

**MINUTES**

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

September 17, 2018

7:00 p.m.

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

**ROLL CALL:** Present: Commissioners Rubinstein, Stegink, Clifford, Gordon,  
Nibbelin and Chair Campbell  
Absent: Commissioner Kraske

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

**STAFF PRESENT:** Planning Director Wehrmeister  
Sr. Planner Murdock  
Police Chief Steidle  
Asst. City Attorney Siegel

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

The motion carried **6-0**.

Ayes: Commissioners Rubinstein, Stegink, Clifford, Gordon,  
Nibbelin and Chair Campbell  
Noes: None

**APPROVAL OF  
MINUTES:** None

**DESIGNATION OF LIAISON TO CITY COUNCIL MEETING OF OCTOBER 8, 2018:**

Planning Director Wehrmeister stated that they will be taking the ordinance amendment, Item 5, to the City Council on October 8, just one week after their next meeting and suggested that they select their liaison at this meeting.

Chair Campbell stated that he would accept being the liaison.

**ORAL COMMUNICATIONS:**

None

**CONSENT ITEMS:**

None

**CONTINUED PUBLIC HEARINGS**

- 1. UP-106-18**                      **File No. 2018-018 – Use Permit UP-106-18** for a 1,112 square foot Outdoor seating area with alcoholic beverage service at an existing Restaurant “Taco Bell Cantina” at 5200 Pacific Coast Hwy (APN 022-191-190).

Commissioner Stegink stated that he would recuse himself as he is within 500 feet of the location.

Sr. Planner Murdock presented the staff report.

Commissioner Nibbelin moved that the Planning Commission continue this item to the regular meeting of October 1, 2018; Commissioner Clifford seconded the motion.

The motion carried **5-0**.

Ayes:	Rubinstein, Commissioners Clifford, Gordon, Nibbelin and Chair Campbell
Noes:	None
Abstain:	Commissioner Stegink

**NEW PUBLIC HEARINGS:**

- 2. UP-104-18**                      **File No. 2018-018 – Use Permit UP-104-18 and CDP-400-18**  
**CDP-400-18**                      for the installation of a new wireless communications facility within  
the public right-of-way of San Pedro Avenue, approximately 480  
feet southeast of Grand Avenue, in the vicinity of 560 San Pedro  
Avenue (APN 023-073-110).

Sr. Planner Murdock presented the staff report.

Commissioner Clifford moved that the Planning Commission continue this item to the regular meeting of October 15, 2018; Commissioner Stegink seconded the motion.

The motion carried **6-0**.

Ayes:        Commissioners Stegink, Clifford, Gordon, Nibbelin,  
                 Rubinstein and Chair Campbell.  
Noes:        None

**3. UP-105-18**

**File No. 2018-019 – Use Permit UP-105-18** for the installation of a new wireless communications facility within the public right-of-way of Oddstad Boulevard, approximately 575 feet northeast of Linda Mar Boulevard, in the vicinity of a vacant parcel with Assessor Parcel Number (APN 023-591-090).

Sr. Planner Murdock presented staff report.

Commissioner Nibbelin moved that the Planning Commission continue this item until the October 15, 2018; Commissioner Clifford seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Rubinstein, Stegink, Clifford, Gordon,  
Nibbelin and Chair Campbell  
Noes: None

**4. MUP-4-18**

**File No. 2018-025 – Marijuana Use Permit MUP-4-18** for the establishment of a Marijuana Retail Operation within an existing 641-square foot commercial space within the MO-SP (Marijuana Operation, Sharp Park Overlay District) zoning district at 2270 Palmetto Avenue (APN 016-182-360).

Sr. Planner Murdock presented staff report.

Vice Chair Clifford stated that his question revolves around the term medical marijuana versus recreational marijuana and he stated that it appears that they are applying only for medical marijuana.

Sr. Planner Murdock responded affirmatively.

Vice Chair Clifford asked if they wanted to change and sell both medical and recreational whether they have to come back to the Commission.

Sr. Planner Murdock stated that they would not necessarily have to because the limitation was self-imposed by the applicant through the operation plan and only by reference to the operation plan would this marijuana use permit limit their sales and they could submit a request to amend that operations plan to the Planning Director and, based on her determination, she may be able to approve it administratively or, if warranted, bring it to a public hearing before the Planning Commission.

Commissioner Gordon asked, if this was an application for medical and recreational use, how the scrutiny change aside from the amount of traffic.

Sr. Planner Murdock stated that he wasn't aware of any meaningful difference between the operation of the two with respect to the Planning Commission's evaluation of the use permit being requested. He agreed that the volume of customer traffic could increase by vehicles as well as the volume of customers coming in and out by other modes and it could lead to different types of impacts because of a broader segment being served. He stated that, other than that, there was no difference in the way the Police Department or Planning Department evaluated the applications which was the same consideration of securing and complying with the ordinance requirements. He stated that the real distinction and beyond the purview of the Planning Commission was with respect to taxation and qualified medical patients may be exempt from certain taxes other than the city's local excise tax and staff has not identified any difference in the operation of facilities beyond that.

Commissioner Gordon asked how it changes in terms of revenue generation for the city.

Sr. Planner Murdock stated that they can assume that combined medical and non-medical facility would likely sell more product but he thought that was not necessarily a true assumption.

Commissioner Gordon asked if the city could impose a tax on revenue generated from the sale of medical marijuana.

Sr. Planner Murdock stated that they could and they have. He stated that there was no exemption unless the operation is a qualified federally listed tax exempt organization and they thought it was

unlikely to be the case until the discrepancy between state and federal law is resolved with respect to cannabis regulation.

Planning Director Wehrmeister clarified that the exemption they hear about with card carrying medical patients has to do with the sales tax to the patient and not an excise tax to the operation which is a business tax. She stated that, regardless of medical or recreational use, the excise tax will be the same.

Chair Campbell stated that he was looking at the Kittelson & Associates traffic analysis on August 21, 2018, and he referred to it talking about the Phog Foundation offices and he understood that it was next door and that doesn't sell anything from what he gathered from the analysis.

Sr. Planner Murdock agreed, stating that the Phog Foundation was a non-retail use and an educational outreach type of use related to cannabis usage for medical purposes and would be a very different type of land use from the one being considered at this time.

Chair Campbell asked if they have sold out of there before.

Chief Steidle stated that they haven't to his knowledge. He stated that it was next door and he has had conversations with them and his understanding is that the business is run exactly as Sr. Planner Murdock stated.

Chair Campbell thought it could be a question for the applicant. He stated that, if you go on line, they say they are selling.

Chief Steidle asked if he was referring to the Foundation.

Chair Campbell stated that he was.

Chief Steidle stated that the Foundation is not the applicant and the Foundation does not sell and has not sold to their knowledge.

Chair Campbell again stated that it would be a question for the applicant because on the website they say they are selling. He stated that he wanted to be sure the traffic analysis was accurate with regard to both as he thought there was a discrepancy.

Commissioner Nibbelin referred to page 14 and Emerald Phog which he thought used to operate in the space which they are talking about, and he asked if Emerald Phog was a medical marijuana dispensary.

Sr. Planner Murdock stated that he thought they sold medical cannabis only under the laws they believed they were following under state law, adding that it was known that it was not a permitted dispensary under local law and they don't have comprehensive business information about them because they were not permitted.

Commissioner Nibbelin asked if there was anything they can derive experientially in terms of complaints, traffic, etc. based on the unpermitted operation of Emerald Phog when they were

operating that might be useful to them as they think about the specific level of operation and concerns about the application.

Sr. Planner Murdock stated that staff was not aware and could not recall of any code enforcement complaints that arose from the operation of that unpermitted Emerald Phog dispensary. He recalled that particular business brought a significant number of supporters to the various public hearings during development of the city's marijuana regulations and those were the impressions he had. He deferred to Chief Steidle if there were any criminal related complaints.

Chief Steidle stated that they had no criminal complaints, adding that the only phone calls they received were people wanting to know if they knew this business was currently operating. He stated that when they learned of their business and showed up at the door, they were invited in and they showed them the operation and were willing to talk about what was going on.

Commissioner Nibbelin stated that one thing that struck him about this application was that it was located in a commercial zone but in a mixed use building with residential upstairs and similar uses in the area. He was curious about the noticing. He understood that we hadn't received any public comment on this application other than what they saw today and a few other comments. He asked if the residents didn't have any feedback regarding this application.

Sr. Planner Murdock stated that none have reached out to him or other staff to his knowledge.

Commissioner Nibbelin and asked if it was noticed in the ordinary process.

Sr. Planner Murdock responded affirmatively.

Commissioner Stegink asked if there was any overlap between the previous occupant and the current applicant.

Sr. Planner thought one or more of the current applicants that comprise the LLC which is applying for this marijuana use permit may have been employees of the Emerald Phog dispensary but as has been represented to him none of them were owners of that operation and thought there was an ability to distinguish between people going and working a job doing what they do and someone who knowingly operated an unlawful unpermitted dispensary.

Commissioner Stegink asked whether John and Patty Sussman's letter was referring to the current applicants or the prior occupants.

Sr. Planner Murdock stated that he didn't understand what he said in the first part of his question.

Commissioner Stegink referred to a letter dated September 17 from John and Patty Sussman of Portola Valley, California, which said they wanted to express their support for the Phog Center's cannabis license application. He asked if they were current customers of the existing applicant or the prior.

Sr. Planner Murdock stated that it would have to be the prior because the current applicant is not operating.

Commissioner Stegink asked if they were to give weight to potential voter uses of this property. He stated that for the Hilton Hotel in the January 5 library report they were given a specific teen center detail that prioritized social activities and gaming as their No. 1 activity there. He stated that it was in direct contrast to the state's legal definition of a youth center required to be a significant distance away. He asked, since the library does not exist now, if it would have to be voted on by a bond to ever exist. He asked if they were to assume for this purpose that it does not exist.

Sr. Planner Murdock stated that the ordinance calls for consideration of facilities which exist currently as of the date of determination and issuance of the permit and he thought to rely on some future youth center would be speculative and not a sound basis for determining this permit.

Commissioner Rubinstein stated that was his first question. He then asked if the use of marijuana was allowed in the facility.

Sr. Planner Murdock stated that it was not, adding that the City Ordinance explicitly prohibits consumption of cannabis products on the dispensary grounds.

Commissioner Gordon referred to the question about the library which he thought was a tough one, and if the voters approve the library and it goes up and within the distance prescribed in proximity to the cannabis center, he asked whether the dispensary would be grandfathered in or what would be the impact. He asked because it was a central location for the Palmetto redevelopment plan.

Sr. Planner Murdock stated that he would argue that the permit would remain valid. He stated that the scenario was contemplated during development of the marijuana regulations and it was a conscious decision to ensure that it was uses in effect at the time of determination so those who followed all the rules and went through and did what they were supposed to do to get a permit would not be penalized by some changing circumstance beyond their control in the future. He thought it would have an impact on the ability of another dispensary or marijuana retail operation to open but it would not have a direct impact on the ongoing operations of those that are already permitted.

Commissioner Stegink asked if there was anything missing from their application that would allow them to sell recreational marijuana, specifically if they have an incomplete recreational marijuana application permit.

Sr. Planner Murdock stated that they did not as there is not a separate permit for medical or non-medical but was the same permit and it goes in line with his response to Commissioner Gordon that they draw no distinction between the medical and non-medical operation and was why they classified them as one type of use and was simply a self-imposed restriction at this point by this applicant, indicating in its operation plan that it only wanted to sell medical marijuana.

Commissioner Stegink asked the City Attorney if it would be within the Planning Commission's purview to approve this operation for recreational marijuana also at this time or would it have to be separately agendized.

Asst. City Attorney Siegel understood that there was not a distinction between the two so he didn't know where the basis would be to put it in the conditions of approval or otherwise make it



part of the findings. He thought any action on the grounds of the land uses would have to be founded on the impacts from those uses as opposed to any distinctions that were not land used base.

Commissioner Stegink concluded that there were no sanctions or intent for sanctions if this turns out to be a recreational marijuana location.

Asst. City Attorney Siegel stated that he was not aware of any in the code or the use permit or terms. He stated that there was the general use permit terms and the specific use permit terms for marijuana uses, and he didn't see anything that drew the distinction between recreational or non-recreational uses.

Sr. Planner Murdock added that, if the Commission wanted to make it clear that any approval that may be granted would authorize medical and non-medical sales, they could clarify that in condition #6 which was the restrictive condition he mentioned previously that would limit this marijuana retail operation to sales in accordance with its operations plan. He stated that was where the applicant himself imposed a medical only model. He stated that the Commission could say that the medical marijuana retail operation shall operate in accordance with the operations plan received by the planning department and date stamped 4/20/18 except that it shall not be limited to the sale of medical cannabis only or something to that effect and subject to confirmation by the city attorney.

Commissioner Stegink stated that it seemed there were a lot of incomplete applications and this was a complete one. He asked if there was one item that all the incompletes are missing such as insurance.

Sr. Planner Murdock remarked that there is not a common theme.

Commissioner Rubinstein referred to mention that after they approve this the background checks would then occur.

Sr. Planner Murdock stated that the background checks have occurred as part of phase one. He stated that the point he was trying to clarify was that it was not as though they act on their best behavior and get through phase one and the city never goes back again. He explained that the Police Chief, before issuing the marijuana public safety license, will be sure that none of the disqualifying convictions have occurred since his phase one determination and until his issuance of the marijuana public safety license. He stated that the Chief may be able to comment on what measures may be in place for moving forward after approval of both to insure that no disqualifying convictions occur.

Chief Steidle stated that the backgrounds are already complete. He explained that, if this were approved, he would go back to our system and take a look to make sure that there are no notifications they missed of any subsequent convictions. He stated that, from this point forward, once they put them through the DOJ and FBI background checks via the live scan machine with the fingerprints on the computer and that record is attached with the Pacifica Police Department and they would get notification of any subsequent conviction of any type. At that point, they would take a look to see what that conviction was to see if it disqualified either the business owner or the employee from operating or working in that business.

Commissioner Nibbelin asked what their discretion was to adjust the hours of operation if the Commission were to think that maybe 8:00 p.m. is a little late for operations, particularly when taking place in a building that also houses residential uses.

Sr. Planner Murdock stated that after he has found the reference to the hours of operation in the ordinance, he will be able to respond.

Commissioner Nibbelin stated that he was asking if they have discretion to truncate the hours if they thought it was too late.

Sr. Planner Murdock stated that the ordinance allows up to 10:00 p.m. but allow the Commission to set more restrictive hours as warranted. He wanted to be sure there wasn't some limitation on the circumstances that could warrant a further restriction.

Commissioner Gordon followed up on that question, asking if the upper floor occupants were renters or owners.

Sr. Planner Murdock thought that, on approval of that development in the early 200s, it was a condominium development. Whether the individuals in the units are renters or owners was not information he has.

Chair Campbell referred to page 10 which notes the two sites are located more than 200 feet from the library and a couple of day care centers were located greater or further than 200 feet and means they are outside the buffer established in the ordinance. He asked if that was the end of the discussion regarding that concern or was there some discretion.

Sr. Planner Murdock stated that the explicit standards are the buffers they identified, the 600 feet to K-12 schools and youth centers and 200 feet to day care centers. He stated that the findings for approval do allow some discretion as noted in the staff report. He stated if there was some compelling public health and safety basis to consider other relevant uses set forth in the finding, it was staff's opinion because of the distance to the opposite side of the street and the likely pedestrian pattern there that the findings for approval do allow some discretion as noted in the staff report. He stated that, if there was some compelling public health and safety basis, they can consider other relevant uses set forth in the findings. It was staff's opinion that, because of the distance, the opposite side of the street and the likely pedestrian pattern there was not cause for concern but the Commission may have a different opinion on that matter.

Chair Campbell thanked him for the clarification as he had been wondering why the discussion was made about the fact that the small size and it being across the street was included in the staff report.

Commissioner Stegink asked if the state wide regulations for smoking tobacco in proximity to the building also applied to smoking marijuana within a certain proximity of the building.

Chief Steidle stated that smoking marijuana in a public place on a public street is illegal. He stated that, if you were so many feet for tobacco, marijuana in public outside of a business in a public place on a sidewalk was completely illegal.

Commissioner Stegink asked if anyone has been charged with that in the last year.

Chief Steidle stated that there were infractions and they have issued citations for that.

Sr. Planner Murdock stated that there was no set of qualifiers or other conditions that would affect the Commission's determination to further restrict the hours as it was subject to the Commission's discretion in this case.

Mark Hancock, Management Consultant, stated that he runs a firm out of Half Moon Bay and was friends with Jesus and was on the board of the Phog Foundation, a 501C3 educational organization. He stated that Sr. Planner Murdock and his team have been excellent to work with, fully understanding that they aren't transportation engineers, architects, etc., and they took time to teach, instruct and help them through the process.

Jesus Sahugun, CEO of Phog Center, LLC, stated that for the past three years he was employed under Emerald Phog, a non-profit under Prop 215, and he was hired as a bud tender and delivery driver and within a few months was helping to manage all aspects of the business. He had the pleasure of helping the company grow but was a trusted member of the community for cannabis education and a clean, safe, organic medicine. He stated that they provided relief to patients who otherwise would have no access to medicine and provided education to those in need and will continue to educate the community on the safe and responsible use of medicinal cannabis through the Phog Foundation a non-profit educational center established by Emerald Phog's founder Joe Kerr. He explained how his experience has encouraged him, with the new legislature and the closure of Emerald Phog in December 2017, to decide to start the application process to establish the Phog Center, LLC to continue providing the Pacifica community with a safe and responsible place to obtain clean organic medicinal cannabis. He explained their process to ensure safety for their clients.

Commissioner Gordon asked what the relationship was between the Phog Center and the Phog Foundation.

Mr. Hancock stated that the Phog Foundation was an independent 501C3 educational organization, mentioning that one of their slogans was Medical is responsible and they were dedicated to the education and research of how medical cannabis affects things like pain, etc. He stated that both he and Mr. Sahugun were on the board, but there was zero business relationship between the two organizations. He stated that by definition they can't be.

Commissioner Gordon asked what kind of affiliation the Phog Foundation had with this operation.

Mr. Hancock stated that, other than Mr. Sahugun being on the board as a community member, it would have no affiliation with the Phog Center.

Commissioner Gordon asked if any of the board members also in any LLCs that are related to medical marijuana.

Mr. Hancock stated that no they are not.

Commissioner Gordon stated that he wasn't saying there was anything wrong with that.

Mr. Hancock stated that he was just saying that he can speak to it as he is on the board. He stated that the only overlap there would be that Mr. Sahugun was affiliated with the Phog Center and volunteers, unpaid, on the board of the Phog Foundation.

Commissioner Gordon concluded that the Phog Foundation's thing was medical marijuana.

Mr. Hancock stated that it was 100% being an educational mission, centered around medical marijuana and its therapeutic uses.

Commissioner Gordon stated that there was some discussion with the Commission about why they weren't applying for recreational uses as well. He stated that it sounds that it was inconsistent.

Mr. Hancock asked clarification on what they weren't applying for.

Commissioner Gordon asked why they weren't also applying for permission to sell non-medical marijuana.

Mr. Hancock stated that it was inconsistent with the mission. He stated that the Phog Center was self-limiting itself to medical patients but the foundation has no sales of cannabis in any respect.

Commissioner Gordon asked the relationship with the Phog Foundation, commenting that the Phog Center was new.

Mr. Hancock agreed that it was brand new.

Commissioner Gordon stated that the Phog Foundation was preexisting.

Mr. Hancock stated that the Phog Foundation was organized in late December of 2017.

Commissioner Gordon asked what the relationship was between the prior operators of the business that was in this location and the Phog Foundation and/or the Phog Center.

Mr. Hancock supposed that the relationship was that Jesus was an employee of the old Emerald Phog and he is now the CEO of the LLC and on the board of the Foundation. He stated that the prior operator of Emerald Phog, Joe Kerr, who was no longer involved with this LLC, is the executive director of the Phog Foundation. He stated that it has been his mission to spread the gospel about medical cannabis.

Commissioner Stegink asked if the prior owner of Phog Center a felon.

Mr. Sahugun stated that it is a new establishment. There has been no prior owner to the Phog Center and he is the first owner.

Commissioner Stegink stated that he meant Emerald Phog.

Mr. Sahugun stated not to their knowledge.

Commissioner Stegink stated that the budtender position as defined was employed as a security function and he asked if they were licensed security guards.

Mr. Sahugun stated the budtenders were not licensed security guards, just 2-3 on site at any point in time, and they have licensed security guards during high peak hours.

Commissioner Stegink asked if the budtenders were armed, asking how they provide a security function.

Mr. Sahugun stated that if anyone comes in, they give them what they want. They have cameras to provide to the city and they don't carry any weapons of any kind on site.

Commissioner Stegink asked what the budtenders security function was.

Mr. Hancock stated that there were 2-3 people on site to make sure nothing goes wrong. If anything goes wrong, someone can call.

Commissioner Stegink stated that one of the problems our municipalities have had is actually tracking these sales down so they can tax it. He asked if each sale will have a unique identifier or a serial number, such that if someone left it on the street or at the bus bench would they be able to track that sale back to a certain individual.

Mr Hancock stated that you would not be able to track the sale unless they left the receipt inside the bag.

Commissioner Stegink asked if they would object to a unique identifier system.

Mr. Sahugun stated that they would not.

Commissioner Stegink asked if they would object to a more traditional business day, such as 9:00 to 5:00 or 10:00 to 5:00.

Mr. Sahugun stated that they would not.

Commissioner Stegink asked if his insurance covers both recreational and medical sales.

Mr. Sahugun stated that it did, adding that they are only sticking with medical. They will not be going into recreational.

Commissioner Rubinstein asked if it was primarily a cash business.

Mr. Sahugun stated that they will be accepting credit cards and checks as well.

Commissioner Rubinstein asked if it is historically mainly cash.

Mr. Sahugun stated that it was not, adding that when he worked for Emerald Phog, they also accepted checks and credit cards, running it as they would run any other business.

Commissioner Rubinstein asked if there was any policy or procedure on cash management. He was concerned about security, such as how cash is held on site, how it was removed from the site.

Mr. Sahugun stated that cash will be stored on site securely in the safe and he will be the only one who has access to it. He stated that he will deposit it every evening.

Commissioner Rubinstein stated that in San Francisco some of the marijuana facilities have a security guard in front checking credentials, and he asked if that will be the case in this situation.

Mr. Sahugun stated that he didn't think so as they don't want to have that approach as they think it is a little bit of an intimidating approach to a lot of people. When they see a security guard they feel intimidated. He stated that they will have a security guard on site during high peak hours, adding that they never had any issues during the time he worked with Emerald Phog with anyone being a problem by being rowdy. He stated that they didn't see a need for it but if it was required they can definitely make it happen.

Commissioner Rubinstein asked if he would be willing to accept a conditional approval of specific hours, whether they are the hours he cited or more limited hours.

Mr. Sahugun agreed.

Commissioner Nibbelin stated that he was curious about their interactions with the people who live upstairs in the same building. He asked if they could report on any communications they have had with them.

Mr. Sahugun stated that they talked to everyone, say hello to everyone, and they are good friends and support them, and have never had any issues with any of them, letting them know that if they have any problems, they can come to them and they will take care of it.

Commissioner Stegink asked if the previous Emerald Phog was affiliated with a school bus holding marijuana that was robbed.

Mr. Sahugun stated that it was not.

Commissioner Gordon stated that he was trying to look up information on the Phog Foundation because it was interesting, but he was having a hard time finding it. He asked if they have a website.

Mr. Hancock stated that the Phog Foundation currently only had a Facebook page.

Chair Campbell stated that he went to the Facebook page and it said uni.ca/cure sf is proud to take over service to the Phog family, and their budtenders are now working for uni.ca/cure sf to assist. He stated that there were a number of google reviews which would indicate that they are either selling, providing or giving away cannabis products at that facility. He asked him to explain that.

Mr. Hancock stated that, from the foundation's perspective, they were aware of that and it was the fog center's attempt to make some revenue in San Francisco.

Mr. Sahugun stated that it wasn't operating under the Phog Center LLC, but they allowed them to use their names so they could help their patients so they would feel more comfortable getting delivery from someone new, but it was under a different company.

Chair Campbell asked how they could verify that.

Mr. Sahugun stated that they can provide the paperwork.

Chair Campbell asked that they get that paperwork as it would be useful to see. He stated that he attached to the operation plan a list of products he will be selling and the suppliers. He noticed that he mentioned CalVAPE Collective LLC and Beezle Brands.

Mr. Sahugun responded affirmatively.

Chair Campbell stated that Calvacollective and Beezlebrand were two of the suppliers, and Calvacollective were providing some things including gummies. He stated that he couldn't find either of those companies registered as corporations in California. He stated that one looks like it went to another type of business entity and another one couldn't be found. He asked where he was purchasing their supplies and are they reputable businesses.

Mr. Sahugun stated that they haven't purchased anything under Phog Center LLC. When they were operating with uni, that was all purchased through uni.

Chair Campbell asked who they purchased their products through.

Mr. Sahugun stated that they have not purchased anything under the Phog Center LLC. When working under uni, they did all the purchasing from the company curesf.

Chair Campbell stated this was the facility they were working with temporarily but they have it in their operation plan as them, but it doesn't say cal uni.

Mr. Sahugun stated that they were open to bring them back on board.

Mr Hancock stated that he understood that these were representative products. He didn't think he or Mr. Sahugun has done any diligence on these companies but it was his understanding that they were representative products. He asked if he was aware that they folded.

Mr. Sahugun stated that he was not.

Chair Campbell stated that they were listed in the operations plan so they assumed that due diligence had been done but maybe not.

Mr. Hancock stated that he thought it was fair to understand with a shifting market these cannabis companies go in and out. He believes this plan was submitted a number of months ago and that was his understanding.

Chair Campbell noticed that he was selling edibles that are in the form of gummies, and he asked if they will be compliant with California restrictions on edibles that look attractive to kids.

Mr. Sahugun responded affirmatively, adding that they were not in any shape or form marketed towards children with any cartoons or any characters of that kind. They look like medicinal products that you would buy at a prescription store.

Chair Campbell asked how they can verify that.

Mr. Sahugun stated that they can bring a product or take a picture because they would require a medical card in order to bring a product in so they can take a picture to verify that once they have the product.

Chair Campbell hoped that the photos and the verification are in the paperwork for this facility before it opens. He stated that he saw the peak hours from the traffic report ended at 2:00 in the afternoon, asking confirmation on that time.

Mr. Sahugun responded affirmatively.

Chair Campbell asked if he would have any objection to closing earlier than 5:00.

Mr. Hancock asked what the rationale would be for closing before 5:00.

Chair Campbell stated that they are close to the library and school gets out at 3:00 and is right down the street.

Mr. Hancock supposed that they would be open to discussing it but he thought it seemed odd to go outside of normal business hours. He was sure Mr. Sahugun was open to discuss it.

Commissioner Rubinstein asked if it was possible to put conditions on the type of edibles that are allowed to be sold.

Mr. Hancock agreed if the commissioner felt like there were particular edibles that are too much of a risk for some reason, he would be open to not selling those.

Commissioner Rubinstein stated that he was only thinking with regard to teenagers and kids, not for any medical use.

Mr. Hancock stated that there would be no sales to teenagers or kids.

Commissioner Rubinstein understood they couldn't sell, but he asked if the product gets out into the community.

[Asst. City Attorney Siegel made comments but they were unintelligible in the recording.]

Commissioner Rubinstein stated that he knows, with cigarettes, there are rules on how they can market it, and they can't market in a way appealing to children. He didn't know if there were similar regulations within the marijuana industry.

Chief Steidle stated that it was his understanding that the state regulations for packaging were very stringent and the idea was no matter what type of cannabis product is leaving the business, it is sealed in a safety container and childproof and he understood that edibles would leave the same



way. He stated that the idea was not marketing to children, with package being safe when it leaves the facility and it was being purchased by someone of age. He stated that when it reaches that point, the burden of safety is upon the purchaser to make sure it doesn't get into the child's hands so they must make sure it is safe in the establishment and when it leaves the establishment.

Councilmember Rubinstein stated that he only asked because some of the edibles are incredibly powerful and tasty.

Mr. Sahagun stated that the new state laws require that nothing can be more than 100 mg per packaging and divided into 5 mg doses, and really powerful edibles have been outlawed. He stated that anything still available is through illegal dispensaries that are still operating.

Chair Campbell thought there were a lot of restrictions on packaging and he thought also on window displays. He stated that they have a condition from the city that they are going to remove the frosted glazing of the storefront window.

Mr. Sahugun stated that it was currently frosted for security and there was no one who was tempted to go inside and see an empty building and go into the back.

Chair Campbell asked about displays on the windows, as he was concerned about displays.

Mr. Sahugun stated that there won't be any displays in the window and it will be clear so if the police come by, it will be easy to walk in.

Mr. Hancock stated that all of the signage is clearly indicated in their application. He thought there were three required signs about no smoking on the premises, security and under age, adding that there will be no additional signage in the windows.

Chair Campbell agreed those three were signages they have to have but it didn't preclude more. He asked if they would not mind a condition that said no storefront displays of edibles that look like candy for example.

Mr. Sahugun stated that they don't carry any of those products which tend to market towards the younger audience and their focus was medical. He stated that no medicinal product looks like a kid's toy or cartoon.

Commissioner Gordon referred to the new laws governing edibles, and stated that in addition to restricting the amount of THC that is allowable in each product, there were also restrictive limits in terms of packaging. He read them briefly to make sure he would comply with them. He stated that a lot of his comments were covered by the law and then read the limits on edibles. He asked if they were comfortable in complying with those rules.

Mr. Sahugun responded affirmatively.

Chair Campbell commented that those rules have been in place for a while and he was surprised to see in their operation plan some of the items listed and he thought was contrary to what Commissioner Gordon just read.

Mr. Hancock stated that they can amend that.

Vice Chair Clifford stated that all his questions have been answered and he thanked the applicant for being straightforward with them.

Commissioner Stegink stated that while he realized that these are sample products, he wanted to be crystal clear that the state law means no gummy bear sales.

Mr. Hancock agreed on no gummy bears.

Commissioner Stegink asked the City Attorney if that was correct.

Asst. City Attorney Siegel stated that he can't speak on that now as he didn't know all the rules about the packaging of marijuana.

Mr. Hancock thought the Phog Center was comfortable not selling gummies if that was important to the Commission.

Chair Campbell stated that they will bring that up during deliberation to see if it is.

Commissioner Rubinstein referred to signage and stated that he was surprised when he heard on the radio that Coca Cola was going to be marketing a product called Coke CBD. He envisioned the types of advertising that go on in convenience stores as the bigger companies get into this business. He wanted to be sure the front of the store will have some signage and some indication about marijuana usage but not advertising specific products.

Mr. Hancock agreed, explaining that they will have a sign that relief is in the Phog made out of wood.

Chair Campbell referred to his position as manager of the last operation.

Mr. Sahugun responded affirmatively.

Chair Campbell asked if he was correct that it was operating completely illegally.

Mr. Sahugun stated it was operating under the Prop. 215 regulations but he didn't think they had a business license.

Chair Campbell asked if they paid any licensing fees to the state when he was managing it.

Mr. Sahugun stated that they did.

Chair Campbell asked if they paid taxes.

Mr. Sahugun responded affirmatively.

Chair Campbell asked how they calculated that and he asked staff how we knew we were getting the licenses and taxes if it was illegal.

Planning Director Wehrmeister stated that they were not paying city taxes.

Chair Campbell asked what they were paying.

Mr. Sahugun stated it was state taxes.

Chair Campbell concluded that there was nothing paid to the city.

Mr. Sahugun stated that they did not based on his knowledge, but Joe Kerr was the one who was in charge of dealing with all the tax operations, etc.

Chair Campbell asked how long he was a manager.

Mr. Sahugun stated that it was for the last two years.

Chair Campbell concluded that in two years there were no taxes paid to the city.

Mr. Sahugun stated that they hadn't to his knowledge.

Commissioner Stegink asked the City Attorney or Planning Director if any city specific tax existed at that time.

Planning Director Wehrmeister stated that there would have been business license taxes at a minimum.

Commissioner Stegink asked if it was based on gross revenue.

Planning Director Wehrmeister stated that it was more complex than that. She stated that, when they issue a business license, they need to issue it for a business that is legal within the city. She stated that, if they were able to issue a business license, there would have been business license tax due.

Chair Campbell opened the public hearing.

Bill Fitzpatrick, Pacifica, stated he had a question regarding the application. He stated that they didn't follow any of the rules of the application and his issue isn't with their business or motto. He stated that there were several people who applied and everyone had to follow the rules of the application but they didn't do that. They were sent a letter saying that their application was incomplete and they had ten days to complete it but it took them 56 days to get the information. He asked how that works, and what happens to the people who went to the trouble and expense of filling out the application properly. He knew there were people who spent a lot of time, effort and money to apply following the rules set down by Pacifica. He asked how some people don't bother following the rules, wait until they find out whether they have been approved and then decide to do it. He thought that was not fair. He added that if he was reading something wrong, he would love to have an answer.

Chair Campbell stated that they can't give him one.

Mr. Fitzpatrick stated that he would like to take that into consideration on their approval as he knew there were several people did apply. The application process seemed fair at the beginning

but somewhere it went astray. He referred to the Tribune where it said they were the first and there were a lot of people watching to see how things go and he thought following the rules should be one of the things that are important. He asked if they don't follow the rules in the beginning what says they will follow the rules down the road.

Steven Slumky, Pacifica, stated that he was present because he was the first customer for Emerald Phog and has been doing business with them for seven years. He stated that they have been extraordinarily conscientious and he trusts them implicitly. He stated that they have deliveries to his home. He stated that their mode of operation changed when they decided to have a storefront. He stated, when it was a delivery only business, there were no issues and everything worked smoothly. He stated that it seems setting very high obstacles in the path of getting this done. He stated that they passed the laws to make marijuana legal and he thought they would be very well served to have the Phog Center in Pacifica to make that a responsible thing for the city.

Celia Alcantata, Pacifica, wanted to address the medical use of cannabis. She stated that she was not a spring chicken but has had enough chicken to know recreational use versus medical. She commented that she attended Woodstock, but stated that she was not using cannabis for recreational. She was afflicted with seizures and spent years on medications and was fortunate enough to work with the Phog and sit down for hours with a budtender to talk about management, fact and cause and how to use cannabis appropriately. She stated that she has not had a seizure in four years. She stated that she wasn't going to say it wasn't fun when smoking but she has been respectful, considerate and especially found a professional group of people. She didn't walk into an apothecary and surrounded by a group of people there for recreational purposes and felt intimidated. She has been with young, middle-aged and older people with shirts and ties on and product appropriately displayed and handled, packaged. She stated that they have come to her home in appropriate vehicles with packages or containers that are sealed appropriately, labeled and never questioned what she was getting or the organic process of it and even kosher products. She wanted them to understand that what they were debating was appropriate for the right reasons. She didn't think they have anything to fear as no one will be smoking or doing anything damaging around children. She felt they would be okay even as new things come up and she hoped they would move forward with this.

Yvonne Duncan, Pacifica, thanked them for taking the time to talk about this. She stated that this was not her first time talking about the Phog and how blessed they are to have them in their lives. She stated that she suffers from serious chronic pain and fatigue constantly and since she has not been able to get her medicine through the Phog she has gone through a lot of hard times trying to get proper medication. She thought they were aware there are other dispensaries in Pacifica that are operating illegally and they were not providing secure medical marijuana. She stated that the Phog Center has always chosen to provide medical cannabis for the older, more serious medical needs community and are not looking to open up to recreational to young people out there just to party which was against what they are here for which is strictly for medical uses. She stated that anytime she has had them at her house, they were always been in a full business suit and you would never know. She mentioned that, if her neighbors saw someone coming to her door, they don't see a young thug, dirty person but top of the line straightforward business and they talk to her about each piece of medicine whether she has ordered it before or not. She stated that they make sure what she is going through at that moment that medicine is going to be right for her. She stated that they explain the correct dosage for what she needs and what to do if she over consumes. She stated that, out of all the cannabis dispensaries she has been to, they are the best and are top of the line. She stated that Harbor Site has a good name for themselves and a lot of

places model themselves around them, but she thought Phog was above and beyond them and they have to give them a chance to show how awesome they are and how great they can be for Pacifica.

Rose Ascencio, Pacifica, stated that medical marijuana is helping her medical problem. She stated that she also uses the medical marijuana patch that has CBD in it for her severe sciatica. She uses patches, ointments for her severe migraines and they work. She has gone to her medical physician who has tried to give her codeine, etc., however she doesn't take pills, drink alcohol or smoke cigarettes but she will use the medical marijuana. She stated that their establishment was wonderful just like the previous speaker explained, because they sit down with you and educate you on what is good for you and is needed for your ailment. She stated that they aren't there to get stoned. They aren't going to be recreational but a medical, working establishment to help patients. She didn't want to be disrespectful of the Commissioners but suggested that they call Joe Kerr at the Phog Center on get educated on what medical marijuana can do for you in your life.

Matt Miller, Pacifica, stated that he is a California notary public and IRS tax preparer. He stated that both the Phog Center LLC and the Phog Foundation are his clients and they are in 100% compliance. He stated that there is nothing in their filings that would indicate that they want to pursue recreational marijuana sales and their record keeping is better than some corporations for whom he does taxes.

Chair Campbell closed the public hearing.

Commissioner Stegink stated that he was inclined to support the application and would like to see more traditional business hours than 8:00 p.m. He stated that there are condominium owners living above them who will probably be affected by the operation of any business after 5:00 p.m. He thought they either do or do not have a problem with the library being there. He didn't have a problem with the business being open from 3:00 to 5:00 p.m. He stated that a lot of cities have had trouble with collecting taxes on cash sale. He stated that every medical product other than marijuana in the United States that is not over the counter has a unique identifier of some sort such as law enforcement or emergency response and he thought there was some way to determine original point of sale of the products. He would like to see a unique identifier of some sort and other than that, he stated he was inclined to approve it.

Commissioner Nibbelin stated that his thinking on this has evolved over the past couple of years. He didn't think he would have been supportive of this or any business dispensing cannabis but after hearing what the community thinks about it and recognizing the expressed viewpoint of the community, he was thinking like Commissioner Stegink and was in support of this particular application. He stated that, in regard to hours, he might be inclined to support something a little later as someone who works until 5:00 p.m. and sometimes after and he thought 5:00 p.m. might be early as a closing time for those who are coming from work and he might be supportive of 6:00 p.m. to make use of the business. He liked moving forward with something that is medically linked. He stated that it has been tried and tested over time in California and they have some sense that medical marijuana dispensaries are not new and this was a good place to start as a community. He added that he prefer that there be some way to lock the business into a medical dispensary model. He stated that a lot of what makes him comfortable about this is that it is a medical marijuana dispensary and there isn't a distinction drawn in the ordinance and they might

not have the ability to do that, but he would be comfortable if there was a way. He was comfortable moving forward at this point.

Chair Campbell stated that he would be more comfortable if this was a straight up medical cannabis facility as he thinks there is more regulation considering the proximity to the library. He didn't know if there was a way to do that. He wondered if there was a one-year review period that they could put on this facility as they did with 7-Eleven and Taco Bell Cantina, since it is one of the first in the city and it would be a reasonable thing to do a relook in a year to see if it is living up.

Planning Director Wehrmeister stated that no modification to the conditions as they are is limiting it to medical marijuana as they were self-limiting in their operations plan. She stated that, if they would like to make that a little bit stronger so it is instructive to future staff, they can do that. She stated that it would not be changed administratively and would need another public hearing. She acknowledged that, regarding the annual review, they have placed that condition on other projects and then can, but she reminded the Commission that the public safety license is reviewed and renewed annual so there was a mechanism in the program to have annual reviews through the police department. The license as well as the use permit are conditioned on each other being valid and active and they have established some checks and balances in the program.

Sr. Planner Murdock added that the marijuana regulations in the zoning provide the Planning Director authority to conduct an annual review of the permittees and to bring the permit back to the Planning Commission if there is evidence of problems. He stated that the ordinance itself already has a baked in annual review at staff level.

Commissioner Nibbelin echoed his support for Chair Campbell's comments. He recognizes that the law enforcement related annual review addresses things but it is a little bit different from the land use community impact concerns they might have and he would be supportive of the proposition that maybe the first annual review might come back, given that they are heading down a new road.

Chair Campbell stated that he was in agreement on that, as well as on the hours of operation and bringing it down to 9:00 to 6:00 which he thought would be a good thing.

Commissioner Rubinstein stated that he was comfortable with the proposed hours suggested by the applicant. He asked staff if they can have some restricted hours if they do go recreational. He stated that they could operate medically 10:00 – 8:00 if they agree to that, but if they go recreational they can maybe go 12:00 to 4:00.

Planning Director Wehrmeister stated that, if she is understanding them correctly, if they add recreation ...

Commissioner Rubinstein stated that would be more restrictive hours.

Planning Director Wehrmeister concluded he meant for the entire business.

Commissioner Rubinstein agreed that it would be the entire business, but if they stick to medical, their hours as proposed can be the condition of approval.

Asst. City Attorney Siegel stated that it wasn't necessarily precluded, but the issue is whether you can tie that to the land use issues that are identified in the ordinance. He asked what it was about recreational use or recreational sales that would create land use impacts which is within the Planning Commission's purview. He stated that, if they were to do that, they would have to look through what the findings are and find substantial evidence of reasons why closing at 4:00 would be necessary. He stated that the alternative to that, as mentioned by staff, would be linking the approval to the business plan that they have in effect, and if they want to modify the business plan in effect for non-medical uses, it would have to come back to the Planning Commission for a use permit amendment. He thought that might be an easier way to accomplish the goal they have in mind of protecting and ensuring that the use is as proposed rather than saying in advance that, if they go recreational, they tie it to a 4:00 closing time. He thought to make the best decision they need to have a tie to the land use impacts that they can identify from non-medical sales.

Commissioner Rubinstein asked if it was possible to have that research done.

Asst. City Attorney Siegel stated that it wasn't a matter of research but that the Planning Commission articulating reasons why selling non-medical marijuana would have detrimental impacts to the community.

Commissioner Rubinstein stated that he has no reason to not believe the applicant in his desire to sell medical marijuana and the support of the community for medical marijuana, but he stated that there didn't seem to be anything to preclude them from pivoting to recreational and he thought any conditions they put on for medical will have to be considered for recreational use. He asked if there was something that can snap into place if they go recreational or the Commission decides to put much more restrictive hours on the medical so they are safe.

Planning Director Wehrmeister thought, if she understood the previous conversation, currently the application is self-restricted and there could be a sentence added to condition No. 6 to indicate that it is approved for medical only and any change to add recreational will come back to the Planning Commission.

Chair Campbell thought that would be good, adding that it was 250 feet from a library and they could make a finding that there is an endangerment, from his perspective.

Commissioner Rubinstein stated that he would not want to see a security guard outside as they typically see in San Francisco, sitting on a stool and waiting for customers. He didn't know if they could put a condition of approval on prohibiting that.

Commissioner Gordon thought there could have been a lot of different applicants to come forward as the first application, and he feels like this was the ideal applicant with self-restriction to medical marijuana. He stated that they have heard testimony from the community on the importance that the service is providing for their health and for him it is an easy one. He came in with scepticism but he feels this is a great fit. He stated that he was in favor of the application. He went on line and looked at the labeling restrictions that in force and he found the language about packages and labels not being attractive to children. He thought that was straightforward. He thought Chair Campbell pointed out appropriately that labeling edibles as gummies was probably in violation of that. He thought they could put an extra qualifier in the conditions about nothing being attractive to children but he felt it was replicating what was already in the books. He stated that, as a working person, he hates getting home from work and not being able to get to

the store because it was closed. He thought 6:00 was early for him and he questioned it for those who worked until 5:00 or 5:30, adding that he didn't have a problem with the hours requested. He thought the Planning Director's suggestion that they make the language more explicit in the conditions that it was restricted to medical uses and if they want to go to recreational, they have to come back to the Commission which he thought was a great idea. He was in favor of it and thought it was a great first potential for approval. He mentioned a comment from the public about someone who was also applying and transparency with the process. He didn't think they had to address it now, but he thought sometime down the road it probably should be addressed. He was in favor with the conditions he mentioned.

Sr. Planner Murdock thought it might be helpful for the applicant to clarify if it intends to continue its delivery component of its business, and that may provide access to the products and service and medicine relief for those with unusual schedules that may not be able to make it to the physical brick and mortar retail store during the hours they end up approving. He thought they intended to continue with that and it could provide off hours type of support.

Chair Campbell stated that he forgot to have the applicant come up to respond to any public comments.

Mr. Murdock referred to the speaker who stated that they missed the ten-day turnaround, and it was their understanding that the ordinance or resolution was put into place much later than when they submitted their application and they were under the process, he was making it clear that there were no deadlines that they missed in any way. He stated that he helped put the application together and he stated that it was very difficult to find an architect and a transportation engineering firm to work with a small project and it takes time to chase down those professionals and convince them for something less than a large amount of money to help them out with architectural renderings or the transportation safety engineer analysis.

Mr. Sahugun stated that they will be continuing delivery service. He asked what the other question was.

Vice Chair Clifford asked what the hours of operation were for the delivery service part of the business.

Mr. Sahugun stated that they deliver until 8:00 but delivery cutoff was 7:00 p.m. for same day delivery and anything after 7:00 would have to be scheduled for the next day so their people don't work late into the evening. He stated that they would not want them to work any later than 8:00 p.m.

Vice Chair Clifford asked if the Commission setting different hours for the operation of the business would affect the delivery side also.

Mr. Hancock stated that, if they set the bricks and mortar hours as one and they were allowed to deliver through 8:00 p.m. or 7:30 as Mr. Sahugun indicates, he didn't see having a problem with that.

Commissioner Nibbelin stated that he was sympathetic to the notion of security and security guards and unless the Police Chief things otherwise, he tends to think that, given the scope and scale of what they were talking about, it could be cost prohibitive for a business just starting out.



He didn't need to see that in order to vote in favor of this matter. He did feel strongly about the operation of the brick and mortar hours of operation. He thought 6:00 might not be the right number, and maybe it should be slightly later. He thought the delivery solution might be a way they can move forward. He was not inclined to support something if it operated as late as 8:00.

Vice Chair Clifford stated that he was very comfortable with the applicant and the application. He knows it is the first time out the gate and they were being very careful. He liked the business hours and thought they were appropriate and wouldn't change them unless the police department was getting complaints and it would be them enforcing anything. He would vote for it coming back for review but he was seeing that there will be a police review at the end of the year, as well as a planning review at the end of the year, and he didn't see the necessity for the Commission to also review it. He stated that, if they aren't happy, they will bring it to them and let them know they are not happy or deal with it directly. He thought scheduling a meeting for everyone to oversee things that are already being overseen seemed extraneous. He stated that he will vote for it as is.

Commissioner Stegink wanted to preserve Commissioners Rubinstein and Nibbelin's followup on the additional load that recreational marijuana will have over medical marijuana as medical marijuana is a specific subset of the population that was under the care of a medical doctor with an existing malady that is treatable by marijuana whereas recreational marijuana is every adult. He stated that there was clearly a different load and he wanted to preserve that for future discussions, even an annual review. He stated that the law enforcement review was completely different as there was no obvious threshold that would kick it to them. He was in favor of 6:00 p.m. He mentioned that there have been studies in the news in the last nine days that shows there are varying potencies and the listed potencies were not accurate. He would like to see a unique identifier where it says, if they have a medicine failed with the potency, such as instead of 5 mg it was 100 mg, that would get revoked. He again mentioned that every medical item not over the counter has a unique identifier and he would like to see these have some identifier whether it is a serial number or a unique identifier where they could track it back to the purchaser. He stated that he has a friend who is a superior court judge and he found a medical marijuana card in a 12-year-old kid's wallet and some sort of method to track down who sold the product if it ends up in the hand of children or if anyone gets poisoned. He felt it was important to do that and get it right and he would like to see it again in a year.

Commissioner Rubinstein stated that he supports the hours the applicant self-imposed but to please his colleagues he would be agreeable to reduce the hour to 10:00 to 7:00 or 10:00 to 6:00. He thought it was important that the applicant comes back because the pivot to recreational is hard for them to monitor. He didn't know what the trigger would be for them to know if they become recreational other than coming back and talking about it, maybe in six months as opposed to a year.

Commissioner Gordon thought they could add something to the conditions that would bootstrap the medical use so if they wanted to do recreational, they would need to come back and that was up to the Commission to impose that.

Commissioner Rubinstein stated that marijuana sales are legal and they have a legal permit and he asked if they asked the payment for marijuana from anybody if they chose to do that.

Chair Campbell asked staff to reiterate one more time the self-limiting aspect of this regarding recreational.

Planning Director Wehrmeister stated that she will do that as well as directly respond to the question that this is a highly regulated area and the state knows if it is only medical and knows that they won't have their state license for recreational without local approval. She stated that the way the use permit's conditions of approval has been structured was limiting to what the applicant proposed which is medical only and it sounds like the Commission may feel more comfortable with adding additional language to condition No. 6 which would say that the operation plan, if they were to request to change that to include recreational would require a public hearing with the Planning Commission to amend the use permit.

Asst. City Attorney Siegel added that, if any business were to operate beyond their conditions of approval by selling certain products, open for certain hours, and they run the risk of city staff on their own finding out about the violations, of members of the community coming in and complaining about the violations and then that gives the city the opportunity to inform the use permit holder that there is information that they are not complying with the terms of their use permit and they risk having it revoked. He stated that it wasn't any different from any other business that operates in Pacifica pursuant to conditions of approval and the first step, once there is evidence that there may be a problem, is the city will investigate and speak with the permittee and find out the facts. If there is non-compliance, the permittee risks losing their business through a revocation proceeding for the use permit. He thought it would be pretty standard in this situation, like any business and if they were to adopt the recommendation of staff, they could modify condition No. 6 to be explicit that the operating plan includes that it was only medical operations and if there were a desire to do recreational sales they would need to seek a use permit amendment and that should address the problem. He added that no system is perfect for making sure there is never a mistake or misunderstanding or efforts to take advantage of it. They put the best systems in place and they rely on people to follow the systems whether the parties enforcing it or that need to comply to make sure those terms are ultimately followed.

Commissioner Rubinstein stated that, with that, he would be in favor of having the applicant come back in a year. He asked, following on Commissioner Stegink's comment about unique identifier codes, if he could address the applicant. He then asked the applicant if there was a system in place where they could do that. He asked if that exists in the marijuana industry.

Mr. Sahugun stated that there was a tracking trace system from the grower all the way to the dispensary. He stated that, once they have their temporary license from the city, they can apply for the state license. Once they have their temporary state license, he will go to Sacramento to take a day class where they teach him how to use the California system, adding that they have to use both the California system as well as their own. He stated that as of July 1, any edible products have to be batch tested and every time you get a delivery you also get test results with that delivery for every single batch and each has individual testing results for the company as well as a tracking system from the distributor down to the manufacturer, to the dispensary, and the dispensary will know who they sell it to.

Commissioner Rubinstein stated that he thought they were talking about when you get a prescription from Walgreen's code on their bottles.

Mr. Murdock asked if he was talking about a unique identifying inventory with a scan.

Commissioner Rubinstein stated that, if he buys something, there is a code that was printed on a machine, like a bar code.

Mr. Sahugun stated that they can do that, adding that some companies are transitioning into having that UBC code on their products.

Commissioner Rubinstein asked if they could transition into that over this one year period and they will have it in place when they come back in a year.

Mr. Sahugun responded affirmatively.

Chair Campbell thought he was seeing the majority support for 9:00 – 6:00 business hours, one-year review, condition No. 6 modified to make sure it is staying medical, some support for a UBC identifier code which he favors, he threw out limiting signage to the three signs allowed.

Commissioner Rubinstein suggested that, if they limit it to 6:00, they allow the applicant to do his deliveries until 8:00.

Mr. Sahugun and Mr. Hancock agreed.

Chair Campbell saw the majority supports that.

Vice Chair Clifford thought 6:00 was a little restrictive but if they can still deliver until 8:00 he would go along with that. He also agreed with modification of condition No. 6 to include the comments put forth by the Planning Director.

Planning Director Wehrmeister stated that she wanted to address something that was a little uncomfortable for staff. She understood the track and trace system and their desire for that, but that was not Planning's area of expertise nor do they have the ability to make sure that type of condition is conducted appropriately or enforced. She suggested that they ask the applicant who has agreed to it if they are amending their operation plan to include offering to do the track and trace system. She felt it would be difficult for staff to make sure that condition was implemented as it wasn't something they do.

Chair Campbell understood, and he felt the operation plan was wholly inadequate and he could not vote for anything that included the operation plan and he hoped they would amend it anyway, and he asked if they would be willing to amend it.

Mr. Hancock stated that they would be happy to amend it to no gummies, track and trace system and any recommendation they have to make it somewhat adequate would be taken under advisement and act immediately.

Commissioner Rubinstein asked if they need a certain period of times to get that system up and running as he assumed it was complicated.

Mr. Sahugun stated that you need a state license to be on that system and it would be the time it takes from getting the temporary city license and apply for the state license and once they have

the temporary state license they will give him an appointment to go to Sacramento and take the class and implement the system into their dispensary.

Planning Director Wehrmeister stated that she wanted to correct the terminology. She mentioned track and trace which the state is already going to implement, and she meant the unique identifier system.

Mr. Murdock stated that there are commercially available products in retail where there are labels are preprinted and he felt they could do it very quickly in terms of an operational change. He stated that they would be happy to put that in their operational plan.

Commissioner Rubinstein thought the public was right that they are being educated at this time, but he thought it sounded like they want to operate under best practices and operation and he thought that was great. He felt all these suggestions contribute to that for them and the community.

Mr. Murdock stated that, from the Foundation perspective, their goal throughout the entire process was to be the right community partner for Pacifica.

Chair Campbell stated that this is the first one out of the box for the city and it wasn't the application he was hoping for. He felt they put people more through the paces for removing a heritage tree than they are doing here. He wasn't happy with the operations plan or enough due diligence. He referred to the lineage of the company, specifically that they didn't follow the rules for two years, didn't pay city taxes and he was uncomfortable with it and it wasn't the applicant he wanted to see. He also felt it was too close to the library which he brought up when they were doing the ordinance. He stated that he would not be voting in favor of this, but he felt it was a close call and he appreciated that it is medical marijuana as opposed to recreational across from the library. He stated that it was a close call but he can't quite get there.

Commissioner Nibbelin stated that he had a couple of concerns about the operation plan. He asked the City Attorney if they can condition their approval on the applicant submitting a revised operation plan that addresses, to the reasonable satisfaction of the Planning Director and Chief of Police, an implementation of a unique identifier system and the issue of not selling gummies or any other concerns they might have with respect to the operation plan and that they would approve it subject to the Planning Director and staff and the Chief of Police receiving a revised operations plan within a certain period of time that was reasonably satisfactory to those points.

Asst. City Attorney Siegel stated that he didn't see any reason why they couldn't do that, and assumed the Planning Director feels the same way. He stated that they can make a condition of approval for an amended operations plan to address these issues to the reasonable satisfaction of the Planning Director.

Commissioner Nibbelin stated that would be his proposal, at least the issues of the unique identifier, the listing out of product, hours of operation and any other things his colleagues are appropriate. He was comfortable giving that discretion to city staff, given the specific things they have pointed out and other things that constitute appropriate practice that would be within the Planning Director's discretion.

Planning Director Wehrmeister asked that regarding the no gummies, they did not want something in the shape of a gummy bear that would be attractive to a child or if they were okay if it was rectangular or square and just happens to be chewy.

Commissioner Nibbelin stated that it may not have been an appropriate example, and he thought the state law speaks somewhat specifically to that and he wasn't a fan of articulating what state law already says. He suggested she strike it if that was not an appropriate thing for them to be concerned about. He would like the operations plan to be revised to reasonable satisfaction of staff as a condition of approval.

Commissioner Gordon thought they were getting close. He referred to the hours of operation and he was counting votes and thought that for the commissioners voting in favor of the project he thought three commissioners are okay with 8:00 and two who want 6:00. He asked if they went with 7:00 p.m. for a brick and mortar.

Commissioner Rubinstein stated that he was okay with 6:00 if that was the consensus but he was also okay with 8:00.

Commissioner Stegink preferred 6:00. He asked if they come back with the owners of the condominiums at the one year review and they have glowing reviews, he would be willing to take another look at their hours. He stated that, to be clear, the gummies issue was to not come back with an amended staff report that includes stuff that was already prohibited by the state.

Vice Chair Clifford was comfortable going to 7:00, while 8:00 would be his preference. He stated that, if the Commission wants 6:00, he will still vote for the project. He stated he would be more comfortable with the later hour because a lot of people who need the stuff aren't necessarily going to be able to get there by 6:00.

Commissioner Nibbelin stated that he was concerned about the ordinary flow of life in a residential structure. He stated that, if you have a residence in a mixed use area, there are certain tradeoffs that are made. He preferred that they start with the smaller step at 6:00 and see how that goes. He thought he was consistent with Commissioner Stegink's perspective.

Commissioner Rubinstein stated that he supported 6:00 with an 8:00 p.m. delivery limitation.

Commissioner Gordon stated that he was okay with that.

Commissioner Stegink thought they have addressed the unique identifiers.

Commissioner Rubinstein was okay.

Commissioner Nibbelin stated that he could make a motion but needed to find it.

Chair Campbell stated that he could go through them again.

Asst. City Attorney Siegel suggested he do it.

Chair Campbell stated that there will be no more than the three signs provided in the application, 9:00 – 6:00 brick and mortar hours with delivery until 8:00.

Commissioner Rubinstein stated that it was 10:00 to 6:00.

Chair Campbell stated that it will be 10:00 to 6:00 brick and mortar hours and deliveries from that facility up to 8:00, adding that he wasn't sure if that meant until 8:00 or that the last delivery truck leaves at 8:00.

Commissioner Nibbelin thought the applicant was indicating that they need to get the order in by 7:00 and they don't make any deliveries after 8:00.

Chair Campbell continued with one year review in addition to what is already required by the city, modifying condition No. 6 to ensure that this facility is staying medical based, requiring the unique identifier of a UBC code or something like that and amending the operations plan to reflect that change.

Commissioner Gordon stated that it was amending the operations plan to the satisfaction of the Planning Director.

Commissioner Nibbelin thought it was to address, among other things, the unique identifier and hours of operation. He thought some of these things will get incorporated by reference into the operations plan.

Commissioner Rubinstein stated there was also the prohibition of having a security guard permanently stationed outside.

Commissioner Gordon asked if it was prohibiting a security guard.

Commissioner Rubinstein responded affirmatively.

Chair Campbell stated that he wouldn't be in favor of that. He stated that, if they want to, they can put a security guard out there in case they get robbed.

Commissioner Rubinstein stated that he sees in San Francisco where they have a person permanently in front of the store on a stool. He was fine with him being inside but not outside on the sidewalk.

Chair Campbell thought, although he wasn't voting for this, that the businesses put them outside for a reason. He thought it might be for more deterrents. He would want to leave it to the business owner.

Commissioner Rubinstein stated that they can ask him.

Mr. Sahugun agreed with him and would prefer to have the security guard inside. He felt, if there was someone outside, it was a bit of an intimidating approach for the patient and makes them feel uncomfortable. They don't want them to feel uncomfortable but welcomed.

Commissioner Rubinstein thought it was more appropriate for a recreational use.

Commissioner Gordon thought they should leave it up to the discretion of the applicant.

Commissioner Rubinstein stated he would defer on that.

Commissioner Stegink saw that in San Francisco frequently the store will have an employee permanently stationed outside and it makes it look like it doesn't blend in with the building it was before the business moved in and it was unusual. He liked the idea of having security inside and, if the applicant was amenable to it, he agreed to do it.

Chair Campbell thought that was fine.

Commissioner Nibbelin stated that he wanted to make a motion.

Commissioner Gordon thought they were making a motion or were they just going through the issues. He thought Chair Campbell was going to make a motion against it and he was excited about that.

Commissioner Nibbelin thought if Commissioner Gordon were articulating a motion he was prepared to let that be the motion. He then thought it would make sense to go ahead.

Commissioner Nibbelin moved that the Planning Commission FINDS the project is exempt from the California Environmental Quality Act, APPROVES Marijuana Use Permit MUP-4-18 by adopting the resolution included as Attachment A to the staff report including conditions of approval in Exhibit A to the resolution, subject to the various points that Chair and Commissioner Gordon had just gone through, specifically the three signs as described in the staff report, the hours of the brick and mortar operation being 10:00 am to 6:00 pm with delivery up until 8:00 pm, submission of a revised business or operations plan, a one-year review as discussed in this proceeding, modification of condition No. 6 to be clear that they are dealing with a medical dispensary model as opposed to recreational, that the revised business plan include a reasonably satisfactory description of implementation of a unique identifier system satisfactory to the Planning Director, and there shall be no security guard posted outside; Commissioner Clifford seconded the motion.

The motion carried **5-1**.

Ayes: Commissioners Stegink, Clifford, Gordon, Nibbelin  
and Rubinstein

Noes: Chair Campbell

Chair Campbell 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.

- 5. TA-112-18**                      **File No. 2018-044 – Text Amendment TA-112-18**, initiated by the City of Pacifica to Amend Existing Zoning Regulations in Order to Clarify Existing Provisions for Processing Marijuana Use Permit Applications. The Text Amendment to be Considered Would Clarify Administrative Procedures Only and Would Not Alter the Zoning Applicable to Property within the City. Recommended CEQA Action: Exempt, CEQA Guidelines Section 15061(B)(3).

Planning Director Wehrmeister presented staff report.

Vice Chair Clifford asked if that was ten calendar days or ten work days.

Planning Director Wehrmeister stated that it was currently not specified so she thought it would be interpreted to be ten calendar days.

Commissioner Gordon stated he was ready to make a motion unless there are more comments.

Planning Director Wehrmeister stated that they have public comments.

Commissioner Rubinstein asked if ten days were sufficient.

Planning Director Wehrmeister believed it was.

Commissioner Nibbelin asked if there was a reason that they couldn't clarify that they were talking about calendar versus business days.

Planning Director Wehrmeister thought it would be helpful if the Commission would like to clarify that.

Commissioner Nibbelin thought it would make sense to be specific about what they were talking about, as if they were to reference the California Civil Code or some places where if it was ten days or less, it was assumed to be business days and if more than ten days assumed calendar and he would rather not get into a fight about that, and he thought it would be good for them to be specific.

Commissioner Rubinstein stated that he would assume ten business days to be conservative.

Commissioner Nibbelin stated that it was the point as that was different from what the Planning Director just said. He was in agreement on stating it specifically in the text.

Commissioner Stegink asked if it was the intent to make it ten calendar days.

Planning Director Wehrmeister stated that they don't have a strong preference, and if it is business days to give them a couple of extra days on the weekend, that was fine with staff.

Chair Campbell asked if the city code has a default.

Asst. City Attorney Siegel didn't know that the city code has a default. He thought it was ten calendar days in most situations in the city code.



Planning Director Wehrmeister stated that they just did this with an appeal of an administrative citation and she thought it was calendar days.

Chair Campbell stated he was in favor of calendar days, asking for input.

Commissioner Stegink stated he was in favor of calendar days.

Commissioner Rubinstein stated he was in favor of calendar days.

Vice Chair Clifford stated he was in favor of business days.

Chair Campbell stated that he was okay with business days and asked for input again, then concluded it was business days.

Chair Campbell opened the public hearing.

Tim Fitzpatrick, Pacifica, stated that he and Adam Zollinger were applicants in a holding process of this whole thing. He stated that they have been in constant communication with the city from the beginning regarding the ten days because it plays a big factor. He stated that they were informed by the Planning Department that it took 56 days for Phog Center to get the rest of their information in. He stated that the ordinance stated that you need to submit a complete application and if you don't submit a complete application, they will be given the ten days, but it was very clear that within that ten days you have to submit a complete application which was what the amendment was saying. He stated that on the first page of the use permit website it says that it was the people's responsibility to keep checking the website for updates and anything that changes. He stated that the people in front of them were next in line to be reviewed and none of the people in front of them adhered to those ten days and they think their application should have been denied based on that. He stated that they were very for the amendment changing and they have a question on it. He stated that it was retroactive to the beginning of the process and, if they approve this, that should take people out of line and put them in the back. He stated that the city has been trying to do this fairly and he feels they have done that to the best of their ability. He stated that they were hoping that the process stays fair, mentioning ordinance 944084 that they have ten days. He understood that Phog Center stated that they didn't know anything about it, but he stated it was in the ordinance already. He stated that all this amendment does is clarify what happens to the application once it is deemed incomplete and he felt that it should have been deemed incomplete from the beginning. He hopes it passes and the city adheres to the laws they set forth at the beginning.

Adam Zollinger, Pacifica, stated that, like the prior applicant said, it was very hard to get that done in ten days, with architectural prints and all the other necessities in the application process. He stated that they spent a lot of money to make it happen and finding out now that it could have possibly been unnecessary for them to have spent that because they were granted in excess of ten days. He stated that was disturbing to hear and they hope that the city will continue to follow the rules they set forth from the beginning. He added that one big thing in the amendment was where it says it is not the intent of the amendment to alter the existing law and apply retroactively to any and all marijuana use permit applications submitted prior to the effective date of the resolution. He thought that would coincide with their application being approved because of being in excess of ten days. He stated that would also give them the opportunity to show them what they think is

a very good opportunity for the city to have a medical and recreational dispensary in the city and have their application reviewed, and it has not been because of being in the holding process. He stated it was all the literature provided in the ordinance and resolution and he hoped that would be taken into consideration. He stated that he drafted a letter explaining all of this and had copies to hand out.

Chair Campbell stated that, if they hand anything to staff, they can give it to the Commission to look at.

Sr. Planner Murdock thought that was the letter that Mr. Zollinger provided to him earlier and he placed it in front of the Commission and there are also copies in the back of the Council chambers.

Chair Campbell closed the public hearing.

Chair Campbell asked staff what they thought of the public comment.

Planning Director Wehrmeister thought it was possible that the speakers are under the assumption that, because they haven't received an incomplete letter that they are complete and there are applications that are complete and are waiting. She stated that they haven't started to check their application for completeness yet as they were not going to spend their money using staff time and resources to do that until it is their turn to start processing. She stated if that was their assumption, it was not a correct assumption as they haven't checked their application for completeness and haven't been given ten days. She stated that the cleanup that is needed is what they are proposing to the Commission at this time. She thought they made an interesting point that there is a recital. It was the last whereas on packet page 53 where it does speak to the retroactive applicability of the ordinance amendment. She stated that they wrote that in there because they have one application that is still incomplete and they keep trying to encourage them and give them access to staff to ask questions to help them, but they are still incomplete. She stated that they would like to revise that recital to add "and not yet deemed complete by the effective date of this ordinance." She stated that the application they heard this evening was obviously deemed complete and there will be one coming at the next regular meeting that is complete.

Chair Campbell explained that the public commenters cannot be brought back because of how the process works. He stated that they can hopefully have a conversation with staff later.

Commissioner Stegink asked for clarification that staff tell him how that would read, which applies to the retroactive. He concluded that it applied to all marijuana use permit applications not yet deemed complete submitted prior to the effective date of this resolution.

Sr. Planner Murdock explained that the last recital on page 53 of the packet would say "whereas the intent of these amendments is not to alter existing law and these amendments therefore apply retroactively to any and all marijuana use permit applications submitted prior to the effective date of this ordinance (changing the word resolution to ordinance) and not yet deemed complete by the effective date of this ordinance."

Commissioner Stegink thanked him, and stated he was going over the work description and explained that he was not 100% sure it was accurate but he has heard it repeated that this is the fifth applicant in line by that lottery. He asked if that was correct.

Sr. Planner Murdock asked if he was referring to the Phog Center LLC.

Commissioner Stegink responded affirmatively.

Sr. Planner Murdock stated that they had lottery No. 5.

Commissioner Stegink asked him to walk him through how No. 1 has not yet been deemed incomplete to get to No. 2 which would then be deemed incomplete to get to No. 3, etc. He asked why No. 5 was the first one.

Sr. Planner Murdock explained that the lottery selection number is not immediately reflective of the order in which the applications may be processed. He stated that the reason was the numerical limitations within the overlay districts. He stated that when the lottery selection was made it was for all applications, but the applications were among various marijuana overlay districts and if Nos. 1 and 2 were in one of the overlay districts and No. 3 was in that same overlay district, they would be unable to process three but they could skip to No. 4 if that was in a different overlay district. He explained that, in this instance, No. 1 was in the Sharp Park overlay district and the rest, Nos., 2, 3 and 4, were in other overlay districts which means the second application in the Sharp Park overlay district was No. 5.

Commissioner Stegink asked, if the slate was completely bare and no applications have been allowed, how would No. 1 not be the first applicant approved.

Sr. Planner Murdock stated that No. 1's application was not complete ahead of No. 5.

Commissioner Stegink concluded that they were not evaluating No. 5 until No. 1 has been deemed incomplete.

Sr. Planner Murdock stated that was not correct.

Commissioner Stegink asked him to restate that as he didn't understand it.

Sr. Planner Murdock stated that once they have identified the order of the lottery selection that could theoretically be approved within the numerical limitations, they began processing those applications which were identified, and provided them an opportunity to come back as quickly as they could with complete applications because all were deemed incomplete. He stated that No. 5 was the first to come back with complete information and was thus the first application to be scheduled for public hearing. He stated that No. 1 was the second application to come back with complete information and has been scheduled for October 1 public hearing.

Planning Director Wehrmeister clarified that Nos. 1 and 5 are the only two between Nos. 1 and 5 that are in the Sharp Park overlay district so No. 5 is not skipping anyone else above them in the Sharp Park District.

Vice Chair Clifford moved that the Planning Commission FINDS the proposed ordinance is exempt from THE California Environmental Quality Act; ADOPTS the resolution included as Attachment A to the staff report to initiate the text amendment and recommend approval to the City Council; and INCORPORATES all maps and testimony into the record by reference with the stipulation that it is ten business days.

Planning Director Wehrmeister asked about the amendment to the recital.

Vice Chair Clifford agreed.

Commissioner Nibbelin seconded the motion.

The motion carried **6-0**.

Ayes:	Commissioners Stegink, Clifford, Gordon, Nibbelin, Rubinstein and Chair Campbell
Noes:	None

**COMMISSION COMMUNICATIONS:**

Vice Chair Clifford stated that he was no longer able to handle the library advisory committee slot and he was hoping that someone else can take that over for him.

Chair Campbell asked if Commissioner Stegink was volunteering.

Commissioner Stegink thought he was wrong.

Planning Director Wehrmeister stated that they will need to agendaize it and she thanked him for making that announcement. She stated that they will bring that to a future agenda for an appointment to a committee.

Commissioner Stegink stated that he had his light on. He stated that he and several other commissioners attended the Pacifica-Daly City Democrats' candidate forum for City Council candidates on Saturday and he was disappointed to learn from their comments that 4 out of 7 candidates were completely unaware that ADUs had already been expedited. He thought that no one knows it and the information has gotten out poorly. He thought the fact that there are four candidates that were completely unaware that ADUs have already been expedited and that we have the single most lenient ADU legislation of all 20 cities in the county was curious. He would like to see some sort of effort made to get that information out to people who could benefit from it. He also asked if every commissioner could get a copy of the by-laws. He explained that there were a couple of things that we are doing that might be eye opening.

Chair Campbell thanked the Police Chief for attending the meeting.

**STAFF COMMUNICATIONS:**

Planning Director Wehrmeister stated as mentioned the second marijuana use permit will be before them on October 1 and the previous Saturday they had their last scheduled community meeting on the local coastal plan adaptation policies which was a presentation to the public regarding their draft policies. She stated that the public comment period will end on October 5 and will be before the Commission on November 19, likely the only item on the agenda.

**ADJOURNMENT:**

There being no further business for discussion, Commissioner Gordon moved to adjourn the meeting at 9:19 p.m.; Vice Chair Clifford seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Stegink, Clifford, Gordon, Nibbelin,  
Rubinstein and Chair Campbell  
Noes: None

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Respectfully submitted,

Barbara Medina  
Public Meeting Stenographer

APPROVED:

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Planning Director Wehrmeister