

**RESOLUTION NO. 2022-021**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PACIFICA REVOKING CANNABIS ACTIVITY PERMIT CAP-8-18 (FILE NOS. 2018-029 AND 2020-020) WHICH AUTHORIZES OPERATION OF A CANNABIS RETAIL OPERATION KNOWN AS SEAWEED HOLISTICS AT 450 DONDEE WAY, SUITE 2 (APN 022-021-640), AND FINDING THE ACTION EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).**

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**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” or “Permittee”) 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 on February 16, 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 and found that the operation of the subject cannabis retail operation is being conducted in a manner that is not in compliance with Article 48 of Title 9, Chapter 4 of the Pacifica Municipal Code (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; and

**WHEREAS**, the Planning Commission of the City of Pacifica did hold a duly noticed public hearing on October 3, 2022, to consider suspension or revocation of Cannabis Activity Permit CAP-8-18.

**NOW, THEREFORE BE IT RESOLVED**, the Planning Commission of the City of Pacifica does hereby find that revocation of the subject permit is exempt under the “Common Sense” exemption per CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty

that there is no possibility that the activity in question may have a significant effect on 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 and No. 18, 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, and No. 18, 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 not in compliance 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 for the Security Plan standards 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 the Security Plan standards of PMC Section 4-16.03(c)(1)(ii).”

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. The Applicant’s progress on this condition, and the associated milestone deadlines contained in the condition.

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 was made before July 27, 2022. Since the annual report to the Planning Commission on August 15, 2022, no progress has been made on the window modification. 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 amended the condition to incorporate the deadline as established in the deferral agreement by adopting Resolution No. 2021-001 on February 16, 2021. 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 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 total 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, which includes the outstanding \$4,080.56 for the original processing of CAP-8-18 and outstanding \$21,872.33 for the processing of the deferral agreement and the amendment to CAP-8-18. 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. Since the annual report to the Planning Commission on August 15, 2022, no progress has been made on the outstanding fees before publication of this report. Therefore, the Applicant is not compliant with COA No. 18.

**BE IT FURTHER RESOLVED**, that the Planning Commission of the City of Pacifica does hereby find that operation of the subject cannabis retail operation is being conducted in a manner that constitutes a public nuisance in accordance with PMC sec. 9-4.4806 and PMC sec. 9-4.4807 because the operation is not in compliance with Article 48 of Title 9, Chapter 4 of the PMC and the requirements of Planning Commission Resolution Nos. 2019-031 and 2021-001.

**BE IT FURTHER RESOLVED**, that the Planning Commission of the City of Pacifica does hereby find that operation of the subject cannabis retail operation is in violation of conditions of the permit, that the cannabis operation is being conducted in a manner that is not in compliance

with Article 48 of Title 9, Chapter 4 of the PMC, that the cannabis operation is being operated in a manner which violates the security plan, and that the cannabis operation is being operated in a manner which constitutes a nuisance and the subject permit may be revoked in accordance with PMC sec. 9-4.4806.

**BE IT FURTHER RESOLVED** that PMC sec. 9-4.4806 establishes the criteria for revocation of a cannabis activity permit if any of the following are found to apply:

- (i) If any of the conditions or terms of such permit are violated;
- (ii) If any law is violated in connection there with;
- (iii) If it appears to the Commission that the cannabis operation has violated any of the requirements of Article 48;
- (iv) If the cannabis operation is being operated in a manner which violates the operational requirements or security plan required by this Code;
- (v) If the cannabis operation is being operated in a manner which constitutes a nuisance;
- (vi) If the cannabis operation has ceased to operate for thirty (30) days or more; or
- (vii) If the cannabis operation is being operated in a manner which conflicts with or violates state cannabis law.

Based on evidence in the record, the Planning Commission concludes that the operation of Cannabis Activity Permit CAP-8-18 is noncompliant with criteria (i), (ii), (iii), and (v) of PMC sec. 9-4.4806 and that revocation of said permit is justified in order to preserve the public health, safety, and welfare. In addition, the Planning Commission finds that revocation is the appropriate remedy to noncompliance because there is no evidence in the record that a suspension would be likely to achieve compliance in the circumstances of this particular case.

**BE IT FURTHER RESOLVED** that the Planning Commission of the City of Pacifica does hereby revoke Cannabis Activity Permit CAP-8-18 and Cannabis Activity Permit CAP-8-18 is henceforth deemed to be expired and shall no longer entitle the permittee to any uses authorized by the cannabis activity permit.

\* \* \* \* \*

File Nos. 2018-029 and 2020-020: Revocation of Cannabis Activity Permit CAP-8-18 (Seaweed Holistics Cannabis Retail Operation)  
450 Dondee Way, Suite 2 (APN 022-021-640)  
October 3, 2022  
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**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Pacifica, California, held on the 3<sup>rd</sup> day of October 2022.

AYES, Commissioners: Hauser, Ferguson, Godwin

NOES, Commissioners: Berman, Wright

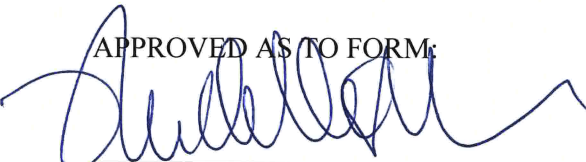
ABSENT, Commissioners: Leal, Domurat

ABSTAIN, Commissioners: None

  
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Lauren Berman, Chair

ATTEST:

  
\_\_\_\_\_  
Christian Murdock, Planning Director

APPROVED AS TO FORM:  
  
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Michelle Kenyon, City Attorney