



City of Homer

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Planning

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Memorandum 21-110

TO: MAYOR CASTNER AND THE HOMER CITY COUNCIL
FROM: RICK ABOUD, AICP, CITY PLANNER
DATE: JUNE 7, 2021
SUBJECT: PROPOSED AMENDMENT TO ALLOW MARIJUANA CONSUMPTION
ENDORSEMENTS

Introduction: The State of Alaska has created an allowance for a Consumption Endorsement that applies to retail marijuana stores. The endorsement is an allowance for on-site consumption of marijuana products. In addition to the myriad of rules and regulation for retail sales, the Alcohol and Marijuana Control Office (AMCO) has a newly adopted set of regulations for the operation of a Consumption Endorsement (regulations are included in backup material). A proposed ordinance was the subject of a public hearing at the June 2, 2021 meeting of the Commission.

Analysis: The Commission reviewed an ordinance that intended to allow a consumption endorsement as prescribed by the State of Alaska to any retail marijuana store, as currently allowed in the city. The Commission has many operational concerns especially about possibility of the smell of marijuana smoke offsite and the proximity of the operation to children and/or families that may frequent the area.

The Commission did ask questions of Chris Logan, a perspective consumption endorsement applicant that currently operates a retail marijuana facility in Old Town. After hearing some rebuttal about their concerns, the Planning Commission voted with two in support and three opposing the addition of a consumption endorsement to retail marijuana facility.

Recommendation: The Homer Planning Commission does not support the proposed ordinance.

Attachments:

Proposed ordinance

Planning Commission minutes



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Staff Report PL 21-35

TO: Homer Planning Commission
FROM: Rick Abboud, AICP, City Planner
DATE: June 2, 2021
SUBJECT: Marijuana consumption endorsements

Introduction

We have a local interest in providing on-site consumption of marijuana, as recently allowed by state law.

Analysis

Local Options

According to Alaska Statutes (AS) 17.38, the city may establish local control over the marijuana industry including prohibitions and operating requirements. Presently, Homer has allowances for marijuana cultivation facilities, product manufacturing, testing, and retail facilities. After a conservative interpretation of prohibited locations based on state and federal criteria, areas located out of prohibited distances in commercial zoning districts (as indicated on the attached map) are allowed to operate under the requirements of the State of Alaska. Homer has chosen to not add an additional layers of regulations on operations, outside of what is already required for local development.

State regulation in general

The consumption endorsement requires the establishment of a retail marijuana store. In addition to local regulations regarding development in general, the state has a host of rules for marijuana businesses. Without going into great detail, operational items addressed by the state outside of the new regulations regarding consumption include; security, inventory, advertising, employee training, waste disposal, delivery/transportation, limit of quantities sold, alarm systems, lock standards, video surveillance, as well as health and safety standards. Retailors are also prohibited from allowing intoxicated or drunken persons to enter or remain on the premises.

State regulations for consumption endorsement

The state has created a body of regulation dealing specifically with consumption operations. The state regulations regarding the consumption endorsement (attached) cover a lot of ground, from rules on products and amounts allowed for on-site consumption to the physical layout of the facility. These rules contain measures to help ensure public safety for patrons,

employees, and the public. The regulations include an examination of surrounding uses, a noticed area for solicitation of comments, security, ventilation, and operating requirements. Areas designated for consumption are not to be visible to those off-site.

Staff input

Since the inception of the marijuana industry a few years ago in Homer, we have not noticed an impact to public safety. As a casual but consistent reviewer of local reported crime, I have seen no significant trends in crimes that might be attributed to the legal marijuana industry. Given that our current legal marijuana industry has not introduced increases in crime, I would expect the same from a consumption endorsement. As the consumption (smoking) of marijuana is illegal in public and it is common for hotels and rentals to ban smoking, visitors may not have legal options for consumption. If it is found to be within the sensibilities of the citizens of Homer to support such a venture, we feel that state regulations regarding the marijuana industry together with our local zoning regulations support the inclusion of the consumption endorsement.

Staff Recommendation

Conduct a public hearing and formulate a recommendation to the City Council concerning the draft ordinance.

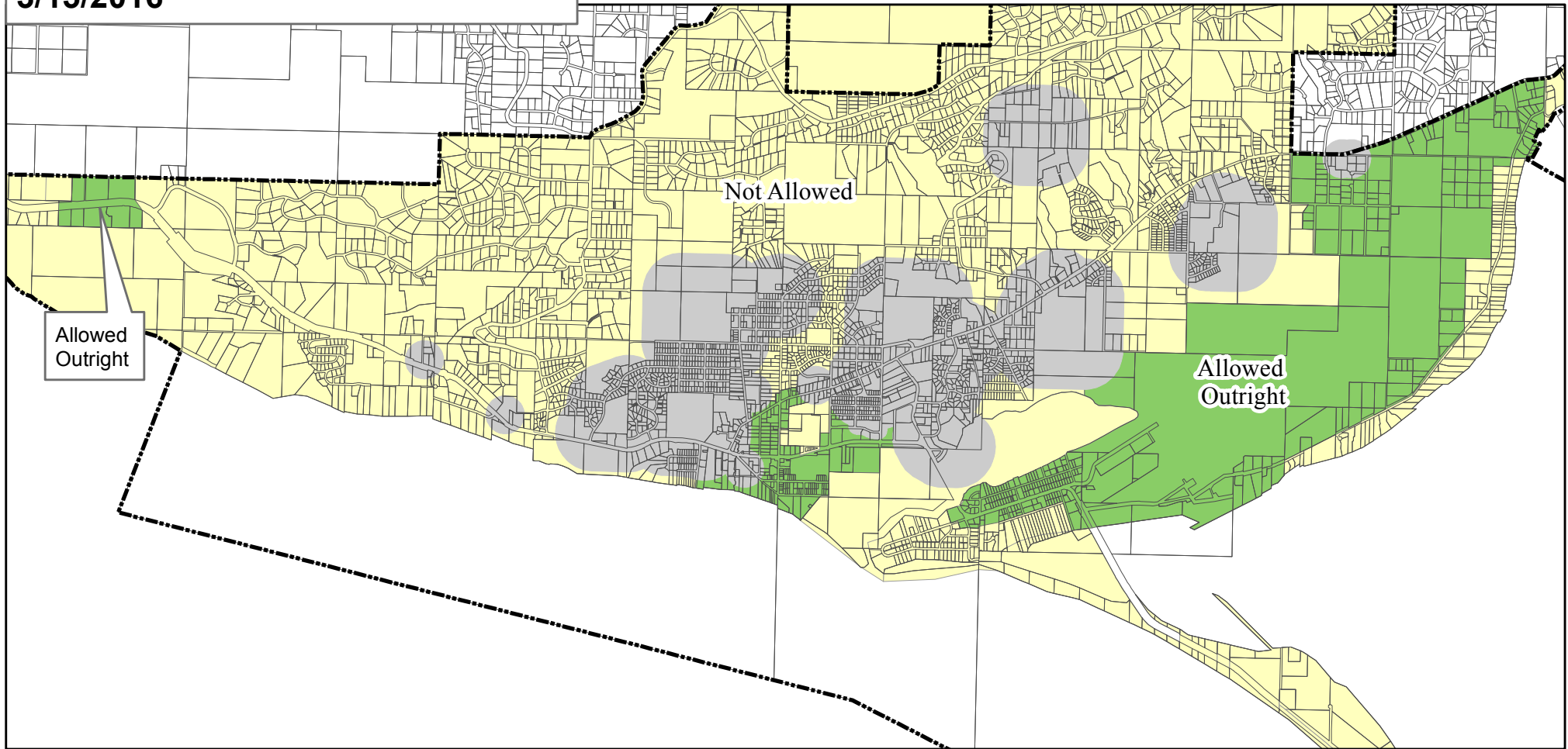
Attachments

Draft ordinance





Marijuana zoning map

3 AAC 306.370. Onsite consumption endorsement for retail marijuana stores.

Commercial Marijuana Map
Adopted Ordinance 16-04(A-2)(S-3)
3/15/2016



Legend

-  City Limits
 -  Buffers
 -  No Commercial Cannabis Businesses
 -  Cultivation, Manufacturing Testing and Retail
- Commercial Marijuana Activities**

State regulations call for buffers to be measured between the public entrance of the cannabis business, and the public entrances of churches and jails. Distances for schools and youth/rec centers are measured from the boundaries to the front door of the cannabis business. All distances are measured by the shortest pedestrian route.

the background. (Eff. 7/22/2017, Register 223)

3 AAC 306.370. Onsite consumption endorsement for retail marijuana stores

(a) Unless prohibited by local or state law, a freestanding licensed retail marijuana store with an approved onsite consumption endorsement is authorized to

(1) sell marijuana and marijuana products, excluding marijuana concentrates, to patrons for consumption on the licensed premises at the time of purchase only in an area designated as the marijuana consumption area and separated from the remainder of the premises, either by a secure door and having a separate ventilation system, or by being outdoors in compliance with (c)(4) below;

(2) sell for consumption on the premises

(A) marijuana bud or flower in quantities not to exceed one gram to any one person per day;

(B) edible marijuana products in quantities not to exceed 10 mg of THC to any one person per day; and

(C) food or beverages not containing marijuana or alcohol; and

(3) allow a person to remove from the licensed premises marijuana or marijuana product that has been purchased on the licensed premises for consumption under this section, provided it is packaged in accordance with 3 AAC 306.345.

(b) A licensed retail marijuana store with an approved onsite consumption endorsement may not

(1) sell marijuana concentrate for consumption in the marijuana consumption area or allow marijuana concentrate to be consumed in the marijuana consumption area;

(2) allow any licensee, employee, or agent of a licensee to consume marijuana or marijuana product, including marijuana concentrate, during the course of a work shift;

(3) allow a person to consume tobacco or tobacco products in the marijuana consumption area;

(4) allow a person to bring into or consume in the marijuana consumption area any marijuana or marijuana product that was not purchased at the licensed retail marijuana store;

(5) sell, offer to sell, or deliver marijuana or marijuana product at a price less than the price regularly charged for the marijuana or marijuana product during the same calendar week;

(6) sell, offer to sell, or deliver an unlimited amount of marijuana or marijuana product during a set period of time for a fixed price;

(7) sell, offer to sell, or deliver marijuana or marijuana product on any one day at prices less than those charged the general public on that day;

(8) encourage or permit an organized game or contest on the licensed premises that involves consuming marijuana or marijuana product or the awarding of marijuana or marijuana product as prizes; or

(9) advertise or promote in any way, either on or off the premises, a practice prohibited under this section.

(c) A marijuana consumption area shall have the following characteristics:

(1) the consumption area shall be isolated from the other areas of the retail marijuana store, separated by walls and a secure door, and shall have access only from the retail marijuana store;

(2) a smoke-free area for employees to monitor the marijuana consumption area;

(3) a ventilation system that directs air from the marijuana consumption area to the outside of the building through a filtration system sufficient to remove visible smoke, consistent with all applicable building codes and ordinances, and adequate to eliminate odor at the property line;

(4) if outdoors, be found by the board to be compatible with uses in the surrounding area through evaluation of

(A) neighboring uses;

(B) the location of air intake vents on neighboring buildings;

(C) a sight-obscuring wall or fence around the outdoor marijuana consumption area;

(D) objections of property owners, residents, and occupants within 250 linear feet or the notification distance required by the local government, whichever is greater; and

(E) any other information the board finds relevant.

(d) An applicant for an onsite consumption endorsement must file an application on a form the board prescribes, including the documents and endorsement fee set out in this section, which must include

(1) the applicant's operating plan, in a format the board prescribes, describing the retail marijuana store's plan for

(A) security, in addition to what is required for a retail marijuana store, including:

- (i) doors and locks;
- (ii) windows;
- (iii) measures to prevent diversion; and
- (iv) measures to prohibit access to persons under

the age of 21;

(B) ventilation. If consumption by inhalation is to be permitted, ventilation plans must be

- (i) signed and approved by a licensed mechanical engineer;
- (ii) sufficient to remove visible smoke; and
- (iii) consistent with all applicable building codes and ordinances;

(C) monitoring overconsumption;

(D) unconsumed marijuana, by disposal or by packaging in accordance with 3 AAC 306.345; and

(E) preventing introduction into the marijuana consumption area of marijuana or marijuana products not sold by the retail marijuana store, and marijuana or marijuana products not sold specifically for onsite consumption;

(2) the applicant's detailed diagram of the marijuana consumption area which must show the location of

- (A) the licensed premises of the retail marijuana store;
- (B) serving area or areas;
- (C) ventilation exhaust points, if applicable;
- (D) the employee monitoring area;
- (E) doors, windows, or other exits; and
- (F) access control points;

(3) the title, lease, or other documentation showing the applicant's sole right of possession of the proposed marijuana consumption area, if the area is not already part of the approved licensed premises for the retail marijuana store;

(4) an affidavit that notice of an outdoor marijuana consumption area has been mailed to property owners, residents, and occupants of properties within 250 linear feet of the boundaries of the property on which the onsite consumption endorsement is proposed, or the notification distance required by the local government, whichever is greater.

(e) The retail marijuana store holding an onsite consumption endorsement under this chapter shall

(1) destroy all unconsumed marijuana left abandoned or unclaimed in the marijuana consumption area in accordance with the operating plan and 3 AAC 306.740;

(2) monitor patrons in the marijuana consumption area at all times, specifically for overconsumption;

(3) display all warning signs required under 3 AAC 306.360 and 3 AAC 306.365 within the marijuana consumption area, visible to all consumers;

(4) provide written materials containing marijuana dosage and safety information for each type of marijuana or marijuana product sold for consumption in the marijuana consumption area at no cost to patrons;

(5) package and label all marijuana or marijuana product sold for consumption on the premises as required by 3 AAC 306.345; and

(6) comply with any conditions set by the local government or placed on the endorsement by the board.

(f) The holder of an onsite consumption endorsement must apply for renewal annually at the time of renewal of the underlying retail marijuana store license. (Eff. 4/11/2019, Register 230)

City Planner Abboud finalized his review of the proposed changes to Title 21.91 and 21.93

Commissioner Highland requested clarification on page 49 in the packet, section 21.93.300 regarding items coming before the Commission would not happen and the qualifications of a Hearing officer since they would not necessarily have the experience that the Planning Commission would have.

Chair Smith commented that he reviewed the draft and believed it to be incredibly thorough and very timely.

VENUTI/HIGHLAND MOVE TO RECOMMEND THE DRAFT ORDINANCE AMENDING HOMER CITY CODE 21.91 TO REMOVE BOARD OF ADJUSTMENT AND HOMER CITY CODE 21.93 ADMINISTRATIVE APPEALS, ESTABLISHING THAT ADMINISTRATIVE APPEALS FROM CERTAIN FINAL CITY PLANNING DECISIONS SHALL BE FILED BEFORE A HEARING OFFICER AND SUPPLEMENTING NOTICE REQUIREMENTS BE MOVED TO PUBLIC HEARING.

There was no further discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

▲ Motion carried.

B. Staff Report 21-36, Extending the No Wake Zone in City Tidelands, Closing Areas to Motorized Vessels & Funds for Regulation Changes.

Chair Smith introduced the item by reading of the title and noted that they received public comment and confirmed with the Commission that they had a chance to review the comments received

The Commissioners present did not indicate that they needed additional time for review of public comment.

City Planner Abboud reviewed Staff Report 21-36 for the Commission and noted that Port Director Hawkins was present to answer any questions.

Port Director Hawkins facilitated discussion and responded to the following topics:

- This was before the Port & Harbor Advisory Commission and they supported it as written
- The previous action taken by the Parks, Art, recreation & Culture Advisory Commission to prohibit personal watercraft from being launched from city beaches and in fact widen it to encompass any motorized watercraft to launch from city beaches without the harbormaster's approval.
- Limited the launching of watercraft to the Load and Launch Ramp in the Harbor

- City Council is directing this change to Title 10.08.210 regarding the vessel speed and no wake zones
- There has only been one recent incident of some horseplay that was immediately handled by Harbor staff.
- Contact with the Harbormasters in Seward, Whittier, Valdez regarding personal watercraft use since they have always been allowed there and they have rental companies in their communities. Seward reported having an issue with one private operator and he put a boot on the trailer and dealt with the issue.
- Clarifying the areas, using the map provided in the packet where vessels could be operated. It was noted that the map was for discussion purposes only.

City Planner Abboud responded that the purpose and intent was preemptive in nature and the issue was new for him.

Commissioner Conley questioned whether they were solving a problem or not.

VENUTI/HIGHLAND MOVED THAT THE PLANNING COMMISSION RECOMMENDS APPROVAL OF ORDINANCE 21-26 AS WRITTEN.

Discussion ensued on the nature of the ordinance addressing the issue of prohibiting motorized watercraft in these sensitive areas are a good idea; addressing the amendments proposed at the Council level; safety issues do promulgate regulations; will not negatively affect anyone to promote lower speed limits in city waters; and this is a form of zoning and planning and makes sense.

HIGHLAND/BARNWELL MOVED TO AMEND THE MOTION TO RECOMMEND CITY COUNCIL INCLUDE IN ORDINANCE CLOSING THE SLOUGH BEHIND MARINER PARK, THE AREA OF MUD BAY CLOSEST TO SHORE, AND THE NICK DUDIACK FISHING LAGOON TO MOTORIZED VESSELS.

There was a brief discussion on the verbiage in the motion as this was a recommendation to City Council and including the map for reference; and review of the amendments that were proposed by Councilmember Aderhold and Evensen.

Deputy City Clerk Krause read the proposed amendment on the floor.

Chair Smith called for further questions.

Port Director Hawkins responded to Commissioner Conley that in comparison to other harbors Homer is different in that Kachemak Bay is a critical habitat area and the other harbors do not have anything specific as far as wake speed to his knowledge. He then addressed enforcement and acknowledged that their limits are ¼ mile outside the harbor entrance and it will be difficult to have harbor employees enforce wake speed; age limits of vessel operators. He stated that he was supportive of the ordinance.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

INFORMATIONAL MATERIALS

A. City Manager's Report for May 24, 2021 City Council Meeting

Chair Smith commented in support of having the inbound EMS Patient Loading at ramp 7 stating that he has had several incidents over the last 10 years with people overboard and expressing that this was a great asset.

B. Planning Commission Calendar

City Planner Abboud commented on getting Public Works Director Keiser on the agenda to talk to them about the storm water planning and to get information from Port Director Hawkins on the Spit Parking Study.

COMMENTS OF THE AUDIENCE

COMMENTS OF THE CITY STAFF

Deputy City Clerk Krause commented that it was an interesting meeting with a variety of topics and opined that it may be time for the City to start thinking about funding for a harbor patrol or HPD in boats similar to other communities. Homer is growing and with the popularity of the beaches and such it gets more crowded each year.

COMMENTS OF THE COMMISSION

Commissioner Highland commented interesting topics and thoughtful comments.

Commissioner Venuti expressed his appreciation also for the topics and addressing the appeals process.

Commissioner Conley commented it was an interesting meeting.

Commissioner Barnwell commented that he was not a fan of PWCs and great discussions.

Chair Smith commented that he appreciated the discussions tonight, the efforts of staff and related an incident he experienced with the Coast Guard and Troopers being able to board his boat to check out his licenses.

ADJOURN

There being no further business before the Commission the meeting was adjourned at 9:00 p.m. Next Regular Meeting is Wednesday, June 16, 2021 at 6:30 p.m. A worksession is scheduled for