

**KENAI PLANNING & ZONING COMMISSION
REGULAR MEETING
AUGUST 28, 2019 – 7:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVENUE, KENAI, ALASKA
CHAIR JEFF TWAIT, PRESIDING**

MINUTES

A. CALL TO ORDER

Commission Chair Twait called the meeting to order at 7:00 p.m.

1. Pledge of Allegiance

Commission Chair Twait led those assembled in the Pledge of the Allegiance.

2. Roll Call

Commissioners present: Chair J. Twait, Vice-Chair D. Fikes, R. Springer, J. Halstead, V. Askin, T. McIntyre, G. Greenberg

Commissioners absent: None.

Staff/Council Liaison present: City Planner E. Appleby, Planning Assistant W. Anderson, City Clerk J. Heinz, City Attorney S. Bloom, Council Liaison B. Molloy

A quorum was present.

3. Agenda Approval

The following revisions to the agenda were noted:

Move item F.1. to Resolution No. PZ2019-33
H.1. as a discussion item.

MOTION:

Commissioner Askin **MOVED** to approve the agenda and Commissioner Fikes **SECONDED** the motion.

MOTION TO AMEND:

Commissioner Fikes **MOVED** to amend the agenda by moving item F.1. to New Business as a discussion item and Commissioner Askin **SECONDED** the motion.

There were no objections on the amendment; **SO ORDERED.**

There were no objections on the motion as amended; **SO ORDERED**.

4. Consent Agenda

MOTION:

Commissioner Askin **MOVED** to approve the consent agenda and Commissioner Fikes **SECONDED** the motion. There were no objections; **SO ORDERED**.

All items listed with an asterisk () are considered to be routine and non-controversial by the Commission and will be approved by one motion. There will be no separate discussion of these items unless a Commission Member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda as part of the General Orders.

5. *Excused absences – None.

B. APPROVAL OF MINUTES

1. *August 14, 2019

The minutes were approved by the Consent Agenda.

C. SCHEDULED PUBLIC COMMENT – None.

D. UNSCHEDULED PUBLIC COMMENT – None.

E. CONSIDERATION OF PLATS – None.

F. PUBLIC HEARINGS

1. **Resolution PZ2019-33** - Recommending the Kenai City Council Amend Kenai Municipal Code 14.20.175 – Adult Businesses, to Increase the Buffer Distances Between Adult Businesses and Sensitive Uses from 500 Feet to 1,000 Feet and Define Sensitive Uses.

[Clerk's Note: This item was moved to item H.1. during agenda approval.]

G. UNFINISHED BUSINESS – None.

H. NEW BUSINESS

[Clerk's Note: This item was moved to item H.1. during agenda approval.]

1. **Discussion** - Resolution PZ2019-33 - Recommending the Kenai City Council Amend Kenai Municipal Code 14.20.175 – Adult Businesses, to Increase the Buffer Distances Between Adult Businesses and Sensitive Uses from 500 Feet to 1,000 Feet and Define Sensitive Uses.

City Attorney Bloom noted an ordinance had been introduced to change the zoning of adult businesses adding that naked dancing was protected under federal and state constitutions as a

form of expression. He provided an overview of an Alaska Superior Court ruling and the guidance it provided in narrowly tailoring regulations to combat harmful secondary effects of adult oriented businesses which was a compelling government interest and providing an evidence-based analysis demonstrating restriction was combatting harmful secondary effects. He reviewed case law which provided that buffers could not be crafted in a way that less than five percent of property in the City would be available for the use of adult oriented businesses noting that the proposed ordinance increased the buffer from 500 to 1,000-feet which would leave approximately six percent available. He added that, as currently written, the Code provided for adult establishments as an allowed use without a Conditional Use Permit and that would remain the case in the proposed ordinance, which expanded the buffer and provided more defined sensitive uses such as libraries, schools, etc. Mr. Bloom provided examples of evidence based decisions from other cities and a legal review which showed the difficulty in achieving the five percent requirement and why that requirement should not be applied to rural communities such as ours. He noted a report from Mt. Vernon, which discussed the evidence they found, and the process used to obtain the evidence. The final report Mr. Bloom provided showed evidence from New York where the harmful secondary effects can have impacts up to 1,000-feet and more likely even 1,500-feet from adult businesses.

Mr. Bloom noted that, when looking at adult oriented businesses in the Kenai Municipal Code, the regulations were detailed, out of date, and a lot potentially need to be changed but Council Member Pettey wanted to propose initial action now and may want to propose additional action later. He added that there was case law where a distinction was made between a business periodically featuring adult oriented material such as an occasional show, and a business which was in the business of featuring adult oriented material.

Clarification was provided that a recommendation from the Planning & Zoning Commission was legally required in the amendment of the zoning law.

Clarification was also provided on certain constitutional protections and how the percentage of available land was calculated.

I. **PENDING ITEMS** – None.

J. **REPORTS**

1. **City Council** – Council Member Molloy noted the decisions on Ordinance No. 3083-2019 relating to the adult oriented businesses discussed and the potential for its referral to the Planning and Zoning Commission, reviewed the action agenda from the August 21 City Council meeting, and noted the recommendation for hours of operation for Marijuana Retail Stores would be a discussion item at Council's meeting September 4.
2. **Borough Planning** – Vice-Chair Fikes reported action from the August 26 Borough Planning Commission and Platting Committee meetings.
3. **Administration** – City Planner Appleby reported on the following:
 - Noted the department had received two inquiries on the adult business ordinance and if it was related to marijuana;
 - Noted the supplemental information for the ordinance related to adult businesses was also available online;
 - Noted an increase in complaints on gravel pits and most were resolved;

- Work was ongoing on material for a sign code ordinance and would schedule another work session; and
- Work on the Lands Management Plan was also ongoing.

K. **ADDITIONAL PUBLIC COMMENT** – None.

L. **INFORMATIONAL ITEMS** – None.

M. **NEXT MEETING ATTENDANCE NOTIFICATION** – September 11, 2019

Commission Chair Twait and Commissioner Springer noted they would be absent from the September 11 meeting.

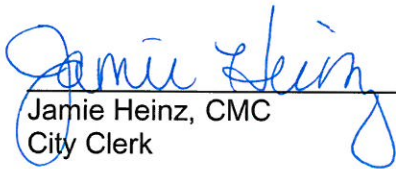
N. **COMMISSION COMMENTS & QUESTIONS**

Vice Chair Fikes thanked Council and administration for the iPads.

O. **ADJOURNMENT**

There being no further business before the Commission, the meeting was adjourned at 7:49 p.m.

Minutes prepared and submitted by:


Jamie Heinz, CMC
City Clerk

