

Session 15-06, a Regular Meeting of the Cannabis Advisory Commission was called to order by Acting Chair Beauregard Burgess at 5:35 p.m. on October 22, 2015 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS HARRIS, ROBL, JONES, SARNO, BURGESS, LEWIS

ABSENT: COMMISSIONER STEAD, MONROE (EXCUSED)

STAFF: CITY PLANNER ABBOUD
DEPUTY CITY CLERK KRAUSE

APPROVAL OF AGENDA

Acting Chair Burgess called for a motion to approve the agenda as presented.

LEWIS/HARRIS - SO MOVED.

There was no discussion.

The agenda was approved as presented by Consensus of the Commission.

PUBLIC COMMENT

The public may speak to the Commission regarding matters on the agenda that are not scheduled for public hearing. (3 minute time limit).

Chris Long, city resident, questioned what regulations the city intended to put into effect, if they plan to limit the number of licenses issued and if so how many medical versus recreational licenses will be issued.

Acting Chair Burgess responded to Mr. Long questions stating that any regulations the city would have considered implemented have already been addressed by the State. Currently they are working on zoning issues.

Comments to the audience on the restrictive nature of the regulations the state of Alaska intends to implement far exceed anything that the commission would have required and since the city cannot be less restrictive only more their hands are tied on what they can implement at this time.

VISITORS

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 September 24, 2015 Regular Meeting

Acting Chair Burgess requested a motion to approve the Consent Agenda.

LEWIS/HARRIS - SO MOVED.

There was no discussion.

The Consent Agenda was approved as presented by Consensus of the Commission.

REPORTS

A. Report to the Commission - City Planner Abboud

City Planner Abboud provided a brief summary of his discussion with the City Manager regarding taxation with the City Attorney. He has not received anything to date. He still has plenty of questions about options and what would the city have to do to enact any of those options and what road they would go down regarding any of those scenarios.

He is interested in the Borough decision to have the Planning Commission act as the licensing authority so they would be authorized to collect the licensing fees. He would like to discuss the exposure and liability to the City of Homer in regards to appeals which would negate any fees they collected.

The Homer Advisory Planning Commission discussed the zoning issues at length at their meeting last night. The proposed zoning was introduced at the October 7th meeting and there was a parting of the ways, in fact the only thing that stayed the same with some heavy convincing was the recommendations for testing facilities. He was able to convince the commissioners that this was a legitimate testing facility with people in white coats, very secure, high paying positions, and involves a large investment.

The Advisory Planning Commission was concerned with regard to the image that this would project for the City of Homer, worried that going down a road of other illegalities not necessarily associated with businesses necessarily, associated activities as with other illegal drugs. He tried to assure them that these would be innocuous, have a vent, lighting, activities won't be visible from the street, enclosed and secured buildings. The Planning Commissioners have basically brought it down that a Conditional Use Permit (CUP) will be required to have any cannabis related type of operation in any of the districts. City Planner Abboud explained the process would then entail a prospective business owner to appear before the Advisory Planning Commission and explain their plan, address any concerns of the Commission. The CUP would also require notice to be sent to all property owners within the area of the proposed operation, who in turn can submit comments or testify in favor or opposition of the proposed operation in that specific location.

The Planning Commission's believes it to be best to be strict then relax restriction if there appears to be no problems. They agreed and followed most of the State recommendations on distances. They will have a public hearing on the November 4, 2015 meeting at 6:30 p.m.

They did not outright restrict any district with the exception of Town Center. He did not see any objection with that restriction since it was supposed to be pedestrian orientated.

The Rural residential Cultivation, they considered special aspects and any lot over 40,000 square feet could be permitted outright for a limited cultivation facility, 20,000 - 39,999 square foot would require a CUP, not allowed for any lot under 20,000 square foot.

City Planner Abboud requested the assistance of this commission to getting the word out and inviting people to come and testify. There will be a second public hearing in December since the Planning Commission only has one meeting for November and December. Then it will be submitted to Council for approval.

Commissioner Lewis questioned being able to get people to attend the public hearing and stated that people will wait until the Council level before they attend a meeting to comment. City Planner Abboud responded on the type of people who would attend and there being a whole other element that should be encouraged to comment.

Commissioner Burgess requested the draft ordinance and a map indicating where it will be permitted outright, where a CUP will be required and where it will not be permitted for the commission meeting November 30, 2015. City Planner Abboud responded that he was unsure how the City Attorney would recommend seeing this in code and he could provide that as soon as it is available for the Planning Commission. He wanted everyone aware that this will be a complicated ordinance for the ordinary person to understand. He will try to have this but if they get busy that there is no guarantee.

Commissioner Burgess stated a simple map for ease of discussion between this commission and the Planning Commission.

Commissioner Harris asked what the City Planner Abboud could realistically envision with regard to the number of retail operations, etc.

City Planner Abboud reported that the Planning Commission will have on their next agenda, November 4, 2015 to discuss licensing limitations; he believed that realistically the number of people who will be able to have the funds to expend and jump through all the state hoops to be very limited. He believed that the discussion will be limited.

Commissioner Sarno requested clarification on the intent of limitation on licensing. City Planner Abboud responded that they did not really go into it, and you can address the number or spacing, but he believes that the commission will be addressing the number of overall cultivation licenses, retail licenses, etc. that the city will issue.

Commissioner Burgess interjected that while he appreciated the expertise of the Planning Commission he did not believe that they should be more restrictive than the state from a zoning standpoint then create barriers to limit the number of licenses issued. The city has a limited opportunity to derive needed revenue from this industry and he opined that this will be essentially deprives the city of that possible revenue stream.

City Planner Abboud responded that the Planning Commission has different perspective, they believe that the image we are portraying to the community will have an undesirable impact on the community is more important.

There was a brief discussion on the Planning Commission trying to address values and that the commission should not try to enact those values but let the market and industry work itself out naturally. Staff recommended the Cannabis Commissioners attend the next Planning Commission meeting or submit comments to address those concerns.

B. Kenai Peninsula Borough Cannabis Task Force Report - Commissioner Monroe

Commissioner Monroe was not present to provide a report.

PUBLIC HEARINGS

(Public Testimony is limited to 3 minutes. The Commission conducts Public Hearings by hearing a staff report if any, hearing public testimony and then acting on the Public Hearing items- Once the public hearing is closed the Commission cannot hear additional comments on the topic.

PENDING BUSINESS

A. Cannabis Zoning Staff Report CAC 15-06 from City Planner Abboud

1. Memorandum from the Library Advisory Board to the CAC Re: Homer Public Library
2. Draft State of Alaska Proposed Regulations as Amended October 1, 2015

City Planner Abboud forwarded the recommendations, spoke about the buffer concerns and submitted a question regarding the phrase concerning religious services since he believed it can be a quagmire and the distance requirement from correctional facilities.

There was a brief discussion regarding the definition and the need for the state to provide a definition for this item. The city has zoning requirement but ultimately if the states description is ambiguous and could apply to just about any type of regularly conducted services anywhere such as a field.

Commissioner Sarno commented on the 3 AAC 306.900 3 AAC 306.900, stating that this regulation is discriminatory and unconstitutional. It is discriminatory because the title of the initiative passed by the voters includes the words "tax and regulate marijuana like alcohol." Once cannabis is purchased, it passes out of the jurisdiction of the state and becomes like a bottle of wine or beer.

The prohibition against consumption in public has a solution: private clubs and other businesses where patrons, over 21 years of age, can safely and convivially consume cannabis products as if in the safety of their own home. This provides for the thousands of tourists who will be coming to Alaska in search of a safe, genuine Alaskan cannabis experience.

This prohibition of cannabis clubs is unnecessary to the functioning of the taxation and regulation of production and sales of cannabis. This prohibition of cannabis clubs directly attacks harmless social consumption. Harmless social consumption is exactly what the spirit of the cannabis initiative aims to protect. This prohibition of cannabis clubs will result in litigation both unnecessary to public safety and needlessly expensive to the state. This prohibition of cannabis clubs violates the US Constitution. The 14th Amendment of the US Constitution provides for equal protection under the law. The prohibition of cannabis clubs is cultural discrimination. Discrimination against a culture is prohibited by the Constitution no less than discrimination by age, gender, handicap, race, and sexual preference.

Cannabis clubs, cannabis-friendly B&B's, cannabis cafes, and the like, are also protected by the First Amendment freedom to associate, a freedom as fundamental as freedom of the press.

Commissioner Sarno questioned the following:

1. Where will the tourists be able to consume cannabis? How about in their hotels or bed and breakfasts? Will these businesses be allowed to provide designated areas?

A: AS 17.38.040 prohibits the consumption of marijuana in public places. "In public" was defined by the board in a regulation that was made permanent this year and includes any place to which the public or a substantial portion of the public has access. The proposed regulation in Article 9 prohibits the creation of clubs that would invite the public in to consume marijuana but charge a membership fee, admission fee or cover charge for admission. AS 17.38 does not provide legal authority for the Marijuana Control Board to create a license type permitting consumption of marijuana in a place which is open to the public.

The Kachemak Cannabis Coalition recommends that the City of Homer recommend to the state that cannabis tourism businesses be included in the regulations for the state law on cannabis. These businesses need only be licensed like any other business. Bed & breakfasts, cafes, clubs and restaurants serve wine and beer. Therefore, people who want to operate cannabis-friendly businesses should be able to invite people who have legally purchased cannabis from dispensaries to partake at their clubs and lodgings.

Commissioner Sarno then questioned the proposed requirement of 3 AAC 306.030, Petition for license in area with no local government. She advocated that this requirement for advertising the business application for a license is onerous. She stated that discretion is standard in the cannabis industry and believed that this regulation makes it impossible for a business to be discreet. This regulation requiring that the neighbors' petition for a cannabis business is discriminatory. If a person wants to open a brewery within 50 miles of a local government, must their neighbors petition for their license to be granted? Cannabis is to be regulated like alcohol.

Commissioner Sarno further questioned the regulation regarding applying for a license for a premise more than five miles from a US post office stating it is incredibly onerous and discriminatory, and nearly impossible to achieve. She queried the 2/3 of residents within five mile radius requirement? There is no demonstrated harm. The effect of the regulation will be to make it impossible for rural residents to open grow operations.

Commissioners responded to her query regarding these requirements are the same for alcohol.

Commissioner Harris provided an explanation for the notification and petition requirement due to various aspects with children and farm equipment as an example.

Commissioner Burgess commented on the concept/definition of "public", with regards to Commissioner Sarno concern of where visitors would be able to consume, a rented/leased or "let" accommodation. He further noted that the recommendation was presented before council and opposed by Councilmember Zak. He suggested communicating with Council.

There was a brief discussion on submitting a recommendation to City Council to include informational materials along with smoking being allowed in lodging facilities.

SARNO/JONES - MOVED TO SUBMIT A RECOMMENDATION TO CITY COUNCIL TO RECOMMEND THE STATE ALLOW CLUBS.

Commissioner Young arrived at 6:22 p.m. Commissioner Burgess turned the meeting over to Chair Young.

Discussion on the motion and the benefit ensued included points were that if it would be proactive or backfire on the City with regard to State actions if the city pushes to allow clubs, no basis for the state to oppose clubs or similar facilities from a public safety perspective it would be beneficial to track and monitor, offering inspection, etc.

SARNO/BURGESS - MOVED TO AMEND THE MOTION THAT A RECOMMENDATION TO THE CITY COUNCIL TO TAKE A PRO-CANNABIS CLUB/PRIVATE CLUB POSITION CITING THE REASONS STATED BY COMMISSIONER ROBL.

Further points included the standing taken by the Marijuana Control Board that they do not have the right to address clubs since it was not included in the referendum; Colorado and Washington currently do not allow clubs; and an argument by Commissioner Harris was presented that the State is regulating clubs in the proposed regulations by not allowing them and as previously stated there is no basis regarding Public Safety that should discourage allowing clubs.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

NEW BUSINESS

A. Memorandum from Deputy City Clerk Krause Re: Taxation

1. Sales Taxes, Excise Taxes - State of Colorado (General Information)
2. Sales Taxes and Excise Taxes - State of Washington (General Information)
3. City of Homer Code - Title 9 Taxation (General Information)
4. State of Alaska Excise Tax Information

Chair Young read the item into the record.

Commissioner Burgess stated that they are limited in what actions they take and that zoning and taxation are currently the only regulatory avenues open to the municipality; he queried if staff has received any response from the City Attorney.

City Planner Abboud explained, with a head nod from Deputy City Clerk Krause, that he has endeavored to get information and direction from the city attorney but as of this morning he has received no response from her.

There was a discussion regarding how prudent it would be to having the ability to tax.

BURGESS/ROBL - MOVED TO SUBMIT A RECOMMENDATION TO CITY COUNCIL TO REQUEST THAT THE BOROUGH IMPLEMENT AN EXCISE TAX ON CANNABIS AND/OR ALCOHOL.

Further discussion on push back from the liquor industry, inclusion of alcohol leaves it up to council to remove or leave in place and that having the ability to implement a tax in order to defray the impacts to the city's workforce, the enforcement that will be required, and additional business footprints that develop in the city will require the additional revenue.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

The information included in the packet was very informative commented Commissioner Burgess and opined favorably on the State of Colorado taxation formulas, stating they made more sense and workable, noting that Washington left too much to municipalities in some areas and not enough in others, believing they were somewhat obstructionist on the state level

B. Next Meeting Deliverables, Agenda Items

City Planner Abboud stated he should be able to have the draft ordinance for the next meeting along with the maps. He will try to figure out how to get the information on the taxation issue from the City Attorney.

Commissioner Harris questioned the issue of the City taxing without the borough? Commissioner Burgess explained that the city can decide to tax marijuana but if the Borough doesn't do it then the city will have to administer and collect the tax which the Finance Department has stated that it would entail hiring additional personnel in finance. Council can decide to do that though. But if the municipalities on the peninsula wanted to tax it would streamline the administrative processes if the Borough was involved.

City Planner Abboud was unsure if there was enough time to get a taxation issue on the ballot if it was needed. There was a brief discussion on taxing and waiting to hear from the Borough first before proceeding further.

INFORMATIONAL MATERIALS

A. 2015 Meeting Schedule and Packet Processing Deadlines

B. 2015 Commission Attendance at Council Meetings

C. Memorandum to Council re: Recommendations and Questions to Submit to the State of Alaska Marijuana Control Board Regarding Proposed Regulations

Commissioner Sarno inquired about submitting recommendations if the MCB is done. Deputy City Clerk Krause responded that there is one final review of any recommendations and/or questions can be submitted and will have one final chance, she believed the date was mid-November. Commissioner Lewis confirmed that the recommendations and questions submitted by the Commission were approved at the last Council meeting with the exception of the one recommendation regarding clubs.

COMMENTS OF THE AUDIENCE

Members of the audience may address the Commission on any subject. (3 minute time limit)

Chris Long, resident, questioned the cultivation regulations on square footage that was mentioned, licensing fees and banking.

City Planner Abboud responded that for the state there is a limited cultivation license that is 500 square feet less and a large cultivation license which he did not believe there was any upper limitation on it. Commissioner Harris provided the information from the amended regulations changed the requirement of enclosure but that a no see privacy type fence or wall with a minimum height of 6 feet was required. The fees are at \$5000 and may vary depending on license, testing facility is dependent on where they set up shop, it was noted that there was someone Homer who was qualified with interested investment backers so there may be one in Homer, banking may take longer since most financial institutions are federally regulated and will not want to be involved with any aspect of the industry, it was mentioned that they may see a state credit union or similar institution created. Since these businesses will be cash based that is the issue that the Chief was relating to regarding Public Safety since it will mean massive amounts of cash laying around and that is a bigger concern than the drug.

COMMENTS OF STAFF

There were no comments from staff.

COMMENTS OF THE CHAIR

Chair Young thanked the commission for putting up with her tardiness seems like they were really productive and looks forward to the next meeting.

COMMENTS OF THE COMMISSION

Commissioner Sarno stated she regrets backing down on her motion. She did it because she has learned to see things in the point view from the City of Homer. However, she believes they have not heard the last of this.

Commissioner Robl stated that one thing they touched on tonight the possibility of issuing licenses or abdicating that to the state; he did not believe the City should pass on that opportunity and should get some advice from the city attorney before they say no. He believed that these licenses are being strictly enforced by the State and they would not have much to do other than zoning compliances; he does not see contentions with most of these and they could miss out on a pretty good revenue stream.

Commissioner Harris and Jones had no comment.

Commissioner Burgess stated it was a good meeting and if Commissioner Sarno was wanting to put something forward he would support that in the form of a resolution. Judging by the State actions at this point he is not sure what good it would do, he believed it will be 99% decided in the courts whether we see Clubs or not. He would just assume that when they come along and ask for permitting authority and the money from the permits, they just think the hippies down here are legit.

Commissioner Lewis stated that we may be crazy fringe banana-belters but we have the whales and king salmon all year round.

ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 7:20 p.m. The next regular meeting is scheduled for MONDAY, NOVEMBER 30, 2015 at 5:30 p.m. in the City Hall Conference Room located upstairs.

Renee Krause, CMC, Deputy City Clerk

Approved: _____