

CANNABIS ADVISORY COMMISSION
REGULAR MEETING
JUNE 23, 2016

Session 16-05, a Regular Meeting of the Cannabis Advisory Commission was called to order by Acting Chair David Lewis at 5:32 p.m. on June 23, 2016 in the Cowles Council Chambers located at City Hall 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS HARRIS, SARNO, REYNOLDS, CLARK, ROBL AND LEWIS

ABSENT: COMMISSIONERS STEAD, CARROLL, YOUNG

STAFF: DEPUTY CITY CLERK KRAUSE
CITY PLANNER ABBOUD

TELEPHONIC: CITY ATTORNEY WELLS

APPROVAL OF AGENDA

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

PUBLIC COMMENT

Mr. Terry Lynn, San Diego, California, has visited the area over the years and was here to obtain feedback from the City on a medicinal cannabis retailer in Homer and being open to the industry and retail operations.

There were a few comments and suggestions from the commission on reviewing the state regulations regarding the residency requirements. City Planner Abboud commented on the zoning requirements. It was noted that there is no separation between recreational and medicinal retail.

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 May 26, 2016 Regular Meeting

Acting Chair Lewis called for adoption of the Consent agenda.

HARRIS/REYNOLDS - MOVED TO ADOPT THE CONSENT AGENDA.

There was no discussion.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

REPORTS

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

1. Memorandum from City Attorney Wells re: Onsite Consumption

City Planner Abboud reviewed his brief report and commented on the applications that were approved. It was noted that only one near Homer had been approved and it was a cultivation license.

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There was a brief discussion on the Borough approval of a license near Homer it is assumed that it was the location on Crossman Ridge and if the borough petition to ban was approved how difficult it would be to relocate those businesses.

City Attorney Wells commented on the regulations for onsite consumption at the state level and also noted that there will be a meeting that she would be able to attend if the Commission would like her to on their behalf. The commission agreed as long as there were no additional costs to the City for her attendance as she has waived her cap for the time being. City Attorney Wells opined that they are looking at September before onsite would be authorized.

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

City Attorney Wells explained the difference between excise taxes and sales taxes and how they are applied. She further added that you run into problems when you are using a percentage versus a flat fee.

Acting Chair Lewis inquired if it would be better to apply an excise tax on weight or THC especially when dealing with edibles. Is there a better way to equal those out?

City Attorney Wells will need to check with a consultant but the legal response was a recommendation to follow what has been done by other municipalities and that provides a benefit of staying in step until the newness of the industry has worn off.

Acting Chair Lewis inquired if they can apply different excise taxes for a smokable product and edibles or other consumables?

City Attorney Wells responded that you cannot tax a product twice. She provided the example of taxing from one entity to another.

Vice Chair Lewis agreed but then further explained what he was asking by offering the following example:

- We are going to charge \$7 per quarter ounce and then break it into grams that breaks it down to \$1.00 per gram of product then they have a \$5.00 per purchase of edibles or similar.

City Attorney Wells stated that would be allowed.

Commissioner Harris inquired if an excise inventory tax can be applied to inventory at the retail level? City Attorney Wells responded that would be allowed as long as the tax is not applied as a percentage of value can be done at the point of sale.

Commissioner Harris confirmed that you cannot tax at the cultivation level and the retail level. She then asked if a inventory tax of a set amount per product be easier?

City Attorney Wells responded that legally the city can structure the tax as they want it, it would be doable the question would be when filing tax returns and she requested time to research the aspects and looking for real life examples and bring back to the July meeting.

That was acceptable to the commission.

Commissioner Harris then inquired if for the city's purposes they refer to the "flower and bud" that they use the correct term "cola". She advocated for the correct term.

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City Attorney Wells responded that the city can use the correct terms but they need to be exercise caution that they do not create confusion with the state. She provided an example of using terms that deviate to create a separate and distinct taxing scheme. If they use different definitions it must be separated and used only in the excise tax chapter in the city code.

Commissioner Harris expressed her reasoning on using the correct term providing the example of charging the whole plant as bud because her understanding of the definition, shown on line 79-80, page 20 in the packet, the root could be charged.

A brief discussion ensued on the definition and the clarification thereof. City Attorney Wells agreed that the scientific term for the definitions could be included for further clarification.

Acting Chair Lewis requested City Attorney Wells to bring back the draft ordinance with the revisions for the next meeting on the inventory excise tax compared to an end of sale excise tax would be appreciated. Commissioner Reynolds pointed out the amounts denoted in the memorandum under the consumption regulations, page 3 of 7; Commissioner Clark recommended basing the excise tax on these amounts whether it is for takeout or consume on premise such as \$1.00 per type. Acting Chair Lewis countered that then they would have to separate the onsite from the retail and if they only allow vaping would they do the whole gram. Commissioner Clark responded that he was suggesting that the excise tax would reflect whether it was a gram for product or 10 mg for edibles or a quarter of a gram for vaping.

The commission entertained discussion on whether the amount of \$1.00 would be too steep for a fledgling industry, they did not want to shoot the golden goose however they did want to charge accordingly. It was agreed that they could charge an amount that would be appropriate and compared content versus per package. City Attorney Wells commented that one of the jurisdictions in the Lower 48 did set the tax too high which in turn sent the industry back to the black market. While she doesn't have a legal opinion on this she will research for the next meeting what tax schemes are in place and these data points will maybe assist the commission in determining the appropriate to apply.

Commissioner Sarno inquired if the Planning Department would be able to field the effects from Licensees so that they can have a real life situation. City Planner Abboud responded that there would be limited resources since so far no one has applied for a license from the city and that due to the limited number of facilities you would have to have a region wide report maybe an association would form as a city it would be difficult.

City Attorney Wells added that the legal market needs to determine at what price can the business be sustainable against the black market, then it may be easier to ascertain at what levels to tax since the industry would be able to sustain that; if you set the tax initially then the argument is that the industry will set the price according to the tax and it may take longer to work itself out.

Acting Chair Lewis posed a scenario of implementing a twenty-five cent excise tax for the first year then revising it in the second. City Attorney Wells stated that would be allowed and also noted that they will not know what the cost of enforcement and administration will be and that would be prudent to review those costs and revise accordingly. She also answered Commissioner Clarks questions regarding application of a cap on the overall sale, but advised caution that it was a per transaction cap not a sale, so that while they are applying it at the point of sale it is not based on the sale. Acting Chair Lewis clarified that they would cap on purchases a \$10.00 correct similar to the cap on Borough Sales tax. City Attorney Wells responded that yes however cautioned the commission that they are going to have to be very careful when writing the code as to where they are applying the tax but it will be the facility's responsibility to pay the tax however they may pass that cost on to the consumer and she requested the opportunity to revisit that when they get there since it may look even different in writing than she is picturing it now.

Commissioner Reynolds commented that she did not think they should limit themselves but in the same reasoning she did not want to charge an exorbitant amount that would be unreasonable. Commissioner

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Harris commented on the capping of taxes if they were not going to tax per package and would support a cap for the first five years since she did not want City Council to tax the industry right out of existence since many members of the Council are not supportive of the industry at this time. Commissioner Harris then inquired about the confidentiality of records such as tax returns with personal data but believed it would be good for the public to see what kind of taxes are brought in by cannabis and not rely on information brought by an opponent to cannabis. City Attorney Wells was not sure that it would be appropriate since these parallel state and federal requirements but the tax assessment roll in the realm of property tax are public. She noted that what they would want to create is similar to an assessment roll that is not as itemized as a tax return. City Attorney Wells can support creating a system similar to the assessment and documents to support that for public disclosure.

Acting Chair Lewis requested City Attorney Wells come up with a couple of draft ordinances then the commission would be willing to pass on this until the next meeting.

City Attorney Wells responded that she and City Planner Abboud can provide the information to the commission and recommended a more worksession like meeting to get through that information. She requested the commission let City Planner Abboud know of any additional information wanted for their next meeting and she will provide it. She opined that the commission should have a very robust packet of information for their next meeting.

Commissioner Harris inquired as of today could the city council stop someone from starting a business in city limits if they were in compliance with state and city regulations. City Attorney Wells responded that yes they could but her recommendation would be to ground any denial based on zoning regulations etc., that the city has implemented.

Acting Chair Lewis commented on banning changes and limiting Council which would in essence be baiting Council. He further stated that at the next meeting the commission can discuss what would be a reasonable tax to implement. Every year Council changes in the fall so it will be what it will be and they move on.

NEW BUSINESS

A. Next Meeting Deliverables, Agenda Items

Commissioner Sarno stated that the Alaska Small Cultivators Association has requested the commission to revisit the zoning in the city for small cultivation and she would like that on the agenda for the next meeting.

The commissioners commented and offered their opinions on putting the zoning back on the agenda to revisit the issue of small cultivations within city limits.

Commissioner Harris and Clark requested the zoning issue to cover the Spit also noting the recommendation of support from the Port & Harbor Advisory Commission for retail businesses on the Spit.

Commissioner Harris requested a motion of support for commercial cannabis businesses.

HARRIS/CLARK - MOVED TO ISSUE A MOTION OF SUPPORT FOR ALL RETAIL, CULTIVATORS AND COMMERCIAL BUSINESSES INCLUDING THOSE JUST OUTSIDE CITY LIMITS.

There was no discussion.

Motion was approved by Consensus of the Commission.

INFORMATIONAL MATERIALS

- A. 2016 Meeting Schedule and Packet Processing Deadlines
- B. 2016 Commission Attendance at Council Meetings
- C. Marijuana Handler Permit Application and Certification Information
- D. Ordinance 16-23, Repealing Homer City Code Chapter 6.12 Drug Abuse and Paraphernalia
- E. News Articles regarding the Marijuana Industry In and Outside Alaska

Acting Chair Lewis mentioned the informational articles contained some interesting items as usual.

COMMENTS OF THE AUDIENCE

Terry Lynn, San Diego, California commented on the direction of the discussions the commissioners entertained tonight and cautioned them to start low. Those small amounts add up but also noted that most users of medical marijuana are on limited budgets and also recommended taxing recreational marijuana to the limits. Mr. Lynn reiterated that they were doing a great job and going in the right direction but to keep it low when you do start.

Acting Chair Lewis asked City planner Abboud if it would be possible to request the City Attorney provide information on separating the taxes for medical and recreational marijuana.

City Planner Abboud responded that he can consult with City Attorney Wells but opined that to differentiate the two would mean a legal wrangle. He stated that technically he heard that Colorado had an issue separating the two and Alaska did not do that so the City of Homer would have to do that and it would mean a lot of work but was not sure the City had the expertise to do it.

Acting Chair Lewis requested City Planner Abboud to please forward the request to the City Attorney.

Commissioner Harris inquired about enacting a senior exemption?

A brief discussion on what parameters and how that would be applied, who determines what ensued. Acting Chair Lewis suggested that the commission could certainly discuss that and recommended when it came time for Commissioner Harris' comments to request that for the next agenda.

COMMENTS OF STAFF

Deputy City Clerk Krause commented it was all good.

City Planner Abboud had no comments.

COMMENTS OF THE CHAIR

Acting Chair Lewis had no comments.

COMMENTS OF THE COMMISSION

Commissioner Robl had no comments

Commissioner Harris commented it was a good meeting. She requested Senior Exemption and Medical Exemption for medical marijuana card holders if they had a card from a physician.

Commissioner Clark thanked Mr. Lynn for coming to the meeting tonight and looked forward to hearing from him at future meetings.

Commissioner Sarno commented on the limiting the exemption to people with a medical card it should be as simple as they state they are using it for medical purposes in the beginning.

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Commissioner Reynolds did not have any comments but recommended that if you google cannabis, city of homer, zoning map you get a really good map.

ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 6:34 p.m. The next regular meeting is scheduled for THURSDAY, JULY 28, 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: _____