

MEMORANDUM 13-106

TO: RICK ABBOUD
CITY PLANNER
CITY OF HOMER

FROM: THOMAS F. KLINKNER

RE: TECHNICAL CORRECTIONS TO HCC TITLE 21

FILE NO.: 506,742.563

DATE: JUNE 4, 2013

I have prepared a draft ordinance that makes technical corrections to Homer City Code Title 21 in response to the legal review by Code Publishing. This follows the ordinance that I prepared in early May that made technical corrections to the remainder of the Code based on the Code Publishing legal review. I have addressed Title 21 separately, because amendments to Title 21 are subject to Planning Department and Planning Commission review before they are presented to the Council. The following memorandum addresses each item in the legal review regarding Title 21 in the order in which it appears in the legal review, a copy of which accompanies this memorandum, indicating where the recommended change appears in the ordinance, or explaining why the ordinance does not include the recommended change.

1. Zoning Code and Level One Site Development Standards. The regulations for each zoning district specify the level of site development standards that applies in the district. HCC 21.50.010(b) also states that, “[t]he level of site development standards required is specified in the applicable zoning district regulations.” Thus, as the legal review points out, additional statements in HCC 21.50.010 – 21.50.040 regarding the application of site development standards in zoning districts are redundant. Sections 12 through 15 of the ordinance eliminate these redundant references.

2. Adoption by Reference. The legal review questions the appropriateness of referring in the Code to the ITE “Trip Generation Handbook [] (current edition),” because it has the effect of delegating to the ITE, a private organization, the setting of standards under the City’s zoning regulations. The legal review suggests substituting a reference to the “Trip Generation Handbook, second edition,” which it identifies as the current edition of this document. However, on the ITE website I find a reference to a “Trip Generation Handbook, 9th edition.”

Sections 2 through 4 and 6 through 11 of the ordinance adopt a reference to the ITE "Trip Generation Handbook, 9th edition" in each zoning district that refers to this publication. These sections also adopt a uniform format for traffic requirements in each zoning district where they appear. If it turns out that the reference to a 9th edition is not correct, please substitute in the ordinance the correct current edition number.

3. **HCC 21.02.010.** Item 41 in the legal review questions whether the years of adoption of elements of the comprehensive plan in HCC 21.02.010 are current. I understand that all of the years of adoption in HCC 21.02.010 are current, so I have not included any amendment of this section in the ordinance. If my understanding is incorrect, please let me know.

4. **HCC 21.10.030.** Item 42 in the legal review points out that the City zoning map that appears on the City's website is dated April 4, 2012. You also pointed out that the Planning Department now refers to an official zoning map that is maintained in electronic, rather than paper, form. Section 1 of the ordinance amends HCC 21.10.030 to make these changes.

5. **HCC 21.22.040(e)(3).** Item 46 in the legal review suggests that the use of the term "intensity" in this provision is unclear. In my opinion, this provision adds nothing to the general nonconforming use standards in HCC 21.61.040, which provides in specific terms that a nonconforming use may not be enlarged or increased. Therefore Section 5 of the ordinance strikes this provision.

6. **HCC 21.41.040.** Item 49 in the legal review questions whether the September 25, 2009 date for the Flood Insurance Study is correct. Because it appears that this date is correct, the ordinance does not amend this section. If a different date is correct, please let me know.

7. **HCC 21.50.120(b)(3).** Item 50 in the legal review questions whether the current language in HCC 21.50.120(b)(3) is enforceable. I believe that the remaining provisions of HCC 21.50.120(b) provide adequate standards for conditional fence permits, so Section 16 of the ordinance strikes this provision.

8. **HCC 21.52.060(b)(3).** Item 51 in the legal review questions whether the current language in HCC 21.52.060(b)(3) is enforceable. Section 17 of the ordinance adds more specific standards to this provision.

9. **HCC 21.54.250.** Item 52 in the legal review suggests that the nuisance standard in this section should be made more quantitative. My review of other codes with more quantitative standards indicates that those standards should be adopted only after more thorough study than I can undertake in preparing this technical correction ordinance. Therefore, the ordinance does not amend this section.

10. **HCC 21.57.210.** Item 53 in the legal review questions whether the current language in HCC 21.57.210(e) and (f) is enforceable. Section 18 of the ordinance revises these subsections to provide more specific standards.

11. HCC 21.59.010. Item 54 in the legal review suggests that the nuisance standard in this section should be made more quantitative. It is my opinion that more quantitative standards should be adopted only after more thorough study than I can undertake in preparing this technical correction ordinance. Therefore, the ordinance does not amend this section.

TFK/TFK

cc: Walt Wrede
Jo Johnson