

MINUTES

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

May 15, 2017

7:00 p.m.

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

ROLL CALL: Present: Commissioners Clifford, Gordon, Campbell, Cooper, Evans and Chair Nibbelin
Absent: Commissioner Baringer

SALUTE TO FLAG: Led by Commissioner Evans

STAFF PRESENT: Planning Director Wehrmeister
Assoc. Planner Murdock
Asst. City Attorney Doherty

APPROVAL OF ORDER OF AGENDA Commissioner Clifford moved approval of the Order of Agenda; Commissioner Cooper seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Clifford, Gordon, Campbell, Cooper, Evans and Chair Nibbelin
Noes: None

APPROVAL OF MINUTES: APRIL 17, 2017 Commissioner Clifford moved approval of minutes of April 17, 2017; Commissioner Gordon seconded the motion.

The motion carried **4-0**.

Ayes: Commissioners Clifford, Gordon, Cooper and Chair Nibbelin
Noes: None
Abstain: Commissioners Campbell and Evans

APPROVAL OF MINUTES: MAY 1, 2017 Commissioner Evans moved approval of minutes of May 1, 2017; Commissioner Campbell seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Clifford, Gordon, Campbell, Cooper, Evans and Chair Nibbelin
Noes: None

DESIGNATION OF LIAISON TO CITY COUNCIL MEETING OF May 22, 2017:

Chair Nibbelin stated that they have Commissioner Clifford designated as the liaison.

ORAL COMMUNICATIONS:

Leo Leon, Pacifica, mentioned all the committees Chuck Evans has been on in addition to the Planning Commission, and having served himself, he knows how much he contributed to Pacifica. He stated that he did a great job and he appreciated it.

CONSENT ITEMS:

None

PUBLIC HEARING:

1. TA-106-17 **Text Amendment TA-106-17 and Rezoning RZ-197-17**, initiated
RZ-197-17 by the City of Pacifica, to Enact New Zoning Regulations, Amend
Existing Zoning Regulations, and Establish New Overlay Zoning

Districts in the

Zoning Map, Related to the Operation and Location of Marijuana
Businesses and Related Activities. The Text Amendment to be
Discussed Would Affect Property Citywide; the Rezoning to be
Considered Would Affect Specified Properties. Recommended
CEQA Action; Exempt, CEQA Guidelines Section 15061(B)(3).

Assoc. Planner Murdock presented the staff report.

Commissioner Gordon stated that it was a great staff report. He referred to page 10, regarding supplemental conditions for retailers. He stated that there were too many negatives for him to understand what was said.

Assoc. Planner Murdock stated that they were seeking to insure that any implements used to smoke or consume marijuana are displayed properly, as he understood there were restrictions on visibility and placement of that type of merchandise. They don't want to prohibit all drug paraphernalia but allow lawful items.

Commissioner Gordon concluded that drug paraphernalia can be sold under the permit as long as it is displayed by certain guidelines.

Asst. City Attorney Doherty stated that the California Health and Safety Code regulates and defines drug paraphernalia as a host of various types of implements and devices for administering various drugs, and restricts display and sales to persons aged 18 years and older, requires display in an enclosed separate room as well as a few other restrictions and they referred to those provisions in the state law rather than specifically list them all.

Commissioner Gordon concluded that there was not a prohibition on selling it, but do it according to state regulations.

Asst. City Attorney Doherty responded affirmatively.

Commissioner Clifford referred to page 61 in the packet, item #2, and stated he had a problem with the wording regarding being 18 or 21 and being allowed in the building.

Asst. City Attorney Doherty stated that the non-medical marijuana regulations restrict marijuana purchases to persons in licensed retail establishments to individuals 21 and older, and the medical marijuana laws permit anyone of any age to purchase it, but if under the age of 18, they must be accompanied by a parent or legal guardian to use the medical marijuana. The city has been directed to permit retail sales of both medical and non-medical marijuana and they had to match those two restrictions.

Commissioner Clifford stated he wasn't having a problem with the sales aspect, but he questioned, if you can't be in the building unless you are 21 or a patient, whether you can hire someone who was 18 to work in the store.

Asst. City Attorney Doherty thought the intent when drafting the item was that persons working at the marijuana business were not necessarily using marijuana while working or purchasing marijuana and the state prohibition would still apply. She clarified that the last sentence stated that no one under the age of 21 was allowed in the store unless they are a qualified patient or an employee.

Commissioner Clifford thought they should add employee, otherwise it conflicts.

Asst. City Attorney Doherty responded that they can do that.

Commissioner Cooper referred to page 50, regarding store front construction, and stated he didn't see anything on light or sound, and he wanted a clarification if that was included. On page 52, regarding supplemental conditions, he pointed out clarification was needed regarding whether sales of marijuana were restricted to qualified patients or caregivers or restricted to qualified patients and caregivers. He referred to prohibition of retail sales, and assumed they meant on site rather than retail sales in general. He mentioned kudos on how they put the packet together as they have come a long way.

Chair Nibbelin added his appreciation for the various provisions that were processed. He then referred to page 47 and a reference to outdoor cultivation prohibited on any residential property abutting a school property, and stated that the regulations referenced not just to schools but day care and youth centers. He asked if that was also the intent of staff.

Assoc. Planner Murdock thought they were applying to the abutting schools.

Chair Nibbelin thought they needed to change the ordinance if that was the intent, but would defer to the other commissioners. He then referred to page 49 regarding approval of an MUP, where a reference is made to proposed location not having a potential adverse effect owing to proximity of parks, playgrounds, etc. and that doesn't include schools and youth centers. While those were addressed regarding the buffer, he didn't want an implication that they couldn't consider something outside the buffer zone of 700-1000 and, if the Commission thought it was too close, they couldn't consider it and he thought it would be appropriate to tweak the language. He then referred to something on page 50 that speaks to the size of the marijuana operation being appropriate to meet the needs of the community. He wondered what staff's perspective was on

use of the term community in this context, such as Pacifica or the broader Bay Area, as he thought that could make a difference.

Assoc. Planner Murdock stated that wasn't an issue they discussed. He stated that they appreciate the concern being raised and they would be open to Commission's desire, adding that it would be staff's preference to limit it to the community of Pacifica, not a regional community.

Chair Nibbelin stated that he would wait for his colleagues' comments.

Commissioner Clifford referred to page 65, items 3 and 4, regarding discussing the lottery. He stated that he was under the impression, following the two study sessions, that they weren't interested in having a lottery for the establishment of a marijuana dispensary, so he wanted to check his memory of that thinking, and staff's thinking in including the lottery.

Assoc. Planner Murdock stated that staff discussed this topic extensively. They didn't know what the demand will be for the licenses and use permits and were attempting to prepare for the worst and hoping for the best. As such, they tried to reconcile the need to have an orderly process and assign these licenses and use permits with the likelihood of extensive staff work if they didn't have a lottery based system. They contemplated bringing the permits to the Commission and have them select those within the number of licenses they can authorize, and a practical matter was to have the initial lottery based system and the Commission would review the number through the process and, if they can't make the findings, they can deny them and another operator would have a hearing for the use permit.

Commissioner Clifford assumed there would be a lottery and a waiting list.

Assoc. Planner Murdock stated that was how they conceived it.

Commissioner Campbell stated that it was a well prepared staff report. He referred to page 52 regarding restricted hours of operation of 7 am to 10 pm daily. He thought that they talked about more restricted hours of operation and he asked for clarification.

Assoc. Planner Murdock stated that hours of operation had a broad range of feedback and they thought this time frame met the middle ground, such as pharmacy type hours as opposed to banking or bar hours at the other extremes. They were open to feedback from them.

Chair Nibbelin asked if it could be adjusted in the context of any particular use permit.

Assoc. Planner Murdock thought it could but it would be difficult to build enough evidence to pinpoint a specific set of hours and he would prefer to have something specified. If they recommend it set by the use permit, they would need to reflect that in the ordinance.

Commissioner Campbell stated that he would bring that up during discussion.

Commissioner Gordon referred to talking about a sunset period for the use permit and would be required to return and get it renewed. He asked if that was reflected in the ordinance as he didn't see it.

Planning Director Wehrmeister stated that typically use permits do not expire so the ordinance is written to reference the licensing requirements of the Police Department and those need to be renewed annually. She stated that, if the police chief does not renew the license, they are no

longer complying with the conditions of the use permit and they would start the revocation process if necessary.

Commissioner Gordon concluded that the indefinite duration was subject to the Police Department.

Planning Director Wehrmeister stated that he was correct, adding that it was consistent with use permits in general under state planning law.

Commissioner Campbell asked what cities in San Mateo County have begun the initiation of this process and also asked if anyone tried to narrow an ordinance so edibles were more tightly controlled, if not banned.

Asst. City Attorney Doherty stated that there were a number of cities that ban the sale of edibles for both medical and non-medical. She stated that most jurisdictions that allow manufacturing that she was aware of, allow edibles along with other non-volatile substance manufacturing which would include the production of oils in hashes in addition to edibles. She stated that the direction staff received was to permit the manufacturing of edibles without other kinds of oils, solvents, etc. She understood, within San Mateo County, Pacifica was out in front as the first jurisdiction in the county to move forward with a non-medical marijuana ordinance. She added that there were some medical marijuana ordinances that have been on the books for a couple of years.

Chair Nibbelin opened the Public Hearing.

Gilbert Anda, Burlingame, stated that his family owns property in Rockaway Beach which would be affected by this overlay. He stated that there were a lot of people who have grown up around marijuana and would probably not be too uncomfortable. He felt that the one question they need to address is whether a medical marijuana store would be appropriate for the Rockaway Shopping Center as it would be more important whether visitors would be uncomfortable as they may have children. He thought it would be better to use more commercial industrial areas as a location for a medical marijuana business, suggesting the Crespi Center or areas on Palmetto that have auto parts and the recycling yard.

Tony, stated he has spoken about the prohibition of outdoor cultivation because of the dangers presented to children's access to it and the potential of conflict between residents and backyard trespassers. He referred to the police chief recommending no on that, and there were negative reports from actual experiences in Colorado. He felt it was an important public safety prohibition. He referred to mention of just 6 marijuana retail operations but no maximum number for testing or manufacturing and he wondered why as he didn't want us to be overwhelmed with those businesses. He felt public accountability was good for government transparency with possible quarterly reports on compliance from responsible agencies. He questioned what the impact to property values was when other cities did city wide rezoning as Pacifica is planning.

Derek St. Pierre, Pacifica, stated he has been a consultant in the medical cannabis industry for a decade. He has watched it grow in the Bay Area. He thanked them for a very thorough report, which was detailed in capturing important things that are crucial to a city developing a policy that will work for the city and the residents, as well as those visiting. He was concerned by the zoning restrictions created by the marijuana overlay map. He stated that excluded everything from C1 zoning and the 600 buffer from daycare centers, and felt they have limited the number of available properties in the Sharp Park District, Rockaway District and Linda Mar District to a small number of potential pieces of property. He stated that each landlord in those properties has

been contacted previously from other businesses to see what the potential was for the city in working with those businesses. He stated that many of the existing properties identified are owned by landlords under deed restrictions or are against the sale of cannabis. He asked them to reconsider a strict prohibition in C-1 to making it a conditional use process much like it is in a C-2 district, and they could open the map quite a bit. He agreed with buffer zones, especially near secondary and high schools, and stated that they have to focus on the fact that, at a daycare, you will never see children more supervised. He would be in support of a ban on adjacent property, but he thought the 600 foot buffer was creating too large of a zone and too much prohibited property.

Holly Smalle, Pacifica, thanked them for taking the time to talk about this issue. She looked on Craigslist to check on commercial lease properties, and Pacifica has 3 – 1 in Eureka Shopping Center and 2 on Palmetto – but by-laws will prevent the 2 on Palmetto from renting to them. She stated that there are zero places that someone can rent. She stated that she is sad. There are 5 current dispensaries in town and they have the best of intentions. She mentioned all they do to cooperate, and she was sad about mention of the lottery, adding that she didn't think those businesses will be allowed to continue. She stated that she has tried over and over to rent space in the future designated areas.

Cheryl King, Pacifica, stated that she works with the mentally ill, adding that many also have physical disabilities. She stated that she does outreach in the whole county and almost no city has anything going to help them get the medical marijuana they need. She hoped they think regionally, countywide and not just Pacifica as there are a lot of people who need help with many medical conditions. She mentioned doing some research on the regulations regarding daycare buffer zones of 1000 feet and Washington discovered that they had to reduce the buffer to 100 feet or medical dispensaries would be too scarce. She mentioned the same problem occurred in Philadelphia and they dropped the daycare requirement. She found that, in Long Beach, they have a buffer zone of 600 feet for public schools, libraries, beaches, etc.

John Leonardine, Pacifica, stated he owned property on Old County Road in Rockaway. He thought it was adjacent to Mr. Anda's property. He stated that there is a cannabis dispensary next door to him in Rockaway and he has found them to be excellent neighbors and they do a very good job of controlling what goes on there, probably better than the less controversial businesses. He also agreed the report was a very thorough plan.

Michael Mark, Pacifica, reported on two of the cannabis businesses in Pacifica, explaining what they provide to ill patients, their diligence in providing good oversight, and what it can mean financially to them and the city. He added that other drugs are used in the city and are worse for children. He had a petition for anyone interested in joining him by signing it.

Matt Wright, Pacifica, stated that since he was 13 he was diagnosed with cancer and he was given narcotics and was addicted until he was 15. He stated that the only thing that saved his life was marijuana. He stated that his doctor at Stanford recommends these products over any other products such as Xanax, etc. He stated his mother uses marijuana for her bipolar condition. He stated that if the present clubs are eliminated, he will have to go into San Francisco for the marijuana, requiring using public transportation.

Ben Patty, Pacifica, stated that he moved to Pacifica about two years ago, and the dispensaries are a good place for medication and a sense of community. He stated that, because they can't take the medication in the immediate area, there will be no one taking it in front of children. He stated that there was a process to get in, and he thought it would be amazing if a child could do it.

Mary Bier, Pacifica, stated that she was the director of the Pacifica Prevention Partnership, a drug free community support program with Jefferson Union High School District. She stated that she will always come and talk about the youth, and letting them know that the more access points we have in the community, the more access there will be. She was confused about the six licenses. She stated that there was an incident when a youth brought some edibles in a potato chip bag. A young girl got them and had a psychotic break and she thought she was going to die because she couldn't breathe. She stated that she met a lot of industry people and they are great people and want to work with them, but she has been told this was a common reaction to edibles when young children get edibles. She stated that they need to be very conscious about how the edibles are getting to the youth. She wants to work with those who come into our city, and she thought they want to work with the city's prevention program. She mentioned that, because the president is planning to cut all the prevention programs and she felt they need to work together to keep those programs going in Pacifica.

A.J. Hampton, Pacifica, thanked them for allowing them to speak and get things off their chest. He stated that Mr. St. Pierre touched on a lot of his topics. He stated that he is an owner operator of West Manor Wellness in Manor which took him 10 months to find. He asked if they were willing to give a conditional use permit under the 600 foot buffer zone to give them an equal opportunity to apply for a permit. He stated that they are not in the green zone which came out after they were locked into a five-year lease agreement.

James Arnold, Pacifica, stated that he is a cook in a local restaurant, and has lived in Pacifica almost all his life. He understood many people have a concern that this started with a social stigma attached to it. He believes that individuals have a right to make decisions for themselves, He thought the cost of keeping it illegal was quite expensive, and government at all levels participates in this war of drugs. He mentioned the prohibition concerns, and pointed out that we tried it with alcohol. He stated that there was no good evidence that prohibiting marijuana decreased the use. He stated that it was like the concept of forbidden fruit. He stated that they were talking about marijuana rather than cannabis. He stated that it has a great value in terms of industrial and agricultural use, but with the social stigma attached, it gives a lot of confusion to the benefits of hemp. He stated that hemp can take the place of trees to make paper and we would save a lot of trees which take a long time to grow and you can grow hemp within six months.

Lauren Macedo, Pacifica, stated that she wanted to address the proposal that medical marijuana dispensaries need to be 600 feet from an infant or toddler daycare center. She didn't think that would be necessary, mentioning that her 18-month old will be quite protected from the influence of the dispensary. She didn't want current business owners to be shut down. She stated that she has her son in daycare and she has considered opening a daycare center and register it and she may then put someone out of business because she lives within 600 feet of a medical marijuana dispensary. She just wanted to give her perspective as a mom of a toddler and infant that she didn't think it would be an issue to be within 600 feet of a dispensary and would not affect her decision of where to send her child to daycare.

Peter Loeb, Pacifica, stated that he has lived in West Rockaway for 42 years, which is one of the designated overlay districts. He stated that there are 5 or 6 restaurants that serve beer, wine and hard liquor as well as a liquor store. He heard remarks that they shouldn't be exposing children and tourists to the sale of marijuana. He stated that there was a dispensary in the neighborhood that has operated responsibly. He made a smart remark on the internet that they should allow the sale of marijuana wherever they sell beer or wine. He mentioned Ian Butler having an article in

the Tribune about reefer madness. He felt saying that children will be harmed by the sale of marijuana was a nutty notion. He also stated that they sell opiates in the drug store and soft drugs like beer and wine, but with drugs that don't result in people crashing cars into innocent people or violent acts, they need to get over the reefer madness notion about what marijuana is. He supports sales and dispensaries of marijuana in his neighborhood. He felt they should approve that, adding that he spent 40 years fighting this drug war.

Dan Stegink, Pacifica, reminded everyone that they can vote at www.shapethefuture.org. He stated that he wasn't going to rest until everyone is registered to vote. He stated that California was expecting \$1 billion in new revenues from taxes on marijuana. He stated that Pacifica needs revenues badly. He referred to alcohol consumption with alcohol sales, adding that they could mimic the ABC's standards and cut out some of the bureaucracy. He mentioned staff saying there were 3 marijuana dispensaries in Pacifica, and other people saying there are 5 or 7. He stated that all of them would like to be paying taxes now. He stated that the Commission could direct staff to compare crime at offsite liquor sales locations with the existing cannabis dispensaries. He thought they might reflect favorably.

Stephen Souza, Pacifica, stated that he works full time at Sure Fire Collective and goes to school at Skyline and CSM Colleges. He stated that Sure Fire Collective supports him financially and also provides him with affordable local medicine. He fears that Pacifica will over regulate the marijuana businesses. He referred to the 600 foot buffer zone from a toddler center and stated that as an employee he can guarantee that they are not getting in his door or an adult with an ID and valid recommendation. He also stated that limiting the number of clubs in Pacifica made no sense to him. He stated that competition will show what was sustainable within a city's limits. He stated as an employee, he has witnessed how much tourism marijuana dispensaries bring in, and potentially can bring in. He stated that they are great people, such as teacher, lawyers, etc., and everyone that makes the world spin. He felt that over regulation was potentially hurting the economy of the city.

Leo Leon, Pacifica, stated that he spoke at the surveys and study session, and he commented that the staff report was a good start. He stated that they had total consensus of both City Council and Planning Commission on the outdoor growth issue. He stated it was part of the state initiative passed by the voters of California. He recommended that they move it forward and he felt property owners will do what was best for themselves and the community. He stated that enacting the ordinance was not going to change that.

Chair Nibbelin closed Public Hearing.

Commissioner Clifford asked staff about talking about using the highway as a divide in the Manor District. He asked what came out of that in terms of the 600 foot buffer from the school. He asked if there was any way to adjust that so Manor shopping center could be included in the green zones.

Planning Director Wehrmeister stated that they gave that some thought and concluded that the freeway didn't act as much of a divider as in other communities that may have a large interstate running through them. Here it was an overpass with sidewalks between the two sides of the freeway and it didn't provide the barrier that they would typically see in other communities where they use a freeway as a dividing line.

Commissioner Clifford asked if the daycare situation was part of the state regulations or something Pacifica added.

Assoc. Planner Murdock stated that the daycare prohibition was part of state law and accompanied by youth centers and schools. He stated that state law allowed them to establish a lesser buffer, it does not allow them to exclude any of those three land use categories as they interpret the law.

Commissioner Campbell referred to a commenter who owned land in Rockaway, and asked if they have canvassed the existing businesses in town for their support.

Assoc. Planner Murdock stated that they have not, but he was aware of Kimco's policies as owner of two large shopping centers and their current policies were not to lease to marijuana related activities. They have not proposed the Fairmont Shopping Center for inclusion but the Linda Mar Shopping Center is in a proposed overlay zone and they were aware that the likelihood is low that a marijuana business would be permitted to open there.

Commissioner Cooper stated that they had a 2-2-2 in the limits of the zone, and he assumed it was a retail operation and the maximum was two licenses per area.

Assoc. Planner Murdock responded affirmatively, adding that the proposed marijuana operation overlay zone as drafted would only apply to marijuana retailers and dispensaries and it was 2 per overlay zone as proposed for a total of 6 citywide.

Commissioner Cooper stated that he didn't have any issues with limiting the other types of licenses from the availability of the property at this time, and he didn't think it was part of the ordinance. He didn't find it useful regarding the quarterly reporting, and he asked staff how they implement that or if it was already part of the regulation.

Assoc. Planner Murdock stated that he would need to hear more about what quarterly report the Commission would be interested in, such as financial in terms of tax revenue generation that wouldn't fit well within the Planning Department's role.

Commissioner Cooper thought it was more about how many dispensaries are currently licenses, currently operating and the location to notify the public that they are out there.

Assoc. Planner Murdock thought it would be easier for staff to manage a section on the web page that indicated the active marijuana use permits and licenses.

Commissioner Cooper thought that was reasonable. He was fine with the language in the ordinance. He mentioned having discussions on the C-2 and C-3 regarding opening up to the C-1. He thought opening up to the C-2 was a good compromise for them, and he had no issue with just keeping it to the current zoning.

Commissioner Evans asked staff if he heard correctly that Pacifica was the only one in San Mateo County that has medical marijuana ability or licensing or recreational or both.

Asst. City Attorney Doherty understands that Pacifica is the first jurisdiction within San Mateo County to consider a non-medical marijuana ordinance.

Commissioner Evans stated that someone brought up the question if there has been any studies done about land values anywhere after they have opened up licensing.

Planning Director Wehrmeister stated that staff has not done that research, but she was going to turn to a consultant present who may have some information to share.

Consultant Matt Eaton stated that, as of the end of the previous year, the city of Denver was working on a commercial survey to reevaluate the impact that marijuana had on particular neighborhoods with high concentrations. He didn't think the survey was completed yet.

Commissioner Evans acknowledged that everything was new but he was wondering if there was anything out there.

Commissioner Cooper referred to issues Oregon had with their recreational portion of the marijuana laws, and he asked if he could fill them in on anything he saw as being a problem.

Mr. Eaton stated that he didn't know what he was speaking of regarding Oregon's study. He stated that he has reviewed the ordinance and didn't see any major issues as it was very consistent with everything he has seen.

Commissioner Evans stated that he didn't want to over regulate things. He thought, if Kimco was saying no, that was two major shopping centers and if Manor is too close, that was another one. He stated that they apparently didn't have any locations available for rent anyway. He understood the sensitivity of that, but also understood that they can have all the regulations they want but if there was no place for them to set up shop, he felt they should try. He stated that they have always been helpful in trying to get small businesses to open up and since this was voted in, he thought they should try and help small businesses, but he didn't want to over regulate. He thought they were on the edge of doing that. He referred to the reefer madness thought, and felt it does have that feeling and was perpetuated by the regulations.

Commissioner Gordon thanked everyone who came and for speaking . They listen to what they say. He referred to the existing dispensaries and asked if any of them are located within the green overlay zones, such as Rockaway.

Assoc. Planner Murdock stated that, of the locations of which he was aware as operating, he thought there was only one dispensary in Rockaway that would be within an overlay zone. He stated that the 600 feet creates a lot of problems where existing dispensaries have chosen to operate.

Commissioner Gordon thought the 600 foot buffer was from state law.

Assoc. Planner Murdock agreed, stating that it was the minimum in state law unless a different buffer was adopted by local jurisdiction.

Commissioner Gordon concluded that they can go lower than 600 feet.

Assoc. Planner Murdock agreed that they could, but he noted that, for some time, staff asked the Commission not to pursue a greater buffer and they haven't evaluated what a lesser buffer would look like. He stated that there was a daycare center in the middle of Palmetto and a 600 foot buffer from that was creating a lot of problems for two of the existing dispensaries.

Commissioner Gordon asked whether, even though the daycare was listed in the state law, they could be less restrictive than that.

Assoc. Planner Murdock stated he would defer to the Asst. City Attorney, but he thought they could adopt a lesser bluffer for any of the land use categories.

Asst. City Attorney Doherty stated that he was correct.

Commissioner Gordon asked her to repeat it.

Asst. City Attorney Doherty stated that they could adopt different buffers for each of the three sensitive uses that are set forth in state law, schools, daycares and youth centers.

Commissioner Gordon concluded that their hands were not tied.

Asst. City Attorney Doherty stated that they were not tied with the 600-foot state recommended buffer.

Commissioner Gordon stated that there was an irony going on, California passed the law that is supposed to encourage or legalize the sale of recreational marijuana and Pacifica was about to pass an ordinance that has the potential to quash the sale of recreational marijuana or medical marijuana in Pacifica with the exception of one lucky location in Rockaway and he is troubled by that. He stated that he would like to come up with an ordinance that doesn't have that impact. He agreed they need a first step, to start somewhere but he was concerned that, by starting with such a restrictive ordinance, given the practical limitations. He mentioned Kimco at Linda Mar and asked where the second location was.

Assoc. Planner Murdock stated it was at the Fairmont Shopping Center.

Commissioner Gordon concluded that Fairmont was not in play. He then stated that Eureka Square was out except for a couple of green dots below Highway 1, Pedro Point was in play and Rockaway was in play. He felt this was a tough balancing act to craft. He felt staff did a great job to balance all their needs, but he didn't think they have struck the right balance.

Commissioner Campbell also appreciated the speakers. He heard several stating that marijuana has an unfair stigma attached to it. He agreed with that, but stated that the stigma was real. He thought the daycare centers have the buffer, not because toddlers will get in there and use it, but because of the stigma. He gave an example of how a stigma can impact environmental law and you can get compensated. He stated that this stigma will decrease property values and make other businesses make decisions based on that. He stated that was why he mentioned canvassing other businesses to get their thinking, because he felt they also deserve to have some say in where these businesses are located. He was thinking of canvassing them and, if they were okay with things, they could consider moving some of the buffers. He stated that his concerns were the edibles and recreational marijuana. He was uncomfortable with the availability of the edibles and he thought, if it were not for them, they would be having a different conversation. He stated that was why he was asking if there was a way to prohibit or restrict the sale of edibles by keeping it with the medical sales which would have more restrictions to get to it.

Commissioner Gordon asked if his concern was that the packaging made it more likely that children will be consumers of marijuana.

Commissioner Campbell thought there was the argument that, if they allow abuses of opioids and alcohol, why not pot. He stated that he didn't get that argument. He agreed that those are bad and should be stopped, and stated that there was also outrage over marketing of cigarettes to

kids, and outrage over sales of hard lemonade and other types of coolers to kids, and then he sees the outrage regarding edibles dissipate and he doesn't get any consistency. He stated that the bottom line was that he would like more prohibition on the sale of it.

Commissioner Gordon asked if that was possible for them to carve out edibles.

Asst. City Attorney Doherty stated that the ordinance before them only allows the manufacturing of edibles in that use permit category.

Commissioner Gordon questioned in terms of retail.

Asst. City Attorney Doherty stated that they could prohibit the retail sales of edibles.

Commissioner Gordon assumed that they could carve edibles out of things authorized in a marijuana retail operation.

Asst. City Attorney Doherty stated her understanding of the proposed regulations that came out the previous month by the Bureau of Medical Cannabis control, they may carve out edibles. She stated that those regulations have not been formally adopted but were tentative proposed regulations. She didn't think there was anything restricting them from carving edibles out of the retail sales at this time.

Commissioner Clifford asked if they could keep it to medical marijuana dispensaries versus even dealing with having retail dispensaries. He stated that part of his concern was that the Justice Department has stated clearly they will follow the Obama rules in terms of medical marijuana dispensaries but have not mentioned recreational marijuana at all and could come down hard on anyone who was allowing that to happen in their jurisdiction, especially with comments coming out of Attorney General Sessions that he was not comfortable with marijuana at all, and his office has clearly stated that they are going to continue not bothering marijuana where it was allowed. He stated that was why he wondered if they should allow anything but medical marijuana in Pacifica.

Chair Nibbelin asked if his question to staff was whether they could do that.

Commissioner Clifford responded affirmatively.

Asst. City Attorney Doherty stated that the answer was yes.

Chair Nibbelin asked if they could discuss the tax implications for the city if they only have medical marijuana dispensaries.

Asst. City Attorney Doherty stated that, the way the law is written, the local excise tax may be approved by the voters and may apply to sales of both medical and non-medical marijuana. Existing state sales tax does not apply to sales of medical marijuana where the sales occur with the use of a state issued medical marijuana identification card. She stated that there is a trailer bill currently moving through the legislature that would remove that restriction for use of state issued identification card to exempt application of state sales tax.

Chair Nibbelin assumed that what he heard was that the local excise tax could be imposed but, under current law, not state sales tax although the law could change.

Asst. City Attorney Doherty stated that generally yes.

Commissioner Cooper referred to labeling, stating that he agreed with the Commissioners' concerns over edibles. He stated that he was at a conference where he heard that, in Colorado, you have to label and imprint the product with a particular label. He asked if California will end up doing that with these sales.

Mr. Eaton stated that the proposed regulations will be very similar to what Colorado does, and the packaging and labeling will be required to meet ASTM certification, i.e., has to be opaque, resealable, substantially hard to get into. If it was not, it would have to be placed in an exit package. He stated that, in Colorado, the packaging and labeling laws are 37 pages, and they required that all the products after 2016 be imprinted with the universal symbol and that symbol will be placed on the packaging, labeling and exit package. He stated it becomes extremely problematic in that there were so many different forms of marijuana and to create a standard across the board requirement for packaging or labeling becomes very difficult because smaller and bulk packaging, spray products and liquids. He stated that the state will address that and are working on very similar regulations. He stated that, in the medical arena, the edible products in Colorado currently account for 64% of all the products purchased. He stated that, in medical, the current age of admitted regular use has increased, and the most popular age for regular use was 45-65 now and the age was getting older, and the older generation uses and purchases edible products. He stated that Colorado and Washington have moved forward with packaging and labeling requirements of universal symbols in both medical and retail.

Chair Nibbelin asked what exit packaging was.

Mr. Eaton stated that, if you have a product that doesn't fit in the needed package, such as a pre-rolled cigarette, you could place that in an exit package which meets those requirements, such as a large bag that was opaque and re-sealable and they could open it, place the product inside, seal it, and the patient could leave and keep that product sealed, hard to get into and re-sealable to the same qualifications.

Commissioner Cooper used the potato chip example, and stated that, if you take a potato chip out of its packaging, for the Colorado or future California labeling principles, they would know that it was a cannabis potato chip by looking at it or would you know by the packaging.

Mr. Eaton stated that, in bulk products like that, you cannot label that and it becomes problematic to make a rule across the board to make everything meet the same specifications. He gave the example of a granola bar. He stated that it would have to be divided into servings and each serving cannot exceed 100 mg and somewhere on that granola bar, they could silk screen the universal label on the bottom of it and every time you break off a serving, you still have the universal symbol on it.

Commissioner Gordon stated that now they were considering the carve out on edibles, and it wouldn't be on the medical side but on the retail side. He asked if that was something that other jurisdictions have done.

Mr. Eaton stated that he did not know of any other jurisdiction that has excluded edibles in their retail or medical, adding that in Colorado the edible products are more than 60% in both sectors of the industry.

Commissioner Gordon asked if both sectors was medical and retail.

Mr. Eaton stated that they account for over 60% of the sales.

Commissioner Gordon stated that, in going down the path of prohibiting edibles on the retail side, he can see a revenue impact. He asked if there were other downsides besides disappointing a lot of people.

Mr. Eaton asked if he meant in excluding the sales.

Commissioner Gordon confirmed that it was on the retail side.

Mr. Eaton stated that edibles come in a variety of different types, mentioning several examples, and it was a very broad topic. He mentioned that, in medical CBD, if transferables were better methods, and you were an older person and you don't want to smoke, an edible is the perfect mechanism to ingest medicine through sublinguals or other forms. He stated that, when you say an edible, many people think of a gummy bear or a brownie, but the edible segment of this industry was massive. He stated that there were several benefits to the variety of different edible products.

Commissioner Gordon thought they were trying to get at edibles aimed at youths.

Mr. Eaton stated that, at a state level, the state packaging and labeling requirements will do a very good job at dissipating that issue. He stated that, through their investigations, the packaging and labeling was not the problem, but was the secondary access when the consumer/user or patient took it home and left it out on the counter where under age children were grabbing, thinking it was a regular product.

Commissioner Gordon stated that it was when it was packaged in a way that was more desirable after it left the packaging.

Mr. Eaton stated that it was after it left the package. That was the greatest type of exposure, not from the dispensary or medical center itself.

Commissioner Gordon asked if they were tilting at something that wasn't an issue. He asked if there was any science that says edibles packaged in a way that complies with these laws has a correlation with increased use among under aged people.

Mr. Eaton stated that there was an incredible amount of research and studies, both in the alcohol and tobacco industry, regarding marketing, packaging and labeling. What the variety of states have done was try to work with those studies regarding marketing toward underage. He stated that, when talking to a child dependency specialist, they will blame the packaging and labeling as a great indicator. He stated that the state has done a good job of addressing that at the front. He suggested that the recommendation will be that they will not be allowed to have bright colors or edible products made in the shape of stars, etc. He stated that all states with medical and recreational prohibit those type of enticing products. He stated that, as time moves on, they are taking that research from the alcohol and tobacco industries, working with the pharmaceutical industry and trying to mirror the packaging and labeling requirements similar to ensure that the product is as safe as possible.

Commissioner Gordon asked if that was where California was headed, covered by these packaging and labeling laws.

Asst. City Attorney Doherty stated that they haven't been formally adopted, but the proposed regulations mirror Colorado's and are extensive. She stated that she cannot speak to the details but she did look at them and they were lengthy.

Commissioner Gordon thanked them for their comments. He didn't think it was an issue for him with the edibles on the retail side since it sounds like the packaging laws will take care of the enticement aspect in terms of youth use.

Commissioner Campbell stated that, as he deals with extensive regulations every day, he didn't think the amount of pages associated with the precaution has any bearing on their efficacy. He acknowledged the extensive pages dealing with the packaging but he felt it could be meaningless. He thought there were a thousand pages dealing with tobacco packaging and alcohol sales and many more dealing with opioids at the local pharmacies, but he falls on the precautionary side. He acknowledged that they don't have a conclusive study that says edibles are a bad thing for kids, which he thought the tobacco litigation was about for years with the expert that says there is no harm and you have to allow it. He thought they were saying that on the climate change. He stated that the flip side says that, if you have something that may do harm for children, they should take a slow approach and see how it works on the marijuana side and revisit it later. He suggested that they phase it in.

Commissioner Evans asked the date for recreational marijuana licensing in the state.

Asst. City Attorney Doherty stated that the state says they plan to begin issuing licenses on January 1, 2018, but they don't have the proposed regulations yet and possibly it will be later.

Chair Nibbelin referred to six licenses citywide, per the zones set up, and asked if they were both recreational and medicinal.

Assoc. Planner Murdock stated that it was for both combined dispensary and retail or independent retail and dispensary.

Chair Nibbelin concluded that it was no more than six, and either they were talking about all medical, recreational or a combination of the two.

Assoc. Planner Murdock responded affirmatively.

Chair Nibbelin referred to buffers, and he seemed compelled by what people had to say about medical dispensaries and wondering about whether or not they could develop different buffers between medical and recreational dispensaries. He stated that he had not realized there were any dispensaries on Palmetto and thought they were doing a good job of staying under the radar. If that continued, he didn't see as big a concern to buffering. He asked if they can have different buffers depending on the kind of operation they are talking about.

Asst. City Attorney Doherty stated that she didn't see why not, just requiring adding another type of marijuana type of operation. She stated that now they had proposed three types of marijuana operations and this would probably create a fourth.

Commissioner Evans stated that they were talking about medicinal and recreational, but they won't, through state law, legalize any licensing until January 2018 or later.

Asst. City Attorney Doherty stated that he was correct.

Commissioner Evans thought they should delay that part for the moment, because he questioned what will happen by January 2018. He stated that staff did an excellent job, but he thought there were so many variables and questions, with the buffer zone as a major problem to him. He felt this needs to be looked at more, adding that with it being defined, they have to enforce it and they will put everyone out of business except for one. He stated that he was not in favor of the idea of putting something into place with so many questions.

Chair Nibbelin asked the Commissioners about the next steps.

Commissioner Campbell appreciated the Chair's suggestion of making a difference between medical and recreational.

Commissioner Cooper stated that, on hearing what people want to do regarding the buffer zone and the medical issue, he thought it would be nice to do something as far as passing either the medical or recreational with a modified buffer zone. He would like to hear what would be a buffer zone.

Commissioner Clifford stated that he was willing to vote for medical dispensaries only. He referred to daycare and stated that he thought they were much closer supervised than K-8 or K-12 and he would be willing to reduce the buffer there, 300 feet from a daycare, and leave everything else at 600 feet.

Chair Nibbelin concluded that he would be in favor of stripping out recreational.

Commissioner Clifford agreed that he would be willing to strip out recreational at this point.

Chair Nibbelin asked about outdoor cultivation.

Commissioner Clifford stated he would leave outdoor cultivation in place.

Chair Nibbelin asked about the other uses provided.

Commissioner Clifford stated he would leave testing and manufacturing in place.

Commissioner Gordon asked if 600 or 300 feet buffers have any impact on the dispensaries that are presently located near the daycares.

Assoc. Planner Murdock stated that he would have to do more detailed analysis but he thought a drastic reduction of 50% to 300 feet may exclude one or both of the two he can think of on Palmetto.

Commissioner Gordon stated that he liked Commissioner Clifford's approach but he would be interested in having more data behind it in terms of knowing how much to reduce the buffer in order to make a real impact, otherwise, he feels like they are speaking with blinders on. He stated that he had the utmost respect for all of his fellow commissioners but thought they all have a little bit of reefer madness going on. He realizes that they have to take baby steps, but he was not in favor of carving out just medical. He stated that the voters didn't carve out recreational, but approved it and he felt they should as well.

Chair Nibbelin stated that the question was how they were feeling about some of the other provisions of the regulations for other uses, aside from whether they were going to pull out the recreational dispensaries for the time being.

Commissioner Gordon stated that he had no problem with other uses. He was interested in bringing down the buffer zones, and he had no problem with outdoor cultivation. He also thought they should “chew on the edibles.”

Commissioner Campbell stated that he would be in favor of what was before them except for the edible issue. He thought the buffer should remain consistent with the state law of 600 feet as he thought that was the easiest for everyone to understand. He asserted that he was not against the recreational sale of marijuana in the city, just against the edibles. He was okay with medical edibles, but they have to go through more steps to get there. He was fine with outdoor cultivation.

Commissioner Cooper stated that medical is legal now, and recreational was not coming until 2018, and they were proposing to do baby steps and do what they can do now and add that as a later amendment.

Chair Nibbelin asked confirmation.

Commissioner Cooper envisioned that they could do something with the medical portion and leave the recreational portion aside until they get closer to that point where they have to do something. He stated that, even if they legalize recreational at this time, it was not legal by state law.

Chair Nibbelin agreed, adding that recreational was in the ordinance before them.

Commissioner Cooper agreed, but added that they could parse that out.

Planning Director Wehrmeister clarified that, part of the reason why staff brought it before them now for recommendation was, because if the City Council would like to put to the voters an excise tax, they need to do that by the second reading of an ordinance in August.

Asst. City Attorney Doherty stated that they need to get the language to the clerk of the county to certify for election by August.

Planning Director Wehrmeister stated that they would need the information as to what they would potentially allow in Pacifica in order to make an informed decision on what kind of excise tax they want to put to the voters, whether medical or recreational. She agreed that they have more months technically, but that was the reason why staff brought this to the Commission now because it was going to be informative for the ultimate decision the Council needs to make on the excise tax.

Commissioner Cooper stated that he didn't have any problem with edibles and looked at it as a business proposition. He thought the dispensaries would have a very difficult time operating just with a plant sale or derived sale. He didn't see how viable that would be in the long term and he didn't think they would be doing a very good service to the community by doing that. He felt their reason for being here was to approve some sort of medical or recreational use. He was for medical marijuana sales and, if they limit it to a plant product, he thought a lot of people don't like the plant product and like the edible which was the only way they can take the medicine.

They might get back the appetite in a different way and he thought it was an appropriate use to do the edible. He stated that he would like some sort of recommendation, and was very much in favor of the medical, but was still confused about the recreational with all the things coming up with the state statutes. He thinks it will change as they get closer, but he thought leaving it vague on the medical portion was something they should be doing. He agreed with Commissioner Evans because they don't know what they are doing as far as displacing existing businesses. He was opposed to giving any grandfather clause to the businesses because he thought they were operating illegally now and he didn't want to preclude too much business to come into Pacifica. He thought, if they restrict it too much supply and demand, you won't have any place to supply and demand will be nil and they will miss out on an opportunity. He was open for suggestions. He thought reducing the buffer zones would be a good start.

Commissioner Evans stated that he has no problems with the edibles. Because he was an anti-smoke person, for someone like him, he would go with the edibles. He still has a problem with the buffer zone as he felt it was too restrictive, but if it opens up one spot in a town of 38,000 people, he felt they need to look at that. He stated that, if you think about it, in 2018 when the state comes together with the new regulations, he stated the only difference between recreational sales and medicinal sales was in the medicinal sales you don't pay sales tax currently. If they have excise tax, it will be on both of them. He thought it will be ridiculous to claim restrictions of medicinal and just go a location for recreational. He reiterated that it was down the road as the state didn't know what they were doing with it yet. He knew this was his last night, but he wasn't in favor of voting for this at all at this time, because they need to look at it further.

Chair Nibbelin stated that he was falling into Commissioners Clifford's and Cooper's stance, as he felt it would be good to do something, particularly with respect to the medicinal. He felt confident and comfortable, after hearing from the public on the need that type of business fills. He felt the buffers were too significant and he thought they should keep a significant buffer for schools, but maybe they should consider youth and daycare centers in the case of medicinal dispensaries as a use permit process rather than a hard buffer at all. He thought that would be considered as to whether a use permit would be granted and that would be discretionary for the Commission to consider in the context of any particular location. He thought he would be comfortable with that regarding medicinal dispensary. He was comfortable with the way things are drafted for recreational dispensaries and what staff has put together. He felt, in the context of medicinal use, he felt it was appropriate that edibles be allowed. He can see concerns regarding recreational and he felt Commissioner Campbell has raised some valid ones.

Assoc. Planner Murdock stated that he would like to get clarification. He stated that the discussion on edibles seems to be focused on the dispensary and retail outlet and the end user, and they want to confirm that there was no desire among the Commission to change the proposed regulations related to edible manufacturing.

Chair Nibbelin didn't think that was anything the Commission was saying.

Several commissioners agreed that they had no problems with that aspect.

Assoc. Planner Murdock didn't think so, but he wanted to be sure.

Planning Director Wehrmeister stated that this was anticipated, and they have another meeting and can come back to them with a revision, but in order to effectively do that, they need to get consensus on where the Commission wants to go. She stated that there are four areas, and they need to know what their thoughts are on the buffers, whether or not the marijuana use permit

findings may be sufficient for the lesser buffer. She asked if they supported the overlay zones. She thought they might expand if the buffers change, or she asked if discretionary use allowed within certain commercial zones and there is no overlay zone within the city. She referred to the edible and medical versus recreational sales.

Commissioner Cooper asked if she would clarify the overlay zone.

Chair Nibbelin asked how she would word a question to them.

Planning Director Wehrmeister thought there were some concerns that the overlay zones were too small with not enough potential space where the businesses could go within the city. She stated that this was what they came up with, given the prior direction to maintain certain buffers. She stated that there was the option which was presented in study sessions that you could not have any buffer but allow dispensary retail sales as a discretionary use within certain zoning districts.

Chair Nibbelin asked about the opposite of keeping the boundaries and allowing a discretionary permit for anything less than the boundaries.

Planning Director Wehrmeister asked if he meant keeping the buffers.

Chair Nibbelin stated keeping them where they are and, if they want something less than that, they have to get approval for that.

Planning Director Wehrmeister asked if he was proposing a permitted use outside the buffers and within the buffers is a discretionary use.

Chair Nibbelin agreed that it would be discretionary use within the buffers. He stated that, if you put the buffers at 600 feet, someone could come to them with a specific proposal, and they would look at it on an individual basis and say they agree or don't agree.

Planning Director Wehrmeister stated that she understood that, but she wanted clarification that, outside the buffer, is a use permitted.

Chair Nibbelin asked whether Commissioner Cooper would want to set a minimum.

Commissioner Cooper was not in favor of that.

Commissioner Gordon thought the first part was interesting with the possibility of getting a discretionary permit within the buffer zone.

Chair Nibbelin stated that you already knew the discretionary.

Planning Director Wehrmeister didn't know if they can do this, but she stated that they tried to set up robust findings that would need to be made in order to approve a use permit. She wondered, with direction and input from the Planning Commission, if there were additional findings they could add to use permits they get within the buffer.

Chair Nibbelin asked what the findings would need to be for a variance. He asked if that would be useful. He asked if they would usually be extraordinary things they would have to show.

Assoc. Planner Murdock was not sure it would fit. He thought the variance was looking at topographical or other issues unique to a particular parcel as opposed to uses surrounding the particular site.

Chair Nibbelin understood, and asked if there would be extraordinary or exceptional that an applicant could show in the context of a particular application to justify permitting a business, notwithstanding the application of the buffer.

Assoc. Planner Murdock stated that he may have a concern with no buffer, but the 600 feet was what they were working off because it was the baseline in state law. He felt the findings were robust and something nearer than 600 feet would still be adequately addressed with these findings and the Commission would have discretion when making the findings for any particular application.

Chair Nibbelin asked what the buffer would look like if it was only schools.

Assoc. Planner Murdock thought it would be a lesser area, but he was not sure, adding that the City Attorney can comment whether they could eliminate a buffer entirely for any of those three identified categories. He agreed that they could make them one foot as an example, but he wasn't sure that no buffer was an option.

Commissioner Cooper stated that, if they put one foot for the other uses besides K-12, it seemed there was enough regulation when someone applies for it, and someone has a daycare center that was within 3 feet of that buffer zone and they complain. He thought they would have the authority to say that it doesn't belong there.

Assoc. Planner Murdock stated that it was provided they can point to evidence that led them to that conclusion and what particular impacts they are anticipating from the use and the types of activities typically generated by dispensaries or retailers. It couldn't be arbitrary.

Commissioner Cooper didn't think it would be arbitrary, but if he looks in the provisions there was pretty loose language.

Assoc. Planner Murdock agreed, adding that as long as they can point to some particular impact or impacts, with some evidence for their determination.

Commissioner Gordon thought one idea was to keep the buffer zones and still have discretionary permits and have, within the buffer zone, a heavier burden they have to show. He was ready to do away with the overlay zones as he felt they were way too restrictive. He felt the buffers were enough. He would love to build in some flexibility, and maybe they never let a dispensary into one of the buffer areas but maybe there will be a reason to do it, and he asked why they don't give them the flexibility to make that call.

Assoc. Planner Murdock stated that he had a couple of considerations for staff's recommendation in offering an overlay zone concept which were the ability to have, through the land use realm and licensing realm, the ability to limit the number, and have some influence throughout the city to avoid clustering. He stated that they need to deal with buffers in state law, and if they adopt a lesser buffer, that was something they need to deal with. He stated that having the overlay zones gives them ways to identify areas outside of the buffers where they may be permissible. He stated that the number and location were assets of the overlay zone concept. He stated that, without an overlay zone concept, the dispersion becomes a difficult issue that gets back to the bad

actor concept mentioned in the study session where they want to avoid dispersion but without overlay zones and impose a 200-foot or 500-foot buffer between dispensaries. He stated that one person can come in and effectively block everyone out from a particular commercial district. He stated that staff thinks there is some utility to the overlay zones, but they were not saying they were as they should be. He thought that a reduced buffer of less than 600 feet would open up some of the marginal centers like Eureka Square where a 300 foot buffer would come into play. He stated that the west Manor section likely would come into play and it was possible Fairmont Shopping Center could come into play, notwithstanding Kimco's current reservations. He offered the thought to not completely abandon the overlay zones because of being seen as too restrictive currently. He stated that they seem very interested in reducing the buffer and, as he anticipates that they may be coming back, they could present what that would look like in terms of an expanded area.

Commissioner Gordon mentioned concerns regarding clustering and location, and asked, if they did away with overlay zones, whether they could still be addressed in the discretionary permit context but with more flexibility.

Assoc. Planner Murdock agreed that they could, and he added that they have the presumption that there is a limitation with the overlay zone. They would need to find evidence for why the clustering would be impactful if they relied on the discretionary permit process.

Commissioner Gordon stated that they have a block of retail stores and a dispensary in that block and it would seem to be finding enough to say they don't think it was in the best interest of the area to have that kind of concentration. He asked why it would be more complicated than that.

Asst. City Attorney Doherty thought Assoc. Planner Murdock actually articulated the standard quite well where a legislative body applies a discretionary finding in the issuance of a land use permit. She stated that there has to be some articulable connection between a finding for compliance with some of the discretionary criteria and the decision that is being made. She stated that, as long as they can do that, she agrees that the regulation they are proposing would work.

Chair Nibbelin thought it could be something like impacts from traffic or parking.

Assoc. Planner Murdock added people milling about on the sidewalk waiting to get in because of access controls, and it has been observed in this community or similar communities. They can point to something real and rational and factual, but he feels that a simple justification such as one is enough and two is too many would not be sufficient, and he wouldn't be comfortable relying on that for a basis to deny it.

Commissioner Gordon stated that you wouldn't want to have a couple of liquor stores next to each other on the same block. He thought the police would have some statistics on clustering that kind of store not having desirable effects on a neighborhood.

Asst. City Attorney Doherty stated that one of the benefits of relying on criteria that direct particular discretion is a uniform application of the criteria and findings necessary for issuance of a permit. She thought there was more likelihood for variable application of some of the criteria where permits are evaluated on a one-off situation without strict criteria that the Planning Commission and City Council can rely upon.

Commissioner Gordon thought that was the whole point of a discretionary permit is to trust the commissioners to make an educated judgement based on the facts before them.

Asst. City Attorney Doherty stated that she wasn't sure she totally agrees. She stated the difference between discretionary and ministerial requirements is that the decision making body is vested with some discretion, but that doesn't mean that the decision making body is vested with discretion on every single point related or every single issue that may arise out of a permit.

Commissioner Gordon was saying that he was trying to give them as much flexibility as possible. He referred to the overlay zones and stated that there was not a lot of area.

Asst. City Attorney Doherty stated that, if the intent was to give the most flexibility possible, then they can accomplish that by doing away with some of those findings, but she felt staff was recommending not to do away with all of them.

Commissioner Clifford thought that, before they decide whether they should get away from the overlays and go with the discretionary, they should first see what things look like once they reduce buffers. If they are going to do that, then they can see what the overlays actually look like then and they could have the discussion about whether or not they want to keep them rather than going from what they were seeing now which was not what they will necessarily see when they decide whether they want to reduce some of the buffers.

Chair Nibbelin concluded that the direction to staff would be to keep the overlay concept, adjusted to reflect the change in buffer they ultimately suggest.

Commissioner Clifford responded affirmatively.

Commissioner Campbell felt staff did a very good job with the overlay zones and is backed by some standards. He felt, if they get too far down the discretionary road, they are raising more questions than they can answer and will probably increase their litigation risk as a city as a consequence. He agreed that they should keep the overlay zone concept and perhaps look at some of the general reductions and buffer for some of the facilities and see how that plays out.

Commissioner Cooper asked if anyone has a minimum of what they want them to do, such as 200 and then have them explore all the way up to 600. He asked what direction they give to staff to do some buffer zone and overlay zone. He thought 200 feet didn't seem like a plausible number for a K-12 school, and he would want to start at 300 or 400 and move from there. He was willing to look at a different buffer zone with daycares.

Chair Nibbelin asked that he answer the question first.

Commissioner Cooper felt, for the K-12 schools, they should explore the 400 foot buffer and they already have the 600 foot buffer and that would be appropriate. For the daycare centers, he thought they should explore down to 200 feet and see where that leads them, going from 200, through to 600. He felt it was important that they look at where the current dispensaries are. He was not going to give any preferential treatment to any of the dispensaries but they have done some research and found where it was possible to do such type of business. He felt that would be useful to him. He was for the overlay zones as an appropriate way to regulate. He stated that they can always change it in the future. He was for edibles. He stated that, with medical versus recreational, he was totally for medical. With recreational, he was for putting something together because they should do that for the City Council to bring an ordinance together and do an excise tax. He stated if state law trumps it, then they will have to deal with it anyway.

Assoc. Planner Murdock asked if Commissioner Cooper could chime in on his preferred buffer from youth centers.

Commissioner Cooper stated that he would go down to 100 feet. He stated that the youth centers fall in line with where the schools are. He asked if Oddstad or Linda Mar were still schools.

Assoc. City Attorney Doherty stated that it has to be a school that is offering primary education.

Commissioner Evans stated that he would leave edibles into it. He liked the idea of overlays but he would want to see what the downsized spaces are. He liked Commissioner Cooper's choices, but he questioned the youth center because of their age and would go a little higher. He thought the youth center was like a school because they won't be sending small kids to a youth center. He was trying to make it easy for the businesses, and they aren't.

Commissioner Campbell stated that the 600 foot buffer was the most workable, and was backed by findings from the state. He stated that, to examine multiple buffers, their time was not limitless and he would go for the 600. He thought his position was clear on edibles, but he would ask Commissioners Evans and Cooper, stating that he didn't get whether it was across the board, recreational and medical or just medical.

Commissioner Cooper had no issues with either one.

Commissioner Evans had no issues either.

Commissioner Gordon stated that he has no problem with edibles on recreational and medical. He loved Commissioner Clifford's suggestion to bring down the buffer zones and see where it leaves them with overlay zones. He stated that he would go down to 100 feet for daycare, 400 feet for youth centers, K-12 he would love to see 400 and 600.

Commissioner Clifford stated that he had no problem with the edibles. He was concerned about the legal ramification of the recreational on the federal level. He stated that he would like to see K-12 stay at 600. He could see daycare going down to 250, but he would like the youth centers at 600. He stated that it was the comings and goings of children in an age group that might be more interested in the recreational aspects of marijuana and K-12 and youth centers have the freedom to move about that daycare centers don't.

Chair Nibbelin thought 600 feet buffers was appropriate for schools and youth centers. He thought they should keep the 600 for recreational, and 600 feet for medicinal but minimal or nominal buffers for a medical dispensary but thought it would be difficult to map out, but he felt the use was different and different buffers are appropriate especially daycare and youth centers. He was in favor of the edibles with respect to medicinal use but no recreational in terms of selling it.

Planning Director Wehrmeister asked how the Commission felt about the number of dispensaries at 6. She wanted to be sure they had that nailed down before they come back.

Commissioner Campbell asked if it was 6 dispensaries or 6 marijuana businesses.

Planning Director Wehrmeister stated specifically retail dispensaries.

Chair Nibbelin asked if 6 applied to any kind or just the recreational.

Asst. City Attorney Doherty stated it was for all retail establishments, and they did not differentiate between medicinal and non-medicinal.

Commissioner Clifford was good with 6.

Commissioner Gordon thought 6 seemed high for Pacifica. He thought Commissioner Nibbelin was the only one who gave different buffers for medical versus recreational.

Commissioner Campbell stated that 6 was what was discussed at the study session and staff did a good job in supporting it and he will remain with 6.

Commissioner Cooper was fine with 6.

Commissioner Evans was fine with 6.

Chair Nibbelin thought it was high, but it has been discussed since the joint meeting and is the figure kicked around.

Planning Director Wehrmeister stated that the motion would be to continue this to June 5.

Commissioner Campbell moved that the Planning Commission continue this item to June 5, 2017; Commissioner Gordon seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Clifford, Gordon, Campbell, Cooper,
Evans and Chair Nibbelin
Noes: None

Chair Nibbelin called a five-minute recess, and then resumed the meeting.

2. TA-107-17

Text Amendment TA-107-17, Initiated by the City of Pacifica, to Consider Extension of Title 9, Chapter 5 – Growth Management Ordinance of the Pacifica Municipal Code to Expire on June 30, 2017. As Scheduled the Text Amendment to be Discussed Would Affect Property Citywide. The Planning Commission Will Consider the Text Amendment and Make a Recommendation to the City Council. Recommended CEQA Action: Exempt.

Planning Director Wehrmeister presented the staff report.

Commissioner Gordon stated that they divide it into two parts, stating the first part would require a public vote for rezoning of HPD and part two was the allocation. He understood that they could see a basis for letting part two expire because it was not serving a purpose. He asked for more information.

Planning Director Wehrmeister stated that the ordinance stipulates that only so many building permits can be issued each year. She added that single family homes are exempt from the ordinance. She stated that the ordinance also allows the annual allocations to continue to roll over and accumulate year after year. Because growth has been slower in Pacifica since the ordinance has been adopted, the accumulation has been so great, but there was no metering

occurring. It has organically happened in Pacifica. She stated that part of the ordinance was not serving its purpose.

Commissioner Gordon asked if it imposes a burden on Planning in some way.

Planning Director Wehrmeister stated that it does, but it wasn't a significant burden. She stated that they need to prepare a staff report when there was a proposal for more than a single family home, mentioning the four units on Palmetto. She stated that, under the provision of the ordinance, there was no allocation process but an automatic consent calendar item to City Council. She stated that there was not a significant analysis or staff time but there was some work needed to go into it.

Commissioner Gordon thought there was not the ability to let the part not serving any purpose expire and the rezoning part be kept active. He assumed there was not the option of extending the part requiring rezoning and let the part not serving any real functional purpose to lapse.

Planning Director Wehrmeister stated that they would have to come back with an amended ordinance. She stated that, if they want to recommend to the City Council that the provisions that apply to the rezoning of agricultural and hillside preservation lands stay in place, she would recommend that they go ahead and adopt the ordinance recommending that the entire growth management ordinance be extended.

Commissioner Evans stated the one statement in the report that took him back was the mention that due to the high number of RDAs available, 1,483, the GMO is no longer meeting the intent of the voters in Pacifica. Under current conditions, five separate developers could come in and each develop 295 units within their allotment and they would still have leftover.

Planning Director Wehrmeister responded affirmatively.

Chair Nibbelin stated that, pertaining to sections 9-507 and 9-508, agricultural land and hillside protection, both would require a vote of the people for certain kinds of rezoning. He asked if that resulted from an original vote that the voters of the city voted on.

Planning Director Wehrmeister responded affirmatively.

Commissioner Cooper asked if she could explain the Hillside Preservation District rezoning for him.

Planning Director Wehrmeister stated that, with the Hillside District and agricultural district under this ordinance, if an individual wanted to rezone one of those pieces of property to something other than agricultural or take away the Hillside Preservation overlay, this states that it would require a public vote to do that.

Commissioner Cooper asked that, if they let it lapse and the developer wants to develop the Hillside Preservation District, they would not need to go to a vote as long as it was within a permit.

Planning Director Wehrmeister agreed, explaining that it would still require the regular review, Planning Commission recommendation to City Council, environmental review that any other rezone would require.

Commissioner Clifford asked if they follow staff's recommendation and allow this to expire or are they still carried on the books for a developer to tap into.

Planning Director Wehrmeister stated that it would not be necessary because there would be no allocation process.

Commissioner Clifford asked if additionally the units that they had previously backed would be gone.

Planning Director Wehrmeister responded affirmatively.

Commissioner Clifford referred to the agricultural and hillside protection, he thought she said that they had different expiration dates than the rest of it.

Planning Director Wehrmeister stated that the way it was drafted was that there was a termination clause in the last section which applies to the chapter. The agricultural land rezone and Hillside Protection District rezone contain their own expiration dates.

Chair Nibbelin stated that the point was that the termination for the entire chapter supersedes the 1977 date reflected.

Planning Director Wehrmeister thought that was a typo by the publishing company. She thought it was supposed to be 1997.

Chair Nibbelin stated that those remain in effect owing to the last subsection of the chapter.

Asst. City Attorney Doherty stated that the ordinance as a whole was extended by the City Council prior to the 1997 expiration dates in subsections 07 and 08, and their interpretation means that the chapter as a whole was extended, and the extension superseded the internal expiration dates.

Commissioner Cooper would like to pause and ask the city attorney before he does a motion.

Chair Nibbelin stated that they will have a public hearing before there is a motion.

Commissioner Cooper stated that they could proceed.

Chair Nibbelin opened the Public Hearing.

Peter Loeb, Pacifica, stated that he support what the Planning Director says that, in order to keep the Hillside Preservation District and agricultural rezoning things active, the simplest thing to do is to extend the ordinance and he was present to ask that they extend the ordinance so the public vote requirement for rezoning agricultural and HPD land stays in effect.

Sam Casillas, Pacifica, thanked Mr. Evans for his service. He then stated that some of the most precious space Pacifica has is the beautiful hillsides. He stated that, in the last 20-30 years, agricultural land on the coastside has been devastated by development. He stated that they had visionaries when the ordinance was put together to think about what they are trying to accomplish when they take the most precious type of space to think about developing it. He stated that the public growth that was part of the growth management ordinance was important as it forces them to think about it. He stated that, when people visit him, they marvel at the fact that everywhere

else they go the hillsides are developed and all they have are mega homes and Pacifica continues to have great open space and agricultural on Highway 1 in certain sections. He stated that, in the future, we have to recognize that we do need to keep a lot of agricultural land open. He pointed out about places like Gilroy where they had all the fields along Highway 1 and now it was massive development. He felt it was terrible to do that to our precious agricultural land, when you consider it California's bread basket and the backbone of its economy is agricultural and we need to be careful with that. He encouraged that the Planning Commission recommend that the ordinance be extended and we continue to look at having public input and vote when these very precious lands come up for consideration to change it to something else.

Dinah Verby, Pacifica, thanked staff for clarifying the issue of the conflict between those dates. She felt it was clear that the voting protections are still in the ordinance and she hope they got a chance to read the email she sent, mentioning that there was a strong history behind it that many of them probably didn't know. She stated that the public vote was as important if not more important than the actual number of units. She felt they were equally important to the voters that it launched a firestorm of political craziness when the Council, 1993, let the growth control ordinance lapse. She stated that the pro-growth control vote was 87%, which was the highest percentage for voting on anything they have seen in Pacifica. She stated that the fact that it has routinely continued and extended ever since was because that was what the voters want. She stated that it has served its purpose. She didn't think about the issue of whether they still need the RDA allotments but, because of the shortness of time, she suggests that they recommend the second alternative and extend it so it doesn't expire and later come back to amend it to tweak the RDA numbers.

Leo Leon, Pacifica, stated he urged them to extend the alternative Attachment B and keep the vote on agricultural and hillside protection intact. He would like to see them make it permanent rather than extend every five years. He stated that the regional housing allocation and accrual need to be addressed. He didn't think they can do it now, but he thought, if the formula is off, they should freeze it until the allocation catch up with the balance which he thought was reasonable and not too far a reach. He thought they may need at some point a chance to activate it and see if it catches up. He stated that, of the accrual number, 20% is available in any given year to anyone who comes in. He suggests that they freeze it and let the number draw down. He stated that he remembers that election and some of the actions the preceded that election. He stated that there was broad support for hillside preservation and agricultural vote in Pacifica.

Timothy Cowan, Pacifica, stated he was speaking to extending the ordinance for another five years. He stated that he was a participant in the original battles. He stated that, at the time, the newly elected City Council had proposed a whole other ordinance that would take away the vote of the people and when they saw that wouldn't fly, they duplicitously said they had calls about the original ordinance and people like it and they will put them both on the ballot. He stated that the ballot worked by local citizens was regarding the taking of their land and they had a third ballot measure. They ended up with an overwhelming vote of the people to keep the people's right to vote on the overlay of the hillside preservation and agricultural lands. He referred to the city to the north that generated the famous song about little boxes, and no one wants Pacifica to look like that with the exception of some realtors. He stated that the vast majority of Pacificans want the right to vote on these things to be maintained and he encouraged them to do that and not have us go through another community roiling experience, which will happen.

Hal Bohner, Pacifica, stated he didn't have any new things to say that haven't already been said, recommending that they extend the ordinance. He agrees that it is the way it should be. He

stated that the public cares about their open space, and these are two key examples of that. He asked that they extend the growth control ordinance.

Chair Nibbelin closed the Public Hearing.

Commissioner Campbell thanked the speakers for coming. He thought this may be one of the more important votes they take to extend this ordinance. He felt it was an ordinance that has kept Pacifica's hillsides to some extent preserved and maintained our quality of life. He sees the problem with the RDAs needs to be fixed, but agrees that they can come back and fix that but for now extend the ordinance as is.

Commissioner Gordon thanked the speakers. He stated that we live in a beautiful area and we get to benefit from a lot of hard work that went on to pass the GMO. He would be voting in favor of extending, and concluded that they would prefer across the board rather than slice and dice.

Commissioner Clifford stated that, after his many years on the Open Space Committee and previous stint on the Planning Commission, he has seen the value of the Hillside Preservation District and the agricultural districts and he would not want to be the one who votes to have them expire. He will vote to extend the ordinance.

Commissioner Evans thanked everyone for coming and sitting through the first discussion. He stated that he was also on Open Space before he got on the Planning Commission and sees the value in that. He believes that the two items should not be together. He stated that the whole idea of the RDAs, nobody was building except individual homes which are exempt. He wasn't worried about it, but he thought they should, at some point, separate the zoning away from that and deal with the RDAs. He believes they should keep in place the protection of hillside and agricultural.

Commissioner Gordon stated that he was ready to make a motion unless someone wants to talk.

Chair Nibbelin stated that, broadly speaking they should be getting rid of the annual allotment processing as it doesn't appear to be serving any particular purpose and he was not speaking in favor of growth control measurements. He stated that, with respect to the agricultural land and hillside protection, he felt it was eminently clear, given the comments and history shared, this was something very important to the voters and was approved in the first instance. He stated that, if this was the mechanism that staff was recommending to insure that this particular voter input process remains in place as to agricultural and hillside protection, he was in favor of extending for that purpose, but not thrilled about the allocation aspect.

Commissioner Gordon moved that the Planning Commission adopt the resolution included in Attachment B, recommending that the City Council adopt the drafted ordinance amending the Municipal Code to extend Title 9, Chapter 5 – Growth Management Ordinance of the Pacifica Municipal Code for five (5) years; Commissioner Campbell seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Clifford, Gordon, Campbell, Cooper,
Evans and Chair Nibbelin
Noes: None

CONSIDERATION:

3, Appointment of One Planning Commissioner to the Library Advisory Committee.

Planning Director Wehrmeister stated that they need a new advisory committee member because Commissioner Evans will no longer be with us.

Chair Nibbelin asked if there was anyone willing to step into the breach. He then stated that, given the hour, they will carry this over to the next meeting.

STAFF COMMUNICATIONS:

Planning Director Wehrmeister let the Commission know they were having a library community meeting at Ingrid B. Lacy Middle School on the following Tuesday, May 23, with an open house from 4:00 to 7:00 p.m. and a workshop from 7:00 to 8:30 p.m.. She stated that there was a mailing that went out and the consultant had a database glitch and you may have seen a different owner name on the mailer associated with their address.

COMMISSION COMMUNICATIONS:

Chair Nibbelin stated that it wasn't possible to articulate adequately the value that Commissioner Evans has added to the Planning Commission and other places where he has served his city and neighbors over time. He stated that they have an official recognition of his work and he then read a proclamation. He then mentioned that, when he came on the Planning Commission, Commissioner Evans was the chair and he felt his way of telling how things were done was important for him getting up to speed and learning how the Commission functions. He wished him luck in his endeavors.

Commissioner Cooper stated that someone approached the bench during the break and shared a card that said under siege was marijuana in Colorado Schools, and he wanted to provide the information. He then mentioned that when they first got on the Commission, they were new and didn't know what was going on, and his guidance has been crucial for him and probably his fellow commissioners. He has been very inspiring to them and he wished him the best in the future. He was happy that he will be closer to his grandchildren.

Commissioner Campbell stated that he has served with him during his entire tenure. He stated that, at these meetings, they get involved and get excited, and he was always the calm voice in the room and centered things and he appreciated that. He stated that he will definitely be missed. He wished him the best on the move, hoping he will have a wonderful time.

Commissioner Gordon stated that the city of Pacifica was a better place because of him, and he thought it will be a more lonely place without his presence. He appreciated his presence on the Commission, stating that he brings a folksy down home approach that brings some sanity to what sometimes feels like a circus. He thanked him and wished him the best of luck down south.

Commissioner Clifford stated that he will miss him so much. He stated that they have been fellow commissioners but also friends for years. He appreciates both his thoughts on the

Commission and having a beer with him on occasion. He hoped he enjoyed his time down south with his kids and grandkids.

Commissioner Evans stated that staff has always made their job doable because, without them, they couldn't be there. They are supposed to represent the entire town, but they aren't masters at what they do and they rely upon them and they have been excellent. He was going to miss them. He has seen a lot of staff come and go and keep up the good work. He asked that they help whoever takes his place as they will need the help. He stated that he needed the help when he got on and didn't think he said a word for the first couple of meetings but just tried to catch everything going on. He thanked them all, stating that they each bring something so needed into the Commission. They are supposed to widely represent the town, but he was so pleased and sometimes shocked that they have a 7-0 vote which says a lot to him. He stated that he would come in with his thoughts on the subject and then hears someone's comments and think that is right. He stated that he and his wife moved here in 1991 and he loves the town. He asked them to keep it the same. He will miss them. He loves them and said to keep up the good work.

ADJOURNMENT:

There being no further business for discussion, Commissioner Gordon moved to adjourn the meeting at 10:18 p.m.; Commissioner Cooper seconded the motion.

The motion carried **6-0**.

Ayes: Commissioners Clifford, Gordon, Campbell, Cooper,
Evans and Chair Nibbelin
Noes: None

Respectfully submitted,

Barbara Medina
Public Meeting Stenographer

APPROVED:

Planning Director Wehrmeister