

RESOLUTION NO. 51-2019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF CANNABIS ACTIVITY PERMIT CAP-11-18 (FILE NO. 2018-032), SUBJECT TO CONDITIONS, TO ESTABLISH AND OPERATE A CANNABIS RETAIL OPERATION AT 1726 PALMETTO AVE. (APN 016-031-260), AND FINDING THE PROJECT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

WHEREAS, Adam Zollinger of CB1 Coastside ("Applicant") has submitted an application to establish a Cannabis Retail Operation for the sale of medicinal and adult-use cannabis and cannabis-related products at 1726 Palmetto Ave. (APN 016-031-260) within the C-1 (Neighborhood Commercial) zoning district and CZ (Coastal Zone) and CO-SP (Cannabis Operation, Sharp Park Overlay District) overlay zoning districts; and

WHEREAS, the City of Pacifica's Zoning Regulations for Cannabis Operations are codified in Article 48 (Cannabis Regulations) of Chapter 4 of Title 9 of the Pacifica Municipal Code (PMC); and

WHEREAS, the project requires approval of a Cannabis Activity Permit (CAP) pursuant to PMC Section 9-4.4803(b); and

WHEREAS, the Applicant has contemplated a transfer of business entities from a sole proprietorship to a single member-manager limited liability company (LLC), the ownership of which consists wholly of the Applicant, and which transfer would be permissible within the limitations established in Section 9-4.4804(e)(3) of the PMC because the beneficial ownership and control of the cannabis operation would remain the same, and provided the LLC adds no additional members with 20 percent or greater share of ownership interest, and provided the Applicant retains 51 percent or greater ownership of the LLC, except as such limitations may be modified in the future by the City Council of the City of Pacifica; and

WHEREAS, after holding a duly noticed public hearing on October 7, 2019, the Planning Commission of the City of Pacifica adopted Resolution No. 2019-034 approving Cannabis Activity Permit CAP-11-18; and

WHEREAS, an appeal was filed by Paul Bradshaw ("Appellant") on October 17, 2019, in opposition to the Planning Commission's action ("Appeal"); and

WHEREAS, the City Council of the City of Pacifica did hold a duly noticed public hearing on November 25, 2019, 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 deny the Appeal based upon all of the reasons set forth in the Staff Report and upholds the Planning Commission's Approval on October 7, 2019, and makes the following findings pertaining to its denial of the appeal of the Planning Commission's action to approve the Project:

Appeal Issue No. 1

"This business is located at 1726 Palmetto in a residential neighborhood."

Staff response: The proposed cannabis operation is located on a parcel that is zoned for commercial use. The site is located in the C-1 (Neighborhood Commercial) Zoning District, as well as within the CO-SP (Cannabis Operation, Sharp Park) Overlay District, as shown in the City's adopted Zoning Map. These zoning districts are intended for commercial uses.

While the Zoning Map shows that there may be single-family and multi-family housing in the surrounding neighborhood, the property is designated as C-1 and located along Palmetto Avenue, where neighborhood retail commercial uses dominate the street frontage. Both the City's General Plan and Local Coastal Land Use Plan call for exclusively commercial land uses along Palmetto Avenue in the West Sharp Park neighborhood west of Highway 1, although a number of nonconforming residential uses exist along the street. The proposed CRO would remove a nonconforming use and commence a commercial use on the site consistent with the City's land use regulations.

According to the General Plan, "the frontage along Palmetto should be mixed with commercial and high density residential uses" and "commercial uses in the neighborhood can be strengthened by consolidation to stimulate foot traffic and visitor-serving uses, and by encouraging neighborhood convenience services to meet the needs of fishermen, other coastal visitors and local residents" (pg. 68). The cannabis business would also be consistent with the City's LCP. The Plan Conclusions section of the LCP states that "neighborhood serving commercial uses to support local residents' needs shall be allowed... but shall not predominate" because the balance of commercial uses should be visitor-serving uses (p. C-107). As noted above, the proposed CRO would meet local residents' needs for lawful access to medicinal and adult-use cannabis. Thus, commencement of the use would be consistent with the intended land use of this portion of the West Sharp Park neighborhood according to the applicable zoning, General Plan, and LCP designations for the site.

Because of the reasons discussed above, there is sufficient evidence in the record to support a conclusion that the proposed commercial cannabis use at the subject site is consistent with the General Plan, Local Coastal Land Use Plan, and Zoning Ordinance and thus the proposed commercial use is appropriate for the location.

Appeal Issue No. 2

"It [The proposed business] will reduce housing in the community..."

Staff Response: The proposed use would result in the cessation of use of the subject property as a single-family residence. However, as explained above under the response to Appeal Issue No. 1, the proposed business is located on a site that is zoned for Neighborhood Commercial uses. Commencement of this retail cannabis business would be consistent with the intended use of the subject property in the City's land use regulations, thus eliminating a nonconforming residential use. Housing is not intended as a primary use in this commercial location and may only be permitted under the C-1 (Neighborhood Commercial) zoning district standards upon approval of a use permit when the housing is located entirely above the ground floor (PMC sec.

9-4.1001(b)(11)). Additionally, the Planning Commission raised no concerns regarding the potential loss of the housing unit at the October 7, 2019 hearing, and there is no evidence that elimination of the nonconforming residential use will adversely affect public health, safety, or welfare.

Because of the reasons discussed above, there is sufficient evidence in the record to support a conclusion that the proposed commercial cannabis use will not reduce housing in the community in a location where housing is intended as a primary land use.

Appeal Issue No. 3

"It [The proposed business]... will increase traffic and congestion."

Staff Response: The Appellant does not provide any evidence or any further information to support his contention that the proposed business will increase traffic and congestion. The proposed CRO meets or exceeds all off-street parking requirements and will not generate sufficient vehicle trips to cause a significant impact on traffic and congestion in the project area. The project will be served by the parking lot that is located on the subject parcel. Per PMC section 9-4.2818(b)(12), the CRO would be required to provide four parking spaces. The applicant has proposed five parking spaces. In addition, the Planning Commission conditioned the permit approval (see Condition of Approval No. 30 in Resolution No. 2019-034) so that the Applicant must provide an additional two parking spaces for employees on-site.

The Applicant also provided a trip generation estimate prepared by a licensed professional engineer (Attachment F of the City Council staff report). Using rates from the 10th Edition of the Institute of Transportation Engineers Trip Generation Manual, the analysis estimates that the proposed operation would generate 272 daily trips with up to 23 (11 inbound/12 outbound) during the afternoon peak hour (the business will not be open during the morning peak hour). The analysis concludes that the operation would not require any further consideration of traffic impacts from the trip generation since it is anticipated to produce fewer than 500 net-new daily trips and fewer than 100 peak hour trips. Additionally, the Planning Commission raised no concerns regarding the amount of traffic generated by the proposed business and specifically found, under Required Finding ix of Resolution No. 2019-034 that the proposed cannabis operation does not create any parking or traffic concerns based on its size and will also be providing delivery. Therefore, there is substantial evidence that the proposed business will not significantly increase traffic or congestion.

Because of the reasons discussed above, there is sufficient evidence in the record to support a conclusion that the parking requirements have been exceeded by the project, as conditioned, and that traffic and congestion would not cause significant adverse effects to the project area.

Appeal Issue No. 4

"... this [The proposed business] is in the wrong location."

Staff Response: As outlined in staff's response to Appeal Issue No. 1, the proposed business is located on a site that is zoned for commercial use and is located in the CO-SP overlay district, specifically intended for Cannabis Retail Operations. In addition, both the City's General Plan and Local Coastal Land Use Plan call for exclusively commercial land uses along Palmetto Avenue in the West Sharp Park neighborhood west of Highway 1. The proposed business is consistent with the land use and zoning regulations applicable to the subject site.

Because of the reasons discussed above, there is sufficient evidence in the record to support a conclusion that the proposed business is located on a site that is appropriate and intended for a cannabis retail operation.

Appeal Issue No. 5

The cannabis business is located "...too close to [a] school..."

Staff Response: While not so stated, staff interprets the Appellant's statement in this issue to relate to Ingrid B. Lacy Middle School at 1427 Palmetto Avenue (APN 009-292-070) which is the nearest K-12 school to the proposed cannabis business.

The project site is located within the CO-SP (Cannabis Operation, Sharp Park) Overlay District which allows cannabis retail operations upon approval of a cannabis activity permit. The City Council created the CO-SP overlay zone to identify parcels which comply with all applicable locational limitations contained in Article 48 of Chapter 4 of Title 9 of the PMC. The subject site is consistent with and complies with the locational limitations set forth in PMC Section 9-4.4803(c)(2), which are consistent with state law requirements regarding distancing from schools. The site is not located within 600 feet of a school or youth center, nor is it within 200 feet of a daycare center. While the Appellant states that the proposed cannabis business is too close to a school, Ingrid B. Lacy Middle School is located approximately 628 feet away from the proposed CRO and also lies outside of the required notification area for a public hearing. Per Council policy, staff sends required notification to properties located within 500 feet of a project site, although state law only requires 300 feet. Moreover, the City Council affirmatively determined that up to three CAP's were permissible within the CO-SP overlay district when it adopted Ordinance No. 844-C.S.

As discussed in the Planning Commission staff report, there is evidence to find that the proposed project complies with the requirements of the Supplemental Cannabis Activity Permit Finding in PMC section 9-4.4805(a)(1)(iii):

The proposed location of the cannabis operation is not likely to have a potentially adverse effect on the health, peace, or safety of persons due to the cannabis operation's proposed proximity to a school, day care center, youth center, public park, playground, recreational center, school bus stop, premises frequented by children, religious establishment, or other similar uses.

The location of the proposed cannabis business is not likely to have any adverse effect on the health, peace, or safety of persons due to the business's proximity to a school, day care center, youth center, public park, playground, recreation center, school bus stop, premises frequented by children, religious establishment, or other similar uses. More specifically, in staff's testimony at the Planning Commission hearing, it explained that the school bus stop adjacent to the project site was only in use as a school bus stop during hours prior to the authorized hours for the subject cannabis business. Furthermore, no evidence was provided to indicate any potential effects on the health, peace, or safety of children who may walk past the cannabis business or frequent other businesses directly across Palmetto Avenue. To the contrary, information in the Applicant's written application materials and testimony at the Planning Commission hearing indicate that it would have security personnel located inside the entrance to the business to ensure persons under 21 years of age are not permitted entry.

Because of the reasons discussed above, there is sufficient evidence in the record to support a conclusion that the proposed cannabis business is not too close to a school, that the proposed cannabis business complies with the locational limitations set forth in the PMC, and that the proposed cannabis business will implement security measures to assure the health, peace, and safety of all persons, including children in the vicinity of the business.

BE IT FURTHER RESOLVED that the City Council of the City of Pacifica does hereby make the finding that the project qualifies for a Class 1 categorical exemption under California Environmental Quality Act (CEQA) Guidelines Sections 15301. CEQA Guidelines Section 15301 applies to the Project as described below:

1. That the Project is exempt from the CEQA as a Class 1 exemption provided in Section 15301 of the CEQA Guidelines, which state in pertinent part as follows:

15301. Existing Facilities

Class 1 exemptions consist of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The key consideration is whether the project involves negligible or no expansion of an existing use.

* * * * *

The subject location of the proposed use is an existing residential structure within a commercial zoned district. Therefore, the proposed use would be consistent with a Class 1 exemption because it would involve only interior alterations, would not result in any physical construction outside the footprint of the existing structure except for installation of new windows, fences, and accessible ramp, and would not result in a use of greater intensity than the type of retail commercial uses for which the area has been designated.

Additionally, none of the exceptions to application of a categorical exemption in Section 15300.2 of the CEQA Guidelines apply, as described below.

- Sec. 15300.2(a): There is no evidence in the record that the project would impact an environmental resource of hazardous or critical concern in an area designated, precisely mapped, and officially adopted pursuant to law by federal, State, or local agencies. The proposed project involves commencement of a cannabis retail business within an existing structure.
- Sec. 15300.2(b): There is no evidence in the record that successive projects of the same type in the area would have a significant environmental impact. The project involves the location of a cannabis retail business within an existing commercially zoned location and within an existing structure.
- Sec. 15300.2(c): There is no evidence in the record of any possibility that the project would have a significant effect on the environment due to unusual circumstances. The project site is zoned for commercial retail use and the cannabis business use proposed does not have any unique characteristics which could cause potentially significant environmental impacts.
- Sec. 15300.2(d) through (f): The project is not visible from Highway 1, which is an eligible scenic highway but is not designated as such; does not involve

a current or former hazardous waste site; and does not affect a historic resource. Therefore, the provisions of subsections (d) through (f) are not applicable to this project.

For the reasons set forth above, there is substantial evidence in the record to demonstrate the proposed project qualifies as a Class 1 exemption and none of the exceptions to application of an exemption are applicable.

BE IT FURTHER RESOLVED that the City Council of the City of Pacifica does hereby make the following findings pertaining to Cannabis Activity Permit, CAP-11-18:

Standard Use Permit Findings (Section 9-4.3303)

- i. Required Finding: *That the establishment, maintenance, or operation of the use or building applied for will not, under the circumstances of the particular case, be detrimental to the health, safety, and welfare of the persons residing or working in the neighborhood or to the general welfare of the City.*

As conditioned, the proposed CRO would not be detrimental to the health, safety, and welfare of the greater public. The Applicant has submitted a security plan that has been reviewed and approved by the Police Chief which would ensure safe operation of the facility. The security plan includes physical security measures such as security cameras which would deter crime and assist with investigating any incidents which may occur. Due to some minor changes made to the front façade for PMC compliance (minimum window requirements, PMC Section 4-16.03(c)(1)(ii)) and minor changes to the interior floor plan, the Applicant would submit a revised security plan for Police Chief review. The proposed CRO would not be allowed to operate until the Police Chief has reviewed and approved the revisions to the security plan.

Furthermore, the operation would be located entirely inside an existing building located in a commercially zoned neighborhood and any noise from the CRO, such as from customers entering and exiting the business, would be consistent with surrounding commercial retail operations. The tenant space does not include any outdoor patio space where clients might congregate to generate noise or litter. In light of these circumstances, the proposed CRO would not result in any adverse impacts to the community.

- ii. Required Finding: *That the use or building applied for is consistent with the applicable provisions of the General Plan and other applicable laws of the City and, where applicable, the local Coastal Plan.*

The proposed cannabis business would be located entirely within an area designated "Mixed Use: High Density/Commercial" in the neighborhood land use diagram of the General Plan and Local Coastal Plan (LCP). The use, if approved, would be consistent with the following General Plan policies:

- Community Facilities Policy 4: Meet basic social needs of City residents, such as transportation, housing, health, information and referral services, and safety, consistent with financial constraints.

Discussion: The proposed cannabis business would provide a lawful source of medicinal, as well as adult-use, cannabis to Pacifica's residents, thereby helping to meet their health needs without a commitment of public financial resources. As expressed at the public hearings held during development of the City's Marijuana Ordinances, many Pacifica residents rely on medicinal cannabis to treat various maladies.

The cannabis business would also be consistent with the City's LCP. The Plan Conclusions section of the LCP states that "neighborhood serving commercial uses to support local residents' needs shall be allowed... but shall not predominate" (p. C-107). As noted above, the proposed CRO would meet local residents' needs for lawful access to medicinal and adult-use cannabis. Thus, commencement of the use would be consistent with the intended land use of this portion of the West Sharp Park neighborhood.

The proposed use has also undergone a thorough review by City staff including the Police Chief and Planning Department staff to ensure consistency with Article 48 "Cannabis Regulations" of Pacifica's Zoning Regulations (PMC Title 9, Chapter 4) and Chapter 16 "Cannabis Public Safety Licenses" of Pacifica's public safety ordinances (PMC Title 4). The Applicant has already obtained approval of Phases 1 and 2 of the application process and is seeking approval of Phase 3 of the process by City Council action on the subject Cannabis Activity Permit. By submitting application materials which demonstrate an intention to comply with the City's ordinances regulating cannabis business activity, the Applicant's operation, as conditioned, would comply with all applicable laws of the City governing cannabis-related activities.

For the reasons stated above, the proposed use is consistent with the applicable provisions of the General Plan, Local Coastal Plan, and other applicable laws of the City.

- iii. Required Finding: *Where applicable, that the use or building applied for is consistent with the City's adopted Design Guidelines.*

The City has adopted Design Guidelines which are intended to accomplish the following purposes:

- Ensure at least a minimum standard of design through the application of consistent policies.
- Encourage new construction which exceeds minimum standards and discourage construction which falls short of those standards.
- Provide a framework for review and evaluation of design proposals.
- Implement applicable General Plan and Local Coastal Plan goals and policies.
- Expedite and facilitate the planning permit process.
- Provide direction for design and redesign of projects.

The City's Design Guidelines are advisory in nature and, unlike zoning, do not contain explicit standards for determining strict compliance. Rather, they address significant elements of project design that, when balanced overall, result in the best possible site layout and building architecture for a project. An

applicant may propose a project that complies with some but not all guidelines and the City Council may still find the project consistent with the Design Guidelines. It is up to the Council's discretion to determine the appropriate balance and relative priority of the guidelines for a particular project when considering whether a project has achieved Design Guidelines consistency.

Design Guidelines that would apply to the subject project would pertain to site planning, building design, and landscaping. The Applicant does not propose to modify the site plan or the building's architecture. A condition of approval would require modification of the front window to meet PMC Section 4-16.03(c)(1)(ii).

Supplemental Cannabis Activity Permit Findings (Section 9-4.4805(a)(1))

- iv. Required Finding: *For cannabis activity permit applications submitted pursuant to Section 9-4.4804(a), the cannabis operation applicant has been placed on the qualified cannabis registration list, as described in Section 9-4.4804(a)(1)(ii)(ad). For all other cannabis activity permit applications, that the Planning Department has received written notification from the Chief of Police that the applicant has complied with all requirements for satisfactory completion of the phase one and phase two cannabis public safety license requirements contained in Chapter 16 of Title 4 of this Code.*

The application is pursuant to Section 9-4.4804(a), as the Applicant applied under the initial application phase. The Police Chief placed Adam Zollinger of CB1 Coastside on the Qualified Marijuana Registration List (the original name for the Qualified Cannabis Registration List) as Qualified Cannabis Registrant (QCR) #18-15 on May 1, 2018. Therefore, there is sufficient information to make this finding.

- v. Required Finding: *The cannabis activity permit application is complete and the applicant has submitted all information and materials required by Section 9-4.4804(c) and (d).*

The CAP application contains all the required information as determined after a review by Planning Department staff. The Planning Department deemed the application complete on September 13, 2019. Therefore, there is sufficient information to make this finding.

- vi. Required Finding: *The proposed location of the cannabis operation is not likely to have a potentially adverse effect on the health, peace, or safety of persons due to the cannabis operation's proposed proximity to a school, day care center, youth center, public park, playground, recreational center, school bus stop, premises frequented by children, religious establishment, or other similar uses.*

The proposed location is within a commercial area, and located in the CO-SP overlay district which is intended for Cannabis Retail Operations. The proposed site is not located within 600 feet of an identified school or youth center, nor is it within 200 feet from any daycare center; the proposed site and business is consistent with and complies with the locational limitations set forth in PMC Section 9-4.4803(c)(2). Therefore, the proposed cannabis business is not likely to have a potentially adverse effect on the health, peace, or safety of persons, including children, at this location.

Therefore, the proposed cannabis business is not anticipated to have any potentially adverse effect on health, peace, or safety due to its proximity to the enumerated sensitive uses.

- vii. Required Finding: *The proposed location of the cannabis operation is not likely to have a potentially adverse effect on the health, peace, or safety of persons due to the cannabis operation's proposed proximity to another existing or permitted cannabis operation.*

The proximity of the business in relation to other cannabis operations is not likely to have an adverse effect on the community. Two other cannabis retail operations were approved in CO-SP, including 2110 Palmetto Ave (MUP-1-18; approximately 900 feet south of the subject site) and 2270 Palmetto Ave. (MUP-4-18; approximately 1,500 feet south of the subject site). Both of the approved businesses are now open and neither of the operations has caused law enforcement or neighborhood concerns since commencing operations. Therefore, each operation should address their individual public health, peace, and safety considerations and there is no information that identifies a cumulative impact would occur as a result of the proximity to other cannabis operations. Moreover, the City Council affirmatively determined that up to three CAPs were permissible within the CO-SP overlay district.

- viii. Required Finding: *The design of the storefront or structure within which the cannabis operation will operate is architecturally compatible with surrounding storefronts and structures in terms of materials, color, windows, lighting, sound, and overall design.*

The existing design of the storefront is architecturally compatible with the surrounding storefronts and structures in terms of materials, color, lighting, and overall design, and the Applicant proposes no significant changes to the storefront. However, PMC Section 4-16.03(c)(1)(ii) sets a minimum standard for the amount of glass along the storefront, and the Applicant has proposed minor alterations to the storefront to achieve compliance with this standard. Additionally, the Applicant has selected a new color scheme and window material that will be consistent with the surrounding buildings. A façade elevation can be found on the last page of the Project Plans in Attachment C of the City Council staff report.

Because the existing glazing does not comply with PMC Section 4-16.03(c)(1)(ii), which requires that the storefronts (front façade) shall be primarily glass with glass occupying at least forty-five (45%) percent of the entire store front and sixty (60%) percent of the horizontal length of the store and window and door areas cannot be covered, tinted, or made opaque in any way, or obscured in any way by landscaping, floor displays, equipment, or the like. As such, a condition of approval has been added that would require modification of the front window to comply. The condition of approval would require the style of the new window to be architecturally compatible. Therefore, the minor nature of the modification of the façade and the requirement controlling the design of the new window would ensure the modification to the façade would be architecturally compatible with the surrounding storefronts and structures. Therefore, as conditioned, there is sufficient information to make this finding.

- ix. Required Finding: *The proposed size of the cannabis operation is appropriate to meet the needs of the local Pacifica community for access to cannabis and that the size complies with all requirements of the City's Zoning Regulations.*

The size of the operation includes 426 sf of retail space and 302 sf of office/storage space, is not oversized to meet regional demand, and, thus, is appropriate to meet the needs of the local Pacifica community for access to cannabis. There is no applicable size limitation in the City's Zoning Regulations on general commercial spaces or CROs specifically. The operation does not create any parking or traffic concerns based on its size and will provide the option of delivery service to customers. For these reasons, the proposed size of the cannabis operation is appropriate under the criteria of this finding.

- x. Required Finding: *The location is not prohibited under the provisions of this article or any local or state law, statute, rule, or regulation, and no significant nuisance issues or problems are likely or anticipated, and that compliance with other applicable requirements of the City's Zoning Regulations will be accomplished.*

Planning Department staff is unaware of any local or state laws, rules, or regulations which would be violated by operation of the subject cannabis business in the identified location after it obtains a Cannabis Activity Permit, Cannabis Public Safety License, and applicable license(s) from the State of California. The location is within a Cannabis Operation Overlay District which authorizes Cannabis Retail Operations and is outside all buffer areas from sensitive uses which include K-12 schools, youth centers, and day care centers. Based on the project's relatively small size and as discussed in Supplemental Cannabis Activity Permit Finding No. 8 below, no significant nuisance issues or problems are likely or anticipated.

The project as proposed also accomplishes compliance with other applicable requirements of the City's Zoning Regulations. As noted in this report, the new retail commercial space will be served by the parking lot that is located on the subject parcel. PMC Section 9-4.2818(b)(12) establishes a parking requirement for "cannabis retail operations" of one parking space for each 300 square feet of gross leasable space, plus additional spaces as necessary based on the unique needs of the operation as determined by the Council. Even though the existing residential structure will be converted into a cannabis retail space, thus increasing the parking demand, the proposal is consistent with the applicable zoning and provides the required parking in a parking area located onsite. Staff has not identified unique characteristics of the proposed cannabis operation which would warrant additional parking. Therefore, there is sufficient information to make this finding.

- xi. Required Finding: *The cannabis operation is not likely to have an adverse effect on the health, peace, or safety of persons living or working in the surrounding area, overly burden a specific neighborhood, or contribute to a public nuisance, and will generally not result in repeated nuisance activities including disturbances of the peace, illegal drug activity, cannabis use in public, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud*

noises (especially late at night or early in the morning hours), lewd conduct, or police detentions or arrests.

Its small size; the adequacy of its internal layout to accommodate waiting customers; the requirements of its security and operations plans; the PMC prohibition on possession, distribution, or consumption of alcohol on the premises, and the prohibition on smoking, ingesting, or consuming cannabis on the premises; its hours of operations; and, updated increased storefront window size, as conditioned, combine to suggest the proposed cannabis business would not have a detrimental effect on the surrounding area, and should serve to prevent excessive disturbances or illegal drug activity. Therefore, as conditioned, there is sufficient information to make this finding.

- xii. Required Finding: *The cannabis operation is not likely to violate any provision of the Pacifica Municipal Code or condition imposed by a City-issued permit, or any provision of any other local or state law, regulation, or order, or any condition imposed by permits issued in compliance with those laws.*

The Applicant has invested significant time and resources developing application materials suitable for City review and approval. These application materials include, but are not limited to, a security plan, operations plan, trip generation analysis, and floor plan. On this basis, the Applicant appears to be committed to operation of the proposed cannabis business in a manner consistent with the Pacifica Municipal Code, state law, and applicable terms of any permits issued.

- xiii. Required Finding: *The applicant and/or the cannabis operation is not the subject of or a party to any of the following: pending litigation filed by the City against the applicant or any of its principals to enforce the Pacifica Municipal Code; a pending code enforcement case against the applicant or any of its principals relating to illegal cannabis activity; or an outstanding balance owed to the City by applicant or any of its principals for any unpaid taxes, fees, fines, or penalties.*

The Applicant and/or the Cannabis operation is not the subject of, or a party to, any pending litigation filed by the City against the applicant or any of its principals to enforce the Pacifica Municipal Code; a pending code enforcement case against the applicant or any of its principals relating to illegal cannabis activity; or an outstanding balance owed to the City by applicant or any of its principals for any unpaid taxes, fees, fines, or penalties.

- xiv. Required Finding: *The applicant has not made a false statement of material fact or omitted a material fact in the application for a cannabis activity permit, as known at the time of determination on the application.*

The Police Department and Planning Department staffs, which have reviewed the submitted application materials and communicated with the Applicant, have not identified any instances wherein the Applicant has made a false statement of material fact or omitted a material fact since filing the subject application on April 20, 2018. Therefore, there is sufficient information to support a finding that the information submitted and statements made by the Applicant associated with their application have been truthful up to and until the time of determination on the subject application.

- xv. Required Finding: *The cannabis operation's site plan has incorporated features necessary to assist in reducing potential nuisance and crime-related problems. These features may include, but are not limited to, procedures for allowing entry; reduction of opportunities for congregating and obstructing public ways and neighboring property; and limiting furnishings and features that encourage loitering and nuisance behavior.*

The location of the proposed business does not feature fixtures or furnishings which would encourage customers to congregate in the business vicinity, such as chairs and benches. As mentioned above, the tenant space is relatively small, and would most likely not be able to physically support a large group of people to congregate indoors. Further, the project site does not include an outdoor space such as a patio which might encourage customers to congregate as most of the outside area is comprised of the walkway and ramp area. Additionally, the proposed tenant space would include large windows which would allow the Police Department to observe business activity from the walkway to ensure public safety. Proposed site landscaping in front of the storefront consists of low-growing plants and so would not obstruct views through the window or provide a hiding place for criminals. The Applicant would also install sufficient video recording equipment to monitor the premises in order to deter crime and support any Police Department investigations into isolated crimes which may occur. Therefore, there is sufficient information to make this finding.

NOW, THEREFORE, BE IT FURTHER RESOLVED that based on the aforementioned findings, the City Council of the City of Pacifica approves and issues Cannabis Activity Permit CAP-11-18 to establish and operate a Cannabis Retail Operation at 1726 Palmetto Ave., subject to conditions of approval included as Exhibit A to this Resolution.

* * * * *

Passed and adopted at a regular meeting of the City Council of the City of Pacifica, California, held on the 25th day of November 2019.

AYES, Councilmembers: Vaterlaus, Martin, O'Neill, Beckmeyer, Bier.

NOES, Councilmembers: None.

ABSENT, Councilmembers: None.

ABSTAIN, Councilmembers: None.


Sue Vaterlaus, Mayor

ATTEST:


Sarah Coffey, City Clerk

APPROVED AS TO FORM:

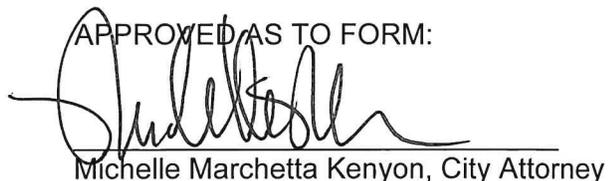

Michelle Marchetta Kenyon, City Attorney

Exhibit A

Conditions of Approval: File No. 2018-032 - Cannabis Activity Permit CAP-11-18 to Establish and Operate a Cannabis Retail Operation at 1726 Palmetto Ave. (APN 016-031-260)

City Council Meeting of November 25, 2019

Planning Division of the Planning Department

1. Development shall be substantially in accord with the plans stamped and dated revised September 1, 2019, which were received by the City of Pacifica on September 4, 2019, except as modified by the following conditions.
2. The approval or approvals is/are valid for a period of two years from the date of final determination. If the use or uses approved is/are not established within such period of time, the approval(s) shall expire unless Applicant submits a written request for an extension and applicable fee prior to the expiration date, and the Planning Director or Planning Commission approves the extension request as provided below. The Planning Director may administratively grant a single, one year extension provided, if in the Planning Director's sole discretion, the circumstances considered during the initial project approval have not materially changed. Otherwise, the Planning Commission shall consider a request for a single, one year extension.

In the event of litigation filed to overturn the City's determination on the approval(s), the Planning Director may toll expiration of the approval(s) during the pendency of such litigation.

3. The Cannabis Activity Permit and Cannabis Public Safety License shall be issued to CB1 Coastside LLC, a California limited liability company (LLC), with Adam Zollinger as the single member-manager thereof. As detailed in this Resolution, because the beneficial ownership and control of the cannabis operation would remain the same (Adam Zollinger), the Planning Commission determined there would not be a transfer of ownership or control under the Applicant's proposal. The transfer of the Cannabis Activity Permit and Cannabis Public Safety License shall hereafter be prohibited as described in Pacifica Municipal Code Sections 9-4.4804(e) and 4-16.03(e), respectively, as currently codified or as may be amended from time to time..
4. The Applicant shall at all times maintain a valid Cannabis Public Safety License and a valid license(s)/permit(s) from the State of California. If at any time the Cannabis Public Safety License or State of California license(s)/permit(s) issued to the Applicant for the subject facility is/are revoked, expires, or otherwise rendered inoperative for any reason, this Cannabis Activity Permit shall immediately become null and void and it shall not be possible to reinstate the Cannabis Activity Permit. A temporary suspension of the Cannabis Public Safety License or State of California license(s)/permit(s) shall render the Cannabis Activity Permit inoperative during the term of the suspension but the Cannabis Activity Permit shall not be considered null and void during the suspension.
5. The Cannabis Retail Operation shall operate consistent with all provisions of Article 48 of Chapter 4 of Title 9 applicable to Cannabis Retail Operations, as currently codified or as may be amended from time to time.

6. The Applicant shall operate and maintain the Cannabis Retail Operation in a manner which does not constitute a public nuisance.
7. Prior to commencement of operations, Applicant shall submit for review and approval of the Police Chief a revised Security Plan which incorporates the window modifications described in these Conditions of Approval. The Applicant shall implement and operate the Cannabis Retail Operation in accordance with the approved Amended Security Plan.
8. The Cannabis Retail Operation shall be conducted entirely within the enclosed space of the business premises and the Operation shall not include the detached garage space.
9. The hours of operation of the business, which includes those hours in which the site may be open to the public for retail sales shall be as follows: 9:00 a.m. through 9:00 p.m. daily. Staff of the Cannabis Retail Operation may occupy the subject site outside of those hours to perform administrative and maintenance functions customary for retail businesses, such as inventory management, cleaning, bookkeeping, etc.
10. The business's regular business hours, the cannabis activity permit and cannabis public safety license issued for such cannabis operation shall be posted in a conspicuous place so that the same may be readily seen by all persons entering the cannabis operation.
11. Prior to commencement of operations, the Applicant shall obtain a building permit to modify the storefront to increase the horizontal and overall measurements of the glass on the first floor storefront to meet or exceed the requirements of PMC Section 4-16.03(c)(1)(ii) and to make all interior renovations, to the satisfaction of the Planning Director. New windows or doors proposed on the storefront shall be architecturally compatible with the remainder of the building, to the satisfaction of the Planning Director.
12. Prior to building permit issuance, the Applicant shall provide or cause to be provided and show on the plans, a trash enclosure on the business premises such that all cannabis waste is securely stored until it is removed from the premises by a vendor authorized under state law, to the satisfaction of the Planning Director.
13. Prior to commencement of operations, the Applicant shall submit for Planning Director review and approval the required incidental signage to be posted at the entrance indicating that the premises are under camera/video surveillance and indicating age restrictions for entrance pursuant to PMC Section 4.16-03(c)(i)(ab) and PMC Section 9-4.4803(d).
14. Prior to commencement of operations, the Applicant shall provide evidence that it has retained the services of a cannabis waste management service and an inventory control service in accordance with state law, to the satisfaction of the Planning Director.
15. The Applicant shall indemnify, defend and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents (hereinafter "City") from any claim, action or proceeding (hereinafter "Proceeding") brought against the City to attack, set aside, void or annul the City's actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the California Environmental Quality Act, and/or any mitigation monitoring program, or brought against the City due to actions or omissions in any way connected to the Applicant's Project

("Challenge"). City may, but is not obligated to, defend such Challenge as City, in its sole discretion, determines appropriate, all at Applicant's sole cost and expense. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorney's fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the Applicant, City, and/or parties initiating or bringing such Proceeding. If the Applicant is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City. Per Government Code Section 66474.9, the City shall promptly notify Applicant of any Proceeding and shall cooperate fully in the defense.

16. All cannabis-related products shall be stored in air-tight containers which are completely sealed in order to minimize unpleasant odors.

All outstanding and applicable fees associated with the processing of this project shall be paid within 30 days of the approval of Cannabis Use Permit CAP-11-18. The Cannabis Retail Operation shall not commence operations until such fees are paid.

17. Notwithstanding the authority granted to Planning Department staff to conduct annual reviews of cannabis operations in Section 9-4.4806(e) of the PMC, the Planning Commission shall conduct the single annual review of the subject Cannabis Retail Operation at a public hearing. The annual review shall occur not less than one year but not more than two years after issuance of the Cannabis Public Safety License to the Applicant.

Building Division of the Planning Department

18. Applicant shall obtain approval of a building permit by the Building Official prior to commencing any construction activity.

North County Fire Authority

19. Portable fire extinguisher(s) required. Mount fire extinguishers 3-5 feet above floor, visible and accessible. Field verify.
20. Provide clearly visible address identification.
21. Utility identification required.
22. Doors shall be easily openable in one motion without special knowledge, key or effort per California Building Code. Use of thumb operated deadbolts prohibited unless integrated with latch.

Engineering Division of the Public Works Department

23. Construction shall be in conformance with the City of Pacifica Storm Water Management and Discharge Control Ordinance and the San Mateo Countywide Storm Water Pollution Prevention Program. Best Management Practices shall be implemented, and the construction BMPs plans sheet from the Countywide program shall be included in the project plans.
24. The following requirements must be clearly noted on the construction plans for the project:

- a. Palmetto Avenue and Santa Maria Avenue shall be maintained clear of construction materials, equipment, storage, debris, and soil. Dust control and daily road cleanup will be strictly enforced. A properly signed no-parking zone may be established during normal working hours only.
 - b. All recorded survey points, monuments, railroad spikes, pins, cross cuts on top of sidewalks and tags on top of culvert headwalls or end walls whether within private property or public right-of-way shall be protected and preserved. If survey point/s are altered, removed or destroyed, the applicant shall be responsible for obtaining the services of a licensed surveyor or qualified Civil Engineer to restore or replace the survey points and record the required map prior to occupancy of the first unit.
 - c. Existing public improvements within the property frontage that are damaged or displaced shall be repaired or replaced as determined by the City Engineer even if damage or displacement occurred prior to any work performed for this project. Any damage to improvements within city right-of-way or to any private property, whether adjacent to subject property or not, that is determined by the City Engineer to have resulted from construction activities related to this project, shall be repaired or replaced as directed by the City Engineer.
25. Applicant shall submit to Engineering Division the construction plans and necessary reports and engineering calculations for all on-site and off-site improvements to the satisfaction of the City Engineer. Such plans and reports shall include but are not limited to:
- a. An accurate survey plan, showing:
 - i. Survey marks and identifying the reference marks or monuments used to establish the property lines;
 - ii. Property lines labeled with bearings and distances;
 - iii. Edge of public right-of-way;
 - iv. Any easements on the subject property.
 - b. A site plan showing:
 - i. The whole width of right-of-way of Palmetto Avenue and Santa Maria Avenue, including existing and proposed improvements such as, but not limited to pavement overlay, under-sidewalk drain, driveway approach, sidewalk, curb & gutter, existing underground utilities and trenches for proposed connections, boxes for underground utility connections and meters, existing power poles and any ground-mounted equipment, street monuments, any street markings and signage;
 - ii. Adjacent driveways within 25' of the property lines;
 - iii. Any existing fences and any structures on adjacent properties within 10' of the property lines.
 - c. All plans and reports must be signed and stamped by a California licensed professional.
 - d. All site improvements including utilities and connections to existing mains must be designed according to the City Standards and to the satisfaction of the City Engineer.

26. No private structures, including but not limited to walls or curbs, fences, mailboxes, or stairs shall encroach into the public right-of-way.
27. If new utility connections are needed, the existing street pavement shall be cold-planed (ground) to a depth of 2" across the entire frontage of the property and out to the extent of the longest utility trench, and an overlay of Caltrans specification ½" Type 'A' hot mix asphalt concrete shall be placed. If, in the opinion of the City Engineer, damage to the pavement during construction is more extensive, a larger area may have to be ground and overlaid.
28. All new utilities shall be installed underground from the nearest main or joint pole.
29. An Encroachment Permit must be obtained for all work within public right-of-way. All proposed improvements within public right-of-way shall be constructed per City Standards.

Condition Added by Planning Commission at October 7, 2019 Public Hearing

30. The applicant shall provide two additional employee parking spaces on-site, exclusive of the delivery and ADA parking spaces.

*** END OF CONDITIONS ***