



**CITY OF PACIFICA  
COUNCIL AGENDA SUMMARY REPORT**

**10/8/2018**

**SUBJECT:**

Resolution Denying Appeal of Planning Commission Recommendation to Approve an Ordinance to Amend Existing Zoning Regulations in Order to Clarify Existing Provisions for the Processing of Marijuana Use Permit Applications (Text Amendment TA-112-18) and Introduction of an Ordinance of the City Council of the City of Pacifica Amending Article 48 "Marijuana Regulations" of Chapter 4 of Title 9 of the Pacifica Municipal Code Pertaining to Processing of Marijuana Use Permit Applications (Text Amendment TA-112-18), and Finding Adoption of the Ordinance Exempt from the California Environmental Quality Act (CEQA).

**RECOMMENDED ACTION:**

- 1) Adopt resolution denying the appeal of Planning Commission's recommendation to approve an ordinance to amend existing zoning regulations in order to clarify existing provisions for the processing of marijuana use permit applications (Text Amendment TA-112-18); and
- 2) Introduce, waive the first reading, and read by title only, the ordinance entitled "An Ordinance of the City Council of the City of Pacifica Amending Article 48 "Marijuana Regulations" of Chapter 4 of Title 9 of the Pacifica Municipal Code Pertaining to Processing of Marijuana Use Permits (Text Amendment TA-112-18), and Finding Adoption Of The Ordinance Exempt from the California Environmental Quality Act (CEQA)."

**STAFF CONTACT:**

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**BACKGROUND/DISCUSSION:**

The City Council adopted Ordinance No. 819-C.S. approving Text Amendment TA-106-17 and Rezoning RZ-197-17 and establishing the City's marijuana regulations on July 10, 2017. The City's marijuana regulations require applicants for marijuana operations to provide all information and materials required to comply with the marijuana use permit application submittal requirements contained in Article 48 of Chapter 4 of Title 9 of the Pacifica Municipal Code (PMC). If the City determines a marijuana use permit application submittal is incomplete, a marijuana operation applicant shall be granted an additional 10 days to submit a complete application. If no completed application is submitted within 10 days, the intent of the ordinance is to cease processing of any applications which remain incomplete after 10 days. Currently, the marijuana regulations simply state the application "shall be deemed incomplete" which some could interpret as resulting in an application remaining incomplete for an indefinite period of time. This was not the intent of the ordinance as an application remaining incomplete for an indefinite period could thus cause undue delay in implementing the City's marijuana program, particularly considering the City's current reliance on lottery rankings to ensure compliance with overlay districts and citywide numerical limitations on marijuana operations.

The proposed ordinance amendments (Attachment B) would clarify that, for an application that

remains incomplete for 10 working days after City notification, the City would cease processing of the application. Once the application is deemed complete, the application would move to the bottom of the Qualified Marijuana Registration List ranking. Due to the citywide and overlay district-specific numerical limitations on marijuana retail operations, it is important to clarify the City Council's intent in this regard in order to ensure efficient implementation and administration of the City's marijuana regulations.

The Planning Commission conducted a public hearing on the proposed ordinance on September 17, 2018. The Planning Commission adopted Resolution No. 2018-003 recommending approval of the proposed ordinance by a vote of 6-0 (Attachment C). Minutes from the hearing are included as Attachment D, and outline two public comments received.

## **1. Appeal of Planning Commission's Recommendation**

### *A. Appeal*

On September 27, 2018, appellant Adam Zollinger (hereafter "Appellant") filed an appeal of the Planning Commission's recommendation to approve the proposed ordinance on September 17, 2018 (Attachment E).<sup>1</sup>

### *B. Staff Responses to Grounds for Appeal*

Appellant, in his appeal (Attachment E), has incorrectly characterized the Planning Commission's action with respect to Text Amendment TA-112-18. Rather than taking an action which "approved" changes to the City's existing Pacifica Municipal Code (PMC) provisions, the Planning Commission merely made a recommendation of approval to the City Council. The advisory action taken by the Planning Commission left intact existing PMC provisions.

The proposed ordinance could not have taken effect upon action by the Planning Commission on September 17, 2018. Adoption of ordinances is a legislative act which requires final action by the City Council in accordance with state law (including but not limited to Government Code sections 65850) and the PMC (including but not limited to PMC sections 9-4.3505 through 9-4.3507). Moreover, zoning ordinances take effect not less than 30 days after final adoption pursuant to Government Code section 36937, barring urgency findings which have not been proposed in this case. Therefore, the Planning Commission did not adopt the proposed ordinance on September 17, 2018, but instead recommended approval of the proposed ordinance amendments to the City Council.

An additional procedural consideration makes it clear that the Planning Commission's action with respect to Text Amendment TA-112-18 could not have affected its consideration of Marijuana Use Permit MUP-4-18. On the agenda for the Planning Commission meeting of September 17, 2018, the public hearing on Marijuana Use Permit MUP-4-18 was listed as Agenda Item No. 4 and consideration of Text Amendment TA-112-18 was listed as Agenda Item No. 5 (Attachment F). The Planning Commission concluded its consideration of Marijuana Use Permit MUP-4-18 under Agenda Item No. 4 prior to considering the proposed ordinance under Agenda Item No. 5. Therefore, it would not have been possible for the Planning Commission to have applied the proposed ordinance to its consideration of Marijuana Use Permit MUP-4-18 because approval of the MUP occurred prior to consideration of the proposed ordinance.

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<sup>1</sup> Appellant also filed a separate appeal relating to the Planning Commission's decision to approve Marijuana Use Permit MUP-4-18 for Phog Center LLC at 2270 Palmetto Avenue; however, that appeal will be heard by City Council on October 22, 2018. All assertions raised by the Appellant in Attachment E relating to the approval of Marijuana Use Permit MUP-4-18 shall be addressed at the October 22, 2018, hearing.

There is no basis to grant the appeal on the grounds raised in the appeal because i) the Planning Commission did not approve the proposed ordinance on September 17, 2018; ii) the proposed ordinance did not take effect on September 17, 2018, and is not currently in effect; and iii) the Planning Commission acted on Marijuana Use Permit MUP-4-18 prior to its action on Text Amendment TA-112-18. Accordingly, staff recommends making the motion to deny the appeal as described in the “Recommended Action” section of this staff report.

## **2. Introduction of Ordinance**

In that there is sufficient evidence to justify denying Appellant’s appeal and proceeding with introduction of the proposed ordinance described in Text Amendment TA-112-18, staff is recommending introduction of the proposed ordinance as it will enable the City to most efficiently implement its marijuana permitting program. Therefore, staff recommends making the motion to introduce the proposed Ordinance as described in the “Recommended Action” section of this staff report.

### **CEQA STATUS:**

The proposed ordinance affects administrative processing procedures only and would not affect the physical environment in any way. Therefore, adoption of the proposed ordinance would be exempt from California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3) because the proposed ordinance would not result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

### **ALTERNATIVE ACTION:**

The City Council may choose to grant the appeal and therefore, not to introduce the ordinance. The Council may also choose to deny the appeal but to amend the ordinance, or may refer the ordinance to the Planning Commission for further study. Certain amendments made by the City Council may require reconsideration of the ordinance by the Planning Commission.

### **RELATION TO CITY COUNCIL GOALS AND WORK PLAN:**

#### **Goals**

- **“Fiscal Sustainability”** includes investing in economic development to increase revenues, funding a reserve/emergency fund, and being well prepared for grant opportunities.
- **“A Healthy and Compassionate Community”** includes addressing affordable housing and mental health services, investigating strategies related to homelessness, and supporting youth services.
- **“Maintaining a Safe Community”** includes supporting our first responders (police, fire, public works), responding to storm emergencies, protecting our infrastructure (streets, sidewalks, water), and engaging in emergency preparedness activities.

### **FISCAL IMPACT:**

No direct fiscal impact. Adoption of the ordinance may result in marijuana operations opening within the City sooner than without the ordinance, which could result in earlier receipts of Marijuana Operation Tax revenues.

**ORIGINATED BY:**

Planning Department

**ATTACHMENT LIST:**

Attachment A - Draft Resolution Denying Appeal of Planning Commission Recommendation (DOCX)

Attachment B - Proposed Ordinance (DOCX)

Attachment C - Planning Commission Resolution No. 2018-003 (PDF)

Attachment D - Planning Commission Minutes from September 17, 2018 (PDF)

Attachment E - Appeal Form (PDF)

Attachment F - Planning Commission Meeting Agenda, September 17, 2018 (PDF)