

MEMORANDUM 13-147

TO: MAYOR AND CITY COUNCIL MEMBERS

FROM: THOMAS F. KLINKNER

RE: RESOLUTION 13-102

FILE NO.: 506,742.18

DATE: OCTOBER 11, 2013

Resolution 13-102, on the agenda for the October 14, 2013 regular Council meeting, purports to grant "irrevocable grandfather rights" to the "Bay View Inn." This resolution will not be effective because provisions of the Homer City Code, which are enacted by ordinance, cannot be overridden by adoption of a resolution.

The status of the Bay View Inn as a nonconforming use is governed by the following Homer City Code provisions:

- HCC 21.61.010 provides that when a previously lawful use is no longer allowed as a result of an annexation, the previously lawful use shall be a nonconforming use that may continue subject to the requirements of HCC Chapter 21.61.

- HCC 21.61.040 provides that a nonconforming use may be continued so long as it remains otherwise lawful, provided that if the nonconforming use is discontinued, the use of that lot shall thereafter conform to the code provisions applicable in the zone in which the lot is located, and the nonconforming use shall not thereafter be resumed or allowed to continue. For this purpose, HCC 21.61.015 defines "discontinued" to mean that a nonconforming use has ceased, and has not substantially resumed, for a period of 12 consecutive months, regardless of intent.

Thus, under HCC Chapter 21.61, there are no "irrevocable grandfather rights"—and a nonconforming use may continue only so long as it meets the requirements of HCC 21.61.040. Notwithstanding the adoption of Resolution 13-102, the Bay View Inn's status as a nonconforming use must be determined under HCC 21.61, and that status will remain subject to the provisions of HCC 21.61.040 regarding events that terminate a nonconforming use.

cc: Walt Wrede
 Jo Johnson