

CANNABIS ADVISORY COMMISSION  
REGULAR MEETING  
JULY 23, 2015

Session 15-03, a Regular Meeting of the Cannabis Advisory Commission was called to order by Chair Aryn Young at 5:32 p.m. on July 23, 2015 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

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

STAFF: CITY PLANNER ABOUD  
DEPUTY CITY CLERK KRAUSE

**APPROVAL OF AGENDA**

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

LEWIS/BURGESS - MOVED TO APPROVE THE AGENDA AS PRESENTED.

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).

Lindianne Sarno, city resident and future member of the commission, commented on the regulations proposed by the State of Alaska and questioned the accuracy since changes could have already been implemented. She did not want to kill the golden goose and believed that the proposed regulations were extremely onerous. Ms. Sarno wanted the City to encourage local business creation not have big business come in from outside.

Wes Schact, Fritz Creek resident, commented on the state proposed regulations against cannabis cafes or similar businesses. He has traveled around to other countries and states that have these places and believes that they should encourage these other types of businesses and festivals which also allow educational avenues.

Commissioner Harris recommended submitting their comments to the state and could provide that information to Mr. Schact if he will leave his contact information.

**VISITORS**

A. Holly Wells, City Attorney - Proposed State of Alaska Marijuana Regulations

Ms. Wells spoke to the commission regarding commentary from the City on two areas in the proposed state regulations. She noted that she also wanted to discuss the worksession on August 10, 2015. Ms. Wells will be providing a comprehensive memorandum on what cannabis is in a technical sense, what marijuana is in both legal and technical sense, what laws will have to be paid attention to on the local level, what laws have been passed on the state level. This document will act like a manual that the commissioners can reference. This is expected to provide the tools they need to tackle the local regulations and understand the relationship between state and federal laws.

Ms. Wells spoke about the comments needed on the regulations regarding local options regulations, this looks like the regulation is providing for a marijuana distribution center as well as a marijuana retail store operated by the municipality. This appears that the whole section was lifted from the regulations regarding alcohol in statute. The authority to create or provide for a local option which allows a damp community has been litigated before the Alaska Supreme Court. There is an entire body of law on the dangers of alcohol in the rural communities. When they did that they stated that "marijuana is not

dangerous.” They separated the two. Because of this case precedence she finds it very unlikely that a marijuana distribution center and a municipality operated distribution center can be authorized via regulation because there are constitutional implications when you exclude other businesses from an industry. Regulating alcohol was done by statute not regulation. Attorney Wells recommended that in the City of Homer’s best interest to comment that this appears to potentially exceed the scope of the Marijuana Control Board’s authority based on alcohol distribution centers being legislatively authorized by statute.

Commissioner Stead requested clarification from Attorney Wells where this is addressed in the proposed regulations on local option. Attorney Wells stepped back and provided a brief history on the statutes that established the regulations for alcohol in the state. Attorney Wells then continued by explaining how those statutes regulating alcohol were used to create the proposed regulations in 3 AAC 306.200. Local Options. She explained that these regulations provide the right to open a municipal owned and operated distribution facility and retail establishment. She expressed that it is one thing to regulate marijuana within the authority granted to municipalities and another thing to operate what is a federally unlawful enterprise. City Attorney Wells expressed concern that if the municipality wanted to actually participate in the industry this may create some vulnerability when it comes to federal laws and the Controlled Substances Act.

Commissioner Monroe questioned whether a citizen initiative could require a municipality to operate a facility. City Attorney Wells responded that there is recourse for a municipality not to perform something it cannot do. She further commented on prohibiting marijuana or one aspect of the industry such as transport.

Commissioner Harris asked if the City did have a facility if that prohibits private businesses within the city. Attorney Wells referred to the proposed regulation 3 AAC 306.260, which allows that exclusivity, she added that if the municipality wanted to do this, as their attorney she would struggle against it due to the fact that there are antitrust laws and federal laws against those actions. Commissioner Harris restated her question regarding allowing additional businesses within city limits when there is a municipal owned facility. City Attorney Wells responded that they could allow additional businesses.

City Attorney Wells requested one additional comment needed regarding the requirement of a definition of “brokerage facility”. In 3 AAC 306.095 (4) Marijuana Cultivator’s Broker License and 3 AAC 306.200 Local options (a) (2) (A) a marijuana cultivation facility or marijuana brokerage facility. It is unclear what this is, she pictures that it is an intermediary of sorts. Commissioner Monroe responded that when section four is issued it would probably address this issue in more detail and may cover the brokerage facility.

Attorney Wells recommended still making the comment since any section that it is mentioned in they should provide the definition so it is understood clearly.

Commissioner Lewis inquired if they can limit licenses to residents only. City Attorney Wells explained that they cannot due to violating the intent of the initiative, separate state constitutional laws and regulations and the authority is not granted to the municipality. They will respect our zoning laws if a license will violate the zoning regulations.

City Attorney Wells additionally commented on the prohibition regarding distance requirements, information gathering under the licensing section, requirements for non-residents regarding licensing, she can provide a more detailed answered at the worksession.

Commissioner Burgess commented on the distance requirement for religious organizations when there are certain religious organizations that marijuana is a part of the culture and belief. City Attorney Wells responded that she believed it was political, since it is onerous and legally there is no need for a comment from the city, but politically she can see the need for wanting to comment on the issue. Commissioner Burgess requested clarification on what the Commission and or city’s role was in commenting as a municipality regarding creating clear regulations or offering comments regarding the

CANNABIS ADVISORY COMMISSION  
REGULAR MEETING  
JULY 23, 2015

larger political ramifications. City Attorney Wells responded that they could respond that the City of Homer anticipates regulating the locations of facilities via zoning ordinances and objects to regulations that may conflict with or create confusion with those regulations so we recommend you remove these restrictions and allow those restrictions to be governed by the municipality.

Commissioner Burgess agreed and commented that the state will probably land themselves in many lawsuits but would prefer to keep the city away from such activity before it could happen.

City Planner Abboud asked about the Federal Standards regarding distances and City Attorney Wells stated that would be good to include within their comment.

Commissioner Stead requested clarification on Attorney Wells previous statement that the State does not contribute any hazards to marijuana consumption. City Attorney Wells replied that they obviously have evidence of harm and the hazards on the Federal level but what she was speaking about earlier was what they do have is actual case statement from the Alaska Supreme Court that marijuana is harmless, they have many case examples of the dangers of alcohol but not marijuana. Commissioner Stead then referred to section 3 AAC 306.350(e), Advertising warnings listed, he believes there is conflict and that they should comment based on what is currently in the law and what the proposed regulations contain. He stated that they should remove them or get a ruling.

City Attorney Wells responded that putting a warning label on something is different than precluding or prohibiting something. She questioned if this was reasonable to allow a municipality to heavily restrict an enterprise.

Commissioner Harris requested clarification 3 AAC 306.300 regarding the “give” portion of the section prohibits the marijuana grower from giving away their product. A discussion ensued regarding the clarification of the meaning give within the context of the proposed regulation regarding business and personal use. City Attorney will carefully review this proposed statute but believed that it does not prohibit the personal option to give away an amount up to the legal limits under the personal use statutes.

Commissioner Harris then questioned the proposed 3 AAC 306.325 Marijuana handler permit required citing the issues that would impede a business from opening. Commissioner Lewis asked if they could submit recommendations regarding having the handler permit training online then a person could proceed on their own.

City Attorney Wells responded that they certainly could submit a recommendation but did not feel that this was the appropriate avenue. She suggested that submitting recommendations that would foster the industry and communicating those options to the Marijuana Control Board, should first be reviewed, vetted and adopted by the City, then submit those recommendations to the Control Board. She cautioned creating more stringent regulations than you would like.

Commissioner Burgess clarified that what the state codifies is not something that the city can change. The city can only submit recommendations.

City Planner Abboud asked City Attorney Wells will draft the recommendations to present for Council review at their next meeting. City Attorney Wells confirmed that if he will submit any recommendations she will include in a memorandum for Council.

A discussion ensued next on the scheduling of implementing regulations and ordinances to be in effect according to the required schedule as outlined in the initiative. City Planner Abboud expressed concern on the time that it will take to have most ordinances before the November deadline.

Commissioner Burgess echoed the concerns expressed by City Planner Abboud regarding having the necessary vetted regulations ready just in case the state does not have the regulatory framework in place for the February deadline. He wanted to pursue that path due to lengthy public process involved with placing new regulations.

City Attorney Wells was slightly confused on the November deadline since no one was going to get any license until February. She has no problem working on a parallel set of regulations, however, as an attorney, she finds it difficult because the state will preempt and the city is going to try to regulate something that is federally unlawful and until the state implements something they are flying blind. Moving forward with zoning regulations, application fees, coming up with a department to do that, etc., are okay. City Attorney Wells is confident that the State will not fail to meet that deadline. It has already been stated that if the State fails to adopt the necessary regulations will bring the DEA and Federal AG into the mix.

City Attorney Wells further added that if the municipality wanted to address the regulations that allowed under the authority granted to them but wanted them to be very clean with regard to zoning, taxation, fees, but policy setting is fairly easy to devise.

Commissioner Burgess reiterated his concerns citing his experience so far within local government and people with strong opinion wanting to impart their opinions on the matter. He agreed with the city attorney opinion that the state will have regulations in place but did not think that it would hurt being proactive and having regulatory framework in place that is not as restrictive as the state and that they should have it in place by November and they can use the templates from the State.

There was a brief disconnection from City Attorney Wells. She agreed that there was no harm however she was more focused on the February deadline and believed the November deadline was more tenuous.

Commissioner Burgess asked for a point of order on discussing the City Attorney recommendations. Deputy City Clerk Krause explained that the memorandum was an item under new business for them to discuss and make a motion to approve.

## **RECONSIDERATION**

No items were scheduled for 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 June 25, 2015 Regular Meeting**

Chair Young requested any changes to the consent agenda. She requested a motion to approve the consent agenda.

STEAD/LEWIS - MOVED TO APPROVE THE CONSENT AGENDA.

There was a brief discussion.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

## **STAFF REPORTS**

### **A. Staff Report CAC 15-02 from City Planner re: Follow Up Items**

City Planner Abboud provided the Marijuana/Alcohol Control Board definition of “in public” in regards to the discussion at the last meeting. He also spoke with City Attorney Wells regarding the buffers and she brought up the issue regarding religious meeting places and it appears that it will be very challenging for this town including the federal buffers required for drug free zones.

City Planner Abboud responded to questions and comment from the commission regarding the definition of public, he advised that public he referred as a place where people gather, it is a business, a place of amusement.

CANNABIS ADVISORY COMMISSION  
REGULAR MEETING  
JULY 23, 2015

Commissioner Burgess opined that they should better define public in ordinance since he believed the state's was nebulous, noting that it would be beneficial for the Homer police and residents to have a clear meaning and understanding of the term.

Commissioner Lewis asked about a scenario regarding renting out a facility that is public but rented out for a private event. City Planner Abboud responded that if it is a private club that would be different and would be considered a private club not open to just anyone and would probably be allowed.

Commissioner Monroe commented that there are lawsuits shaping up regarding public versus private. Commissioner Harris noted that the current definitions have expired and the Control Board intends to make these permanent but intent is not doing. She has also tried to speak with Cynthia Franklin, but has been unable to get a response.

Commissioner Jones asked if drinking in public was allowed in Homer and Commissioner Robl responded that it was legal. There are laws regarding public drunkenness but not consumption.

Commissioner Harris also advocate for defining public for Homer.

City Planner Abboud offered that there would have to be separate regulations regarding clubs.

Further discussion on smoking in public and what other communities and the public would allow or want, enacting restrictive regulations that would hamper the revenue, tourist, creation of ancillary businesses, having specific known locations for this activity would be easier to control ensued.

#### **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.*

There were no items for public hearing.

#### **PENDING BUSINESS**

A. Review and Approval of the Draft Bylaws for the Commission

Chair Young requested a motion to bring to the floor.

**BURGESS/LEWIS -MOVED TO APPROVE THE DRAFT BYLAWS FOR THE CANNABIS ADVISORY COMMISSION.**

There was a brief discussion on correcting typographical errors and formatting.

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

Motion carried.

#### **NEW BUSINESS**

A. Memorandum from City Attorney Wells re: Commission Reviews Process Schedule Recommendations

City Planner Abboud reviewed the recommendations from the City Attorney that comment should be forwarded to the Marijuana Control Board an requested any additional recommendations.

**BURGESS/LEWIS - MOVED TO STRIKE 3 AAC 306.200 a (3) AND 3 AAC 306.260 IN ITS ENTIRETY. DEFINE BROKERAGE FACILITY IN THIS SECTION AND OBJECT TO STATE REGULATIONS REGARDING ZONIG TO THE MUNICIPALITY AS IS CUSTOMARY AND FOLLOWED IN REGULAR PRACTICE.**

There was no discussion.

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

Motion carried.

CANNABIS ADVISORY COMMISSION  
REGULAR MEETING  
JULY 23, 2015

BURGESS/LEWIS - MOVED TO RECOMMEND 3 AAC 306.300 NEEDS TO EXPLICITLY EXCLUDE GIFTING, WITHOUT MONETARY COMPENSATION, BY AN INDIVIDUAL TO AN INDIVIDUAL, PER THE ORIGINAL STATUTE 17.38.20.

Discussion on giving product and as written is conflict in what is proposed versus what is already law and belief that it needs to be clear, that the intent is to prohibit retail operations from giving away product not private and it aligns with the regulations against alcohol. Further discussion, referencing additional sections in the proposed regulations which showed the relation to business, this being a drafting error, but written broadly enough its intent is business related ensued. Commissioner Burgess called for the vote.

VOTE. NO. ROBL.

VOTE. YES. HARRIS, STEAD, YOUNG, MONROE, JONES, BURGESS, LEWIS

Motion carried.

B. Staff Report CAC 15-03 from City Planner re: Comments on Marijuana Regulations Set #2  
1. Marijuana Regulations Set #2

City Planner Abboud reviewed the comments and points that he noted in his memorandum and previously discussed with the City Attorney.

Commissioner Burgess commented that the commission appears to be on the same page as his comments and recommendations.

Chair Young asked a question regarding the timing of presenting this to Council. City Planner Abboud responded that he hoped the Clerk was pulling the information now to present to the City Attorney, this will be included in the City Manager's report to Council at the next meeting, Council will approve and City Manager will forward the comments to the state.

C. Memorandum from Deputy City Clerk re: Comments on Marijuana Regulations Set #1, Round 2  
1. Marijuana Regulations Set #1, Round 2

MONROE/BURGESS - MOVED TO SUBMIT THE RECOMMENDATION TO STRIKE PROPOSED REGULATION 3 AAC 306.310 SUBSECTION 3, ITEM C IN THE MEMORANDUM TO COUNCIL TO FORWARD TO THE STATE.

Discussion and comments on limiting retail businesses, the financial legalities since this is still a controlled substance followed, how it is handled in Colorado and Washington.

VOTE. YES. BURGESS, JONES, MONROE, YOUNG, HARRIS

VOTE. NO. LEWIS, STEAD, ROBL.

Motion carried.

BURGESS/MONROE - MOVED TO SUBMIT A RECOMMENDATION THAT PROPOSED REGULATION 3 AAC 306.310 SUBSECTION 3, ITEM B, BE STRICKEN FROM THE DRAFT.

There was a brief discussion and clarification on the proposed regulation limiting or prohibiting a business from reducing the cost of the product to the cost of purchase and not below which basically forces the business to take a loss instead of trying to recoup any percentage of their costs.

VOTE. NO. ROBL, STEAD.

VOTE. YES. HARRIS, YOUNG, MONROE, JONES, BURGESS, LEWIS.

Motion carried.

CANNABIS ADVISORY COMMISSION  
REGULAR MEETING  
JULY 23, 2015

Commissioner Harris requested assistance in making a motion to address her concern with regard to the mandatory requirement to have a marijuana handler permit prior to opening up a business.

LEWIS/HARRIS - MOVED TO SUBMIT A RECOMMENDATION THAT THE STATE HAVE AND PROVIDE THE TRAINING FOR THE MARIJUANA HANDLER PERMIT, 3 AAC 306.325, OR DO NOT REQUIRE THE PERMIT UNTIL IT IS IN PLACE AND TRAINING TO BE AVAILABLE ONLINE.

There was no further discussion.

VOTE. YES. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

D. Memorandum from Deputy City Clerk re: Joint Worksession with Mayor and Council

Chair Young brought the item to the floor for discussion. It was determined that all commissioners planned to attend the

**INFORMATIONAL MATERIALS**

A. 2015 Meeting Schedule and Packet Processing Deadlines

B. 2015 Commission Attendance at Council Meetings

Commissioner Stead stated that he would be unable to attend the September 14<sup>th</sup> meeting and would attend the September 28<sup>th</sup> meeting instead.

C. Medical Marijuana Code West Yellowstone, Wyoming submitted by Commissioner Etwiler

D. Marijuana regulations Set #1 and Public Notice Form Set #1

**COMMENTS OF THE AUDIENCE**

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

Glenda Korn, city resident, commented on the progress that the commission is making, she is really proud of the commission and looking forward to the next meeting. She commented that it is a bit of a nightmare doing things online and trying to get things done unless you are in Anchorage since it takes such a long time to get the papers from the State.

**COMMENTS OF STAFF**

There were no comments from staff.

**COMMENTS OF THE CHAIR**

Chair Young stated she will forego comments in the interest of time.

**COMMENTS OF THE COMMISSION**

Commissioner Robl, Harris, Stead, Jones and Lewis had no comments.

Commissioner Monroe appreciated how the commission sticks to a schedule since the Borough meetings seem to take about four hours. Thank you.

Commissioner Burgess commented on the different perspectives presented and the professional demeanor of the commission, he would like to include in the draft schedule presented tonight a parallel for them to get ordinances and regulations drafted as they know how it will end up if they do not plan appropriately and if he needs to do some nudging let him know.

CANNABIS ADVISORY COMMISSION  
REGULAR MEETING  
JULY 23, 2015

**ADJOURN**

There being no further business to come before the Commission, the meeting adjourned at 7:32 p.m. The next regular meeting is scheduled for THURSDAY, AUGUST 27, 2015 at 5:30 p.m. in the City Hall Cowles Council Chambers.

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Renee Krause, CMC, Deputy City Clerk

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