

5. TA-112-18

File No. 2018-044 – Text Amendment TA-112-18, initiated by the City of Pacifica to Amend Existing Zoning Regulations in Order to Clarify Existing Provisions for Processing Marijuana Use Permit Applications. The Text Amendment to be Considered Would Clarify Administrative Procedures Only and Would Not Alter the Zoning Applicable to Property within the City. Recommended CEQA Action: Exempt, CEQA Guidelines Section 15061(B)(3).

Planning Director Wehrmeister presented staff report.

Vice Chair Clifford asked if that was ten calendar days or ten work days.

Planning Director Wehrmeister stated that it was currently not specified so she thought it would be interpreted to be ten calendar days.

Commissioner Gordon stated he was ready to make a motion unless there are more comments.

Planning Director Wehrmeister stated that they have public comments.

Commissioner Rubinstein asked if ten days were sufficient.

Planning Director Wehrmeister believed it was.

Commissioner Nibbelin asked if there was a reason that they couldn't clarify that they were talking about calendar versus business days.

Planning Director Wehrmeister thought it would be helpful if the Commission would like to clarify that.

Commissioner Nibbelin thought it would make sense to be specific about what they were talking about, as if they were to reference the California Civil Code or some places where if it was ten days or less, it was assumed to be business days and if more than ten days assumed calendar and he would rather not get into a fight about that, and he thought it would be good for them to be specific.

Commissioner Rubinstein stated that he would assume ten business days to be conservative.

Commissioner Nibbelin stated that it was the point as that was different from what the Planning Director just said. He was in agreement on stating it specifically in the text.

Commissioner Stegink asked if it was the intent to make it ten calendar days.

Planning Director Wehrmeister stated that they don't have a strong preference, and if it is business days to give them a couple of extra days on the weekend, that was fine with staff.

Chair Campbell asked if the city code has a default.

Asst. City Attorney Siegel didn't know that the city code has a default. He thought it was ten calendar days in most situations in the city code.

Planning Director Wehrmeister stated that they just did this with an appeal of an administrative citation and she thought it was calendar days.

Chair Campbell stated he was in favor of calendar days, asking for input.

Commissioner Stegink stated he was in favor of calendar days.

Commissioner Rubinstein stated he was in favor of calendar days.

Vice Chair Clifford stated he was in favor of business days.

Chair Campbell stated that he was okay with business days and asked for input again, then concluded it was business days.

Chair Campbell opened the public hearing.

Tim Fitzpatrick, Pacifica, stated that he and Adam Zollinger were applicants in a holding process of this whole thing. He stated that they have been in constant communication with the city from the beginning regarding the ten days because it plays a big factor. He stated that they were informed by the Planning Department that it took 56 days for Phog Center to get the rest of their information in. He stated that the ordinance stated that you need to submit a complete application and if you don't submit a complete application, they will be given the ten days, but it was very clear that within that ten days you have to submit a complete application which was what the amendment was saying. He stated that on the first page of the use permit website it says that it was the people's responsibility to keep checking the website for updates and anything that changes. He stated that the people in front of them were next in line to be reviewed and none of the people in front of them adhered to those ten days and they think their application should have been denied based on that. He stated that they were very for the amendment changing and they have a question on it. He stated that it was retroactive to the beginning of the process and, if they approve this, that should take people out of line and put them in the back. He stated that the city has been trying to do this fairly and he feels they have done that to the best of their ability. He stated that they were hoping that the process stays fair, mentioning ordinance 944084 that they have ten days. He understood that Phog Center stated that they didn't know anything about it, but he stated it was in the ordinance already. He stated that all this amendment does is clarify what happens to the application once it is deemed incomplete and he felt that it should have been deemed incomplete from the beginning. He hopes it passes and the city adheres to the laws they set forth at the beginning.

Adam Zollinger, Pacifica, stated that, like the prior applicant said, it was very hard to get that done in ten days, with architectural prints and all the other necessities in the application process. He stated that they spent a lot of money to make it happen and finding out now that it could have possibly been unnecessary for them to have spent that because they were granted in excess of ten days. He stated that was disturbing to hear and they hope that the city will continue to follow the rules they set forth from the beginning. He added that one big thing in the amendment was where it says it is not the intent of the amendment to alter the existing law and apply retroactively to any and all marijuana use permit applications submitted prior to the effective date of the resolution. He thought that would coincide with their application being approved because of being in excess of ten days. He stated that would also give them the opportunity to show them what they think is

a very good opportunity for the city to have a medical and recreational dispensary in the city and have their application reviewed, and it has not been because of being in the holding process. He stated it was all the literature provided in the ordinance and resolution and he hoped that would be taken into consideration. He stated that he drafted a letter explaining all of this and had copies to hand out.

Chair Campbell stated that, if they hand anything to staff, they can give it to the Commission to look at.

Sr. Planner Murdock thought that was the letter that Mr. Zollinger provided to him earlier and he placed it in front of the Commission and there are also copies in the back of the Council chambers.

Chair Campbell closed the public hearing.

Chair Campbell asked staff what they thought of the public comment.

Planning Director Wehrmeister thought it was possible that the speakers are under the assumption that, because they haven't received an incomplete letter that they are complete and there are applications that are complete and are waiting. She stated that they haven't started to check their application for completeness yet as they were not going to spend their money using staff time and resources to do that until it is their turn to start processing. She stated if that was their assumption, it was not a correct assumption as they haven't checked their application for completeness and haven't been given ten days. She stated that the cleanup that is needed is what they are proposing to the Commission at this time. She thought they made an interesting point that there is a recital. It was the last whereas on packet page 53 where it does speak to the retroactive applicability of the ordinance amendment. She stated that they wrote that in there because they have one application that is still incomplete and they keep trying to encourage them and give them access to staff to ask questions to help them, but they are still incomplete. She stated that they would like to revise that recital to add "and not yet deemed complete by the effective date of this ordinance." She stated that the application they heard this evening was obviously deemed complete and there will be one coming at the next regular meeting that is complete.

Chair Campbell explained that the public commenters cannot be brought back because of how the process works. He stated that they can hopefully have a conversation with staff later.

Commissioner Stegink asked for clarification that staff tell him how that would read, which applies to the retroactive. He concluded that it applied to all marijuana use permit applications not yet deemed complete submitted prior to the effective date of this resolution.

Sr. Planner Murdock explained that the last recital on page 53 of the packet would say "whereas the intent of these amendments is not to alter existing law and these amendments therefore apply retroactively to any and all marijuana use permit applications submitted prior to the effective date of this ordinance (changing the word resolution to ordinance) and not yet deemed complete by the effective date of this ordinance."

Commissioner Stegink thanked him, and stated he was going over the work description and explained that he was not 100% sure it was accurate but he has heard it repeated that this is the fifth applicant in line by that lottery. He asked if that was correct.

Sr. Planner Murdock asked if he was referring to the Phog Center LLC.

Commissioner Stegink responded affirmatively.

Sr. Planner Murdock stated that they had lottery No. 5.

Commissioner Stegink asked him to walk him through how No. 1 has not yet been deemed incomplete to get to No. 2 which would then be deemed incomplete to get to No. 3, etc. He asked why No. 5 was the first one.

Sr. Planner Murdock explained that the lottery selection number is not immediately reflective of the order in which the applications may be processed. He stated that the reason was the numerical limitations within the overlay districts. He stated that when the lottery selection was made it was for all applications, but the applications were among various marijuana overlay districts and if Nos. 1 and 2 were in one of the overlay districts and No. 3 was in that same overlay district, they would be unable to process three but they could skip to No. 4 if that was in a different overlay district. He explained that, in this instance, No. 1 was in the Sharp Park overlay district and the rest, Nos., 2, 3 and 4, were in other overlay districts which means the second application in the Sharp Park overlay district was No. 5.

Commissioner Stegink asked, if the slate was completely bare and no applications have been allowed, how would No. 1 not be the first applicant approved.

Sr. Planner Murdock stated that No. 1's application was not complete ahead of No. 5.

Commissioner Stegink concluded that they were not evaluating No. 5 until No. 1 has been deemed incomplete.

Sr. Planner Murdock stated that was not correct.

Commissioner Stegink asked him to restate that as he didn't understand it.

Sr. Planner Murdock stated that once they have identified the order of the lottery selection that could theoretically be approved within the numerical limitations, they began processing those applications which were identified, and provided them an opportunity to come back as quickly as they could with complete applications because all were deemed incomplete. He stated that No. 5 was the first to come back with complete information and was thus the first application to be scheduled for public hearing. He stated that No. 1 was the second application to come back with complete information and has been scheduled for October 1 public hearing.

Planning Director Wehrmeister clarified that Nos. 1 and 5 are the only two between Nos. 1 and 5 that are in the Sharp Park overlay district so No. 5 is not skipping anyone else above them in the Sharp Park District.

Vice Chair Clifford 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 with the stipulation that it is ten business days.

Planning Director Wehrmeister asked about the amendment to the recital.

Vice Chair Clifford agreed.

Commissioner Nibbelin seconded the motion.

The motion carried **6-0**.

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