



City of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

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Homer, Alaska 99603

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Memorandum Agenda Changes/Supplemental Packet

TO: MAYOR WYTHE AND HOMER CITY COUNCIL

FROM: JO JOHNSON, MMC, CITY CLERK 

DATE: JANUARY 26, 2015

SUBJECT: AGENDA CHANGES AND SUPPLEMENTAL PACKET

CONSENT AGENDA

Memorandum 15-009, from Deputy City Clerk, Re: New Liquor License for La Baleine Cafe.

Non-Objection from Kenai Peninsula Borough and Homer Police Chief Page 1

PUBLIC HEARINGS

Ordinance 14-56(A), An Ordinance of the Homer City Council Amending Homer City Code 21.70.010, Zoning Permit Required, and 21.90.030, Invalid Land Use Permits, Regarding the Requirement for a Zoning Permit and the Relationship of Zoning Violations to Permit Issuance. Planning.

Written public comments Page 3

RECOMMENDATION:

Voice consensus to changes under Agenda Approval.

Fiscal Note: N/A



KENAI PENINSULA BOROUGH

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JAN 15 2015

**JOHNI BLANKENSHIP, MMC
BOROUGH CLERK**

January 15, 2015

Ms. Sarah Oates
Records & Licensing Supervisor
Alcoholic Beverage Control Board
2400 Viking Drive
Anchorage, AK 99501-1768

RE: Non-Objection of New License Application
Business Name : La Baleine Cafe
License Type : Restaurant/Eating Place – Public Convenience
License Location : City of Homer
License No. : 5368

Dear Ms. Oates,

This serves to advise that the Finance Department has reviewed the above referenced application and has no objection to the issuance of this license.

Should you have any questions, or need additional information, please do not hesitate to contact our office.

Sincerely,

Michele Turner
Deputy Borough Clerk

MLT/klr

cc: City of Homer
Applicant
KPB Finance Department
File



CITY OF HOMER POLICE DEPARTMENT

4060 HEATH STREET HOMER, AK 99603-7609

EMERGENCY 911
TELEPHONE (907) 235-3150
TELECOPIER (907) 235-3151

MEMORANDUM

DATE: January 15, 2015
TO: Melissa Jacobsen, Deputy City Clerk
FROM: *MR* Mark Robl, Police Chief
SUBJECT: NEW LIQUOR LICENSE FOR LA BALEINE CAFE

We do not object to the following new liquor license:

Type:	Restaurant/Eating Place – Public Convenience
Type:	Restaurant/Eating Place Public Convenience
Lic #:	5368
DBA Name:	La Baleine Cafe
Licensee/Applicant:	Within the Wild Adventure Company
Premise Address:	4460 Homer Spit Road, Homer, AK 99603
Mailing Address:	PO Box 91419, Anchorage, AK 99509

Mayor = CJC
1/19/15
J

Jo Johnson

From: Frank Griswold <fsgriz@alaska.net>
Sent: Saturday, January 17, 2015 5:25 PM
To: Jo Johnson
Subject: Proposed Ordinance 14-56

Dear Mayor and Council members:

HCC 21.95.010 states: An amendment to this title may be initiated by any of the following:

- a. A member of the City Council;
- b. A member of the Planning Commission;
- c. The City Manager;
- d. The City Planner; or
- e. A petition bearing the signatures, and the printed names and addresses, of not less than 50 qualified City voters. [Ord. 10-58, 2011].

Staff Report PL 14-88 states: "This particular section of code has been cited in regards to recent appeals of Planning Commission decisions in CUP's [sic]. The City Attorney has provided a suggested code amendment for your review." So Ordinance 14-56 was initiated by City Attorney Thomas Klinkner who has no authority to initiate a zoning ordinance amendment under HCC 21.95.010 or otherwise. Mr. Klinkner advised/represented the City Planner and the Administration in the pending appeal of CUP 13-13 which would be directly and significantly affected by the enactment of Ordinance 14-56. Mr. Klinkner and the Planning Department are clearly attempting to change City code in the middle of an administrative appeal to retroactively justify their actions and promote the private interests of Jose Ramos at the expense of the health, safety, and welfare of the general public.

HCC 21.95.040(a) mandates that the Planning Department may recommend approval of a zoning amendment only if it finds that the amendment "is consistent with the Comprehensive Plan and will further specific goals and objectives of the plan." Land Use Goal 3, Objective A states: "Create a clear, coordinated regulatory framework that guides development. Clear, predictable, consistent rules and regulations are key to achieving standard, quality design. These rules and regulations have to fit the context of the marketplace and be accepted by the development community. Overregulation is a disincentive, while **under-regulation will achieve less than the desired results.**" Strategy 2 states: "Provide a clear and predictable approval process for every development including project review and permitting and providing appropriate staff review." Planning Staff ignores Objective A and claims: "Charging and processing payments for activities that are not currently regulated by the City of Homer does not promote an appropriate review. . . The proposed amendments will eliminate the spurious process of requirements for activities not currently regulated by City Code." If the activities being deregulated via proposed Ordinance 14-56 were not regulated by the City of Homer there would be no purpose in deregulating them. How "spurious" could the process be dealing with nonexistent regulations? No goal or objective of the Comprehensive Plan encourages the relaxing of spurious zoning code regulations and/or enforcement. In its Memorandum to the Homer Advisory Planning Commission regarding the October 15, 2014 meeting, Planning Staff cited Objective A of Land Use Goal 3 but tactically and deceitfully omitted Goal 3 itself: "**Encourage high quality buildings and site design that complements Homer's beautiful natural setting. . . . An integrated but balanced regulatory and enforcement process**

is needed for the entire city, to raise the bar for future development standards." Proposed Ordinance 14-56 is designed to lower the bar for development standards and allow the Planning Department to arbitrarily apply zoning standards, enforcing them for its enemies and waiving them for family and friends. Nothing could be less clear or less coordinated than an enforcement policy that allows development on one site and prohibits it on another, at the whim of the Planning Department. Objective B states: **Encourage high quality site design and buildings.** Good site design, appealing architecture, and quality construction practices contribute to the creation of high quality buildings. Attractive, well constructed buildings are a long term asset to the community. Design can be thought of in two categories: form, meaning what the building looks like; and function, meaning the construction methods and layout of the building." Strategy 1 states: **Adopt building codes and create an inspection program.** Strategy 2 states: "Set standards that regulate the form of development to encourage attractive, diverse housing styles." Strategy 3 states: "Develop specific policies regarding site development including standards for landscaping, grading, lighting, view projection, etc., in coordination with current national efforts that promote better site development (LEED certification standards, Sustainable Sites Initiative, Low Impact Development, etc.)." But instead of proposing an ordinance to adopt building codes and create an inspection program, Mr. Klinkner and the Planning Department seek to eliminate existing building codes and circumvent site inspections.

HCC 21.95.040(c) mandates that the proposed ordinance "will promote the present and future public health, safety and welfare." The Planning Department claims that this requirement will be met by not requiring citizens to "become frustrated with erroneous development hurdles." This reasoning, if it can even be called that, would support the elimination of all zoning requirements. HCC 21.70.010 and HCC 21.90.030 were enacted by duly elected officials in accordance with HCC 21.01.030 to promote the public health, safety, and welfare. Accordingly, these ordinances have a presumption of validity. Proposed Ordinance 14-56 is designed to promote private financial interests at the expense of the health, safety and welfare of the general public.

HCC 21.95.040(d) mandates that the proposed ordinance "is consistent with the intent and wording of the other provisions of this title." Proposed Ordinance 14-56 is inconsistent with the following provisions of Title 21:

21.70.030 Permit issuance and denial.

a. The City Planner will review the application to determine whether the proposed building or structure, and intended use, comply with the zoning code and other applicable provisions of the City Code, and to determine whether all permits and approvals required by applicable Federal, State, or local law or regulation have been obtained. The City Planner may also refer the application to other City officials for review, comment or approval for compliance with applicable City Code. If the application meets all of the requirements, the City Planner will issue a written zoning permit.

b. The City Planner will deny a zoning permit if the application is incomplete or the City Planner determines that the application does not meet all the requirements for issuance of a zoning permit. A denial must be in writing and state the reasons for denial. It shall be promptly given to the applicant. If an application is denied because of incompleteness, the applicant may resubmit the application at any time, supplying the missing information.

c. **In granting a zoning permit, no City official or employee has authority to grant a waiver, variance, or deviation from the requirements of the zoning code and other applicable laws and regulations, unless such authority is expressly contained therein.** Any zoning permit that attempts to do so may be revoked by the City Manager as void. The applicant, owner, lessee, and occupant of the lot bear continuing responsibility for compliance with the zoning code and all other applicable laws and regulations.

d. If the City grants a zoning permit when the applicant has not obtained all necessary permits or approvals from the Federal, State, or other local governments or agencies, or has otherwise failed to satisfy all the requirements

for a permit, neither the City, the City Planner, or any other City officer or employee shall be liable to any person for any consequences thereof. The applicant, owner, lessee, and occupant of the lot are solely responsible to ensure that all required permits and approvals have been obtained, and the issuance of a zoning permit by the City does not does not excuse any such requirement nor does it constitute a warranty or representation that all required permits and approvals have been obtained from the Federal, State, or other local governments or agencies. [Ord. 08-29, 2008].

21.70.070 Other permits under zoning code.

Nothing in this chapter shall relieve the applicant of the obligation to obtain a conditional use permit, sign permit, variance, or other permit or approval required by other provisions of the zoning code. The zoning permit required by this chapter shall be in addition to any other applicable permit or approval requirements. If any such additional permits or approvals are required, they must be obtained prior to the issuance of the zoning permit under this chapter. [Ord. 08-29, 2008].

21.70.090 Occupancy without a permit prohibited.

No person shall use or occupy a building or structure that has been erected, constructed, enlarged, altered, repaired, moved, improved, or converted after January 1, 2000, without a properly issued and unrevoked zoning permit required by this chapter. [Ord. 08-29, 2008].

For all of the reasons above, proposed Ordinance 14-56 should be voted down.

Frank Griswold

