

MINUTES

**CITY OF PACIFICA
PLANNING COMMISSION
COUNCIL CHAMBERS
2212 BEACH BOULEVARD**

October 1, 2018

7:00 p.m.

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

ROLL CALL:

Present: Commissioners Kraske, Nibbelin, Gordon, Clifford,
Rubinstein and Chair Campbell
Absent: Commissioner Stegink recused himself until completion
of Item #1.

SALUTE TO FLAG:

Led by Rubinstein

STAFF PRESENT:

Planning Director Wehrmeister
Sr. Planner Murdock
Contract Planner Aggarwal
Police Chief Steidle
Asst. City Attorney Bazzano

APPROVAL OF ORDER OF AGENDA

Commissioner Gordon moved approval of the Order
of Agenda; Commissioner Nibbelin seconded the
motion.

The motion carried **6-0**.

Ayes: Commissioners Kraske, Nibbelin, Gordon, Clifford,
Rubinstein and Chair Campbell
Noes: None

APPROVAL OF MINUTES: SEPTEMBER 4, 2018

Vice Chair Clifford moved approval of minutes of
September 4, 2018; Commissioner Gordon seconded the
motion.

The motion carried **6-0**.

Ayes: Commissioners Kraske, Nibbelin, Gordon, Clifford,
Rubinstein and Chair Campbell
Noes: None

For September 17, 2018 minutes, Vice Chair Clifford stated that on packet page 55, it stated that he was in favor of calendar days and he stated that he actually stated he was in favor of business days and would move to approve with that change.

Chair Campbell asked what they had ended up voting on for the days.

Sr. Planner Murdock stated that, in terms of the proposed ordinance, they voted to recommend business days.

**APPROVAL OF
MINUTES:
SEPTEMBER 17, 2018**

Vice Chair Clifford moved approval of minutes of September 17, 2018 as amended; Commissioner Nibbelin seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Kraske, Nibbelin, Gordon, Clifford,
Rubinstein and Chair Campbell
Noes: None

**DESIGNATION OF LIAISON TO CITY COUNCIL MEETING OF OCTOBER 8, 2018
AND OCTOBER 22, 2018:**

Planning Director Wehrmeister stated Chair Campbell had volunteered to be the liaison for October 8 meeting regarding the proposed changes to the marijuana ordinance. She stated that, for October 22, there were several items, the development agreement ordinance which is on this meeting's agenda and an appeal of the marijuana use permit which was heard by the Planning Commission previously.

Chair Campbell asked confirmation that the development agreement and marijuana use permit appeal will be at the October 22 meeting and the marijuana ordinance at the October 8 meeting.

Planning Director Wehrmeister responded affirmatively.

Chair Campbell stated that he would like it if someone would volunteer for the October 8 meeting.

Vice Chair Clifford stated that he would not want to volunteer for October 8 but was willing to volunteer for October 22.

Commissioner Nibbelin stated that he was willing to volunteer for October 8.

Chair Campbell thanked him and confirmed that Vice Chair Clifford would be the liaison for October 22.

Planning Director Wehrmeister confirmed Commissioner Nibbelin for the October 8 meeting and Vice Chair Clifford for the October 22 meeting.

ORAL COMMUNICATIONS:

None

CONSENT ITEMS:

None

CONTINUED PUBLIC HEARING:

- 1. UP-106-18** **FILE No. 2018-021 – Use Permit UP-106-18** for a 1,112 square Foot outdoor seating area with alcoholic beverage service at an existing restaurant “Taco Bell Cantina” at 5200 Pacific Coast Hwy (APN 022-191-190).
Recommended CEQA Action: Class 1 (Existing Structures)
Categorical Exemption, CEQA Guidelines Section 15301.

Contract Planner Aggarwal presented staff report.

Vice Chair Clifford stated that they received a notice asking for changes in some of the conditions.

Contract Planner Aggarwal stated that they received it about 6:15 p.m. and she stated that the applicant could speak to them in greater detail.

Eric Moxley, applicant, stated that the Planning Department did a nice job of listening to the applicant, Commissioners and community. He stated that they were amendable to the majority of the 20 conditions, but there were three points which he felt needed discussion. He stated that condition #10 was regarding raising the barrier above the gate. He asked that they refer to page 116 where the Chief of Police stated he believed the present barrier with the alarm sufficed as a barrier to keep law abiding citizens. He asked if they want to discuss each individually or after mentioning them all.

Chair Campbell stated he could mention them all first.

Mr. Moxley referred to condition #14 which addresses the hours of operation. He felt they misspoke at the previous hearings, clarifying that the current hours of operation were 7:00 a.m. to 11:00 p.m. with the exception of Friday and Saturday when they are open until 12:00 a.m. He stated that the hours change from time to time and they asked that the condition be modified to be consistent with the actual hours of operation with the terminology that they will never be open later than midnight on the patio, as it is currently only Friday and Saturday. He stated that it would be helpful for staff and community to have the same hours of operation for both and asked for it clarified in simple terms. He stated that the final condition is in reference to a trash enclosure that encroaches on the easement adjacent to their property. He stated that there was a stipulation that they bring the trash enclosure onto the property. He asked that they be granted the ability to encroach on the easement. If not possible, he asked that they be given the opportunity to rebuild the trash enclosure when they remodel the building. He felt that other than those, they all worked together to do the right thing for the community and he looked forward to a discussion.

Commissioner Nibbelin thought condition #14 looks okay to him, but he was curious how the last call would work in connection with the outdoor seating area. He reviewed the responsible alcohol service policy and a last call was generally 30 minutes prior to the established restaurant closing time or 1:30 whichever comes first. He wondered if they intended to deal with service on the patio so that last call would be a half hour prior to service ceasing on the patio.

Mr. Moxley agreed, stating that they would modify the policy to state that.

Commissioner Nibbelin thought the conditions of approval already reflected that but he wanted to be sure that was clarified.

Mr. Moxley stated that it was in there as one of the conditions.

Commissioner Rubinstein referred to condition #11, stating it states there is permanent signage in the parking lot or other exterior areas on the premises advertising alcohol or sales shall be prohibited and he would like to expand that to include banners or non-permanent signage that they might use.

Mr. Moxley stated that they were amenable to that.

Commissioner Rubinstein agreed that the outdoor alcohol service should be commensurate with the hours they are open, but he had an issue with serving alcohol that late but he didn't know how to address those two issues at that location. He stated that with condition #17 he had no issue on whether it was on or off the easement but he would ask for a definitive timeframe assigned to it but not when they will have contractors on site.

Mr. Moxley stated that within their lease with the landlord, they have discussed remodeling before the end of the year and they can tie it to that.

Commissioner Rubinstein asked if they were agreeable to a 90 or 120 day timeframe.

Mr. Moxley stated that he would ask the Planning Department how quickly they can grant permits for construction once they submit.

Sr. Planner Murdock stated that one element of uncertainty was the fact that the area was in the Coastal Commission's permit jurisdiction and we have no control over the timeline that may be required to navigate their permitting process. He stated that, if the Commission makes a change to the condition, incorporating some flexibility to account for that would be helpful to staff.

Commissioner Rubinstein agreed that it could be commensurate with issuance of a permit for the remodel.

Bill McDermott, Golden Gate Bell consultant, stated that they have been engaged with Patrick Foster of the Coastal Commission for the last year making sure he knows what is going on with the steps and their application was in with them for the exemption status due to the limited impact. He stated that they have correspondence that he is in support of that and he was just following the steps. He stated that the Coastal Commission has been a great partner in the process.

Commissioner Rubinstein asked if the type of trash enclosure would be suitable for the location outdoors on the beach.

Mr. McDermott stated that the conditions of approval were very specific about materials, size and location. He stated that the original thought was to just cut the corner off of the wood and they were not on the property anymore. He stated that they will assess that with staff to make sure it works. He stated that it was an encroachment of about 18 in. by 18 in. of the corner of the trash

enclosure and the condition was very specific about materials and requirements and they will work with staff during the permit process to nail it down perfectly.

Commissioner Rubinstein thanked him for the information. He then referred to what they asked that Taco Bell could do to be better stewards environmentally at this location with eliminating some single use products that are not biodegradable.

Mr. Moxley stated that they have already started to work with Taco Bell and have removed the single use plastic objects from the consumer area and they are available for consumer use but are behind the counter and have to ask for them, adding that there are signs posted. He stated that they now have compostable straws on site and they have engaged with the franchisor in discussing what they can do to be more responsible, not just at that store but globally, with the single use plastics. He stated that it was a big ship and tough to turn it quickly but they have done what they can do immediately to help the Pacifica community.

Commissioner Rubinstein stated that they were talking about straws, forks and spoons and the ketchup packets or hot sauce packets.

Mr. Moxley agreed.

Commissioner Gordon stated that he wanted to ask questions along the same lines. He stated that it was their opportunity to make Taco Bell an example and model for other restaurants, adding that they have the best location in the entire city. He stated that there was an email from Lynn Adams of the Pacifica Beach Coalition which stated that after talking with the owner and district manager Taco Bell has committed to pull back the straws and lids to behind the counter which he thought he just alluded to.

Mr. Moxley stated that was correct.

Commissioner Gordon acknowledged it was by request only, and he asked the status of changing their plastic cups to paper cups.

Mr. Moxley stated that they have engaged with the brand to discuss that. He stated that the paper cups that were the alternative were not biodegradable or recyclable but at this point, because of what was readily available, they have changed to a plastic cup that is recyclable.

Commissioner Gordon asked if they have gone to recyclable paper cups or plastic cups.

Mr. Moxley stated they were plastic cups.

Commissioner Gordon asked if the ultimate goal was compostable cups.

Mr. Moxley stated that the franchisor controls that and they have engaged in discussions with them and the entire franchise community was in Las Vegas last week and that was the topic of discussion.

Commissioner Gordon stated that he saw this as an incredible opportunity to make impacts nationwide but acknowledged that was for another conversation.

Mr. Moxley was happy to continue to engage with them. He stated that Lynn Adams and her team has been outstanding in reaching out to have a discussion instead of saying they don't want them to do something. He stated that it was a relationship that should have been formed a long time ago and she has been great to work with.

Commissioner Gordon was happy to hear that, but he also likes to see commitments memorialized in writing and that was what he was going to try to do at this time. He referred to changing cutlery to biodegradable, asking the status on that.

Mr. Moxley stated that they committed to going back to the franchisor and engage in a conversation and remove the plastic cutlery from the consumers' immediate use. He stated that they have done what they can do as a franchisee of a much larger brand and have engaged in conversations that are being heard.

Commissioner Gordon concluded that currently they were still using plastic cups and cutlery.

Mr. Moxley agreed, adding that the straws are now biodegradable straws.

Commissioner Rubinstein asked if the cantina model used silverware.

Mr. Moxley stated that they did not.

Commissioner Gordon asked if the beer was served in recyclable plastic cups.

Mr. Moxley stated that he did not know that at this point.

Commissioner Gordon asked if that was a goal.

Mr. Moxley stated that it would be his goal, adding that the franchisor has a lot of control over their entire supply chain and it all has to go through the franchisor.

Commissioner Kraske referred to the hours of operation for the outdoor patio, asking if he knows currently the percentage of alcohol sales occurs after 10 p.m.

Mr. Moxley stated that he did not know what percentage of the alcohol sales was after 10 p.m. but he knows that the alcohol sales is very, very low as a percentage of their total sales. He stated that it is currently not on a menu board. He stated that their other cantina in the local community has sales less than 5% for the entirety of the sales mix so he concluded it was a low percentage.

Commissioner Kraske concluded that by reducing the hours of operation for a couple of hours it would not have a large effect on alcohol sales.

Mr. Moxley stated that he wasn't sure he understood the question.

Commissioner Kraske stated his concern was related to noise and trash. With maintenance staff ending at 8 PM, and the outdoor patio being open until 12 AM, that would leave four hours for trash to accumulate and potentially blow onto the beach.

Mr. Moxley stated, for clarification, the maintenance plan refers to the entirety of the property and the plan makes sure they are circulating the entirety of the property and for the safety of their employees in any of their restaurants they don't allow them to go off the property [out of the building] into the parking lots by themselves after dark. He stated that, if they are talking about beer or alcohol sales, people would be depositing those cups into the trash, their team would continue to empty the trash on the interior and on the patio which is contained. He stated that it was the outside parking lot that wouldn't be picked up until first light. He stated that it was consistent with every restaurant in the country.

Commissioner Kraske stated he wanted to have an ongoing discussion about the hours of operation as he was not yet comfortable with the proposed operation until midnight.

Chair Campbell stated that they can discuss that when they get to discussion time.

Vice Chair Clifford referred to the trash can on an easement, asking who owns that easement.

Mr. Moxley stated that he does not know and cannot answer. He asked Mr. McDermott if he knew who the owner of the easement was.

Mr. McDermott stated that there were two easements. Easement One runs along the ocean and they assume everyone is the owner of that easement for public use. Easement Two which was generally on the north side where all the old bushes used to be that were blocking the pathway were cleaned out was also for public use. He stated that, on the south side where the trash enclosure is located, it was a mistype in his notes and was not actually encroaching into an easement, but encroaching into a neighbor's property by the 18" by 18" and they would be proposing to approach the neighbor. He thought staff might be able to tell them if they were the neighbor as it was part of a public parking lot.

Contract Planner Aggarwal responded affirmatively.

Mr. McDermott stated that the first thing they would do would be to approach staff and discuss what they would do to memorialize an easement to maintain it as is. He stated that they would then proceed down the pathway as outlined in the letter to modify it and bring it up to the standards needed. He concluded that it was not in an easement but off their property since 1971. He understood how that works and what needs to be done with that. He was informed that, as mentioned by Commissioner Kraske, there may be some additional dialogue about hours of operation and they would respectfully request the ability for Eric to come up and fill in any gaps as there were a lot of moving pieces between alcohol inside and outside normal sales and they want to make sure they have a clear picture of their intentions during the discussion so as to not have any contradictions in expectations.

Commissioner Gordon asked if the "evil" plastic to-go bags are in use.

Mr. Moxley stated that they are paper to go bags.

Commissioner Gordon assumed those were recyclable.

Mr. Moxley assumed that they are but he did not know, adding that they were brown paper bags.

Commissioner Gordon asked if the food containers were single use or reusable.

Mr. Moxley stated that the majority was wrapped in paper but there are some items of which he does not know the recyclable status. He stated that there was a power bowl that comes in a plastic container and he wasn't sure if it was single use or recyclable.

Commissioner Gordon referred to the lids to the cups.

Mr. Moxley stated that the lids to the cups were recyclable, adding that both the cups and lids were changed. He stated that the straws were now biodegradable.

Commissioner Rubinstein referred to having separate recyclable and compostable trash containers inside the store.

Mr. McDermott stated that they will be putting that in with their remodel.

Chair Campbell referred to the gangplank to access the outside window and apologized if it was already in the plan, but he asked if that was going to be constructed or does it already exist.

Mr. Moxley stated that it already exists.

Chair Campbell stated that he has had some reports from our finest teens who tried to use it and couldn't find it and they set off the alarms in the back trying to get to the outside patio.

Mr. Moxley stated that it runs along the north side of the building along the windows.

Chair Campbell concluded that it was open and available.

Mr. Moxley responded affirmatively.

Chair Campbell referred to the discussion about plastic utensils and changing policy, and asked, in a hypothetical action plan from them if they wanted to go to the franchisor and request that they change their policy, how does it work.

Mr. Moxley stated that it was Taco Bell.

Chair Campbell concluded that they will not give them authorization unless they get it changed, and he asked how it works and what policies would prevent or not prevent them from taking action on this.

Mr. Moxley referred to the supply chain, and the franchisor buys supplies for 7,500 restaurants. He stated that to change anything on a dime would never happen. He stated that it was work with both the franchisees and the franchisors talking about how to come up with solutions that will work for the entirety of the system. He stated that it was a long arduous process to change.

Chair Campbell stated that he had a general understanding of the franchisor and franchisee relationships and they are huge. He asked, as a franchisee, what the mechanism for even making the request.

Mr. Moxley stated that he was a former Yum employee [the corporate parent of Taco Bell] and he has the red phone directly to people and he has made phone calls. He stated that was how they were able to get the permission to pull back their cutlery, change the plastic cups, immediately change to biodegradable straws, and they called the purchasing department, QA department and it goes through a long process of discussion. He stated that, if there are things that can be changed quickly that work for portions of the system, they will grant those things, such as the straws. They granted that for them because there were other communities that had already mandated the change of straws and the supply chain had already been vetted, and they just had to get that supply into their distribution center. He stated that the things without a large magnitude are able to be changed much quicker but some items that the 7,000 chains use and the supply chain has already been purchased and is in the inventory and the vetting of a new product to put it into use with which many people are involved, there was a large amount of testing to make sure that the consumer is safe and the products will hold up and represent both the brand and franchisee well.

Chair Campbell commented that he can probably see where the Commissioners are headed and things won't change unless the franchisor is convinced to change things and will never change if no one tells them no or they make a pilot program where there is some movement. He referred to when he was in a planning and zoning attorney in Arizona and McDonald's was going to go into Sedona and the town Council stated that they have to have a green sign. He stated that the franchisee went nuts stating that they had to have golden arches, but they ended up with green arches. He thought there may be a way to do this. He urged him to think about a pilot program they could do get at the issue and we could be the first.

Mr. Moxley stated that the things he can commit to, which he wasn't sure was part of the use permit portion of what they were discussing or deciding upon, was to continue to have those discussions in honoring the commitments such as he has made to the Coastal Coalition and continue working with Lynn Adams and her team and going to bat with the franchisor. He can't make promises of what the franchisor is going to say that they can and cannot do.

Commissioner Rubinstein stated that they didn't understand the process of the franchisee/franchisor relationship, but from a layman's perspective they can assume there can be a carve out for forks, where the franchisee could purchase their own forks. He didn't know if that was true or not.

Mr. Moxley stated that it was not true. He stated that the franchise agreement between the franchisor and franchisee, with Taco Bell which is the one he was most versed in was iron clad and there were a list of things they can use and they were held accountable to that.

Commissioner Rubinstein referred to the meeting they had a few weeks ago, and asked what was being discussed on the corporate level. He pointed out that Starbucks has taken the lead in the industry and he asked if Taco Bell was responding to local ordinances that come up or were they thinking of transitioning to more sustainable and biodegradable use.

Mr. Moxley stated that Taco Bell was taking the approach, from what they have been told, to not having a knee jerk reaction and change to go along with what others have done or what municipalities state they have to do and are looking at what they do to solve the problem of single use plastic globally within the brand.

Commissioner Rubinstein thought it was good that it was part of the discussion corporate wide.

Mr. Moxley added that they were not aware of all the discussions they have internally but that was stated to the entire franchise community last week.

Mr. McDermott stated that he wanted to clarify a couple of things to make sure they understand the perspective of the Commission and staff, deferring to the City Attorney on what the application was requesting and how it ties back into this discussion and if they really relate. He stated that the expectation and goal of creating this spark was admirable but he questioned whether one location was enough and asked if the city looked at mandating a city wide mandate for every restaurant that comes in to do this. He stated that they are not just the guinea pigs because of their request to allow them to dine outdoors with beverages but if it was a citywide issue they have the opportunity to make a bigger mark than just one Taco Bell that will move much slower because of the ship that Eric has to turn with paddles instead of an engine. He stated that they would like to focus on what the use permit was. He would defer 100% to the city's attorney but he wanted to be sure they were turning the boat the right way and the way it can actually happen.

Chair Campbell agreed that he would like the City Attorney to chime in.

Asst. City Attorney Bazzano introduced herself, and reminded the Commission of what was aptly put in the staff report on page 11 that the condition must bear a rational nexus to the reason for requiring the permit and must also be roughly proportional to the impact of the development project. She stated that whatever conditions the Commission imposes has to have a nexus to the permit sought, and her concern that some sort of condition relating to food service ware may not meet that standard and they would need to evaluate that. She also pointed out that food service ware is already addressed in the Municipal Code and there are already regulations in place for restaurants within the city relating to food service ware. She understood that Council will be considering amendments to that regulation shortly but there were already regulations in the Municipal Code currently relating to food service ware by restaurants.

Commissioner Kraske referred to design, mentioning that they removed the willow trees in the front of the property along the parking lot, and he asked if they had any plans to revegetate that area or leave it as is.

Mr. Moxley stated that the plan was to resurface the entirety of the parking lot, adding that he was not familiar with what a willow tree is, but he stated that there will be landscaping done along with the remodel to make sure the property looks like a world famous Taco Bell.

Chair Campbell opened up the public hearing.

Tygarjas Bigstyeck, Pacifica, stated that he heard the city attorney mention the term nexus and he wanted to jump on the bandwagon. He stated that approximately ten years ago, his mentor and predecessor at his business died of non-alcohol related liver cancer, and he did research into why so many people he knows and loves were dying of cancer. He stated that the obvious thing that occurred to him was that the petroleum industry which creates plastic and byproducts of plastic were dumping poison into the atmosphere, water, soil, food system and he thought plastic was a huge chunk of where all that cancer was coming from. He also mentioned the omega 3 found in fish and you eat fish to offset the cancer and fish are nibbling on the plastics etc. He stated that intoxicated persons don't necessarily make the best judgment and if you have a bunch of

intoxicated persons on an outside patio they may not be able to make it into a garbage can and having compostable items ready to go means that any compostable items tossed upon the beaches and get swept out into our oceans will not proliferate the cancer of his concern. He thought that would be a possible nexus from that perspective. He thanked them for ardently talking about plastics, adding that he hadn't planned to bring it up but was more interested in the trash thing. He stated that at the last Council meeting there was discussion about whether there were trash cans being taken away from Taco Bell as they were remodeling and he suggested that they make sure there are ample trash and recycling receptacles available and none be taken away there or any nearby location. He stated that he had a nostalgic moment as he has lived in Pacifica his entire life and that was an iconic building and he suggested that it would be pleasant if it maintains its character to whatever extent possible and longtime residents would probably like that incorporated into the plan.

Ian Butler, Pacifica, stated in his dream world that place would not be a Taco Bell but an organic homegrown free range thing, but it was a Taco Bell and will continue to be a Taco Bell. He stated that the idea of allowing them to have alcohol is a good idea as it adds to the draw the city has. He stated that we already have the coolest Taco Bell in the country and to have a drink on that deck would be a wonderful place to be. He stated that he wasn't sure if the deck would be where it is allowed but he thought it should be as that would be where he would want to have a beverage. He thought the ideas Lynn Adams had for the trash and recyclability were great and using this as an opportunity for Taco Bell to take it more seriously was also wonderful. He was all for the plan and he hoped they let it go through as easily as possible.

Mr. Moxley stated that he appreciates the endorsement. He referred to the trash issues, mentioning that there is a condition that they not remove the trash receptacles placed on site with two additional receptacles in the back and two in front of the building and now three in the middle of the parking lot and one on the easement to the north side with no plans to remove them which he thought were in the conditions.

Chair Campbell closed the public hearing.

Vice Chair Clifford stated that he did not want to delete condition #10 as the barrier was proposed to be made of Plexiglas and they were talking about three feet wide. He stated that there will not be lost views because it was going to be made out of Plexiglas. He liked it and suggested it originally and wants to keep it as opposed to what the applicant suggested. He liked the way they had the hours of operation worded and keep it as is. He stated that he can work with changing condition #17 to match up with the wording that the applicant has put forward. He stated that other than that, he liked the project and was in favor of moving ahead.

Chair Campbell thought condition #10 should stay. He stated that if they were talking about everything being compostable if it blew on the beach he would change his mind, but since that was not the case it should stay. He thought they could revisit it later if national policy changes on the Taco Bell side. On condition #14, he was fine with what Taco Bell proposed but was open to comment on that. On condition #17, he was amenable to Taco Bell's change and otherwise was in support of the project.

Commissioner Gordon referred to Commission seeking changes in terms of the biodegradability or compostability of cutlery, cups, etc. He mentioned the City Attorney raising the issue of nexus and he would like to address it directly. He didn't think it was a tough connection to make. He

stated that, if they think about the scope requested, it was to serve alcohol on the deck of the only restaurant in Pacifica situated on a beach. He stated that it was a windy area and he could see that granting the permit will result in increased usage of that outdoor deck for not only drinking beer but eating food with it. He thought it was common sense that, if you have people outside a restaurant situated on a beach, you would want the beer cups to be as close to biodegradable as possible, and he thought that, given the location being outdoors, there was a lot of wind on the beach and the possibility of things blowing on the beach, it made a lot of sense to have the means of drinking and eating on the deck being as environmentally friendly as possible. He stated that, regarding nexus, he thought the argument could be made. He mentioned his approval of the applicant's efforts in making changes voluntarily, but also saw it as a great opportunity to push, as they were granting a benefit to the franchisee, to ask something in return. He thought the details can be worked out but he felt there was a lot of opportunity to request that they move toward more compostable material, biodegradable cutlery, compostable cups, and recyclable beer cups. He then asked if there was a discussion of having an annual review or having them come back in 12 months to evaluate the conditions. He would be in favor of voting for the application that there was a condition that laid out some requirements that needed to be met by the time the annual review came up and would give the franchisee motivation. He understood it takes a long time to move that ship, but he thought 12 months was plenty of time to check out the supply chains. He stated that other restaurants are doing it all over the country and he didn't think it was that much of a hardship. He was in favor of a condition that spelled out more clearly the goals they were discussing and link it to something they would look at during the annual review. He welcomed any comment by Counsel.

Asst. City Attorney Bazzano stated that the use permit is for the use of the outdoor seating area. She agreed with the concern that related to the use permit would be trash and excess litter in the area. She stated that the conditions imposed could reasonably relate to that concern but she thought the difficulty was finding the rough proportionality of that rational nexus with food service ware as the overriding concern was trash and litter on the beach and that would be addressed appropriately through the conditions. She added that food service ware and the compostability of food service ware is already addressed in the Municipal Code regulations, with requirements already placed on the restaurant relating to what types of food service ware can be used. She stated that the nexus would be difficult to make between the type of food service ware being utilized and the applicant's request to use the outdoor area for dining purposes.

Commissioner Gordon asked if she was saying that they were prohibited from addressing an issue that has already been addressed in the Municipal Code and they were not able to go any further than that.

Asst. City Attorney Bazzano stated that what she was saying that the issue has already been addressed by the Municipal Code.

Commissioner Gordon concluded that they were not able to address it here.

Asst. City Attorney Bazzano stated that the applicant was already obliged to comply with the language in the Municipal Code. She reiterated that there was no need to place additional burdens on the applicant because he is already obliged to comply with the Municipal Code.

Commissioner Gordon stated that he was not aware of what was in the Municipal Code.

Asst. City Attorney Bazzano stated that it was in Section 6-5.401 and she stated that she could read it if he would like that.

Commissioner Gordon appreciated it if she would.

Asst. City Attorney Bazzano then read that section of the Municipal Code.

Commissioner Gordon appreciated the reading, then asked if she was saying that what he was trying to get them to do was already required in the Municipal Code.

Asst. City Attorney Bazzano thought so.

Commissioner Gordon stated that he listened closely and was trying to get a sense of whether there were teeth there or was it do the best you can and they understand or is it that they must do it.

Asst. City Attorney Bazzano stated that it does require that all food vendors using disposable food service ware shall use biodegradable, compostable, reusable or recyclable food service ware and food service ware includes cups, lids, straws, etc. She stated that it was an issue that Council considered at a couple of work sessions and the direction from Council was to bring back an amendment to the section but that has not yet come before Council so the section may change in the near future.

Commissioner Gordon asked if she knew the nature of the amendment being considered.

Asst. City Attorney Bazzano stated that the direction from Council was to make it stricter in its type of enforcement in its application.

Commissioner Gordon stated that it was a good point she was raising.

Asst. City Attorney Bazzano stated that they wanted to model after the Santa Monica ordinance which was fairly strict.

Commissioner Gordon thought that was great and in a sense she was right. What he was trying to get them to do was already being required of them under the Municipal Code and it will get stronger.

Asst. City Attorney Bazzano stated that they will be subject to further regulations in the future.

Chair Campbell thought that was great. He was going to make the suggestion that, if they didn't do something like that, they would require the Plexiglas to surround the whole outside patio if after a year the trash was too much but maybe they don't need it.

Commissioner Rubinstein stated that he would be comfortable proceeding with the following conditions, leaving #10 the way it is, #11 adding banners or temporary signage to the permanent signage. He stated that considering the applicant's inability to make changes to the biodegradable cutlery and whether there was a nexus or not, he was comfortable limiting the alcohol service hours on the outdoor deck to 10:00 am to 10:00 pm, seven days a week, which he thought was reasonable, adding that it could change in the future if things change. He was open

to discussion about that, but making it simple and limited made sense outdoors. He stated that no one needs to be drinking beer at 7 a.m. on the beach, and 10:00 seems fine on the weekend, stating that was regarding condition #14. With condition #17, they were in agreement that it can remain as the applicant suggests. He didn't have any further comment on the biodegradable issue as he didn't think there was anything they could do now to enforce that.

Chair Campbell stated that he was on record for supporting a midnight hour at the last meeting and he will stick with that.

Commissioner Kraske stated that he would like to see the operation hours from 10:00 am to 10:00 pm. He stated that, since they weren't willing to pursue the biodegradable products route, those hours of operation was fair.

Commissioner Rubinstein clarified that it was 10:00 am to 10:00 pm for alcohol service on the deck.

Commissioner Nibbelin referred to the hours of operation. He was concerned about the notion of operation to 2:00 in the morning which he thought was excessive. He has a problem with midnight but if last call was 11:30 pm, midnight would be acceptable to him. He thought 2:00 am was too late but he understood that was not a theoretical possibility. He thought 10:00 pm may be a little early for at least weekends but could see 10:00 pm during the week making sense. He appreciated the conversation between Commissioner Gordon and others and the city attorney. He would be inclined to defer to the city attorney's analysis with respect to nexus, recognizing that a case can be made to the contrary. He thought, in some ways, it was better to have people eating on the deck than eating on the beach, and if they didn't have the deck, there was nothing they could do to stop people from taking food and eating on the beach and littering there. Having the deck available keeps the trash closer to the restaurant which might be a win. He was fine with leaving condition #10 in. He referred to a suggested edit to condition #11 and he was fine with that. He was fine with the proposed change to condition #14 as they have to figure out what they want to do with respect to the operating hours and the request on condition #17, he could go whatever way people care to go, and he was in support of the project.

Vice Chair Clifford referred to the hours of alcohol service in the outdoor seating area, he thought Friday and Saturday from 7:00 a.m. to 11:30 p.m. sounds fine to him. He stated that there might be someone who works night and comes in at 7:00 in the morning and a beer was perfectly appropriate for them, adding that he used to work nights and he knows. He stated that he didn't have a problem with the hours as conditioned already and didn't see a real need to change them.

Chair Campbell also agreed with the hours as proposed.

Commissioner Gordon referred to the hours proposed, stating he was confused and asked what they were now.

Contract Planner Aggarwal stated that the hours of operation are 7:00 to 10:30 p.m., Sunday through Thursday and 7:00 am to midnight on Friday and Saturday and the hours of alcohol service are last call a half hour before closing time.

Commissioner Gordon stated he was okay with those hours. He asked staff regarding recyclable cutlery. He stated that there was already a law in the books that says, if you're a restaurant in

Pacifica and you are serving food, your cutlery must be recyclable at the very least, including cups. He asked if that was accurate.

Asst. City Attorney Bazzano thought the code was required for take away but not for interior dining. She stated that it says all food vendors were strongly encouraged to use reusable food service ware in place of using disposable food service ware for all food served on premises.

Commissioner Gordon thought there was a requirement for to go, but an encouragement otherwise. He asked where Taco Bell falls, as on premises or to go.

Asst. City Attorney Bazzano stated that it would be included in the definition of food vendor and for food service ware given to someone taking it off premises and they would have to comply with the Municipal Code language related to disposable food service ware.

Commissioner Gordon understood, adding that it sounded like the franchisee was saying that they don't comply in terms of beer cups but beer cups by definition would be not to-go so he would drop that item. He stated that in terms of cutlery to go orders, they were not providing that, and he asked what the next step was for the city to enforce that.

Asst. City Attorney Bazzano stated that primarily the city would want to educate the restaurant about the language in the Municipal Code. She thought, in listening to the previous Council work sessions, there may be a lot of restaurants within Pacifica that are not aware of this Municipal Code language and the city's first step would be to educate the restaurant regarding the language in the Municipal Code. She explained that the city manager was entitled to enforce the provisions of the Municipal Code if that education does not succeed in having the restaurant comply with the provisions of the Municipal Code.

Commissioner Kraske asked if the annual review was still a condition.

Planning Director Wehrmeister stated it was condition #19.

Chair Campbell thought, if trash becomes a significant issue when the wind is blowing and stuff is blowing on the beach, they look at it in a year. He thought Plexiglas could go up on more portions of the outside patio. He stated that there were no more lights and he asked what the Commission wanted to do next.

Commissioner Rubinstein stated that he would make a motion with the restricted hours and if they don't want that, he suggested that someone else make the motion.

Commissioner Nibbelin suggested he make a motion and see if he gets a second and they can see what happens.

Commissioner Rubinstein moved to changes in the conditions of approval to No. 10 staying the same, No. 11 includes temporary signage or banners, No. 14 would be outdoor service from 10 a.m. to 10 p.m. seven days a week and No. 17 as amended by the applicant.

Asst. City Attorney Bazzano stated that before a vote is taken on the item, she had some concerns to the amendment to condition #11. She asked, just for clarification, what they were asking the condition be amended to.

Commissioner Rubinstein explained permanent signs and banners, temporary signage such as typical Taco Bell type printed material advertising alcohol outside the restaurant.

Asst. City Attorney Bazzano thanked him for the clarification.

Commissioner Kraske seconded the motion.

The motion carried **5-1**.

Ayes: Commissioners Kraske, Gordon, Clifford,
Rubinstein and Chair Campbell

Noes: Commissioner Nibbelin

Chair Campbell declared that anyone aggrieved by the action of the Planning Commission has ten (10) calendar days to appeal the decision in writing to the City Council.

NEW PUBLIC HEARINGS:

**2. PSD-822-17
UP-87-17**

File No. 2017-032 – Site Development Permit PSD-822-17 and Use Permit UP-87-17 for construction of an approximately 5,900 square foot (s.f.) single-family residence on an 86,940 s.f. (1.99 acres) vacant lot at 4096 Fassler Avenue (APN 022-150-030), also known as Lot D of the Harmony@1 Subdivision. Recommended CEQA Action: Development of the lot was reviewed in the “Harmony @ 1 Roberts Road Subdivision Final Environmental Impact Report,” certified by the Planning Commission on October 15, 2007, and certified by the City Council on November 13, 2007.

Sr. Planner Murdock stated that Contract Planner Aggarwal helped him in preparation of this project. He then presented staff report.

Planning Director Wehrmeister asked if they could take a break to allow Commissioner Stegink to have the opportunity to hear the entire deliberation. She thought it was fine that he missed the staff report which was a summary of the written report.

Commissioner Rubinstein stated that he will be there in five minutes.

Chair Campbell called a 5-minute break then reconvened the meeting.

Commissioner Stegink acknowledged he is now present and disclosed that he discussed this project with the applicant and Javier Chavarria.

Vice Chair Clifford asked if the Planning Commission can make changes to conditions #2 and 4 that only affect Lot 2 as he didn't want to set any precedence for the rest of the project.

Sr. Planner Murdock thought they can as they imposed those conditions after a public hearing and after the public hearing in this case could grant an amendment to those conditions applicable only to this lot.

Vice Chair Clifford asked about the HPD parking requirements mentioning covered and uncovered and he asked if that was the maximum or minimum. He stated he saw it interpreted as the minimum but he wasn't clear that it was the case.

Sr. Planner Murdock stated that the code was silent and didn't indicate maximum or minimum, adding that typically these standards are provided as minimum and that was how staff interpreted that provision. He stated that the Commission may reach a different conclusion in interpreting the code.

Vice Chair Clifford stated that he was thinking of HPD meaning Hillside Preservation District and putting more parking is counter intuitive to preserving the hillside. He asked how large the turf-covered area was, i.e., how many square feet. He mentioned that they were all looking for the information and he added that in the staff report he saw it only as a percentage of 17+ of the entire lot and he didn't know what it calculated to.

Sr. Planner Murdock didn't think they had the figure available for the turf area alone, adding that they had a figure for impervious surface limited to 9.2% of the site meaning the balance of the site would be pervious surface including landscaping and natural vegetation and the turf would be roughly 90% of the site that is pervious but as far as the proportion of that which is comprised by turf, they didn't have that figure.

Vice Chair Clifford stated that the reason he asked was that, in the 2014 project, the turf had to be less than 2,000 square feet and it would be good to know how much turf is part of this project. He then asked if any vehicles were parked in the cul-de-sac during the September 19 test for fire safety.

Sr. Planner Murdock responded that they were not.

Vice Chair Clifford asked how painting the curbs red made it any easier for a ladder truck to get through there than not painting them as it was already having a difficult time getting through there based on the staff report.

Sr. Planner Murdock stated his understanding of the Fire Department's concerns was that, by painting the curbs red and installing no parking signage in accordance with the Fire Code, it would provide a legally enforceable mechanism for the Fire Department to ensure that vehicles are not parked there, thus further narrowing the cul-de-sac and rendering it un-maneuverable entirely. He stated that the apparatus was able to make it around the cul-de-sac with great difficulty without any cars parked and, by having no parking signage properly installed and providing an enforceable mechanism, it would serve to prevent parking in the future.

Vice Chair Clifford asked why they didn't require the 60 foot wide or 120 foot hammerhead with two acres of land and why it isn't on the table.

Sr. Planner Murdock stated that he wasn't able to find any information in the record of the Harmony @ One project review and approval that indicated how a cul-de-sac narrower than 96 feet in diameter which would be required by the Fire Code was approved for the project. He stated that they are reviewing the circumstances as they exist today and, being narrower than 96 feet in diameter, they are suggesting the condition of approval to prohibit parking to ensure that the limited radius there is preserved.

Vice Chair Clifford asked if they could condition it to have a Y or a hammerhead in addition to painting the curbs red.

Sr. Planner Murdock stated that it was difficult for him to remark on the feasibility of constructing that as there are not only legal considerations about who owns what property given that the subdivision is approved and only the cul-de-sac area was reserved for common use. He stated that the property touching it on all sides of the cul-de-sac is now privately owned by different owners and unless the design was able to be accommodated entirely on the project site, he wasn't sure it was a legally enforceable requirement. He also was not sure if sufficient HPD coverage would remain to construct such a large fire apparatus turnaround at this stage without significantly revising the project to reduce coverage and transfer it to the turnaround.

Vice Chair Clifford asked what the minimum height of a pool barrier as it was mentioned to build it to the minimum height but no mention what that height is.

Sr. Planner Murdock stated that, while not 100% certain, he believed it was five feet with additional specific standards on steps that may be at the bottom of it, but a five foot clear height so a child would not be able to climb over it.

Vice Chair Clifford asked if they can get a list of incomplete subdivision improvements. He stated that it said it would be approved with Engineering okaying all the additional unfinished improvements actually made but he didn't know what the improvements are.

Sr. Planner Murdock stated those were an administration matter for staff to be concerned with to ensure completion. He stated that he has a "punch list" prepared by Engineering and he would be happy to provide it if the commissioners pass it along for reference. He explained that it concerns various issues such as subdivision monuments related to the survey, slurry sealing streets, verifying storm water basin calculations, etc., which are all very technical engineering type of improvements that remain.

Vice Chair Clifford asked if it had anything to do with the trees that were supposed to be planted.

Sr. Planner Murdock stated that there were a small number of non-technical types of subdivision improvements but they were not a part of the subdivision improvement agreement because of their non-engineering type improvements and were general conditions of approval type requirements that city staff and Planning were ensuring.

Vice Chair Clifford asked if those will be on the table in terms of being able to finalize the project, clarifying that it specified that Engineering has to finalize their stuff. He asked if Planning will have to finalize their items also.

Sr. Planner Murdock responded affirmatively, explaining that they were in contact with the representative for the property owner who was continuing in the role as the subdivider to insure those improvements are completed. He added that they have received a landscape plan within the last 2-3 weeks and they were making slow progress at working towards completion of those items.

Commissioner Nibbelin asked about his understanding of the parties respective positions with respect to whether Lot D was or was not a part of the Harmony @ One final subdivision map or if it makes any difference. He understood from looking at the material that it was possible that they will get some testimony at this time that Lot D was not part of the subdivision, adding that he saw staff's layout why it was that Lot D was part of the Harmony @ One subdivision. He thought it was more relevant to the extent to which this particular lot is controlled by the conditions of approval rather whether it is or is not part of the subdivision per se. He stated that there was a letter in packet page 228 from an attorney with the Duane Morris law firm that deals in land use matters which makes some claims regarding the department's past practice or position with respect to the lot. He stated that it also makes some assertions that the city's position was directly contrary to the maps in positions they have taken in writing in the past regarding the property. He looked at that and the fact that perhaps Mr. Chavarria will speak to his understanding as to whether this particular lot is part of the subdivision. He also stated that on looking at conditions of approval on packet page 257, it appears to him on looking at the articulation of various permits

granted at that time that it doesn't appear critical one way or the other whether they determine that this particular lot was or wasn't part of the subdivision but it appears clear that the conditions of approval were intended to apply to the permits at issue, particularly the use permit and site development permit. He concluded that he was wondering staff's reflections on that and whether it was critical that they make a determination that this lot is or is not part of the subdivision if it appears clear that the conditions of approval were intended to apply to the lot.

Sr. Planner Murdock stated that he agrees with him that the operative question is whether or not the conditions of approval which would require the Commission to grant an amendment to those conditions to approve the project as proposed are truly applicable in the Commission's opinion. He felt it was important to clarify whether this is a lot that is part of the subdivision or not. He thought they have convincing evidence on their own that it is a part, including the legal description of the lot itself, referencing Lot D of the Harmony @ One subdivision map. He stated that staff would not insist on a resolution by the Commission as staff feels confident in its own resolution of that question, but the point is whether the conditions of approval are applicable which would prevent this property from developing in the way this applicant desired.

Commissioner Nibbelin stated that his point was that it appears the conditions of approval from 2007 were intended to apply to the extent relevant to Lot D whether or not it is part of the subdivision. He stated that he preferred not to spend an extended period of time arguing over an issue that might or might not make any difference as to whether the conditions of approval apply.

Sr. Planner Murdock understood, adding that they sought to include that information in the record in response to the correspondence they had with the attorney from Duane Morris, Denis Shanagher, as it was a very important supporting fact to suggest that the conditions of approval do apply because if it is part of the subdivision it makes that analytical leap simpler to believe that the conditions of approval would rightly apply, but whether or not the project site is or is not part of the Harmony @ One subdivision, he thought there was ample evidence that the conditions of approval are applicable.

Commissioner Nibbelin noted on page 257, it was specific that the permits referenced in the first full paragraph after the salutation to Stuart and Tait are listed including a use permit and site development permit and the next sentence notes that the permits were approved subject to several conditions listed. He stated that he wasn't concerned about whether the parcel was or wasn't part of the subdivision as it was very clear that these conditions apply to those permits.

Sr. Planner Murdock agreed.

Commissioner Stegink asked if they were to make a decision based on the staff report recommendation or federal and California evidence rules.

Asst. City Attorney Bazzano stated that she was not clear which federal evidence rules which he is citing.

Commissioner Stegink suggested they go with California in terms of recorded documents purporting to affect interests in land, which he thought was an exception to this evidence.

Asst. City Attorney Bazzano stated that the formal rules of evidence don't necessarily apply to these hearings. She stated that staff has made a recommendation based on its review of the

relative documents and the history of the project. She stated that, with guidance from Counsel the Planning Commission can consider that recommendation but can deliberate and choose to go a different route than staff's recommendation.

Commissioner Stegink understood, concluding that as the document stands now, it would be the recorded document that was supreme.

Asst. City Attorney Bazzano stated that two of the documents on which staff is relying is the final subdivision map which was recorded in addition to the conditions of approval which was also recorded against the title on the property.

Commissioner Stegink asked if they were in conflict. He stated that on packet page 157 that there was clear evidence in the record that the subject site Lot D was part of the Harmony @ One subdivision.

Asst. City Attorney Bazzano agreed, explaining that both the subdivision map and the conditions of approval are recorded against the parcel property.

Aaron Royston, owner, thanked Sr. Planner Murdock for all his hard work the last few months and the Commission for their service to Pacifica. He stated that, before discussion on the project and the issue of Harmony, he was going to talk about the desire he and his wife had to move to Pacifica. They have a growing family and have been in the Bay Area for about six years. They are outdoor enthusiasts who spend most of their weekends in Pacifica hiking with their dog or surfing and came to the realization that they should live here as it was a perfect place to raise their family and then embarked on this journey, mentioning the importance for them to live in an environmentally conscious way. He stated that he was on the board of the San Francisco Bay Wildlife Society, a non-profit that supports the US Fish and Wildlife Service in the Bay Area, and was a big reason for picking their architect, Ray Johnston, who is experienced with working in coastal communities throughout the northwest, and their design was focused on being sustainable and environmentally friendly and he will let him discuss the project. Referring to the top issue with Harmony, when they invested in the lot they did a huge amount of legal review and spoke to the former owners whom they will hear from at this time as well as the Harmony developers. He stated that they bought it as a private lot and not from the Harmony developer and part of their confidence was in knowing they weren't part of the conditions of approval in the 2014 and 2007 approvals. He stated that the conditions of approval that were applied to the lot were entirely different than Harmony and listed out entirely different, and there was a robust discussion about whether this approval set precedent for Harmony and the Commission at that time decided that this was not part of Harmony and didn't set any precedent for any other approvals at Harmony. He stated that they take issue with the city's stance in that specific issue, but were very appreciative of Sr. Planner Murdock's recommendation to support the project with certain amendments. He stated that, on the fencing, they were happy to comply, adding that there were ways to work around their security concerns that were visually friendly.

Sylvia Charles, owner, added that they both grew up in coastal communities which was a big draw for them for Pacifica. She stated that she was a physician who owns a health food company based out of San Mateo and they were there for the long haul and want to be in this home permanently. She appreciated their time.

Ray Johnston, architect, presented a brief piece on the application for this property adjacent to the Harmony subdivision. He pointed out the specific location of the two-acre project which was bordered by a riparian corridor on three sides. He stated that they were planning a robust landscape program. He mentioned the permeable paving and some of the specifics of the proposed house which was terraced to minimize its impact on the land below, and maintaining lack of view of the house from Fassler Drive, minimal visibility on Linda Mar, with the footprint of the home at 6.1% of the site and they will preserve over 53% of the site in native conditions. He stated that 16% of the site will be replanted and restored. He stated that there was a lot of fill located on the site with a lot of opportunistic plants and they plan to restore the native environment including providing a transition between that and play areas for their child. They will build to LEED Gold standard and were anxious for this hearing to define the details of that. He showed them different views of the project, as well as views from various areas of Pacifica. He stated that they have great opportunities as well as challenges in managing winds, great solar site, etc.

Mr. Royston stated that Mr. Johnston and Mr. Chavarria were available to answer any questions.

Vice Chair Clifford referred to mention that the turf was 6,000 square feet.

Mr. Johnston stated that it was around 7% of the site. He stated that they will probably seed plant that rather than turf.

Vice Chair Clifford asked if it will have an irrigation system using gray water.

Mr. Johnston stated that they haven't determined that yet but was definitely on the plate with the LEED Gold standard. He stated that they are bio-filtrating all the storm water runoff now from the relatively limited impervious surfaces.

Vice Chair Clifford referred to the seed stock and asked how much pesticide, fertilizer, etc. would be required.

Mr. Johnston stated as little as possible but they haven't done the technical design yet.

Vice Chair Clifford gets that there is a lot of passive solar and he wasn't sure how they were using the wind, and asked if they have any plans for an active solar system.

Mr. Johnston stated that one of the photographs was a solar thermal system that they have employed in a number of places which is very effective, and photovoltaic as well.

Vice Chair Clifford asked if both of them will be part of the actual plan.

Mr. Johnston stated that was their current plan and they were waiting for this hearing to do the technical design of those systems. They were considering ground source heat pumps as well and a variety of systems to make the house highly sustainable.

Vice Chair Clifford asked what the main source of heat was for the house.

Mr. Johnston stated that it was radiant in slab heat.

Vice Chair Clifford asked if it was electric or water.

Mr. Johnston stated that the solar thermal works well with radiant fluid and photovoltaic works well with an electric system. He stated that photovoltaic was improving and getting better all the time and they were seeing a number of projects lean that way as it was a better way to use an energy source that was harvested right on the site.

Vice Chair Clifford stated that was one of the things he will be looking for. He asked how the pool and spa are heated.

Mr. Johnston stated that they were doing photovoltaic now on one project for electric heat for a pool, and they have recently done solar thermal on another project.

Vice Chair Clifford asked if it will be one or the other or a combination of both.

Mr. Johnston thought it will not be both, but will need some heat purchased from off site, but hopefully a minimal amount and they can get most of the energy from one of those two sources. He stated that a ground source heat pump can also be functional that way.

Vice Chair Clifford referred to cooling. He stated that they have a lot of passive solar and he assumed that there will be times on long bright sunny days and they will need some kind of cooling.

Mr. Johnston agreed that they will need a little bit of cooling and they have been doing energy recovery ventilator and fluid based cooling system rather than forced air.

Vice Chair Clifford assumed it was a possibility of capturing some of the heat and reusing it later to heat the pool.

Mr. Johnston agreed. He stated that the slab helps a lot on grade rather than a crawl space and they anticipate that being a little thicker than it would have to be structurally and having insulation underneath it. He stated that will be a heat sink that will stabilize temperature. He stated that they have a couple of featured concrete walls that they are looking at using as well, but acknowledging that it is harder to do an interior concrete wall and get it to act as a heat sink.

Commissioner Stegink stated that it was a gigantic house but was also a beautiful house. He asked if their deck matched the printouts they were given. He asked if he had 13 more slides he was going to roll through.

Mr. Johnston thought it might be.

Commissioner Stegink asked Chair if there was a precedent to give the applicant more time. He stated that it was an extremely contentious project for 11 years.

Chair Campbell thought they could.

Mr. Johnston then continued the slide presentation of the project. He stated that they were using dark material so it doesn't pop out much and their goal was that it not be visible from Fassler. He pointed out the riparian areas and restored areas with a lawn around the house and pool. He

mentioned a braided berm along an edge that will contribute to their privacy from people walking in the riparian corridor and allow them to not export soil. He showed slides with all the riparian, landscaping, etc., as well as roofing specifics, landscaping light fixtures,

Commissioner Kraske stated that he liked the project and supported it with all the high environmental standards being built. He mentioned the fence and a condition of approval to find an alternative to the metal fencing. He asked what kind of material they were using.

Sr. Planner Murdock stated that the condition of approval uses the example of a wooden split rail fence and there may be 4-6 inch circular wood with open type fencing.

Commissioner Kraske asked how the applicant feels about that suggestion.

Mr. Royston stated that they were very flexible, and the only thing going through their minds was security but it was a very safe neighborhood and that was a big draw. He stated that they were on the back side of it and adjacent to what could be accessed via Fassler and they were comfortable with vegetation and anything less imposing.

Chair Campbell asked if the location of the house was in the same location as approved in 2007.

Mr. Johnston stated that it was a little deeper into the site from the cul-de-sac, and he thought the 2007 house was rotated so the living room came closer to the edge of the bluffs. He thought, if anything, it was pulled away from the two public exposure areas, the cul-de-sac and the slope down to Linda Mar.

Commissioner Stegink stated that the applicant's architect referred to it as the landscape pallet but it was a slide called landscape and surroundings, something he was unfamiliar with, and he asked if the trees listed were compatible with replacing heritage trees.

Planning Director Wehrmeister stated that she was not familiar with red bud but she was with the other ones.

Commissioner Stegink stated that this was a beautiful home, mentioning that they had a couple of beautiful homes sketched out at one time. He asked if he would entertain a completion bond for this project.

Mr. Royston asked him to clarify what he meant.

Commissioner Stegink reiterated that he wanted to know if they would entertain a completion bond guaranteeing that they will complete the project.

Mr. Royston stated that they would love to complete the project, but he didn't know what that entails. He did think they would be amenable.

Commissioner Nibbelin stated that another term was performance bond. He stated that they were not free as there was a cost associated and tied to construction and he would be concerned about the nexus or need. He would not be in support of it as a requirement.

Chair Campbell suggested that they can talk about it a bit more in discussion and bring them back up.

Ms. Charles that they anticipated starting as soon as they were able to work with Planning on the building permits. She stated that they were eager to move there, stating that it has been two years since they purchased it and they were ready.

Chair Campbell opened the public hearing.

Javier Chavarria, Pacifica, stated that he was talking as a resident that lives in the community and has been involved in the project from day one. He would love to see these plans approved because they are ready to move to Pacifica, ready to raise their family and be part of our community. He stated that a project of this nature will get things moving in that hill. He stated that there has been a lot of movement with another house that is coming to Planning and his client on that is Pacifica House and he was also eager to move to Pacifica. He stated that as an engineer on the project, he has a lot of the answers to the questions they may have regarding how they got here. He stated that the most important document when they start any type of development is a tentative map. He stated that the tentative map incorporated three different parcels. He stated that his parcel was incorporated on the tentative map only because it had a floating easement and coming across 53 acres to access the property as it was a landlocked piece of land. He stated that, in order to abandon that floating easement and dedicate a new access where the road is, it had to be part of the tentative map. He stated that the signature of the property owner giving authorization for the tentative map was precisely for that redefinition of the access easement into the property. He stated that another important element on any HPD property that is being developed is required by the code to be reclassified as a P-D. He stated that this property was not reclassified as P-D and remained as the original Agricultural/B-5 because it was not seen in that approval process as part of the overall process. He stated that if they have any more questions, he had a lot of answers and history on the project and he will be happy to answer if it is helpful in approving this project.

William Husson, Pacifica, stated that he was the previous owner of the property before they found this couple to become part of the Pacifica community. He stated that there has been a lot of discussion on the adjacency of Lot D to the Harmony @ One environment and he thought the clearest method of visualizing was to look at the video from their last approval meeting that was in the letter then sent to the Planning Department and he didn't know if the Commissioners have been able to read that letter but they outlined not only the video but they talked about it and they said several times that it was not part of the Harmony @ One CC&Rs. He stated that they had to draw the line as mentioned by Mr. Chavarria, and he read the statement from the previous presentation. He clarified that Planning wanted to include Lot D to make sure they got all the benefits of the easements to use the road and utilities and was in line with Mr. Chavarria's statement. He referred to the work he and his wife did in planning the project back in 2007, and what they proposed was not of concern because it was a two-acre agricultural zoned area adjacent to Harmony @ One CC&Rs. He stated that he would be happy to offer any other information they may want.

Chair Campbell closed the public hearing.

Mr. Royston stated that he had no more comments and just thanked them for the consideration.

Commissioner Nibbelin stated that he was satisfied with the staff report and the presentation. He thought it was a very well-conceived project and was in favor of it. He stated that, subject to comments from his colleagues, he was ready to make a motion.

Commissioner Gordon agreed with Commissioner Nibbelin's comments, stating that this was a stunning project. He didn't think they often got projects of this incredible quality, and he stated it was a pleasure to look at. He was in favor of it and appreciated the sensitivity as the house was being built on a view shed and they could have gone higher in the build but didn't and the footprint on the lot was very small. He stated that the LEED Gold standard was awesome and he was strongly in favor of this project. He thought the fence issue got resolved and he was in favor as conditioned.

Chair Campbell stated that he was on the Commission in 2007 when they first looked at this and this project conforms with his understanding of what was going on at the time. He thought the big issue then was moving it back off the ridgeline a little bit and they agreed to and then he thought it has been moved even further. He stated that he remembered the Michelle Kaufman conversations and he thought this home echoes some of those design features and he thought that was interesting. He stated that some of the CC&Rs might not apply but it is a distinction of a difference and they may move forward with approving the plan.

Sr. Planner Murdock thought they could run through the evolution of staff's analysis of the project. He stated that starting from scratch, none of the present staff in the Planning Department participated in the 2007 approval process nor in the 2014 approval process of the second home on this site, and they were obligated to formulate their interpretation of the applicable framework from the written record and supplement it with any clarifying oral communications from public hearings. He stated that, on reviewing the totality of the evidence in the written conditions of approval, the minutes and Environmental Impact Report, and reviewing the meeting record including the comments referenced from prior staff, it weighed in favor of indicating that various Harmony @ One restrictions were applicable to the site. He stated that they didn't disagree that there was conflicting information in the record but they think the written evidence is more convincing than the oral representations and understandings of that era. He stated that they did have disagreements and some question of whether the CC&Rs applicable to the planned development portion may also be applicable to the site. He stated that staff has concluded convincingly that the CC&Rs are not applicable to this property yet various conditions of approval are. They want to make sure the terminology is clear for the record now in 2018 that they do not believe that the CC&R conditions are applicable and certain conditions of approval outlined in the staff report are applicable.

Chair Campbell thought that was right. He remembered the CC&Rs not being an issue and this project was in the milieu of the approval of the entire development. He thought things were a little messy during the public hearings, but he was in favor of approving this project.

Vice Chair Clifford stated that he was also at the 2007 Commission meeting as a commissioner and was not a commissioner at the 2014 project. He was willing to vote for this project as long as he is absolutely certain that any changes they make to the conditions apply only to this project, specifically conditions #2 and 4. He stated that, in terms of the fence, he wants it to be very open fencing as there are wild life corridors there and he didn't want to put up a six-foot tall metal fence that could impede wild life movement. He was happy with the project and felt it was a lovely home and he thought they will be going forward with the lead gold. He stated that he

didn't hear that they were going to get LEED Gold certification but rather would accumulate the points for LEED Gold but not a certificate as he understands the process they are proposing. He was happy with just getting the points. He will be voting in favor of the project with staff's assurance that any changes they make to the conditions do not affect anything else in the Harmony @ One subdivision.

Sr. Planner Murdock referred to his point, and stated that they believe the wording of condition #17 on packet page 199 is currently drafted to narrowly tailor the amendments that are granted, with the sentence on what applies to Lot D and they don't believe it is currently written in a way that would be generally applicable to the rest of the Harmony @ One subdivision.

Asst. City Attorney Bazzano agreed that the language was specific to this project just as the permit application was specific to this particular property.

Vice Chair Clifford thanked them for that clarification.

Chair Campbell thanked Vice Chair Clifford for making that point which he was saying in 2014 and he appreciated that it is in the conditions.

Commissioner Nibbelin moved that the Planning Commission adopts the attached resolution to FIND the project substantially consistent with the "Harmony @ 1 Roberts Road Subdivision Final Environmental Impact Report," certified by the Planning Commission on October 15, 2007, and certified by the City Council on November 13, 2007; and APPROVE Site Development Permit PSD-822-17 and Use Permit UP-87-17 subject to conditions of approval in Exhibit A; and to incorporate all maps and testimony into the record by reference; Commissioner Stegink seconded the motion.

The motion carried **7-0**.

Ayes: Commissioners Kraske, Nibbelin, Gordon, Clifford,
Rubinstein, Stegink and Chair Campbell
Noes: None

Chair Campbell declared that anyone aggrieved by the action of the Planning Commission has ten (10) calendar days to appeal the decision in writing to the City Council.

3. MUP-1-18

File No. 2018-022 – Marijuana Use Permit MUP-1-18 for the Establishment of a Marijuana Retail Operation within an existing 1,486 square foot commercial space at 2110 Palmetto Avenue (APN 016-182-360).
Recommended CEQA Action: Class 1 Categorical Exemption, Section 15301.

Contract Planner Aggarwal presented staff report.

Commissioner Kraske asked if this would be the second and final marijuana operation to be approved in this overlay district.

Contract Planner Aggarwal stated that this was the second of only two in this district.

Commissioner Kraske stated that it will be the final one if approved.

Sr. Planner Murdock stated that they don't want to speculate because the first use permit that was approved was subject to an appeal to City Council and the outcome of that appeal was not known at this time.

Vice Chair Clifford asked if they could give them the reason given for the appeal.

Sr. Planner Murdock stated that there were several reasons listed and it was best to wait for the appeal to be heard before the City Council.

Vice Chair Clifford referred to the sign ordinance and their desire to have no queues out in front of the building, he asked if it was possible to allow them to add one more sign that says "no loitering".

Asst. City Attorney Bazzano stated that regarding loitering specifically, she would never advise a client to add a sign that says no loitering. She stated that she would tie the prohibition more to the actual language in the code since loitering was questioned as unconstitutional. She stated that the city does have a sign ordinance that regulates signage.

Vice Chair Clifford stated that he was looking at how they go about enforcing no queues. He stated that although it is a condition, he asked how they enforce that there be no queues at this business. He stated that they were conditioning it so it doesn't happen but he would like to find a practical way to make that happen.

Sr. Planner Murdock thought Contract Planner Aggarwal can elaborate if necessary but he thought the operation plan for the marijuana use permit prepared by the applicant indicated that they would monitor the situation and ask customers that may inadvertently queue outside to return at a later time when the interior space was less busy.

Contract Planner Aggarwal added that the applicant had proposed to manage the queueing outside and staff imposed a condition that they have to conduct the business entirely within the enclosed premises and there will not be any queueing outside with impediment of the sidewalk. She stated that was the extent of the condition so far.

Chair Campbell referred to packet page 411, stating that staff wrote up evidence to suggest a member of the applicant entity has not complied with provisions of the Pacifica Municipal Code of the marijuana operation tax and he wondered why they have that recounted in it. He asked if it was general background for them.

Sr. Planner Murdock stated that there was a required finding to the effect that there was no information to suggest the operation would violate any provision of the Pacifica Municipal Code but they have evidence that in a prior operation at least one violation of the Municipal Code was allowed to be ongoing and they noted that and reflected the applicant's offer to remedy that violation. He stated that, if remedied as required by the condition of approval, they believe the Commission can make the finding that the operation would not be likely to violate the Municipal Code in the future.

Chair Campbell thanked the police chief for coming. He asked about the previous marijuana retail operation known as Surefyre Collective that was operating in the city but not pursuant to any municipal legal authorization.

Chief Steidle stated that he was correct.

Chair Campbell asked if efforts were made to remedy that situation by the city.

Chief Steidle stated that they were not.

Chair Campbell asked if efforts were made to contact the owner of Surefyre.

Chief Steidle stated that they had contacted the owner and they were aware of the business. He stated that lack of enforcement and not shutting the illegal businesses down at the time was decisions made by previous city administrators.

Chair Campbell asked what the applicant's reaction was when told that they didn't have legal authorization.

Chief Steidle didn't know.

Sr. Planner Murdock stated that subsequent to the city's enactment of marijuana regulations, the Planning Department did contact the various unpermitted operators, including Surefyre dispensary, and they cooperated immediately with the city's request and followed the City's timeline that was requested by the Planning Department to close their operations. He stated that they closed before the dead line.

Commissioner Nibbelin saw the recommended hours of operation by staff were from 9 a.m. to 8 p.m., and he asked if they could remind him of what the hours were for the previous operation they considered a few weeks ago. He thought it was closer to 7 p.m.

Chair Campbell stated it was 6 p.m.

Commissioner Nibbelin acknowledged that it was 6 p.m. and 8 p.m. for delivery. He thought that was a salient fact and he asked if there was a reason why staff was recommending 8 p.m. at this

point when they had expressed 6 p.m. with respect to the other submitted application in this district.

Sr. Planner Murdock stated that the location was different in that this building does not have a resident immediately above the space and he thought there was a potential that noise impacts are less likely to affect a nearby resident and a later hour of operation could be reasonable in this location.

Commissioner Nibbelin thought that made sense. But he still thought the residents were pretty close.

Sr. Planner Murdock stated that they were near but not immediately above as was the case at the other operation.

Commissioner Stegink stated for full disclosure, he has discussed this project with William Fitzpatrick, Alan Wald, Tony Williams, Amos Young, Adam Zollinger, Tim Fitzpatrick, Ian Butler and John Leonardini. He stated that on the previous project staff stated that they were not to consider a potential library bond project at that location and consider it as is. He asked the city attorney if that was the same with this application.

Asst. City Attorney Bazzano asked him to clarify his question.

Commissioner Stegink understood that there was a plan for a November 2019 library bond attempt and he was curious because there were several aspects of that project that looks like what the state would call a youth center that might conflict with this if it was developed after the library occurred. He was curious as to whether they were to look at it as it exists at this moment in time or look at a potential library use and how it might conflict with this location.

Asst. City Attorney Bazzano understood that the potential uses were speculative at this point and she would defer to Sr. Planner Murdock on the details. She stated that at this stage they have to evaluate what was in front of them.

Commissioner Stegink stated that it was a speculative use.

Sr. Planner Murdock stated that the ordinance does specify that those particular uses, K-12 schools, youth centers and day centers should be considered only at the time of permit approval, not speculative future uses.

Asst. City Attorney Bazzano clarified that the schools could move in to the area but at this point as they are evaluating the permit they have to evaluate what was actually in place around the area.

Commissioner Kraske asked where the closest residential unit was to this establishment.

Contract Planner Aggarwal stated that there were three tenant commercial spaces on the first floor and the residential unit is not above this tenant space but the one adjacent to it.

Sr. Planner Murdock mentioned that they can see the façade of the building and the area outlined in the white symbology was the proposed lease space for this operation, noting the open air space

above and the apartment units beginning at the lease space adjacent to the south and specifically no residential use directly above the proposed operation location.

Derrek St. Pierre, on behalf of Lytt LLC, thanked the Commission for staying this late and offering time and consideration as they review the permit and Planning for their hard work. He didn't believe the presentation they were going to give would have been possible without their input. He stated that they were also looking forward to making this presentation for quite some time. He stated that they were part of the initial input taken by Planning as well as the Commission in drafting the regulations as well as the Council who finally put the regulations in front of them for which they are applying. He stated that they were seeking a marijuana retail operation permit that would be a valuable addition to the Sharp Park business district. He stated that this medical and recreational marijuana retail operation proposal would bring business to the community, officially at 2110 Palmetto Avenue. He referred to Montecito and Palmetto, stating that around the corner was the area. He stated that, as indicated by Sr. Planner Murdock, they will be locating where currently Reflection Hair Salon was located. He clarified that the salon was not closing but relocating to the Rusty Hook if their permit is approved. He stated that the owners of the Rusty Hook retired. He stated that the building was built in 1962 and they were not proposing any modifications to the exterior but a few minor modifications to the interior of the business to facilitate foot traffic. He stated that Lytt LLC was comprised of Pacifica residents. He then introduced them, giving their background in this industry. He stated that they were looking to provide Pacifica a customer friendly community oriented facility without additional consultants. He referred to a substantial amount of material that had been prepared and presented to Planning in order to get to this stage. He thanked their consultants, naming them, and stated that they brought them to answer any questions by the Commission. He showed a layout of the interior of the facility with a quick rundown of a visitor's experience and their process, including the packaging. He mentioned that there would be identification numbers for each purchase, tracking the product up to the sale of the product. He referred to staff's conditions of approval, stating that they agreed with every one of them, such as landscaping, no queueing outside, and showed them the opaque bag used for the packaging. He clarified their positions on all the conditions, such as paying the past taxes, concluding with the hours of operation, agreeing to the opening time, but were requesting the ability to operate until 9 p.m., giving their rationale to provide for different schedules and compete with neighboring markets such as San Francisco where they are open and delivering until 10 p.m., including delivery in Pacifica. He mentioned having an open house for all the surrounding businesses and residents at the Rusty Hook which was vacant and had the same layout as their proposed location and made a presentation.

Chair Campbell appreciated the effort made to pay the past taxes, and since they already deposited it with the city, he asked how much it was.

Mr. St. Pierre stated that it wasn't actually two years, but understood it was after the passage of Measure G and subsequent adoption by City Council, and they were talking from November 2017 through July 2018, with a commitment of 6% on those sales.

Chair Campbell assumed they have paperwork and receipts.

Mr. St. Pierre stated that, as part of the application requirement, they have to submit past taxes to the Planning Department. He stated that, in this instance, their application didn't include any past taxes because Lytt LLC was an entire new entity without any corporate tax history. He stated

after Planning requested that, as Mr. Chapman was a member of both entities, they pay the past taxes for Surefyre Collective, they did comply and provided all those taxes to the city.

Chair Campbell asked staff if that was an escrow account.

Planning Director Wehrmeister thought he meant tax information, but not the actual payment.

Chair Campbell understood it was just the tax information not the payment.

Mr. St. Pierre clarified that, while he hasn't inquired since August, the Finance Department didn't have the code set up for payment of the applicable taxes and that was one of the issues.

Holly Smallie, managing director, stated that, as part of the application process, she had spoken to Planning who asked that they pay the taxes and she went to Finance and they stated that they didn't have any way for them to pay that at this time, and they will get in touch with them when they work it out and they can make the payment. So, they explained the details to Planning and committed and will be happy to pay whatever taxes are due.

Chair Campbell thought that was a wonderful way to run a business.

Ms. Smallie agreed that unless something new occurred, she went in and was sent away.

Chair Campbell stated that they will be voting to approve their business and they will be running the business in compliance with city law. He stated that they didn't in the past because the laws didn't apply to them in the past.

Asst. City Attorney Bazzano clarified that she didn't believe this applicant was a part of Surefyre.

Ms Smallie agreed.

Asst. City Attorney Bazzano stated that she was not a part of Surefyre entity.

Chair Campbell understood and withdrew the question.

Ms. Smallie stated that it was a legal question for Kyndra Miller.

Kyndra Miller, owner of CannaBusiness Law, stated that the collective was operating in full compliance with Proposition 215 but they have gone through some transitions since 2015 with respect to state and local regulations. She stated that they were in compliance with Proposition 215 at the time but as the rules changed they received a notice and complied with that notice. She stated that Surefyre Collective was a completely separate entity from Lytt LLC.

Chair Campbell commented that they shared some management.

Mr. St. Pierre stated that it was correct as Mr. Chapman was the prior operator of Surefyre and one of the managing operators of Lytt LLC.

Commissioner Kraske referred to the issue of hours of operation. He asked what the hours of operation were for the previous establishment.

Ms. Smallie stated it was 10 a.m. to 9 p.m.

Mr. St. Pierre reiterated the times.

Commissioner Kraske asked what percentage of sales was between 8 and 9 p.m.

Ms. Smallie stated that she can't speak to that percentage.

Mr. St. Pierre stated that in preparation for the hearing, he asked the question, and the bulk of clientele business hours tend to end between 8:15 and 9 p.m. when foot traffic was tapering off. He stated that there was consistent and steady flow of people calling close to the 9 p.m. hour and asking that they stay open because they were attempting to arrive before they close. He would say it was a decreasing percentage as the hour goes later.

Commissioner Kraske thought it would not adversely affect their business if they held to the 8 p.m. hours.

Mr. St. Pierre requested that they are allowed a 9 p.m. closing hour to allow for the variety of schedules of shifts that occur in the population as they have the 9-5, swing shift and graveyard shift. He stated that, based on which hours they are working and the length of their commute, closing earlier can make it difficult to obtain access. He stated that, if they are contemplating closing the foot traffic hours at 8 p.m., he would request that delivery still be allowed until 9 p.m.

Commissioner Stegink stated that he was curious as to when Mr. Chapman started selling marijuana products in Pacifica.

Mr. St. Pierre stated that it was in March 2017.

Commissioner Stegink stated that the attorney mentioned a 2015 date, and he asked what that was.

Mr. St. Pierre stated that it was in relationship to Prop. 215 and the change in the laws, but not a date associated with him operating a collective in Pacifica.

Commissioner Stegink asked staff if they had confidence that they will collect past due taxes on this location before it opens.

Sr. Planner Murdock was positive, adding that the condition of approval proposed by staff was conditioned upon payment of those taxes prior to commencing operation.

Commissioner Stegink referred to mention of competing with neighboring markets and the need to be open until 10 p.m. He asked if he was aware of the hours of the location that was approved so far.

Mr. St. Pierre was aware of that.

Commissioner Rubinstein referred to the delivery component, and asked what the proposed hours of operation were for that part of the business and that he describe it in more detail. He mentioned that the prior applicant went into some detail on the delivery side of the business.

Mr. St. Pierre stated that he addressed it in the operational plan and was glad to highlight them, explaining that the proposed hours would be the same hours as the proposed business hours, 9 a.m. to 9 p.m. for delivery. He stated that, due to the fact of their primary concern on the brick and mortar store of serving walk in patients and giving a full customer experience to them, their primary focus will be on the brick and mortar. He stated that they intend on having daily deliveries but those will partially depend on the amount of demand associated with it. He explained that they will not send someone to the other side of town for a \$5 delivery when it becomes a situation that is not cost effective to make a delivery. He stated that was the constraint in terms of a delivery model and it can be partially demand driven. He stated that they have a host of patients that they previously worked with and identified during the days of Surefyre Collective where they physically do not have the means to leave their house or get to the actual brick and mortar store, which is the primary reason they continue to offer delivery to ensure access to those individuals. He referred to the question of their delivery polices, stating that in terms of delivery each vehicle will have a secure separation for product and any cash that is part of the transaction. He also stated that the items will leave with a specific shipping manifest with destination and would return after being signed off by the recipient and at the end of the actual shift all the deliveries are put back into the actual track and trace system to confirm all the deliveries and product issued associated with those deliveries.

Commissioner Rubinstein asked if they anticipated any third party deliveries, services, etc.

Mr. St. Pierre stated he was familiar with the question of third party deliveries and that was not something they were contemplating as this was going to be an entirely in house operation. He stated that, on looking into third party operations, they felt it gave too much control to another entity and leaves too many things out of their control and they will not have any third party contracting for delivery.

Commissioner Stegink asked how many delivery trucks they currently have.

Mr. St. Pierre stated zero.

Commissioner Stegink stated that he called their customers patients but they won't necessarily be holding a prescription for the product. He asked if that was correct.

Mr. St. Pierre stated it was correct. He stated that it may be a holdover and the verbiage he was using from prior times when it was strictly medical. He stated that it will be both patients as well as customers.

Commissioner Stegink referred to a 12-year-old child with a prepaid credit card who calls for a delivery. He asked how they determine whether he is an adult.

Mr. St. Pierre stated that, as part of the delivery process, they have to confirm the identity of the individual as they will submit a driver's license, date of birth and an address to the location. He stated that the delivery driver will confirm that the individual who said they called with that date of birth and that information was in fact the actual person on the identification presented to him.

He stated that the process would stop at a point in time if the individual had a fake ID or when the delivery driver ran into a fake ID and dealt with it accordingly.

Commissioner Stegink concluded that they were not checking the IDs against any data base to verify they are unique human beings.

Mr. St. Pierre stated that it was difficult to get access to the California Department of Motor Vehicles driver's license data base and they will not pay the fees associated with that. He stated that the confirmation part would occur upon the actual delivery to confirm that the individual presenting it is the individual who attempted to order it. He thought the police chief could address that issue that DMV data bases are not easily accessible.

Ms. Smallie stated that it was a great question. She stated that someone is verified inside a dispensary and it would be verified in a home also. She stated that California does not allow you to deliver to any public lands such as to a beach, park or theater but a home. She stated that there are so many checks and balances associated with the regulations in general. She stated that it doesn't stop in the store, adding that delivery was extensive also. She stated that other verified forms of identification are military cards and passports. She stated that if they threw her in front of a bar she would probably mess up all night long as she didn't know what all those things are and she wasn't trained. She stated that part of their training will be to establish gorgeous training that was well done and they are doing a very good job identifying a 12-year-old from someone over 21. She reiterated that there were very significant regulations about it.

Chair Campbell asked if there was any distinction at all between the delivery of cannabis and the delivery of alcohol to a home or the same.

Chief Steidle didn't know if the code addresses delivery of alcohol to a home. He asked what his specific question was.

Chair Campbell asked if it was the same factual scenario if someone orders a bottle of Jack Daniels bourbon to the house. He asked how you confirm that it is not a 12-year-old.

Chief Steidle stated that there are times when you can order alcoholic beverages from companies, and there was no one who would be there to verify if someone is dropping something off through UPS or Federal Express. He was not aware of any companies in Pacifica that delivered alcohol to homes.

Planning Director Wehrmeister stated that she could respond to that from a wine club purchase.

Chair Campbell stated that he was thinking of from a liquor store.

Planning Director Wehrmeister stated that she wasn't familiar with liquor stores that do it, but a wine club purchase she thought UPS may not do that. She stated that you have to have someone 21 or older to accept the delivery or it will be delivered to Walgreen's and you have to come in and show Id to pick it up.

Commissioner Rubinstein agreed, stating that if you ordered on InstaCart and ordered liquor or wine and you aren't home, they won't deliver it.

Chair Campbell concluded it was basically the same.

Ms. Smallie stated that they want to do the very best job and she assumed it was the same fine. If you allow a minor into the dispensary, she thought it was a \$100,000 fine and she assumed it was the same for delivery. She stated that they will work very hard to not make that mistake. She stated that they care about children as well as not paying such a fine.

Commissioner Stegink asked staff who was levying that \$100,000 fine.

Planning Director Wehrmeister stated that they were not aware if it was the state.

Ms. Miller stated that the Bureau of Cannabis Control was in charge of enforcement at the state level, and the state has very specific enforcement provisions which recently have been funded to increase enforcement. There are more raids of illegal operations throughout the state of California with different degrees and levels of punishment that the state will enforce and violation of the state rules could result in the pulling of the state license or refusal to renew. She stated that the Bureau of Cannabis Control, for which Chief Laurie Ajax was in charge, would be in charge of those functions at the state level. She stated that there was a two-part process to being a fully licensed business in California, first obtaining local authority which was why they were present at this meeting and second would be applying to the state for a temporary license or annual license which would allow them to operate.

Chair Campbell asked how close they were to IBL.

Sr. Planner Murdock stated that they were more than 600 feet so quite some distance.

Commissioner Kraske referred to the site directly to the right of the property, asking if it was a park or a vacant lot.

Sr. Planner Murdock stated that, if he was describing the area to the north which would be to the right if looking at the front of the building, it was a privately owned parcel, not a park, and was currently undeveloped. He stated that they were processing a development permit application for that site for a residential mixed use building with a small commercial space in the front.

Chair Campbell opened the public hearing.

Tygarjas Bigstyck, Pacifica, stated that he has had a couple of different versions of grandstanding statements he could have made depending on questions he heard. He thanked the Commission for listening in a reasonable and respectful ways. He thought it was great that the city was making sure that viable businesses are entering Pacifica and contributing what will hopefully fix a lot of potholes and do wonderful work besides. He mentioned a comedian, Bill Hicks, who would talk about marijuana usage in a positive way as it contributed to his life and he would ask the audience that if someone was having a fight with someone next to them, would you think they were drunk or stoned, and that would lead him into the differences between alcohol and marijuana. He stated that he knows this establishment was more than 600 feet from IBL and he was certain that the closest alcohol selling establishment is probably closer than this would be. He referred to the business operating hours, and stated he could not speak from a medicinal point of view as he does not have a card or planning on getting one. He thought if he had been at the last meeting, he would have made a robust argument but not from the point of view of the patient.

He stated that, as someone working for a living, and used marijuana many times over the course of his life during moments of anxiety, he finds that it was great for helping with anxiety. He stated that there was a change over where he works in 2015 and he needed medicine then but he wasn't buying it as medicine. Now he has that option. He didn't use it often but someone who could see an instance when it could come in handy. He admitted that he has gotten stoned and it can be fun, adding that he didn't do that often. He stated that his hours are 11-8 every day and he didn't see any problem with keeping the hours open to 10 p.m., but he wouldn't want to wake up earlier to head downtown to buy something and after he got off work at 8 p.m., he thought it would be nice to be at least open until 9 p.m. for him.

Ersie Joyner, Pacifica, stated that he was the owner and operator of Ingenious Tactical Solutions and they specialize in organizational development training services, investigations, personal security and threat assessment. He stated that they were brought on as a team member of Lytt LLC to help develop a plan regarding the Palmetto address. He stated that they were brought on to look at site assessments, vulnerability identification, target hardening, state and local compliance security planning and site planning and design. He stated that they wanted to be sure they were doing it in a way that the business could be a part of the community instead of apart from the community. He stated that his staff has over 100 years of law enforcement experience and are recognized in the state of California and the country as experts in development of businesses surrounding cannabis distribution and safety. He expressed to Lytt LLC the importance of them being good partners to the city, community and the police department and safety was a very important thing. He stated that, in dealing with Lytt, he has seen a paradigm shift in regard to them being much different from people he has dealt with throughout the country regarding their acceptance in working with local law enforcement and the community and city government. He felt strongly that Lytt will be a business that the city, community and police can be proud of but also will bring a lot to the city as well as a strong foundation in growing. He was available if they have any questions about training, security or industry standards around the surrounding cannabis cities.

Ryan Warmon, San Francisco, thanked them for their consideration. He understood it was very complex and at times contentious. He stated that a number of them in the cannabis industry prefer the term adult use to recreational because adult use emphasizes personal responsibility and is more in keeping in the spirit of viewing the products as over-the-counter alternative medicines to be available in California without a doctor's prescription. As an industry professional, he stated that the medical segment of the market has shrunk down to less than 10% or even 5% of total cannabis sale. He thought there were some in the room who could provide substantiating data about the claim. He stated that there was very little incentive now to maintain a doctor's medical recommendation for cannabis except for an 8.5% discount on sales tax. He stated that all the high dose edible products have been taken off the market and under the proposed regulations for California, they will be capped at 200 mg for medical patients only with very specific products of slightly higher doses aimed at severely ill patients with a doctor's recommendation and everything else is capped at 100 mg in terms of edibles. He echoed Mr. St. Pierre's recommendations in terms of the open hours, adding that it is a community of working class people with variable schedules and making that consideration for slightly later hours was important. He stated that on edibles, particularly gummies, he was concerned at the Commission's previous efforts to restrict the sales of gummies and edibles as it was the fastest growing and largest segment of the cannabis market. The gummies are desired because they are an alternative to brownies and cooking and contain less sugar, easier to dose accurately which is a requirement of edible products in California and they have no odor and very little stigma. He

stated that was why gummies were a desirable form of consumption. He stated that California has already taken significant measures to prohibit gummy bears or any other kinds of animals or shapes that might appeal to children and require that they be in child resistive packaging. He brought a few child resistant package products that he would like to pass around to them if interested.

Chair Campbell suggested that he hand it to staff.

Jim Norkoli, Pacifica, stated he was from the security industry with 28 years' experience, doing Department of Defense, Homeland Security, banking institutes and he was following the newest trend in California. He has been living and breathing it because of all the state mandates and he has taken the time with Lytt to confirm their security plan was compliant with California which is more stringent than Pacifica has in place. He stated that the design of the facility was to allow them to access the facility without accessing product until they have been verified and they were probably limited on the queueing section in front. He referred to Taco Bell earlier talking about having alcohol on the beach and those hours were considered and he was curious why there was such a challenge with the hours of operation of this facility where there isn't consumption on the property.

Chair Campbell stated that they don't have Q&A.

Mr. Norkoli asked if they had any questions for him.

Donna Wagner, Pacifica, stated that her initial issue was hours of operation. She stated that it is her neighborhood and she stated that, if they want to attract people to the neighborhood and keep them there, she thought 9:00 pm was a better hour to stop. She stated that Florey's Book Store is open until 9:00 pm, the gym is open past 9:00 pm, and that was the neighborhood. She was speaking to respect because her apartment on Salada was about 15 feet from the back door of Surefyre and the only issues they ever had were parking and they were addressed immediately with the people at Surefyre who were happy to step in and assist by saying things like they can get the license number and they won't be able to buy there anymore. She appreciated their help and concern about the neighborhood. She stated that she was a medical professional and works until 7:30 pm at night and 8:00 pm would not work for her, adding that she is a medical marijuana cardholder and uses edibles. She felt it would be more convenient for people with expanded work hours to be able to access medication. She understood it was not just a purely medical marijuana facility but she was speaking for those who are now less than 5% but still require help in certain ways.

Ian Butler, Pacifica, stated that it was late and way past time for this to happen. He stated that it was 22 years ago that California voted Prop. 215 in with 54% of the votes statewide, with 2/3 of Pacificans voting in favor of medical marijuana. He stated that there are kids who were born since that day and are now old enough to legally consume marijuana. He then stated that Prop. 19 happened in 2010 which California didn't pass but only 46% voted for it statewide and in Pacifica 60% voted in favor of legalizing marijuana for everyone. He stated that they had Prop. 64 which California did approve with 57% and 2/3 of Pacificans voted in favor of that. He stated that Pacifica was about 10-15% ahead of the rest of California regarding approval of marijuana as evidenced by Measure G last year where 79% of Pacificans voted for it. He stated that this is the most popular issue in the history of Pacifica for as long as he has been watching it. He stated that some may have reservations about the fact that some places existed before when it wasn't legal

and he was proud of them for that because the people wanted it and every chance they had they voted for it. He stated that there are reasons cities had to drag their feet, mentioning Eric Holder's crackdown and they didn't have the money to handle any of the lawsuits but Pacificans wanted it as well as the politicians. He was thankful for the people who came in and provided medicine to people who needed it. He was thankful for them to do it and to not let them have a dispensary once they make it legal was almost like saying everyone can sit in the front of the bus except Rosa Parks. He thought part of the reason they are in favor of it is that we have a chance to see what it was like to have a dispensary next door and they have learned that it is not a problem. He felt there was not a problem with them being open later. If they want to revitalize Palmetto and have it a vibrant area where people want to go they should let them be open longer so they can spend more money and be there longer and cause less traffic during the day if they can spread out the visitors over a greater amount of time and creates less issue with crowding and traffic but makes it a vibrant and happy neighborhood. He was thankful for these people who are good folks and he hoped they can let it go with as few restrictions as possible.

W. D. Flient, Pacifica, stated that he was a veteran and the service officer for the American Legion in Pacifica, as well as vice commander for Veteran of Foreign Wars, as well as a nurse in San Francisco. He urged everyone to consider making education for seniors, veterans, disabled as this was a wonderful product and a great opportunity. He stated that many seniors do not know too much about it. He stated that they all got a chance to watch the movie, "Reefer Madness" and many people's minds are still there. He stated that this is a medicinal product with some great values and if they can educate their seniors they can save them from deteriorating with alcohol because alcohol destroys your brain cells. He is 70 and works in a jail for San Francisco General and he had anxiety. The Veteran's Administration was recommending antidepressants and drugs, and he has given drugs and seen how they can't get off of them with aberrant behavior they have had. He stated that cannabis was a helpful alternative. He stated that seniors need to be educated to know that there are ways to take it, mentioning putting it in a blender with strawberries, etc., and regulate it and determine how much goes into your body. He thought this would be a good thing for the community if they were to consider that. He stated that they can use cannabis with dignity or feeling like they are doing something horrible.

Kyndra Miller, Beverly Hills, thanked them for their time. She stated that the public comments were eloquent and touched on the issues she was going to address about statistics and she will address the issues they raised earlier. She stated that she was not only an attorney for 9-10 years but was also on the Board of Directors of National Normal which is the national organization for the reform of marijuana laws. She was also the president of the Cannabis Law section of the Beverly Hills Bar Association. She represents businesses but is an activist looking to protect consumer rights. She referred to Commissioner Rubinstein asking about the issue of third party deliveries. She stated that it was not allowed under state law and they have made it clear that, if you are going to deliver, it has to be conducted by an employee of the licensee and in this case the applicant would be the licensee and to deliver they would have to hire someone specifically to deliver and would not be able to outsource that function. She referred to Commissioner Stegink asking the question of identifying people to make sure they are not delivering to minors. She stated that most of the software on the market when a patient or a 21 and older comes into the business and registers, their identification is uploaded onto the computer with their picture. She stated that they will have a database with a picture and all of their identification and when the delivery employee goes to the physical address they have to look at the individual and look at the picture and make sure they match. If they don't match, the delivery is not allowed to go forward at that point. She stated that the state has contemplated this issue which has been a concern with

allowing adult use under Prop 64 and taken into consideration. She represents businesses up and down the state of California and she states that she was proud of Pacifica as there were not many cities and counties who have gotten as far as Pacifica has and she was proud of her client and was part of the compliance team and going to make sure they are compliant with local law as well as being compliant with state law. She thanked them for being ahead of the curve in California in getting her client to the point where they can have a hearing and will be approved for this permit.

Mr. St. Pierre stated that he wanted to respond to the education for seniors comment and stated that it was an integral part of their business in providing on site education to any patients or customers coming into the business. He stated that was the primary reason they want to focus on a brick and mortar store to allow that opportunity for interaction and education to occur. He stated that they will have materials available on site. He acceded the rest of his time to the managing director, Ms. Smallie.

Ms. Smallie stated that they were excited to be standing there. She stated that each of them in some ways have pushed them to be better and do more to create this team and really hear what they shared perviously about concerns. They watched the videos, read everything, every public comment, their concerns and she thought they have done a great job. She mentioned having a Chinese meal recently and her fortune cookie said to seek to understand and be understood, and she felt they have worked hard to understand. She stated that they want to offer at cost lock bags and lock medication so that people can come in and take them at cost and they didn't charge any more than it costs them to buy them and when the edible products go home there is some level of personal responsibility and they were encouraging that. She stated they weren't super expensive but something people can take home. She mentioned that they did a lot of research and Santa Cruz has a gorgeous model with a monthly cannabis coalition meeting and they invite all the other dispensary owners and anyone from the public to talk about cannabis. She stated that they do a lot of beautiful education and outreach to disseminate information about sensitive topics and seek to do a better job. She stated that they have beautiful ideas about reducing parking demand and want to work hard to do a great job. She stated that they negotiated a second cannabis waste bin to be on site so customers, rather than increasing land fill or to decrease land fill diversion and make sure items are recycled appropriately. She stated that customers can bring back items, but not exchanging as there are specific laws about exchanging but they can bring back items that have been used and put them in their waste bins and they won't end up in a home garbage can. She stated that they are trying to reduce youth access and be a part of the community and part of youth prevention. She stated that they were meeting with one of the partners for youth prevention on Thursday and were excited about it. They want to be bossed around and do better and want them to tell them how they can do better. She stated that they also want to succeed in a business, adding that they know they are competing with other businesses in other cities that have a huge variety of products and can stay open later and they want to be courteous to the city and advocate for themselves and have some success as a business. They hope they understood and that they understand that they are really trying.

Chair Campbell closed the public hearing.

Commissioner Gordon thanked them for the presentation and great staff report. He was in favor of the application. He stated that one of the most interesting comments was from one of the security guys who mentioned that they had no problem approving alcohol consumed on premises until 10 p.m. He thought that was a fair observation. He stated that he was a lot more concerned about alcohol consumption than about marijuana consumption and that was not being consumed

on the premises. He realized that the applicant was asking for 10 p.m. and staff is recommending 8 p.m. He stated he was comfortable with 9 p.m. as a compromise. He mentioned that one of the neighborhood residents mentioned that other stores in that area close at 9 p.m. and he was sensitive to people's schedules who work late. He was okay with a 9 p.m. close time. He was in favor of the project. He referred to Commissioner Stegink's observation about a matter from five years ago that it was possible that they will have a library and youth center in that area and he felt it was tough as they have already approved this overlay district. He stated that, when the time comes, they will have to deal with it. He stated that he was raising the issue of the overlay district but it was something to keep in the back of their minds. He was in favor of the project and was impressed with the group they brought with all the consultants. He respects that they are taking this really seriously.

Commissioner Stegink asked staff to walk him through how this group essentially got four opportunities to apply for licensing versus the rest of the group that got one opportunity.

Sr. Planner Murdock stated that he could not recall the number of applications, thinking as many as 4 or 5 perhaps. He stated that the ordinance that City Council adopted established no limitation on the number of applications an individual applicant could submit or the number of locations they could pursue with applications. He stated that some assumed there was a limit of one but that was not the case. He stated that this applicant took advantage of that opportunity to file multiple applications for multiple locations. He stated that the ordinance was clear that one applicant can only receive one license and only one license can be issued for one property. He stated that, if the applicant was granted a permit this evening, their other applications would have no effect.

Commissioner Stegink asked who the next licensee will be deemed incomplete or complete.

Sr. Planner Murdock stated that he didn't understand the question, but explained that there are only three applications being processed currently, one which they acted on at the last Planning Commission meeting, one they are acting on at this meeting and one remains incomplete. He stated that, if this application was approved and the first application was upheld on appeal, there would be no further applications processed for the West Sharp Park overlay district.

Commissioner Stegink asked which one was deemed incomplete.

Contract Planner Aggarwal stated that it was 450 Old County Road and Rockaway Enterprises was the name of the applicant.

Commissioner Stegink referred to the whole gummy thing, and the actual statement was gummy bears prohibited by California law but not gummies texture or gelatin and pectin mixed together. He stated that Chair Campbell had concerns about the library and they originally suggested 3 p.m. as a closing time. He stated that they chose and ordered Phog Center up to 6 p.m. and delivery until 8 p.m. He was more comfortable with some traditional business hours. He didn't have a problem with coming back in a year and taking a look at this. He stated that they were good citizens, good actors and at that point, he will entertain 10 p.m. with no problem, but at this point he thinks keeping a little more limited approach on a brand new roll out that was unique in the entire state might be a good idea.

Commissioner Rubinstein asked the commissioners how they reconcile the conditions of approval that they agreed to for the prior applicant who made a different presentation and different operation. He stated the other business was located about 700 feet from this business and he asked how they reconcile it in the interest of fairness.

Commissioner Nibbelin stated that they are different applications and they came in with different teams and different levels of analysis which may justify different conditions with a different comfort level. He sees the logic in respect to operating hours. He sees a desire to harmonize what they are doing but doesn't think there is a need to give the different teams application received and a different level of analysis. He echoed the comment on being impressed with the level of preparation that they saw this evening and the team that was assembled. He felt a sense of comfort that they were dealing with folks who are prepared to implement this in a professional way. He was not comfortable with operating hours to 9:00 p.m. With reservations, he was inclined to move in the direction of staff's recommendation.

Vice Chair Clifford stated that he will vote for this project. He referred to the hours of operation which seemed to be the biggest sticking point. He would go along with staff's recommendation in terms of hours of operation. He felt that made sense and they could review it in a year and say that they can stay open until 10 p.m. because of no complaints.

Commissioner Gordon responded to Commissioner Rubinstein's question. He thought it was a good point about how they would be consistent. He stated that the prior application had residents directly above the stores which made a big impact on him and he was inclined toward shorter business hours because he has lived on the second floor of a mixed use building. He stated if the Commission was into going along with staff's recommendation in terms of ending at 8 p.m., that was fine.

Chair Campbell thought it was a better application and project than the last one and was a very professional unit. He was looking for one out of the box to approve and this comes close. His concern was and still remains that they weren't quite there with regulations with gummies that appeal to children. He was also concerned about the bus stop and he didn't know how close it was to IBL.

Commissioner Nibbelin was prepared to make a motion.

Planning Director Wehrmeister stated that it occurred to her that during the deliberation there may be an assumption that there is a condition for annual review and it was not currently included. She stated it was not a standard condition but the Commission may choose to place on the project and she thought she would bring it up. She believed the condition they put on the last application was that there was discussion of the cannabis licensing which already has a staff annual review built into it. She stated that there would be at least a first annual review would be with the Planning Commission.

Commissioner Nibbelin moved that the Planning Commission FINDS the project is exempt from the California Environmental Quality Act; APPROVES Marijuana Use Permit MUP-4-18 by adopting the resolution included as Attachment A to the staff report including conditions of approval in Exhibit A to the resolution subject to the additional condition of approval that there be an annual review with the Planning Commission; and INCORPORATE all maps, the applicant's MUP application and all attachments and testimony into the record by reference.

Commissioner Stegink asked what the hours were that they decided on.

Commissioner Nibbelin asked whether the hours recommended by staff which he assumed were integrated into the conditions of approval, were specifically 9 a.m. until 8 p.m.

Commissioner Stegink asked how late the Sharp Park Library was open.

Planning Director Wehrmeister stated that it depended on the days and she could look it up.

Commissioner Stegink thought it was 8 p.m. He was in favor of the project.

Chair Campbell asked if that was a second.

Commissioner Stegink seconded the motion.

The motion carried **6-1**.

Ayes: Commissioners Kraske, Nibbelin, Gordon, Clifford,
Rubinstein and Stegink

Noes: Chair Campbell

Chair Campbell declared that anyone aggrieved by the action of the Planning Commission has ten (10) calendar days to appeal the decision in writing to the City Council.

4, TA-113-18

File No. 2018-048 – Text Amendment TA113-18, initiated by the City of Pacifica, to amend Chapter 4 “Zoning within Title 9 “Planning and Zoning” of the Pacifica Municipal Code by adopting a new Article 50 entitled “Development Agreements,” The Text Amendment to be Considered Would Affect Administrative Procedures Only and Would Not Alter the Zoning Applicable to Property within the City.
Recommended CEQA Action: Not a “project” pursuant to Public Resource Code Section 21065.

Planning Director Wehrmeister presented the staff report.

Commissioner Kraske asked for clarification regarding the proposed ordinance would also require that each development agreement shall be reviewed at least once every 12 months by city staff to ensure developer’s good faith compliance. He asked if that was in perpetuity.

Planning Director Wehrmeister stated that it was for the life of the agreement.

Asst. City Attorney Bazzano added that it was pursuant to statute as well, explaining that there was a statutory requirement in Government Code 65865.1 that requires periodic review at least every 12 months.

Commissioner Stegink stated that he has read the entire California Law particularly 65864 and he read the section. He stated that in the past they have had some discussions and agreement for developers to pay some of the cost of the roads they have damaged. He asked if that has held up and whether we have ever collected any money for that.

Planning Director Wehrmeister asked if they have damaged roads during development.

Commissioner Stegink stated he has heard discussion of that.

Planning Director Wehrmeister stated that was a standard condition of approval, adding that she didn’t know how often Engineering has to call that condition.

Commissioner Stegink stated that in general and discussion wise, he was not in favor of erecting any additional barriers towards small business in Pacifica. He stated that they have a lot of empty lots and it was definitely a barrier to a new business being developed and was a time barrier and a money barrier and he wasn’t a fan of it.

Commissioner Nibbelin stated that he wasn’t clear on the last comment. He understood that what they were doing by way of text amendment was broadly speaking something that the government code would contemplate they have in place and in the eventuality that they want to negotiate development agreements they have a process for doing so.

Planning Director Wehrmeister agreed.

Sr. Planner Murdock stated that it required the mutual agreement of the city and the developer.

Commissioner Nibbelin stated that would be embodied in its own ordinance after the development agreement is concluded.

Planning Director Wehrmeister agreed.

Commissioner Nibbelin stated that he would be ready to make a motion on as soon as they are done discussing it.

Chair Campbell was in support of it and firmly believed that the quarry would have been developed by now if they had this ordinance in place at the time. He was all for it.

Asst. City Attorney Bazzano stated that they were still on questions of staff.

Chair Campbell opened the Public Hearing and seeing no one, closed the Public Hearing.

Commissioner Gordon moved that the Planning Commission FINDS the proposed ordinance is exempt from the California Environmental Quality Act; ADOPTS the resolution included as Attachment A to the staff report to initiate the text amendment and recommend approval to the City Council; and INCORPORATES all maps and testimony into the record by reference; Vice Chair Clifford seconded the motion.

The motion carried **6-1**.

Ayes: Commissioners Kraske, Nibbelin, Gordon, Clifford,
Rubinstein and Chair Campbell.
Noes: Commissioner Stegink

CONSIDERATION:

5. Library Advisory Committee Appointment.

Chair Campbell asked if there were any volunteers and, seeing no one, he stated that it looked like they will have to table it.

COMMISSION COMMUNICATIONS:

Commissioner Stegink asked which applicants will be reviewed for marijuana licenses next. He stated that he talked to quite a few applicants or relatives of applicants who might benefit from the application process and they seem to be completely in the dark as to what was coming next. He thought it might be a false representation and an inaccurate representation. He asked if they know which overlay district was going to be looked at next and which permits will be looked at, assuming they are complete.

Sr. Planner Murdock stated earlier during consideration of the marijuana use permit that the Sharp Park District currently has two approved marijuana use permits which would be the limit that the city could approve within the MO-SP or Sharp Park overlay district, however one of those is subject to appeal to the City Council and, if approved and appeal is denied, the Sharp Park District will be maxed out and the next movement would likely be in the Rockaway Beach overlay district and they have one incomplete application in that district currently and if the approval granted at this meeting is made final and not appealed or upheld on appeal, that would eliminate a numerical obstacle to the second applicant in Rockaway Beach being processed.

Commissioner Stegink stated that he assumed they all got a copy of the bylaws the past week and he drew attention to the three provisions which are their ability to agendize a study session, ability to form subcommittees and ability to ask oral communications speakers questions at the conclusion of oral communications.

Commissioner Rubinstein asked how two licenses get approved for the Sharp Park overlay district. He was curious because both businesses are located 700 feet from each other and are essentially doing the same thing. He thought it was odd and assumed one business in that location would have been sufficient for that business.

Asst. City Attorney Bazzano cautioned the Planning Commission on these types of discussions because they are getting deep into the weeds, and this item has not been agendized. Her concern was the potential for entering into Brown Act grey areas when having discussions on items not on the agenda.

STAFF COMMUNICATIONS:

Planning Director Wehrmeister stated that she sent out an email before the meeting and it looks like they may have some scheduling conflicts with City Council as they are scheduling special hearings for the redistricting that they will be considering. She asked for a show of hands of who has conflicts and she can find out how many nos there are for alternative dates the week of December 3. December 3 is their regular meeting date and the City Council may need to use that date to hold a redistricting public hearing. She wants to find out if they will be available to meet on Tuesday, December 4, Wednesday, December 5 or Thursday, December 6. She asked for nos for each date.

Commissioner Rubinstein stated that he had no for December 5.

Planning Director Wehrmeister stated that she didn't know if they will need to but she has her answer in case they do.

ADJOURNMENT:

There being no further business for discussion, Vice Chair Clifford moved to adjourn the meeting at 11:04 p.m.; Commissioner Gordon seconded the motion.

The motion carried **7-0**.

Ayes: Commissioners Kraske, Nibbelin, Gordon, Clifford,
Rubinstein, Stegink and Chair Campbell
Noes: None

Respectfully submitted,

Barbara Medina
Public Meeting Stenographer

APPROVED:

Planning Director Wehrmeister