

RESOLUTION NO. 2022-016

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PACIFICA FINDING THAT OPERATION OF A CANNABIS RETAIL OPERATION AT 450 DONDEE WAY, SUITE 2 (APN 022-021-640) AUTHORIZED BY CANNABIS ACTIVITY PERMIT CAP-8-18 (FILE NO. 2018-029) IS NOT IN COMPLIANCE WITH THE REQUIREMENTS OF ARTICLE 48 OF CHAPTER 4 OF TITLE 9 OF THE PACIFICA MUNICIPAL CODE OR THE REQUIREMENTS OF PLANNING COMMISSION RESOLUTION NOS. 2019-031 AND 2021-001, AND TAKING OTHER ACTIONS PERTAINING TO A PUBLIC HEARING TO CONSIDER SUSPENSION OR REVOCATION OF CAP 8-18, AND FINDING THE ANNUAL REVIEW EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

WHEREAS, the Planning Commission of the City of Pacifica adopted Resolution No. 2019-031 to approve Cannabis Activity Permit CAP-8-18 (File No. 2018-029) to Seaweed Holistics, LLC (“Applicant”) for a cannabis retail operation at 450 Dondee Way, Suite 2 (APN 022-021-640) subject to conditions of approval, at a duly noticed public hearing on September 16, 2019; and

WHEREAS, the Planning Commission of the City of Pacifica adopted Resolution No. 2021-001 to amend Conditions of Approval No. 9 and 18 of Resolution 2019-031 to revise the timing of the implementation of the conditions to after commencement of operations of the cannabis retail operation (File No. 2020-020); and

WHEREAS, Condition No. 19 of Exhibit A of Resolution No. 2019-031 of the Planning Commission of the City of Pacifica requires the Planning Commission to perform two annual reviews of the cannabis retail operation authorized by Cannabis Activity Permit CAP-8-18, where the first annual review shall occur not less than one year but not more than two years from the issuance of the Cannabis Public Safety License (CPSL); and

WHEREAS, the Chief of Police issued a CPSL for the subject cannabis retail operation on October 16, 2019; and

WHEREAS, the Applicant commenced cannabis retail operations in September 2020 and therefore staff delayed the first annual review to occur not later than more than two years from the implementation of the CPSL; and

WHEREAS, the Planning Commission of the City of Pacifica did hold a duly noticed public hearing on August 15, 2022, to conduct an annual review of Cannabis Activity Permit CAP-8-18, at which time it considered all oral and documentary evidence presented, and incorporated all testimony and documents into the record by reference.

NOW, THEREFORE BE IT RESOLVED, the Planning Commission of the City of Pacifica does hereby find that this annual review is not a “project” pursuant to § 15378 of the California Environmental Quality Act (CEQA) Guidelines because it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Pacifica does hereby find that the operation of a Cannabis Retail Operation 450 Dondee Way, Suite 2 (APN 022-021-640) is not in full compliance with the requirements of Article 48 of Chapter 4 of Title 9 of the Pacifica Municipal Code as further discussed below:

PMC sec. 9-4.4803(d)(5) states, “The Planning Commission may impose additional conditions which it deems necessary to ensure that operation of the cannabis operation will be in accordance with the findings provided in Section 9-4.4805(a) and with the standards and regulations provided in this article and applicable state laws.”

As further discussed below for Condition of Approval No. 9, No. 18, and No. 20, the Applicant has not complied with these conditions imposed by the Planning Commission and therefore is out of compliance with PMC sec. 9-4.4803(d)(5) and Condition of Approval No. 1, No. 5, and No. 6.

Condition of Approval No. 1

This condition requires the development to be substantially in accordance with the approved plans modified by the conditions of approval. As further discussed below for COA No. 9, the Applicant has not complied with COA No. 9 which requires the modification of the storefront window. Therefore the development is out of compliance COA No. 1.

Condition of Approval No. 5

This condition incorporates all the requirements of Article 48 of Chapter 4 of Title 9 of the PMC applicable to the cannabis retail operation. PMC Section 9-4.4803(d)(5) states, “The Planning Commission may impose additional conditions which it deems necessary to ensure that operation of the cannabis operation will be in accordance with the findings provided in Section 9-4.4805(a) and with the standards and regulations provided in this article and applicable state laws.” As further discussed below for COA No. 9, No. 18, and No. 20, the Applicant has not complied with these conditions imposed by the Planning Commission and therefore is out of compliance with PMC Section 9-4.4803(d)(5) and, therefore, COA No. 5.

Condition of Approval No. 6

This condition prohibits the operation of the cannabis retail operation from creating a public nuisance. As established in PMC sec 9-4.4807, “[a]ny use or condition caused or permitted to exist in violation of any provision of this article shall be and hereby is declared a public nuisance and may be summarily abated by the City pursuant to Code of Civil Procedure, section 731 or any other remedy available to the City.” The cannabis retail operation is in violation of provision of Article 48 as demonstrated in this annual report because there are Conditions of Approval that have not been complied with and, as a result, the cannabis retail operation is considered a public nuisance, as defined in the PMC. Therefore, the Applicant is non-compliant with COA No. 6.

Condition of Approval No. 9

This condition was initially included in Resolution No. 2019-031 to bring the existing storefront window into the glazing requirements of PMC sec. 4-16.03(c)(1)(ii), which states, “Windows and window coverings. Storefronts (front facade of the cannabis operation) shall be primarily glass with glass occupying at least forty-five (45%) percent of the entire store front and sixty (60%) percent of the horizontal length of the store. Window and door areas shall not be covered, tinted, or made opaque in any way, or obscured in any way by landscaping, floor displays, equipment, or the like.”

Planning Commission’s findings in Resolution No. 2019-031 detail “The first floor of the proposed

storefront is 24' wide and 8' high for a total of 192 sf. The first floor of the existing storefront currently has a 10' by 6' window and a door with a 2' by 5'-6" glass panel for a total of 71 sf of glass. Therefore, the existing glass along the first story storefront does not occupy at least 45 percent (86.4 sf minimum) of the storefront nor does the 10' wide window plus the 2' wide glass panel door meet the 60 percent of horizontal length of the store (14'-3" minimum). A COA would require modification of the front window to comply with PMC Section 4-16.03(c)(1)(ii)."

As discussed under section A of this staff report, COA No. 9 initially required the Applicant to modify the storefront window prior to commencement of operations. However, in response to the Applicant's claims that revenue from the operation of the cannabis operation was necessary to generate the funds for the window modifications, the City worked with the Applicant to establish a mutually agreed upon schedule that would delay the window modifications until after the commencement of operations. The City entered into a deferral agreement with the applicant and the Planning Commission later amended the condition to be consistent with the deferral agreement.

On April 26, 2021, the Applicant requested additional time from the City due to a personal loss related to COVID-19. In response, staff did suspend its regular reminders and check-ins to the applicant for approximately one year, other than an email to update the Applicant on the total of outstanding funds as discussed under COA No. 18, below. Staff was unable to grant additional time to comply with the requirements of this COA because it was enacted by the Planning Commission. Thereafter, staff followed up with the Applicant in March 2022 to remind the Applicant of the outstanding window modification requirement (and outstanding fees as further discussed below), informed the Applicant that the annual report was upcoming, and encouraged resolution of these items before the report to Planning Commission. The Applicant responded stating that they were working with their landlord on next steps. On April 20, 2022, staff informed the Applicant the annual report has been scheduled for August 15, 2022 and further encouraged the Applicant to complete the window modification by July 27, 2022 so staff would have time to note satisfaction of the COA in the annual report. No progress was made on the window modification before publication of this report. Therefore, the Applicant is not compliant with COA No. 9.

Condition of Approval No. 18

This condition in Resolution No. 2019-031 is standard language that is generally included in all Planning Commission resolutions. The condition required that all outstanding and applicable fees associated with the processing of this project shall be paid within 30 days of the approval of Cannabis Activity Permit CAP-8-18 and that cannabis retail operations shall not commence operation until such fees are paid. The City's master fee schedule establishes a time and materials billing system for planning applications. While staff collects an initial lump sum deposit and requires the Applicant to sign a reimbursement agreement form as part of the application, this standard condition provides an additional layer of authority for the City to collect any outstanding fees or payments prior to the commencement of the project.

The City calculated the outstanding fees associated with the permit to be \$4,080.56. On January 31, 2020, the City sent the Applicant a written request for the funds within 30 days consistent with the payment terms in the reimbursement agreement. In February 2020, the Applicant requested to pay the amount in \$1,000 monthly installments, which staff agreed to and established a payment plan over the next four months. The first payment was due March 31, 2020, however no payments for the outstanding fees were made.

In June 2020, staff began conversations with the Applicant of the option to enter a deferral

agreement. The Applicant agreed to pay the cost of preparing the deferral agreement and processing the amendments to the conditions of approval. Staff worked with the Applicant to establish a mutually agreed upon payment deadline that would occur after the commencement of operations. The Planning Commission formally the condition to incorporate the deadline as established in the deferral agreement. The revised condition required the permittee to pay all outstanding fees within 60 days of Planning Commission approval of the revised conditions (i.e., April 17, 2021). Staff calculated costs at the time and informed the Applicant of the outstanding fees of \$25,299.29 to be paid by March 10, 2021. No payment for the outstanding fees was made.

On April 26, 2021, the Applicant requested additional time from the City due to a personal loss related to COVID-19. Staff followed-up again with the Applicant on June 10, 2021 and informed the Applicant that the final invoice for the processing of the amendment was received and updated the final outstanding costs for the processing of the CAP, preparation and execution of the deferral agreement and processing the amendments of the CAP was \$25,952.89. No response was received from the Applicant. Staff followed up with the Applicant again in March 2022 to remind the Applicant of the outstanding fees (and window modification requirement as discussed above), informed the Applicant that the annual report was upcoming, and encouraged resolution of these items before the report to Planning Commission. The Applicant responded with a written request for a payment plan. On April 20, 2022, staff denied the Applicant's request for the payment plan, and informed the Applicant the annual report had been scheduled for August 15, 2022 and further encouraged the Applicant to pay the outstanding fees by July 27, 2022 so staff would have time to note satisfaction of the COA in the annual report. No payment for the outstanding fees was made before July 27, 2022.

Condition of Approval No. 20

This condition was initially included in Resolution No. 2019-031 in response to concerns that the Police Chief had regarding the Applicant's ability to comply with all PMC requirements and conditions of approval imposed on this permit, in particular the lack of completion of the storefront window modifications. The Planning Commission included this condition to require:

- i) The Applicant to permit inspection of its cannabis operation by City officials during normal operating hours without advanced notice;
- ii) The Applicant to submit quarterly compliance reports to the Chief of Police outlining how the operation is complying with all applicable laws and conditions of approval; and
- iii) The Applicant to provide a live stream of the Applicant's video surveillance system which is accessible to the Chief of Police via remote access 24 hours per day.

There have been no compliance issues with the Applicant permitting inspection of its cannabis operation by City officials during normal operating hours without advance notice or providing access to the Applicant's live stream video surveillance system 24 hours per as day. The Applicant did inform Planning staff that they have not submitted the quarterly compliance reports to the Chief of Police since March 2021.

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Pacifica does hereby find operation of the subject cannabis retail operation is being conducted in a manner that is non-compliant with Article 48 of Title 9, Chapter 4 of the PMC and the requirements of Planning Commission Resolution Nos. 2019-031 and 2021-001 and therefore constitutes a public nuisance in accordance with PMC sec. 9-4.4806 and PMC sec. 9-4.4807.

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Pacifica

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does hereby direct staff to schedule a public hearing within 60 days to consider suspension or revocation of Cannabis Activity Permit CAP-8-18 in accordance with PMC sec. 9-4.4806.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Pacifica does hereby find that the information contained in this Resolution and the staff report and all other information in the record constitute the full and complete first annual report on Cannabis Activity Permit CAP-8-18.

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PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Pacifica, California, held on the 15th day of August 2022.

AYES, Commissioners: Berman, Hauser, Godwin, Leal, Wright

NOES, Commissioners: None


ABSENT, Commissioners: Domurat, Ferguson

ABSTAIN, Commissioners: None



Lauren Berman, Chair

ATTEST:



Christian Murdock, Acting Planning Director

APPROVED AS TO FORM:



Michelle Kenyon, City Attorney