



Homer City Hall

491 E. Pioneer Avenue

Homer, Alaska 99603

www.cityofhomer-ak.gov

City of Homer Agenda

Planning Commission Regular Meeting

Wednesday, June 02, 2021 at 6:30 PM

Council Chambers via Zoom Webinar

Webinar ID: 979 8816 0903 Password: 976062

Dial 669 900 6833 or 253 215 8782 or Toll Free 877 853 5247 or 888 788 0099

CALL TO ORDER, 6:30 P.M.

AGENDA APPROVAL

PUBLIC COMMENTS The public may speak to the Commission regarding matters on the agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit).

RECONSIDERATION

CONSENT AGENDA All items on the consent agenda are considered routine and non-controversial by the Planning Commission and are approved in one motion. There will be no separate discussion of these items unless requested by a Planning Commissioner or someone from the public, in which case the item will be moved to the regular agenda.

- A. Planning Commission Regular Meeting Minutes of May 19, 2021 **p. 3**
- B. Decisions and Findings Conditional Use Permit (CUP) 21-05 to expand a deck for outdoor seating at the Harbor Grill restaurant, 4262 Homer Spit Rd. **p. 10**
- C. Memo from City Clerk, Re: Motion to Dismiss Appeal in the Matter of Conditional Use Permit 2020-15 and Order Granting Motion to Dismiss Appeal **p. 15**

PRESENTATIONS / VISITORS

REPORTS

- A. Staff Report 21-34, City Planner's Report **p. 21**
- B. Public Works Task Force **p. 22**

PUBLIC HEARINGS

- A. Staff Report 21-35, An Ordinance to add onsite consumption endorsement for marijuana retail facilities as an allowed use **p. 23**



PLAT CONSIDERATION

PENDING BUSINESS

NEW BUSINESS

- [A.](#) Memo from City Clerk, Re: Introduction of an Ordinance amending the administrative appeals process for City Planning decisions under Homer City Code 21.91 and 21. 93 **p. 40**
- [B.](#) Staff Report 21-36, Ordinance 21-26 Extending the No Wake Zone in City Tidelands, Closing Areas to Motorized Vessels & Funds for Regulation Changes **p. 58**

INFORMATIONAL MATERIALS

- [A.](#) City Manager's Report for May 24, 2021 City Council Meeting **p. 71**
- [B.](#) Planning Commission Calendar **p. 78**

COMMENTS OF THE AUDIENCE Members of the audience may address the Commission on any subject. (3 min limit)

COMMENTS OF THE STAFF

COMMENTS OF THE COMMISSION

ADJOURNMENT

Next Regular Meeting is Wednesday, June 16, at 6:30 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska. Meetings will adjourn promptly at 9:30 p.m. An extension is allowed by a vote of the Commission



Session 21-12, a Regular Meeting of the Planning Commission was called to order by Chair Scott Smith at 6:35 p.m. on May 19, 2021 at Cowles Council Chambers in City Hall located at 491 E. Pioneer Avenue, Homer, Alaska, via Zoom Webinar. There is one vacancy due to a resignation on the Commission.

PRESENT: COMMISSIONERS VENUTI, HIGHLAND, BENTZ, BARNWELL AND SMITH

ABSENT: COMMISSIONER CONLEY (EXCUSED)

STAFF: CITY PLANNER ABBOD
DEPUTY CITY CLERK KRAUSE

APPROVAL OF THE AGENDA

Chair Smith requested a motion to approve the agenda.

VENUTI/BARNWELL – MOVED TO APPROVE THE AGENDA.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Commissioner Highland joined the meeting at 6:39 p.m. after a brief technical issue was resolved.

PUBLIC COMMENTS ON ITEMS ALREADY ON THE AGENDA

RECONSIDERATION

CONSENT AGENDA

- A. Planning Commission Regular Meeting Minutes of May 5, 2021
- B. Decisions and Findings for Conditional Use Permit CUP 21-04 to expand the Safeway grocery store at 90 Sterling Highway
- C. Dedication of Roadway easement for Easy Street on City Properties

Chair Smith requested a motion to approve the Consent Agenda.

VENUTI/BENTZ – MOVED TO ADOPT THE CONSENT AGENDA AS PRESENTED.

There was no discussion.

VOTE. NON- OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PRESENTATIONS / VISITORS

REPORTS

A. Staff Report 21-29, City Planner's Report

Chair Smith introduced the item by reading of the title and requested City Planner Abboud to present his report to the Commission.

City Planner Abboud provided a summary of Staff Report 21-29 for the Commission. He commented on the Ordinance 21-27 waiving connection to city sewer noting that he requested to see a map of the properties that this would affect. He reported that it was nice to hear from a visiting company compliment to city of their signage and to know that they are doing right with the sign code.

Chair Smith offered to write a written report as he was not sure that he would be able to provide a verbal report.

Commissioner Bentz asked about the discussion on trees and shrubbery as replacement and including those species that can assist with erosion and drainage issues that are non-native species since there are so few native species, then developing a list that can be distributed to developers as a preferred recommendation.

A brief discussion ensued on landscaping requirements in or near parking lots and easements next to roadways.

B. Public Works Campus Task Force Report – Commissioner Barnwell

Commissioner Barnwell provided an update on the Task Force progress noting the following:

- Two council members opposed the use of funds
- Task Force members agreed that there is a risk but that risk cannot be quantify
- Some Council members felt that they are under the same risk and nothing has happened
- Reviewing potential sites since the opportunity may not be available in the near future
- The Public Works Facility is a critical infrastructure and provides essential services to all departments within the city
- The existing facility is old and really needs to be updated even outside of the risk of tsunami

PUBLIC HEARINGS

- A. Staff Report 21-30, Conditional Use Permit (CUP) 21- 05 to expand a deck for outdoor seating at the Harbor Grill restaurant at 4262 Homer Spit Road.

Chair Smith introduced the item by reading of the title. He invited City Planner Abboud to provide his report.

City Planner Abboud provided a summary of Staff Report 21-30.

Chair Smith confirmed with the Clerk that an applicant was not present.

Chair Smith opened the public hearing seeing no one in the public wishing to provide testimony he closed the public hearing.

City Planner Abboud noted for the record that they do have the application signed by the City Manager as the owner of the property it just did not make the packet.

Chair Smith opened the floor to questions from the Commission.

City Planner Abboud facilitated discussion and answered a question on the following:

- Perennial issue when it involves the Spit is parking and while it may not be too much of an issue with this project it still will reduce the availability of parking

Chair Smith hearing no further questions requested a motion.

VENUTI/BENTZ MOVED TO ADOPT STAFF REPORT 21-30 AND APPROVE CONDITIONAL USE PERMIT 21-05 WITH FINDINGS ONE THROUGH TEN.

There was a brief discussion on the economic reason for doing this project.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

- B. Staff Report 21-31, Draft resolution recommending adoption of the updated Community Design Manual to the City Council.

Chair Smith introduced the item by reading of the title and requested City planner to provide his report.

City Planner About reviewed Staff Report 21-31 for the Commission noting the amendments that were made to the document.

Chair Smith opened the public hearing noting that there were no public indicating that the wish to provide testimony he closed the public hearing and opened the floor to questions from the Commission.

City Planner Abboud facilitated discussion and provided responses to questions on the following:

- The recent experience regarding a connex and how this issue would fit into the Community Design Manual
- Having a public conversation on the use of connex in Homer as homes
- Providing more examples in the CDM may not be accepted in the future as what is acceptable changes over time.
- The CDM is used or applied in the CBD when a CUP is triggered and a zoning permit application does not trigger the CDM.
- Review of the CDM our recent project such as the police station does not use the recommendations outlined in the CDM.
- The difference between a large rectangular building with a flat roof and a small rectangular building with a flat roof relates to scale in comparison to existing buildings.

Further discussion ensued on the use of connex as a prefabricated home and tiny homes, review of the CDM to make sure that those discussions happen and maybe they can schedule a worksession to discuss the design and exterior of those as homes.

BENTZ/BARNWELL MOVE TO APPROVE THE RECOMMENDED STAFF REVISIONS TO THE DESIGN REVIEW GOALS AND ARCHITECTURAL DESIGN REVIEW SECTIONS.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

BENTZ/VENUTI MOVED TO ADOPT STAFF REPORT 21-31 AND FORWARD A RECOMMENDATION TO CITY COUNCIL TO APPROVE A RESOLUTION ADOPTING THE AMENDED COMMUNITY DESIGN MANUAL.

There was a brief discussion on including not in the CDM but as a resource of common plants or site assessment for landscaping for the homeowner or developer to access as a resource.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PLAT CONSIDERATION

A. Staff Report 21-32 Skyline Drive Subdivision No. 7A Preliminary Plat

Chair Smith introduced the item by reading of the title and yielded the floor to City Planner Abboud.

City Planner Abboud provided a summary of Staff Report 21-32.

Mr. Gary Nelson, Surveyor and representing the applicant was available for questions.

Chair Smith opened the public comment period and seeing there were no members of the public present he opened the floor to questions from the Commission.

Chair Smith requested a motion having no questions from the Commission for the Applicant or City Planner.

VENUTI/BENTZ MOVED TO ADOPT STAFF REPORT 21-32 AND RECOMMEND APPROVAL OF THE PRELIMINARY PLAT WITH THE FOLLOWING COMMENT:

INCLUDE A PLAT NOTE STATING PROPERTY OWNER SHOULD CONTACT THE ARMY CORPS OF ENGINEERS PRIOR TO ANY ON SITE DEVELOPMENT OR CONSTRUCTION ACTIVITY TO OBTAIN THE MOST CURRENT WETLAND DESIGNATION (IF ANY). PROPERTY OWNERS ARE RESPONSIBLE FOR OBTAINING ALL REQUIRED LOCAL, STATE AND FEDERAL PERMITS.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PENDING BUSINESS

NEW BUSINESS

A. Staff report 21-33 Planning Commission Election of Vice Chair

Chair Smith introduced the item and opened the floor to nominations from the Commission.

Commissioner Bentz nominated Commissioner Barnwell.

Commissioner Barnwell declined the nomination stating that he did not have enough experience and nominated Commissioner Bentz as Vice Chair.

Commissioner Bentz declined noting the difficulty in conducting a meeting a responding to the content and she is has served as Vice Chair before.

Commissioner Venuti nominated Commissioner Highland.

Commissioner Highland responded that she was willing to serve as Vice Chair until August.

Chair Smith requested the Clerk to perform a roll call vote.

VOTE. YES. BARNWELL, BENTZ, VENUTI, SMITH, HIGHLAND.

Motion carried.

INFORMATIONAL MATERIALS

- A. Manager's Report for April 26, 2021 City Council Meeting
- B. Kenai Peninsula Borough Notice of Decisions (None received)
- C. Planning Commission Calendar

Chair Smith opened the floor to questions or comments from the Commission on the Informational materials and there were none forthcoming. He then asked if City Planner Abboud had any comments on the calendar.

City Planner Abboud provided a review and status of upcoming meetings and encouraged the Commission to submit any topics that they think would be good worksession matters.

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.

City Planner Abboud stated that he has attempted to provide a bit more thorough review of the CUP applications focusing on the alignment with City Code and the Comp Plan.

COMMENTS OF THE COMMISSION

Commissioner Highland thanked everyone and reminded the Commission that they needed to recruit another Commissioner.

Commissioner Bentz commented on the CUP reports and stated that she appreciates the mapping or diagraming that the Planning department provides since it assists in visualizing what is going on, even though they read the reports, it helps to have those maps for the illustrative purposes.

Commissioner Venuti thanked Commissioner Highland for stepping up and expressed his appreciation for the City Planner and the Clerk.

Commissioner Barnwell commented on his appreciation for having the added documentation for the CUP application especially maps and GIS information the better in his mind. He echoed his appreciation for all that the Planning department and the Clerk.

Chair Smith echoed his appreciation for the Planning department and working through the COVID restrictions, dealing with absences and remote working schedules and there has not been a hiccup on their end which shows the leadership in the Planning department and the clerical leadership by our Clerk. He additionally expressed his appreciation and honor of working with the Commissioners, recognizing their volunteerism on this commission and other groups and announced that he may have some upcoming time away from the Commission in June and July for family medical reasons but if he is able to attend via Zoom he plans to do that.

ADJOURN

There being no further business before the Commission the meeting was adjourned at 7:25 p.m. Next Regular Meeting is Wednesday, June 2, 2021 at 6:30 p.m. A worksession is scheduled for 5:30 p.m. All meetings scheduled to be held virtually by Zoom Webinar from the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

RENEE KRAUSE, MMC, DEPUTY CITY CLERK

Approved: _____

HOMER PLANNING COMMISSION

Approved CUP 2021-05 at the Meeting of May 19, 2021

Address: 4262 Homer Spit Road

Legal Description: T 7S R 13W SEC 1 SEWARD MERIDIAN HM 0890034 HOMER SPIT SUB AMENDED LOT 19

DECISION

Introduction

Jose Ramos/Don Jose's, LLC (the "Applicant") applied to the Homer Planning Commission (the "Commission") for a Conditional Use Permit (CUP) under Homer City Code HCC 21.28.030(i), to locate a building within a setback area required by HCC 21.28.040(b) in the Marine Commercial District (MC).

The applicant applied to expand a deck for outdoor dining approximately 1000 square feet. The deck is proposed to be located up to three feet away from the right-of-way (ROW) that is used for access to the harbor ramp.

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on May 19, 2021. Notice of the public hearing was published in the local newspaper and sent to 35 property owners/ lease holders of 12 parcels within a 300-foot periphery of the site.

At the May 19, 2021 meeting of the Commission with Commissioner Conley being excused, the Commission voted with the unanimous consent of the five commissioners present to approve CUP 2021-05, with findings 1-12.

Evidence Presented

City Planner Abboud reviewed the staff report and there was no public testimony.

Findings of Fact

After careful review of the record, the Commission approves Condition Use Permit 2021-02 with findings 1-12.

The criteria for granting a Conditional Use Permit is set forth in HCC 21.71.030 and 21.71.040, in addition to the standards found in HCC 21.28.030(i)(1 & 2).

HCC 21.28.040(i).

The location of a building within a setback area required by HCC 21.28.040(b). In addition to meeting the criteria for a conditional use permit under HCC 21.71.030, the building must meet the following standards:

1. Not have a greater negative effect on the value of the adjoining property than a building located outside the setback area; and

Finding 1: The proposed project will not have a negative effect on the values of neighboring properties.

2. Have a design that is compatible with that of the structures on the adjoining property.

Finding 2: The proposed design is compatible with that of adjoining properties.

HCC 21.71.030.

a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.

Finding 3: The applicable code authorizes each proposed use and structure.

b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.

Finding 4: The proposed use and structure is compatible with the purpose of the zoning district.

c. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.

Finding 5: An expansion of a deck into the setback to be used for dining is not expected to negatively impact the adjoining properties greater than other permitted or conditional uses.

d. The proposal is compatible with existing uses of surrounding land.

Finding 6: The proposal is compatible with existing uses of surrounding land.

e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.

Finding 7: Public services and facilities are adequate to serve the existing use along with the proposed deck expansion.

f. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.

Finding 8: The Commission finds the proposal will not cause undue harmful effect upon desirable neighborhood character as described in the purpose statement of the district.

g. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.

Finding 9: The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area and the city as a whole when all applicable standards are met as required by city code.

h. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.

Finding 10: The proposal will comply with applicable regulations and conditions specified in Title 21.

i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.

Finding 11: The proposal is not contrary to the applicable land use goals and objects of the Comprehensive Plan and no evidence has been found that it is contrary to the applicable land use goals and objectives of the Comprehensive Plan.

j. The proposal will comply with all applicable provisions of the Community Design Manual (CDM).

Finding 12: Project complies with the applicable provisions of the CDM.

HCC 21.71.040(b).

In approving a conditional use, the Commission may impose such conditions on the use as may be deemed necessary to ensure the proposal does and will continue to satisfy

the applicable review criteria. Such conditions may include, but are not limited to, one or more of the following:

- 1. Special yards and spaces:** No specific conditions deemed necessary
- 2. Fences and walls:** No specific conditions deemed necessary
- 3. Surfacing of parking areas:** No specific conditions deemed necessary.
- 4. Street and road dedications and improvements:** No specific conditions deemed necessary.
- 5. Control of points of vehicular ingress and egress:** No specific conditions deemed necessary.
- 6. Special provisions on signs:** No specific conditions deemed necessary.
- 7. Landscaping:** No specific conditions deemed necessary.
- 8. Maintenance of the grounds, building, or structures:** No specific conditions deemed necessary.
- 9. Control of noise, vibration, odors or other similar nuisances:** No specific conditions deemed necessary.
- 10. Limitation of time for certain activities:** No specific conditions deemed necessary.
- 11. A time period within which the proposed use shall be developed:** No specific conditions deemed necessary.
- 12. A limit on total duration of use:** No specific conditions deemed necessary.
- 13. More stringent dimensional requirements,** such as lot area or dimensions, setbacks, and building height limitations. Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit.
- 14. Other conditions necessary** to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot.

Conclusion: Based on the foregoing findings of fact and law, Conditional Use Permit 2021-05 is hereby approved, with Findings 1-12.

Date

Chair, Scott Smith

Date

City Planner, Rick Abboud AICP

NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code, Chapter 21.93.060, any person with standing that is affected by this decision may appeal this decision to the Homer Board of Adjustment within thirty (30) days of the date of distribution indicated below. Any decision not appealed within that time shall be final. A notice of appeal shall be in writing, shall contain all the information required by Homer City Code, Section 21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to the below listed recipients on _____, 2021. A copy was also delivered to the City of Homer Planning Department and the Homer City Clerk on the same date.

Date

Travis Brown, Planning Technician

Jose Ramos/Don Jose's, LLC
127 W Pioneer Ave.
Homer, AK 99603

Rob Dumouchel
City Manager
491 E Pioneer Avenue
Homer, AK 99603

Michael Gatti
Jermain, Dunnagan & Owens
3000 A Street, Suite 300
Anchorage, AK 99503



City of Homer

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Office of the City Clerk

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Homer, Alaska 99603

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(p) 907-235-3130

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Memorandum

TO: CHAIR SMITH AND THE HOMER PLANNING COMMISSION
FROM: MELISSA JACOBSEN, MMC, CITY CLERK
DATE: MAY 27, 2021
SUBJECT: MOTION TO DISMISS APPEAL IN THE MATTER OF CONDITIONAL USE PERMIT
2020-15 AND ORDER GRANTING MOTION TO DISMISS APPEAL

A motion to dismiss the appeal in the matter of Conditional Use Permit 2020-15 and an order granting motion to dismiss appeal was submitted by the City through its counsel of record Jermain, Dunnagan & Owens P.C. This is prompted by the applicant in the matter withdrawing her conditional use permit application for 106 W. Bunnell Avenue.

Attachments:

- Motion to dismiss appeal
- Order granting motion to dismiss appeal

Michael R. Gatti, Esq.
Max D. Holmquist, Esq.
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Telephone: (907) 563-8844
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mgatti@jdolaw.com
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Attorneys for City of Homer

BEFORE THE HOMER PLANNING COMMISSION

In the Matter of

)	
)	
CONDITIONAL USE PERMIT 2020-15)	On appeal from Planning
)	Commission Decision
)	October 7, 2020

MOTION TO DISMISS APPEAL

The City of Homer (the “City”), by and through its counsel of record, Jermain, Dunnagan & Owens, P.C., hereby moves to dismiss the above-captioned appeal because the applicant for Conditional Use Permit 2020-15, Melody Livingston (the “Applicant”), has withdrawn her application.

On March 9, 2021, the Homer Board of Adjustment (“BOA”) remanded the above-captioned appeal to the Homer Planning Commission (the “Commission”) for further review under HCC 21.93.510(a).¹ On April 20, 2021, the Applicant emailed the City notifying it that she has withdrawn her September 17, 2020 conditional use permit application for 106 West Bunnell Avenue that is the subject of this appeal.² The Applicant’s withdrawal of her conditional use permit application voids CUP 20-15.

¹ See Decision and Order Remanding to the Planning Commission dated March 9, 2021.

² See emails between Melody Livingston and the City, copies of which are attached hereto as Exhibit A.

The Commission should dismiss this appeal due to the Applicant's withdrawal of her application for two reasons. First, the withdrawal of the CUP application that is the basis of this appeal moots the claims on appeal. The Alaska Supreme Court has held that "a claim is moot if it has lost its character as a present, live controversy."³ In this appeal, the relief sought by the Appellant is the denial of CUP 20-15. Since CUP 20-15 is voided by the withdrawal of the CUP application, the issues raised in this appeal are moot.

Second, the Commission and the BOA no longer have jurisdiction to decide any issues raised in this appeal. The Commission's jurisdiction to consider and decide upon a CUP application depends upon the existence of a CUP application.⁴ The BOA's appellate jurisdiction only extends to the grant or denial of a CUP.⁵ Neither body has jurisdiction to decide legal issues related to a CUP appeal after a CUP applicant has withdrawn her application and is no longer seeking a CUP.

Accordingly, the City respectfully requests that the Commission dismiss the above-captioned appeal.

DATED this 14th day of May, 2021, at Anchorage, Alaska.

JERMAIN DUNNAGAN & OWENS, P.C.
Attorneys for Appellee
City of Homer

By: s/Michael R. Gatti/
Michael R. Gatti
Alaska Bar No. 8306033
Max D. Holmquist
Alaska Bar No. 0911057

³ *Akpik v. State, Office of Management and Budget*, 115 P.3d 532, 535 (Alaska 2005).

⁴ HCC 21.71.040(a).

⁵ HCC 21.93.030(a).

Sherry Sims

From: Rick Abboud <RAbboud@ci.homer.ak.us>
Sent: Thursday, April 29, 2021 4:10 PM
To: Michael Gatti
Cc: Max D. Holmquist
Subject: FW: remand

fyi

From: Rick Abboud
Sent: Tuesday, April 20, 2021 7:34 AM
To: Melissa Jacobsen <MJacobsen@ci.homer.ak.us>
Subject: FW: remand

Melissa,

Melody has requested to withdraw CUP 20-15 regarding the Wild Homey proposal.

Rick

From: (null) (null) <melodyliving@yahoo.com>
Sent: Tuesday, April 20, 2021 6:14 AM
To: Rick Abboud <RAbboud@ci.homer.ak.us>
Subject: Re: remand

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Sorry about the delay. I am now in Chicago. The move was demanding 😊.
Please withdraw my current application. We will resubmit in a year or two.
Thank you for your efforts on this.
Melody Livingston

Sent from my iPhone

On Apr 15, 2021, at 7:32 PM, Rick Abboud <RAbboud@ci.homer.ak.us> wrote:

Melody,

Just wanted to follow up on our last conversation regard the remand of your CUP for Wild Honey. If you wish to regroup and reapply at a later, please respond with an email stating your intent to withdraw your current application.

Thanks,

Rick

RICK ABBOUD, AICP

City Planner

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Attorneys for City of Homer

BEFORE THE HOMER PLANNING COMMISSION

In the Matter of

)	
)	
CONDITIONAL USE PERMIT 2020-15)	On appeal from Planning Commission Decision
_____)	October 7, 2020

[PROPOSED] ORDER GRANTING MOTION TO DISMISS APPEAL

The Homer Planning Commission, having reviewed the City of Homer's Motion to Dismiss Appeal and finding that Applicant Melody Livingston's withdrawal of her September 17, 2020 conditional use permit application for 106 West Bunnell Avenue voids Conditional Use Permit 20-15 and moots all pending issues in this appeal, and that there is good cause to dismiss this appeal;

HEREBY ORDERS that the above-captioned appeal is dismissed.

DATED: _____

SCOTT SMITH
CHAIR – HOMER PLANNING
COMMISSION

LAW OFFICES OF
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Planning

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TO: Homer Planning Commission
FROM: Rick Abboud, AICP, City Planner
DATE: June 2, 2021
SUBJECT: Staff Report 21-34, City Planner's Report

5.24.21 City Council

Resolution 21-038, A Resolution of the City Council of Homer, Alaska Amending the Homer Fee Schedule Under City Clerk Fees and Planning and Zoning Fees. City Clerk. Follows Ordinance 21-32.

Memorandum 21-083 from City Clerk as backup

Tasmania Court Sewer Special Assessment District
Memorandum 21-085 from Public Works Director as backup
One person commented.
POSTPONED to June 14, 2021.

6.14.21 City Council

Introduction of Community Design Manual amendment.

Easy Street easement.

Economic Development Advisory Commission

The Wayfinding and Streetscape project has started! You can follow the project on this blog, as well as submit comments: <https://homerwayfinding.blogspot.com/> Have a specific area of interest? Show up at one of the pop-up events, or the Thursday (June 10th) zoom to share your thoughts. After this June field work, the consultant will provide a draft plan in late summer/early fall.

The Comprehensive Economic Development Strategy, a 5 year plan, can be viewed here: <https://kpedd.org/> . This plan is necessary for certain projects to receive federal funding, and coordinates the economic development activities of Kenai Peninsula Economic Development District, and to some extent the borough and cities. The plan is borough wide and gives a good overview for our region as a whole. Comments can be emailed to the, by June 14th. The EDC had a work session on this topic and will formulate comments at their next meeting, June 8th.

Commissioner report to City Council

6/14 _____

6/28 _____



City of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

491 East Pioneer Avenue
Homer, Alaska 99603

clerk@cityofhomer-ak.gov

(p) 907-235-3130

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Memorandum

TO: HOMER PLANNING COMMISSION
FROM: PUBLIC WORKS CAMPUS TASK FORCE
THRU: RENEE KRAUSE, MMC, DEPUTY CITY CLERK
DATE: MAY 27, 2021
SUBJECT: PROGRESS UPDATE

At the May 26, 2021 regular meeting the Task Force discussed the following items:

- Reviewed the Criteria developed to evaluate the strategies to mitigate the risks
- Providing a point system in the ranking that is reflective of the unquantifiable risk so that the difference can be readily viewed in the mitigation strategies.
- Concluded that the strategies must be viewed with criteria that reflects the public perception

The Task Force also discussed the format for the report including but not limited to the following:

- The report should be in two parts first part containing the analysis and what was analyzed
- Including the Risk Mitigation and Strategies Table
- The second part of the report would contain the recommendations and the basis or rationale on how they reached the preferred recommendation
- The Costs Estimates Table should also be included
- Site Selections to include basis for non-selection

It was agreed that a memorandum no longer than two pages, summarizing the sections in the report would be provided as a cover for the 20 plus page report which would provide more in-depth information or the story on how the Task Force reached their conclusions.

The June 9, 2021 regular meeting was cancelled due to the impending absences of two members and staff.



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.

**CITY OF HOMER
HOMER, ALASKA**

Planning Commission

ORDINANCE 21-__

**AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA,
AMENDING HOMER CITY CODE 21.18.020, CENTRAL
BUSINESS DISTRICT; HOMER CITY CODE 21.24.020, GENERAL
COMMERCIAL 1; HOMER CITY CODE 21.26.020, GENERAL
COMMERCIAL 2; HOMER CITY CODE 21.27.020, EAST END
MIXED USE; HOMER CITY CODE 21.62.020, MARIJUANA
CULTIVATION, MANUFACTURING, TESTING, AND RETAIL
FACILITIES.**

WHEREAS, it is in the City's best interest to draft comprehensive regulations regarding the use of property within the City to cultivate, manufacturer marijuana or to operate a retail store selling marijuana with or without a consumption endorsement; and

WHEREAS, the City is dedicated to drafting regulations that prevent the distribution of marijuana to minors; prevents revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; prevents the diversion of marijuana from states where it is legal under state law in some form to other states; prevents state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; prevents violence and the use of firearms in the cultivation and distribution of marijuana; prevents drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; prevents the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public land; and prevents marijuana possession or use on federal property.

THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code Chapter 21.18 is amended as follows:

Section 21.18.020 Permitted uses and structures.

The following uses are permitted outright in the Central Business District, except when such use requires a conditional use permit by reason of size, traffic volumes, or other reasons set forth in this chapter:

- a. Retail business where the principal activity is the sale of merchandise and incidental services in an enclosed building;

[Bold and underlined added. Deleted language stricken through.]

- b. Personal service establishments;
- c. Professional offices and general business offices;
- d. Restaurants, clubs and drinking establishments that provide food or drink for consumption on the premises;
- e. Parking lots and parking garages, in accordance with Chapter 21.55 HCC;
- f. Hotels and motels;
- g. Mortuaries;
- h. Single-family, duplex, and multiple-family dwellings, including townhouses, but not including mobile homes;
- i. Floatplane tie-up facilities and air charter services;
- j. Parks;
- k. Retail and wholesale sales of building supplies and materials, only if such use, including storage of materials, is wholly contained within one or more enclosed buildings;
- l. Customary accessory uses to any of the permitted uses listed in the CBD district; provided, that a separate permit shall not be issued for the construction of any detached accessory building prior to that of the main building;
- m. Mobile homes, provided they conform to the requirements set forth in HCC 21.54.100;
- n. Home occupations, provided they conform to the requirements of HCC 21.51.010;
- o. Ministorage;

p. Apartment units located in buildings primarily devoted to business or commercial uses;

q. Religious, cultural, and fraternal assembly;

r. Entertainment establishments;

s. Public, private and commercial schools;

t. Museums and libraries;

u. Studios;

v. Plumbing, heating and appliance service shops, only if such use, including the storage of materials, is wholly within an enclosed building;

w. Publishing, printing and bookbinding;

x. Recreational vehicle parks only if located south of the Sterling Highway (Homer Bypass) from Lake Street west to the boundary of the Central Business District abutting Webber Subdivision, and from Heath Street to the west side of Lakeside Village Subdivision, provided they shall conform to the standards in HCC 21.54.200 and following sections;

y. Taxi operation limited to a dispatch office and fleet parking of no more than five vehicles; maintenance of taxis must be conducted within an enclosed structure, and requires prior approval by the City Planner of a site, access and parking plan;

z. Mobile food services;

aa. Itinerant merchants, provided all activities shall be limited to uses permitted outright under this zoning district;

bb. Day care homes and facilities; provided, however, that outdoor play areas must be fenced;

cc. Rooming house, bed and breakfast and hostel;

dd. Auto repair and auto and trailer sales or rental areas, but only on Main Street from Pioneer Avenue to the Sterling Highway, excluding lots with frontage on Pioneer Avenue or the Sterling Highway, subject to the following additional requirements: Vehicles awaiting repair or service, inoperable vehicles, vehicles for parts, and vehicles awaiting customer pickup shall be parked indoors or inside a fenced enclosure so as to be concealed from view, on all sides. The fence shall be a minimum height of eight feet and constructed to prohibit visibility of anything inside of the enclosure. The portion of any vehicle exceeding eight feet in height may be visible outside of the fence. Vehicle parts (usable or unusable), vehicle service supplies, and any other debris created in the repair or servicing of vehicles shall also be stored indoors or inside the fenced enclosure out of view of the public;

ee. Farmers' market;

ff. Dormitory;

gg. Financial institutions;

hh. As an accessory use, one small wind energy system per lot having a rated capacity not exceeding 10 kilowatts;

ii. One detached dwelling unit, excluding mobile homes, as an accessory building to a principal single-family dwelling on a lot.

jj. Marijuana cultivation facilities, manufacturing facilities, retail facilities, ~~and~~ testing facilities, **and consumption endorsement** as defined by State law;

kk. Medical Clinics

Section 2. Homer City Code Chapter 21.24 is amended as follows:

Section 21.24.020 Permitted uses and structures.

The following uses are permitted outright in the General Commercial 1 District, except when such use requires a conditional use permit by reason of size, traffic volumes, or other reasons set forth in this chapter.

- a. Air charter operations and floatplane tie-up facilities;
- b. General business offices and professional offices;
- c. Dwelling units located in buildings primarily devoted to business uses;
- d. Auto repair;
- e. Auto and trailer sales or rental areas;
- f. Auto fueling stations and drive-in car washes;
- g. Building supply and equipment sales and rentals;
- h. Restaurants, including drive-in restaurants, clubs and drinking establishments;
- i. Garden supplies and greenhouses;
- j. Heavy equipment and truck sales, rentals, service and repair;
- k. Hotels and motels;
- l. Lumberyards;
- m. Boat and marine equipment sales, rentals, service and repair;
- n. Mortuaries;
- o. Open air businesses;
- p. Parking lots and parking garages, in accordance with Chapter 21.55 HCC;
- q. Manufacturing, fabrication and assembly
- r. Publishing, printing and bookbinding;

- 142 s. Recreation vehicle sales, rental, service and repair;
- 143 t. Retail businesses;
- 144 u. Trade, skilled or industrial schools;
- 145 v. Wholesale businesses, including storage and distribution services
146 incidental to the products to be sold;
- 147 w. Welding and mechanical repair;
- 148 x. Parks and open space;
- 149 y. Appliance sales and service;
- 150 z. Warehousing, commercial storage and mini-storage;
- 151 aa. Banks, savings and loans, credit unions and other financial institutions;
- 152 bb. Customary accessory uses to any of the permitted uses listed in the
153 GC1 district; provided, that no separate permit shall be issued for the
154 construction of any type of accessory building prior to that of the main
155 building;
- 156 cc. Dry cleaning, laundry, and self-service laundries;
- 157 dd. Taxi operation;
- 158 ee. Mobile food services;
- 159 ff. Itinerant merchants, provided all activities shall be limited
160 to uses permitted outright under this zoning district;
- 161 gg. Recreational vehicle parks, provided they shall conform to the
162 standards in Article II of Chapter 21.54 HCC;
- 163 hh. Day care homes; provided, that a conditional use permit was obtained
164 for the dwelling, if required by HCC 21.24.030; all outdoor play areas
165 must be fenced;

ii. Rooming house and bed and breakfast;

jj. Dormitory;

kk. As an accessory use, one small wind energy system per lot.

ll. Marijuana cultivation facilities, manufacturing facilities, retail facilities,
~~and~~ testing facilities, **and consumption endorsement** as defined by state
law.

Section 3. Homer City Code Chapter 21.26 is amended as follows:

Section 21.26.020 Permitted uses and structures.

The following uses are permitted outright in the General Commercial 2
District, except when such use requires a conditional use permit by reason of size,
traffic volumes, or other reasons set forth in this chapter:

a. Production, processing, assembly and packaging of fish, shellfish and
seafood products;

b. Construction, assembly and storage of boats and boat equipment;

c. Manufacture and assembly of pottery and ceramics, musical
instruments, toys, novelties, small molded products, electronic instruments
and equipment and electrical devices;

d. Research and development laboratories;

e. Trade, skills or industrial schools;

f. Publishing, printing and bookbinding facilities;

g. Auto, trailer, truck, recreational vehicle and heavy equipment sales,
rentals, service and repair, excluding storage of vehicles or equipment that
is inoperable or in need of repair;

- 190 h. Storage and distribution services and facilities, including truck
191 terminals, warehouses and storage buildings and yards, contractors'
192 establishments, lumberyards and sales, or similar uses;
- 193 i. Airports and air charter operations;
- 194 j. Underground bulk petroleum storage;
- 195 k. Cold storage facilities;
- 196 l. Parking lots and parking garages, in accordance with
197 Chapter 21.55 HCC;
- 198 m. Mobile commercial structures;
- 199 n. Accessory uses to the uses permitted in the GC2 district that are clearly
200 subordinate to the main use of the lot or building, such as wharves, docks,
201 restaurant or cafeteria facilities for employees; or caretaker
202 or dormitory residence if situated on a portion of the principal lot;
203 provided, that separate permits shall not be issued for the construction of
204 any type of accessory building prior to that of the main building;
- 205 o. Taxi operation;
- 206 p. Mobile food services;
- 207 q. Itinerant merchants, provided all activities shall be limited
208 to uses permitted outright under this zoning district;
- 209 r. Recreational vehicle parks, provided they shall conform to the standards
210 in Chapter 21.54 HCC;
- 211 s. Hotels and motels;
- 212 t. Dormitory;
- 213 u. As an accessory use, one small wind energy system per lot;
- 214 v. Open air business.

w. Marijuana cultivation facilities, manufacturing facilities, retail facilities, ~~and~~ testing facilities, **and consumption endorsement** as defined by state law.

Section 4. Homer City Code Chapter 21.27 is amended to read as follows:

Section 21.27.020 Permitted uses and structures.

The following uses are permitted outright in the East End Mixed Use District, except when such use requires a conditional use permit by reason of size, traffic volumes, or other reasons set forth in this chapter:

- a. Auto, trailer, truck, recreational vehicle and heavy equipment sales, rentals, service and repair;
- b. Drive-in car washes;
- c. Building supply and equipment sales and rentals;
- d. Garden supplies and greenhouses;
- e. Boat and marine equipment sales, rentals, manufacturing, storage yard, service and repair;
- f. Welding and mechanical repair;
- g. Restaurants, including drive-in restaurants, clubs and drinking establishments;
- h. Religious, cultural, and fraternal assembly;
- i. Studios;
- j. Personal services;
- k. Agricultural activities, including general farming, truck farming, nurseries, tree farms and greenhouses;
- l. Private stables;
- m. Storage of heavy equipment, vehicles or boats;
- n. Plumbing, heating and appliance service shops;
- o. Home occupations on a lot whose principal permitted use is residential, provided they conform to the requirements of HCC 21.51.010;
- p. Mortuaries and crematoriums;
- q. Open air businesses;
- r. Parking lots and parking garages, in accordance with Chapter 21.55 HCC;
- s. Manufacturing, fabrication and assembly;
- t. Retail businesses;
- u. Trade, skilled or industrial schools;
- v. Wholesale businesses, including storage and distribution services incidental to the products to be sold;
- w. Parks and open space;
- x. Warehousing, commercial storage and mini-storage;
- y. Recreational vehicles, subject to the standards in HCC 21.54.320(a), (b) and (c);
- z. Dry cleaning, laundry, and self-service laundries;
- aa. Mobile food services;
- bb. As an accessory use, one small wind energy system per lot;

cc. Production, processing, assembly and packaging of fish, shellfish and seafood products;
dd. Research and development laboratories;
ee. Storage and distribution services and facilities, including truck terminals, warehouses and storage buildings and yards, contractors' establishments, lumberyards and sales, or similar uses;
ff. Cold storage facilities;
gg. Mobile commercial structures;
hh. Single-family and duplex dwellings, only as an accessory use incidental to a permitted principal use; provided, that no permit shall be issued for the construction of an accessory dwelling prior to the establishment of the principal use;
ii. The repair, replacement, reconstruction or expansion of a single-family or duplex dwelling, including a mobile home, that existed lawfully before its inclusion in the GC1, GC2 or EEMU zoning districts, notwithstanding any provision of Chapter 21.61 HCC to the contrary; provided, that a mobile home may not be used to replace or expand such a dwelling;
jj. Customary accessory uses to any of the uses permitted in the EEMU district that are clearly subordinate to the main use of the lot or building, including without limitation wharves, docks, storage facilities, restaurant or cafeteria facilities for employees; or caretaker or employee dormitory residence if situated on a portion of the same lot as the principal use; provided, that no permit shall be issued for the construction of any type of accessory building prior to the establishment of the principal use;
kk. Taxi operation;
ll. Itinerant merchants, provided all activities shall be limited to uses permitted outright under this zoning district;
mm. More than one building containing a permitted principal use on a lot;
nn. The outdoor harboring or keeping of dogs, small animals and fowl as an accessory use to a residential use in a manner consistent with the requirements of all other provisions of the Homer City Code and as long as such animals are pets of the residents of the dwelling and their numbers are such as not to unreasonably annoy or disturb occupants of neighboring property.
oo. Marijuana cultivation facilities, manufacturing facilities, retail facilities, ~~and~~ testing facilities, **and consumption endorsement** as defined by state law.

Section 5. Homer City Chapter 21.62 is amended as follows:

21.62.010 Scope

a. This chapter applies to the operation of all marijuana cultivation, manufacturing, retail, ~~and~~ testing facilities, **and consumption**

endorsement as defined by state law within the city boundaries.

b. This chapter in no way protects marijuana facilities from enforcement of federal law nor is it intended to sanction conduct or operations prohibited by law. All persons engaged in the marijuana industry within the city operate at their own risk and have no legal recourse against the City in the event that city laws are preempted, negated or otherwise found unenforceable based upon federal law prohibiting the sale, distribution, consumption or possession of marijuana.

Section 6. This ordinance shall take effect upon its adoption by the Homer City Council.

Section 7. This ordinance is of a permanent and general character and shall be included in the City code.

ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER, ALASKA, this _____ day of _____ 2021.

CITY OF HOMER

KEN CASTNER, MAYOR

ATTEST:

MELISSA JACOBSON, CMC, CITY CLERK

AYES:

NOES:

ABSTAIN:

ABSENT:

First Reading:

Public Reading:

Second Reading:

Effective Date:

Reviewed and approved as to form:

Rob Dumouchel, City Manager

Michael Gatti, City Attorney

Date: _____

Date: _____

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 of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

491 East Pioneer Avenue
Homer, Alaska 99603

clerk@cityofhomer-ak.gov

(p) 907-235-3130

(f) 907-235-3143

Memorandum

TO: CHAIR SMITH AND THE HOMER PLANNING COMMISSION

FROM: MELISSA JACOBSEN, MMC, CITY CLERK

DATE: MAY 27, 2021

SUBJECT: ORDINANCE 21-XX AMENDING TITLE 21.91 AND 21.93 THAT ADMINISTRATIVE APPEALS BE HEARD BY A HEARING OFFICER AND SUPPLEMENTING NOTICE REQUIREMENTS TO INCLUDE A PUBLISHED NOTICE OF HEARING

This ordinance proposes amendments to the Zoning Code that administrative appeals on all zoning matters be heard by a hearing officer.

Homer City Code Chapter 21.91 Planning Commission and Board of Adjustment is amended to remove reference to the Board of Adjustment and clarify the hearing officer appointment and powers and function.

In summary, Homer City Code Chapter 21.93 Administrative Appeals is amended as follows:

- References to appeals to the Planning Commission and to the Board of Adjustment and combining them under Decisions subject to appeal.
- Under 21.93.020 Decisions subject to appeal, item 5 is deleted. If there are any other decisions expressly made appealable by other provisions in code, they need to be identified in this section.
- The section regarding decisions not subject to appeal is deleted because appealable decisions are identified in 21.93.020 Decisions subject to appeal.
- Appeal timelines are amended to shorten up the overall appeal process from 180 to 120 days.
 - The time to file an appeal is changed from 30 to 15 days.
 - Preparation of the record is changed from 30 to 15 days.
 - The time to hear and issue a decision on an appeal is changed from 120 to 90 days.
- The written briefing section is deleted and replaced with language that a prehearing conference will be scheduled to develop the briefing schedule, set the hearing date, and address other matters as needed with all parties present.
- The Authorized Representative section is deleted and replaced with Representation and clarifying language.
- A section is included to require the hearing be noticed in the paper during the calendar week prior to the appeal hearing date.
- References to appeals to the Planning Commission and to the Board of Adjustment are deleted and replaced with reference to a hearing officer.
- Conflict of Interest and Ex Parte sections are amended to be specific to a hearing officer.

I look forward to the Commissions feedback on these amendments.

Recommendation: Review, discuss, and schedule for public hearing.

**CITY OF HOMER
HOMER, ALASKA**

City Clerk

ORDINANCE 21-xx

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA
AMENDING HOMER CITY CODE 21.91 PLANNING COMMISSION
AND BOARD OF ADJUSTMENT TO REMOVE THE BOARD OF
ADJUSTMENT AND 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.

WHEREAS, City Planning Commission quasi-judicial administrative appeals will be
most efficiently adjudicated by establishing jurisdiction for such matters before a hearing
officer with experience in administrative law.

NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code Chapter 21.91 shall be amended as follows:

Chapter 21.91

PLANNING COMMISSION AND ~~BOARD OF ADJUSTMENT~~ **HEARING OFFICER**

Sections:

Article I. Planning Commission

21.91.010 Planning Commission established.

21.91.020 Powers and functions.

Article II. ~~Board of Adjustment~~ **Hearing officer.**

21.91.100 ~~Board of Adjustment~~ established. **Hearing officer appointment.**

21.91.110 Powers and functions.

21.91.120 Procedures.

21.91.130 Appeals to Superior Court.

Article I. Planning Commission

21.91.010 Planning Commission established.

There shall be a Planning Commission established and functioning pursuant to Chapter 2.72
HCC.

21.91.020 Powers and functions.

In addition to the powers and functions assigned to the Planning Commission in Chapter 2.72 HCC, the Commission has all the powers and functions assigned to it in this title.

Article II. ~~Board of Adjustment~~ **Hearing officer.**

21.91.100 ~~Board of Adjustment established.~~ **Hearing officer appointment.**

~~There is established a Board of Adjustment comprised of the members of the Homer City Council and the Mayor. The Mayor shall preside over the Board of Adjustment and participate in the deliberations. The Mayor shall not vote except in the case of a tie.~~

A hearing officer shall be appointed by the City Manager to hear and decide appeals authorized by HCC 21.93. A hearing officer appointed by the City Manager must have at least five years' experience acting as an administrative law judge or administrative hearing officer and must be licensed to practice law in the State of Alaska and in good standing.

21.91.110 Powers and functions.

a. ~~Either the Board of Adjustment or a hearing officer appointed by the City Manager shall hear and decide appeals authorized by Chapter 21.93 HCC. A decision appealed under Chapter 21.93 HCC shall be heard by a hearing officer unless the individual or entity appealing the decision selects the Board of Adjustment to hear the appeal in their notice of appeal. A **The** hearing officer appointed by the City Manager shall hear and decide appeals pursuant to the provisions of the zoning code.~~

b. ~~A **The** hearing officer appointed by the City Manager to **shall** act as the decision maker in appeals of decisions made by the **City Manager, City Planner, City Planner's designee, or the** Planning Commission must have at least five years' experience acting as an administrative law judge or administrative hearing officer and must be licensed to practice law in the State of Alaska and in good standing.~~

c. ~~The City Manager, the City Planner or the City Planner's designee, or any City of Homer official, agency, or unit shall appeal to a hearing officer and may not select to appeal to the Board of Adjustment.~~

21.91.120 Procedures.

Appeals heard by ~~the Board of Adjustment~~ or a hearing officer shall be conducted according to applicable procedures specified in **HCC Chapter 21.93 HCC.**

21.91.130 Appeals to Superior Court.

a. An appeal from a final decision of ~~the Board of Adjustment or~~ a hearing officer may be taken directly to the Superior Court by a party who actively and substantively participated in the proceedings before the hearing officer ~~or by the City Manager or City Planner or any governmental official, agency, or unit.~~

b. An appeal to the Superior Court shall be filed within 30 days of the date of distribution of the final decision to the parties appearing before the ~~Board of Adjustment or~~ hearing officer.

c. An appeal from a final decision of the ~~Board of Adjustment or~~ hearing officer to the Superior Court is governed by court rules.

Section 2. Homer City Code Chapter 21.93 shall be amended as follows:

Chapter 21.93

ADMINISTRATIVE APPEALS

Sections:

~~Article I. General Provisions~~

21.93.010 Appeals, general.

21.93.020 Decisions subject to appeal to Planning Commission **by a person with standing.**

~~21.93.030 Decisions subject to appeal to the Board of Adjustment or a hearing officer.~~

~~21.93.040 Decisions not subject to appeal.~~

~~21.93.050 Standing – Appeal to Planning Commission.~~

~~21.93.060 Standing – Appeal to hearing officer.~~

21.93.070 Time for appeal.

21.93.080 Notice of appeal.

21.93.090 ~~Authorized representative~~ **Representation.**

21.93.100 General appeals procedure.

21.93.110 Appeal decisions.

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~~Article IV. Conflicts of Interest and Ex Parte Contacts~~

~~21.93.700 Appeals— Conflicts of interest.~~

~~21.93.710 Appeals— Ex parte communication prohibited.~~

~~Article I. General Provisions~~

21.93.010 Appeals, general.

This chapter governs administrative appeals to the ~~Planning Commission and the Board of Adjustment~~ **a hearing officer** from actions and determinations taken under the Homer Zoning Code.

21.93.020 Decisions subject to appeal to ~~Planning Commission.~~

a. The following acts or determinations **final decisions** made under **issued pursuant to** this title by the City Manager, City Planner, or **City Planner's designee** may, when final, be appealed to the ~~Commission~~ by a person with standing:

1. Approval or denial of a zoning permit.
2. Approval or denial of a sign permit.
3. Approval or denial of any other permit that is within the authority of the City Planner to approve or deny.
4. An enforcement order issued under HCC 21.90.060.
5. ~~Any other decision that is expressly made appealable to the Commission by other provisions of the Homer Zoning Code.~~

~~21.93.030—Decisions subject to appeal to the Board of Adjustment or a hearing officer.~~

b. The following acts or determinations **final decisions** of the Commission, when final, may be appealed to the ~~Board of Adjustment or a hearing officer appointed by the City Manager~~ by a person with standing:

1. Grant or denial of a conditional use permit.
2. Grant or denial of a variance.
3. Grant or denial of formal recognition of a nonconforming use or structure, or a decision terminating a nonconforming use or structure.
4. Grant or denial of a conditional fence permit.
5. A decision by the Commission in a matter appealed to the Commission under HCC 21.93.020.
6. Any other final decision that is expressly made appealable to the ~~Board of Adjustment or a hearing officer~~ by other provisions of the code.

~~21.93.040—Decisions not subject to appeal.~~

~~The following acts or determinations may not be appealed:~~

~~a. A decision to cite or not cite a person for a violation of the code under HCC 21.90.090 or any other provision of the code.~~
~~b. A decision to not issue an enforcement order under HCC 21.90.060, 21.40.150, or any other provision of the code.~~
~~c. An order of abatement issued under HCC 21.90.070 after all appeals have been exhausted or the time for appeal has expired.~~
~~d. Any legislative act or determination, including any recommendations, to approve or reject any proposal or ordinance for the adoption, revision, or amendment of the zoning code, the zoning map, a comprehensive plan or any component thereof, any other plan, a rezoning, or any other legislative matter.~~
~~e. Any matter not expressly made appealable by this section or another provision of the Homer Zoning Code.~~

21.93.050 Standing — Appeal to Planning Commission.

~~a. Only the following have standing to appeal an appealable action or determination~~ **a final decision** ~~of the City Manager, City Planner, or City Planner's designee to the Commission~~ **a hearing officer:**

1. The applicant for the action or determination, or the owner of the property that is the subject of the action or determination.
2. The City Manager or City Planner or any governmental official, agency, or unit.
3. Any person aggrieved **adversely affected** by the action or determination.

~~21.93.060 — Standing — Appeal to hearing officer.~~

~~b. Only the following have standing to appeal an appealable action or determination~~ **a final decision** ~~of the Planning Commission to the Board of Adjustment or a hearing officer:~~

1. Applicant for the action or determination, or the owner of the property that is the subject of the action or determination under appeal.
2. The City Manager, the City Planner or the City Planner's designee, or any governmental official, agency, or unit.
3. Any person who actively and substantively participated in the proceedings before the Commission and is aggrieved by the action or determination.
4. Any person who actively and substantively participated in the proceedings before the Commission and would be aggrieved **adversely affected** if the action or determination being appealed were to be reversed on appeal.

21.93.070 Time for appeal.

~~a. An appeal to the Planning Commission must be~~ **shall** ~~filed within 30~~ **15** ~~days after the date of:~~

211 **1. Distribution of the final action or determination ~~decision of the City Manager, City~~**
212 **Planner, or planning staff members** to the applicant or other person whose
213 property is the subject of the matter being appealed; or

214
215 ~~b. 2. An appeal to the Board of Adjustment or a hearing officer must be filed within 30 days~~
216 ~~after the date of d~~ **Distribution of the final action or determination decision of the**
217 **Planning Commission** to the applicant and other parties, if any.

218
219 21.93.080 Notice of appeal.

220
221 a. A notice of appeal from an action or determination of the City Planner or the Planning
222 Commission shall be filed with the City Clerk **and shall be accompanied by the planning**
223 **appeal fee as established in the City of Homer Fee Schedule.**

224
225 b. A notice of appeal shall be in writing, be signed by the appellant, and shall contain, ~~but is~~
226 ~~not limited to,~~ the following information:

- 227
228 1. The name and address of the appellant.
229 2. A description of the action or determination from which the appeal is sought and the
230 date upon which the action or determination became final.
231 3. The street address and legal description of the property that is the subject of the
232 action or determination being appealed, and the name and address of the owner(s) of
233 that property.
234 4. Detailed and specific allegations of error, including reference to applicable provisions
235 of the zoning code or other law.
236 5. A statement of whether the action or determination should be reversed, modified, or
237 remanded for further proceedings, or any other desired relief.
238 6. Proof showing that the appellant is an aggrieved person with standing to appeal
239 under HCC 21.93.050 or 21.93.060, whichever is applicable.
240 ~~7. The appellant's choice of decision maker, which may be either the Board of~~
241 ~~Adjustment or a hearing officer appointed by the City Manager.~~

242
243 c. The City Clerk shall reject any notice of appeal that does not comply with HCC 21.93.070
244 and this section and notify the appellant of the reasons for the rejection. If a notice of appeal
245 is rejected for reasons other than timeliness, a corrected notice of appeal that complies with
246 this section will be accepted as timely if filed within seven days of the date on which the City
247 Clerk mails the notice of rejection.

248
249 d. **Within seven days of the date on which the City Clerk determines the notice of appeal**
250 **complies with HCC 21.93.070,** ~~The City Clerk shall mail~~ copies of the notice of appeal **shall**
251 **be mailed** to all parties of record **the appellant, appellee, owner of the property that is**
252 **the subject of the action or determination, and to neighboring property owners.** ~~in the~~

proceeding appealed **as set forth in HCC 21.94.030.** from within seven days of the date on which the City Clerk determines the notice of appeal complies with HCC 21.93.070 and this section.

e. Any person with standing under HCC 21.93.050 or 21.93.060, whichever is applicable, may, within seven days after the date the City Clerk mailed copies of an accepted notice of appeal, file notice of cross appeal. Any notice of cross appeal shall, to the extent practical, comply with subsection (b) of this section.

f. The City Clerk shall promptly give notice of the cross appeal to the appellant and all other parties who have filed a notice of appearance.

21.93.090 Authorized representative **Representation.**

No person may represent a party to an appeal without filing with the City Clerk written authorization, which shall be signed by the party so represented and provide the name and address of the party's representative. If the person representing another is a lawyer licensed to practice law in Alaska, an entry of appearance signed by the attorney is acceptable in lieu of authorization signed by the person so represented.

a. A party to an appeal may be represented by an attorney or may be self-represented. An agency or entity is self-represented when acting through an authorized employee or officer.

b. A party represented by an attorney in the appeal shall file, or cause the attorney to file, and serve on the other parties a document that:

- 1. identifies the attorney; and**
- 2. provides the address, telephone number, facsimile number, and electronic mail address for the attorney.**

21.93.100 General appeals procedure.

a. A hearing officer shall be appointed in accordance with HCC 21.91.100.

ab. All appeals must be heard **and a decision rendered** within ~~60~~ **90** days after the appeal record has been prepared. The ~~body or officer hearing the appeal~~ **hearing officer** may, for good cause shown, extend the time for hearing. ~~The decision on appeal must be rendered within 60 days after the appeal hearing.~~

bc. The appellant, the applicant for the action or determination that is the subject of the appeal **appellee**, owner of the property that is the subject of the action or determination,

and all parties who have entered an appearance **their representatives** shall be provided not less than 15 days' written notice of the time and place of the appeal hearing. Neighboring property owners shall be notified as set forth in HCC 21.94.030.

~~ed. When an appellant chooses to appeal to a hearing officer, t~~ **The City Clerk shall identify the hearing officer in the notice of hearing. All parties shall have 10 5 days from the date of the notice to object to the hearing officer based upon conflicts of interest, personal bias or ex parte contacts. Failure to file an objection to the hearing officer within the 10 5 days shall waive any objection to the hearing officer.**

e. A notice of hearing shall be published at least once during the calendar week prior to the appeal hearing date and the notice shall contain:

- 1. A brief description of the proposal on which the public body is to act;**
- 2. A legal or common description of the property involved and a street address;**
- 3. Date, time and place of the public hearing;**
- 4. A statement that the complete proposal is available for review, specifying the particular City office where the proposal may be examined.**

~~ef. An electronic recording shall be kept of the entire proceeding. Written minutes shall be prepared. The electronic recording shall be preserved for one year unless required for further appeals. No recording or minutes shall be kept of deliberations that are not open to the public.~~

21.93.110 Appeal decisions.

~~a. All final decisions on appeals shall be in writing, and shall state the names and number of members of the body who participated in the appeal, the names and number voting in favor of the decision, and the names and number voting in opposition to the decision. All final decisions issued by a hearing officer must state the name of the officer.~~

b. A decision shall include an official written statement of findings and reasons **conclusions** supporting the decision. This statement shall refer to specific evidence in the record and to the controlling sections of the zoning code. ~~Upon express vote, the body~~ **The** hearing officer may adopt, as their statement of findings and reasons, those findings and reasons officially adopted by the body or officer below from which the appeal was taken.

c. Copies of the written decision shall be promptly mailed to the appellant, ~~the applicant for the action or determination that is the subject of the appeal~~ **appellee**, the owner of the property that is the subject of the action or determination, and ~~all parties who entered a written notice of appearance in the appeal proceeding~~ **their representatives**.

~~Article II. Planning Commission Appeal Procedures~~

21.93.300 — Appeals to the Planning Commission.

a. Within 30 days after receipt of a timely notice of appeal to the Planning Commission, the City Planner will prepare an appeal record consisting of all relevant documents submitted to or used by the Planning Department in making the decision under appeal, including any staff reports, correspondence, applications, or other documents. The appeal record shall be paginated. The appellant shall be notified by mail when the appeal record is complete. Any person may obtain a copy of the appeal record from the Planning Department upon payment of the costs of reproduction.

b. An appeal hearing shall be scheduled within the time specified in HCC 21.93.100. The hearing will be open to the public.

c. The Commission may prescribe rules of procedure for additional public notification in cases where the Commission determines its decision would have a substantial effect on the surrounding neighborhood.

d. The Commission may accept new testimony and other evidence, including public testimony, and hear oral arguments as necessary to develop a full record upon which to decide an appeal from an act or determination of the City Planner. Any person may file a written brief or testimony in an appeal before the Commission.

e. The Commission may undertake deliberations immediately upon the conclusion of the hearing on appeal or may take the matter under advisement and meet at such other time as is convenient for deliberations until a decision is rendered. Deliberations need not be public and may be in consultation with an attorney acting as legal counsel to the Commission.

f. The Commission may affirm or reverse the decision of the City Planner in whole or in part. A majority vote of the fully constituted Commission is required to reverse or modify the action or determination appealed from. For the purpose of this section the fully constituted Commission shall not include those members who do not participate in the proceedings due to a conflict of interest or disqualifying ex parte contacts, disqualifying partiality, or other disqualification for cause. A decision affirming, reversing, or modifying the decision appealed from shall be in a form that finally disposes of the case on appeal, except where the case is remanded for further proceedings.

g. The Commission may seek the assistance of legal counsel, City staff, or parties in the preparation of a decision or proposed findings of fact.

21.93.310 — Other procedures.

~~If no specific procedure is prescribed by the code, the Planning Commission may proceed in an administrative appeal in any lawful manner not inconsistent with this title, statutes, and the Constitution.~~

~~Article III. Board of Adjustment Appeal Procedures~~

~~21.93.500 — Parties eligible to appeal Planning Commission decision to the Board of Adjustment or a hearing officer — Notice of appearance.~~

~~a. Only persons who actively and substantively participated in the matter before the Commission and who would be qualified to appeal under HCC 21.93.060 may participate as parties in an appeal from the Commission to the Board of Adjustment or a hearing officer.~~

~~b. Any person so qualified who desires to participate in the appeal as a party, other than the appellant, the City Planner or the City Planner's designee, the applicant for the action or determination that is the subject of the appeal and the owner of the property that is the subject of the action or determination, must, not less than 14 days before the date set for the appeal hearing, file with the City Clerk a written and signed notice of appearance containing that party's name and address, and proof that the person would be qualified under HCC 21.93.060 to have filed an appeal.~~

~~21.93.510 New evidence or changed circumstances.~~

~~a. Except as provided in subsections (b) and (c) of this section, the Board of Adjustment or hearing officer shall not consider allegations of new evidence or changed circumstances and shall make their decision based solely on the record. If new evidence or changed circumstances are alleged, the Board of Adjustment or hearing officer may, in their discretion, either hear the appeal without considering the allegations or may remand the matter to the appropriate lower administrative body or official to rehear the matter, if necessary.~~

~~b. When the standing of a person is in issue, the Board of Adjustment or hearing officer may take additional evidence for the limited purpose of making findings on the question of the person's standing. No evidence received under this subsection shall be considered for purposes other than determining standing.~~

~~c. When the disqualification of a member of the Board of Adjustment for conflict of interest, ex parte contact, partiality or other cause is in issue, the Board of Adjustment may take additional evidence for the limited purpose of making findings on the question of disqualification. No evidence received under this subsection shall be considered for purposes other than determining disqualification.~~

~~21.93.520 Preparation of record.~~

a. The appeal record shall be completed within ~~30~~ **15** days after receipt of a timely and complete notice of appeal. ~~to the Board of Adjustment or hearing officer, and~~ **The appeal record** shall consist of the items, and shall be prepared in the manner, described in this subsection.

1. The Clerk will assemble and paginate all relevant documents involved in the original decision, including any staff reports, minutes, exhibits, notices, and other documents considered in making the original decision.
2. A party may elect to include a verbatim transcript of the testimony before the Planning Commission in the appeal record by making a written request to the City Clerk for a recording of the testimony within 14 days after the Clerk mails copies of the notice of appeal to the parties pursuant to HCC 21.93.080(d). The requesting party shall arrange and pay for the preparation of the transcript. Only a transcript prepared and certified as accurate by a qualified court reporter shall be accepted. The original transcript must be filed with the City Clerk to be provided to the hearing officer with the record on appeal.

b. The appellant, ~~the applicant for the action or determination that is the subject of the appeal~~ **appellee**, the owner of the property that is the subject of the action or determination, ~~or other parties who have entered an appearance shall be notified by mail when the record and transcript, if ordered, are complete. A~~ any person may obtain a copy **of the record** upon payment of the costs of reproduction and any applicable mailing costs.

21.93.530 ~~Written briefs.~~ **Prehearing conference.**

~~a. Each party to the appeal (each appellant, cross appellant, and respondent) may file with the City Clerk one opening brief not later than 20 days after the date of mailing the notice of the completion of the record on appeal. The brief shall be typed on eight and one half by 11 inch paper and shall include a statement of relevant facts contained in the record on appeal, with citations to the page numbers in the record, a clear statement of the party's position regarding the allegations of error specified in the notice of appeal, and arguments citing points and legal authorities in support of such position.~~

~~b. Each party (each appellant, cross appellant, and respondent) may submit one reply brief within 14 days after the date opening briefs are due. A reply brief shall be limited to a response to matters specifically raised in the opening brief(s) being responded to.~~

~~c. Upon request, any person may obtain a copy of any brief upon payment of reproduction charges and any applicable cost of mailing.~~

d. Upon written request, and for good cause shown and when it appears to the City Clerk that other parties will not be unduly prejudiced by the delay, the City Clerk may grant an extension of time not to exceed five days for the filing of any brief.

The hearing officer will hold a preconference hearing to develop a briefing schedule, set a hearing date, and address other matters as needed related to the appeal hearing.

21.93.540 Appeal hearing.

a. The meeting at which the Board of Adjustment hears an appeal shall be open to the public. An appeal before the hearing officer shall also be open to the public. The City Attorney or another attorney acting as legal counsel to the Board shall be present at appeals before the Board of Adjustment.

b. Each party (each appellant, cross appellant, and respondent) may present oral argument at the appeal hearing, subject to the order of presentation and time limitations that the Board of Adjustment or hearing officer adopts at the commencement of the hearing. The taking of testimony or other evidence is limited by HCC 21.93.510.

c. The Board of Adjustment or hearing officer may undertake deliberations immediately upon the conclusion of the hearing on appeal or may take the matter under advisement and meet at such other time as is convenient for deliberations until a decision is rendered. Deliberations need not be public.

d. The Board of Adjustment or hearing officer may exercise his or her independent judgment on legal issues raised by the parties. "Legal issues" as used in this section are those matters that relate to the interpretation or construction of the zoning code, ordinances or other provisions of law.

e. The Board of Adjustment or hearing officer shall defer to the findings of the lower administrative body regarding disputed issues of fact. Findings of fact adopted expressly or by necessary implication by the lower body shall be considered as true if they are supported by substantial evidence. But findings of fact adopted by less than a majority of the lower administrative body shall not be given deference, and when reviewing such findings of fact the Board of Adjustment or hearing officer shall exercise independent judgment and may make their own findings of fact. If the lower administrative body fails to make a necessary finding of fact and substantial evidence exists in the record to enable the Board of Adjustment or hearing officer to make the finding of fact, they may do so in the exercise of their independent judgment, or, in the alternative, the Board of Adjustment or hearing officer may remand the matter for further proceedings. "Substantial evidence," as used in this section, means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Unless otherwise established in the prehearing conference an appeal to a hearing officer will be conducted as follows:

1. Preliminary Matters

2. Oral arguments – 20 minutes each for appellant and appellee. The appellant may reserve a portion of their time for rebuttal or closing comments.

3. The hearing officer may question each of the parties

4. Adjourn for deliberative purposes.

~~21.93.550 Board of Adjustment or~~ **H**earing officer decision.

~~a. The Board of Adjustment or hearing officer may affirm or reverse the decision of the lower administrative body in whole or in part. If the appeal is heard by the Board of Adjustment, a majority vote of the fully constituted Board is required to reverse or modify the action or determination appealed from. For the purpose of this section, the fully constituted Board shall not include those members who do not participate in the proceedings due to a conflict of interest or disqualifying ex parte contacts, disqualifying partiality, or other disqualification for cause. A decision affirming, reversing, or modifying the decision appealed from shall be in a form that finally disposes of the case on appeal, except where the case is remanded for further proceedings.~~

~~b. The Board may seek the assistance of legal counsel, City staff, or parties in the preparation of a decision or proposed findings of fact.~~

21.93.560 Remand.

~~a. The Board of Adjustment or hearing officer may remand the appeal to the lower administrative body when the Board or hearing officer determines that:~~

- ~~1. There is insufficient evidence in the record on an issue material to the decision of the case;~~
- ~~2. There has been a substantial procedural error that requires further consideration by the lower administrative body; or~~
- ~~3. There is other cause requiring further proceedings by the lower administrative body.~~

~~b. A decision remanding a case shall describe any issue upon which further evidence should be taken, and shall set forth any further directions the Board or hearing officer deems appropriate for the guidance of the lower administrative body.~~

~~c. The lower administrative body shall promptly act on the case upon remand in accordance with the decision of the Board of Adjustment or hearing officer. A case on remand has priority on the agenda of the lower administrative body, except cases remanded under HCC~~

21.93.510(a) are not entitled to priority. The applicant or owner of the property in question may waive the priority given by this subsection.

21.93.570 Other procedures.

If no specific procedure is prescribed by the code, the Board of Adjustment or hearing officer may proceed in an administrative appeal in any lawful manner not inconsistent with this title, statutes, and the Constitution.

Article IV. Conflicts of Interest and Ex Parte Contacts

21.93.700 Appeals—Conflict of interest.

a. A member of the Planning Commission, Board of Adjustment or a hearing officer appointed to hear an appeal from a Planning Commission decision may not participate in the deliberation or voting process of an appeal if, following the procedures set forth in this chapter, the Commission, or Board member or hearing officer is determined to have a substantial financial interest in the official action, as defined in Chapter 1.18 HCC. In the absence thereof, all Commission or Board members or a hearing officer shall participate in the deliberation and voting process unless excused pursuant to other provisions of this chapter.

b. When a financial interest of a member of the Planning Commission or Board of Adjustment is disclosed on the record, the remainder of the Commission or Board, respectively, shall determine whether the member should participate in the matter. If it is determined the member should participate, any action taken thereafter by the body shall be valid notwithstanding a later determination by a court, an appellate tribunal, or a hearing officer that the member should have been disqualified from participation because of a substantial financial interest in the matter; except the action shall be invalidated when the disqualified member's vote was necessary to establish the required majority to approve the decision of the body. When a Commission or Board decision is invalidated because such vote was necessary to establish the required majority, the body shall commence new consideration of the matter beginning at the point where the Commission or Board, respectively, determines it is necessary to do so to eliminate the effect of the member's improper participation.

c. A hearing officer shall disclose any substantial financial interest, personal bias or ex parte contact immediately upon being appointed by the City Manager and shall refrain from accepting the appointment if a substantial financial interest, personal bias or ex parte contact exists. If the substantial financial interest, personal bias or ex parte contact arises after the hearing officer's appointment, he or she shall disclose his or her interest and shall be disqualified from serving as the hearing officer unless all parties waive any objection to the hearing officer.

d. For purposes of hearing an appeal, a quorum of the Commission is four members. If it is not possible to obtain a quorum of the Planning Commission to hear an appeal without the participation of members disqualified by reason of a substantial financial interest, then all members who would be so disqualified shall nevertheless participate in the appeal, including deliberations and voting, and the decision rendered in such a case shall be valid notwithstanding the participation of such members. This subsection shall not apply if the matter can be postponed to a later date (not later than 75 days after the appeal record is prepared) when the body can obtain a quorum of members who are not disqualified by a substantial financial interest.

e. For purposes of hearing an appeal, a quorum of the Board is four members. If it is not possible to obtain a quorum of the Board to hear an appeal without the participation of members who have chosen to abstain or been disqualified by the Board due to substantial financial interest, bias or partiality, then the hearing shall be postponed and a hearing officer shall be appointed. A hearing officer appointed under this subsection shall conduct the rescheduled hearing no more than 60 days after the original hearing date except that the hearing officer may extend the hearing date for good cause shown.

A hearing officer judge shall refrain from hearing or otherwise deciding a case presenting a conflict of interest. A conflict of interest may arise from a financial or other personal interest of the hearing officer or administrative law judge, or of an immediate family member. A conflict of interest exists if:

- a. **The financial or other personal interest reasonably could be perceived to influence the official action of the hearing officer; or**
- b. **A hearing officer previously represented or provided legal advice to a party on a specific subject before the hearing officer.**

21.93.710 Appeals— Ex parte communication prohibited.

a. ~~No member of the Commission or Board of Adjustment or any~~ **The** hearing officer appointed by the City Manager to review a decision issued by the Commission shall **not** have ex parte communication with any person. “Ex parte communication” means to communicate, directly or indirectly, with the appellant, other parties or persons affected by the appeal, or members of the public concerning an appeal or issues specifically presented in the notice of appeal, either before the appeal hearing or during any period of time the matter is under consideration or subject to reconsideration, without notice and opportunity for all parties to participate in the communication.

b. This section does not prohibit:

1. Members from discussing matters relating to the appeal among themselves.

2. ~~Communications between municipal staff and Commission or Board members or the hearing officer where:~~

- ~~a. Such staff members are not themselves parties to the appeal; and~~
- ~~b. Such communications do not furnish, augment, diminish, or modify the evidence in the record on appeal.~~

3. ~~Communications between the Commission or Board and its legal counsel:~~

~~c. If, before an appeal commences, a member of the Commission or Board receives an ex parte communication of a type that could not properly be received while an appeal is pending, the member shall disclose the communication in the manner prescribed in subsection (d) of this section at the first meeting of the Commission or Board at which the appeal is addressed.~~

~~d. A member of the Commission or Board who receives an ex parte communication at any time shall, at the first opportunity after the communication, place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the member received an ex parte communication. Any party to the appeal desiring to rebut the ex parte communication must be granted a reasonable opportunity to do so if a request is promptly made.~~

~~e. If the Commission or Board determines in its discretion it is necessary to eliminate the harmful effect of an ex parte communication received in violation of this section, the Commission or Board may disqualify the member who received the communication from participation in the appeal. In addition, the Commission may impose appropriate sanctions, including default, against a party to the appeal for any violation of this section.~~

f. It is a violation, subject to penalties and other enforcement remedies under this title:

1. For any person to knowingly have or attempt to have ex parte communication with a ~~Commission or Board or hearing officer~~ in violation of subsection (a) of this section.
2. For any ~~Commission or Board member or~~ **the** hearing officer to knowingly receive an ex parte communication in violation of subsection (a) of this section.
3. For any ~~Commission or Board member~~ **the hearing officer** to knowingly fail to place on the record any matter **any matter that is an ex parte contact** ~~when and as required under subsections (c) and (d) of this section.~~

Section 3. This Ordinance is of a permanent and general character and shall be included in the City Code.

671 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this __ day of _____, 2021.

672

673

CITY OF HOMER

674

675

676

KEN CASTNER, MAYOR

677 ATTEST:

678

679

680 _____
MELISSA JACOBSEN, MMC, CITY CLERK

681

682 YES:

683 NO:

684 ABSTAIN:

685 ABSENT:

686

687 First Reading:

688 Public Hearing:

689 Second Reading:

690 Effective Date:



City of Homer

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(f) 907-235-3118

Staff Report PL 21-36

TO: Homer Planning Commission
FROM: Rick Abboud, AICP, City Planner
DATE: June 2, 2021
SUBJECT: Ordinance 21-26 vessel operations in city tidelands

Introduction

As the State of Alaska is allowing personal water craft (i.e. wave runners/Sea Doo's/jet ski's) to operate in Kachemak Bay this season, citizens are concerned with their presence in the Bay. Council member Lord introduced an ordinance to regulate motor craft in the tidelands and the council asked to have the Planning Commission review the proposal. The proposal seeks to regulate the actions of watercraft in the City tides.

Analysis

The draft ordinance amends chapter ten of the Homer City Code, Protection of the Harbor and Waterways. Below is a breakdown of decision points made by the ordinance, so the commission can show their support or concerns with particular issues. Attached is a depiction of the various proposed locations for regulation.

In addition to the map, I have attached the proposed ordinance, City Council minutes, and Memo 21-070 from Council introduction. Port Director Hawkins is planning to attend the meeting in case the commission has questions regarding the operation of the harbor and water crafts.

Proposed Regulations

1. Expansion of no wake speed zone from ¼ mile from boat harbor entrance, the Deep Water Dock, and the Pioneer dock to include all City tidelands (as depicted on attachment and described in lines 45-50 of the proposed ordinance).
2. Prohibition of watercraft from the entrance of Beluga Slough and Louie's Lagoon (depicted on attachment and described on lines 52-53 of the proposed ordinance).
3. Provide an allowance of \$2000 for signage (lines 55-59 of the proposed ordinance).

Staff Recommendation

Review the proposed amendment and provide comments for the City Council's considerations

Attachments

Proposed ordinance 21-26

City Council minutes 4.26, 5.10

Memo 21-070

Map of City tidelands DRAFT ONLY NOT REGULATORY

1 **CITY OF HOMER**
2 **HOMER, ALASKA**

Lord

3
4 **ORDINANCE 21-26**

5
6 AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA
7 AMENDING HOMER CITY CODE 10.08.210 VESSEL SPEED LIMITS,
8 RENAMING THE SECTION, EXTENDING THE NO WAKE ZONE
9 THROUGHOUT CITY TIDELANDS, AND CLOSING LOUIE’S LAGOON
10 AND THE ENTRANCE OF BELUGA SLOUGH TO MOTORIZED
11 VESSELS AND AMENDING THE FY21 OPERATING BUDGET TO
12 AUTHORIZE EXPENDITURE OF UP TO \$2,000 FOR MOTORIZED
13 VESSEL REGULATION CHANGES.

14
15 WHEREAS, City-owned tidelands provide valuable nearshore wildlife habitat and areas
16 for nonmotorized recreation; and

17
18 WHEREAS, Beluga Slough and Louie’s Lagoon both have discreet entrance points and
19 flood with the tides, creating important tidal habitat, and

20
21 WHEREAS, City code currently requires a no wake speed for vessels not only within the
22 small boat harbor but also in a ¼ mile area around the outer City docks; and

23
24 WHEREAS, It is in the best interest of the community for habitat protection and public
25 safety to extend the no wake zone throughout all City-owned tidelands; and

26
27 WHEREAS, Both Beluga Slough and Louie’s Lagoon provide habitat that is not
28 compatible with motorized vessel traffic; and

29
30 WHEREAS, Public education and outreach are important components of regulatory
31 changes and additional signage, newspaper and radio ads, and other avenues of
32 communication requires funds to complete as we enter into the 2021 boating season.

33
34 NOW, THEREFORE, THE CITY OF HOMER ORDAINS:

35
36 Section 1. Homer City Code Section 10.08.210 Vessel Speed Limits is hereby amended
37 as follows:

38
39 10.08.210 Vessel speed limits **and closed areas**

a. It is unlawful to operate a vessel at a speed greater than two miles per hour (no wake speed) while entering, leaving, and inside the small boat harbor. The seaward boundary of the no wake speed zone will be marked by signs.

b. **Throughout all City tidelands and** while within one-quarter mile of (1) the boundary of the no wake speed zone at the small boat harbor entrance, (2) the City's Deep Water Dock, or (3) the City's Pioneer Dock it is unlawful to operate a vessel at a speed that will cause a wake, wash, or wave action that will damage, endanger or cause undue distress to any other vessel or occupant thereof, **or wildlife including birds**, regardless of established speed limits or the lack thereof.

c. **All motorized vessels are prohibited from the entrance to Beluga Slough and from all waters within Louie's Lagoon.**

Section 2. The City Council hereby amends the FY2021 Operating Budget and authorizes an expenditure up to \$2,000 for motorized vessel regulation changes:

<u>Account No.</u>	<u>Description</u>	<u>Amount</u>
100-0110-xxxx	City Manager	\$2,000

Section 3. Section 1 of this ordinance is of a permanent and general character and shall be included in Homer City Code.

Section 4. Section 2 of this ordinance is a budget amendment, is temporary in nature, and shall not be codified.

ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this ____ day of _____, 2021.

CITY OF HOMER

KEN CASTNER, MAYOR

ATTEST:

MELISSA JACOBSEN, MMC, CITY CLERK

YES:

NO:

ABSTAIN:

ABSENT:

- 83 First Reading:
- 84 Public Hearing:
- 85 Second Reading:
- 86 Effective Date:

ORDINANCE(S)

- a. Ordinance 21-26, An Ordinance of the City Council of Homer, Alaska Amending Homer City Code 10.08.210 Vessel Speed Limits, Renaming the Section, Extending the No Wake Zone throughout City Tidelands, and Closing Louie's Lagoon and the Entrance to Beluga Slough to Motorized Vessels and Amending the FY21 Operating Budget to Authorize Expenditure of up to \$2,000 for Motorized Vessel Regulation Changes. Lord. Introduction April 26, 2021 Public Hearing and Second Reading May 10, 2021

Memorandum 21-070 from Councilmember Lord as backup

LORD/VENUTI MOVED TO INTRODUCE ORDINANCE 21-26 BY READING OF TITLE ONLY, REFER IT TO THE PORT AND HARBOR ADVISORY COMMISSION AND PLANNING COMMISSION, AND COMING BACK TO COUNCIL FOR PUBLIC HEARING AND SECOND READING ON JUNE 28, 2021.

Councilmember Lord noted the memo accompanying this is the tendrils that she wanted to make sure were captured, if there are other questions councilmembers have, it will be good to bring them up for the Commissions to work through.

Councilmember Aderhold likes the memo and agrees requiring everyone to slow down in those areas is good for a lot of reasons, not just because of personal watercraft. Good point was raised regarding the rocks that are just under the water in some areas that could be very dangerous if they're hit at a high rate of speed. The difficulty is in the enforcement and identifying the tidelands. She noted the importance of making sure that vessels can still get to the Northern Enterprise lift and other legal use of the tidelands. In addition to the areas listed she feels it's important to consider the slough behind Mariner Park and the area of Mud Bay that's closest to the shore, the triangle established by the spit and shoreline. She agrees with having the Commissions look at this and also attorney assessment of will be important.

Councilmember Evensen thanked the City Manager for his approach to the topic in general and the City Attorney for the research he's already done. He supports Commission review, and proposed that it also be referred to Parks Art Recreation and Culture Advisory Commission (PARCAC). He added support for consideration of general inclusivity of areas including Mariner Slough, Fishing Hole, and Mud Bay. Mud Bay is easily identified at high tide by the ADF&G markers and low tide represents the greatest tideland the city owns. Also the potential for legitimate use of the tideland and a permit process for that activity could be considered. Lastly he added identifying all the user groups for these area, and the concept establishing the tidelands as a special use area and defining what that means.

Councilmember Venuti agrees with consideration of raising the \$2000 to ensure adequate and effective signage.

Councilmember Lord acknowledge the idea of further consideration of the dollar amount. She feels this needs to get refined to what the proposed regulation is going to be, going through the process with the Commissions and public outreach, then what it looks like and what it will cost will evolve.

ADERHOLD/EVENSEN MOVED TO AMEND TO ADD PARCAC TO THE LIST OF COMMISSIONS THIS WILL GO TO.

There was no discussion.

VOTE (amendment): NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

There was no further discussion on the main motion as amended.

VOTE (main motion as amended): NON OBJECTION: UNANIMOUS CONSENT

City Council Minutes Excerpt May 10, 2021

- a. Ordinance 21-26, An Ordinance of the City Council of Homer, Alaska Amending Homer City Code 10.08.210 Vessel Speed Limits, Renaming the Section, Extending the No Wake Zone throughout City Tidelands, and Closing Louie's Lagoon and the Entrance to Beluga Slough to Motorized Vessels and Amending the FY21 Operating Budget to Authorize Expenditure of up to \$2,000 for Motorized Vessel Regulation Changes. Lord. Introduction April 26, 2021 Public Hearing and Second Reading May 10, 2021

Memorandum 21-070 from Councilmember Lord as backup

LORD/VENUTI MOVED TO INTRODUCE ORDINANCE 21-26 BY READING OF TITLE ONLY, REFER IT TO THE PORT AND HARBOR ADVISORY COMMISSION AND PLANNING COMMISSION, AND COMING BACK TO COUNCIL FOR PUBLIC HEARING AND SECOND READING ON JUNE 28, 2021.

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ADERHOLD/EVENSEN MOVED TO AMEND TO ADD PARCAC TO THE LIST OF COMMISSIONS THIS WILL GO TO.

There was no discussion.

VOTE (amendment): NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

There was no further discussion on the main motion as amended.

VOTE (main motion as amended): NON OBJECTION: UNANIMOUS CONSENT

Motion carried.



Memorandum 21-070

TO: MAYOR CASTNER AND HOMER CITY COUNCIL

FROM: COUNCILMEMBER LORD

DATE: APRIL 21, 2021

SUBJECT: ORDINANCE 21-26

With new State of Alaska regulations allowing personal watercraft (PWC) in the Kachemak Bay Critical Habitat Area, there are concerns from the community regarding nearshore habitat and nonmotorized recreation protections. Currently, motorized vessels are not commonly operating within City tidelands. These areas may be more attractive to shallow draft PWCs. This ordinance is intended to set boundaries that prioritize and protect habitat and nonmotorized uses of City-owned tidelands.

There are several considerations to consider when discussing this proposal:

- Clarity of boundaries for public education and enforcement. The City tidelands boundary is not readily obvious. We need to be able to communicate the new regulation in a meaningful way. Maintaining buoy markers presents substantial logistical challenges and is likely not the most pragmatic option. This marking system could be reassessed depending on the level of need as we experience PWC use patterns and outreach effort success.
- Restricted/no access areas. Currently these are drafted as Louie's Lagoon and the entrance to Beluga Slough. In consideration of the above concern, consider amending the proposal to have two larger restricted/no access areas and forego the No Wake speeds.
- Beluga Slough itself is owned by a mixture of the U.S. Fish and Wildlife Service and private entities. The City owns tidelands at (or near) the entrance to the slough, and in the far back corner by the sewer treatment plant.
- Is a distance seaward too unclear? i.e. No wake 1,000 feet seaward of the shoreline within all City tidelands where motorized vessels are allowed.
- While the lifting of the PWC prohibition has catalyzed this conversation, this proposal would apply equally to all motorized vessels. Per the AK Dept. of Natural Resources: "PWCs are considered powerboats under state and federal law, and operators must meet the same boat registration and equipment requirements (see Resources) as other powerboats." (Alaska Boater's Handbook, Prince William Sound Supplement)
- Ultimately, public outreach and education will be required to ensure that whatever regulation the City adopts is communicated effectively to the impacted user groups. This should include not only the areas under speed limit/restriction, but also who to call in case of questions or concerns. It could also be used as a great opportunity for some positive information about tidelands, possibly in partnership with KBNERR? There are funds appropriated in the ordinance for introduction, but this should be discussed in terms of an appropriate amount.
- While the City must make substantive efforts towards educating the impacted user groups on regulation changes, it is ultimately the responsibility of the users to know and comply with all applicable local, state, and federal laws. We must make that good faith effort for outreach, but after that "I didn't know" is not a defensible claim in most aspects of adult life.

- Current Homer City Code Chapter 10.08 is titled 'Protection of the Harbor and Waterways'. The proposed code changes would come under this chapter, and within the section there already exists a penalty structure. See HCC 10.08.220

I have talked with Port & Harbor Commission Chair Steve Zimmerman, and he has agreed to have this Ordinance on the April 28th agenda for their review and recommendations. If Council would like to also refer to Planning, it would be great to get on their May 5th agenda. My hope is that Council can introduce this at our April 26th meeting, then receive comments back from Port & Harbor (and Planning if applicable), make amendments and pass a final version of the ordinance at our May 10th regular Council meeting.

Below are several examples of how state regulations define speed limits and and restricted use areas for motorized boats and PWC.

From Alaska Administrative Code (AAC, state regulation), 200' is used as a boundary for No Wake zones around state managed docks, boat launches, or swimming beaches:

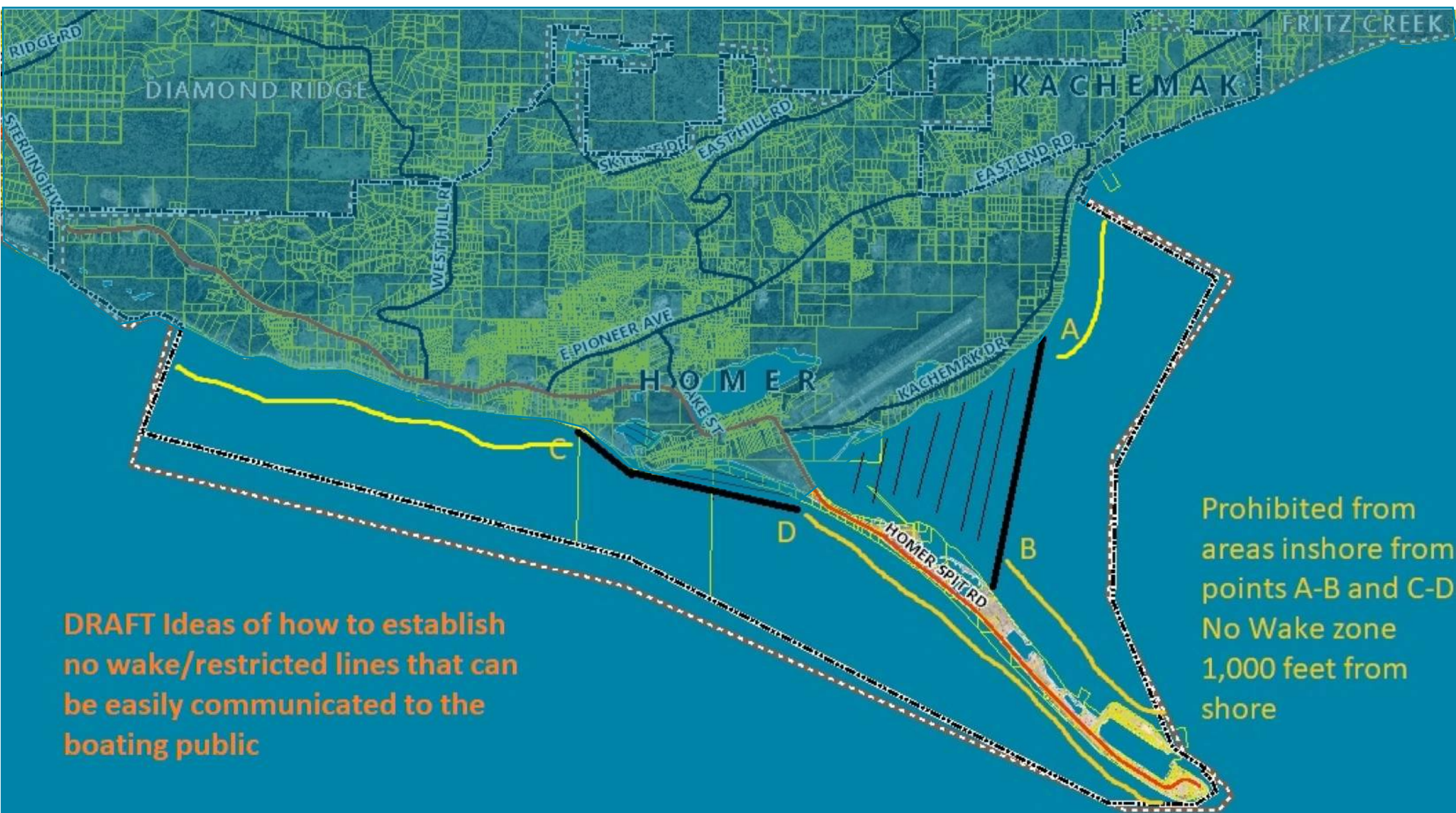
11 AAC 20.115. Motorized boats (a) The use of a boat with a motor, other than a personal watercraft, is allowed in Kachemak Bay State Park only on saltwater, China Poot Lake, Hazelle Lake, or Petrof Lake. (b) A person may not launch or operate a personal watercraft in Kachemak Bay State Park. (c) A person may not operate a motorized boat in excess of "Slow No-wake" speed, five miles per hour maximum, within two hundred feet of a state managed dock, swimming beach, or boat launch, or within an area designated and marked as a "Slow No-wake" zone.

From AAC for the Kenai River Special Management Area. Although there is a 300' of shore no wake designation, most of these regulations reference physical landmarks and/or river mile markers.

11 AAC 20.865. Non-motorized areas (a) The operation of a boat by the use of a motor is prohibited (1) on the Kenai River between river mile 80.7 and Skilak Lake; and (2) on the Kenai River between Skilak Lake and river mile 47.0 from March 15 through June 14. (b) Repealed 3/1/2008. (c) On the waters of the Kenai River Special Management Area, a person may not launch or operate (1) an airboat, hovercraft, or hydroplane; or (2) a personal watercraft, except as provided in [11 AAC 20.867](#).

11 AAC 20.867. Personal watercraft (a) A person may operate a personal watercraft within the Kenai River Special Management Area only on Kenai Lake on the portion of the lake that is north of a line running from the Primrose Campground boat launch to a prominent marker on the east shore of Kenai Lake, and east of a line running from the Chugach Electric Association powerhouse to a marker on the south side of Porcupine Island, and thence north to the United States Forest Service campground on the north side of Porcupine Island. (b) Within the area on Kenai Lake described in (a) of this section in which a personal watercraft may be operated, a person may not operate a personal watercraft (1) within 300 feet of shore (A) greater than five miles per hour; or (B) in a manner that creates a wake; or (2) between the hours of 10:00 p.m. and 10:00 a.m.

11 AAC 20.870. Boating and aircraft speed limits (a) A person may not operate a boat at a speed greater than five miles per hour in the no wake area between the Kenai Lake Bridge and river mile 80.7 on the Kenai River. (b) No person may operate a boat or aircraft at a speed greater than five miles per hour in the no wake area of the Moose River between the Sterling Highway Bridge and the confluence with the Kenai River. (c) No person may operate a boat or aircraft at a speed greater than five miles per hour in the no wake area of the side (north) channel of the Kenai River from river mile 11 downstream through lower Beaver Creek to its confluence with the main channel of the Kenai River at approximately river mile 10. (d) A person may not operate a boat or aircraft at a speed greater than five miles per hour in the no wake area within the channel north of the island located between river mile 15.2 and river mile 14.7, which includes the upstream and downstream entrances to Castaway Cove.





City of Homer

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Memorandum

TO: Mayor Castner and Homer City Council
FROM: Rob Dumouchel, City Manager
DATE: May 19, 2021
SUBJECT: City Manager's Report for May 24, 2021 Council Meeting

FY22/23 Budget

The operating budget ordinance is being introduced at this Council meeting, draft capital budget information is being released as well. Both budgets remain on track for approval before the end of the 2021 fiscal year on June 30th.

New EMS Inbound Patient Loading Zone at Ramp 7

There is a new dedicated inbound patient loading zone in the Homer Harbor on JJ Float (pictured below). This location is closer to the harbor entrance and will facilitate a faster patient transfer from vessel to responding emergency services personnel. See the attached flyer¹ for more information.



2021-26 Comprehensive Economic Development Strategy Draft Available for Comment

The Kenai Peninsula Economic Development District (KPEDD), in conjunction with the University of Alaska Center for Economic Development, has been working on the 2021-26 draft of the Kenai Peninsula Comprehensive Economic Development Strategy (CEDS). The draft can be viewed at <https://kpedd.org/wp-content/uploads/2021/05/KPEDD-CEDS-Plan-2021-2026-Full-Report.pdf>, and comments directed to KPEDD Program Manager Caitlin Coreson at caitlin@kpedd.org.

Update: Poopdeck Trail ADA Ramp

The Poopdeck trail's ADA ramp has been successfully installed. Here's a note from Parks Superintendent Matt Steffy regarding the project:

KHLT staff, COH staff, ILC staff, and an army of volunteers completed Phase III of the new trail project. This consisted of spreading and compacting more gravel, adjusting drainage, and installing the new ADA ramp on the City's end of the trail next to the ILC. The manufacturer of the ramp was on site to oversee installation. We anticipate a lot of positive feedback on an amenity that has been much anticipated.



Safe and Healthy Kids Fair

The Safe and Healthy Kids Fair and Bike Rodeo took place May 15th at Homer High School's parking lot. Here is an update from Community Recreation Manager Mike Illg:

We were happy to report that the Annual Safe and Healthy Kids Fair and Bike Rodeo was recently at the Homer High parking lot on Saturday, May 15th. This outdoor event had a detailed mitigation plan and required masking and screening for all participants that allowed us to have the event on school grounds. We had at least 20 different community organizations involved and the number of estimated participants was approximately 200 people. Some of the primary organizers included City Staff from the Fire Department and Community Recreation. There were many smiles, lots of fun and we even gave away 5 brand new bicycles! We are looking forward to possibly continue to offer an outdoor event in the future as there were so many positive responses from the public.



Community Assistance Program Funding for 2022

The Finance Department will be filing paperwork shortly to request Homer's portion of the State of Alaska's Community Assistance Program (CAP) funds. We will be including an intent to put CAP funds towards ADA improvements around the City. That said, upon receipt, the Council may direct the funds in any direction they wish as long as they meet the criteria of the program. The disbursement in 2021 was directed to assist in the acquisition of SCBA equipment for the Volunteer Fire Department (Ord 21-25).

Alaska Municipal League Summer Conference

The Alaska Municipal League Summer Conference is being held in Fairbanks from August 3rd to 6th. Interested Councilmembers are encouraged to read the attached memo² from City Clerk Jacobsen for more details.

Employee Updates

Taylor Crowder joined the Homer Police Department on May 14th as a Police Officer II. He came to us as a lateral from North Carolina and has ten years of experience as a police officer. Accompanying Officer Crowder in the move to Homer are his wife and four children.



COVID-Related Updates

COVID Risk Status

On March 30th I moved the City from the “Orange” to “Yellow” level on our COVID risk framework. The City remains in yellow status after the most recent review completed on April 19th. On April 26th, I directed a limited opening of City Hall and the Library. On May 13th the Center for Disease Control (CDC) released new guidance which allows for fully vaccinated individuals to stop masking both outdoors and indoors. Working with staff, we created new guidelines for City staff based on the CDC guidance. Masks are still required for the public in City facilities. Staff is still required to be masked when interfacing with the public. Staff will, however, be able to relax masking standards in their work spaces.

Enclosures:

1. Flyer – New EMS Inbound Patient Loading Zone
2. Memo – AML Summer Conference

New EMS Inbound Patient Loading Zone

Location -Ramp 7/Harbormaster's Office/JJ Float

There is a NEW dedicated inbound patient loading zone in Homer Harbor on JJ float. This location is closer to the harbor entrance and will facilitate a faster patient transfer from vessel to responding emergency services personnel. Vessel owners and EMS personnel will be directed to this location by Police dispatchers and harbor staff, for a coordinated response. Vessel owners are reminded that they must maintain NO WAKE speeds while transiting that harbor basin as per city code.

- **If responding in a vehicle the staging area will be the harbormaster's office parking lot with access to Ramp 7.**
- **For vessels transporting a patient, access to EMS will be JJ Float (shown) marked in RED and BLUE.**
- **Questions? Call the harbor office at 235-3160
or
VHF Channel 16**





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Memorandum

TO: MAYOR CASTNER AND HOMER CITY COUNCIL

FROM: MELISSA JACOBSEN, MMC, CITY CLERK

DATE: MAY 17, 2021

SUBJECT: ALASKA MUNICIPAL LEAGUE SUMMER CONFERENCE HELD AUGUST 3-6, 2021 IN
FAIRBANKS, AK

The Alaska Municipal League Summer Conference will be held in person in Fairbanks this year. The conference dates are August 3-6. The conference agenda isn't available at this time but the current list of meetings is as follows:

August 3-4 – Alaska Defense Forum - *Alaska Defense Communities will produce the second Alaska Defense Forum. The agenda for the morning of August 4th will be specific to local government leaders.*

August 4-5 – Alaska Conference of Mayors

August 5-6 – AML Summer Legislative Conference

Please contact me by end of day June 8th if you plan to attend the AML Summer Legislative Conference in person so a travel authorization can be prepared for Council approval and timely arrangements can be made.

PLANNING COMMISSION ANNUAL CALENDAR
FOR THE 2021 MEETING SCHEDULE

<u>MEETING DATE</u>	<u>SCHEDULED EVENTS OR AGENDA ITEM</u>
JANUARY 2021	
FEBRUARY 2021	AK APA Conference PC training: legislative vs quasi-judicial decisions; decisions and findings
MARCH 2021	Guest speaker and training: KPB Platting/Planning
APRIL 2021	2018 Comprehensive Plan Review
MAY 2021	Transportation work session with Public Works
JUNE 2021	Reappointment Applications Deadline
JULY 2021	Reappointments Spit Plan Review (One meeting this month)
AUGUST 2021	Election of Officers (Chair, Vice Chair) PC training: Roberts rules, OMA Capital Improvement Plan Review
SEPTEMBER 2021	Economic Development speaker (such as KPEDD, chamber, SBA,)
OCTOBER 2021	?? Floodplain or other hazard regulations overview...connect dots between comp plan and our current regs
NOVEMBER 2021	(One meeting this month) Review and Approve the 2022 Meeting Schedule
DECEMBER 2021	(One meeting this month) Review Bylaws, and Policies and Procedures
Semi Annually: PW project update	
Odd Years:	2018 Comprehensive Plan (April) Homer Spit Plan, (July), Review Bylaws, and Policies and Procedures (December)
Even Years:	HNMTTP (April), Transportation Plan (July), Town Center Plan (December)