

RESOLUTION NO. 2023-014

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PACIFICA AMENDING CANNABIS ACTIVITY PERMIT CAP 8-18 TO MODIFY THE REQUIREMENTS OF RESOLUTION NO. 2019-031 OF THE PLANNING COMMISSION OF THE CITY OF PACIFICA RELATING TO THE MODIFIED REQUIREMENTS RELATED TO STOREFRONT WINDOW SIZE (CONDITION OF APPROVAL NO. 9) AND PAYMENT OF OUTSTANDING AND APPLICABLE FEES AND COSTS ASSOCIATED WITH THE PROCESSING OF THE APPLICATION (CONDITION OF APPROVAL NO. 18) (CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) STATUS: CATEGORICALLY EXEMPT).

Initiated by: Ana Leaño-Williams of Seaweed Holistics LLC (“Permittee”)

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 (“Permittee”) for a cannabis retail operation at 450 Dondee Way, Suite 2 (APN 022-021-640) within the C-1 (Neighborhood Commercial) zoning district and CZ (Coastal Zone) and CO-RB (Cannabis Operation, Rockaway Beach Overlay District) overlay zoning districts, 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, 2021 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, 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 adopted Resolution No. 2022-016 finding 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 adopted Resolution No. 2022-021 to revoke Cannabis Activity Permit CAP-8-18 (File No. 2018-029) to Seaweed Holistics, LLC by a vote of 3 to 2 (with 2 absences); and

WHEREAS, on October 10, 2022, the City Clerk received a written request from a Councilmember to call up the Planning Commission’s action on the subject item for City Council review pursuant to PMC sec. 2-1.105; and

WHEREAS, on October 13, Ana Leaño-Williams of Seaweed Holistics timely submitted a City of Pacifica Appeal Form, and applicable fee to the City Clerk’s office to appeal the Planning Commission’s revocation of the CAP; and

WHEREAS, the City Council of the City of Pacifica adopted Resolution No. 79-2022 to deny the appeal and uphold the Planning Commission’s revocation of Cannabis Activity Permit CAP-8-18 (File No. 2018-029) to Seaweed Holistics, LLC by a vote of 5 to 0, subject to certain specified conditions relating to the revocation of CAP-8-18; and

Resolution for Approval
450 Dondee Way, Suite 2 (APN 022-021-640)
File No. 2023-023 – Cannabis Activity Permit Amendment, CAP-8-18 (Cannabis Retail Operation)
December 4, 2023

WHEREAS, the City Council of the City of Pacifica enacted Ordinance No. 893-C.S. on November 13, 2023, to temporarily modify the storefront window requirements for cannabis operations, and an amendment to Cannabis Activity Permit CAP-8-18 is necessary to reflect the modified storefront window requirements; and

WHEREAS, on December 4, 2023, the Planning Commission of the City of Pacifica held a duly noticed public hearing to consider an amendment to Cannabis Activity Permit CAP-8-18 wherein it considered all written, oral and other evidence submitted.

NOW, THEREFORE BE IT RESOLVED by the Planning Commission of the City of Pacifica as follows:

- A. The above recitals are true and correct and material to this Resolution.
- B. In making its findings, the Planning Commission relied upon and hereby incorporates by reference all correspondence, staff reports, and other related materials.

BE IT FURTHER RESOLVED, the Planning Commission of the City of Pacifica previously found that the Cannabis Retail Operation at 450 Dondee Way, Suite 2 was categorically exempt from the California Environmental Quality Act (CEQA) as a Class 1, Existing Facilities exemption as set forth in Resolution No. 2019-031. The project description of the cannabis retail operation would remain the same and as conditionally approved by Planning Commission Resolution No. 2019-031, with the exception of details relating to modified requirements related to storefront window size and payment of outstanding and applicable fees and costs associated with the processing of the application. These amendments to COA No. 9 and No. 18 would have no impact on the Planning Commission’s finding that the project is exempt as a Class 1, categorical exemption for Existing Facilities.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Pacifica approves an amendment to Cannabis Activity Permit CAP-8-18 to modify COA No. 9 and No. 18 of Planning Commission Resolution No. 2019-031 (which shall supersede previous amendments to same approved in Planning Commission Resolution No. 2021-001) by deleting and replacing COA No. 9 and No. 18 in their entirety to read as follows:

COA No. 9: The Applicant's existing storefront window configuration is consistent with the provisions of PMC section 4-16.03(c)(1)(ii) as enacted in Ordinance No. 893-C.S. of the City Council of the City of Pacifica which are applicable to a cannabis activity permit approved or amended between January 1, 2024, and June 30, 2024. Specifically, the existing storefront (exterior front façade of the cannabis operation at the first-floor level) is primarily glass with glass occupying at least thirty-five (35%) percent of the entire storefront and fifty (50%) percent of the horizontal length of the storefront, and no glass area used to comply with the required provisions have a vertical or horizontal dimension less than two (2') feet. Applicant shall not modify the storefront window configuration without obtaining City of Pacifica approval of an amendment to Cannabis Activity Permit CAP-8-18 and approval of all other applicable permits including but not limited to a building permit.

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December 4, 2023

COA No. 18: Applicant shall pay all outstanding and applicable fees associated with the processing of the amendment to CAP-8-18, and all outstanding and applicable fees and costs associated with the preparation and execution of the Deferral Agreement and an amendment to the Deferral Agreement, in accordance with the requirements of Resolution No. 79-2022 of the City Council of the City of Pacifica. Specifically, Applicant shall make the remaining payments required by Resolution No. 79-2022 as follows:

- *Pay \$1,822.69 by 1:30pm on December 15, 2023, but no later than 5:00pm on January 2, 2024.*
- *Pay \$1,822.69 by 1:30pm on January 12, 2024.*

Failure to make any required monthly payment by the last day of the subject month in which the payment is due shall warrant immediate revocation of Cannabis Activity Permit CAP-8-18.

BE IT FURTHER RESOLVED, except as described above, the remaining previously adopted approval for the Cannabis Retail Operation at 450 Dondee Way, Suite 2, as set forth in Resolution No. 2019-031, including COA Nos. 1 through 8, 10 through 17, and 19 through 25 shall remain unchanged and without modification or amendment.

BE IT FURTHER RESOLVED, failure by the Permittee to comply with any and all terms and conditions of this Resolution or COA Nos. 1 through 8, 10 through 17, and 19 through 25 of Planning Commission Resolution No. 2019-031, or the requirements of City Council Resolution No. 79-2022, including but not limited to any timelines or deadlines for Permittee’s performance associated therewith, shall cause the subject cannabis retail operation to be out of compliance with this Resolution, Planning Commission Resolution No. 2019-031, and City Council Resolution No. 79-2022. In the event the City finds the Permittee to have failed to comply with these stated terms and conditions, the City may pursue all legal remedies including but not limited to closure of the subject cannabis retail operation.

BE IT FURTHER RESOLVED, that the effective date of this Resolution shall be January 2, 2024, which shall be considered the date of amendment of Cannabis Activity Permit CAP-8-18 for purposes of application of the modified storefront window requirements contained in Ordinance No. 893-C.S. of the City Council of the City of Pacifica.

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Resolution for Approval
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December 4, 2023

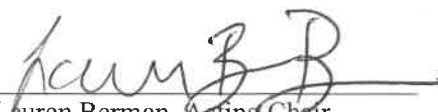
PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Pacifica, California, held on the 4th day of December, 2023.

AYES, Commissioners: BERMAN, DEVINE, GODWIN, WRIGHT

NOES, Commissioners: N/A


ABSENT, Commissioners: FERGUSON, HAUSER, LEAL

ABSTAIN, Commissioners: N/A


Lauren Berman, Acting Chair

ATTEST:

APPROVED AS TO FORM:


Christian Murdock, Planning Director



Michelle Kenyon, City Attorney

Exhibit A

Planning Commission Resolution No. 2019-031

RESOLUTION NO. 2019-031

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PACIFICA
APPROVING CANNABIS ACTIVITY PERMIT CAP-8-18 (FILE NO. 2018-029),
SUBJECT TO CONDITIONS, TO ESTABLISH AND OPERATE A CANNABIS RETAIL
OPERATION AT 450 DONDEE WAY, SUITE 2 (APN 022-021-640), AND FINDING THE
PROJECT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT
(CEQA).**

Initiated by: Ana Leño-Williams of Seaweed Holistics (“Applicant”)

WHEREAS, the City of Pacifica’s Zoning Regulations for Cannabis Operations are codified in Article 48 (Cannabis Regulations) of Chapter 4 of Title 9 of the Pacifica Municipal Code (PMC); and

WHEREAS, the Applicant has submitted an application to establish a Cannabis Retail Operation for the sale of medicinal and adult-use cannabis and cannabis-related products at 450 Dondee Way, Suite 2 (APN 022-021-640) within the C-1 (Neighborhood Commercial) zoning district and CZ (Coastal Zone) and CO-RB (Cannabis Operation, Rockaway Beach Overlay District) overlay zoning districts; and

WHEREAS, the project requires approval of a Cannabis Activity Permit (CAP) pursuant to PMC Section 9-4.4803(b); and

WHEREAS, the Applicant has contemplated a transfer of business entities from a sole proprietorship to a single member- manager limited liability company (LLC), the ownership of which consists wholly of the Applicant, and which transfer would be permissible within the limitations established in Section 9-4.4804(e)(3) of the PMC because the beneficial ownership and control of the cannabis operation would remain the same, and provided the LLC adds no additional members with 20 percent or greater share of ownership interest, and provided the Applicant retains 51 percent or greater ownership of the LLC, except as such limitations may be modified in the future by the City Council of the City of Pacifica; and

WHEREAS, the Planning Commission of the City of Pacifica held a duly noticed public hearing on September 16, 2019, 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 by the Planning Commission of the City of Pacifica as follows:

- A. The above recitals are true and correct and material to this Resolution.
- B. In making its findings, the Planning Commission relied upon and hereby incorporates by reference all correspondence, staff reports, and other related materials.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Pacifica does hereby make the finding that the project qualifies for Class 1 categorical exemption under California Environmental Quality Act (CEQA) Guidelines Sections 15301, as described below: Class 1 exemption provided in Section 15301 of the CEQA Guidelines states in part:

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination... The key consideration is whether the project involves negligible or no expansion of an existing use.

The subject location of the proposed use is an existing commercial structure within a commercial zoned district. Therefore, the proposed use would be consistent with a Class 1 exemption because it would involve only minor interior alterations, would not result in any physical construction outside the footprint of the existing structure except for installation of new windows, and would not result in a use of greater intensity than the type of retail commercial uses for which the area has been designated.

The project also does not trigger any of the exceptions to the exemption outlined in CEQA Guidelines Section 15300.2, as described below:

- Sec. 15300.2(a): There is no evidence in the record that the project would impact an environmental resource of hazardous or critical concern in an area designated, precisely mapped, and officially adopted pursuant to law by federal, State, or local agencies. The proposed project involves commencement of a cannabis retail business within an existing structure.
- Sec. 15300.2(b): There is no evidence in the record that successive projects of the same type in the area would have a significant environmental impact. The project involves the location of a cannabis retail business within an existing commercial tenant space.
- Sec. 15300.2(c): There is no evidence in the record of any possibility that the project would have a significant effect on the environment due to unusual circumstances. The project site is zoned for commercial retail use and the cannabis business use proposed does not have any unique characteristics which could cause potentially significant environmental impacts.
- Sec. 15300.2(d), (e) and (f): The project is not visible from Highway 1, which is an eligible scenic highway but is not designated as such; does not involve a current or former hazardous waste site; and does not affect a historic resource. Therefore, the provisions of subsections (d) through (f) are not applicable to this project.

For the reasons set forth above, there is substantial evidence in the record to demonstrate the proposed project qualifies as a Class 1 exemption and none of the exceptions to application of an exemption are applicable.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Pacifica does make the following findings pertaining to Cannabis Activity Permit, CAP-8-18:

Standard Use Permit Findings (Section 9-4.3303)

- (1) *That the establishment, maintenance, or operation of the use or building applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, and welfare of the persons residing or working in the neighborhood or to the general welfare of the City.*

As conditioned, the proposed CRO would not be detrimental to the health, safety, and welfare of the greater public. The Applicant has submitted a security plan that has been reviewed and approved by the Police Chief which would ensure safe operation of the facility. The security plan includes physical security measures such as several security cameras, video recorder, and 24/7 security monitoring, which would deter crime and assist with investigating any incidents which may occur. Due to some minor changes made to the front façade for PMC compliance (minimum window requirements, PMC Section 4-16.03(c)(1)(ii)) and additions to physical security measures, the Applicant would submit a revised security plan for Police Chief review. The proposed CRO would not be allowed to operate until the Police Chief has reviewed and approved the revisions to the security plan.

Furthermore, the operation would be located entirely inside an existing commercial building located in a commercially zoned neighborhood and any noise from the CRO, such as from customers entering and exiting the business, would be consistent with surrounding commercial retail operations. The tenant space does not include any outdoor patio space where clients might congregate to generate noise or litter. In light of these circumstances, the proposed CRO would not result in any adverse impacts to the community.

- (2) *That the use or building applied for is consistent with the applicable provisions of the General Plan and other applicable laws of the City and, where applicable, the local Coastal Plan.*

The proposed cannabis business would be located entirely within an area designated “Commercial” in the neighborhood land use diagram of the General Plan and Local Coastal Plan (LCP) and designated Mixed Use in the Rockaway Specific Plan. The use, if approved, would be consistent with the following General Plan policies:

- *Community Facilities Policy 4: Meet basic social needs of City residents, such as transportation, housing, health, information and referral services, and safety, consistent with financial constraints.*

The proposed cannabis business would provide a lawful source of medicinal, as well as adult-use, cannabis to Pacifica’s residents, thereby helping to meet their health needs without a commitment of public financial resources. As expressed at the public hearings held during development of the City’s Marijuana Ordinances, many Pacifica residents rely on medicinal cannabis to treat various maladies.

- *Page 76: “The focus for future development in Rockaway Beach should be commercial development emphasizing visitor-serving commercial uses, such as hotels, restaurants, and retail shops that will take advantage of the neighborhood’s coastal location. Although visitor-serving uses should predominate, a mixture of some local-serving businesses, such as offices and personal service establishments will complement the area and meet community needs.”*

The proposed cannabis retail business would provide a lawful source of medicinal and adult-use cannabis, which would attract and serve both locals, as discussed above, and visitors, due to the specialty nature of the product. Therefore the business would support the intended mix of business types for area.

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September 16, 2019

The cannabis business would also be consistent with the City’s LCP. The Plan Conclusions section of the LCP states that “neighborhood serving commercial uses to support local residents’ needs shall be allowed... but shall not predominate” (p. C-107). As noted above, the proposed CRO would meet local residents’ needs for lawful access to medicinal and adult-use cannabis. Thus, commencement of the use would be consistent with the intended land use of this portion of the Rockaway Beach neighborhood.

The CRO would also be consistent with the Mixed Use designation in the Rockaway Specific Plan. The Specific Plan describes Mixed Use as “intended to allow activities such as lodging, restaurants, and retail goods and services which enable visitors to enjoy the coastal environment.” Due to the specialty nature of a CRO, visitors would likely enjoy the CRO.

The proposed use has also undergone a thorough review by City staff including the Police Chief and Planning Department staff to ensure consistency with Article 48 “Cannabis Regulations” of Pacifica’s Zoning Regulations (PMC Title 9, Chapter 4) and Chapter 16 “Cannabis Public Safety Licenses” of Pacifica’s public safety ordinances (PMC Title 4). The Applicant has already obtained approval of Phases 1 and 2 of the application process and is seeking approval of Phase 3 of the process by Planning Commission action on the subject Cannabis Activity Permit. By submitting application materials which demonstrate an intention to comply with the City’s ordinances regulating cannabis business activity, the Applicant’s operation, as conditioned, would comply with all applicable laws of the City governing cannabis-related activities.

For the reasons stated above, the proposed use is consistent with the applicable provisions of the General Plan, Local Coastal Plan, and other applicable laws of the City.

(3) Where applicable, that the use or building applied for is consistent with the City’s adopted Design Guidelines.

The City has adopted Design Guidelines which are intended to accomplish the following purposes:

- Ensure at least a minimum standard of design through the application of consistent policies.
- Encourage new construction which exceeds minimum standards and discourage construction which falls short of those standards.
- Provide a framework for review and evaluation of design proposals.
- Implement applicable General Plan and Local Coastal Plan goals and policies.
- Expedite and facilitate the planning permit process.
- Provide direction for design and redesign of projects.

The City’s Design Guidelines are advisory in nature and, unlike zoning, do not contain explicit standards for determining strict compliance. Rather, they address significant elements of project design that, when balanced overall, result in the best possible site layout and building architecture for a project. An applicant may propose a project that complies with some but not all guidelines and the Planning Commission may still find the project consistent with the Design Guidelines. It is up to the Commission’s discretion to determine the appropriate balance and relative priority of the guidelines for a particular project when considering whether a project has achieved Design Guidelines consistency.

Design Guidelines that would apply to the subject project would pertain to site planning, building

design, and landscaping. The Applicant does not propose to modify the site plan or the building's architecture or lighting. A condition of approval would require modification of the front window to meet PMC Section 4-16.03(c)(1)(ii).

Supplemental Cannabis Activity Permit Findings (Section 9-4.4805(a)(1))

- (1) *For cannabis activity permit applications submitted pursuant to Section 9-4.4804(a), the cannabis operation applicant has been placed on the qualified cannabis registration list, as described in Section 9-4.4804(a)(1)(ii)(ad). For all other cannabis activity permit applications, that the Planning Department has received written notification from the Chief of Police that the applicant has complied with all requirements for satisfactory completion of the phase one and phase two cannabis public safety license requirements contained in Chapter 16 of Title 4 of this Code.*

The application is compliant with Section 9-4.4804(a), as the Applicant applied under the initial application phase. The Police Chief placed Ana Leñaño-Williams of Seaweed Holistics on the Qualified Marijuana Registration List (the original name for the Qualified Cannabis Registration List) as Qualified Cannabis Registrant (QCR) #18-12 on May 1, 2018. The applicant has successfully completed phases one and two of the public safety license requirements contained in Chapter 16 of Title 4. Therefore, there is sufficient information to make this finding.

- (2) *The cannabis activity permit application is complete and the applicant has submitted all information and materials required by Section 9-4.4804(c) and (d).*

The CAP application contains all the required information as determined after a review by Planning Department staff. The Planning Department deemed the application complete on September 6, 2019. Therefore, there is sufficient information to make this finding.

- (3) *The proposed location of the cannabis operation is not likely to have a potentially adverse effect on the health, peace, or safety of persons due to the cannabis operation's proposed proximity to a school, day care center, youth center, public park, playground, recreational center, school bus stop, premises frequented by children, religious establishment, or other similar uses.*

The proposed location is within a commercial area, and located in the CO-RB overlay district which is intended for Cannabis Retail Operations. The proposed site is not located within 600 feet of an identified school or youth center, nor is it within 200 feet from any daycare center; the proposed site and business is consistent with and complies with the locational limitations set forth in PMC Section 9-4.4803(c)(2). Therefore, the proposed cannabis business is not likely to have a potentially adverse effect on the health, peace, or safety of persons, including children, at this location.

Therefore, the proposed cannabis business is not anticipated to have any potentially adverse effect on health, peace, or safety due to its proximity to the enumerated sensitive uses.

- (4) *The proposed location of the cannabis operation is not likely to have a potentially adverse effect on the health, peace, or safety of persons due to the cannabis operation's proposed proximity to another existing or permitted cannabis operation.*

The proximity of the business in relation to other cannabis operations is not likely to have an adverse effect on the community. Two other cannabis retail operations were approved in CO-RB, including 450 Old County Road (MUP-10-18; approximately 150 feet east of the subject site) and 403 Dondee Way (MUP-3-18; approximately 300 feet north of the subject site). Neither of the approved businesses are currently open; however, both operations were reviewed and approved under similar operational standards and public safety requirements that are applicable to the proposed project. Therefore, each operation should address their individual public health, peace, and safety considerations and there is no information that identifies a cumulative impact would occur as a result of the proximity to other cannabis operations. Moreover, the City Council affirmatively determined that up to three CAPs were permissible within the CO-RB overlay district.

- (5) *The design of the storefront or structure within which the cannabis operation will operate is architecturally compatible with surrounding storefronts and structures in terms of materials, color, windows, lighting, sound, and overall design.*

The existing design of the storefront is architecturally compatible with the surrounding storefronts and structures in terms of materials, color, lighting, and overall design, and the Applicant proposes no significant changes to the storefront. However, PMC Section 4-16.03(c)(1)(ii) sets a minimum standard for the amount of glass along the storefront, and the Applicant has proposed minor alterations to the storefront to achieve compliance with this standard. The use of the second floor of the unit would only be for employee access; therefore, the second story portion of the front elevation is not considered the storefront for the purposes of compliance with PMC Section 4-16.03(c)(1)(ii).

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 condition of approval would require modification of the front window to comply with PMC Section 4-16.03(c)(1)(ii). The condition of approval would require the style of the new window to be architecturally compatible. Therefore, the minor nature of the modification of the façade and the requirement controlling the design of the new window would ensure the modification to the façade would be architecturally compatible with the surrounding storefronts and structures. Therefore, as conditioned, there is sufficient information to make this finding.

- (6) *The proposed size of the cannabis operation is appropriate to meet the needs of the local Pacifica community for access to cannabis and that the size complies with all requirements of the City's Zoning Regulations.*

The size of the operation includes 672 sf of retail space and 352 sf of office space, is not oversized to meet regional demand, and, thus, is appropriate to meet the needs of the local Pacifica community for access to cannabis. There is no applicable size limitation in

the City’s Zoning Regulations on general commercial spaces or CROs specifically. The operation does not create any parking or traffic concerns based on its size. For these reasons, the proposed size of the cannabis operation is appropriate under the criteria of this finding.

- (7) *The location is not prohibited under the provisions of this article or any local or state law, statute, rule, or regulation, and no significant nuisance issues or problems are likely or anticipated, and that compliance with other applicable requirements of the City's Zoning Regulations will be accomplished*

Planning Commission is unaware of any local or state laws, rules, or regulations which would be violated by operation of the subject cannabis business in the identified location after it obtains a Cannabis Activity Permit, Cannabis Public Safety License, and applicable license(s) from the State of California. The location is within a Cannabis Operation Overlay District which authorizes Cannabis Retail Operations and is outside all buffer areas from sensitive uses which include K-12 schools, youth centers, and day care centers. Based on the project’s relatively small size and as discussed in Supplemental Cannabis Activity Permit Finding No. 8 below, no significant nuisance issues or problems are likely or anticipated.

The project as proposed also accomplishes compliance with other applicable requirements of the City’s Zoning Regulations. As noted in this report, the existing retail commercial space is served by the off-site public parking lot that is located immediately across Dondee Way from the site. PMC Section 9-4.2818(b)(12) establishes a parking requirement for “cannabis retail operations” of one parking space for each 300 square feet of gross leasable space, plus additional spaces as necessary based on the unique needs of the operation as determined by the Commission. The cannabis retail operation parking requirement is the same as “retail stores and services establishments”; therefore, the conversion of the space from a retail space to a cannabis retail space would not increase the parking demand. No unique characteristics of the proposed cannabis operation have been identified which would warrant additional parking. Therefore, there is sufficient information to make this finding.

- (8) *The cannabis operation is not likely to have an adverse effect on the health, peace, or safety of persons living or working in the surrounding area, overly burden a specific neighborhood, or contribute to a public nuisance, and will generally not result in repeated nuisance activities including disturbances of the peace, illegal drug activity, cannabis use in public, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises (especially late at night or early in the morning hours), lewd conduct, or police detentions or arrests.*

Its small size; the adequacy of its internal layout to accommodate waiting customers; the requirements of its security and operations plans; the PMC prohibition on possession, distribution, or consumption of alcohol on the premises, and the prohibition on smoking, ingesting, or consuming cannabis on the premises; its hours of operations; and, updated increased storefront window size, as conditioned, combine to suggest the proposed cannabis business would not have a detrimental effect on the surrounding area, and should serve to prevent excessive disturbances or illegal drug activity. Therefore, as conditioned, there is sufficient information to make this finding.

- (9) *The cannabis operation is not likely to violate any provision of the Pacifica Municipal Code or condition imposed by a City-issued permit, or any provision of any other local or state law, regulation, or order, or any condition imposed by permits issued in compliance with those laws.*

The Applicant has invested significant time and resources developing application materials suitable for City review and approval. These application materials include, but are not limited to, a security plan, operations plan, trip generation analysis, and floor plan. On this basis, the Applicant appears to be committed to operation of the proposed cannabis business in a manner consistent with the Pacifica Municipal Code, state law, and applicable terms of any permits issued.

However, the Chief of Police for the City of Pacifica submitted a memo to Planning staff regarding his experience with the Applicant and her previous business operations (Attachment F). The Chief of Police's memorandum describes his interactions with the Applicant and the Applicant's apparent misunderstanding, if not blatant disregard, of the City's ordinances when she commenced operating an unpermitted cannabis operation after specific advisement from the Chief of Police that such operation would not be permissible until the Applicant obtained permits from the City of Pacifica.

As a result of the Police Chief's experiences with the Applicant, there is sufficient evidence to suggest that enhanced ongoing monitoring of this Applicant for an appropriate period of time may be necessary to ensure consistent compliance with all Pacifica Municipal Code requirements and conditions of approval imposed on this permit. Therefore, pursuant to PMC 9-4.4805(a), additional monitoring requirements have been included in the conditions of approval.

These enhanced monitoring conditions shall remain in effect until completion of two annual reviews of this CAP.

With these enhanced monitoring requirements in place, and in light of the terms and potential consequences of the Settlement Agreement, there is sufficient evidence to make this finding.

- (10) *The applicant and/or the cannabis operation is not the subject of or a party to any of the following: pending litigation filed by the City against the applicant or any of its principals to enforce the Pacifica Municipal Code; a pending code enforcement case against the applicant or any of its principals relating to illegal cannabis activity; or an outstanding balance owed to the City by applicant or any of its principals for any unpaid taxes, fees, fines, or penalties.*

The City of Pacifica filed a lawsuit against the Applicant, the subject property owner, and others with the San Mateo County Superior Court (Case No. 18-CIV-06222) in November 2018. The lawsuit concluded with the parties entering into a Settlement Agreement in June 2019. The terms of the Settlement Agreement, among other things, require the Applicant to make scheduled payments to the City. As of the writing of this report, the Applicant is in good standing with the payment schedule as confirmed by the Finance Department. Therefore, because of compliance with the terms of the Settlement Agreement, there is sufficient evidence to make this finding. Additionally, the terms of a Settlement Agreement between the City of Pacifica and the Applicant require the

Applicant, among other things, to comply with the Pacifica Municipal Code and to operate in compliance with applicable local and state law, including but not limited to operating only when in possession of a Cannabis Public Safety License, Cannabis Activity Permit, City of Pacifica business license, as well as any required state licenses or permits. Failure to comply with the terms of the Settlement Agreement could cause the Applicant to incur further costs in addition to any other civil or criminal remedy available to the City. Based on the foregoing, this finding can be made because the Applicant and/or the cannabis operation is not the subject of or a party to any of the following: pending litigation filed by the City against the applicant or any of its principals to enforce the Pacifica Municipal Code; a pending code enforcement case against the applicant or any of its principals relating to illegal cannabis activity; or owes an outstanding balance to the City for any unpaid taxes, fees, fines, or penalties.

- (11) *The applicant has not made a false statement of material fact or omitted a material fact in the application for a cannabis activity permit, as known at the time of determination on the application.*

The Police Department and Planning Department staffs, which have reviewed the submitted application materials and communicated with the Applicant, have not identified any instances wherein the Applicant has made a false statement of material fact or omitted a material fact since filing the subject application on April 20, 2018. Therefore, there is sufficient information to support a finding that the information submitted and statements made by the Applicant associated with their application have been truthful up to and until the time of determination on the subject application.

- (12) *The cannabis operation's site plan has incorporated features necessary to assist in reducing potential nuisance and crime-related problems. These features may include, but are not limited to, procedures for allowing entry; reduction of opportunities for congregating and obstructing public ways and neighboring property; and limiting furnishings and features that encourage loitering and nuisance behavior.*

The location of the proposed business does not feature fixtures or furnishings which would encourage customers to congregate in the business vicinity, such as chairs and benches. As mentioned above, the tenant space is relatively small, and would most likely not be able to physically support a large group of people to congregate indoors. Further, the project site does not include an outdoor space such as a patio which might encourage customers to congregate as most of the outside area is comprised of the walkway area. Additionally, the proposed tenant space would include large windows which would allow the Police Department to observe business activity from the walkway to ensure public safety. Existing site landscaping in front of the storefront consists of low-growing plants and so would not obstruct views through the window or provide a hiding place for criminals. The Applicant would also install sufficient video recording equipment to monitor the premises in order to deter crime and support any Police Department investigations into isolated crimes which may occur. Therefore, there is sufficient information to make this finding.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Pacifica approves and issues Cannabis Activity Permit CAP-8-18 to establish and operate a Cannabis Retail Operation at 450 Dondee Way, Suite 2, subject to conditions of approval attached as Exhibit A.

Resolution for Approval
450 Dondee Way, Suite 2 (APN 022-021-640)
File No. 2018-029- Cannabis Activity Permit, CAP-8-18 (Cannabis Retail Operation)
September 16, 2019

* * * * *

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Pacifica, California, held on the 16th day of September, 2019.

AYES, Commissioners: Berman, Campbell, Nibbelin, Bigstycck, Kraske

NOES, Commissioners: Rubinstein

ABSENT, Commissioners: Clifford

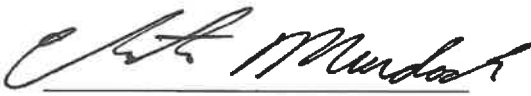
ABSTAIN, Commissioners: None



Oren Rubinstein, Vice Chair

ATTEST:

APPROVED AS TO FORM:


for Tina Wehrmeister, Planning Director



Michelle Kenyon, City Attorney

Exhibit A

Conditions of Approval: File No. 2018-029 - Cannabis Activity Permit CAP-8-18 to Establish and Operate a Cannabis Retail Operation at 450 Dondee Way, Suite 2 (APN 022-021-640)

Planning Commission Meeting of September 16, 2019

Planning Division of the Planning Department

1. Development shall be substantially in accord with the plans stamped and dated revised August 10, 2019, which were received by the City of Pacifica on September 9, 2019, except as modified by the following conditions.
2. The approval or approvals is/are valid for a period of two years from the date of final determination. If the use or uses approved is/are not established within such period of time, the approval(s) shall expire unless Applicant submits a written request for an extension and applicable fee prior to the expiration date, and the Planning Director or Planning Commission approves the extension request as provided below. The Planning Director may administratively grant a single, one year extension provided, if in the Planning Director's sole discretion, the circumstances considered during the initial project approval have not materially changed. Otherwise, the Planning Commission shall consider a request for a single, one year extension.

In the event of litigation filed to overturn the City's determination on the approval(s), the Planning Director may toll expiration of the approval(s) during the pendency of such litigation.
3. The Cannabis Activity Permit and Cannabis Public Safety License shall be issued to Seaweed Holistics LLC, a California limited liability company (LLC), with Ana Leñaño-Williams as the single member-manager thereof. As detailed in this Resolution, because the beneficial ownership and control of the cannabis operation would remain the same (Ana Leñaño-Williams), the Planning Commission determined there would not be a transfer of ownership or control under the Applicant's proposal. The transfer of the Cannabis Activity Permit and Cannabis Public Safety License shall hereafter be prohibited as described in Pacifica Municipal Code Sections 9-4.4804(e) and 4-16.03(e), respectively, as currently codified or as may be amended from time to time.
4. The Applicant shall at all times maintain a valid Cannabis Public Safety License and a valid license(s)/permit(s) from the State of California. If at any time the Cannabis Public Safety License or State of California license(s)/permit(s) issued to the Applicant for the subject facility is/are revoked, expires, or otherwise rendered inoperative for any reason, this Cannabis Activity Permit shall immediately become null and void and it shall not be possible to reinstate the Cannabis Activity Permit. A temporary suspension of the Cannabis Public Safety License or State of California license(s)/permit(s) shall render the Cannabis Activity Permit inoperative during the term of the suspension but the Cannabis Activity Permit shall not be considered null and void during the suspension.
5. The Cannabis Retail Operation shall operate consistent with all provisions of Article 48 of Chapter 4 of Title 9 applicable to Cannabis Retail Operations, as currently codified or as

may be amended from time to time.

6. The Applicant shall operate and maintain the Cannabis Retail Operation in a manner which does not constitute a public nuisance.
7. Prior to commencement of operations, Applicant shall submit for review and approval of the Police Chief a revised Security Plan which incorporates the window modifications described in these Conditions of Approval. The Applicant shall implement and operate the Cannabis Retail Operation in accordance with the approved Amended Security Plan.
8. The Cannabis Retail Operation shall be conducted entirely within the enclosed space of the business premises.
9. Prior to commencement of operations, the Applicant shall obtain a building permit to modify the first floor storefront to increase the horizontal and overall measurements of the glass on the first floor storefront to meet or exceed the requirements of PMC Section 4-16.03(c)(1)(ii), to the satisfaction of the Planning Director. New windows or doors proposed on the storefront shall be architectural compatible with the remainder of the building, to the satisfaction of the Planning Director.
10. Prior to commencement of operations, the Applicant shall submit for review and approval of the Police Chief a physical barrier to secure the rear area of the first floor from the front “customer waiting” area in accordance with PMC Section 9-4-4803(d)(1)(x). The Applicant shall fully install or construct approved physical barrier, after obtaining any necessary building permits, prior to commencement of operations.
11. Prior to commencement of operations, the Applicant shall submit for review and approval of the Police Chief a physical barrier to prevent public access to the second floor. The Applicant shall fully install or construct the approved physical barrier, after obtaining any necessary building permits, prior to commencement of operations.
12. Prior to commencement of operations, the Applicant shall provide or cause to be provided and show on the plans, a trash enclosure on the business premises such that all cannabis waste is securely stored until it is removed from the premises by a vendor authorized under state law, to the satisfaction of the Planning Director.
13. Prior to commencement of operations, the Applicant shall i) provide the Planning Department for review and approval additional information to confirm consistency of the existing wall sign with the 450 Dondee Way Master Sign Program (MSP); or, ii) obtain property owner authorization to seek Planning Department approval of a revised MSP to accommodate the existing sign, and obtain Planning Director or Planning Commission approval of said revised MSP. Alternatively, prior to commencement of operations, Applicant shall remove all signage not compliant with Article 29 of Chapter 4 of Title 9 of the PMC from the storefront.
14. Prior to commencement of operations, the Applicant shall submit for Planning Director review and approval the required incidental signage to be posted at the entrance indicating that the premises are under camera/video surveillance and indicating age restrictions for entrance pursuant to PMC Section 4.16-03(c)(i)(ab) and PMC Section 9-4.4803(d).

15. Prior to commencement of operations, the Applicant shall provide evidence that it has retained the services of a cannabis waste management service and an inventory control service in accordance with state law, to the satisfaction of the Planning Director.
16. The Applicant shall indemnify, defend and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents (hereinafter "City") from any claim, action or proceeding (hereinafter "Proceeding") brought against the City to attack, set aside, void or annul the City's actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the California Environmental Quality Act, and/or any mitigation monitoring program, or brought against the City due to actions or omissions in any way connected to the Applicant's Project ("Challenge"). City may, but is not obligated to, defend such Challenge as City, in its sole discretion, determines appropriate, all at Applicant's sole cost and expense. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorney's fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the Applicant, City, and/or parties initiating or bringing such Proceeding. If the Applicant is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City. Per Government Code Section 66474.9, the City shall promptly notify Applicant of any Proceeding and shall cooperate fully in the defense.
17. All cannabis-related products shall be stored in air-tight containers which are completely sealed in order to minimize unpleasant odors.
18. All outstanding and applicable fees associated with the processing of this project shall be paid within 30 days of the approval of Cannabis Use Permit CAP-8-18. The Cannabis Retail Operation shall not commence operations until such fees are paid.
19. Notwithstanding the authority granted to Planning Department staff to conduct annual reviews of cannabis operations in Section 9-4.4806(e) of the PMC, the Planning Commission shall conduct two annual reviews of the subject Cannabis Retail Operation at a public hearing. The first annual review shall occur not less than one year but not more than two years after issuance of the Cannabis Public Safety License to the Applicant. The second annual review shall occur not less than one year after the first annual review.

Police Department

20. To achieve enhanced monitoring of this Cannabis Retail Operation, the Applicant shall, until completion of the second annual review described in these Conditions of Approval, comply with the following requirements:
 - i) The Applicant shall permit inspection of its cannabis operation by City officials during normal operating hours without advanced notice;
 - ii) The Applicant shall submit quarterly compliance reports to the Chief of Police not later than the due date of quarterly Cannabis Operations Tax filings required by Chapter 18 of Title 3 of the PMC. The compliance reports shall outline how the operation is complying with all applicable laws and conditions of approval

governing operation of the Cannabis Retail Operation; and
iii) The Applicant shall 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 without notice to the Applicant.

Building Division of the Planning Department

21. Applicant shall obtain approval of a building permit by the Building Official prior to commencing any construction activity.

North County Fire Authority

22. Existing sprinkler/fire alarm system shall be altered/extended as required by the interior modifications described in these Conditions of Approval. Install per NFPA 13. Submit under separate fire permit if any partitions are added which affect proper fire sprinkler spacing as determined by the Fire Chief.

Engineering Division of the Public Works Department

23. Construction shall be in conformance with the City of Pacifica Storm Water Management and Discharge Control Ordinance and the San Mateo Countywide Storm Water Pollution Prevention Program. Best Management Practices shall be implemented, and the construction BMPs plans sheet from the Countywide program shall be included in the project plans.
24. The following requirements must be clearly noted on the construction plans for the project:
 - a. Dondee Way shall be maintained clear of construction materials, equipment, storage, debris, and soil. Dust control and daily road cleanup will be strictly enforced. A properly signed no-parking zone may be established during normal working hours only.
 - b. All recorded survey points, monuments, railroad spikes, pins, cross cuts on top of sidewalks and tags on top of culvert headwalls or end walls whether within private property or public right-of-way shall be protected and preserved. If survey point/s are altered, removed or destroyed, the applicant shall be responsible for obtaining the services of a licensed surveyor or qualified Civil Engineer to restore or replace the survey points and record the required map prior to occupancy of the first unit.
 - c. Existing public improvements within the property frontage that are damaged or displaced shall be repaired or replaced as determined by the City Engineer even if damage or displacement occurred prior to any work performed for this project. Any damage to improvements within city right-of-way or to any private property, whether adjacent to subject property or not, that is determined by the City Engineer to have resulted from construction activities related to this project, shall be repaired or replaced as directed by the City Engineer.

Resolution for Approval
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Condition Added by Planning Commission at September 16, 2019 Public Hearing

25. The hours of operation of the business, which includes those hours in which the site may be open to the public for retail sales shall be as follows: 10:00 a.m. through 8 p.m. daily. Staff of the Cannabis Retail Operation may occupy the subject site outside of those hours to perform administrative and maintenance functions customary for retail businesses, such as inventory management, cleaning, bookkeeping, etc.

*** END OF CONDITIONS ***