

Session 16-06, a Regular Meeting of the Cannabis Advisory Commission was called to order by Chair Aryn Young at 5:31 p.m. on July 28, 2016 in the Cowles Council Chambers located at City Hall 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS HARRIS, SARNO, REYNOLDS, CLARK, ROBL,
STEAD, CARROLL, YOUNG, AND LEWIS

STAFF: DEPUTY CITY CLERK KRAUSE
CITY PLANNER ABBOUD

TELEPHONIC: CITY ATTORNEY WELLS

APPROVAL OF AGENDA

Chair Young requested a motion to approve the agenda.

LEWIS/REYNOLDS - SO MOVED.

There was no discussion.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PUBLIC COMMENT

VISITORS/PRESENTATIONS

A. Jenny Carroll, Special Projects & Communications Coordinator, 2017-2022 Capital Improvement Plan

Ms. Carroll provided an outline on the Capital Improvement Plan (CIP) process and the intent of have a CIP, what type and category of projects that are included in the CIP and how the document is used to leverage funding from the state legislature.

Mr. Abboud provided some suggestions on how the commission can determine their recommendations to Council when they address the item later on in the agenda.

Ms. Carroll fielded a few questions from the commission on the projects and process.

RECONSIDERATION

ADOPTION OF CONSENT AGENDA

(Items listed below will be enacted by one motion. If separate discussion is desired on an item, that item may be removed from the Consent Agenda and placed on the Regular Meeting Agenda at the request of a Commissioner.)

A. Meeting Minutes for the June 23 2016 Regular Meeting

Chair Young called for adoption of the Consent agenda as presented.

LEWIS/REYNOLDS - SO MOVED.

There was no discussion.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

REPORTS

A. City Attorney Report on Issues Surrounding Marijuana and Taxation

City Planner Abboud sent notification to the City Attorney to call in at this time the commission was prepared to hear her report. While waiting for the City Attorney to call in the City Planner Abboud proceeded to answer a question from Commissioner Lewis on his report regarding the differences between medical and recreational cannabis and whether they would be exempt from the sales taxes.

City Planner Abboud was unsure whether medical cannabis would be exempt from sales tax. He then related information on his experience in visiting businesses in Colorado, he was curious about HIPPA requirements also. Commissioner Lewis opined that it should be similar to prescriptions since they are not taxed. City Planner Abboud expressed concerns regarding the HIPPA regulations.

Chair Young requested City Attorney Wells to comment on the medical marijuana and HIPPA requirements.

City Attorney Wells stated that when it comes to the HIPPA requirements that they should be as conservative as they can. If they have information that is coming from a physician which would take extra steps but believed that they can fashion an exemption however it will take time since there is no previous regulations to base their off of; she cannot fully answer since she would have to review the HIPPA requirements and they have to keep an eye on Washington DC since they are beginning these steps.

Discussion ensued on the implied liability of the city since the city would not be operating a dispensary. It was opined that any HIPPA regulations would fall to the business owners and they could just include a regulation that employees be trained for HIPPA requirements when dealing with medical marijuana. Additional concern expressed by the commission was that the Proposition 2 did not allow tracking and so was concerned that a business would have to track those medical marijuana purchasers. Further clarification was provided by City Attorney Wells that the very fact that a person is receiving treatment and the treatment is in the form of a marijuana prescription could trigger HIPPA requirements, because the city would be having businesses complete tax returns telling us the amount of sales and exemptions, it would be easier if the tax is at the cultivation level. The city would have to walk through those filing steps and consider what information they are asking when they pay the excise tax, how are they validating or not validating, such as exempt sales and the city is not going to audit that since that would then denote the medical versus recreational. There is an unknown and thus a concern. Further comment on the medical sales and HIPPA and what additional requirements on the business may be required. This may be a real burden on the industry that they do not know about. It is good to consider now but can be very time consuming also.

Additional items discussed were differentiating between recreational and medical within one business, separating the businesses through zoning; additional discussion on enforcement; costs related to enforcement; preparing ordinances for taxation and regulation which are going to be costly when comparing the revenue when at this time there is only one known application that has been filed; creating more hoops and expenses for an industry that already has considerable hoops to jump through; until the industry is perfected and goes through the testing such that other prescriptions have gone through that medical marijuana should be included in that sales tax; not taxing seniors and medical users; simple signage and presentation of a medical card which offers less accountability; an auditing process that complies with HIPPA.

The commission agreed that additional information was needed on how HIPPA requirements and exemptions would be applied.

City Attorney Wells spoke about delaying the excise taxes, as she has started to consider the costs involved in the legal fees and setting up the excise collection. The low end of legal fees for establishing an excise tax was around \$25,000. To establish a department to or sub-department to collect and enforcement of that tax could be upwards of \$100,000.00; she then performed an exercise to present a hypothetical scenario on the usage and amount of revenue from sales which would only

bring in at \$0.25 per gram would mean \$65,000 in revenue and at \$1.00 per gram would be \$260,000 in revenue per year. Given the amount of the cost to get the system in place, not including the amount of staff time involved, it is very difficult to see an economic benefit, the application process takes long enough and that doesn't even include the possibility of those residents that do not want their usage known; medical exemptions if that is a route the city takes.

City Planner Abboud offered the other facets of unknown within the taxation realms regarding edibles. He also mentioned the Borough initiative to ban marijuana which if that passes then it would mean a boon for the city.

City Attorney Wells responded that focusing the commission's efforts on the process such as the interplay on zoning, permitting, operations and reporting may be a better avenue until they get at least one establishment.

LEWIS/CLARK - MOVED TO POSTPONE DISCUSSION ON ESTABLISHING AN EXCISE TAX ON MARIJUANA UNTIL ONE YEAR AFTER A BUSINESS HAS BEEN OPENED.

There was a brief discussion on postponing implementing an excise tax will allow them to realize the increase in sales tax revenue from the industry and allowing the industry to know what to expect in the form of expenses when opening and conducting business within the city.

HARRIS/MOVED TO OFFER A FRIENDLY AMENDMENT TO CHANGE THE POSTPONEMENT TO THREE YEARS.

LEWIS AS MAKER OF THE MOTION ACCEPTED THE FRIENDLY AMENDMENT.

There was a brief discussion on not wasting time of the commission.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

City Attorney Wells will bring a progress update for the next meeting. City Planner Abboud commented on creating the next steps to focus on what happens when they get notice of an application. City Attorney Wells recommended a Administrative Hearing based on the zoning regulations and the Planning Department with City Planner Abboud is fully capable of reviewing those applications in a very a black and white way. It is understood that the City Planner will be making a decision based solely on those considerations. After much more in depth discussion and review of information if the Commission wants a review that includes the Commission and Council participation, provides for an appeal method they can make those decisions. She confirmed with the City Planner that is what direction he was thinking would be the best at this time and would be her recommendation.

City Planner Abboud was unsure if they were bound to include the Commission in the review of applications. He noted that one of the items that is not included in his black & white world and City Attorney Wells has mentioned to him his comment and protest of an application from residents outside of the laws and regulations established. He cited as an example the issue going on now with an application in Happy Valley. He also noted that if someone protested for other than established law the CAC would be beneficial in that respect. He provided the steps involved in the Planning world.

This is a process that requires development and the assistance of City Attorney Wells would be required.

A brief discussion on legal reasons for approving a permit and anything else would be considered arbitrary and could lead to suit. City Attorney Wells recommended allowing or directing the City Planner to review applications based solely on the letter of the law which will then remove the Commission or the Council from acting as a quasi-judicial body subject to all the due process and issues.

City Attorney Wells further clarified for City Planner Abboud that they have rules in place and any applications received can be reviewed administratively by the Planning Department based on those regulations currently in place.

A brief discussion and clarification by the City Attorney over the regulatory responsibilities of the Commission and that she could have an ordinance ready for the next meeting giving outlining and giving the City Planner the authority to review and approve the applications based upon the existing regulations. City Attorney Wells further explained that it can be handled administratively; it was not required to go through the Commission or Council. A notice will be sent to someone in the city and he can review it.

B. Report to the Commission - City Planner Update 16-11

1. Memorandum from City Attorney Wells re: Onsite Consumption

Chair Young inquired if there was anything additional City Planner Abboud wanted to add.

City Planner Abboud provided anecdotal comments on the taxation scenarios that he discussed with the City Attorney. He then outlined the options available for addressing the re-zoning issues.

PUBLIC HEARINGS

PENDING BUSINESS

A. Draft Ordinance 16-XX Amending Title 9, Taxation to Add Chapter 9.18, entitled Excise Tax on Marijuana

1. City of Houston, Alaska, Ordinance 16-09(A), Levy a Marijuana Excise Tax
2. City of Houston, Alaska, Ordinance 16-08, Marijuana Licensing and Regulation

Chair Young noted that since they moved and passed the motion to suspend taxation that there was no need for additional discussion.

NEW BUSINESS

A. Revisiting the Zoning Regulations for Limited Cultivation within the City and Retail Businesses on the Spit

Commissioner Sarno understood the situation and will bring those directions back to the folks that want the zoning changed and explain what they will have to do.

HARRIS/SARNO - MOVED THAT ANY LAND OVER HALF AN ACRE BE AVAILABLE FOR LIMITED CULTIVATION AND BUSINESS ON THE SPIT.

Discussion followed regarding the rural residential and council actions and testimony in opposition of cultivation in those areas; if that was allowed it would be prudent to consider that an issue to ban could be brought forth again and pass; take it slow and let the community see that it is working and with the current council no actions would pass at this time.

VOTE. NO. LEWIS, REYNOLDS, CARROLL, SARNO, YOUNG, STEAD, HARRIS, ROBL, CLARK

Motion failed.

Commissioner Harris moved to recommend that if an initiative is brought forward that the person who brings forth an initiative pay a fee to file for the initiative.

There is no legal standing at this time to make a person pay for filing a initiative.

B. Proposed Amendments to the State Marijuana Regulations: Testing Facility Requirements, Notices for Marijuana Stores and Onsite Consumption and Marijuana Products in Marijuana Retail Stores

Commissioner Carroll opposed the proposed regulations for a Marijuana Handlers Card believes that it should follow the same guidelines as getting a TAPS card. Anyone who handles alcohol has one, they take a test. To require the business owners to have every employee go through fingerprinting and federal background search is government over reach.

Commissioner Harris and Clark agreed offering the onerous requirement to have a person being paid minimum wage to sweep the floor or putting stickers on containers who does not handle or deal with the product be required to have the Handlers permit and background check along with fingerprinting. It could be considered a method of shaming to take the employment in the industry.

LEWIS/CLARK - MOVED TO FORWARD A RECOMMENDATION OF COMMISSION IN OPPOSITION TO THE REQUIREMENTS OF BACKGROUND CHECK AND FINGERPRINTING FOR A MARIJUANA HANDLER PERMIT AS OUTLINED IN THE PROPOSED REGULATIONS 3 AAC 306.700 AND THAT IT SHOULD BE LIMITED TO THE OWNER OF THE BUSINESS.

There was no additional comments.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

C. Capital improvement Plan 2017-2022 Commission Recommendations

Commissioner Sarno suggested the commission include at least one of the Fire Department requests since there is such a threat of fires each year. Commissioner Clark questioned inclusion of the Paving Project from Anchor Point to Homer. City Planner Abboud clarified the project for the commission.

There was a brief discussion and clarification on the recommending new projects for inclusion in the plan, including and supporting projects of other entities within the city and then the process for recommending two projects.

The Commissioners took a few minutes to review the projects and each commissioner offered their top two projects as follows:

Commissioner Clark - Multi-use Community Center
Fire Department Improvement

Commissioner Robl - Public Safety Building - Phase I
Radio Communication System Upgrades

Commissioner Harris - Public Safety Building - Phase I
Fire Department Improvements

Commissioner Stead - Large Vessel Haul Out Repair Facility
Ice Plant Upgrade

Commissioner Young - Large Vessel Haul Out Repair Facility
Radio Communication Systems Upgrades

Commissioner Sarno - Fire Department Improvements
Multi-Use Community Center

Commissioner Carroll - Fire Department Improvements
Multi Use Community Center

Commissioner Reynolds - Public Safety Building Phase I
Radio Communication System Upgrades

Commissioner Lewis - Large Vessel Haul Out Facility
Radio Communication System Upgrades

Top Projects Selected:

Fire Department Improvements - 4	Radio Communication System Upgrades - 4
Multi-Use Community Center - 3	Large Vessel Haul Out Facility - 3
Public Safety Building - Phase I - 3	Ice Plant Upgrades - 1

The Fire Department Improvements project has been funded so the Commissioners who chose that project selected another project as follows:

Commissioner Clark - Large Vessel Haul Out Facility
Commissioner Harris - Public Safety Building Phase I
Commissioner Sarno - Large Vessel Haul Out Facility

YOUNG/REYNOLDS - MOVED TO FORWARD A RECOMMENDATION TO COUNCIL TO INCLUDE THE RADIO COMMUNICATION SYSTEM UPGRADES PROJECT AND LARGE VESSEL HAUL OUT FACILITY PROJECT IN THE CAPITAL IMPROVEMENT PLAN 2017-2022 & 2018 LEGISLATIVE REQUEST.

There was no further discussion.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

D. Next Meeting Deliverables, Agenda Items

There was no discussion.

INFORMATIONAL MATERIALS

- A. 2016 Meeting Schedule and Packet Processing Deadlines
- B. 2016 Commission Attendance at Council Meetings

It was noted that Commissioner Lewis would not be attending the August commission meeting or the August 22, September 12th Council meetings and Commissioner Reynolds would not be in attendance at the August council meetings.

Commissioner Harris volunteered to speak at the August 8, 2016 Council meeting.

Chair Young stated they could have a volunteer lined up for September at the next commission meeting.

COMMENTS OF THE AUDIENCE

Terry Lynn, formerly of San Diego, California, now a proud resident of Homer, looking forward to getting this project started in the city, commented on the direction of the discussions the commissioners entertained tonight and complimented them on the ground work that they were doing. Mr. Lynn reported owning liquor stores and bars and the trials of dealing with inebriated persons which he has never faced with a person who has used marijuana unless they had been drinking. He

commented on the ease with which a non-taxable medicinal sale of marijuana could be made and the simple process of noting that sale on a form without violating HIPPA rules or patient confidentiality. He also reported people who wanted to come to Alaska and start a business but were hesitant due to all the uncertainty.

Responding to questions from the commissioners he did not believe that the janitor needed a handlers card and an extensive background and fingerprinting, he agreed that following the regulations is needed and also that in California and one of the reasons he was relocating to Alaska, was the lack of regulations in California, people were doing it because they could. Alaska is doing right. He also advocated for getting marijuana off the Schedule One list.

Commissioner Carroll encouraged Mr. Lynn to work within the legislature to refine and change the medical cannabis regulations.

Mr. Lynn reported receiving the thanks from many people whom he has helped.

COMMENTS OF STAFF

COMMENTS OF THE CHAIR

COMMENTS OF THE COMMISSION

Commissioner Clark, Robl, Harris, Stead, Carroll, Lewis had no comments

Commissioner Sarno commented that she appreciated all the commissioners coming to the meeting and working on the issues before them and thanked Mr. Lynn for attending their meeting.

Commissioner Reynolds commented thanked Rick and Holly for providing understandable and digestible information. They both did a lot of background research that is really helpful. The whole tax thing and income is a hurdle that they need to figure out and the reason that Council and the community heard was the industry would be another source of revenue and to help get more buy-in rom community was to show the benefits and how much that cannabis was helping the community.

ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 7:39 p.m. The next regular meeting is scheduled for THURSDAY, AUGUST 25, 2016 at 5:30 p.m. in the City Hall Cowles Council Chambers located at 491 E Pioneer Avenue, Homer, Alaska.

Renee Krause, CMC, Deputy City Clerk

Approved: _____