

RESOLUTION NO. 52-2018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA DENYING THE APPEAL AND UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF MARIJUANA USE PERMIT MUP-1-18 (FILE NO. 2018-022), FILED BY LYTT LLC, SUBJECT TO CONDITIONS, TO ESTABLISH AND OPERATE A MARIJUANA RETAIL OPERATION AT 2110 PALMETTO AVENUE (APN 016-182-360) AND FINDING THE PROJECT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).

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

WHEREAS, an application has been submitted to establish a Marijuana Retail Operation to sell medical and nonmedical cannabis products at 2110 Palmetto Avenue (APN 016-182-360) within the C-1 (Neighborhood Commercial) zoning district and CZ (Coastal Zone) and MO-SP (Marijuana Operation, Sharp Park Overlay District) overlay zoning districts; and

WHEREAS, the project requires approval of a Marijuana Use Permit (MUP) pursuant to Section 9-4.4803(b); and

WHEREAS, after holding a duly noticed public hearing on October 1, 2018, the Planning Commission of the City of Pacifica adopted Resolution No. 2018-006 approving Marijuana Use Permit MUP-1-18; and

WHEREAS, an appeal was filed by Adam Zollinger on October 11, 2018, 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 13, 2018, at which time it considered all oral and documentary evidence presented relating to the appeal, and incorporated all testimony and documents into the record by reference.

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

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

BE IT FURTHER RESOLVED that the City Council of the City of Pacifica does hereby deny the appeal and makes the following findings pertaining to its denial of the appeal of the Planning Commission's action to approve Marijuana Use Permit MUP-1-18:

1. Appellant's claim that Lytt LLC ("Applicant") *"failed to comply with the deadlines for submission of the marijuana use permit application as set forth on the City of Pacifica's website and set forth in the applicable adopted ordinances"* is denied. Applicant complied with the deadline for submission of its marijuana use permit application as required by Pacifica Municipal Code (PMC) section 9-4.4804(a)(2).

2. Appellant's claim that Applicant "*failed to comply with the deadlines for an extension of time for incomplete applications which disqualified Lytt from permit approval*" is denied. Applicant complied with the deadline for submission of its marijuana use permit application as required by Pacifica Municipal Code (PMC) section 9-4.4804(a)(2).
3. Appellant's claim that Applicant "*previously operated an illegal dispensary*" is denied. The factor identified by the Appellant is not among the required findings for approval of a marijuana use permit contained in PMC section 9-4.4805(a)(1). Nevertheless, the Planning Commission was aware of and considered this factor when it made the findings for approval of Marijuana Use Permit MUP-1-18.
4. Appellant's claim that Applicant "*failed to comply with business tax obligations*" is denied. The Planning Commission properly considered this factor when it made the findings for approval of Marijuana Use Permit MUP-1-18 required by PMC section 9-4.4805(a)(1).

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, as described below:

1. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, Class 1, (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.
2. The subject location of the proposed use is an existing mixed-use structure consisting of ground floor retail commercial uses and upper floor residential uses. The proposed cannabis business would locate within one of three existing commercial lease spaces. Therefore, the proposed use would be consistent with a Class 1 exemption because it would involve only minor interior alterations, would not result in any physical construction outside the footprint of the existing structure except for installation of a wall sign, and would not result in a use of greater intensity than the type of retail commercial uses for which the structure was originally constructed.
3. The project also does not trigger any of the exceptions to the exemption outlined in CEQA Guidelines Section 15300.2, 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 commercial tenant space.
 - 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), (e) and (f): The project is not visible from Highway 1, which is an eligible scenic highway; does not involve a current or former hazardous waste site; and does not affect a historic resource (the building in which it is proposed was approved for construction in 2009). Therefore, the provisions of subsections (d) through (f) are not applicable to this project.
4. 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 approval of Marijuana Use Permit MUP-1-18:

Standard Use Permit Findings Pursuant to PMC Section 9-4.3303

- (1) 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.*

Finding:

The proposed business will be located inside an existing commercial building in place of an existing commercial tenant in the subject space. The hours of operation requested by the Permittee are from 8:00 a.m. to 10:00 p.m. Given that there are residences located in close vicinity of the proposed operations, including directly above the adjacent commercial spaces and in the building to the rear of the proposed operation, the requested hours have the potential to generate noise impacts for the residents at sensitive periods early and late in the day. Therefore, City Council has placed restrictions on hours of operation and has included a condition of approval to allow hours of operation from 9:00 a.m. to 9:00 p.m. to minimize noise impacts.

Outside queuing of potential customers is not anticipated but it may occur. Although the Permittee proposes to employ staff to direct potential customers to queue adjacent to the door, given the narrow width of the sidewalk in front of the business, it is likely that any outdoor activity associated with the business may be an impediment to free public use of the sidewalk. Therefore, Planning Commission has included a condition of approval prohibiting outdoor queuing and requiring that

the business operations be conducted entirely within the enclosed premises of the business. As conditioned, the business operations would be located entirely inside an existing commercial building. The tenant space does not include any outdoor patio space where clients might congregate to generate noise or litter.

The Permittee submitted a security plan, dated February 18, 2018, which was reviewed and approved by the Police Chief. The security plan includes physical security measures such as closed circuit video cameras which will deter crime and assist with investigating any incidents which may occur. An addendum to this plan, dated August 14, 2018, incorporates separation between the queuing/waiting area and the retail sales area with a three-foot high wall and minor modifications to the location of cameras, which has also been reviewed and approved by the Police Chief which will ensure safe operation of the facility.

However, the security plan, dated February 18, 2018, proposed sharing a trash enclosure with other building tenants in its current location to the rear of the building in the parking area. Per Section 8308 of the Emergency Regulations in effect as of June 6, 2018, pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), a secured waste receptacle or a secured area on the licensed premises designated on the licensee's premises diagram is required for the disposal of cannabis waste. For the purposes of this section, "secure waste receptacle" or "secured area" means that physical access to the receptacle or area is restricted only to the licensee, employees of the licensee, or the local agency, a waste hauler franchised or contracted by a local agency, or a private waste hauler permitted by the local agency. Public access to the designated receptacle or area shall be strictly prohibited.

The Permittee has indicated its intent to contract with Gaiaca, a state-licensed cannabis waste company as its private waste hauler, although the 'secure area' on the premises for cannabis waste is not indicated on the floor plan of the premises. The Planning Commission has incorporated a condition of approval requiring that the Permittee indicate the location of the 'secure area' for cannabis waste on the floor plan to the satisfaction of the Planning Director and Police Chief, prior to building permit issuance.

Therefore, as conditioned, the City Council has determined that the proposed marijuana operation will not 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

(2) 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.

Finding:

The proposed cannabis business would be located entirely within an area designated "Commercial" in the neighborhood land use diagram of the General Plan and Local Coastal Plan (LCP). It would be consistent with the following two General Plan policies:

Community Design Policy 2: Encourage the upgrading and maintenance of existing neighborhoods.

The proposed cannabis business would be one of the first businesses of its kind to be lawfully established in Pacifica, which would create a retail use of interest in the neighborhood and a lawful place to purchase cannabis.

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.

The proposed cannabis business would provide a lawful source of cannabis to Pacifica's residents, thereby helping to meet their need for cannabis products. Particularly, in reference to medical cannabis, the proposed operation would help address the health needs of the residents without a commitment of public financial resources.

As conditioned, 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, a cannabis business would meet local residents' needs for lawful access to 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 been reviewed by City staff including the Police Chief and Planning Department Staff to ensure consistency with the provisions of Ordinance Nos. 818-C.S. and 819-C.S. The Permittee 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 Marijuana Use Permit. By submitting complete application materials, the Permittee has demonstrated an intention to comply with the City's ordinances regulating cannabis business activity and is anticipated to 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.

(3) Where applicable, that the use or building applied for is consistent with the City's adopted Design Guidelines.

Finding:

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 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 which 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 subject business does not propose to modify the site plan or the building's architecture or lighting. The existing stucco storefront with large glass windows is compatible within the neighboring storefronts and the surroundings.

Site conditions do not allow major alterations to include landscaping. However, the Permittee proposes to locate a 12' long and 18" wide planter on the property, below the front window, planted with low succulents so as to not obstruct view inside the business premises through the glass windows.

Given the limitations of the site and in that the Permittee does not propose modification to the existing building storefront that is compatible with the adjacent development, the City Council has determined that the project is consistent with the applicable Design Guidelines.

Marijuana Use Permit Findings Pursuant to PMC Section 9-4.4805(a)(1)

- (1) *The marijuana operation applicant has been placed on the marijuana qualified registration list, as defined in Title 4, Chapter 16.*

The Police Chief placed Lytt, LLC on the Qualified Marijuana Registration List as Qualified Cannabis Registrant (QCR) #18-20 on March 15, 2018. Therefore, there is sufficient information to make this finding.

- (2) *The marijuana use permit application is complete and the applicant has submitted all information and materials required by Section 9-4.4804(c).*

The MUP application contains all the required information as determined after a review by Planning Department staff. The Planning Department deemed the application complete on September 4, 2018. Therefore, there is sufficient information to make this finding.

- (3) *The proposed location of the marijuana operation is not likely to have a potentially adverse effect on the health, peace, or safety of persons due to the marijuana 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 MO-SP overlay district which is intended for Marijuana Retail Operations. Per PMC Section 9-4.4803(c)(2) a marijuana operation may not operate on a parcel or lot located within six hundred (600') feet of a school or youth center or within two hundred (200') feet of a day care center that are in existence at the time the marijuana use permit is issued. The subject site is not located within six hundred feet of a school or youth center or within two hundred feet of a day care center. "Classical Ballet of California", a dance studio is located at 1919 Palmetto Avenue, approximately 440 feet to the northeast of the proposed business, although it is not considered a school or a youth center as defined in PMC Section 9-4.4801(v) and (y), respectively.

The site is located approximately 275 feet from the Sharp Park Library; approximately 650 feet from Sharp Park Beach; approximately 820 feet from a public park at the intersection of Brighton Road and Palmetto Avenue; and, approximately 550 feet from the Pacifica Municipal Pier. A bus stop, serviced by Route 19 with school-day service to and from Ingrid B. Lacy Middle School, is located directly across Palmetto Avenue from the project site. However, Route 19 services the stop only between 8:04 AM and 8:44 AM on school days, before the cannabis business would open based on the conditioned hours of operation. The stop would not receive drop-offs in the afternoon when the route is operating between 2:20 PM and 3:54 PM when the cannabis business may be open.

The proposed cannabis business is not likely to have a potentially adverse effect on the health, peace, or safety of persons, including children, at these locations, provided it is contained entirely within the interior premises of the facility and maintains a discreet appearance. Based on information provided by the Permittee outside queuing of potential customers is not anticipated, although it may occur. The Planning Commission has included a condition of approval prohibiting outdoor queuing and requiring that the business operations be conducted entirely within the enclosed premises of the business. The Permittee has not proposed large signage to advertise the business.

Therefore, as conditioned, 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.

- (4) *The proposed location of the marijuana operation is not likely to have a potentially adverse effect on the health, peace, or safety of persons due to the marijuana operation's proposed proximity to another existing or permitted marijuana operation.*

Previously, there were three unpermitted Marijuana Retail Operations within the West Sharp Park neighborhood, including the Surefyre Collective dispensary at 1905 Palmetto Avenue operated by one of the corporate officers of Permittee Lytt, LLC, Brett Alexander Chapman. All three have ceased operations as confirmed by Code Enforcement staff.

Phog Center LLC has been approved to operate at 2270 Palmetto Avenue, which would be located 460 feet south of the Applicant. The Pacifica Municipal Code does not prescribe a minimum distance between Marijuana Operations. Both businesses are required to operate within the confines of applicable state and local laws and the conditions of approval of its Marijuana Use Permit which shall ensure its desirable operation. Thus, when combined with the

operation of the subject business, if approved, which shall have its own conditions of approval, the two cannabis business will operate harmoniously within the surrounding neighborhood.

Therefore, as conditioned, the proposed location of the subject marijuana retail operation is not likely to have a potentially adverse effect on the health, peace, or safety of persons due to its proposed proximity to another existing or permitted marijuana operation.

- (5) *The design of the storefront or structure within which the marijuana operation will operate is architecturally compatible with surrounding storefronts and structures in terms of materials, color, windows, lighting, sound, and overall design.*

The subject project does not propose any architectural modification to the existing storefront or the building façade, which is compatible with surrounding storefronts and structures. The subject project also does not propose any sound-emitting elements on the façade. A condition of approval would restrict any façade modifications without prior City authorization. Therefore, as conditioned, the design of the proposed business's storefront and structure is compatible with surrounding storefronts in terms of materials, color, windows, lighting, sound and overall design.

- (6) *The proposed size of the marijuana operation is appropriate to meet the needs of the local Pacifica community for access to marijuana and that the size complies with all requirements of the City's Zoning Regulations.*

The size of the operation complies with the pertinent size requirements of the City. The interior of the commercial space meets all minimum dimensional requirements of the California Building Code including the minimum dimensions for an accessible restroom. The subject business occupies a relatively modest area of 1,486 square feet. In addition to medical cannabis, if approved, it would be the first business of its kind in Pacifica which will lawfully cater to the demand for non-medical cannabis in the community and is unlikely to be oversized relative to the anticipated local demand. The proposed cannabis business also would provide delivery service in order to serve customers in locations other than the subject location during hours of operation of the business. This service would serve to meet needs of persons who may be unable to visit the site and may induce a reduction in the number of customers visiting the site thereby reducing the potential impacts from noise, parking, and traffic. Therefore, the proposed size of the marijuana operation is appropriate to meet the needs of the local Pacifica community and its size would comply with all requirements of the City's Zoning Regulations.

- (7) *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 Marijuana Use Permit, Marijuana Public Safety License, and applicable license(s) from the State of California. The location is within a Marijuana Operation Overlay District which authorizes Marijuana Retail Operations and is outside all buffer areas from sensitive uses which include K-12 schools, youth centers, and day cares. Based on the project's relatively small size and as discussed in Supplemental Marijuana Use Permit Finding No. 8 below, no significant nuisance issues or problems are likely or anticipated.

The project also accomplishes compliance with other applicable requirements of the City's Zoning Regulations except for the off-street parking standards contained in Article 28 of Chapter 4 of Title 9, the master sign program requirement of Article 29, and the landscaping standards in Article 10 of Chapter 4 of Title 9 of the Pacifica Municipal Code. As noted elsewhere, the mixed-use commercial and residential structure in which the cannabis business proposes to operate does not provide any off-street parking for its commercial uses and provides only four parking spaces for its residential uses which may require additional parking spaces according to Article 28 standards. The site also does not have a master sign program to coordinate signage for the multi-tenant commercial and residential structure, and does not have any landscaping installed on-site despite a requirement for landscaping over 10 percent of the site area. However, the site was authorized to be constructed with the existing parking, signage, and landscaping schemes in accordance with applicable zoning provisions at the time of its construction in 1962. Therefore, the structure is considered to be nonconforming but lawful as provided in Article 30 of Chapter 4 of Title 9 of the Pacifica Municipal Code (use of the site is also nonconforming on the basis that a use permit has not been issued for the residential use above the ground-floor commercial use as required by PMC Sec. 9-4.1001(b)(11), but that consideration is not germane to the subject application and will not be further analyzed).

Article 30 allows for the continued use of nonconforming but lawful structures. It provides, in part, that "All structures, including, but not limited to, main buildings, accessory buildings, walls, and fences, which do not meet the development regulations for the district within which the structure is located and any residential building in a commercial district shall be deemed nonconforming but lawful..." and sets forth certain additional requirements for continued operation (PMC Sec. 9-4.3002(c)(2)). These additional requirements include but are not limited to a requirement to obtain a use permit if a use would increase the extent of nonconformity, and a requirement to reduce or eliminate nonconformities where deemed feasible by the Planning Administrator. Section 9-4.3002(c)(2)(ii) further provides that "A physical change, enlargement, extension, or remodeling which does not increase the nonconformity may be made, as with a conforming structure, by securing the required building permits. The decision that the alteration will or will not increase the extent of the nonconformity shall be made by the Planning Administrator or designee. Decisions may be appealed to the Commission within fourteen (14) days after such action."

Staff's analysis of the proposed cannabis business has found that the proposed remodeling of the existing commercial space would not increase the extent of the nonconformity with off-street parking standards because it would not increase floor area of the commercial building and would not propose a use with a more intensive parking requirement than standard retail uses under the City's off-street parking standards in Section 9-4.2818(b), which require one parking space per 300 square feet of gross leasable area. Despite the unique requirement for a marijuana use permit under Article 48, the proposed cannabis business otherwise operates like other retail businesses which have occupied the subject site in the 56 years since its construction, none of which have required consideration of special permits prior to commencing operations on the basis of their parking demand. Therefore, the Planning Commission determined that no additional requirement to provide off-street parking is warranted in this case. With respect to the absence of a master sign program, a condition of approval would require the Permittee to obtain approval of a master sign program by the Planning Director prior to issuance of a building permit for a sign.

The Permittee has also proposed to install a landscaping planter box in the limited area available to improve the landscaping condition on the site, which would reduce the degree of nonconformity with the 10 percent landscaping standard. By requiring a master sign program and installing a landscaping planter box, measures deemed feasible by the Planning Commission, the Permittee would eliminate or reduce nonconformities at the site.

By virtue of its compliance with applicable locational standards, its operation consistent with standard retail uses which do not intensify off-street parking requirements at the site, by eliminating or reducing nonconformities by preparing a master sign program and installing landscaping, and for additional reasons set forth in Finding No. 8 below, the City Council believes there is sufficient evidence to make this finding.

- (8) *The marijuana 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, marijuana 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.*

The business will employ an on-site manager responsible for overall operation during all operating hours and will provide the Police Department with the contact information of all such persons, which would engender responsible operations. The Permittee has stated that it has retained the services of a company, "Gaiaca Waste Revitalization," to assist in cannabis waste management to ensure that there are appropriate means to dispose of unwanted cannabis related items. The Permittee has also stated that it has retained the services of an inventory control service to provide "seed to sale" software tracking as required by California law. The Planning Commission has included a condition of approval requiring evidence to the effect prior to building permit issuance.

The Planning Commission has also included conditions of approval requiring that the business operations be conducted entirely within in the enclosed premises, and the City Council has required that business hours be restricted from 9:00 a.m. to 9:00 p.m. daily to minimize the potential for noise at sensitive hours in the morning and evening hours. In addition, the Pacifica Municipal Code prohibition on possession, distribution, or consumption of alcohol on the premises, and the prohibition on smoking, ingesting, or consuming marijuana on the premises, should serve to prevent excessive disturbances or illegal drug activity.

- (9) *The marijuana 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 Permittee has invested significant time and resources developing application materials suitable for City review and approval. These applications materials include, but are not limited to, a security plan, operations plan, parking and trip generation analysis, and a floor plan. On this basis, the Permittee 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.

However, there is evidence to suggest a member of the Permittee entity has not complied with provisions of the Pacifica Municipal Code contained in Chapter 18 of Title 3 of the Pacifica Municipal Code, known as the "Marijuana Operation Tax." The Pacifica voters enacted the tax in November of 2017 by adopting Measure G. Section 3-18.02 provides that "Every marijuana operation operating in the city, regardless of whether such marijuana operation has a marijuana use permit pursuant to Title 9, Chapter 4, Article 48 of this Code or a marijuana public safety license pursuant to Title 4, Chapter 16 of this Code, shall pay a marijuana operations tax [in the amount prescribed by law]." The tax is currently set at 6 percent of gross receipts. The Marijuana Operation Tax is owed regardless of whether the business obtained a Marijuana Use Permit or not.

The Permittee entity is Lytt LLC which, according to the Permittee, has two members: Cheryl Ann King and Brett Alexander Chapman. Mr. Chapman is known to City staff as the owner/operator of a former unpermitted Marijuana Retail Operation known as "Surefyre Collective" which operated at 1905 Palmetto Avenue until July 2018. The precise start date of Surefyre Collective's operations is unknown to City staff but is believed to have been in March 2017. Regardless its start date, staff has confirmed through investigation that it was operating as of the effective date of the Marijuana Operation Tax and continued operating until July 2018. During that entire period Surefyre Collective was subject to the Marijuana Operation Tax. On this basis, the Planning Commission has substantial evidence that Mr. Chapman owned/operated a business which was subject to the Marijuana Operation Tax and the Marijuana Operation Tax for Surefyre Collective was not paid. The failure to pay the Marijuana Operation Tax constitutes a violation of the Pacifica Municipal Code.

Mr. Chapman has represented to staff his willingness to make full payment of all taxes owed by Surefyre Collective. The precise amount of all taxes owed pursuant to PMC section 3-18.02, any penalties and interest owed pursuant to PMC section 3-18.11, the registration fee required by PMC section 3-18.05, and any other license taxes, and/or fees owed are details which shall be resolved with the City Manager and the Finance Division. The relevant consideration for purposes of this finding is that payment of all debt owed to the City is paid which would remedy the violation and enable a finding that the Permittee, Lytt LLC, would be likely to operate in accordance with all applicable state and local laws. In order to make the necessary finding required in PMC section 9-4.4805(a)(1)(ix) that the Permittee is not likely to violate any provision of the PMC, staff has included a condition of approval which would require the Permittee to pay all of the debt owed by Surefyre Collective prior to Permittee commencing operations. By inclusion of this condition and the Permittee's payment of all outstanding taxes and other amounts owed to the City, the City Council has sufficient information to make this finding.

(10) The applicant has not made a false statement of material fact or omitted a material fact in the application for a marijuana use permit, as known at the time of determination on the application.

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

(11) The marijuana 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. There is only one entry/exit point for customers, located on Palmetto Avenue, where access will be controlled for qualified customers. Access to the product storage area will also be controlled, accessible only to authorized personnel. The project site does not include an outdoor space such as a patio to allow for customers to congregate. Furthermore, the Planning Commission has included a condition of approval requiring that all business operations be conducted entirely within the enclosed premises of the business.

Additionally, the existing tenant space includes large windows which will allow the Police Department to observe business activity from the public right-of-way to ensure public safety. Although there is no existing landscaping on the site, the Permittee has proposed a box planter outside the front windows to enhance the appearance of the business with low growing landscaping to ensure that views through the windows are not obstructed.

The Permittee will also install video recording equipment to monitor the premises in order to deter crime and support any Police Department investigations into isolated crimes which may occur with video evidence. As part of business operations, the Permittee has presented employee specific policies, and a training regime to deter crime related problems and implement security measures that are described in detail in Attachment D to the staff report.

Therefore, on the basis of the physical design of the facility and operational and security parameters proposed by the Permittee, the City Council believes 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 Marijuana Use Permit MUP-1-18 to establish and operate a Marijuana Retail Operation at 2110 Palmetto Avenue, subject to conditions of approval attached hereto as Exhibit A and hereby incorporated by reference.

* * * * *

Passed and adopted at a regular meeting of the City Council of the City of Pacifica, California, held on the 13th day of November 2018.

AYES, Councilmembers: Keener, Vaterlaus, Digre, O'Neill, Martin

NOES, Councilmembers:

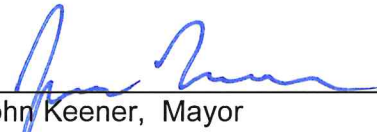
ABSENT, Councilmembers:

ABSTAIN, Councilmembers:

ATTEST:

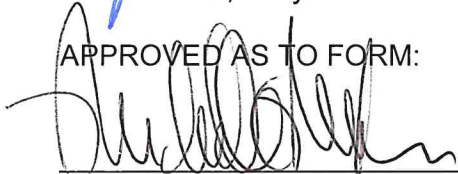


Sarah Coffey, City Clerk



John Keener, Mayor

APPROVED AS TO FORM:



Michelle Marchetta Kenyon, City Attorney

Exhibit A

Conditions of Approval: File No. 2018-022 – Marijuana Use Permit MUP-1-18 for Lytt LLC to Establish and Operate a Marijuana Retail Operation at 2110 Palmetto Avenue (APN 016-182-360)

Planning Division

1. Development shall be substantially in accord with the plans stamped and received on September 24, 2018, except as modified by the following conditions.
2. The Permittee shall at all times maintain a valid Marijuana Public Safety License and a valid license(s)/permit(s) from the State of California. If at any time the Marijuana Public Safety License or State of California license(s)/permit(s) issued to the Permittee for the subject facility is/are revoked, expires, or otherwise rendered inoperative for any reason, this Marijuana Use Permit shall immediately become null and void and it shall not be possible to reinstate the Marijuana Use Permit. A temporary suspension of the Marijuana Public Safety License or State of California license(s)/permit(s) shall render the Marijuana Use Permit inoperative during the term of the suspension but the Marijuana Use Permit shall not be considered null and void during the suspension.
3. The Marijuana Use Permit is non-transferrable to any other person or entity.
4. The Marijuana Retail Operation shall operate consistent with all provisions of Article 48 of Chapter 4 of Title 9 applicable to Marijuana Retail Operations, as currently codified or as may be amended from time to time.
5. The Permittee shall operate and maintain the Marijuana Retail Operation in a manner which does not constitute a public nuisance.
6. The Marijuana Retail Operation shall implement and operate in accordance with the Security Plan, dated February 18, 2018 and addendum, dated August 14, 2018, as approved by the Police Chief.
7. The Marijuana Retail Operation shall be conducted entirely within the enclosed space of the business premises.
8. Prior to building permit issuance, the Permittee 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.
9. Prior to commencement of operations, the Permittee 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.

10. A member of Permittee entity owned and operated Surefyre Collective, a “marijuana operation” as that term is defined in Pacifica Municipal Code (PMC) 3-18.03, which operation failed to pay the “Marijuana Operation Tax” and registration fee imposed pursuant to Chapter 18 of the PMC. This past due debt is currently owed by a member of Permittee entity, pursuant to PMC section 3-18.14. Prior to commencement of operations under this Marijuana Use Permit, Permittee shall satisfy the debt owed by Surefyre Collective to the City and shall pay all taxes, registration fees, license fees, and penalties owed pursuant to Title 3 of the PMC. In order to calculate the debt owed, Permittee shall submit monthly tax returns on forms provided by the City Manager, or his designee, as required by PMC 3-18.10 for every month that Surefyre was operating. Each monthly tax return shall contain all gross receipts earned during that month and each monthly tax return shall contain a declaration under penalty of perjury that the statements contained in the return are true, correct and complete. The City Manager, or his designee, shall review the returns and calculate the taxes owed pursuant to PMC section 3-18.02, any penalties and interest owed pursuant to PMC section 3-18.11, the registration fee required by PMC section 3-18.05, and any other license taxes, and/or fees owed and advise Applicant of the total debt owed. The Applicant shall pay all debt owed by Surefyre, as determined by the City Manager, or his designee, to the City prior to Permittee commencing operation of the marijuana operation authorized by this permit.
11. 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 Permittee 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.
12. The Permittee 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 Permittee's project, but excluding any approvals governed by California Government Code Section 66474.9. 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 fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the Permittee, City, and/or parties initiating or bringing such Proceeding. If the Permittee 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.
13. Prior to the issuance of a building permit for the proposed wall sign, the Permittee shall obtain approval of a master sign program encompassing all uses at the subject

site in accordance with Section 9-4.2907(a) of the Pacifica Municipal Code. The Planning Director shall have final authority to review and approve the master sign program.

14. The hours of operation of the proposed business, which includes those hours in which the site may be open to the public for retail sales and in which deliveries may be made, shall be as follows: 9:00 a.m. through 9 p.m. daily.

Staff of the Marijuana 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.

15. All cannabis-related products shall be stored in air-tight containers which are completely sealed in order to minimize unpleasant odors.
16. The Permittee shall not modify the colors, materials, or any other aspect of the building façade without written authorization from the City of Pacifica.
17. All outstanding and applicable fees associated with the processing of this project shall be paid within 30 days of the approval of Marijuana Use Permit MUP-1-18. The Marijuana Retail Operation shall not commence operations until such fees are paid.
18. Prior to commencing operations, Permittee shall install a planter box beneath the front window of the commercial space and maintain low-growing plantings which do not obstruct visibility into the commercial space from the public right-of-way, to the satisfaction of the Planning Director.

Building Division

19. Prior to building permit issuance, the Permittee shall show on the plans all improvements for accessibility for persons with disabilities in accordance with the California Building Code and all other applicable laws.

North County Fire Authority

20. Fire Department approval is for retail only, and does not include approval for any hazardous or potentially volatile manufacturing processes.
21. If a fire sprinkler exists on premises, any changes in walls may require that the system be altered or extended under a fire permit.
22. Portable fire extinguishers(s) are required. Mount fire extinguishers three to five feet above the floor. The fire extinguishers shall be visible and accessible, and shall be field verified.
23. Clearly visible address identification is required to the satisfaction of the Fire Chief.
24. The doors shall be easily opened in one motion without special knowledge, key or effort per the California Building Code (CBC). The use of thumb operated deadbolts is prohibited unless integrated with latch.

Engineering Division

25. Construction shall be in conformance with the City of Pacifica Storm Water Management and Discharge Control Ordinance and San Mateo Countywide Storm Water Pollution Prevention Program. Best Management Practices (BMPs) shall be implemented and the construction BMPs plan sheet from the countywide program shall be included in the project plans.
26. Roadways shall be maintained clear of construction materials, equipment, storage, and debris, especially mud and dirt tracked onto Palmetto Avenue. Dust control and daily road cleanup will be strictly enforced.
27. No private structures, including but not limited to walls, curbs, and fences shall encroach into the public right-of-way. In the event any portion of the required planter box encroaches into the public right-of-way, the Permittee shall obtain approval of an encroachment permit by the City Engineer prior to such installation.
28. Prior to building permit issuance, revise the plans to include a note that states: "Existing curb, sidewalk or other street improvements adjacent to 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."

Annual Review

29. Notwithstanding the authority granted to Planning Department staff to conduct annual reviews of marijuana operations in Section 9-4.4806(e) of the Pacifica Municipal Code, the Planning Commission shall conduct a single annual review of the subject Marijuana Retail Operation at a public hearing not less than one year but not more than two years after issuance of the Marijuana Public Safety License to the Permittee.

*** END OF CONDITIONS ***