure, or establish, alter or maintain any use of land in the city except as permitted under this chapter.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.05.040).

17.04.050 Districting of city.

The city shall be divided among the use districts specified in this title.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.25.010).

17.04.060 Fees.

The council shall establish a schedule of fees for applications and for appeals under this title. The schedule of fees shall be posted in the city offices and may be altered or amended only by the council.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.10.040).

Chapter 17.08 DEFINITIONS

Sections:

17.08.010. Applicability.

As used in this title, the words set out in this chapter mean as defined in this chapter.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010 (part)).

17.08.020 Accessory.

"Accessory," applied to a use or structure, means customarily subordinate to or incidental to, and located on the same lot with, a principal use, building or structure.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(a)).

17.08.030 Alley.

"Alley" means a public right-of-way providing a secondary access to abutting properties.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(b)).

17.08.040 Alteration.

"Alteration" means any change, addition or modification in construction or occupancy.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(c)).

17.08.050 Building

"Building" means any structure built for the support, shelter or enclosure of persons, animals, goods or property of any kind.

(Ord. 80-14 § 1 (part), 1980: prior code: 13.50.010(d)).

17.08.060 Building line.

"Building line" means the outside perimeter of a structure.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(e)).

17.08.070 Commission.

"Commission" means the planning commission of the city.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(f)).

17.08.080 Dwelling, multiple-family.

"Dwelling, multiple-family" means a building consisting of more than two dwelling units.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(j)).

17.08.090 Dwelling, one family.

"Dwelling, one family" means a detached building consisting of one dwelling unit.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(h)).

17.08.100 Dwelling, two-family.

"Dwelling, two-family" means a detached building consisting of two dwelling units.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(i)).

17.08.110 Dwelling unit.

"Dwelling unit" means a building or part thereof providing independent and complete cooking, living, sleeping and toilet facilities for one family or for one or more unrelated individuals.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(g)).

17.08.120 Essential service.

"Essential service" means publicly owned and operated gas, electrical, telecommunication, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire

alarm boxes, traffic signals, hydrants, and other similar equipment and accessories in connection therewith, not including buildings and major structures.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(k)).

17.08.130 Home occupation.

"Home occupation" means a commercial use conducted entirely within a dwelling unit by the permanent inhabitants thereof, which use is clearly secondary to the use for dwelling purposes and does not change the character or appearance of the dwelling.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(l)).

17.08.140 Lot.

"Lot" means a parcel of land shown as an individual unit on the most recent plat of record.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(m)).

17.08.150 Lot, corner.

"Lot, corner" means a lot located at the intersection of two or more streets.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(n)).

17.08.160 Lot line.

"Lot line" means a property line bounding a lot.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(o)).

17.08.170 Nonconforming.

"Nonconforming" means not complying with all applicable provisions of this title.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(p)).

17.08.180 Nonconformity.

"Nonconformity" means a nonconforming use or structure.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(q)).

17.08.190 Person.

"Person" includes any individual, partnership, joint venture, corporation, unincorporated association, or governmental entity.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(r)).

17.08.200 Public right-of-way.

"Public right-of-way" means any street, alley or other land on which the public has legal right of passage.
(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(s)).

17.08.210 Setback.

"Setback" means the distance between a lot line and the nearest building line.
(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(t)).

17.08.220 Street.

"Street" means a public right-of-way which affords the principal means of access to abutting property.
(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(u)).

17.08.230 Structure.

"Structure" means anything which is constructed or erected and located on or under the ground, or attached to something fixed to the ground.
(Ord. 80-14 § 1 (part), 1980: prior code § 13.50.010(v)).

Chapter 17.12 ZONING MAP AND ZONING MAP REQUIREMENTS

Sections:

17.12.10 Zoning map—Adoption.

- A. The council, by ordinance adopted under the procedure in Sections 13.20.040-060, shall divide the city among the use districts established in this title.
- B. For the convenience of the public, the use districts designated by the council shall be depicted on a map designated as the zoning map of the city. When use district boundaries or other matters depicted on the zoning map are changed, the zoning map shall be changed accordingly on the effective date of adoption of the change.
- C. An ordinance under subsection A of this section, and any action effecting a change described in subsection B of this section, shall include a legal description of the property to which its provisions apply. If the zoning map conflicts with the text of such an ordinance or other action, the text of the ordinance or action, interpreted in accordance with Section 13.20.030, shall govern.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.20.010).

17.12.020 Zoning map—Identification—Amendment—Filing.

- A. The zoning map shall be identified by the signature of the mayor, attested by the city clerk, under the statement, "This certifies that this is the zoning map of the City of Kotzebue, depicting the use districts established in the City by the ordinances listed hereon."
- B. The land area affected by an amendment to the zoning map shall be shown on the map with a serial number which also shall be entered in a table displaying the ordinance number, the date of adoption of the ordinance, and the signature of the clerk attesting the recording of the change.
- C. A certified copy of the current zoning map shall be kept on file in the city office.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.20.020).

17.12.030 Interpretation of district boundaries.

In determining the boundaries of any use district, the following rules apply:

- A. Where a district is bounded by a street or alley, the district shall extend to the centerline of the street or alley.
- B. All submerged lands and tidelands within the city that are not otherwise designated within the boundaries of any use district shall be within the use district immediately adjacent to them.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.20.030).

17.12.040 Amendment—Initiation.

The following may initiate a zoning map amendment:

- A. The council;
- B. The planning commission;
- C. Any government agency operating in the city;
- D. Any private person, provided that the application includes a petition signed by the owner or owners of a majority of the land area, excluding streets, that is the subject of the proposed amendment.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.20.040).

17.12.050 Amendment—Planning commission recommendation.

- A. Before the council acts on a proposed zoning map amendment, the commission shall consider the proposed amendment at a public hearing and report its recommendation to the council. In its recommendation the commission shall consider:
 - 1. The need and justification for the proposed amendment including findings as to the effect which the proposed change would have on the objectives of the city's comprehensive plan;
 - 2. The effect which the proposed amendment would have on surrounding properties.
- B. The commission shall forward its recommendation to the council within thirty days of the filing of the amendment application.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.20.050).

17.12.060 Amendment—Council action.

An ordinance effecting a proposed zoning map amendment shall be submitted to the council with the commission's recommendation. The council shall hold at least one public hearing before acting on the ordinance. The council shall act on the proposed amendment within three consecutive meetings following the conclusion of the public hearing, unless the applicant agrees to an extension of time for council action.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.20.060).

Chapter 17.16 GENERAL USE DISTRICT

Sections:

17.16.010 Purpose.

The general use district is intended to apply to the predominately residential sections of the city. The district regulations prohibit industrial uses and other uses which would be a nuisance to nearby residences, but do not prohibit home occupations which would have no detrimental effect on the surrounding residential area.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.25.020(a)).

17.16.020 Permitted uses.

Permitted uses in the general use district:

- A. Single, two-family, and multifamily dwellings;
- B. Home occupations;
- C. Schools, hospitals, parks and playgrounds, and other public uses;
- D. Churches, parsonages and cemeteries;
- E. Accessory uses customarily incidental to, and appurtenant to, a permitted use.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.25.020(b)).

Chapter 17.20 COMMERCIAL USE DISTRICT

Sections:

17.20.010 Purpose—Predesignation required.

Commercial use district areas shall be designated on the zoning map at such time as development requiring this type of zoning is proposed. The district regulations are designed to encourage businesses and offices to concentrate in a central commercial area and in planned commercial subcenters. Some uses not requiring a central location are excluded from this district. Encouraging commercial and office concentration is intended to further the convenience and welfare of the general public and is considered especially important where many people have no vehicular transportation and walk from place to place within the community.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.25.030(a)).

17.20.020 Permitted uses.

Permitted uses in the commercial use district:

- A. Multifamily dwellings;
- B. Home occupations;
- C. Wholesale and retail business establishments, business and professional offices, and incidental manufacturing, processing and storage of goods for sale at retail or wholesale on the premises, but not to include any open storage or repair yard;
- D. Accessory uses customarily incidental to, and appurtenant to, a permitted use.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.25.030(b)).

17.20.030 Setbacks.

Development Requirements. Buildings in the commercial use district shall be set back from property lines as follows:

- A. Minimum setback from streets shall be ten feet;
- B. Minimum setbacks from public alleys shall be five feet;
- C. On all property lines not adjoining a public right-of-way, there shall be no minimum setback requirement, except that wherever a commercial district adjoins a general use district, the minimum setback for all structures within the adjoining commercial district area shall be ten feet.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.25.030(c)).

Chapter 17.24 INDUSTRIAL DISTRICT

Sections:

17.24.010 Purpose.

The industrial district is intended to apply to areas where the land is best used for industrial purposes. The district regulations permit a wide range of industrial uses and discourage land uses which might preempt land better used for current or future industrial development.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.25.040(a)).

17.24.020 Permitted uses.

Permitted uses in the industrial district:

- A. Industrial and commercial establishments;
- B. Transportation facilities;
- C. Power plants, public maintenance yards, water storage and sewage treatment facilities;
- D. Accessory uses customarily incidental to, and appurtenant to, a permitted use, including dwellings.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.25.040(b)).

Chapter 17.28 SUPPLEMENTARY REGULATIONS

Sections:

17.28.010 Applicability.

Except as this chapter provides otherwise, the provisions of this chapter apply within all use districts.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.30.010).

17.28.020 Nuisance effects and hazards.

- A. Notwithstanding any provision of this title to the contrary, no person may establish or maintain any use of land or a structure that causes or reasonably may be expected to cause noise, vibration, smoke, dust or other particulate matter, humidity, heat or glare, at or beyond any lot line on which the use is located, to a degree that prevents the reasonable use of other land or structures in accordance with this title, or that is injurious to the public health, safety, convenience or welfare.
- B. Before a building permit is issued for a use of or structure that may have the effects described in subsection A of this section, the commission shall determine whether it will have those effects. The building permit shall not be issued unless the commission finds that, through the use of mitigating measures or otherwise, the proposed use will not have such effects.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.30.020).

17.28.025 Business hours.

- A. During the period commencing at the beginning of the school year no retail business establishment shall remain open for business between the hours of ten p.m. and six a.m. of each day from ten p.m. Sunday night through six a.m. Friday. Businesses must remain closed from twelve midnight to six a.m. beginning Friday night through six a.m. Sunday. On those days during the school year when there is no school the following day retail business establishments may stay open until midnight.
- B. During the portion of the calendar year when school is not in session no retail establishment shall remain open between the hours of twelve midnight and six a.m.

(Ord. 90-9 § 1, 1990).

17.28.030 Essential services.

Essential services are permitted in all use districts.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.30.030).

17.28.040 Stripping topsoil.

No person may strip, excavate or otherwise remove topsoil from a lot for sale or use other than on the premises, except as necessary in connection with the construction or alteration of a structure on the premises, or excavation or grading incidental thereto.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.30.040).

17.28.050 Removal of gravel or fill.

Except for excavating and moving material within a lot, no person may remove gravel or fill material from a lot without first obtaining a permit therefor from the administrative official. The administrative official shall not issue such a permit unless he finds that the permitted activity will increase the land within the city that is suitable for community use.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.30.050).

17.28.060 Visibility for corner lots.

No fence, wall, hedge, or other structure or planting may be erected, placed or maintained within the area on a corner lot bounded by the lot lines abutting streets and a line intersecting those lot lines at points ten feet from their intersection, unless the height of the fence, wall, hedge, or other structure is no greater than three feet.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.30.060).

17.28.070 Bulk fuel storage.

All bulk-fuel facilities shall be located and designed in accordance with standards established by state law and enforced by the State Fire Marshal.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.30.070).

17.28.080 Off-street parking.

Adequate off-street parking shall be provided for each use. For each residential building there shall be a minimum of two parking spaces, or three parking spaces for each two dwelling units, whichever is greater. Required parking spaces for a residential building shall be on the same lot as the building. For each other use there shall be sufficient off-street parking to accommodate all vehicular traffic associated with the use, either on the same lot as the use or within two hundred feet of that lot.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.30.080).

17.28.090 Off-street loading.

Off-street areas for loading and unloading vehicles shall be provided on any lot used for any nonresidential use where substantial amounts of goods are received or shipped at regular intervals. Loading areas shall be of sufficient size to permit loading and unloading without interference with or projection into any public right-of-way, street or sidewalk. Loading areas shall be provided with access to an alley or, if no alley adjoins the lot, with access

to a street. Required yards may be used for the purpose; however, no required off-street parking area may be used for off-street loading.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.30.090).

17.28.100 Minimum lot area.

- A. Minimum lot size shall be regulated by the following setback requirements. All buildings shall be set back twenty feet from the front lot line and ten feet from the side and rear lot lines, unless otherwise classified within a "historical use district or site."
- B. All buildings classified within a "historical use district or site" shall be set back ten feet from the front lot line and five feet from the side and rear lot lines.
- C. The planning commission shall maintain maps identifying lots classified as historical use sites. The commission shall determine lots to be classified as a historical use site on a case by case study. In making determinations, the commission shall consider existing plotting and zoning regulations, dimensions of property, existing structures, type of street and current occupancy.
- D. Where more stringent state building codes or related standards require greater setbacks such standards shall take precedence over the setback standards in this title.
- E. In the case of corner or double frontage lots the planning commission shall determine which yard shall be considered the frontage yard based on length of the frontage, primary access, type of street and current occupancy.

(Ord. 89-12 § 1, 1989: Ord. 80-14 § 1 (part), 1980: prior code § 13.30.100).

17.28.110 Municipal cemetery plot size.

Plot sizes in the municipal cemetery shall measure seven feet by four feet. The size of a double plot shall be seven feet by eight feet.

(Ord. 90-10 § 1, 1990).

Chapter 17.32 NONCONFORMING USES AND STRUCTURES

Sections:

17.32.010 Intent.

There may exist structures, and uses of land and structures, that have been made unlawful by the provisions of this title or the establishing or altering of use districts under this title. This chapter is intended to permit such structures and uses to continue for the duration of their economic usefulness, but to discourage their future perpetuation.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.35.010).

17.32.020 Continuation restrictions.

Where a use of land, a structure or a use of a structure lawfully existed on the effective date of a provision of this chapter or the establishment or alteration of a use district under this chapter that rendered the use or structure nonconforming, the nonconforming use or structure may continue, subject to the following:

- A. A nonconforming use shall cease when abandoned. A nonconforming use is abandoned when:
 - 1. The owner's intent to discontinue the use is apparent; or
 - 2. The equipment and furnishings characteristic of the use have been removed, and have not been restored or replaced by similar equipment or furnishings within six months.
- B. A nonconformity shall cease when it is damaged to such a degree that the estimated cost of its repair exceeds ninety percent of its replacement cost at the time the damage occurred.
- C. Any addition to, or expansion of, a nonconforming structure shall comply with all applicable provisions of this chapter.
- D. A nonconforming use or structure shall not be changed so as to increase the extent or degree of its nonconformity.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.35.020).

17.32.030 Lawful existence defined.

For the purpose of Section 17.32.020, a structure lawfully existed if the ground-story framing of the structure had been completed lawfully before the effective date of the enactment rendering the structure nonconforming.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.35.030).

17.32.040 Necessary repair or modification.

Nothing in this title prohibits the repair or modification of a structure when required in accordance with law for the safety of the structure's occupants or the general public.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.35.040).

17.32.050 Inventory of nonconformities.

Before enactment of any amendment to this title, or the establishing or altering of any use district under this title, the administrative official shall make an inventory of all nonconformities that the enactment will create. These inventories shall be retained as records of the nonconforming uses and structures allowed to continue under this title.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.35.050).

Chapter 17.36 PLANNING COMMISSION

Sections:

17.36.010 Established.

There is established a planning commission, which shall perform planning, zoning and platting functions for the city in accordance with this chapter and AS 29.33.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.15.010(a)).

17.36.020 Composition—Appointment—Qualifications.

The commission shall consist of seven members. The mayor appoints commission members, subject to council confirmation. Each commission member shall be a qualified city voter.

(Ord. 04-07 § 3 (part), 2004: Ord. 83-3, 1983: Ord. 80-14 § 1 (part), 1980: prior code § 13.15.020).

17.36.030 Term.

A commission member's term shall be three years and until his successor is appointed and qualifies; provided, that the initial commission members shall draw lots to divide the membership substantially into thirds, to serve terms of one, two and three years, respectively, so that the terms of commission members will be staggered.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.15.030).

17.36.035 Meetings—Absence from.

- A. No city planning commissioner shall absent himself/herself from any meetings of the planning commission except for good and sufficient reason.
- B. The reason shall be submitted in writing and approved by the planning commission. In the event of an emergency when a request to be excused cannot be submitted in advance, the request to be excused shall be considered at the next regular meeting.

(Ord. 89-3 § 1 (part), 1989).

17.36.040 Vacancies.

- A. A vacancy on the commission shall be filled as provided in Section 17.36.020 for a remainder of the term of the former member.
- B. A vacancy occurs when:
 - 1. A confirmed appointee fails to qualify and assume the duties of the office within thirty days of confirmation;
 - 2. A member departs the city intending to remain outside the city for ninety days or more;
 - 3. A member submits a resignation accepted by the council;
 - 4. A member, due to incapacity or absence from the city, cannot attend commission meetings for ninety days or more;
 - 5. A member is absent from three consecutive regular commission meetings without the commission excusing any such absence.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.15.040).

17.36.050 Compensation.

Commission members shall be compensated as provided by resolution of the council, and may be reimbursed for reasonable expenses incurred in the performance of their duties.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.15.050).

17.36.055 Agenda.

- A. All reports, communications, ordinances, resolutions, contract documents or other matters to be submitted to the planning commission for consideration shall be delivered to the planning director seventy-two hours prior to the meeting. The agenda deadline will be at twelve noon on the prior Tuesday before a Thursday meeting for regular meetings, and twenty-four hours prior to meeting, for special meetings.
- B. The chairman shall organize an agenda of such matters according to the order of business and the planning director shall furnish each commissioner with a copy of the same.

(Ord. 96-10 § 1, 1996: Ord. 89-3 § 1 (part), 1989).

17.36.060 Meetings—Quorum.

- A. Regular Meeting. The commission shall hold a regular meeting once a month on the second Thursday of each month. The place for the meeting shall be the City Hall in Kotzebue. The meetings shall promptly start at five p.m.; any change in the time and place of the meeting shall be noticed at least forty-eight hours prior to the meeting. Three commissioners constitute a quorum.
- B. Special Meetings. Special meetings may be called by the chairman or two commissioners upon not less than twenty-four hours' public notice. Written or oral notice shall be communicated to each member of the commission not less than twenty-four hours prior to the meeting. Quorum requirements for special meetings shall be the same as for regular meetings.

(Ord. 96-10 § 2, 1996; Ord. 89-3 § 1 (part), 1989: Ord. 80-14 § 1 (part), 1980: prior code § 13.15.070).

17.36.065 Voting.

All commission actions shall be by vote, after a quorum is established. A minimum of four commissioners must vote in favor of the proposed action for the action to become authorized.

(Ord. 04-7 § 3 (part), 2004: Ord. 89-3 § 2, 1989).

17.36.070 Officers.

The commission annually shall select from its membership a chairman and vice-chairman. The chairman shall preside at meetings of the commission, and shall represent the commission as directed by its membership. The vice-chairman shall act in the absence of the chairman. The administrative official shall act as secretary to the commission.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.15.060).

17.36.080 Rules of procedure.

The commission, by resolution, may adopt its own written rules of procedure, consistent with this chapter, governing the conduct of its proceedings. In all matters of procedure not governed by such rules or this title, Robert's Rules of Order, Newly Revised, shall govern.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.15.080).

17.36.090 Powers and duties.

The planning commission shall have the following powers and duties:

- A. To review and act upon applications for zoning map amendments and variances, and appeals from decisions of the administrative official, in accordance with this chapter and AS 29.33;
- B. To act as the platting authority for the city in accordance with AS 29.33;
- C. Preparing plans, surveys and maps for the systematic development and betterment of the municipality as a place of residence and business;
- D. Studying and making recommendations regarding the advisability, location and design of any proposed public building, park, right-of-way or other public use of land within the city. Before any final action is taken on a proposed public capital improvement within the city, including state and federal capital improvements, plans, an drawing of the proposed improvement shall be submitted to the planning commission for its review and recommendation;
- E. Studying and making recommendation of the use, subdivision or method of disposition of all publicly owned land within the city. Before any publicly owned land (including state and federally owned lands) is sold, leased or otherwise transferred from public to private tenure, plans for the subdivision and use of such lands shall be submitted to the planning commission for its review.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.15.020(b)).

17.36.100 Rulemaking—Amendment, variance, appeal jurisdiction—Resolutions.

- A. The planning commission by resolution may adopt rules consistent with this title, to implement, interpret or make specific its provisions. Copies of all rules adopted under this subsection shall be available to the public in the offices of the administrative official and the clerk.
- B. The planning commission shall review and and act uon applications for zoning map amendments, variances, and appeals from decisions of the administrative official, as provided in this title. The commission shall take formal action by voting whether to approve an application or appeal. The commission's decision shall be recorded in a resolution approving or denying the application or appeal in question, prepared by the secretary to the commission. The resolution shall include findings of fact supporting the decision, based upon the facts presented to the commission and the commission's debate on the matter. The commission chairman shall review resolutions prepared by the secretary for conformrity to the findings and decision fo the commission. A resolution is adopted as the decision of the commission when it is signed by the chairman, signifying his approval of the form thereof.

(Ord. 80-14 § 1 (part), 1908: prior code § 13.15.090).

17.36.110 Conflicts of interest.

A commission member shall not participate in deliberation or vote on a question if:

- A. the commission member or a member of his immediate family has a substantial financial interest in any property affected by the decision; or
- B. The commission member or a member of his immediate family could foreseeably profit in any material way through a favorable or unfavorable decision.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.15.100).

Chapter 17.40 VARIANCES AND APPEALS FROM DECISIONS OF ADMINISTRATIVE OFFICIAL

Sections:

Article I. Variances

17.40.010 Planning commission duty.

The commission shall review and act upon applications for variances from the requirements of Chapters 17.16 through 17.28 in accordance with this chapter.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.40.010).

17.40.020 Application—Submittal requirements.

Application for approval of a variance shall be submitted to the planning director. Applications shall be in a form approved by the city. The application shall include the application fee prescribed under this chapter and shall state specifically why the proposed variance conforms to the standards in Section 17.40.080.

(Ord. 96-10 § 3, 1996: Ord. 80-14 § 1 (part), 1980: prior code § 13.40.020(a)).

17.40.030 Application—Rejection.

The planning director shall reject any application that does not conform to the requirements of Section 17.40.020 and inform the applicant in writing of the reason for the rejection. A rejected application may be resubmitted in proper form without payment of an additional application fee if the resubmission occurs within thirty days of the date that notice of the rejection was sent to the applicant.

(Ord. 96-10 § 4, 1996: Ord. 80-14 § 1 (part), 1980: prior code § 13.40.020(b)).

17.40.040 Public hearing.

The commission may hold a public hearing before acting on a variance application if it finds that the requested variance will substantially affect adjacent property.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.40.030(a)).

17.40.050 Findings of commission.

The commission may approve a variance application only upon finding that the application conforms to the standards in Section 17.40.080, and to other applicable statutes and ordinances. The findings of the commission shall be set forth in the resolution approving or disapproving the application.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.40.030(b)).

17.40.060 Conditions.

The commission may approve a variance application subject to any conditions that it finds necessary to implement the purposes of this title, or to conform the application to this title or other applicable statutes or ordinances. The conditions shall be set forth in the resolution approving the application. Any conditions imposing a continuing burden on the land that is the subject of the application shall be included in a written declaration of covenants, conditions and restrictions, which shall be executed by all persons holding an interest in the land or their authorized representatives, and recorded when the decision granting the variance is final.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.40.030(c)).

17.40.070 Notice of resolution.

The commission's resolution approving or disapproving an application shall be mailed to the applicant within ten days after the decision on the application.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.40.030(d)).

17.40.080 Standard for granting.

The commission may grant a variance if it finds the variance not harmful to public welfare, in harmony with the comprehensive plan and in compliance with state statutes.

(Ord. 82-4, 1982; Ord. 80-14 § 1 (part), 1980: prior code § 13.40.040).

Article II. Appeals from Administrative Official

17.40.090 Appealable decisions— Filing—Who may appeal.

- A. The following decisions of the administrative official are subject to appeal to the planning commission:
 - 1. The denial of a building permit;
 - 2. The issuance of an order under Section 17.52.020.
- B. A decision described in subsection A of this section is final unless appealed to the planning commission within ten days of the mailing of notice of the decision. An appeal is commenced by filing with the clerk a written notice of appeal, specifically stating the reason for the appeal and the relief sought, the payment of the appeal fee prescribed under this title.
- C. An appeal may be brought by any person aggrieved by the decision appealed, or any government agency.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.40.050).

17.40.100 Hearing.

The planning commission shall hold a public hearing on each appeal. At the hearing the commission shall review the appeal record and hear evidence and argument presented by persons interested in the appeal.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.40.060(a)).

17.40.110 Affirmation or reversal.

The planning commission shall either affirm or reverse the administrative official's decision in whole or in part. If the planning commission fails to approve the reversal of the administrative official's decision, that decision is affirmed.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.40.060(b)).

17.40.120 Findings and conclusions.

Every decision of the planning commission on an appeal shall be based upon findings and conclusions adopted by the commission. The findings must be reasonably specific so as to provide the community, and where appropriate, reviewing authorities, a clear and precise understanding of the reason for the decision.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.40.060(c)).

17.40.130 Notice of decision.

The planning commission's decision on an appeal shall be mailed to the parties to the appeal within ten days after the decision.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.40.060(d)).

Chapter 17.44 APPEALS TO BOARD OF ADJUSTMENT

Sections:

17.44.010 Board designated—Jurisdiction.

The city council is the board of adjustment. In accordance with this title the board of adjustment shall hear and decide:

- A. Appeals alleging errors in the enforcement of the zoning ordinance or building codes;
- B. Appeals from decisions of the commission on applications for variances under Chapter 17.40.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.45.010).

17.44.020 Who may appeal.

Any person aggrieved by a decision appealable under Section 17.44.010, and any governmental agency affected by the decision, may appeal the decision.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.45.020).

17.44.030 Filing—Stay of order or decision.

- A. An order of decision interpreting or enforcing the zoning ordinance or building codes, and a decision of the commission on an application for a variance, is final unless an appeal is commenced within fifteen days of the date of the order or decision.
- B. An appeal is commenced by filing with the clerk a written notice of appeal, specifically stating the reason for the appeal and relief sought, and payment of the appropriate fee.
- C. Upon commencement of an appeal from an order or decision granting an entitlement under this title, the order or decision is stayed until the decision on appeal becomes final.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.45.030).

17.44.040 Scheduling of hearing.

Upon the timely commencement of an appeal the clerk shall schedule the appeal hearing, mail notice of the appeal, and prepare the appeal record.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.45.040(a)).

17.44.050 Notice of appeal.

The planning director shall mail notice of the appeal to each person who would have been entitled to notice of the original proceeding and any person who appeared and participated in any hearing below. The notice shall include the appellant's notice of appeal, describe the decision appealed from, state the date of the appeal hearing and time within which written argument supporting or opposing the appeal may be submitted, and contain the substance of Section 17.44.060 B regarding the availability of the appeal record.

(Ord. 96-10 § 5, 1996: Ord. 80-14 § 1 (part), 1980: prior code § 13.45.040(b)).

17.44.060 Record.

- A. The appeal record shall be completed within twenty days of receipt of the notice of appeal. In the case of an appeal from an enforcement order it shall include the administrative case file and the decision or order appealed from. In the case of an appeal from a decision of the commission on a variance application, it shall include the minutes of the proceedings before the commission, all documentary materials submitted to the commission, and the commission's written decision.
- B. A copy of the appeal record shall be available for public inspection at the clerk's office. Any person may obtain a copy of the record upon payment of the fee therefor established under this title.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.45.040(c), (d)).

17.44.070 Hearing.

At the appeal hearing the board of adjustment shall review the appeal record and hear evidence and argument presented by persons interested in the appeal.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.45.050).

17.44.080 Affirmation or reversal.

The board of adjustment shall either affirm or reverse the lower administrative decision in whole or in part. If the board of adjustment fails to approve the reversal of the lower administrative decision, that decision is affirmed.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.45.060(a)).

17.44.090 Findings and conclusions.

Every decision of the board of adjustment shall be based upon findings and conclusions adopted by the board. Such findings must be reasonably specific so as to provide the community, and where appropriate, reviewing authorities, a clear and precise understanding of the reason for the decision.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.45.060(b)).

17.44.100 Notice of decision.

The board of adjustment's decision shall be mailed to the parties to the appeal within ten days after the decision.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.45.060(c)).

17.44.110 Judicial review.

In accordance with Appellate Rule 45 of the Alaska Rules of Court, any person adversely affected by a final decision of the board of adjustment under this title may appeal that decision to the Superior Court. An appeal to the Superior Court shall be heard solely on the record before the board of adjustment. The findings of the board of adjustment shall not be reversed, if in light of the whole record they are supported by substantial evidence.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.45.070).

Chapter 17.48 BUILDING PERMITS

Sections:

17.48.010 Required—Conformance of work.

Except as otherwise provided by law, no person may construct, erect, structurally alter, or move any structure unless the administrative official has issued a building permit therefor. Before issuing a building permit, the administrative official shall certify in writing on the permit that the work permitted conforms to this chapter, subject to any variances granted under Chapter 17.40, and other city ordinances governing the use of land and structures.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.10.020(a)).

17.48.020 Application.

Application for a building permit shall be submitted to the administrative official. Applications shall be in a form approved by the city. An application shall include:

- A. The building permit fee prescribed under this title;
- B. A plan drawn to scale showing the location and dimensions of all lot lines;
- C. The location, dimensions and proposed uses of all structures, including those proposed to be constructed, erected, altered or moved under the building permit; and
- D. Such other information as is necessary to determine whether the proposed work will conform to this title.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.10.020(b)).

17.48.030 Confirmation of dimensions.

Work under a building permit shall not commence until the permittee has located accurately the lot lines of the building site, and the administrative official has inspected the location of the building corners on the site and confirmed that the location and dimensions of the building conform to the permit application.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.10.020(c)).

17.48.040 Building permit fees.

- A. The building permit fee shall be as shown in Table 3-A on page 16 of the Uniform Building Code, 1985 Edition, published by the International Conference of Building Officials (ICBO), 5360 South Workman Mill Road, Whittier, California 90601, subject to the following modifications:
 - 1. That the first one hundred thousand dollars of value of any new construction project will be exempt from consideration;
 - 2. That the first fifty thousand dollars of value of any renovation, remodel, repair or restoration will be exempt from consideration; and
 - 3. That any project for which the full value is exempt under subsection A(1) or (2) of this section shall be subject only to a ten dollar application fee.
- B. At the time of application there shall accompany the application payment of sixty-five percent of the total building permit fee and this payment shall be known as the "plan review fee."
- C. At the time of actual issuance of the building permit, payment shall be made of the remaining thirty-five percent of the building permit fee in addition to any required payments for utility charges or deposits.
- D. Any applicant who desires to withdraw his application while it is in the plan review process may do so upon notification of the administrative official. Any refund of the plan review fee will be made by the administrative official based upon his determination of the percentage of the work completed of the plan review. The administrative official's decision shall be final.
- E. Following issuance of a building permit, any applicant who decides to abandon the work for which the permit was intended prior to the start of work, may apply to the administrative official for refund of the thirty-five percent of the building permit fee, less a twenty-five dollar administrative charge.

(Ord. 85-11, 1986).

Chapter 17.52 ADMINISTRATION AND ENFORCEMENT

Sections:

17.52.010 Administrative official.

The manager shall be the administrative official responsible for enforcing this title. The administrative official shall have the powers and duties described in this title. The administrative official may delegate his authority under this title to one or more city employees.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.10.010).

17.52.020 Enforcement orders.

The administrative official may:

- A. Order the discontinuation of unlawful uses of land or structures;
- B. Order the removal or abatement of unlawful structures, or any unlawful additions or alterations thereto;
- C. Order the discontinuation of construction or other preparatory activity leading to an unlawful structure or an unlawful use of land or a structure;
- D. When necessary to ensure compliance with this title, suspend or revoke building permits, variances or other city land use entitlements.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.10.030(a)).

17.52.030 Inspections—Right of entry.

In accordance with this section the administrative official may make inspections necessary to enforce the provisions of this title. When the administrative official has reasonable cause to believe that in any building or on any premises there exists any violation of this title, he may enter such building or premises at any reasonable time to inspect the same or perform any of his duties under this title; provided, that where the Constitution of the United States or the state requires that the administrative official obtain an administrative search warrant before making an inspection, he shall not make the inspection until authorized to do so by such a warrant, issued by a court of competent jurisdiction.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.10.030(b)).

Chapter 17.56 VIOLATION—PENALTY

Sections:

17.56.010 Misdemeanor penalty.

A person who violates any provision of this title is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than five hundred dollars.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.10.050(a)).

17.56.020 Civil action.

- A. The city or any aggrieved person may bring a civil action to enjoin any violation of this title, and the violation of any term or condition of any entitlement approved under this title, and to obtain damages for any injury the plaintiff suffered as a result of the violation.
- B. In addition to injunctive and compensatory relief, each violation shall be subject to a civil penalty not to exceed five hundred dollars.
- C. An action for injunction under this section may be brought notwithstanding the availability of any other remedy.
- D. Upon application for injunctive relief and
the finding of an existing or threatened violation, the Superior Court shall enjoin the violation.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.10.050(b)).

17.56.030 Separate violations.

Each act or condition violating this title or any term or condition of any entitlement approved under this title, and every day during which the act or condition occurs, constitutes a separate violation under this chapter.

(Ord. 80-14 § 1 (part), 1980: prior code § 13.10.050 (c)).