

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA DENYING THE APPEAL OF THE PLANNING COMMISSION'S RECOMMENDATION TO CITY COUNCIL TO APPROVE ZONING TEXT AMENDMENT TA-112-18 (FILE NO. 2018-044) TO AMEND ARTICLE 48 "MARIJUANA REGULATIONS" OF CHAPTER 4 OF TITLE 9 OF THE PACIFICA MUNICIPAL CODE

WHEREAS, on July 10, 2017, 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 in Article 48 of Chapter 4 of Title 9 of the Pacifica Municipal Code; and

WHEREAS, 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. If a marijuana use permit application submittal is incomplete, a marijuana operation applicant shall be granted an extension of time to submit a complete application within ten (10) days; and

WHEREAS, the Planning Commission of the City of Pacifica did hold a duly noticed public hearing on September 17, 2018, at which time it considered all oral and documentary evidence presented, and incorporated all testimony and documents into the record by reference; and

WHEREAS, following the public hearing on September 17, 2018, the Planning Commission adopted Resolution No. 2018-003 to recommend to the City Council an amendment to section 9-4.4804, subsections (a)(2)(ii) and (a)(2)(vi) of the Pacifica Municipal Code to clarify existing law regarding the procedures for processing marijuana use permit applications that remain incomplete in excess of a ten (10) working day period following notification that an application submittal is incomplete; and

WHEREAS, an appeal was filed on September 27, 2018, in opposition to the Planning Commission's action; and

WHEREAS, the City Council of the City of Pacifica did hold a duly noticed public hearing on October 8, 2018, at which time it considered all oral and documentary evidence presented relating to the appeal, and incorporated all testimony and documents into the record by reference.

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

1. The above recitals are true and correct and material to this Resolution.
2. In making its findings, the City Council relied upon and hereby incorporates by reference all correspondence, staff reports, and other related materials.

BE IT FURTHER RESOLVED that the City Council of the City of Pacifica does hereby make the following findings pertaining to the appeal of the Planning Commission's recommendation to City Council to approve Text Amendment TA-112-18:

1. Appellant, in his appeal, 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.
2. 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.
3. The Planning Commission's action with respect to Text Amendment TA-112-18 at the meeting of September 17, 2018, 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. 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.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Pacifica denies the appeal of the Planning Commission's recommendation to the City Council to approve Text Amendment TA-112-18.

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Passed and adopted at a regular meeting of the City Council of the City of Pacifica, California, held on the 8th day of October 2018.

AYES, Councilmembers:

NOES, Councilmembers:

ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

John Keener, Mayor

ATTEST:

APPROVED AS TO FORM:

Sarah Coffey, City Clerk

Michelle Marchetta Kenyon, City Attorney