

MINUTES

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

February 16, 2021

7:00 p.m.

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

Chair Nibbelin explained the conditions for having Planning Commission meetings pursuant to the provisions of the Governor’s executive order, N-25-20 and N-29-20, which suspends certain requirements of the Brown Act and pursuant to the orders of the Health Officer of San Mateo County, as this meeting is permitted to conduct necessary business as an essential governmental function with no public attendance allowed. He also gave information on how to present public comments participating by Zoom or phone.

ROLL CALL: Present: Commissioners Berman, Ferguson, Godwin, Hauser, Leal and Chair Nibbelin
Absent: None

SALUTE TO FLAG: Led by Commissioner Hauser

STAFF PRESENT: Dep. Planning Director Murdock
Asst. City Attorney Bazzano
Police Captain Glasgo
Assoc. Planner O’Connor

APPROVAL OF ORDER OF AGENDA Vice Chair Berman moved approval of the Order of Agenda; Commissioner Godwin seconded the motion.

The motion carried **6-0**.

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

APPROVAL OF MINUTES: JANUARY 19, 2021 Commissioner Godwin moved approval of the minutes of January 19, 2021; Commissioner Ferguson seconded the motion.

The motion carried **6-0**.

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

DESIGNATION OF LIAISON TO CITY COUNCIL MEETING OF FEBRUARY 22, 2021:

None

ORAL COMMUNICATIONS:

Dep. Planning Director Murdock introduced the speakers.

Judy Hansen, Pacifica, stated that she is present regarding the church in the back of the valley and she apologized if she was early in the meeting.

Chair Nibbelin stated that they will be taking comments on that item later in the agenda and he asked if she could wait for that item.

Ms. Hansen agreed to wait.

Margorie Lobel, Pacifica, stated that she was also going to speak against granting the temporary permit to the church in the back of the valley as she has very profound concerns about that approval and she definitely hope to address it later in the meeting.

CONSENT ITEMS:

None

PUBLIC HEARINGS:

- 1. Amend CAP-8-18** **File No. 2020-020 – Amendment to Cannabis Activity Permit CAP-8-18** to modify requirements of Resolution No. 2019-031 of the Planning Commission of the City of Pacifica related to the timing requirements for the first-floor storefront window modifications (Condition of Approval No. 9) and payment of outstanding and applicable processing fees relating to the CAP (Condition of Approval No. 18) in relation to an existing cannabis retail operation approved in 2019 for retail sale of adult use and medicinal cannabis at 450 Dondee Way, Suite 2 (APN 022-021-640) in Pacifica. Recommended CEQA Action: Class 1 Categorical Exemption, CEQA Guidelines Section 15301.

Assoc. Planner O'Connor presented the staff report.

Chair Nibbelin referred to the 60-day timeline for payment of outstanding fees, and he was curious if staff was considering creating flexibility to afford additional time so the matter might not have to come back if there was any good reason to kick the timeline out.

Assoc. Planner O'Connor stated that they chose 60 days as a proposal and, as mentioned in her presentation, they consulted with Seaweed Holistics to make sure the timelines were feasible for them. She stated that, when entering the agreement, they provided that it was the right timeline.

Anna Williams, proprietor, appreciated being able to conduct her business, mentioning that they were unfortunately not where they expected to be five months in. She understood the reasons behind the requirements for their storefront window, but stated that meeting the requirements would send her into financial hardship and making it difficult to come out from under that setback. She stated that she provides income for her family and is obligated to provide the same for her staff. She stated that it would cost \$45,000 or more to complete the project based on her quote from the vendor. She stated that they barely make enough to break even as well as pay their employees. She appreciated the kindness of the vendors for allowing them to do business with them with net terms. She stated that, as a struggling business in its infancy, she is counting on the city's ability to weigh the points made tonight and see their plea to allow them to defer the project to accommodate for the timeframe for manufacturing of materials needed and to give their business a chance to earn the funds necessary to complete that. She realized that she was not the only person or business affected by the aftermath of the pandemic in some way. She thanked Pacifica for support in allowing them to open and she also mentioned the potential financial value they bring to the community for a mutually beneficial relationship. She did not address the timeframe to pay the fees mentioned by Assoc. Planner O'Connor, and she felt the 60-day period would be ample time to meet the obligations as far as the fees associated with the project. She felt it might be achievable. She asked her husband if he had anything to say.

Tony Williams, proprietor, stated he was her husband and co-founder of the business and he hoped that they can continue with their initial agreements made with the city on payments of debts owed. He stated that they unfortunately got behind on some payments but they are in a better situation now and the business is getting better weekly. He stated that they are current on all tax payments with the city and they would love to continue the initial agreement that was initially in place and they can move forward.

Chair Nibbelin asked if Commission had any questions.

Vice Chair Berman thought there were a few timeframes mentioned in the COA, such as the 60-day timeframe and two weeks after building permit issuance to construct improvement with the exception of custom purchasing. She stated it sounded apparent in their presentation, but she wanted to confirm it as she knows there are several timelines in the COA but she didn't know if there was a prior agreement to which she was referencing.

Ms. Williams asked if she was posing her question to her.

Vice Chair Berman responded affirmatively.

Ms. Williams stated that one concern she had.

Chair Nibbelin suggested that she turn off her video and they might have an easier time hearing her.

Ms. Williams stated that her only concern was that everyone understand that there is a backlog and a delay in the manufacturing of a custom window they proposed to put in place to meet the requirements. She submitted the quote from the vendor, and the latest change timeframe for them to complete such a job is anywhere between 6 and 10 months. She stated that she hoped the Commission would be understanding, especially due to the pandemic and things are backlogged or not happening at this time. She stated that there has been a little relief as far as what type of businesses can operate and to what degree, but based on the conversations they have had with the vendor, there is a significant time associated with this on top of how long it would normally take to do such a job. She has no idea as far as how much the building permit for this job is going to take, three days from the time it is told to her and depending on how much it is, as she has no idea how much things cost. She would like to be able to do that within a three-day period.

Vice Chair Berman concluded that one of the primary concerns was the ordering of materials and she then referred to staff, and mentioned the revision for COA No. 9 and stated that there was a statement about extending the timeline due to special ordering of materials. She asked staff to confirm that the statement addresses Ms. Williams' concern.

Assoc. Planner O'Connor stated that they had expectations that special order for the window may vary and the language in the deferral agreement, as well as in the proposed condition of approval language for Condition No. 9 states that, with appropriate documentation to show that the delay is due to a special order and both parties can agree for additional time to allow that manufacturing of materials to occur.

Commissioner Godwin asked staff if it was true that, in May 2019, when this agreement was made that it would have taken a long time to manufacture this window and that was a well known problem for the last year and a half.

Assoc. Planner O'Connor asked if he was referring to May 2019, because this cannabis activity permit was not approved until September 2019.

Commissioner Godwin stated that they can go from the September 2019 date, and that is still about a year and a half. He stated that, at that time, as a person who has ordered windows, custom windows have always had a certain lead time requirement.

Assoc. Planner O'Connor stated that she can't speak to that point, but maybe Ms. Williams can speak to when she first researched potential manufacturing timing for a window, but this requirement for the window size is a requirement that occurred prior to approval and was always a known requirement, adding that she can't speak to when she investigated and determined the lead time for the window.

Commissioner Godwin asked Ms. Williams why she didn't take care of this a long time ago.

Ms. Williams stated that it wasn't that she didn't try to take care of this issue before the fact, but she had to prioritize that she also needed to get it approved by the state. She wanted to be sure that was the case first otherwise it would have been a moot issue, at least in her mind. She needed state approval first to be able to operate this business and then deal with this issue.

Mr. Williams stated that they have been occupying that space for about seven years in another business prior to this current business, and were there for years when they put in the application for this.

Commissioner Godwin thought it was a fairly modest amount of money for a business and asked why it was such a big hurdle for them.

Mr. Williams stated that it was because they were a small business and don't have the money. He stated that, during the pandemic, a lot of things have changed as far as businesses and unfortunately, they weren't eligible for any of the small business loans or other things put in place to help small businesses and they have had to carry the business themselves for the last three years while they waited for this permit to get processed.

Commissioner Godwin asked if they still had adequate reserves to run the business with a high degree of confidence.

Ms. Williams stated that they do not have reserves and have been blessed to be working with kind vendors who allow them to deal with them on a net term basis and extended the 30 days to 60 days.

Mr. Williams added that they feel that the business model they have created will do very well here and they feel confident on running the business and it being a big success here.

Commissioner Hauser asked if they could hear public comments before they ask any more questions.

Chair Nibbelin thought that was a good idea and he did see one hand raised.

Chair Nibbelin opened the Public Hearing.

Dep. Planning Director Murdock introduced the speakers.

Beth Lemke, Pacifica, stated that she was the owner of Grape in the Fog and a neighbor of Seaweed, and has known the owners through their journey of trying to get open and jumping through hurdles and was attending this meeting in support of them. She stated that, because of their status, while legal in California, they are kept out of receiving any funding which her own business was able to receive. She stated that Ms. Williams' presentation, while distorted audio, sounded like the custom windows will cost them around \$50,000. She thought that was a huge amount of money, and she didn't understand what Commissioner Godwin meant when saying that is not a large sum, as she thought it is enormous for a small business. She stated that she is in support of them as they have a beautiful space and are in business to be an asset to the community which she believes that they are, and she thought anything that would stop them from being able to move forward with their business would be unfortunate and unjust.

Stacey, Pacifica, stated that she owns Pacifica Massage and Wellness and is located fairly close to Seaweed. She is also in support of this business and she thought the previous speaker said it well, as they are a tasteful business, reputable, and everyone is so nice. She came in late to the meeting, but she thinks she knows the gist. She also believes that the amount of glazing that will be added is what is in relation for the \$50,000 cost for the window to be put in. She stated that, as a small business owner, she also believes \$50,000 is a lot of money.

Debra Patterson, Pacifica, stated she is the owner of the Pacific Java Café and is in the same area the Seaweed. She referred to previous speaker support for them and stated that they are a huge asset to the area. She understands that this is old business that they are talking about, but reiterated that they were a huge asset to the community such as cleaning up, doing little things like beach clean up on their own. She stated that their store is delightful, clean, presentable and was in support. She stated that we have been devastated by the shutdowns and as small business owners, they are reeling. She stated that some days they were losing money but to stay viable you stay open so people don't forget you are there.

Judy Hansen, Pacifica, asked, if she speaks to this situation, is she allowed to speak later in the meeting.

Chair Nibbelin stated that she can speak once on each item.

Ms. Hansen stated that she wanted to speak on behalf of this business on multiple levels. One, she is a teacher and has taught children how there used to be mom and pop stores all over and how they wave to the big box stores and, if we don't support them, they won't be there. She stated that people used to be able to support a family on their business but, as they go to just being employees, they can't, adding that we are a beautiful, unique, amazing community that is in a position to be leaders. She stated that, when she tells people she is from Pacifica, it is with a feeling of pride that we are unique and beautiful. She would like to see us come together as a community to support this business and listen to how we can help them be successful and hear the challenges they are going through and rally behind what is must be like to be trying to exist. She stated that it is hard to exist as a person of any age in this Covid situation but small businesses are being pushed out like unwanted entities. She asked the community to congratulate small businesses for having the guts and tenacity to stay open and try to be a live, thriving business. She thanked them for their effort and contribution and she asked that as a community we listen not to what it was like in the past to get a window to run a business as this is a unique historical time and it will take adaptation to help us all get through it.

Chair Nibbelin closed the Public Hearing.

Commissioner Hauser appreciated that the business community has come to support this business and she also appreciated that staff has given a recommendation to approve this. She felt it held a lot of water. She stated that, prior to being on this Commission, she spent a lot of time on the Economic Development Committee talking about how important it was for local businesses in Pacifica to have an opportunity to thrive. She was in favor of approving the motion. She stated that the applicant can use whomever they want to make the window, but she appreciated that they are using Dial Glass as a local business. She thought, in the spirit of everything the community and Ms. Williams has talked about, she was happy to support this motion.

Chair Nibbelin stated that he was in the same camp as Commissioner Hauser. He stated that, in his professional capacity, he spends a lot of time trying to figure out ways to use whatever legislative and emergency powers we have to sustain local business and fill in the gaps where they can to ensure the ongoing viability. He stated that his primary concern was making sure that staff has maximum flexibility that they want to address this situation so that it doesn't need to come back at any point if something unanticipated happens in the next 60 days or whatever timeline they talk about. He stated that, if staff feels they have what they need, then he was happy to support this item as presented. He stated he would entertain a motion.

Vice Chair Berman stated that she would like to make a motion but was curious if staff could answer the question he just presented and advise if there is any other flexibility that could be incorporated into the COA because it is a hard time now for any construction but especially small business construction and funding. She wondered if staff knows of any other potential flexibilities to the COAs presented or if this is where the agreement stands.

Chair Nibbelin stated he would give it to Assoc. Planner O'Connor and/or Dep. Planning Director Murdock to address.

Assoc. Planner O'Connor stated that the language in the staff report is representative of the agreement that the city and Seaweed has entered into. She stated that, when they entered into the agreement as mentioned in Ms. Williams' presentation, it was a timeline that everyone was comfortable with. She thought, from staff's point of view, this is where they want to be, but if the Planning Commission wants to talk about something else, that is their position.

Chair Nibbelin stated that, to be clear, he didn't personally have any interest in undercutting or working around staff if they have what they need. He just wants to be sure they have the flexibility they need so they don't have to have the item come back as that is time consuming for staff and others. He stated that, if necessary, they are happy to entertain changes.

Dep. Planning Director Murdock stated that the key thing is having some type of deadline for performance is important to staff as was indicated, and that is within the discretion of the Commission to determine what the timeline is. He stated that they built in timelines mutually acceptable to the city and Seaweed and they are reasonable timelines from the city's perspective for performance on those things that are largely within Seaweed's control. He stated that they also built in flexibility for things outside of Seaweed's control, such as manufacturing of the window. He stated that staff feels that they struck the right balance but it was up to the Commission to decide.

Vice Chair Berman asked if Asst. City Attorney Bazzano has a comment as she saw her hand raised.

Asst. City Attorney Bazzano stated that she just wanted to support what Dep. Planning Director Murdock and Assoc. Planner O'Connor said, basically that the deferral agreement was entered into between both parties after negotiations and the timelines set forth in the deferral agreement were thought out and given a lot of consideration for the factors involved. She also stated that, as Dep. Planning Director Murdock said, the deferral agreement does not negate the Planning Commission's ability to make adjustments to the conditions of approval and, if the Planning Commission wants to make adjustments, that is within their discretion. She reiterated that staff based the timeline in the deferral agreement after negotiations.

Vice Chair Berman moved that the Planning Commission APPROVE the Amendment to Cannabis Activity Permit CAP-8-18 to modify the requirements of Resolution No. 2019-031 of the Planning Commission of the City of Pacifica related to the timing of first-floor storefront window modifications (Condition of Approval No. 9) and payment of outstanding and applicable processing fees relating to the CAP (Condition of Approval No. 18) by adopting the resolution included as Attachment A to the staff report; Commissioner Hauser seconded the motion.

Dep. Planning Director Murdock took a verbal roll call.

The motion carried **6-0**.

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

- 2. TUP-1-20** **File No. 2020-013 - Temporary Use Permit TUP-1-20,**
filed by Iglesia Ni Cristo, to operate a church within a tent erected
beneath an existing covered arena structure for a period not to exceed
six months at 650 Cape Breton Drive (APN 018-170-060 & 022-
320-200) in Pacifica.
Recommended CEQA Action: N/A

Dep. Planning Director Murdock presented the staff report.

Chair Nibbelin concluded that the only action by the Commission is to continue the item to a date to be determined as they do not have a set date because of additional information requirements. He asked if there were any questions with staff regarding the report.

Vice Chair Berman stated that it was not necessarily a question but, when they get to public comment, and this item is mainly for the continuance, she wondered if the Commission might want to consider reducing the amount of time for public comment to either one or two minutes as it is that people should only be commenting on the continuance of the item.

Chair Nibbelin thanked her, adding that the thought occurred him that they might “split the baby” and suggested maybe 90 seconds. He stated that they had a similar conversation in the last continuance of this matter, as the only action the Commission is taking is whether or not to continue the item. He acknowledged that anyone who wants to speak on the item is entitled to, and there was not much they can do to limit the range of comment but they have heard a lot of comment about substantive concerns as well as a lot of written communication by the commissioners on the concerns and they are briefed on all of the concerns that have been communicated at this point. He stated that they will be having a full and fleshed out conversation about the substance of the matter when it is actually agendaized for Commission’s consideration and action. He agrees with Vice Chair Berman and wondered what the other commissioner think, even though he could make that determination.

Commissioner Hauser stated that she supports Vice Chair Berman’s and his suggestion and she would support one minute over 90 seconds. She wasn’t sure you would need more time to talk about the continuance.

Commissioner Leal supported the suggestion of either one minute or 90 seconds.

Chair Nibbelin appreciates one minute is enough on some level, but he was going to opt for 90 seconds, recognizing that they are well-briefed on many of the concerns raised.

Chair Nibbelin opened the Public Hearing.

Dep. Planning Director Murdock introduced the speakers.

Erin Macias, Pacifica, stated that 650 Cape Breton was sold in December 2020 and the former owner is listed on the TUP with the church as their agent. She stated that a contractual relationship between the parties should have been terminated upon the sale of the parcel and the TUP is no longer applicable or valid. She stated that the city has the required documentation that they normally require for permit application of the new owners to demonstrate the parties are authorized to enter into agreements and ask the church to apply for a new permit since the

conditions are no longer temporary but a permanent use of the parcel for church use. She stated that Pacifica had different categories of use permits and a church falls under 9-4.2306 of the Municipal Code as a special use permit and the temporary use permit is not applicable at all. She stated that the church representatives have made it clear they intend to use the parcel for a fully operational church site and they intend to operate their business office at the site as well. She would like the Planning Commission to carefully consider what is on the documentation on file and recognize the lack of appropriateness for this parcel as it is inaccurate, incomplete and is the wrong permit application. She stated that they are no longer a temporary tenant of the former owner but a new parcel owner with the desire to change the use of the parcel permanently from equestrian and build a permanent church structure and accompanying supportive spaces which should require a completely different permit application and a full environmental impact report. She asked that they perform the proper due diligence on this project as the application does not comply with the use permit category as defined in the PMC.

Chris Redfield, Pacifica, stated that Pacifica has a stable environment there for decades and many of the buildings and homes in specific areas were built with either no planning or with afterthought accommodations. He stated that this may be one of the youngest planned developments since incorporation and these parcels work in this location. He stated that it would seem that this process is only a formality to the applicant and appears a possible foregone conclusion, given the tactics. He stated that they all know the cash donations per se could have been presented. He found that as influenced pedaling which seems to be the M.O. of this organization. He stated that Pacifica officials need to be the alpha stallion and not become geldings in this process as the neighborhood in Pacifica deserves it.

Lori Yep, Pacifica, stated that this is very frustrating. She was sure they were doing their due diligence by continuing this and looking at the proposed temporary use permit to make it compliant with Pacifica's Municipal Code. She thought what was frustrating to her and the neighbors to whom she has talked is that they are not sure what to do and how to oppose this because it keeps getting continued. She stated that they read through all the application materials which do seem to lean in favor of the new owner. She cannot figure out why they don't seem more impartial. She thought this process was new to so many Pacificans and they don't know how to stay on top of it and are anxious on a daily basis on what is going to happen and if they will miss anything. She stated that is the reason that these continuances are so frustrating to everyone.

Judy Hansen, Pacifica, appreciated the leadership they are having and getting to share and speak. She stated that her biggest concern is that these are unique times for humanity and she stated that, if they had been able to go back 200 years and build societies and communities in a sustainable manner, they would not even have roads going along all these valleys and they would have beautiful little creeks and salmon coming up. She stated that we are in a lot of trouble. The earth will go on but we may or may not. She stated that the valley used to echo with frogs at night and the people need nature to sustain themselves and feel good. She asked Commission to step up to the plate and make a stance for the future and let us have that valley to be natural and where we can have an outdoor church for nature where everyone is in harmony and feeling the good love of nature and the sustainability that we have set aside for the future and they some day make the frogs echoing again throughout the valley. She asked that they think long range to the 7th generation.

Chair Nibbelin closed the Public Hearing.

Chair Nibbelin stated that they will consider the matter at a time certain, and one good thing is that they are looking at a date to be determined. He stated that, by the time they get it set, they will be in a place where they will be more certain to be prepared to consider the matter on the merits. He concluded that they were in a better place with this particular motion in light of the totality of the circumstances and the various concerns raised. He stated that, if there are no further discussion, he would entertain a motion.

Commissioner Hauser moved that the Planning Commission continue the item to a future date as determined by staff; Commissioner Ferguson seconded the motion.

Dep. Planning Director Murdock took a verbal roll call.

The motion carried **6-0**.

Ayes: Commissioners Berman, Ferguson, Godwin, Hauser,
Leal and Chair Nibbelin

Noes: None

CONSIDERATION:

3. N/A Appointment of Liaison to Library Advisory Committee (LAC).
Recommended CEQA Action: N/A

Dep. Planning Director Murdock presented the staff report.

Commissioner Ferguson asked if there was a restriction as to the proximity of this project as in most commission matters.

Dep. Planning Director Murdock stated he would ask the Asst. City Attorney to comment on that as he did not know, given the advisory capacity, as to whether there is a conflict of interest concern related to his role as a resident of Sharp Park. He stated that it would then probably apply to Commissioner Leal as well.

Commissioner Ferguson wondered if volunteering as a part of that advisory role would have the usual restrictions as to proximity of the project.

Asst. City Attorney Bazzano stated that it would not as this was the Library Liaison Committee and it is citywide.

Chair Nibbelin asked if there was no problem living close to the site.

Asst. City Attorney Bazzano stated that there was not.

Commissioner Ferguson stated that, in that case, he volunteered.

Chair Nibbelin thought, by acclamation, they should thank him for his willingness to volunteer. He asked if they need a vote on this. He would make the motion that Commissioner Ferguson be appointed if someone wanted to second it.

Dep. Planning Director Murdock stated that was the Chair's prerogative and, if he agrees with Commissioner Ferguson serving as the liaison, he is able to make that determination as Chair.

Chair Nibbelin stated he would exercise his prerogative, and he thanked him for his willingness to serve as it is a very important function. He stated that he should probably state, regarding previously approved item is 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.

Dep. Planning Director Murdock asked if, before, moving, they seek public comment on this item.

Chair Nibbelin understood. He then opened public comments and, seeing no one, closed public comments.

COMMISSION COMMUNICATIONS:

None.

STAFF COMMUNICATIONS:

Dep. Planning Director Murdock stated that there were none.

ADJOURNMENT:

There being no further business for discussion, Commissioner Leal moved to adjourn the meeting at 8:08 p.m.; Commissioner Godwin seconded the motion.

Dep. Planning Director Murdock took a verbal roll call.

The motion carried **6-0**.

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

Respectfully submitted,

Barbara Medina
Public Meeting Stenographer

APPROVED:

Planning Director Wehrmeister