

Commission Information:

Initiated by: City Clerk
 First on Agenda: August 16, 2007
 Action: Failed
 3-3 (Kerslake, AlLee,
 Vote: Hamming – yes, Madar,
 Silva, Brown – no)

Council Information:

Introduced by: City Council
 Date: August 28, 2007
 Public Hearing: September 11, 2007
 Action: Adopted
 Vote: 6-1

Yes:	No:
Pippel	Wood
Erbey	
Vanover	
Best	
Hanson	
Combs	

CITY OF PALMER, ALASKA

ORDINANCE NO. 07-018

AN ORDINANCE OF THE PALMER CITY COUNCIL REPEALING PALMER MUNICIPAL CODE SECTION 17.08.215, HEARING OFFICER DEFINITION; AMENDING SECTION 17.72.080 APPEAL, TO REFER APPEALS TO A HEARING OFFICER; AND ENACTING CHAPTER 17.98, APPEALS TO A HEARING OFFICER

THE CITY OF PALMER, ALASKA ORDAINS:

Section 1. Classification. This ordinance shall be permanent in nature and shall be incorporated into the Palmer Municipal Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Section 17.08.215 is hereby repealed.

Section 4. Section 17.72.080 is hereby amended to read as follows (new language is underlined and deleted language is stricken):

17.72.080 Appeal.

A.—The commission’s action may be appealed pursuant to PMC 17.98 by any party, including ~~but not limited to~~ a city official. The right of appeal is forfeited unless a written appeal is delivered to the clerk within twenty (20) calendar days of the commission’s decision.

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- ~~B. The appeal from commission action on applications for a conditional use permit regarding a subject of substantial impact is to the Council. All other appeals are to a hearing officer. Upon a timely request for appeal and subject to subsection (C) of this section, the city manager shall determine whether or not the application pertains to a subject of substantial impact.~~
- ~~C. For purposes of this section, a subject of substantial impact includes at least one of the following:~~
- ~~1. A project covering more than 10 acres;~~
 - ~~2. A project involving construction of more than 20 dwelling units;~~
 - ~~3. A project involving construction of more than 10,000 square feet of floor space;~~
 - ~~4. Other projects having a substantial impact on the health, safety, or welfare of a significant number of people in the vicinity of the project.~~

Section 5. Chapter 17.98 is enacted to read as follows:

CHAPTER 17.98 APPEALS TO HEARING OFFICER

17.98.005 Definitions.

“Appeal packet” means the packet which contains the notice of hearing date, appeal letter, the appeal record and briefs.

“Appeal record” consists of the entire Community Development file pertaining to the case under appeal, including all original papers and exhibits, and the transcript of the proceedings before the Commission.

“Appellee” means the party responding to the appeal application.

“Appellant” means the party who files an appeal application pursuant to PMC 17.

“Interested persons” means any person who would be adversely affected by the decision.

17.98.010 Hearing officer.

- A. To be appointed as a hearing officer, a person must be an attorney at law in the state of Alaska who possesses knowledge of Title 17, general land use regulations, and principles of due process. An attorney may not act as hearing officer in any case in which he or she has any direct or indirect financial interest, and must certify to the absence of any such interest before receiving the appeal record on a form provided by the clerk. A hearing officer may not be a current city employee or a current member of the council or commission.
- B. A hearing officer shall be impartial in all decisions, both in fact and in appearance. The hearing officer shall not engage in ex parte contact with any person concerning the appeal either before or after the appeal hearing.
- C. The manager or clerk shall solicit persons who are willing to serve as hearing officers, and shall maintain a list of interested persons determined to be qualified.
- D. Upon an appeal being filed, the manager shall appoint the hearing officer and shall report the appointment to the council.

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- E. Compensation of the hearing officer shall be determined by council legislation prior to the hearing.

17.98.015 Stay on appeal.

An appeal stays the decision or order appealed until a written decision is rendered by the hearing officer; provided that the hearing officer may, upon motion, vacate the stay if it is determined to protect the public's health, safety and welfare.

17.98.020 Notice of appeal; appeal fee.

- A. As set forth in PMC Title 17 a decision of the Commission may be appealed by filing an appeal application with the clerk on a form provided by the clerk. The appeal application shall clearly state the grounds of the appeal, and include the appellant's mailing address or that of the appellant's representative.
- B. Except as provided in subsection C of this section:
1. An appeal application shall include a nonrefundable filing fee of three hundred dollars (\$300.00) and a five hundred dollar (\$500.00) deposit for preparation of the appeal record, advertising and mailing costs.
 2. Upon receipt of the appeal record, the clerk shall reasonably determine the cost of preparation of the appeal record, advertising and mailing costs. If the costs exceed the amount of the deposit, the clerk shall invoice the appellant for the excess. The invoice shall be paid within fifteen (15) business days of receipt of the invoice by the appellant or the appeal will be dismissed. The clerk shall return to the appellant all amounts in excess of the actual costs of preparing the appeal record, advertising and mailing.
- C. Within the timeframe for filing the appeal application, an appellant may request the city waive payment of part or all of the fee and costs described in subsection B of this section because of the appellant's indigence. The request shall include a sworn financial statement in a form approved by the clerk. The clerk will grant or deny the request based on a determination of whether the appellant is indigent.

17.98.030 Preparation of appeal record.

- A. Upon the timely filing of an appeal, the clerk shall request the record from the city staff. The City staff shall provide the record to the clerk within thirty (30) calendar days of the request. The record shall contain all pertinent records including:
1. A verbatim transcript of the proceedings before the Commission from which the appeal has been taken.
 2. Copies of all documentary evidence, memoranda and exhibits, correspondence and other written material submitted to the Commission prior to the decision from which the appeal is taken.
 3. A copy of the written decision of the Commission, including its findings and conclusions.
- B. Upon completion of the record, the clerk shall mail or personally serve the appeal record on the hearing officer, the appellant, the applicant, if not the appellant, and each other interested person who has submitted a written request for a copy of the appeal record. Interested persons requesting a copy of the record shall be charged on a per page basis.

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17.98.040 Written arguments.

- A. Brief of appellant. The appellant may file a written brief of points and authorities in support of those allegations of error specified in the appeal letter with the clerk's office not later than fifteen (15) calendar days after service of the appeal record. The clerk shall mail or otherwise deliver a copy of the appellant's brief to the City staff and hearing officer; assigned responsibility for the appeal.
- B. Brief of appellee. The appellee may submit to the clerk a written reply to the appeal letter and any brief no later than thirty (30) calendar days after service of the appeal record. The clerk shall mail or otherwise deliver a copy of the appellee's brief to the appellant, City staff and hearing officer assigned responsibility for the appeal.
- C. Reply brief. The appellant may file a written reply brief to appellee briefs submitted pursuant to subsection 17.98.040 B. The appellant's reply brief is due no later than ten (10) calendar days after service of notice that the appellee briefs have been filed.
- D. Form of briefs. All briefs shall be typewritten on 8 1/2- by 11-inch pages. The text of the brief shall be double-spaced other than quotations from the record, case law or other applicable law or exhibits which cannot be retyped on 8 1/2- by 11-inch pages. The brief of the appellant is limited to twenty-five (25) pages exclusive of exhibits. The brief of the appellee is limited to twenty-five (25) pages exclusive of exhibits. The reply brief is limited to ten (10) pages exclusive of exhibits. The clerk shall not accept a brief unless it is in the form prescribed by this section and filed within the time prescribed by this section.

17.98.050 Distribution of appeal packet; notice of hearing.

Following the time set for receipt of written arguments from the appellant and appellee, the clerk shall prepare and distribute to the hearing officer an appeal packet containing the notice of appeal, the appeal record, written comments by interested parties, and any briefs filed in accordance with Section 17.98.040. Notice of the hearing date shall be published in a newspaper of general circulation and shall be mailed or personally served to the appellant and appellee. Interested persons requesting a copy of the record shall be charged on a per page basis.

17.98.060 Conduct of hearing.

- A. The meeting at which the hearing officer hears an appeal shall be open to the public and a record of the hearing shall be made.
- B. The hearing shall be subject to the following order and time limitations:
 - 1. City staff: ten (10) minutes to present the decision of the Commission;
 - 2. Appellant: fifteen (15) minutes;
 - 3. Appellee: fifteen (15) minutes;
 - 4. Interested persons: three (3) minutes each;
 - 5. Appellant, for rebuttal: five (5) minutes.
- C. The hearing officer may question each of the parties listed under subsection B of this section.
- D. The hearing officer may adjourn the hearing for deliberative purposes.

17.98.070 Scope of review.

- A. The hearing officer shall hear an appeal solely on the basis of the appeal packet and oral testimony as described in subsection 17.98.060 B.

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- B. The hearing officer may exercise his or her independent judgment on legal issues raised by the appellant. The term "legal issues," as used in this section, means those matters that relate to the interpretation or construction of ordinances or other provisions of law.
- C. The hearing officer shall defer to the judgment of the Commission regarding disputed issues or findings of fact unless a substitution of his or her independent judgment pursuant to subsection 17.98.070 D is made. Findings of fact adopted expressly or by necessary implication by the Commission may be considered as true if they are supported in the record by substantial evidence. The term "substantial evidence," for the purpose of this section, means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. If the record affords a substantial basis of fact from which the fact in issue may be reasonably inferred, it shall be considered that the fact is supported by substantial evidence.
- D. Notwithstanding the provisions of subsection 17.98.070 C, the hearing officer may substitute his or her independent judgment for that of the Commission on any disputed issues or findings of fact. Such judgment must be supported on the record by substantial evidence.

17.98.080 Decision.

- A. The hearing officer shall decide an appeal on the basis of the appeal packet, in accordance with the standards of Section 17.98.070.
- B. The hearing officer may affirm or reverse the decision of the Commission in whole or in part. A decision reversing or modifying the decision appealed from shall be in a form which finally disposes of the case on appeal except where the case is remanded in accordance with Section 17.98.090 A.
- C. Every decision of the hearing officer to affirm or reverse the decision of the Commission pursuant to subsection 17.98.080 A of this section shall be in writing and shall be based upon and include findings and conclusions adopted by the hearing officer. 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 hearing officer's decision. The hearing officer may seek the assistance of the City staff in the preparation of findings.
- D. Every final decision of the hearing officer shall clearly state it is a final decision with respect to all issues involved in the case, and that the parties have thirty (30) days from the date of mailing, or other distribution of the decision, to file an appeal to the superior court.
- E. A decision by the hearing officer to remand the case on one or more issues, in accordance with PMC 17.98.090 A, is not a final decision with respect to any issue involved in the appeal. Notwithstanding the foregoing, all matters decided by the hearing officer (except those remanded pursuant to PMC 17.98.090) will be deemed a final decision following the lower administrative body's decision provided no appeal is perfected within the time period specified in PMC 17.72.080.
- F. A hearing officer's decision remanding a case on one or more issues, in accordance with PMC 17.98.090 A, will include the following statements:
 1. the decision is the final decision with respect to all matters resolved therein when, following the lower administrative body's decision on remand, no appeal is perfected within the time period specified in PMC 17.72.080; and
 2. the parties have thirty (30) calendar days from the expiration of said time period to appeal to the superior court.


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17.98.090 Remedies.


- A. Where the hearing officer reverses or modifies a decision of the Commission in whole or in part, its decision shall finally dispose of the matter on appeal, except that the case shall be remanded to the Commission where the hearing officer determines either that:
1. There is insufficient evidence in the record on an issue material to the decision of the case; or
 2. There has been a substantial procedural error which requires further public hearing.
- A decision remanding a case shall describe any issue on which further evidence should be taken, and shall set forth any further directions the hearing officer deems appropriate for the guidance of the Commission.
- B. The Commission shall act on the case upon remand in accordance with the decision of the hearing officer in the minimum time allowed by the circumstances. Cases on remand following a decision of the hearing officer shall take precedence over all other matters on the Commission's agenda.

Section 6. Effective Date. Ordinance No. 07-018 shall take effect upon adoption by the City of Palmer City Council.

Passed and approved this eleventh day of September, 2007.



John C. Combs, Mayor



Janette M. Bower, CMC, City Clerk

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