



Scenic Pacifica
Incorporated Nov. 22, 1957

PLANNING COMMISSION Staff Report

DATE: October 19, 2020

FILE: MUP-1-18

ITEM: 1

PUBLIC NOTICE: Notice of Public Hearing was published in the Pacifica Tribune on October 7, 2020, and mailed to 362 surrounding property owners and occupants.

APPLICANT: Lytt LLC
2110 Palmetto Avenue
Pacifica, CA 94044

OWNER: Ricco Louis Lagomarsino
Testamentary Trust
7120 Mission Street
Daly City, CA 94015

PROJECT LOCATION: 2110 Palmetto Avenue (APN 016-182-360) – West Sharp Park

PROJECT DESCRIPTION: Annual review of File No. 2018-022 – Authorizing operation of a cannabis retail operation, Lytt LLC, selling medicinal and adult use cannabis

SITE DESIGNATIONS: General Plan/Local Coastal Plan: Commercial
Zoning: C-1 (Neighborhood Commercial) / C-Z (Coastal Zone Combining) / CO-SP
(Cannabis Operation, Sharp Park Overlay District)

RECOMMENDED CEQA STATUS: The annual review is not a “project” pursuant to § 15378 of the California Environmental Quality Act (CEQA) Guidelines because it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

ADDITIONAL REQUIRED APPROVALS: N/A

RECOMMENDED ACTION: Adopt the attached Resolution.

PREPARED BY: Helen Gannon, Assistant Planner

1. BACKGROUND

The City Council, on appeal from the Planning Commission, adopted Resolution No. 52-2018 approving Marijuana Use Permit MUP-1-18 for operation of a cannabis retail operation within an existing commercial space on November 13, 2018¹. Pursuant to Pacifica Municipal Code (PMC) Section 9-4.4806(e), the Planning Department is “authorized to conduct an annual review of the operation of each permitted cannabis operation ... for full compliance with the operational, recordkeeping, nuisance and other requirements [of Pacifica’s Cannabis Regulations]...” Condition of Approval No. 29 of City Council Resolution No. 52-2018 required the Planning Commission to conduct the initial annual review and established the timing of the annual review to be held not less than one year but not more than two years from the issuance of the Cannabis Public Safety License (CPSL).

The Chief of Police issued the CPSL for the subject cannabis retail operation on November 29, 2018. Therefore, since more than one year but less than two years have passed since CPSL issuance, staff scheduled the subject annual review by the Planning Commission. This is the first and only annual review to be conducted by the Planning Commission pursuant to Condition of Approval No. 29. Planning Department staff may conduct future annual reviews as deemed necessary by the Planning Director pursuant to staff’s authority provided in PMC Section 9-4.4806(e).

2. ANNUAL REVIEW

A. Criteria

The City of Pacifica’s “Cannabis Regulations” are contained in Article 48 of Chapter 4 of Title 9 of the PMC (**Attachment B**). The Cannabis Public Safety License requirements are contained in Chapter 16 of Title 4 of the PMC. Additionally, Marijuana Use Permit MUP-1-18 set forth compliance requirements in the conditions of approval in Exhibit A to City Council Resolution No. 52-2018 (**Attachment C**). The following section lists each condition of approval with staff’s assessment of whether operation of the site is compliant with the respective condition based on a site inspection conducted on September 15, 2020.

B. Conditions of Approval

Table 1, below, lists the conditions of approval applicable to Marijuana Use Permit MUP-1-18:

¹ Upon adoption of Ordinance No. 844.C.S., effective date June 12, 2019, the City transitioned to use of the term “cannabis.” However, Marijuana Use Permit MUP-1-18 was approved under the provisions of Ordinance No. 819.C.S., effective date November 7, 2017, which at that time used the term “marijuana.” The term “marijuana” will be used to refer to the approved permit, but all other references in this report shall be to “cannabis.”

TABLE 1

Condition of Approval:	Staff Discussion:
1	Compliant. Staff confirmed during its inspection on 9/15/2020, that development was substantially in accord with the plans approved by the Planning Commission.
2	Compliant. As indicated in Chief of Police Steidle’s Memorandum discussed in Section 2.C, below, the Permittee received a Cannabis Public Safety License which is still valid, expiring on November 29, 2020.
3	Compliant. The MUP has not been transferred to any other person or entity.
4	Compliant. Staff confirmed with the Permittee and during its inspection on 9/15/2020.
5	Compliant. Staff confirmed during its inspection on 9/15/2020, received a memorandum from the Chief of Police indicating that the operation has not constituted a public nuisance, and further confirmed with Code Enforcement Officer White that no code enforcement issues were present at the site.
6	Compliant. Prior to commencement of operation, the Chief of Police confirmed the implementation of the Phase II Security Plan.
7	Compliant. Staff confirmed with the Permittee and during its inspection on 9/15/2020. Furthermore, there have been no complaints to the Police Department or Code Enforcement Division regarding outdoor operations.
8	Compliant. Staff confirmed with the Permittee and during its inspection on 9/15/2020.
9	Compliant. Information was provided to staff prior to commencement of operation.
10	Compliant. Staff confirmed with the Finance Division that all fees were paid on 10/26/2018.
11	Compliant. The approved use was established within two years from the date of final determination.
12	N/A. There have been no claims, actions, or proceedings brought against the City in which the Operator would be required to indemnify, defend, and hold harmless the City of Pacifica.
13	Compliant. The operator installed a window sign on the front windows instead of a wall sign. Therefore, no master sign program was required.
14	Compliant. Staff verified during its inspection on 9/15/2020. Store hours of 9:00 am to 9:00 pm have been posted on the store frontage.
15	Compliant. Staff verified during its inspection on 9/15/2020.
16	Compliant. Staff verified during its inspection on 9/15/2020.
17	Compliant. Operator paid all applicable fees as required.
18	Compliant. Staff verified during its inspection on 9/15/2020.
19	Compliant. Staff inspected the interior of the retail space on 9/15/2020, which included a ramp for accessibility.
20	Compliant. A fire inspector verified during an inspection on 8/31/2020, that only retail uses were being conducted and that no hazardous or potentially volatile manufacturing processes were occurring on the site.
21	Compliant. A fire inspector verified during an inspection on 8/31/2020 that no walls have been altered in a manner which would require an alteration or extension of the fire sprinkler system.
22	Compliant. A fire inspector verified during an inspection on 8/31/2020.
23	Compliant. A fire inspector verified during an inspection on 8/31/2020.
24	Compliant. A fire inspector verified during an inspection on 8/31/2020.
25-28	Compliant. No exterior construction occurred at the site. Operation commenced within existing commercial space.
29	Compliant. The Planning Commission will conduct the single annual review of the subject MUP on October 19, 2020.

As shown in Table 1, there is evidence that the Operator has complied with all applicable conditions of approval in Resolution No. 52-2018. Condition No. 12 is not applicable because there have been no claims, actions, or proceedings against the City in relation to the permit.

C. Police Department and Code Enforcement Division Review

In addition to its analysis of the conditions of approval applicable to Marijuana Use Permit MUP-1-18 (Section 2.B, above), Planning Department staff consulted with the Chief of Police and Code Enforcement Officer to determine if, pursuant to PMC 9-4.4806(b), violations of Article 48, the security plan or any violations which constitute a nuisance have occurred, which could be a basis for revocation of MUP-1-18. The date range of the analysis was September 2019 through September 2020.

Police Chief Dan Steidle considered incident types that would affect quality of life for the subject site and immediate vicinity. The incident types considered were objectionable conditions that constitute a nuisance on any public sidewalk or public space abutting the cannabis operation premises as well as any calls for service within an approximately three block radius of the business. As noted in Chief Steidle's memorandum (**Attachment D**), there were six calls for service or complaints potentially related to the cannabis operation such as consumption of cannabis in a public place, subject(s) under the influence of cannabis, or loitering during the given period. Of these calls, five were calls for service placed by Lytt employees/management informing the Police Department of a problem. Pacifica Municipal Code Section 4-16.03(c)(2) requires licensees to "take reasonable steps to correct objectionable conditions that constitute a nuisance." Further, 4-16.03(c)(2)(ii)(aa) states that timely calls to law enforcement placed by the licensee shall not be construed as evidence of objectionable conditions that constitute a nuisance. One call was placed by a bystander regarding a cannabis violation in front of the business that Lytt was not aware of. However, Lytt has demonstrated a pattern of reporting problems it has observed and only one out of the six calls for service were from parties other than Lytt. Therefore, Chief Steidle concluded in his memorandum that the Chief of Police has no concerns regarding the operation of Lytt during the reviewed period.

The City's Code Enforcement Officer also did not identify any code enforcement complaints related to the subject site. Therefore, there is no evidence of a public nuisance from the Code Enforcement Division.

D. Finance Division Review

Planning Department staff also consulted with the City's Financial Services Manager, to determine if the subject cannabis operation has complied with all business license tax and cannabis operation tax obligations. The Financial Services Manager confirmed that all business license and cannabis operation tax filings and payments have been timely and Lytt, LLC is in good standing with the Finance Division.

3. STAFF ANALYSIS

As demonstrated in Section 2 of this report, the operator of the cannabis retail operation at 2110 Palmetto Avenue has complied with all conditions of approval applicable to ongoing operation of the

cannabis retail operation in addition to the operational, recordkeeping, nuisance and other requirements of the City's Cannabis Regulations in Article 48 of Chapter 4 of Title 9. Notably, the Police Chief and Code Enforcement Officer have not identified any quality of life or other nuisance concerns related to the cannabis operation. Therefore, staff recommends adoption of the attached resolution to find operation of the cannabis retail operation in full compliance with the requirements of Article 48 of Chapter 4 of Title 9 of the PMC.

COMMISSION ACTION

MOTION FOR APPROVAL:

Move to **ADOPT** the attached resolution to **FIND** that the annual review of the cannabis retail operation is exempt from the California Environmental Quality Act; to **FIND** that the operation of the cannabis retail operation at 2110 Palmetto Avenue (APN 016-182-360) authorized by Marijuana Use Permit MUP-1-18 (File No. 2018-022) is in full compliance with the requirements of Article 48 of Chapter 4 of Title 9 of the Pacifica Municipal Code; and, to **INCORPORATE** all maps and testimony into the record by reference.

ATTACHMENT LIST:

Attachment A - Draft Resolution (DOCX)

Attachment B - Article 48 Cannabis Regulations (PDF)

Attachment C - City Council Resolution No. 52-2018 Denying Appeal and Approving MUP-1-18 (PDF)

Attachment D - Police Chief Memorandum (DOC)