

**MINUTES**

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

April 17, 2017

7:00 p.m.

Chair Gordon called the meeting to order at 7:02 p.m.

**ROLL CALL:** Present: Commissioners Baringer, Nibbelin, Clifford, Cooper and Chair Gordon  
Absent: Commissioners Evans and Campbell

**SALUTE TO FLAG:** Led by Commissioner Cooper

**STAFF PRESENT:** Planning Director Wehrmeister  
Assoc. Planner Murdock  
Asst. City Attorney Nira Doherty

**APPROVAL OF ORDER OF AGENDA** Commissioner Nibbelin moved approval of the Order of Agenda; Commissioner Clifford seconded the motion.

The motion carried **5-0**.

Ayes: Commissioners Baringer, Nibbelin, Clifford, Cooper and Chair Gordon  
Noes: None

**APPROVAL OF MINUTES: MARCH 20, 2017** Commissioner Clifford moved approval of minutes of March 20, 2017; Commissioner Cooper seconded the motion.

The motion carried **5-0**.

Ayes: Commissioners Baringer, Nibbelin, Clifford, Cooper and Chair Gordon  
Noes: None

**DESIGNATION OF LIAISON TO CITY COUNCIL MEETING OF MAY 22, 2017:**

Planning Director Wehrmeister stated that the decision to not extend the permits for 1557 Beach was appealed and they need a liaison to City Council.

Commissioner Clifford stated that, since he made the motion to deny the extension, he would volunteer to defend that decision.

**ORAL COMMUNICATIONS:**

Roger Medler, Pacifica, stated that they have had a 30 year issue regarding Seaview Tire & Brake and now they had one with SaveMore Meats. He asked why some people have to have codes enforced with permits and others don't. He questioned why there is parking behind Seaview Tire & Brake, adding that the signs need to be taken down. He stated that there is no certificate for occupancy for Seaview Tire & Brake according to City Clerk O'Connell and no certificate for

occupancy for SaveMore Meats. He asked why codes are not being enforced along with permits. He referred to the impact of constant noise from Seaview Tire & Brake behind his house which he has been working on and it was ridiculous. He stated that the trucks have improved by shutting their engines off, but the refrigeration units keep running and they are louder than the motors. He stated that the Seaview Tire & Brake's phones should not be ringing when he is out in the yard, adding that he is allowed peace and quiet in his yard and hoped he will be lucky enough to get that from the city.

**CONSENT ITEMS:**

None

**PUBLIC HEARINGS:**

**1. TA-105-17**

**TEXT AMENDMENT TA-105-17, Initiated by the City of Pacifica**, to Amend Various Pacifica Municipal Code Provisions to Conform with Amendments Enacted by the California Legislature to Government Code Section 65852.2 Concerning Accessory Dwelling Unit (i.e., Second Residential Unit) Permitting by Local Agencies, the Amendment to be Considered Would Affect Residential Property Citywide. Recommended CEQA Action: Statutory Exemption (CEQA Guidelines Section 15282(H)); And “General Rule” Exemption (CEQA Guidelines Section 15061(B)(3)).

Assoc. Planner Murdock presented the staff report.

Commissioner Clifford referred to the half mile from a bus stop rule, and asked if there was a level of bus service required as there are a couple of bus stops that are not used but are present.

Assoc. Planner Murdock stated that the state law didn't provide any guidance in providing levels of service for public transit and staff felt the proposed ordinance they provided reasonably balances the ambiguity in state law and they adopted a transit stop standard but weren't comfortable including level of service standards.

Commissioner Cooper thought the statute was broad and didn't limit the restrictions of the Home Owners Association, and he assumed they couldn't put any additional restrictions without violating the state statute.

Asst. City Attorney Doherty explained that the provisions provided in state law were the extent of the provisions local agency may apply with no further standards for evaluating ADU permit, and agreed that any additional standards regarding an HOA would be inconsistent with the ordinance.

Commissioner Cooper then referred to owner occupancy and stated that he had expressed wanting the owner occupancy to be part of it and wasn't sure if it was just at time of permit or the owner had to occupy the property throughout the duration, which was his conclusion. He asked whether he was mistaken.

Commissioner Nibbelin stated that he thought several individuals agreed that it needed to be at the drawing of the permit but the situation might change afterwards which he thought the minutes reflected.

Assoc. Planner Murdock further clarified Commissioner Clifford's question regarding transit, stating that the map staff prepared regarding their decision relied on the bus stop information from SamTrans and they will endeavor to ensure that the stops used for the mapping were active stops but will rely on information from the transit provider.

Commissioner Clifford thought that could change over time.

Assoc. Planner Murdock stated that they anticipate having to update the map over time and weren't adopting the map as part of the ordinance but a standard and the map can be dynamic and change over time.

Commissioner Baringer asked staff if they talked to other cities regarding their plans in connection with this ordinance for a different perspective.

Assoc. Planner Murdock stated that he has not had substantive discussions with surrounding cities. He stated that they participate in a group called 21 Elements which included local planners and it was facilitated by a consultant hired by the county. He stated that they have talked about it several times regarding the requirements under state law, with presentations from the state Housing and Community Development department explaining their best interpretation with the current version of the law. He felt they all started from a place of common information but thought the ordinances have been tweaked to reflect specific community concerns, adding that they tried to draft the ordinance by responding to concerns for Pacifica. He thought the Asst. City Attorney may have some additional perspective from other clients working on this ordinance.

Asst. City Attorney Doherty stated that she has advised 12-15 cities on their AD ordinances, and they vary. She stated that she has not seen an ordinance strictly compliant with state laws, adding she thought it was almost impossible to maintain zoning ordinances while complying strictly with state laws because they are vague and ambiguous.

Chair Gordon opened Public Hearing.

Chris Weld, Pacifica, stated he was the architectural chairperson for the Fairmont Subdivision Improvement Association. He thought none of them have to deal with slum landlords, but he does. He stated that the ADU ordinance as he understands it would usurp the contractual agreement that exists with the deed of the homeowners in Fairmont if they plan development, as it isn't R1 but PD which is a difference. He didn't see how the state or the city can usurp the contractual agreement imbedded in the CC&R covenant conditions and restrictions that are part of the property deed. He urged them, in developing the ordinance and in reference to the Asst. City Attorney's interpretation of the vagueness of the ordinance, to exclude the HOA where there is a contractual agreement. He stated that he has been a resident since 1973 and he felt this ordinance was detrimental to the quality of life in Pacifica which he holds the city as responsible to protect.

Howard Jaffe, Pacifica, stated that he currently hosts people all over the world at his Airbnb for various reasons, such as honeymoons, etc. He stated that he didn't allow them to stay a month because it was hard to kick them out due to other laws and rules. He asked, if this were to pass, whether he would still be able to do that. He stated that most come for 2-4 days.

Chair Gordon stated that this was not a venue to ask questions but an opportunity to make a statement, but he stated that he could contact the Planning Department on Tuesday and they will be happy to answer questions.

Mr. Jaffe concluded that, in the event that it would disrupt this important part of his life and the California experience for visitors, he would recommend that they not approve it until further discussion happens.

Chair Gordon closed the Public Hearing.

Commissioner Baringer stated that he has had a lot of time to think about the proposed ordinance and he keeps coming back to the fact that it goes against all of the land development principles and practices that he has worked on during his entire 40-year career in real estate development. He didn't see any way that this will not adversely impact the quality of life for the residents of Pacifica. He felt this eliminates an R1 zoning and no hearings for any new structures that could be developed, no public input, no common sense approach to parking other than tearing down the garage requires replacement of parking. He added that they can't make any analysis of water usage or sewer usage, can't charge any additional fees to offset the maintenance and improvement of infrastructure. He referred to projects where people speak up in opposition to density and he thought this was a high density development. He stated that, if this ordinance was approved and every property owner in Linda Mar took advantage of this, the impact on traffic, schools and infrastructure would be horrendous. He could not see any scenario where the city would be willing to allow this to happen. He understood there was a housing shortage in California and it needs to be dealt with, but he felt this was not how they need to deal with it. He thought they should not approve it and suggested telling the state that this may be appropriate in some areas of the state to help offset the housing shortage, but he questioned, down the road, if this gets unwound because of illegal activity, whether we would ask people who built them to take them down. He then referred to the commercial aspects, and thought there was no prohibition on a developer going to every property owner and propose to partner with them to build an ADU in the yard and share the rent. He stated that we would go from a single family residential community to a commercial multifamily community. He didn't think that was what any Pacificans thought when they were buying their home and establishing a presence in the community. He felt they should say no or at least do the development where they limit the size to 600 feet, require public hearings, charge reasonable fees for the impact on sewers, water, etc. He thought they needed a common sense approach and he didn't see anything in the ordinance that allows the city the ability to make the judgment on a lot of levels as to what was good for our community. He stated that we have a lot of public input in Pacifica and this removes that. He will continue to be opposed to it, even if there is litigation, to protect our community. He did not want to be in a position to waste the resources of the community that might be utilized for some other aspect. He felt this was worth protecting.

Vice Chair Nibbelin asked for clarification regarding the CC&Rs. He thought nothing they were doing by government regulation bears on private arrangements that may exist among property owners, and if there are CC&Rs that are enforceable, it was a private matter and they take care of it.

Assoc. Planner Murdock agreed, stating that there was nothing in their analysis that would indicate that this would prevent a homeowners' association with valid CC&Rs from preventing construction of an accessory dwelling unit.

Vice Chair Nibbelin concluded that they would take it among themselves in the proper form.

Assoc. Planner Murdock stated that they may be forced to issue a building permit but it doesn't mean that the owner could affect the construction in reliance on that permit if it conflicted with the CC&Rs.

Vice Chair Nibbelin referred to the short term rentals, and recognized that the proposed ordinance would prohibit the use of ADUs approved under the ordinance as short term rentals. He assumed

it didn't have any particular impact on any other kind of short term rentals if someone is using the primary dwelling unit currently for short term rentals.

Assoc. Planner Murdock agreed, stating that the proposed ordinance would address short term rentals and accessory dwelling units only.

Vice Chair Nibbelin stated that he has respect for his fellow commissioner who has eloquently expressed some perspectives on ADUs. He felt his perspective was different. He stated that, as they think about the future of the Peninsula, it does rely on in fill development and figuring out the various places where they can house people. He thought that was an ongoing challenge for which, in his work with the County, they spend a lot of time thinking about how they are going to house people. He also felt that, in thinking about housing, they have to think about the impact which was a tradeoff. He stated that, currently, we are operating under state law, and until they have an ordinance that complies with state law, the state law controls, and it is more permissive than what they were proposing. He asked staff if that was a reasonable characterization.

Asst. City Attorney Doherty agreed.

Vice Chair Nibbelin felt they need to move forward with something if they want to maintain any kind of local control over ADUs, and they need to move expeditiously. He didn't think they will see a lot of success with any litigation over what they want to move forward on. He thought it will be a poor use of city resources going forward. He felt what was put in front of them was a reasonable balanced approach under the circumstances. He stated that the state made a determination that state wide, this was an important way to move forward to create more housing. He concluded that, with state wide application, there wasn't a lot we can do about it, but just do the best we can to shape this to reflect our local needs. He felt staff has done a good job articulating what came out of the study session. He felt they needed to move forward, mentioning not seeing anything to prevent them from school impact fees, etc., if warranted. He thought it would be based on individual parcels, but he felt they need to move forward. He felt that, while this proposal was not perfect, it was good and they can't let perfect be the enemy of good.

Chair Gordon stated that he was in Commissioner Baringer's camp. He wasn't sure if the residents of Pacifica realize the impact this can have on the quality of the neighborhoods. He thought it could be very dramatic. He stated that he owed staff an apology because he has changed his views since the study session and was now concerned about the impact it will have and he was interested in crafting an ordinance that tries to comply with the spirit of the state law, but maintains our ability to mitigate the impacts. He stated they did an excellent job of embodying the consensus from what they discussed from the prior study session, but he has changed. He referred to the issue raised by Commissioner Cooper regarding the owner being the occupant at the time of application but also throughout the tenure of the ADU. He felt that was the way they can comply with the spirit of the state law while maintaining some kind of control over impact. He would be in favor of changing what was in the proposed amendment to reflect that. He thought it was frustrating for those wanting to move forward, but he was not there. He would be interested in having a discussion on ways to tweak this proposal to manage the potential impacts.

Commissioner Cooper agreed that it was a complicated issue. He felt the Airbnb's were a tradeoff between being able to charge for an ADU versus the city getting money from an Airbnb where the people spend their money in Pacifica. He stated that, if we aren't able to charge for the

hookup, additional tax, etc., there was a genuine strain on the system and the city for those services. He mentioned some of the inconsistencies that he hoped the state will change. He also recognized Commissioner Nibbelin's comment that this was at least some sort of restrictions which was valid. He agreed that they need to move forward on this. He stated that, in his opinion, he wasn't sure whether, as a Commission, they wanted to invalidate the state law by proposing things that were in direct conflict. He agreed they need to move forward but there were things in the law that he didn't like, such as that, once the owner leaves, the ADU goes away. He thought that was a fair restriction. He also felt they should allow Airbnb as one speaker mentioned that was part of his income and it was exposing Pacifica to others in the country who spend money.

Commissioner Clifford referred to sewer fees, stating that if an ADU was put into the building, they will be adding a kitchenette and bathroom, and would automatically trigger at least a camera-ing of the existing sewer system which often leads to a replacement of the sewer laterals which improves the system. He stated that, if an ADU is an auxiliary building, they will have to run new pipe to the existing system which will trigger a camera-ing and follow-up that leads to a replacement of the sewer lateral. He concluded there was some followup in terms of improving the overall sewer system. He stated that a large amount of the INI comes from the sewer laterals, not necessarily the main lines. He concluded there was some benefit to the city's infrastructure. He had problems with the idea of every backyard having an ADU in it, because his single family neighborhood would no longer be a single family neighborhood with all kinds of impacts. He was also in the middle of concerns that there was some benefit to the state law but also real detriments. He wasn't certain the state will get what they're looking for in increasing the amount of housing. He agreed that they will have to have an ordinance in place as the old ordinance was eliminated and they are following the state. He was leaning towards going with what was presented because he likes what the state has done, and they get some choices doing it this way. He stated that, if they fight the state, they wind up with what the state says.

Commissioner Baringer understood the different perspectives, but he felt this was choosing between getting shot or stabbed. He felt this happens when you have a one size fits all policy. He stated that, in some parts of California, this will work perfectly such as certain parts of the Bay Area where they have large lots and having an ADU on an acre-lot would not be a significant impact on the community, but the way the majority of our community was laid out, this does not work. He felt there should be some kind of a hearing. He stated that, if the neighbors are willing to go along with it, he felt that would help him get around this being rammed down our throat by the state. He stated that, with an administrative approach to densification, he was opposed to it. He stated that, if the plan and need was to develop additional housing, in a community like Pacifica where a lot of land is not developed, there were more thoughtful ways to solve a housing shortage by taking the land that was not developed and developing that land. He stated that he wasn't talking about density. He stated that we have a lot of single family residential parcels in Pacifica that are not developed. He felt those should be developed before we start densifying the rest of the city. He stated that he is opposed to this, and may be the only one who is, but he cannot, in good conscience, vote for this. He felt it would definitely have to be revamped and give the community a stronger say in what happens. He stated that, at the end of the day, we have to live with it, long after everyone in Sacramento was gone, which is why he believed we should have the final say on what happens in our community.

Vice Chair Nibbelin thought one of the key components of the state law was that it makes these administrative and there aren't going to be hearings under state laws which are prohibited by the

law. He thought we won't get any traction on something that would ignore that aspect of the law. He stated that, if someone comes in applying for an ADU, they are applying under state law and he didn't think the city was doing itself any favors by kicking the can down the road. He thought, if someone came in today seeking an ADU permit, they will apply under state law and those standards applied. He asked if he was correct in that assumption.

Assoc. Planner Murdock responded affirmatively.

Asst. City Attorney Doherty agreed that he was correct, but added that our position on the existing state law was that they would also include standards that are currently in the city's existing ADU ordinance that are consistent with state laws.

Vice Chair Nibbelin stated that he read the Commission by-laws which states that it takes four votes of the Commission to approve and move forward with recommendations on text amendments, which is what they were discussing, and they may not be able to get four votes on this and it may cause them to continue this until they have more commissioners present.

Chair Gordon stated that was why he suggested they come up with some kind of modifications to what was presented to see if they can get a consensus. He agreed that, if it was a take it or leave it, he didn't think it will pass. He thought they could get a consensus of four votes with some tinkering.

Commissioner Clifford mentioned listening to Commissioner Baringer and wondered about a tree ordinance that was administrative but there was a possibility of a hearing through that process. He mentioned that, for the heritage trees, you post that you are going to cut down a heritage tree and, if no one disagrees, the permit is granted. He asked if they required that for an ADU they have to post on their property line and, if no one said anything, you issue them a permit and they go ahead, but if neighbors wanted an administrative hearing, he asked if that could happen.

Asst. City Attorney Doherty stated that an administrative hearing involves discretion and they were not permitted to employ discretion in issuing ADU permits pursuant to state laws. She stated that a local agency could implement certain noticing standards, but any standards beyond those set forth in the state law, and are used for consideration of issuance or denial of an ADU permit, would be in violation of the state law.

Commissioner Clifford thought they could require a posting of this, and asked if it were possible that a neighbor could appeal the issuance of the permit to the Planning Commission.

Asst. City Attorney Doherty stated that the state laws only pertain to the issuance of ADU permits, but do not regulate appeals of the issuance or denial of permits.

Commissioner Clifford concluded that there was possibly an avenue for effected neighbors to come forward and do something or at least have a hearing on whether that particular unit should be built.

Asst. City Attorney Doherty stated that he was correct, but if it came to the Planning Commission or another legislative body on appeal, the standards that the body would be relying on for reviewing the issuance of the permit would be the same ministerial standards that are set forth in state laws.



Commissioner Clifford asked if she was saying that they would likely not be able to sustain an appeal.

Asst. City Attorney Doherty stated that if they sustained an appeal based on factors that went beyond the ministerial factors set forth in the state laws, upon a legal challenge, their determination would likely be overturned.

Chair Gordon referred to parking in the proposed ordinance, asking if it would tie the required off street parking to the number of bedrooms.

Assoc. Planner Murdock stated that they drafted the proposed ordinance in response to input from the Commission at the study session. He stated that the state law allows them to establish per bedroom or per ADU parking requirements and they heard from the Commission some support for up to two bedrooms and one parking space, three or more bedrooms two parking spaces. He stated that it was subject to change as they have discretion relative to the parking requirement based on bedroom or unit.

Chair Gordon asked confirmation that he meant off street parking.

Assoc. Planner Murdock responded affirmatively, adding that the effect of that may be limited based on the transit exemption for providing off street parking. He stated that, until that was resolved, it wasn't particularly effective but was there. He stated that they drafted the definition of transit should there be a future time when the legislature allows the city to define transit. He stated that they have a service level included in the definition that would take effect.

Chair Gordon mentioned a neighborhood with a parking issue, like Pedro Point, and he thought they were covered by the transit exemption.

Assoc. Planner Murdock thought there was half of it, on the easterly half that was within the exception area and in the westerly half that was not within a half mile of transit.

Chair Gordon thought that was an example of a way the ordinance could have a bad impact on a neighborhood. He stated that, for the section of Pedro Point that was covered by the exemption, it could make the parking situation worse than it already is.

Assoc. Planner Murdock stated that he has not thought of a good way to get around that. He felt the law was straightforward and he wasn't sure how creative they can be without undermining the strength of our ordinance.

Commissioner Baringer asked if it was possible for them to enact a moratorium until they can get this squared away so that all of them can agree on it.

Asst. City Attorney Doherty stated it was not.

Commissioner Baringer asked why they could not.

Asst. City Attorney Doherty explained that the state law specifically states that until the time a local agency adopts an ordinance that was consistent with the state laws, the state laws shall apply.

Commissioner Baringer asked what happens if they do it anyway, stating that we get sued and then what happens.

Asst. City Attorney Doherty stated that you lose.

Commissioner Baringer asked how long it takes for it to happen.

Asst. City Attorney Doherty stated that it depends. She stated that, if you received a legal challenge, they would assess the potential damages to the plaintiff in the lawsuit and the city would make a decision on how to move forward.

Commissioner Baringer stated that, regardless of his opinion on the whole legislation, he didn't think they want someone walking into the office the next day with an application and being able to pull it.

Assoc. Planner Murdock didn't think they were in that situation. He stated that the law gives the city 120 days to act on one of the applications.

Commissioner Baringer asked if that was using due diligence per their definition if you took 120 days to review an application for a permit.

Assoc. Planner Murdock did not understand the question.

Commissioner Baringer concluded that, if someone came in the next day, the city could take up to 120 days and still be acting in good faith in processing that application.

Assoc. Planner Murdock stated that he was not aware of anything contained in the state law that imposes some other standard. It is 120 days.

Asst. City Attorney Doherty agreed.

Commissioner Cooper stated that he was looking at the seven text amendments proposed. He stated that staff has done a lot of work and they were looking for direction from the Commission on what to put in. He felt they should give them an answer, acknowledging that they may not do it at this time, but they should give them an answer. He stated that he has a problem with the first two text amendments, short term rentals and owner occupancy. He asked what elements in the document did the Chair have a problem with or the state statute in general with which Commissioner Baringer has an issue.

Chair Gordon stated that it was more specific, but he liked his approach to make consensus on certain bullet points. He asked if they could do that.

Commissioner Cooper was trying to help staff because they were looking for direction.

Chair Gordon understood, and asked staff if that would be helpful.

Assoc. Planner Murdock thought it was a helpful starting point.

Asst. City Attorney Doherty stated that, if they make substantial changes to the ordinance as proposed, they will need to come back as they cannot recommend an ordinance unless it is substantially similar to the one presented in the agenda.

Vice Chair Nibbelin asked if it was because they need a public hearing.

Asst. City Attorney Doherty stated that they need to properly notice the public.

Commissioner Cooper suggested they address the amendment regarding the owner occupancy of the primary unit only at time of the building permit application, but he felt the owner should be occupying the space. He asked if they have a change of opinion.

Chair Gordon stated he has had a change of opinion.

Commissioner Clifford stated he has not.

Vice Chair Nibbelin was in agreement with the way it is written as of now.

Commissioner Baringer asked if they are talking about short term rentals.

Commissioner Cooper stated that they were talking about owner occupancy.

Commissioner Baringer stated he felt the owner should be there. He stated that his comment previously was that he didn't know how you enforce that. He stated that they can document ownership at the time of application and then sell the entire project a month later and the city will not know that so he didn't know how they enforce that going forward.

Chair Gordon stated that his issues about enforcement are noted, but he was looking for yes or no on the first bullet point.

Commissioner Baringer wants them to own it when they do it as the last thing they want is an absentee landlord constructing two on a lot. He stated that there were comments made at that public hearing where people were living in an area where they had problems with that issue.

Chair Gordon stated it was No. 1 in the comment.

Commissioner Baringer stated that he does prefer that the owner does live there at all times, but he didn't know how they are going to enforce it.

Chair Gordon stated that it sounded like there were three votes not in favor of the first bullet point and two in favor of the first bullet point.

Commissioner Cooper stated that on the second one, prohibiting short term rental, he stressed from an economic standpoint. He understood opposing views on not changing the ways we live in Pacifica, but he thought it was a great place to visit and it was getting very expensive to live

here, and some use that as a supplemental income and it provides revenue for the businesses in Pacifica. He would strike it and let state law take effect.

Commissioner Clifford liked prohibiting it as using it as an Airbnb adds to a little more disruption to the neighborhood as tourists have different hours than residents. He prefers not having the ADU rented out as an Airbnb.

Vice Chair Nibbelin agreed that they should not be building ADUs and then rented out for the reasons stated which he thought creates an additional incentive beyond what the state legislature has.

Commissioner Baringer stated he was opposed to short term rental of the ADUs.

Chair Gordon stated he also opposed it adding up to four.

Commissioner Cooper stated he did not have any issues with the others as they seem to be minor in their restrictions such as where doors are, heights, etc. He thought the third amendment was a logical addition to the state statute.

Chair Gordon asked if anyone had a problem with bullet point 3.

Commissioner Clifford stated, if the minimum rear setback was 20 feet, he didn't have a problem having a window 20 feet from someone else's backyard but he would if it was five feet.

Assoc. Planner Murdock explained that the rear setback in the R1 zoning district is 20 feet. He stated that they were proposing that an ADU constructed between 19.99 feet and five feet would not be allowed to have an opening facing the rear property line. He added that it was important to note it was possible under state law to convert accessory structures to accessory dwelling units and they can be constructed less than 20 feet from the property line under current zoning. They have tried to capture that so that someone is less inclined given the standard to build an accessory structure and then flip it into an accessory dwelling unit.

Commissioner Clifford stated that he was fine with No. 3 as written.

Chair Gordon asked and concluded there were no objections to No. 3.

Commissioner Cooper stated that the next bullet point was assuring that the ADU did not exceed the same height as the existing building, and he didn't have a problem with that.

Chair Gordon asked and concluded there were no objections to No. 4.

Commissioner Cooper stated that No. 5 was the minimum floor area and he thought they did a good job restricting the primary and ADU square footage by limiting it to the primary residence as a percent as well as the overall property area, and he didn't have a problem with it.

Chair Gordon asked and concluded that there were no objections to No. 5.

Commissioner Cooper stated that No. 6 was the two tier parking standards based on the number of bedrooms to ensure sufficient off street parking. He thought they agreed it was based on the bedrooms not the dwelling unit.

Chair Gordon commented with limited enforceability.

Commissioner Baringer stated that it sounds reasonable but that was the problem unless it was within 95% of the city where there are no parking requirements and, in that case, he has a huge problem with it. He felt we already had parking problems in numerous areas of the city and this will only exacerbate it.

Commissioner Cooper stated that the last one requires replacement of covered off street parking spaces to create an ADU. He didn't have a problem with that.

Commissioner Baringer agreed.

Chair Gordon stated that the only one that did not garner at least four votes was the first bullet point.

All commissioners were in agreement.

Chair Gordon asked if they propose a modification to the ordinance that replaced the first bullet point.

Commissioner Cooper suggested that they end it saying requires owner occupancy of primary dwelling unit period.

Chair Gordon stated he would like it to say at all times, and maybe they can approve something at this meeting.

Vice Chair Nibbelin stated that the exercise they were engaging in was good, but he thought there were a few other standards under proposed amendments on page 35 that he was concerned about. They covered the things they talked about at the study session, but there were a handful of things that he wanted to be sure they were okay with. He stated that there was a bullet point that talks about procedures for legalization of an unpermitted ADU and another one that talks about standards for construction on a site with an existing nonconformity. He stated that it occurred to him that he didn't know what the ordinance as proposed says about those two things and he asked staff to give a brief summary of what the procedures are, asking if there was anything remarkable with respect to legalization that streamlines legalizing unpermitted ADUs and what they do in situations with non-conformities.

Assoc. Planner Murdock stated that, with legalization of existing units, they have not included any streamlined provision, and they must meet the standards or it is not legal. With construction on a site with existing non-conformities, they have a cryptic method on permitting and reviewing construction on sites with non-conformities and they have tried to say that, if meeting all the requirements despite the non-conformities they can construct it with a building permit but not a discretionary permit. He stated that they allow people to seek variances if they can't comply with a particular standard and come in for discretionary review. He stated that they have limited the discretionary review to the physical development, not consideration of use of the ADU.

Vice Chair Nibbelin appreciated having all the information.

Chair Gordon stated that it was tough because they were being forced to move forward on an ordinance that has potentially serious ramifications for our community. He asked if they could get four votes for changing the first bullet point that require that the owner of record live in one of the units at all times.

Vice Chair Nibbelin stated that, if that was adequate to get four votes, in spite of some misgivings, he would support that.

Commissioner Clifford stated that he will not support a change to that. He knows from personal experience that some of his friends are aging and not necessarily going to be able to stay in their homes and, therefore, not be able to keep the ADU going. He stated that they may need the income from renting their home and the ADU to support their medical needs beyond what they saved for during their work life. He was reluctant to support a change that forces them to sell their home or close down the ADU and just rent their home because they are not living in it.

Chair Gordon thought selling their home would generate a certain amount of income.

Commissioner Clifford stated that they might not want to sell their home.

Chair Gordon understood that was a choice they sometimes need to make.

Commissioner Clifford was reluctant to support any change to that.

Chair Gordon noted a no from Commissioner Clifford.

Commissioner Baringer stated that he believes the homeowner needs to be there. His preference would be that they are there the entire time to manage the property but he didn't know how they were going to enforce it.

Commissioner Cooper stated that he felt they have to do something and they were giving direction. He concluded that the fellow commissioners did not agree with him, but he felt they all need to compromise on certain things. He was concerned, even if they made the change, whether Commissioner Baringer would approve the ordinance.

Commissioner Baringer stated that he was probably odd man out as he was against it fundamentally. He felt they should persist and resist and stand up for our community and not let someone in Sacramento steamroll it. He didn't know how that plays out but he felt they should at least make some kind of an effort.

Chair Gordon asked, even if they have four votes for that change, if that would constitute a material change.

Asst. City Attorney Doherty stated that they consider that not to be a material change.

Chair Gordon stated that they need four and Commissioner Clifford was a negative.

Commissioner Cooper stated that, knowing that the majority of the commissioners would want to change that, it looked like they have to postpone this to another meeting, and he asked if they have staff make the change for the first provision when they come back to approve it as written.

Vice Chair Nibbelin wanted to be clear. He stated that he was trying to see if there was a way to get something done at this time, but he wants to reserve the right to look at it holistically when it comes back.

Planning Director Wehrmeister stated that she was hearing the various concerns and thought Commissioner Baringer was opposed to the state law, so she wasn't sure they could bring something back that would get his vote, but she thought, beyond the bullet points they went through and hearing all their comments, they could perhaps go through the entire ordinance again. She thought the Commission needs to be prepared that staff has a duty to come back and tell them that they may be drafting changes in response to their comments that are risky in terms with compliance with the state law, and it was their responsibility to inform them of that. She stated that, when they bring the recommendations to City Council, they need to make sure they are fully aware of those concerns. She stated that, as Planning Director, she was uncomfortable that they are not comfortable. She stated that, even with the caveats, she would like to work on it and bring something back that they are more comfortable with making a recommendation to the City Council. She stated that they have some substantive issues coming in May and she suggests that they continue it but they renotice it as it was an important issue for the community and paying for another notice in the newspaper is money well spent. She stated that they can then decide internally the time they need and get it back to them as soon as possible.

Chair Gordon stated that sometimes staff provides them with alternative motions, and he wondered if that first bullet point is something they could present so the Commission could vote for option A or B without having to go back to the drawing board.

Vice Chair Nibbelin moved that the Planning Commission continue this matter to a date to be determined by the Planning Director for further consideration of ordinance revisions based on feedback the Planning Director has received in connection with this hearing; Commissioner Clifford seconded the motion.

The motion carried **5-0**.

Ayes: Commissioners Baringer, Nibbelin, Clifford, Cooper  
and Chair Gordon

Noes: None

**CONSIDERATION:**

**2. PLANNING COMMISSION BY-LAWS AMENDMENTS.**

Planning Director Wehrmeister presented the staff report.

Vice Chair Nibbelin stated that, on Section 6 of the by-laws regarding special meetings, he understood the Brown Act only requires 24 hours' notice to convene a special meeting, and he was curious why they limit themselves to 72 hours.

Commissioner Baringer thought it was 72 hours.

Asst. City Attorney Doherty stated that he was correct that it was 24 hours.

Vice Chair Nibbelin asked if there was any reason why they couldn't change Section 6 to reflect 24 hours.

Planning Director Wehrmeister stated that they can make that change.

Commissioner Cooper stated that they had a question regarding special meetings occurring at 6:00 p.m. versus 7:00 p.m.

Planning Director Wehrmeister stated that if they were referring to study sessions, the by-laws said 6:00 p.m. and it was difficult for people to make it after work, for both the Commission and the Public, so they switched it to incorporate study sessions within the normal meeting.

Commissioner Cooper thought he read it the opposite way.

Chair Gordon asked if they needed to vote to approve it.

Planning Director Wehrmeister stated that no resolution was needed but a motion for approval with the suggested change was.

Commissioner Clifford moved to approve the changes to the Planning Commission By-Law; Commissioner Nibbelin seconded the motion.

The motion carried **5-0**.

Ayes: Commissioners Baringer, Nibbelin, Clifford, Cooper  
and Chair Gordon  
Noes: None



**3. REORGANIZATION OF THE PLANNING COMMISSION.**

Commissioner Clifford nominated Vice Chair Nibbelin for Chair; Chair Gordon seconded the motion.

The motion carried **5-0**.

Ayes: Commissioners Baringer, Nibbelin, Clifford, Cooper  
and Chair Gordon  
Noes: None

Vice Chair Nibbelin nominated Commissioner Cooper for Vice Chair; Commissioner Gordon seconded the motion.

The motion carried **5-0**.

Ayes: Commissioners Baringer, Nibbelin, Clifford, Cooper  
and Chair Gordon  
Noes: None

**COMMISSION COMMUNICATIONS:**

Commissioner Cooper asked how the RiteAid thing went today.

Planning Director Wehrmeister stated that it was the next week.

Commissioner Cooper asked if they were invited to that.

Planning Director Wehrmeister stated that they were as it was a public hearing.

Commissioner Cooper asked confirmation that it was at 4:00 p.m.

Planning Director Wehrmeister responded affirmatively.

Chair Gordon asked what they were talking about.

Commissioner Cooper stated that there was a hearing because RiteAid wants to redo their façade and they were doing it at a public hearing.

Planning Director Wehrmeister stated that it was an administrative item.

Vice Chair Nibbelin thanked members of the City Council for reappointing him at their last meeting and thanked his fellow commissioners for voting for him to be the chair for the following year.

Commissioner Baringer asked staff the status on the two houses slated for demolition.

Planning Director Wehrmeister stated that they were pursuing grant funding to assist the city with the payment for that which was the reason for the hold up. She stated that the project was with engineering. She didn't have the specifics but that was the reason why they were still there.

Commissioner Baringer asked what the timing would be, if she would wildly speculate on the timing.

Planning Director Wehrmeister thought it would be in the fall.

Commissioner Baringer asked if that was for both of them.

Planning Director Wehrmeister responded affirmatively.

Commissioner Baringer asked about the mobile home park.

Planning Director Wehrmeister stated it was Pacific Skies Estate.

Commissioner Baringer asked where they were on bringing it back to wrap it up.

Planning Director Wehrmeister hoped to bring it back within the next several months. She stated that there continues to be studies submitted and they never get to the point where she can bring something back and they won't have someone at the podium saying they submitted another study.

Commissioner Baringer stated that, previously, they were trying to corroborate what the distance was from the cliff to the development and the city had hired their own consultant to tell staff what the number could be. He concludes that the number was still in flux.

Planning Director Wehrmeister stated that it was a peer review that was conducted and completed. It was a public document and the applicant requested it. They continued to submit more documents.

**STAFF COMMUNICATIONS:**

Planning Director Wehrmeister stated that on May 1, they were going to have a study session on the marijuana business locational requirements, mentioning that the Council delegated to the Planning Commission where they could be located, distance from sensitive uses, etc. They will have the study session to get their feedback on that issue. Then they were optimistic that, on May 15, they would have an ordinance for recommendation to City Council regarding marijuana businesses. She stated that these were the reasons why she did not want to continue the ADU ordinance to a date specific. She stated that they also have rent stabilization and just cause issues in front of City Council. She stated that she knows the Commission gets a lot of questions from the public and she was letting them know that they are preparing a frequently asked questions list for the website, as well as the introduced ordinance. She stated that, when it gets posted, she will make sure the Commission gets a link to see them in case they get any questions. She then stated that, in addition to news on Esplanade, 1112 Palmetto was tagged. She stated that the lot is having additional bluff loss and they have not come in for an emergency permit to demolish some structures but they were getting a plan together as to what they want to do with the lot. She stated that they will be hearing from her on that soon.

Commissioner Cooper stated that, since they aren't getting the agenda at their house anymore, he doesn't have time to read it and probably doesn't need it. He stated that he liked what was on the agenda but he could probably get his laptop.

Vice Chair Nibbelin agreed, stating that if it was not coming to the house, there was no need to print it out. He would have to print it out ahead of time.

Planning Director Wehrmeister thanked them.

Vice Chair Nibbelin stated that Commissioner Clifford wants it.

Commissioner Baringer was fine with the electronic copy.

Commissioner Clifford stated that he still wants his copy.

Chair Gordon stated that he needs his hard copy.

Commissioner Cooper asked about the meeting minutes, and he asked why they spend money transcribing the meeting minutes when they are on line in video.

Planning Director Wehrmeister stated that it was requested when she first started a few years back that they go back to transcribed minutes. She stated that, internally, some staff members find it helpful when they need to go back.

Commissioner Cooper thought it takes a long time to do.

Planning Director Wehrmeister stated that they have a stenographer who does it for them, and it was a cost, but it wasn't a tremendous cost.

Commissioner Clifford asked if the building with the additional loss was the one with the deck hanging over the beach.

Planning Director Wehrmeister responded affirmatively.

**ADJOURNMENT:**

There being no further business for discussion, Commissioner Cooper moved to adjourn the meeting at 8:27 p.m.; Commissioner Clifford seconded the motion.

The motion carried **5-0**.

Ayes: Commissioners Baringer, Nibbelin, Clifford, Cooper  
and Chair Gordon  
Noes: None

Respectfully submitted,

Barbara Medina  
Public Meeting Stenographer

APPROVED:

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Planning Director Wehrmeister