

INFORMATIONAL DATA SHEET FOR ORD. 78-13

ADMINISTRATIVE COSTS: Same as now

CITIZENRY EFFECT:

Group Affected: Homer Residents

Nature & Effect on Each Group: Clearly define zoning procedures and authority, allow townhouses in the Residential district.

INTRODUCING AUTHORITY:

Kenai Peninsula Borough Assembly

By: Donald E. Gilman
Borough Mayor

Introduced by: Mayor
Date: April 4, 1978
Hearing: May 16, 1978
Vote: 103 "Yes" 9 "NO"; 27 "Absent"
Action: Enacted

KENAI PENINSULA BOROUGH

ORDINANCE 78-13

AN ORDINANCE AMENDING PORTIONS OF TITLE 21 OF THE KENAI PENINSULA BOROUGH CODE OF ORDINANCES PERTAINING TO ZONING ADMINISTRATION AND ENFORCEMENT PROCEDURES IN HOMER AND ADDING TOWNHOUSES AS A CONDITIONAL USE IN THE RESIDENTIAL DISTRICT.

WHEREAS, the Kenai Peninsula Borough exercises zoning powers in the City of Homer pursuant to AS 29.33.070 et seq.; and

WHEREAS, the Kenai Peninsula Borough has enacted certain ordinances governing the Homer zoning districts as Chapters 21.28 through 21.68 of the Kenai Peninsula Borough Code of Ordinances; and

WHEREAS, it is necessary to periodically revise such ordinances;

NOW THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1: That Section 21.28.010 is amended to read as follows:

Chapters 21.28 through 21.70 of the Kenai Peninsula Borough Code of Ordinances shall be known and cited as the "Homer District Zoning Ordinance" and are applicable to all lands within the municipal boundaries of the City of Homer. [THIS CHAPTER AND CHAPTERS 21.32 THROUGH 21.68 MAY BE CITED AS "THE HOMER DISTRICT ZONING CODE." THE PROVISIONS OF THIS CHAPTER AND CHAPTERS 21.32 THROUGH 21.68 ARE APPLICABLE ONLY WITHIN THE DISTRICT WHICH IS DESCRIBED AS ALL LAND CONTAINED WITHIN THE CITY LIMITS OF THE CITY OF HOMER.]

Section 2: That sentence 1 of Section 21.28.020 is amended to read as follows:

This Chapter and Chapters 21.32 through 21.70 are adopted in order to enhance the public health, safety and welfare by providing local authority to:

Section 3: That the Kenai Peninsula Borough Code of Ordinances is amended by adding a new section to be numbered 21.32.180, which shall read as follows:

21.32.180 Dwelling Groups. "Dwelling groups" means a group of two or more, detached or semi-detached one-family, two-family, or multi-family dwellings occupying a parcel of land, in one ownership and having any yard or court in common, but not including motels and hotels.

Section 4: That Section 21.32.280 is amended to read as follows:

21.32.280 Home Occupation. "Home occupation" means any use customarily conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof, and in connection with which there is no exterior sign, no display of stock in trade, no outside storage of materials or equipment, no commodity sold upon the premises and not more than two persons are engaged in such occupation.

["HOME OCCUPATION" MEANS AN OCCUPATION CARRIED ON BY THE OCCUPANT OF A DWELLING AS A SECONDARY USE IN CONNECTION WITH WHICH THERE IS NO DISPLAY, NO STOCK IN TRADE NOR COMMODITY SOLD UPON THE PREMISES, NO PERSONS EMPLOYED, AND NO MECHANICAL EQUIPMENT USED WHICH MAY MAKE NOISE, DUST, ODOR OR VIBRATION DETRIMENTAL TO DWELLING OCCUPANCY.]

Section 5: That the Kenai Peninsula Borough Code of Ordinances is amended by adding the following new section to be numbered 21.32.470, which shall read as follows:

21.32.470 Off Street Parking. "Off street parking space" means a parking space with independent access, not included within established front yard set back.

Section 6: That the Kenai Peninsula Borough Code of Ordinances is amended by adding the following new section to be numbered 21.32.510, which shall read as follows:

21.32.510 Planned Development Unit. "Planned unit development" means a group or combination of certain specified residential, commercial, or industrial uses developed

as a functional and integral unit in a district where some or all the uses might not otherwise be permitted.

Section 7: That the Kenai Peninsula Borough Code of Ordinances is amended by adding the following new section to be numbered 21.32.640, which shall read as follows:

21.32.640 Townhouse. "Townhouse" means single family dwelling units constructed in a series or group of not less than three units separated from an adjoining unit or units by an approved party wall or walls, extending from the basement of either floor to the roof along the linking lot line. Each unit and its lot to be held fee simple, except that the amenities, open area and other associated common property shall be held as undivided common property of the owners of each unit.

Section 8: That Chapter 21.36 of the Kenai Peninsula Borough Code of Ordinances is hereby repealed in full.

Section 9: That the Kenai Peninsula Borough Code of Ordinances is amended by adding the following new section to be numbered 21.36.010, which shall read as follows:

21.36.010 Zoning Districts.

A. Section 21.04.010 of the Borough Code divides the Borough into two (2) zoning districts, rural and municipal. The municipal district of the city is hereby further divided into zoning districts and within each district only certain uses and standards are allowed as prescribed in this chapter.

B. Zoning districts--Designated. The Homer district is divided into the following types of use districts:

1. Residence use districts: R--1-family dwellings, 2-family dwellings, 3 (or more) family dwellings;

2. Commercial use district: C--Commercial;

3. Industrial use districts: I--Industrial. (Ord. 33 §1 (part), 1967: KPC §20.20.15(a)).

C. The zoning use districts shall be bounded as shown on a zoning district map entitled "Homer District Zoning

Map".

Section 10: That the Kenai Peninsula Borough Code of Ordinances is amended by adding the following new section to be numbered 21.36.020 , which shall read as follows:

21.36.020 Zoning Map.

- (A) The official zoning map shall be kept in the borough offices. The "Homer District Zoning Map" in effect on the date of this ordinance is hereby adopted by reference and declared to be part of this ordinance in the exact form as it exists on the date this ordinance is adopted or amended by the Borough Assembly.
- (B) If the zoning map becomes lost or damaged the map or significant parts thereof remaining after partial destruction shall be preserved. The Borough Assembly may by ordinance adopt a new zoning map which shall be consistent with and supersede the old zoning map.
- (C) The map shall be signed by the Borough Clerk with a note of the date of adoption by the Borough Assembly. Amendments shall be immediately added to the official zoning map with a notation of the date of adoption by the Borough Assembly.

Section 11: That Chapter 21.40 of the Kenai Peninsula Borough Code of Ordinances is hereby repealed in full.

Section 12: That the Kenai Peninsula Borough Code of Ordinances is hereby amended by adding the following new chapter to be numbered 21.40 , which shall read as follows:

CHAPTER 21.40

GENERAL PROVISIONS

21.40.010 Compliance.

Except as hereinafter provided, all land and structures within the City of Homer shall be constructed, used, occupied or altered in conformance with the requirements of the zoning district in which they are located.

21.40.020 Unlisted Uses

Unlisted uses may be allowed within a district upon written decision by the Homer Advisory Planning Commission providing that each unlisted use meets all of the following conditions:

- (1) The use is not specifically permitted in any other district.
- (2) The use is not more appropriate in another district; and
- (3) The use is consistent with the purpose of the district in question; and is similar to other uses permitted outright.

21.40.030 Number of Buildings Per Lot. No more than one structure containing a permitted or permissible principal use may be erected on a single lot except upon submission and approval of a conditional use permit as specified in 21.61.010 through 21.61.050 of this ordinance.

21.40.040 Parking, Garage and Loading Facilities. Every building hereafter erected, enlarged or converted to a use shall conform to the parking, garage and loading facility requirements of this ordinance and City of Homer Ordinances.

Section 13: That the Kenai Peninsula Borough Code of Ordinances is amended by adding the following new section to be numbered 21.44.025, which shall read as follows:

21.44.025 Conditional Uses.

Townhouses shall be conditionally permitted if the following requirements are met:

- A. The proposed development meets all conditions specified in Chapter 21.61.
- B. A detailed development plan is submitted with the application for a Conditional Use to include a site plan, drawn to scale. Such site plan shall include, but shall not be limited to the topography and drainage of the proposed site, the location of all buildings and structures on the site, courts and open space areas, circulation patterns, ingress and egress points, parking areas (including the total number of parking spaces provided), and a general floor plan of the principal buildings, together with other such information as the Planning and Zoning Commission shall require.
- C. Not more than six (6) contiguous townhouses shall be built in a row with the same or approximately the same front line, and not more than twelve (12) townhouses shall be contiguous.
- D.. No more than one (1) townhouse project shall be located any closer than six hundred feet (600') to another townhouse project, unless otherwise approved by the Planning Commission.

- E. Separation requirement. No portion of a townhouse or accessory structure in or related to one (1) group of contiguous townhouses shall be closer than 15 feet to any portion of a townhouse or accessory structure related to another group, or to any building outside the townhouse area.
- F. Minimum Lot Width for an individual townhouse is 24 feet.
- G. Minimum Lot Area for each townhouse unit shall be 2,000 square feet, and the townhouse project must conform to the following:
- (1) The project lot area must equal or exceed the total floor area of the project divided by the Floor Area Ratio.
 - (2) The Floor Area Ratio shall be four-tenths (.4).
 - (3) Open Area equals the Total Floor Area divided by the Living Space Ratio.
 - (4) The Living Space Ratio shall be one and one-tenth (1.1).
 - (5) Open Area shall not include areas used for parking or maneuvering incidental to parking or vehicular access.
 - (6) Parking Space Area shall be provided at the minimum rate of two and one-half (2.5) spaces per dwelling unit exclusive of driveways, traffic lanes in parking lots and street dedications.
 - (7) Two hundred (200) cubic feet of covered storage space to be exclusive of the living area of the unit.
- H. Each townhouse unit shall have a total yard area containing at least 1,000 square feet. Such total yard area may be reduced to 500 square feet if 500 square feet of common open or common recreational area not including parking spaces, is available for each unit. Such yard area shall be reasonably secluded from view from streets or neighboring property. Such yard area shall not be used for off-street parking or for any accessory building.
- I. Grouping of parking spaces is desirable provided that spaces intended for a particular unit are no more than 100 feet from the unit. On minor streets use of the right-of-way may be permitted for maneuvering incidental to parking where this will facilitate snow removal. On collector and arterial streets, maneuvering incidental to parking shall not be permitted.

- J. Visibility at access points for automobiles. The following requirements apply to all private drives and entrances to or exits from common parking areas including such drives and access routes on adjacent property. At the intersection of any private drive or entrance or exit for a common parking area with a public street, no fence, wall, hedge, or other planting or structure forming a material impediment to visibility between a height of two and a half feet and eight feet shall be erected, planted, placed, or maintained, and no vehicle so impeding visibility shall be parked within triangular areas defined by lines connecting points as follows:

Beginning at the point where the midline of the private drive or entrance or exit for a common parking area intersects the public right-of-way, thence to a point 35 feet along the right-of-way line in the direction of approaching traffic, thence to a point 25 feet toward the interior of the property along the previously described midline, and thence to point of beginning. No such visibility triangle need be maintained on the side of the drive, entrance or exit away from approaching traffic on the same side of the street.

- K. Townhouse developments shall adhere to a minimum 20 foot setback from any road right-of-way, and shall adhere to a minimum 15 foot side and rear lot setback.
- L. Maximum building height shall not exceed 35 feet.
- M. All party walls shall adhere to fire safety standards as established by the State Fire Marshall.
- N. All townhouse developments constructed pursuant to a conditional use permit issued under the provisions of this Article shall be constructed in compliance with the current State statutes. (AS §18.60.580-.590 and 18.60.705-.740 and 18.70.095)
- O. The developer or subdivider of any townhouse development shall give evidence that compliance with the Horizontal Property Regimes Act (§§34.07) has been made prior to the sale of any townhouse dwelling units.

(1) The developer or subdivider of any townhouse development shall deposit with the appropriate Homeowners Association, formed in compliance with the Horizontal Property Regimes Act cited above, a contingency fund in the sum of five hundred dollars (\$500.00) per dwelling unit in the townhouse development.

(2) A copy of the By-Laws of the Homeowner's Association showing in what manner the aforesaid contingency fund shall be controlled shall be furnished to the city for review and approval.

P. All areas not devoted to buildings, drives, walks, parking areas or other authorized installations shall be covered with one or more of the following: lawn grass, natural or ornamental shrubbery or trees.

Q. All roadways, fire lanes, or areas for maneuvering incidental to parking (not to include designated commonly-held open space or recreational areas) shall be a minimum of 22 feet in width. Furthermore, no vehicular parking shall be allowed in the aforementioned areas.

R. The standards set forth in this section shall complement the general standards set forth in this Chapter and shall not be construed as superseding any general standard. In the event of conflict, the stricter standard shall control.

Section 14: That Sections 21.60.60, 21.60.090, and 21.60.100 of the Kenai Peninsula Borough Code of Ordinances are hereby repealed.

Section 15: That the Kenai Peninsula Borough Code of Ordinances is amended by adding the following new chapter to be numbered 21.61, which shall read as follows:

CHAPTER 21.61

CONDITIONAL USE PERMITS

21.61.010 Intent. It is the intent of this section to provide the flexibility necessary to permit a use within a district under conditions which are specified in addition to regulations applying to uses permitted outright within the district.

21.61.020 General Conditions. Prior to granting a use permit it shall be established that the use satisfies the following conditions:

- (A) The use is consistent with the purpose of this ordinance and the purpose of the zoning district.
- (B) The value of the adjoining property will not be significantly impaired.
- (C) The proposed use is in harmony with the community plan and with surrounding land uses.
- (D) Public services and facilities are adequate to serve the proposed use.
- (E) A more suitable location for the use is not practicably available within the zoning district.
- (F) Any and all specific conditions deemed necessary by the Advisory Planning Commission to fulfill the above mentioned conditions shall be met by the applicant.

21.61.030 Application for Conditional Use Permits. Application for a conditional use permit shall be filed with the City Manager. The application shall include but is not limited to the following:

- (A) Name and address of the party seeking the permit.
- (B) A legal description of the land.
- (C) A description of the proposed use including a dimensioned plot plan, and a description of neighboring land use including any necessary maps and diagrams.
- (D) The appropriate fee.
- (E) Any additional information which the administrative official, Borough Planning Commission, or if appropriate the advisory planning commission may require to determine if all conditions will be satisfied.

21.61.040 Procedures.

- (A) If the application is in order the City Manager shall schedule a public hearing and notice of the proposal as specified in Chapter 21.69 of this ordinance.
- (B) Approval shall require the concurring majority vote plus one of the Advisory Planning Commission.

21.61.050 Time Limitations. Failure to meet any time limits imposed by the conditional use permit granted by the Advisory Planning Commission shall void the conditional use permit.

Section 16: That the Kenai Peninsula Borough Code of Ordinances is amended by adding the following new chapter to be numbered 21.62

CHAPTER 21.62

VARIANCES

21.62.010 Intent. A variance may be granted to provide relief when a literal enforcement of this ordinance would deprive a property owner of the reasonable use of his real property.

21.62.020 Conditions Precedent to Granting a Variance.

- (A) All of the following conditions shall exist before a variance may be granted:
 - (1) A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district.
 - (2) Special conditions and circumstances exist which are peculiar to the land or structures involved and which are not applicable to other lands and structures in the same district.
 - (3) The special conditions and circumstances have not been caused by actions of the applicant.
- (B) Financial hardship or inconvenience shall not be reason for granting a variance.

- (C) Other nonconforming land use or structures within the district shall not be considered grounds for granting a variance.
- (D) A variance shall be the minimum variance necessary to permit the reasonable use of the land or structure.
- (E) A variance shall not be granted which will permit a land use in a district in which that use is otherwise prohibited.

21.62.030 Application for a Variance. Application for a variance shall be filed with the City Manager and the application shall include but is not limited to the following:

- (A) All of the information required for a conditional use permit, and
- (B) A precise description of the variance requested, including the section, paragraph, and sentence of this ordinance from which the applicant wishes to deviate, and
- (C) A written item by item response to all of the conditions specified in Section 21.62.020.

21.62.040 Procedures. Procedures shall be as specified in Section 21.61.040, which shall read as follows:

Section 17: That the Kenai Peninsula Borough Code of Ordinances is amended by adding the following new chapter to be numbered 21.63.

CHAPTER 21.63

CONTRACT ZONING

21.63.010 Intent. It is the intent of this section to provide a means of insuring that the type of land use proposed in a rezoning request is the one which occurs if the rezoning is granted. "Contract zoning" means a zoning reclassification to a less restricted use when the owner of the rezoned property, either through an agreement with the assembly or a covenant in favor of the borough, places restrictions on the use of the land beyond the zoning requirements generally attaching to the new district in which the property has been placed.

21.63.020 Procedures.

- (A) A petition for contract rezoning shall be submitted to the City Manager. The applicant's petition shall contain detailed information on the proposed development and use of the land. Proposed covenants, guarantees or other forms of agreement to assure the development and use of the land as proposed shall also be submitted. A time schedule for the development and use shall be included with the petition.
- (B) The City Manager shall present the petition to the Advisory Planning Commission. The Advisory Planning Commission may consider the petition upon finding that:
 - (1) The proposed land use can be developed in a manner to be compatible with development in adjacent zoning districts.
 - (2) Existing public facilities, services and utilities can accommodate the proposed use without any detrimental effect on adjacent zoning districts.
 - (3) Rezoning accomplished under this section does not constitute "spot zoning". The provisions of Section 21.70.010(C) do not apply to zoning initiated pursuant to this Chapter.
 - (4) Rezoning to a district allowing the proposed use would permit other uses which would not be compatible with the adjacent land use.
- (C) The Advisory Planning Commission may reject, modify or accept the applicant's proposals submitted under (A) of this section. If the applicant agrees in writing to the Advisory Commission's action, the Commission shall initiate the ordinance amendment procedures of Chapter 21.70. Action taken by the Commission pursuant to this section shall not be construed to limit the Commission's authority to reject or modify the applicant's proposal during the zoning ordinance amendment process.
- (D) The applicant may appeal an Advisory Planning Commission action pursuant to (C) of this section as provided in Chapter 21.68.

Section 18: That Chapter 21.64 of the Kenai Peninsula Borough Code of Ordinances is hereby repealed.

Section 19: That the Kenai Peninsula Borough Code of Ordinances is amended by adding the following new chapter to be numbered 21.64, which shall read as follows:

CHAPTER 21.64

NONCONFORMITY

21.64.010 Intent. When any lot, structure, use or occupancy legally exists prior to the adoption of this ordinance but does not meet the requirements of this ordinance it shall be considered a nonconforming lot, structure or use. Except as provided in this ordinance nonconformities may continue but may not be expanded.

21.64.020 Nonconforming Lots. Each lot containing at least 6,000 square feet of record at the time of adoption of this ordinance may be developed in conformity with all other provisions of this ordinance even though such lot fails to meet minimum area or width requirements. No lot of less than 6,000 square feet may be used except in conformity with all provisions of this ordinance.

21.64.030 Nonconforming Structures. Nonconforming structures are subject to the following restrictions:

- (A) No such structure may be enlarged or altered in a way which increases its nonconformity;
- (B) Repairs and/or replacement of structural parts shall not exceed 50 percent of appraised value prior to repairs or replacement unless said repairs or replacement is in conformity with all other provisions of this ordinance;
- (C) Any such structure which is moved for any reason for any distance whatever shall thereafter conform to the regulations for the zone in which it is located after it is moved.

21.64.040 Nonconforming Uses. Nonconforming uses are subject to the following provisions:

- (A) No structure shall be altered except as permitted in this ordinance.
- (B) Nonconforming uses shall not be extended to occupy any land outside nonconforming structure.

- (C) When a nonconforming use is discontinued for one year the use shall not thereafter be permitted except in conformance with the regulations of this ordinance.
- (D) When a nonconforming structure is destroyed, all associated nonconforming uses shall be deemed terminated.
- (E) The nonconformity shall not be moved to any other portion of the lot or the parcel.

21.64.050 Elimination of Nonconforming Lots, Structures and Uses. A reasonable schedule for the termination of a nonconforming lot, structure or use, or combination thereof, which significantly impairs the public health, safety, and general welfare or the rights of neighboring property owners pursuant to this ordinance, shall be established by amendment to the Homer Zoning Ordinance.

Section 20: That the Kenai Peninsula Borough Code of Ordinances is amended by adding the following new chapter to be numbered 21.65, which shall read as follows:

CHAPTER 21.65

ADMINISTRATION AND ENFORCEMENT

21.65.010 Administrative Official.

- (A) The Homer City Manager shall be the Administrative Official relating to all actions taken by the Homer Advisory Planning Commission and the City Council sitting as the Board of Adjustment.
- (B) The Borough Planning Director is the Administrative Official relating to all actions taken by the Borough Planning Commission.
- (C) This chapter shall govern all enforcement of the Homer District Zoning Ordinance.

21.65.020 Duties of the Borough Planning Director. Administration and enforcement responsibilities of the Planning Director include, but are not limited to the following:

- (A) Maintaining records of all zoning text and district changes related to this ordinance, and
- (B) Processing appeals made under this ordinance.

- (C) Providing technical assistance upon request by the City Manager.

21.65.030 Duties of the City Manager. The City Manager or his appointed staff shall be responsible for:

- (A) Interpreting and enforcing this ordinance, and
- (B) Maintaining records of all activity related to this ordinance, and
- (C) Processing appeals and applications made under this ordinance.

21.65.040 Procedures for Abating Violations.

- (A) When a violation is discovered the City Manager or his appointed staff shall notify in writing via certified mail or by notice posted at the site of the violation the person responsible for said violation. The notice shall specify the violation and order abatement within a reasonable period of time, to be no longer than 90 days. All purported violations known to the city manager, interpretation and abatement action shall be presented to the Homer Advisory Planning Commission at its next regular meeting.
- (B) If a violation is not corrected within the statement period, the City Manager is hereby authorized to notify any attorney representing the City of Homer who may, with the consent of the Borough Attorney initiate action to abate the violation, including the filing of criminal charges as necessary.

21.65.050 Criminal Penalties.

- (A) Every act prohibited by this chapter or any rule or regulation adopted in pursuance thereof is declared unlawful and every violation of this ordinance shall constitute a misdemeanor. Every person convicted of a violation of any provision of this chapter or any rule or regulation adopted or issued in pursuance thereof, shall be punished by a fine of not more than \$500.00 or by imprisonment not to exceed thirty (30) days, or by both fine and imprisonment. Each act of violation and every day upon which such violation shall continue after the expiration of any grace period specified in the notice of violation constitutes a new and separate offense.

- (B) The penalties provided by this section shall, unless other penalty is expressly provided, apply to every portion of the "Homer District Zoning Ordinance", Chapters 21.28 through 21.70 inclusive, and to all amendments to said ordinance.

Section 21: That the Kenai Peninsula Borough Code of Ordinances is amended by adding the following new Chapter to be numbered 21.66, which shall read as follows:

CHAPTER 21.66

Responsibilities of Borough Planning Commission
and Homer Advisory Planning Commission

21.66.010 Borough Planning Commission Responsibilities.

- (A) The Borough Planning Commission shall:
- (1) Hear and act upon appeals as provided in this ordinance.
 - (2) Prepare and recommend zoning ordinance amendments to the Borough Assembly pursuant to Chapter 21.70.
- (B) The Borough Planning Commission shall adopt by resolution procedural rules to be followed when hearing and deciding an appeal. The adopted procedures shall meet or exceed the requirements of Section 21.68.060.
- (C) The fee schedule relating to Borough matters be established by resolution of the Borough Planning Commission.

21.66.020 Homer Advisory Planning Commission Established.

- (A) In order to maximize local involvement in the implementation and modification of the Homer Zoning Ordinance, the Homer Advisory Planning Commission is hereby established. Advisory Planning Commission jurisdiction is limited to the area within the Homer City boundaries.
- (B) The Advisory Planning Commission shall have seven members. Members shall be residents of the City of Homer and appointed by the Mayor subject to confirmation by the City Council.

- (C) Members shall be appointed for three-year terms. Appointments to fill vacancies are for the unexpired term.
- (D) The local Planning Commission existing at the time this amendment becomes effective shall become the Homer Advisory Planning Commission.
- (E) The Homer Advisory Planning Commission shall, exercising zoning authority delegated by the Borough Planning Commission:
 - (1) Interpret initially the provisions of this Chapter and make zoning compliance determinations when requested by the local administrative official, and
 - (2) Act initially upon requests for PUDs, variances and conditional use permits.
 - (3) Prepare and recommend to the Borough Planning Commission modifications to the Homer District Zoning Ordinance.
- (F) The Homer Advisory Planning Commission shall follow the applicable procedural rules of the Borough Planning Commission and the requirements of Section 21.68.060. The Homer Advisory Planning Commission may adopt additional procedural rules with the prior approval of the Borough Planning Commission.
- (G) The fee schedule shall be established by resolution of the City Council after approval by the Borough Planning Commission.

Section 22: That the Kenai Peninsula Borough Code of Ordinances is amended by adding the following new Chapter to be numbered 21.67, which shall read as follows:

CHAPTER 21.67

BOARD OF ADJUSTMENT

21.67.010 Board of Adjustment Established. The Homer City Council is hereby declared to be the Board of Adjustment.

21.67.020 Powers and Duties. The Board of Adjustment shall hear and decide appeals consistent with the other

sections of this ordinance and AS 29.33.110 - 130.

21.67.030 Procedures. Appeals heard by the Board of Adjustment shall be consistent with Chapter 21.68.060 of this ordinance and the rules and regulations governing city council activity as specified in the Homer City Code.

21.67.040 Appeals to Superior Court. All appeals from any actions of the Homer City Council sitting as a Board of Adjustment shall be taken directly to the Superior Court for the State of Alaska. The costs of defending an action taken by the Homer City Council sitting as the Board of Adjustment shall be borne by the City of Homer.

Section 23: That Chapter 21.68 of the Kenai Peninsula Borough Code of Ordinances is repealed in full.

Section 24: That the Kenai Peninsula Borough Code of Ordinances is amended by adding the following new Chapter to be numbered 21.68, which shall read as follows:

CHAPTER 21.68

APPEALS

21.68.010 Purpose. This section governs all appellate actions and determinations taken under the Homer District Zoning Ordinance.

21.68.020 Who May Appeal. Any person or persons with interests in land which is affected by an action or determination taken under this ordinance may appeal said action or determination.

21.68.030 Period For Appeal. An appeal must be filed within ten (10) days of the action or determination being appealed.

21.68.040 Appeal Application. All applications for administrative appeal shall be filed with the City Clerk, shall be in writing, and shall contain, but is not limited to, the following information:

- (A) The name and address of the applicant.
- (B) A description of the action or determination from which the appeal is sought.
- (C) The reason for the appeal which must include a description of the harm which the appellant will suffer.

The City Clerk shall upon receipt of all applications for appeal immediately transmit a copy to the Borough Planning Director. The period for decision by the Borough Planning Commission specified in Section 21.68.060 (B) shall not begin to run until a copy of any notice of appeal has been received by the Borough Planning Director.

21.68.050 Body To Hear Appeals.

- (A) Appeals from action or determination of the City Manager are heard by the Homer Advisory Planning Commission.
- (B) Appeals from the Homer Advisory Planning Commission are heard by Kenai Peninsula Borough Planning Commission.
- (C) Appeals from the Kenai Peninsula Borough Planning Commission are heard by the Homer City Council acting as the Board of Adjustment.

21.68.060 Appeals Procedure.

- (A) This Section governs all administrative appeals made under this ordinance.
- (B) All appeals must be decided by the agency with whom the appeal has been filed within 60 days after the appeal has been filed with that agency.
- (C) The appellant and all parties who have participated in the decision below shall be provided with 15 days notice of the scheduling of the appeal hearing. Affected property owners shall be notified as set forth in Section 21.69.030.
- (D) The notice of hearing shall specify that all persons who wish to appear before the agency hearing the appeal notify that agency of their plans at least three (3) days prior to the hearing.
- (E) All persons taking part in the appeal may be represented by such persons as they desire, may produce additional new evidence as necessary, and may dispute evidence introduced by any party.

- (F) An electronic recording shall be kept of the entire proceeding and shall be reduced to written minutes. The electronic record shall be preserved for one year unless required for further appeals.
- (G) All decisions shall be in writing and made solely upon the record before the agency hearing the appeal and shall make reference to evidence contained in the record. The agency shall include in its record the officially adopted minutes and decision of the agency from which the appeal was taken.
- (H) The agency deciding an appeal shall adopt as part of its decision an official statement of findings and reasons supporting its decision. This statement shall refer to specific evidence in the record and to the controlling sections of this ordinance. Upon express vote, the agency may adopt, as its statement of findings and reasons, those findings and reasons officially adopted by the agency below from which the appeal was taken.
- (I) Copies of the agency's decision and official statement shall be promptly mailed to all parties participating in the appeal hearing.
- (J) Any party participating in an appeal hearing shall have 30 days to appeal the decision to a higher agency or court. Any decision not appealed within that period shall become final.

Section 25: That the Kenai Peninsula Borough Code of Ordinances is amended by adding the following new Chapter to be numbered 21.69, which shall read as follows:

CHAPTER 21.69

PUBLIC HEARINGS

21.69.010 Purpose. This section governs all public hearings held under the authority of the Homer District Zoning Ordinance.

21.69.020 Public Hearing Procedures.

- (A) Notice of the public hearing shall be published at least twice in a paper of general circulation within the city. The notice shall be published during each of the two calendar weeks prior to the public hearing date.
- (B) The notice shall contain at least the following information:
 - (1) A brief description of the proposal on which the public body is to act.
 - (2) A legal or common description of the property involved.
 - (3) Date, time and place of the public hearing.
 - (4) Person and place to contact for more detailed information.
- (C) The Rules of Order of the body holding the hearing shall prevail.

21.69.030 Notification of Neighboring Property Owners.

A copy of the aforementioned newspaper notification shall be mailed to real property owners on record on the Borough Assessor's records within a 300 foot periphery of the parcel affected by the proposed action. When a public hearing is to be held about a zoning ordinance amendment involving a change in the text or major district boundary changes, no notification of neighboring property owners shall be required, but notices shall be displayed in at least three public places.

21.69.040 Procedures. If the purpose of the public hearing is to take testimony and evidence bearing upon a current application or appeal, the hearing body shall adhere to the procedures set forth in Section 21.68.060.

Section 26: That the Kenai Peninsula Borough Code of Ordinances is amended by adding the following new Chapter to be numbered 21.70, which shall read as follows:

CHAPTER 21.70

AMENDMENT PROCEDURES

21.70.010 Initiation of Zoning Ordinance Amendments.
Amendments to the Homer District Zoning Ordinance may be

initiated by:

- (A)
 - (1) The Borough Assembly.
 - (2) The Borough Planning Commission.
 - (3) The Homer City Council.
 - (4) The Homer Advisory Planning Commission.

- (B) Any person may request a zoning ordinance amendment subject to the following conditions:
 - (1) A zoning map amendment may be requested only by petition from a majority of the property owners in the area concerned; and
 - (2) An amendment to the ordinance text may be requested by a petition bearing the signatures of 50 voters registered within the City of Homer.

- (C) Except for the extension of existing district boundaries, no change to the zoning map shall be considered which contains an area less than one (1) acre not including street or alley rights-of-way.

- (D) Any proposed amendment to the zoning ordinance which is substantially the same as any other proposed amendment submitted within the previous nine months and which was rejected shall not be considered.

- (E) The zoning amendment request shall include the names and addresses of the applicant, a map showing the area involved, the present zoning and proposed zoning, and any other pertinent information requested by the City or Borough.

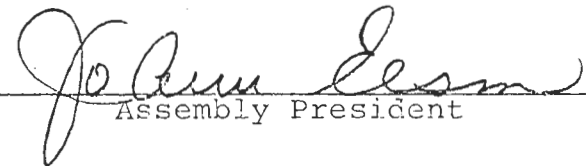
21.70.020 Amendment Procedure. Any valid request to initiate a zoning ordinance amendment shall be submitted to the City Manager. He shall immediately forward the request to the Borough Planning Director. The Director shall arrange notice and schedule public hearings as follows:

- (A) A public hearing shall be held by the Homer Advisory Planning Commission on the proposed amendment in accordance with Chapter 21.68 of this ordinance. After the public hearing, the Homer Advisory Planning Commission shall send its written recommendations to the Borough Planning Commission along with all certified copies of minutes and public records relating to the proposed amendment.

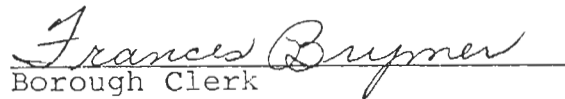
- (B) A public hearing shall be held on the proposed amendment by the Borough Planning Commission in accordance with the provisions of Chapter 21.68 of this ordinance. After the public hearing, the Borough Planning Commission shall send their written recommendations to the Borough Assembly along with all minutes and public records relating to the proposed amendment. The public hearings of the Homer Advisory and Borough Planning Commission may be held simultaneously.
- (C) A public hearing shall be held by the Borough Assembly on the proposed amendment in accordance with Chapter 21.68 of this ordinance except that the Borough Assembly need not adopt any statement of reasons for approving or disapproving any proposed amendments.

Section 27: That this ordinance shall become effective upon enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH
THIS 16 DAY OF May, 1978.


Assembly President

ATTEST:


Borough Clerk

