

Session 15-05, a Regular Meeting of the Cannabis Advisory Commission was called to order by Chair Aryn Young at 5:30 p.m. on September 24, 2015 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS HARRIS, STEAD, YOUNG, MONROE, BURGESS, LEWIS

ABSENT: COMMISSIONER SARNO, JONES, ROBL (EXCUSED)

STAFF: CITY PLANNER ABBOD  
DEPUTY CITY CLERK KRAUSE

### APPROVAL OF AGENDA

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

LEWIS/MONROE - MOVED TO APPROVE THE AGENDA AS WRITTEN.

There was no discussion.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

### 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).

### 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 August 27, 2015 Regular Meeting

Chair Young requested a motion to approve the Consent Agenda of August 27, 2015.

LEWIS/MONROE - SO MOVED.

There was a brief discussion.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

### REPORTS

A. Holly Wells, City Attorney (via telephonic participation)

1. Memorandum: Proposed Comments and Questions Regarding State of Alaska Marijuana Regulations
  - Exhibit A: Moving at a Snail's Pace
  - Exhibit B: Three Sets of Proposed Marijuana Regulations
  - Exhibit C: Marijuana Control Board Public Comments, Questions & Answers
  - Exhibit D: Regulation of Marijuana Industry 3 AAC 306 Table of Contents

City Atty Wells spoke on her review of the proposed regulations and speaking with the Marijuana Control Board it would behoove the CAC is to think about all comments be put into question format

such as “We are looking for a definition of a brokerage facility, but phrase it as, “Where are the definitions of a brokerage facility” City Attorney Wells felt that it will offer a better chance of a response from the Marijuana Control Board. Her firm is working on the questions on behalf of all communities.

Commissioner Monroe inquired if they were to devise their comments at this time?

City Attorney Wells responded that if the Commissioners will craft their comments/questions and Deputy City Clerk can submit them to her she can have them included in the Resolution that she will draft and present to Council for the October 12<sup>th</sup> Council meeting and then recommended that a representative, which she would like to attend, the Public Meeting of the Marijuana Control Board.

City Attorney Wells continued that by attending the last meeting will offer an opportunity to engage the Marijuana Control Board in person.

BURGESS/MONROE - MOVED TO INCLUDE IN THE RESOLUTION THE RECOMMENDATION THAT A REPRESENTATIVE OF THE CITY BE PRESENT AT THE ORAL HEARING.

There was a discussion on who the representative should be and clarified that it would be the City Attorney Wells or appointed representative of the firm but as worded allows the Council to determine another representative if they so choose.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

City Attorney Wells requested the record show the most precise intent of the commission, she requested the Commission to address zoning related issues at this meeting and then she can have a draft ordinance for the next meeting.

City Planner Abboud responded that he has provided materials in a laydown for tonight for general recommendations to begin running them through the Planning Commission to discuss any special requirements, hold a Public Hearing, bring back to this body then present to Council for final approval until the State has made up its mind.

City Attorney Wells agreed and commented on the ability of a community effectively prohibiting certain aspects of marijuana industry within their community through zoning. She would really like to have this body start tonight to consider which areas of the city are they going to open up to what component of the marijuana industry. She will draft an ordinance for presentation to the Planning Commission as a starting point.

City Planner Abboud replied that he requires some insight into cultivation and how that would affect some of the districts; most of the other districts such as the industrial districts this type of stuff is allowed; commercial districts we need to take a closer look at and it may require a Conditional Use Permit (CUP) but he did not think there would be any stricter restrictions than the state is proposing.

City Attorney Wells responded but do to interference the Clerk could not transcribe her response.

Commissioner Burgess requested clarification on page 13 of the packet, item 3 AAC 306.900 regarding the City’s position on marijuana clubs, he stated that they are in a unique position, people will be coming to Homer under Cannatourism and the City will lose any revenue aspects.

City Attorney Wells responded that if Homer wants to take the position as the City under the recommendation of the CAC, that revenue raising sources are important to the City including the marijuana industry and that the marijuana tourism industry is an important component of that therefore they find this provision very restrictive. Previously, early in the process, she would not have supported a comment on this issue. However, here you are saying what laws are needed to be implemented to capitalize on the industry and support the industry in Homer. City Attorney then added that when the Commission has a comment that is more policy loaded make sure that she

understands what they understand and if Council does not approve the commission's recommendation it is still the beginning of sculpting your intent and position on the industry and your goals.

Commissioner Lewis stated that Denver, Colorado did not allow clubs but now they are talking about it since they have issued over 1000 citations for smoking in public and he questioned structuring a question that will address the issue since the City will not have the law enforcement resources to provide the enforcement necessary. We are already down a couple of officers and with everything else the city will want to use the resources they do have for more priority related efforts.

City Attorney Wells replied that it was an excellent argument and they can point to the priorities of the Federal Government. It can be argued that they are being very deliberate in what local regulations they adopt so they can enforce what regulations they establish and are in compliance with these priorities. This prohibition of clubs puts the municipality into a position that we may be unable to enforce these provisions due to the lack of resources. This regulation does not affect any of the other listed priorities.

Commissioner Burgess opined that there would be no apprehension on the Council level on supporting what the Commission submits as policy recommendation for the Council's approval. He believed that they did not need to worry about the bureaucracy.

BURGESS/MONROE - MOVED THAT THE CITY ATTORNEY INCLUDE IN THE RESOLUTION THE RECOMMENDATION TO ALLOW CLUBS FOR THE REASONS STATED PREVIOUSLY.

City Attorney Wells also stated that it may be helpful if the Commission produce a statement that Council can approve in that basically expresses the city's intent; such as "the City of Homer, Alaska, supports the Marijuana Industry equal to and in the same manner as any other industry development within the city limits with the understanding that there are limitations based upon Federal law. Additionally the City of Homer recognizing that the industry is unlawful under Federal law but permitted under Alaska Law it will be promoted and regulated respective of the industry. City Attorney Wells indicated that a statement will present a unified presence to the State. This will provide some flexibility at the oral hearing to answer questions, fill in or expand upon the comments keeping in mind the position of the city.

Commissioner Burgess believed that as a commission they may make that statement but wanted to address his motion regarding clubs.

There was a brief discussion on the purpose of the motion was to allow the city attorney to include in the resolution that the commission would like to address the issue of where people can utilize the product stating that there is safety, enforcement, and economic implications and allowing the city attorney some brevity of expansion in that area. It was noted that at some time in the future the commission may want to issue a statement of support as recommended by the city attorney.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Commissioner Burgess then asked about the zoning component, he wanted to follow the Drug Free zone, because the incongruities he would like the city attorney to include as many angles as possible since what the state is proposing really ties the municipality's hands with regard to limiting the areas where it could be allowed. The City attorney will look into that.

Commissioner Harris questioned if the regulations proposed included church properties that may be owned outside of where services may be conducted. City Attorney Wells believed it was broader than that but did not have the specific answer and would look into it and send an email to the Clerk who could forward the information to the Commission.

City Planner Abboud responded that it was to be a place where religious services are regularly conducted. Commissioner Monroe agreed with that statement.

Commissioner Lewis inquired if someone held services regularly in their home, school or space in a commercial district would the regulation be applied. City Attorney Wells responded that this was the exact scenario that she wanted to address. This broad interpretation limits or restricts the community.

City Attorney Wells inquired if there were any other questions for her. She will be available if they need her later in the meeting.

The Commission expressed confidence in their Clerk being able to get their motions and recommendations succinctly.

Commissioner Burgess encouraged the commission to voice the concerns and allow the attorney to put this into a question.

The commission discussed the number of licenses a person or entity could have; the types of licenses various entities are allowed to possess; if it was a restraint of trade regarding the resident requirement and that they are using the PFD residency requirement/qualifications; this has been argued before the Board by several attorneys and they will not budge on this requirement.

Commissioner Monroe provided a few scenarios before the Board and it was shot down within five minutes of discussion. He further added that the Cole Memorandum does not even address recreational marijuana only medical marijuana.

BURGESS/ MOVED TO INCLUDE IN THE DRAFT RESOLUTION TO GO BEFORE COUNCIL, 3 AAC 306.310 (c)(3) (B) OFFER OR DELIVER TO A CONSUMER AS A MARKETING PROMOTION OR FOR ANY OTHER REASON: MARIJUANA OR MARIJUANA PRODUCT AT A PRICE BELOW THE MARIJUANA RETAIL STORE'S ACQUISITION COST

Commissioner Monroe stated that this has been struck from the regulations within the past 5 or 6 days it was one of the two things that had changed.

Commissioner Burgess removed his motion from the table for consideration.

Commissioner Lewis inquired if they wanted to question that the handler permit be available online and payable by credit card.

LEWIS/BURGESS - MOVED TO REQUEST CLARIFICATION ON THE HANDLER PERMIT PROCESS, IF THIS WILL BE AVAILABLE ELECTRONICALLY INCLUDING THE PROCESS ON HOW A PRIVATE ENTITY CAN BECOME AUTHORIZED TO ISSUE PERMITS SIMILAR TO OTHER PROFESSIONAL JOB CLASSIFICATIONS.

A discussion on the intent of the motion was to make applications for a Handler Permit as accessible as possible in areas that may not have physical training opportunities available and that there be a prescribed process on how to be a teacher or certifier to get a handlers permit. It was noted that due to the geographic nature of the state it is imperative that the certification and payment be available electronically. Further comment on the economic impact to a municipality to have clear direction and process for private industries to offer these courses as soon as possible so that businesses can be ready as soon as license applications can be accepted. Additional discussion on what Colorado and Washington currently require and have in place ensued.

VOTE. YES. NON-OBJECTION. UANIMOUS CONSENT.

Motion carried.

Commissioner Harris wanted to ask how the State will provide the classes in order to get the permits. She was unsure how to frame that in a better question.

Commissioner Burgess responded that the Clerk will have captured the discussion in the last motion which carried that request regarding the process of establishing a system.

Chair Young expressed concern on the regulation 3 AAC 306.020(2) the name, mailing address, phone number and social security number of the applicant and each family member and affiliate of the applicant. Chair Young expressed that this seemed excessive.

Speculation ensued on the requirement of family member's personal information, the requirement was noted to be more restrictive than trying to obtain and Department of Defense contract, it was noted that a change was made that the personal information of any dependent children was not required. Further comment was made that for each member, shareholder, or anybody with any interest is a licensee and must provide their fingerprints and information, there must be a divestiture clause because if one licensee moves out of state then the entity can lose their license.

Commissioner Harris read from Exhibit B, Questions and Answers provided by the Marijuana Control Board, page 159 of the packet, top of the page, Answer to 3-7 Regarding strictness: requirements concerning the identification of all interested parties in a license is related to the unique status of this substance. See answer to Questions 1-2 above and specifically those priorities in the Cole memo that require that state regulations clearly address prevention of revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels and prevention of state authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity. The proposed regulations are modeled after the type of financial background investigations that appear to have satisfied the federal priorities in other states and which is contemplated by the Alaska legislature in AS 17.38.084 which mandates disclosure of financial interests.

Commissioner Harris then referenced the Question 1 and 2 on page 156 of the packet regarding the restrictive nature and asking if this was similar to other state licensing requirements commenting that to her they are not answering the question and do not plan to and want control.

BURGESS/LEWIS - MOVED TO INCLUDE IN THE RESOLUTION INCLUSION OF LEADING QUESTIONS OR AN OUTRIGHT OBJECTION TO REQUIRING PROPRIETARY OR OVERLY BEARING PERSONAL INFORMATION OF ANY PERSONS NOT A SHAREHOLDER, APPLICANT OR REPRESENTATIVE OF THE CORPORATION.

Discussion and comments from the commission were that the requirement of every family member was overly excessive, controlling and draconian ensued and that a clarification of affiliate be requested.

YOUNG/LEWIS - MOVED TO AMEND THE MOTION TO INCLUDE A REQUEST FOR A DEFINITION OF AFFILIATE AS USED IN 3 AAC 306.020.

There was a brief discussion on this applying within the sense of business in that sense.

VOTE (AMENDMENT). YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Chair Young called for additional discussion.

Commissioner Harris noted that within the same Question and Answer document she recalled reading a question on the security of proprietary information and the State responding that it has been able to collect and keep that type of proprietary information secured without incident.

Chair Young called for approval of the motion as amended.

VOTE.(MAIN) YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Chair Young inquired if there were any additional recommendations.

Commissioner Burgess inquired if anyone else had issue with the restriction that if you have an interest in a testing facility you cannot have an interest in any other facility. He can understand a restriction that you could not test the product of an affiliate facility. He provided an example as such that if you test the proof of alcohol you cannot have an interest in a brewery.

Commissioner Monroe stated he could not remember the exact discussion on this subject but stated that for the most part it could be circumvented within the corporate structure for practical purposes.

Commissioner Burgess read from the proposed regulations under 3 AAC 306.400 (c) A licensee of any marijuana cultivation facility, or an employee or agent of a marijuana product manufacturing facility, may not have an ownership interest in, or a direct or indirect financial interest in any licensed marijuana testing facility; which he interpreted that to include shareholders of either.

Commissioner Harris could understand the restriction with regards to testing a product and giving a false positive and maybe they should they ask for direction from the City Attorney.

Chair Young inquired if anyone would like to make a motion at this time.

Commissioner Burgess stated he had additional questions regarding the requirement under 3 AAC 306.410 Limited marijuana cultivation facility license; privileges and prohibited acts. Item (b)(3) sell directly to a consumer or to any marijuana establishment that does not hold a marijuana cultivation broker facility license, his interpretation of this regulation is that a middleman is required. This limits the limited cultivation facility to selling their product to a broker, they cannot sell directly to a retail facility.

Commissioner Harris commented that she read, could not remember what page, but that brokers would be able to contract with testing facilities. To her that the regulations are so tight creating an arena that limits the overall number of participants. The full size cultivators will be able to contract with the brokers because currently they do not know what the broker regulations will be yet, but if they contract with the brokers they will literally be able to push the small cultivators out.

Commissioner Burgess agreed stating that was a major concern and put forward the following motion:

**BURGESS/LEWIS - MOVED THAT THE CITY ATTORNEY INCLUDE IN THE DRAFT RESOLUTION THE QUESTION OR OBJECTION IF NECESSARY, WHY IS IT NECESSARY TO LIMIT THE ABILITY OF LIMITED CULTIVATION FACILITIES TO SELLING DIRECTLY TO RETAIL OR MANUFACTURING ESTABLISHMENTS.**

Discussion included points that this restriction inherently limits small business opportunities, is poor business practices; there are no well-founded public safety reasons, restriction based on issues regarding the excise taxes; the activities of the limited growers; brokers are basically performing the secretarial/bookkeeping responsibilities; regulations need to allow for small full grow operations under 500 feet or allow small scale access to retail or manufacturing facility.

**VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.**

Motion carried.

**BURGESS/MONROE - MOVED TO ELIMINATE ANY REFERENCE TO CHURCHES OR RELIGIOUS ENTITY FROM THE DRAFT REGULATIONS.**

There was a brief discussion on the inclusion of churches in the regulations goes against the separation of church and state; there are already avenues that any non-profit or church may register with the board to receive notice and can submit objection on any location or application; this allows the city to not be discriminatory based on an entity having a religious affiliation.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

#### B. Staff Report - City Planner Abboud

City Planner Abboud commented on the places where religious services may be held and that if they changed the current map to 500 feet if they could picture the distance shown by another 300 feet, which is half of what is shown on the current map around the schools you can see that it will cut out most if not all of the most of the Central Business District.

He reviewed the various activities and which districts that those activities would be appropriate throughout the city. He was unaware of some of the nuances of the manufacturing components within the industry and how that should affect zoning such as the following:

Commercial - reasonable to have a Conditional Use Permit

Bridge Creek - this can be allowed outright since the established rules will sort out any activity

East End Mixed Use should be reserved for large scale commercial operations.

Rural Residential - this will have to be hashed out as there are some areas that are congested and not sure if it would be appropriate to have certain types of operations

- Proposed regulations currently restrict smells being emitted and visual
- Discussion on the concerns with regard to having cultivation operations in neighborhoods where residences are very close, privacy, security
- commented on this would be the limited cultivation
- Public comments will be allowed in the application process
- This is the district that is suitable for limited cultivation facilities

Commissioner Harris brought up a concern with regard to the local utility increasing costs for electric service and felt that it should be addressed prior to the need. Commissioner Monroe called for a Point of Order that this venue was not a place for airing personal issues and additionally responded with information regarding the cannabis industry and stated that there should be little if any noticeable increase in electrical usage by the utility other than possibly new businesses opening.

There was brief discussion on some of the details regarding manufacturing foods and the proposed regulations on the facilities by the state in regards to the actual operations to produce the end product.

It was agreed by consensus of the Commission to present the proposed zoning restrictions before the Planning Commission and bring their recommendations back to this commission for review before submitting to Council for Approval.

City Planner Abboud will review the parks restriction in the federal restrictions but most of the Commission was agreeable to the 200 feet.

#### C. Kenai Peninsula Borough Cannabis Task Force Report - Commissioner Monroe

Commissioner Monroe reported that the Borough Commission did not establish a time limit so the meetings typically run from 6:00 p.m. to 10:00 p.m. They meet twice monthly in Soldotna.

The Task Force was established by the Borough Mayor and submits their comments and recommendations through the Mayor's Office. The Task Force composition is somewhat stacked in favor of the industry but is not reflective of the political will of the Borough Assembly.

This Task Force has voted not to opt out at this time, recommended that the Borough establish a regulatory body and chose the Borough Planning Commission in order to review licenses and forward to the state, and agreed not to ban the sales of edibles. This has been the extent of the actions taken on the Borough level.

#### **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**

##### **NEW BUSINESS**

###### **A. Next Meeting Deliverables, Agenda Items**

There was a brief discussion on when to expect a zoning ordinance before this commission. There was no definitive answer from City Planner Abboud.

Commissioner Harris and Burgess would like to have on the next agenda - Issues and the Realm of Taxes - Excise Taxes on Marijuana

Commissioner Burgess requested the City Attorney to provide information materials on the tax aspects and what we could propose to the Borough regarding excise taxes.

##### **INFORMATIONAL MATERIALS**

- A. 2015 Meeting Schedule and Packet Processing Deadlines
- B. 2015 Commission Attendance at Council Meetings
- C. Municipal Legislative Actions
- D. Commissioner Sarno Appointment
- E. Resolution 15-068, Cannabis Advisory Commission Bylaws
- F. Highs and Lows in the Wake of Legislation

There was no discussion on the informational materials.

##### **COMMENTS OF THE AUDIENCE**

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

Wes Schact, resident of Fritz Creek, thanked the Commissioners for their time and apologized for the lack of an audience tonight.

##### **COMMENTS OF STAFF**

City Planner Abboud stated he will bring these issues other than zoning up in conversation with the city manager and city attorney and see what they say.

Deputy City Clerk Krause commented that it was a good meeting very enjoyable and nice to have humor.

##### **COMMENTS OF THE CHAIR**

Chair Young passed on her comments.

##### **COMMENTS OF THE COMMISSION**

Commissioners Harris and Stead had no comments.

Commissioner Monroe stated that he has formed his opinions on what direction that the State will be going and apparently the City Attorney was thinking along the same lines with her comments on the Marijuana Control Board not being receptive to changes on their proposed regulations and he believed



that it will be a worthwhile question to ask how much resources the City wants to expend to on this effort, there may not be much of an industry to regulate after the State is done. Things may look like they have the past 10-20 years.

Commissioner Burgess agreed and to piggyback on what Commissioner Monroe said, while interacting and talking with other councilmembers who want to know what they are doing here on the commission level he thinks that if the commission agrees that the City should consider taking a pro-industry position on this issue that is something that the commission should discuss and forward a recommendation to Council, he definitely believes Council is looking to this body to make those recommendations and to justify them and support them and if they are entering into a state environment that is all but overtly opposed to or hostile to the industry the consequences not that it doesn't happen the consequence is that the industry is pushed back into a criminal element where they don't make money. Homer has a tremendous opportunity to considered being reasonably pro-industry since the people in Homer strongly voted in favor of legalization. They should consider points that the City may want to adjudicate or take legal action; it may do the city a lot of good from the tourism and notoriety standpoint. There is a lot to be said for visit the place in Alaska where they said "Hey, wait, no we wanted this and voted for it." Mr. Burgess continued by saying that no one on this commission should feel any hesitation in making that recommendation if they felt that it should be made.

Commissioner Lewis said, "The Same"

#### **ADJOURN**

There being no further business to come before the Commission, the meeting adjourned at 7:35 p.m. The next regular meeting is scheduled for THURSDAY, OCTOBER 22, 2015 at 5:30 p.m. in the City Hall Cowles Council Chambers.

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Renee Krause, CMC, Deputy City Clerk

Approved: \_\_\_\_\_