

MINUTES

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

October 3, 2022

7:00 p.m.

Chair Berman called the meeting to order at 7:00 p.m.

Sr. Planner O'Connor took a verbal roll call.

ROLL CALL: Present: Commissioners Ferguson, Godwin, Hauser and
Chair Berman
Absent: Commissioners Domurat, Leal and Wright

SALUTE TO FLAG: Led by Vice Chair Hauser

STAFF PRESENT: Asst. City Attorney Bazzano
Sr. Planner O'Connor
Interim Police Chief Stratton

Chair Berman asked if there was public comment on administrative business and, seeing no one, closed public comments.

Sr. Planner O'Connor stated that there was a hand raised by Thomas Rodriguez.

Chair Berman reopened public comments and explained the scope.

Mr. Rodriguez apologized, stating that he didn't have any comments and didn't realize what that meant.

Chair Berman closed public comments again.

**APPROVAL OF ORDER
OF AGENDA** Vice Chair Hauser moved approval of the Order
of Agenda; Commissioner Ferguson seconded the
motion.

Sr. Planner O'Connor took a verbal roll call.

The motion carried **4-0**.

Ayes: Commissioners Ferguson, Godwin, Hauser and
Chair Berman
Noes: None

**APPROVAL OF
MINUTES:
JUNE 20, 2022** Vice Chair Hauser moved approval of the minutes
of June 20, 2022; Commissioner Godwin seconded the
motion.

Sr. Planner O'Connor took a verbal roll call.

The motion carried **4-0**.

Ayes: Commissioners Ferguson, Godwin, Hauser and
Chair Berman

Noes: None

DESIGNATION OF LIAISON TO CITY COUNCIL MEETING OF OCTOBER 10, 2022:

None

ORAL COMMUNICATIONS:

None

CONSENT ITEMS:

None

PUBLIC HEARINGS:

1. CAP-8-18

File No. 2018-029 and 2020-020 – Consideration of revocation of Cannabis Activity Permit CAP-8-18 which authorizes the operation of a cannabis retail operation, Seaweed Holistics, LLC, for the sale of medicinal and adult use cannabis at 450 Dondee Way, Suite 2 (APN 022-021-640). Recommended CEQA Action: Exempt pursuant to the “Common Sense” exemption, CEQA Guidelines Section 15061(b)(3).

Sr. Planner O’Connor presented the staff report.

Chair Berman stated that she had forgotten to read the notes regarding AB361 and she asked Asst. City Attorney Bazzano if now was okay to read it or should she wait before consideration items.

Asst. City Attorney Bazzano suggested Commissioners ask their questions and, before they open public hearing, she can read the summary.

Chair Berman asked if anyone had questions or did they want to hear from the applicant first.

Commissioner Ferguson stated he had one question from staff before they hear from the applicant. He was confused when he found sub note 3 and he hoped a little explanation as to the jump in the outstanding fees, as he thought the applicant originally owed \$4,856 for the original processing of CAP 8-18 and an outstanding \$21,872.33 for the processing of the deferral agreement for Amendment CAP8-18, and he asked for more detail for what the additional \$4,000 is for versus the \$21,800.

Sr. Planner O’Connor stated that, typical to all development applications, they collect an initial deposit and then bill against that deposit at the staff billing rate as they spend time on a project. She stated that, when they first process the CAP, the staff cost of processing that application exceeded the deposit amount provided by approximately \$4,000 value as detailed in the staff report. She stated staff requested that amount from the applicant to be paid prior to the commencement of the cannabis operation, however, the applicant expressed their ability to pay that outstanding fee was not an option until they generated funds from operating the cannabis retail operation and that was the reason that element was included into the deferral agreement. The applicant was made aware that, by doing this, they will be responsible for the cost of preparing a deferral agreement and the cost of amending the conditions of approval for the CAP to incorporate this change of the condition of approval and thus the amount they owed increased but they were going to be able to pay it after they generated revenue from the operation of their cannabis retail operations.

Commissioner Ferguson stated that all the things she said he already understood, but in simple terms, could she explain what exactly they are being charged for with the \$25,000.

Sr. Planner O’Connor stated that those costs are associated with staff time for processing the CAP, the \$4,000 amount for processing the original CAP and the additional \$21,000 was associated with processing a deferral agreement and amending the CAP, thus, all staff time costs.

Commissioner Ferguson asked if they are allowed to disclose the hourly rate and staff time is that amounts to this amount.

Sr. Planner O'Connor stated that it is a mixture of not only planning staff time, but doesn't have the hourly rate in front of her for the fee, but it is approximately \$215/hour. In addition to legal staff time or their participation in the efforts, most notably the preparation and execution of the deferral agreement.

Commissioner Ferguson stated that this costs the city plus that mark up.

Sr. Planner O'Connor agreed, adding that the legal staff time is an amount passed on to the applicant.

Chair Berman stated, for the record, Commissioner Wright is now present.

Vice Chair Hauser stated that, for clarification, there is \$25,000 of fees and the business owner has not paid them. She asked when the last time they received any sort of payment from the business owner.

Sr. Planner O'Connor referring to the development permit or the cannabis activity permit, she believed it was the initial deposit.

Vice Chair Hauser stated that they have not paid anything since the initial deposit. She also wanted to clarify something piggybacking Commissioner Ferguson's questions. She concluded that every year the city adopts a master fee schedule and she asked if she was correct that the Planning staff's hourly fee is made available to the public in our master fee schedule.

Sr. Planner O'Connor responded affirmatively.

Vice Chair Hauser stated that the applicant, the public and the Commission all had access to that. She stated that she has more question for the business owner but she will reserve them for after public comment.

Chair Berman asked if there were any other questions for staff before they hear from the business owner, and seeing none, she will allow the owner to speak, clarifying that they get ten minutes and can reserve three of those minutes for after public comment.

Asst. City Attorney Bazzano confirmed she was correct, and would open the public hearing, ask the business owner to speak and they will have ten minutes.

Chair Berman reiterated that they have ten minutes, but can reserve three minutes for after the public comment period.

Asst. City Attorney Bazzano responded affirmatively.

Vice Chair Hauser asked if there was a statement she wanted to read.

Chair Berman stated that she will read it before public comments. She asked if the owner was available to speak.

Sr. Planner O'Connor stated they were raising their hands. She set the applicant up and asked her if she wanted anyone else to be allowed to talk during their presentation.

Chair Berman stated they could not hear them.

Applicant, Mr. Williams, asked if they could hear them now.

Chair Berman reminded them that they have ten minutes and can reserve three of them for after public comment.

Mr. Williams thanked them for allowing them to speak on their behalf. He stated that it was a huge misunderstanding.

Asst. City Attorney Bazzano stated that they need clarification on whether he wants to reserve some time for rebuttal or they want their full ten minutes now.

Applicant/Operator Ana Williams stated that they can reserve three minutes for later.

Mr. Williams agreed that they can reserve three minutes for later as they don't have a whole lot of information. He referred to the information the city already has from them.

Sr. Planner O'Connor stated that she needed him to allow her to amend the timer and she will be able to show it.

Mr. Williams stated that, based on the information the city has, there has been a slight miscalculation in the information. He stated that they noticed that their store front has been miscalculated and during this time, they have been trying to deal with it and they have been looking at the window instead of addressing the issue of the ordinance. He stated that they were originally told their front store window was too small and the city ordinance required the window be 45% glazed and unfortunately their building is 24 feet corner to corner but that is not their store front, but the measurement used when measuring their store front. He stated that the store front is from one corner of the building to the outside of their front door downstairs and that measurement is 20 feet. With that measurement, they are and have always been compliant and the city made an error in reading the measurement. He stated that the landlord and developer who built the complex just recently discovered this when they took all the information they got from the city that they have been going over to try and come up with ways to fix it, but there is nothing to be fixed. The ordinance states that the store front must be 45% glazed. The store front of their store is that amount and they meet the requirements. They have submitted the information showing that they meet the requirements. He stated that their first four feet outside of their door is all steps and is not considered a store front area or retail area, and it was included in the measurements and the reason why their current store front is not compliant is because the measurements are off. He is asking the city to take time and have Planning go back and look at it because the measurement should be measured from the side of the door, not from the very wall to wall, as that is not their store front but the building front and that is not the correct measurement that should be used.

Ms. Williams clarified that there was a time when they were considering this and she asked the question if the second floor windows were to be included in this measurement in the calculation

of the glazing for the ordinance. Again, she reiterated that the width of the store front from wall to wall is exactly 24 feet. She stated that they have made accommodations to their location, not including the second level, because no retail business happens there. She stated that they would like them to consider, in the same respect, the area of the retail store that the staircase occupies, should also not be included in the calculation of the window because there is no business being conducted in the stairs or underneath the stairs. She stated that they have measured from the opposite wall to the start of the stair case to be 20 feet and, by this measurement, the current size of their window meets the requirement and they wanted them to consider that and look at that solution.

Mr. Williams stated that their landlord just recently discovered this as they have been looking at the fact that they needed to make the window bigger and not that they have been looking at the problem when he actually looked at the whole problem that the store front needed to be 45% of square foot. He saw that and he saw the measurements and knew the measurements from what he built as he built the complex. When he looked at the measurements and wrote them down and he submitted them to each one of them and sent copies of the measurements to you and Planning had this measurements and have always had these measurements. They are right there in front of them, but they measured them incorrectly and they used the building measurements instead of the store front measurements. He stated that it is a retail store front, not the building store front. He stated that they haven't made any payments toward anything concerning this because they have been trying to get it taken care of and there is nothing to take care of and nothing to do and they are compliant.

Chair Berman stated that they still have three minutes for after public comment. She stated that, at this time, if the Commission doesn't mind, she would like to read the meeting notes and then open it up to public comment if acceptable to the Commission, and she acknowledged that they were in agreement.

Chair Berman explained the conditions for having Planning Commission meetings pursuant to Government Code Section 54953 (as amended by AB 361), to conduct necessary business as an essential governmental function as a teleconference meeting with no meeting location open to the public. She also gave information on how to present public comments participating by Zoom or phone

Chair Berman opened the Public Hearing.

Sr. Planner O'Connor introduced the speakers.

Peter Loeb, Pacifica, stated that he was in support of the business owner. He stated that all of the out of compliant issues stemmed from not being able to resolve the window problem. He commented on the issues in play in this process, and what is needed to meet the window requirements, stating the property owner is not willing to do that. He concluded by asking that they not approve the proposed resolution and allow the question of the store front measurement to be resolved.

George (JE), Pacifica, stated that he worked with the applicant to get the business opened in Pacifica, and he stated that the business owners did everything possible to be in compliance and thought a revocation of a permit was on the extreme side and questioned what was done with

other comparable owners in the city. He suggested, for fairness, that they suspend the permit until all the fees are in compliance and let them figure out the store front situation.

Thomas Rodriguez, Pacifica, stated he is the CEO of Rockaway Enterprises and the store they operate is under the dba of Coastside Cannabis. He stated that Mr. Estrada is correct, and he expressed his thoughts and concerns on the issue, including business fairness and an equitable process for everyone and asserted that they made every effort to be as compliant as possible.

Chair Berman closed the Public Hearing, and brought it to the business owner if they would like to speak.

Mr. Williams agreed with Mr. Rodriguez and definitely thought the playing field should be fair for everyone. He stated that their building has been complaint since the beginning but the measurements were mistaken. He stated that they have been business owners in Pacifica for almost ten years and they had this building in their previous business and it has been operating for a while. Based on the information they just got, he stated that it was not their fault that the measurements were taken wrong and there was no holding a fee hostage. He stated that they are small business owners and they couldn't afford to pay \$25,000 on something that they were not even sure they owed yet or still owe, and they had questions about it and they didn't know they were being charged hourly. He stated that they have no problems paying what they owe, and paid all the money they owed when they started. He asked that they come out and take the correct measurements and allow them to continue to operate. They celebrated two years of operation with no issues whatsoever, including passing two security inspections with flying colors and no problems. They ask that they let them keep their business open and take the time to take the correct measurements as they are compliant and have been since day one.

Chair Berman asked the Commission if they have any questions for the business owner or staff and then deliberation.

Asst. City Attorney Bazzano asked if she closed the public comments before having the Commission ask questions for the permittee or business owner.

Chair Berman stated she is correct. The public comment is closed.

Asst. City attorney Bazzano stated that, once they finish questions, then she closes the public hearing.

Sr. Planner O'Connor stated that she will leave the applicant in the panel's room until she hears otherwise that questions have been addressed.

Chair Berman asked Commissioner Ferguson if he has questions for the permit holder.

Commissioner Ferguson stated he had procedural questions regarding that they put into the agenda packet a note that the existing permit expires in less than two weeks on the 16th anyway and he asked if the purpose of this meeting is to renew the permit. He stated he is trying to understand if it is a two-step process. If they get past the window and all the resulting fees and the appropriate or inappropriate window sizes, is it then a separate issue of renewing the permit with an additional \$23,577 for the price for renewal fee or is this one and the same hearing.

Sr. Planner O'Connor stated that, for a retail cannabis operation to operate, they need not only a cannabis activity permit, which is the topic of the conversation at this meeting, but they also need to obtain a cannabis public safety license from the police department, and that is issued in accordance with a different section of our municipal code and managed by our police department. She stated that they are tied together in their conditions of approval for the CAP but they are two separate permits, one a permit and one a license. She stated that their cannabis public safety license is set to be expired in October 2022.

Commissioner Ferguson understood, but doesn't know our municipal codes and the language confused him.

Ms. Williams stated that the application for the renewal has been submitted and she has until October 16 to pay that \$23,000 amount to finish that.

Chair Berman thanked her for the clarification.

Commissioner Godwin stated he had a question for Sr. Planner O'Connor. He stated that it was his understanding, for the tax purposes which he thinks applies to store frontage as well, the stairs are charged to the first floor of a building. He asked if that was also her belief or does she believe that applicant's current view at this meeting is correct, i.e., some question about the validity of the stairs as part of the store front.

Sr. Planner O'Connor stated that she has a response, and if Chair Berman approves, she is happy to get into staff's response to those points. She recognizes that they have the applicant available to answer questions and if they don't have any questions for the applicant, she can move them out of the panelist position.

Chair Berman thanked her, and suggested they try to ask all of their questions for the applicant now and then they will pass it off to Sr. Planner O'Connor to answer Commissioner Godwin's questions. She stated that they can always invite the business owner back if they have more questions later on.

Vice Chair Hauser asked if she had the owner's name correct, Ms. Williams.

Ms. Williams states that she was correct.

Vice Chair Hauser understood it has been a multi-year process, and she asked if she provided drawings to the city or some sort of design of the building.

Ms. Williams stated that she did, and it was not a design but the existing building which was built in 1989.

Vice Chair Hauser asked if she provided the elevations at the time of submittal for the permit.

Mr. Williams stated that they had to and those are the drawings that they are referring to that the city already has the information and they were looking at the numbers.

Ms. Williams stated that those were drawn up by Mr. Grindrod.

Mr. Williams reiterated that those were also drawn up by their landlord who did build the complex.

Vice Chair Hauser stated she was trying to decipher if her question is for the owner or for Sr. Planner O'Connor. She asked, when Mr. Grindrod provided the drawings of the existing building, whether they provided the calculation or who did the calculation.

Mr. Williams stated that the city did the calculations for that, Planning did the calculations for this instance they are dealing with now. They just recently went back over the paperwork they got from them pertaining to this and looking at the exact numbers, and attempted to figure out the issue. He stated that Mr. Grindrod, unfortunately, was told that we have been looking at the window for so long because they were told the window needed to be bigger and that wasn't the problem. The problem was that the store front had to be a certain percentage glazed, and that was the issue. Once he had a chance to get all of the information together and look at it, he noticed that they already had the measurements they were asking for and they just took the wrong measurements.

Commissioner Ferguson stated that he was present for previous meetings discussing these windows. He stated that, outside of the windows, there was an existing original permit fee of around \$4,000 which was not a window issue. He stated that another business was allowed to open and he was in support of that and he was in support of allowing this owner to remain open pursuant to tackling this window issue. He understood the structural implications of what they are talking about to have a sizeable front glazed window. Outside of these additional fees incurred because of the window issue, he asked if they can explain why those fees haven't been paid as he thought there were a number of different fees for different things being applied to them. He asked why they haven't been paid to the city as it has been several years and it sounds like the next round of fees are coming due.

Ms. Williams stated that she can't say specifically why they didn't pay that particular amount. She stated that she was presented with one bill and she didn't know she was getting charged by the hour for it.

Commissioner Ferguson asked if that was the \$4,000 bill that they are talking about.

Ms. Williams agreed, adding that she can't remember and doesn't know why that particular amount was overlooked, but they were literally a mom and pop shop and went through a lot of fees that they paid getting to the point where they were at that time. She stated that the window seemed large enough and she didn't know where those measurements came from and she didn't know why Pacifica decided to have a window measurement inserted in the ordinances where other places do not and they actually want windows smaller for safety reasons. She stated that is beside the point as this is where they are. They asked for a deferment and they haven't gotten to this place since then. They had a lot of family deaths last year and they just don't have the money. When they first started this, they were hit with a \$45,000 attorney fees and they didn't even go to court. She stated that there have been a lot of things they have had to pay for while they are trying to build a business. She stated that they also opened during Covid and it was not easy. Up to now, they are still not profitable.

Mr. Williams stated that a lot of people fail to understand is that they got a permit to operate in the middle of Covid and a lot of people fail to realize and forget about is that cannabis is a

sociable drug and, if they have a sociable drug in the middle of a pandemic when people are telling people not to go out and not socialize, he asked what they think is going to happen. He stated that Commissioner Godwin made a comment at the last meeting about how well the cannabis industry is doing, but he was misinformed as the cannabis industry is not doing well at all. That is why our governor just gave them \$100 million last year to the industry to help them out and he hoped that the city is reaching out and taking advantage of this and getting some of this money as well. He stated that they are hurting as the cannabis industry is not doing as well as people think it is. He stated that they understand that there is a pandemic and people are starting to come back to life but it has been really tough. For their first two years of operation, they owe the city a considerable amount of money and they paid all of that off and this wasn't something that was owed, but something they were dealing with. He stated that they paid what they owed the city and they operated for two years with no problems whatsoever and went through two security inspections with no issues.

Chair Berman asked if there were any other questions for the business owner, and seeing none, she stated, if additional questions are asked, they may ask the owners back to panelist status. She stated that they are now ready to hear Sr. Planner O'Connor's response to Commissioner Godwin's question.

Asst. City Attorney Bazzano asked that Chair Berman close the public hearing.

Chair Berman closed the public hearing.

Sr. Planner O'Connor stated that they received the proposal from the operator with the alternative interpretation of the store front and she believes the discussion of the store front reinterpretation is outside of the relevance of this item because, currently, the store front remains out of compliance as no modification has been made to bring the glazing to compliance. She prepared an exhibit using the proposal provided by the property owner and had some additional visuals that may help to detail where staff is. She pointed out the visual provided by the business owner and her interpretation of their proposal is that they would like to reduce the store front area by removing an area that the perpendicular walls occupy, as well as an approximate 3-foot width that is placed in front of where the stairs come down on the interior, as well as another six inches on the other side. She stated that, while they believe this discussion is outside of the scope, she wants to provide some feedback. She stated that the interpretation of the store front as being 24 feet wide is captured in the resolution that approves the cannabis activity permit and is used as a point of fact into the findings in the reported resolution. The timing to appeal those findings has passed. She believes that the consideration of the interpretation of the store front would be appropriate during a hearing to amend the cannabis activity permit if the Planning Commission is interested in further exploring this reinterpretation of the store front. She stated that staff has thoughts and feedback with consideration of the removal of the 3-foot portion in front of the stairway. She stated that, based on a recent site visit to the operation, staff's understanding is that, once you enter the store to the right of the door, there is not only a landing in front of the stairway which is acceptable to the public, but an ATM machine used by the public and there seems to be no reason why they would not identify this as a customer used space. She stated that the city has not reduced the store front width for any cannabis activity permit application due to wall width. Based on the figures provided, the northern wall width is not counted as part of the current store front. As represented in the drawing provided by the applicant, this northern perpendicular wall which extends out and is part of the projection, this portion of the projected adjacent store front is the 6 inches of wall width that would be accommodated by that wall. She

stated that the only other two-story cannabis retailer which was approved by the Planning Commission, 403 Dondee, has not been constructed or implemented stairs or elevators within their store front or along their front elevation as part of their store front, even though their second story is a non-customer area.

Chair Berman stated that they lost her for a minute and she asked her to go back to when she spoke of the other two-story cannabis permit applicant.

Sr. Planner O'Connor stated that the only other two-story cannabis retailer is 403 Dondee, and in their approval plan, they have included areas where the stairs and elevator occur along their front elevation as part of their store front, even though their second story is also a non-customer area. She stated that those are a few preliminary reasons why staff would not recommend the interpretation being proposed in terms of the store front. In addition, if there was a desire to further consider this interpretation, staff believes there would be a need to amend the current cannabis activity permit to capture these findings to confirm compliance with all regulations which is an essential component of the findings to support a cannabis activity permit.

Commissioner Godwin stated that Glass Houses has just raised \$100 million to buy and partner with cannabis retailers. Columbia Care has significant fees as well and is actively acquiring cannabis businesses and making partnerships with them. 420property.com among other people specialize in handling partnership arrangements and the sale of cannabis businesses in the state of California. He asked if there is any reason why the city would not be open to a partnership arrangement if it had been proposed by these business owners in order to help them raise the funds to do resolve this long-term ongoing window compliance problem and other non-payment issues that they have with the city.

Asst. City Attorney Bazzano stated, before that question is answered, she wanted to focus the Planning Commission back to the task at hand, i.e., they are talking about whether or not the Planning Commission would choose to revoke or suspend the permit and the issues before the Commission are whether or not the non-compliance should result in suspension or revocation. Issues that are extraneous to that, such as funding sources or grant opportunities, etc., is beyond the scope of the agenda item.

Chair Berman thanked her, and since she brought it up, she asked if Asst. City Attorney Bazzano or Sr. Planner O'Connor would mind walking through what the process might be after this meeting's hearing if they decide that it was appropriate to suspend the business or if the business license was revoked.

Sr. Planner O'Connor stated that she can start with that response and maybe Asst. City Attorney Bazzano may supplement anything she left out. She stated, should the Commission choose to revoke the cannabis activity permit as recommended by staff, that would go into effect ten days after the action assuming that no appeal is filed, and at that point the operation would have to cease with their sales and activities that are allowed under their cannabis activity permit, which is the sale and distribution of some adult use and medicinal cannabis products. If it was appealed to Council, then the permit would stay valid until action by Council was made and a final determination was made. She stated that, if the Commission chooses to proceed with a suspension, staff would collect the Commission's feedback and thoughts about the criteria of the suspension, how long, the details of what they would want that suspension to be and the reason

for the findings to support that suspension and they would return at a later meeting to present that resolution to the Planning Commission for consideration.

Chair Berman stated that their only two options are to revoke the permit or suspend the permit.

Asst. City Attorney Bazzano stated that is what has been agendaized, and the Commission is within their discretion to decide to continue the matter if they need more information or want staff to do something different. Before the Commission this evening is the two options, i.e., to suspend or revoke, based on the fact that, at the last Planning Commission meeting on August 16, there was a determination of non-compliance.

Chair Berman stated, if they continue the item to request more information, they would still be presented in the future with the two options to revoke or suspend.

Asst. City Attorney Bazzano responded affirmatively.

Vice Chair Hauser stated that this is hard as the city wants to support small businesses and they underscore every year as the top Council goal. She stated that they have a committee dedicated to working with them but they are talking about whether or not a business is in compliance and she is specifically thinking about the fees. She asked if their impact fees were being deferred, and even if they were, the business is operating. She stated that this is a reimbursement of staff's time for fees that are adopted and posted to the public and made available in various ways. In this case, one of the exhibits in the agenda packet is Exhibit C, sections 4b and 6, an agreement for the benefit of the business owner, signed by the business owner and the city, in which the business owners specifically warrants that they will pay the fees. She stated that, at the last meeting, they discussed not paying fees didn't show a good faith effort to rectify the problem. She is not sure why there is this notion that city staff can work for free. She stated that it may be a small business but they are in Pacifica and are not flushed with cash and they need cost recovery just like every other city in California. She stated that the fee question came up two weeks ago, and her read of it is that the business is operating and hasn't shown a good faith effort to fix the issue. She mentioned at the last meeting that rules have reasons and they heard that every other cannabis dispensary is in compliance and they heard some compelling statements from members of the public at this meeting and she has a hard time asking staff to do additional analysis on the business owner's window design when staff has not been given cost recovery from future work or past work. She thinks this is binary and she thinks paying the fee would have gone a long way or at least part of the fee, but nothing has been done since the initial deposit and, at this time, she supports staff's recommendation and she was open to everyone else's thoughts. She didn't see anything that has been done to be in compliance.

Commissioner Wright asked the applicant, with the prospect of having to pay another \$20,000 fees in two weeks for a renewed permit plus owing the arears, if they are prepared within two weeks' time to make those payments.

Chair Berman asked if he was asking that question of the permit holder.

Commissioner Wright responded affirmatively.

Chair Berman asked Asst. City Attorney Bazzano if she should reopen the hearing and invite the business owner back to answer questions.

Asst. City Attorney Bazzano stated that it is within her discretion to reopen the public hearing to ask the applicant or permittee that question. She stated that her concern is that it is beyond the scope of this agenda item. As Sr. Planner O'Connor stated earlier, the public safety license is a different requirement and at this meeting, they are talking about the cannabis activity permit.

Commissioner Wright stated he will withdraw the question. He stated that he had more questions. He asked staff to explain to him in plain language what it would be for them to see it to be in compliance. He stated that the ratio for the windows and payment of the fees seems to be the two big issues and he asked if they were the only issues.

Sr. Planner O'Connor stated he was correct. The payment of the outstanding processing fees and the modification of glazing within the store front to bring it into compliance with the municipal codes would bring the other conditions of approval into compliance and they are the two critical items.

Commissioner Wright asked if they made their front door all glass in the two years that they have had while they have been talking about this plus the time they were applying for it, as that could have resolved the glass issue. He asked, if they paid the fees, whether that would resolve that issue.

Sr. Planner O'Connor stated that it was not fully correct as she did not believe the replacement of the existing door with a full glass door would meet the glazing requirements as there would need to be further window modifications made to meet the window standards.

Commissioner Wright asked, if they agree with them that it should only be 24 feet instead of 20 feet, that is the ATM machine is problem. He asked, if the ATM machine was there, would they still be of the same opinion, based on the paperwork that was submitted to staff that the landing area is part of the store.

Sr. Planner O'Connor didn't know if she was able to put a definitive opinion in the record on that issue, but what she presented earlier were definitely preliminary concerns with that interpretation of the store front. She also noted that the resolution for the approval of the cannabis activity permit records in those findings that the store front is 24 feet wide and that modifications are necessary. If they are going to talk about reevaluating how they are defining the store front, those findings need to be appropriately reported in a resolution associated with the cannabis activity permit.

Commissioner Wright asked if it was fair to say that it has been almost two years that they have been talking about getting them into compliance.

Sr. Planner O'Connor stated that she can confirm that the operation has been open for approximately two years and that has identified that the window don't meet the municipal code standards prior to that as they were processing their permit, which is the reason why they included the condition of approval to require the implementation of the window modifications prior to operations. She didn't have an accurate timeline of how long they have been talking about this, but it was prior to the approval.

Commissioner Wright concluded that it is roughly over two years.

Sr. Planner O'Connor responded affirmatively.

Commissioner Wright stated that he also feels torn as he wants to support the business but, at the same time, he feels that he has a duty to fairness as some of the other citizens have spoken to and a duty to the city as well. He stated that he is torn. He is heartened by the fact that there has been no issues that have involved police interactions, but he wanted to put it out there that he is on the fence on this.

Commissioner Ferguson stated that he has some public comments for the public record before he states his position on this so they can move forward. He thought staff did a fabulous job of making a case study of why not to do business in Pacifica as what is illustrated here is something that they should all be embarrassed about as he is. He stated that they have had three public hearing and he calculated about 100 hours of staff time talking about the size of a window. He stated that is why a lot of people are leaving California and conducting business other places. He stated that there was a clear agreement at the beginning of this process and a fair and middle playing field where these were laid out, fees haven't been paid, we are a cash-strapped city. He recalls discussing this a year ago and there were payment plans that were put forth but it doesn't seem like there has been any effort to pay back fees that were owed at the beginning of the application. There was a good faith effort made by the city to allow the business to start. He stated that, for that reason alone, he is in support of revoking this permit, but the whole process is a little bit disheartening.

Chair Berman asked Commissioner Godwin if he had any final questions or comments.

Commissioner Godwin thought he went far afield on questions but stated that he could make comments. He thought they need to work with all the stakeholders in a business, and as a former business owner, he thinks that's essential. He agreed there are things they can discuss in the future and he agrees with Commissioner Ferguson that the process has been somewhat cumbersome regarding this business and it would be nice if it was more streamlined and more business friendly, but you have to honor your agreements and he doesn't see that it has happened here, adding that the city needs to make good faith agreements as to the people making those good faith agreements with them, and he is in favor of revoking this permit at this point.

Chair Berman stated, before going to Commissioner Ferguson, she agrees with what many of the commissioners have mentioned. She is saddened to hear that no payment progress has been made as a lot of them were hoping since their August meeting that some progress would be made on outstanding payments. She stated that they heard from Chief Steidle in the past that this business has been operating without complaints and issues and she thought it is a fabulous business to have in Rockaway. She finds it hard to swallow to send them back to start and totally revoke the permit and she would be in favor of suspending their permit. She understands that more staff time will be spent on this process and she has to believe that the business owner will pay or make progress on those fees if this permit were to be suspended and they review it again at a future date.

Commissioner Ferguson stated that he is prepared to make a motion and not spend any more time on this and go back and forth if agreeable to Commission. He stated that he may need help from Asst. City Attorney Bazzano but if there is a way they can lay out a continuance date to say that, by a specific date a specific amount of outstanding fees aren't paid, then it is revoked

automatically without more input by the Commission or if it is just a cut and dried that they either suspend or revoke at this meeting.

Asst. City Attorney Bazzano thanked him for the opportunity to respond. She stated, as Sr. Planner O'Connor stated earlier, if it is the Planning Commission's desire to suspend the CAP permit, they would get as much information from the Commission at this time on the perimeters of that suspension, i.e., decide things like what the timing would be for complying with the conditions of approval because there is no way through this process that they have on this agenda, as all they are deciding at this time is suspension or revocation as there is no way at this time to fix the condition of approval relating to the window. She added that the Planning Commission could decide to suspend the CAP to give the applicant an opportunity to try fill an application to amend that condition of approval relating to the window. She stated that the Planning Commission would have to provide the parameters on that suspension and staff would come back to the Commission at a future meeting to submit the resolution for the Planning Commission's consideration. She referred to the suggestion of putting in the resolution for suspension something about automatic revocation and she would not recommend doing that because revocation would be a different proceeding and they would want to give the permittee due process through the revocation and it could not be an automatic revocation.

Commissioner Ferguson stated that revocation tonight is what they are discussing.

Asst. City Attorney Bazzano stated that at this time, if the Commission supports staff's recommendation, and if there is a majority of them that adopts the resolution that has been presented to them, the revocation will go forward at the meeting. She stated that, if he desires to make the motion, he can ask the chair to make that motion.

Commissioner Ferguson stated that he needs to wrap his head around what he will be moving to do.

Chair Berman thanked him.

Commissioner Wright stated that, as stated earlier, he feels he has a duty to the city and those other operators who are in compliance, but he heard very clearly from them that they are not in favor of revocation and strongly recommended that they suspend, and they are the competition. He is a little heartened by that, and in thinking on that, he thought, to support your thoughts towards suspension as opposed to revocation, he would want there to be some very clear conditions about what they would expect for that versus doing a revocation, but he would leave that to further deliberation.

Chair Berman stated, prior to passing on to Vice Chair Hauser, she had a question, i.e., if they were to decide that the permit should be suspended, is it just a suspension on the cannabis permit. She believes the business owner, prior to having their CAP permit, they were able to sell cannabis classified as a different subset. She asked, if the permit was suspended, can they still operate at their location, but not sell cannabis.

Sr. Planner O'Connor deferred to the Asst. City Attorney.

Asst. City Attorney Bazzano thought she was correct, but she doesn't know the parameters as there may be other restrictions on what they can or cannot do at that location. She doesn't know

what their business license is for, as if they have a business license to sell other products, they could possibly continue to do business selling non-cannabis related products, but the cannabis activity permit applies to cannabis business activities.

Chair Berman thought, hypothetically, if they decide to approve a motion to suspend the CAP permit, they have to understand what this business owner is allowed to sell, and do they need to receive more information in order to proceed with suspension.

Asst. City Attorney Bazzano asked if it was a question for her.

Chair Berman stated that it is a question but she doesn't know if it is for her and Sr. Planner O'Connor. She wondered, if going through the process this evening and they were to proceed with suspending the permit, whether they need more information at this time to understand what this business owner is allowed to sell at their store.

Sr. Planner O'Connor stated that the municipal code details that the cannabis activity permit authorized the sale of cannabis products and cannabis products is a defined term in the health and safety code. She thinks there is a definition in the municipal code, as well as state regulations that will define what they can and cannot sell without an active cannabis activity permit. She asked if she is interested in knowing what they sell now and what percentage of their stock they will not be able to continue moving forward with.

Chair Berman thanked her for asking for clarification. She wants to be forward thinking and wants to understand that, if this permit were suspended, it is not like the shop needs to entirely close.

Sr. Planner O'Connor stated that, if they wish to continue to sell items that don't require a cannabis activity permit, which is products that are controlled under that permit, as Asst. City Attorney Bazzano detailed, they will be able to continue that. She stated that the caveat she identified was, with the assumption that their business license and other kind of accessory type approvals would be in support of that.

Chair Berman stated that answers her question. She asked if Vice Chair Hauser has questions.

Vice Chair Hauser stated that she has a comment. She stated that she is clearly hearing that they are considering suspension or revocation, and she is going back to in the staff analysis to a sentence that says, although there is no specific requirement regarding when a suspension should be utilized rather than revocation, generally suspensions are used when a suspension is likely to allow the applicant time to achieve compliance in a particular case. She is thinking about what they asked for at the last meeting, i.e., a payment of fees, and there has been no big payback that has been made in that regard. She is thinking about what the business owner said at this meeting, i.e., they don't think they are going to see the fees until they resolve the window. She stated that there is a disconnect between what they think is fair and what they agreed to which are that they agreed to conditions of approval. She stated that every applicant and business owner has conditions of approval and every business owner gets to see them before the hearing that happened and every applicant has the right to appeal their condition and none of that took place. She stated that back in 2019 when this happened, it came back to the Commission for them to make the accommodations and they made them, and years have passed and nothing has happened, no payments of the fees, and she disagrees with staff's analysis. She agrees with Commissioner

Ferguson that there are things that maybe are hard barriers to be a business owner in certain places and she also disagrees to some extent because she thinks Pacifica does a fabulous job engaging with our business owners and putting together documents and reaching out to them and putting money towards economic development here in a way other cities have not. She doesn't think it is an issue with Pacifica but an issue with the permit and she doesn't see it delaying any further. She would not support suspension, but will be supporting staff's recommendation in Section B of the staff report.

Commissioner Wright asked Asst. City Attorney Bazzano if both suspensions and revocations appealable and, if they vote for a suspension, does it take effect immediately and if they vote for revocation, does that revocation take place immediately or does the ten-day clock start and then at the end of the ten-day clock, if it hasn't been appealed, is that when it takes force.

Asst. City Attorney Bazzano stated, as indicated earlier, if the Planning Commission adopts the resolution that supports staff's recommendation for revocation, it would take effect after the appeal period has terminated. She stated any determination of the Planning Commission, either a suspension or revocation, is appealable to Council. She stated that the suspension is a bit trickier because they can make that determination at this meeting, but it would not go into effect until they bring back the resolution for adoption at a later date.

Commissioner Wright stated, in some regard, he agrees that at the last meeting it seemed that they were trying a stick and the question to him is are they talking about using a bigger stick or about a death blow. He has a hard time putting a small business out of business and he still supports suspension as opposed to revocation.

Commissioner Ferguson stated that he is having a hard time with this and he would like to make a motion as he wouldn't ask someone else to do it for him, if they are ready to hear it.

Chair Berman stated she would be interested to see if Commissioner Godwin has any final comments. She knows he could make the motion and it could remain on the table, but he asked him to hold off for a few minutes.

Commissioner Ferguson agreed.

Commissioner Godwin asked Asst. City Attorney Bazzano if she has any idea about the history of suspensions, such as what percentage of the time that results in the business successfully coming out of them and succeeding after this occurs or is it likely just delaying the inevitable. He acknowledged it was a statistical question but he thought that information would be helpful to him.

Asst. City Attorney Bazzano stated that Sr. Planner O'Connor could correct her if she is wrong, but she didn't believe that any cannabis business has either had its cannabis activity permit suspended or revoked so this is something that Pacifica is experiencing in the first instance. She added that, in other jurisdictions as indicated in the staff report, suspension works if there is a chance of compliance. If they need another month and then they are going to come into compliance, in this case the permittee would have a lot to undertake in order to come into compliance, i.e., file an application, get the condition of approval amended which must be approved by the Planning Commission, and it is a whole other process that the permittee would have to overcome in order to come into compliance with that condition of approval, in addition to

paying the outstanding fees which they haven't done since 2021 when they signed the agreement and the Planning Commission amended the conditions of approval consistent with the agreement.

Commissioner Godwin stated that it sounds reasonable to him. He would be hopeful for a suspension if they had a deep pockets partner and he felt like there is some short term activity that they could get the funds from someone in their late stage negotiations but, otherwise, he is aligned with Commissioner Hauser that they had opportunities and it seems like revocation is the best way to go.

Chair Berman stated, to clearly understand his position, she stated that it sounds like he agrees with Vice Chair Hauser and would like to pursue the revocation, but she thought he had a statement that he would be interested in talking about suspension or is that not the case.

Commissioner Godwin stated that, if there was some clear evidence to him, like they had a business broker, certified financial statements, talked to a big people who have piles of money to do this kind of stuff and there is some level of negotiations, he could say yes, he could be with suspension for a short period of time while they completed this discussion or the discussion fell apart and then they could not go forward. He stated that, as they don't seem to be moving on anything that he sees as a feasible outcome, he was more inclined to go for revocation. He stated that the best thing he learned in software is, if you want to fail, fail fast as you don't want to keep dragging out a business that is almost going to be successful until it is a slow death. He stated that this seems like a situation where it will ultimately end up in revocation and the more they drag it out, the more painful it will be for the city and the business owner and nothing is going to get better, just worse.

Chair Berman thanked him for that clarification. She asked Commissioner Ferguson if he would like the floor again.

Commissioner Ferguson moved that the Planning Commission adopt the attached resolution to FIND that action is exempt from the California Environmental Quality Act; REVOKE Cannabis Activity Permit CAP-8-18 (File Nos. 2018-029 and 2020-020) associated with the cannabis retail operation at 450 Dondee Way, Suite 2 (APN 022-021-640); and incorporate all maps and testimony into the record by reference; Vice Chair Hauser seconded the motion.

Vice Chair Hauser asked if city staff can clarify with the amount of Commissioners present how many do they need to pass the motion.

Sr. Planner O'Connor stated that they need 3.

Chair Berman stated that they have a motion and a second and asked for a roll call vote.

Sr. Planner O'Connor took a verbal roll call.

The motion carried **3-2**.

Ayes: Commissioners Ferguson, Godwin, and Hauser
Noes: Commissioner Wright and Chair Berman

CONSIDERATION:

2. TA-122-22

File No. 2022-017 – Text Amendment TA-122-22, report to Planning Commission on City Council modification of the Planning Commission recommended “Outdoor Commercial Permit” ordinance, which would amend various Pacifica Municipal Code provisions to create zoning provisions applicable to processing and issuance of “Outdoor Commercial” permits for existing commercial businesses. Recommended CEQA Action: Exempt from the California Environmental Quality Act (CEQA) pursuant to Class 1, Class 3 and Class 4 exemptions under CEQA Guidelines Sections 15301, 15303 and 15304 and under the “General Rule” exemption in CEQA Guidelines § 15061(b)(3).

Sr. Planner O’Connor presented the staff report.

Commissioner Wright is in favor of the resolution as he thought it was an oversight not to include it the first time and adding it in is a good opportunity for the city to maximize their support for other businesses.

Commissioner Ferguson agreed with Commissioner Wrights comment and appreciated his candor. He remembers thinking it might have been something that should have been spelled out more clearly the first time but was glad they were addressing it now.

Commissioner Godwin agreed with his fellow commissioners as he thought restaurants included bars but that is probably an oversight and he was glad to see it clarified and he supports it.

Chair Berman also supports it as well. She stated, not seeing questions, she asked if someone was willing to make a motion.

Asst. City Attorney Bazzano stated she has to open public comments.

Chair Berman opened public comments, and seeing no one, closed public comments.

Commissioner Ferguson stated, unless Vice Chair Hauser feels strongly about being the one making the motion, he could read it.

Chair Berman encouraged him to do so.

Commissioner Ferguson moved that the Planning Commission FINDS the proposed ordinance as amended is exempt from the California Environmental Quality Act; ADOPTS the resolution included as Attachment A to the staff report to recommend City Council approval of the modified ordinance; and INCORPORATES all maps and testimony into the record by reference; Vice Chair Hauser seconded the motion.

Sr. Planner O’Connor took a verbal roll call.

The motion carried **5-0**.

Ayes: Commissioners Ferguson, Godwin, Hauser, Wright

and Chair Berman
Noes: None

Chair Berman declared that anyone aggrieved by the action of the Planning Commission has ten (10) calendar days to appeal the decision in writing to the City Council.

COMMISSION COMMUNICATIONS:

Commissioner Godwin commended the Fog Fest team as he felt they put on a great event with a huge attendance and it is a wonderful addition. He is glad to see them back.

Chair Berman agreed.

Vice Chair Hauser stated that Commissioner Domurat asked at the last meeting to agendaize a review of the Planning Commission's work and provide an opportunity for the community. She knows that staff had mentioned that it was potentially going to be agendaized for November and wanted to let everyone know to be on the lookout in November and they can give a staff update as they get closer.

Commissioner Wright asked if they are going back to in-person with their next meeting. He thought Council approved going back to in person with themselves, but he didn't hear in the resolution when they did that if that included the Commission as well.

Sr. Planner O'Connor stated he is stepping on her toes regarding her staff communications. She stated she is happy to go to that stage if it is okay with Chair Berman.

Chair Berman agreed to going to staff communications.

STAFF COMMUNICATIONS:

Sr. Planner O'Connor stated that, on September 26, Council confirmed the return to in-person City Council, Commission and committee meetings beginning on October 10. Therefore, starting with the next Planning Commission meeting, the meeting will be held in person at the City Council Chambers with a live broadcast by Pacific Coast Television on Comcast Channel 26 and online livestream with a phone in line to allow for participation by members of the body as necessary and members of the public to provide verbal input to the meeting, including public comment.

Chair Berman stated that, if there are no comments, she asked for a motion to adjourn.

ADJOURNMENT:

There being no further business for discussion, Vice Chair Hauser moved to adjourn the meeting at 8:59 p.m.; Commissioner Ferguson seconded the motion.

Sr. Planner O'Connor took a verbal roll call.

The motion carried **5-0**.

Ayes:	Commissioners Ferguson, Godwin, Hauser, Wright and Chair Berman
Noes:	None

Respectfully submitted,

Barbara Medina
Public Meeting Stenographer

APPROVED:

Acting Planning Director Murdock