

MINUTES

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

July 17, 2017

7:00 p.m.

Chair Nibbelin called the meeting to order at 7:01 p.m.

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

SALUTE TO FLAG: Commission was led in a salute to the flag.

STAFF PRESENT: Planning Director Wehrmeister
Assoc. Planner Murdock
Asst. Planner O'Connor
Contract Planner Gnos
Asst. City Attorney Doherty

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

The motion carried **5-0**.

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

APPROVAL OF MINUTES: MAY 15, 2017 Approval of minutes was moved and seconded.

The motion carried **4-0**.

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

APPROVAL OF MINUTES: JUNE 5, 2017 Commissioner Gordon moved approval of minutes of June 5, 2017; Commissioner Clifford seconded the motion.

The motion carried **5-0**.

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

**APPROVAL OF
MINUTES:
JUNE 19, 2017**

There was not a quorum so approval of minutes will be postponed to another meeting.

DESIGNATION OF LIAISON TO CITY COUNCIL MEETING:

None

ORAL COMMUNICATIONS:

None

CONTINUED PUBLIC HEARINGS:

- 1. RIA-1-16** **Rent Increase Application RIA-1-16**, filed by Applicant Law Offices of Mark Haesloop Pursuant to Pacifica Municipal Code Section 9-4.2455(E), to Increase the Rent by 25 Percent or to Market Rate, Whichever is Lower. Upon the Expiration of Each Tenant's Term at 435 Gateway Drive (APN 009-540-110, 009-540-120, 009-540-130, 009-540-140, 009-540-150, 009-540-160 and 009-540-170) in Pacifica; the Site is a Multi-Family Apartment Complex Approved for a Condominium Conversion. Recommended CEQA Action: Class 1 Categorical Exemption, CEQA Guidelines Section 15301; and Section 1506(B)(3).

Contract Planner Gnos presented the staff report.

Commissioner Clifford referred to a letter from the Legal Aid Society asking, if they grant the increase, whether that will be in effect forever or will they have to return to the city for additional rent increases.

Planning Director Wehrmeister stated that the Commission had the discretion to phase the rent increase over time, if they desired to do that and the Commission had the option to approve a one-time rent increase and future rent increases would need to come back to the Commission, explaining that the reason was three factors the Commission must consider, i.e., point in time factors, and it was difficult for staff to make a recommendation for approval that is prospective within the parameters of the Municipal Code.

Commissioner Clifford stated that, in terms of the prospective, he thought it sounded like staff would be uncomfortable with it being all encompassing.

Planning Director Wehrmeister responded affirmatively.

Commissioner Clifford asked if staff report reflected that, if they give 25% or a lesser amount, that would be it or would they go ahead and have them come back.

Planning Director Wehrmeister stated that it was their intention to write it so a future rent increase would need to come back. She questioned whether, before the item was concluded, Counsel would think they need to word it differently to make it explicit, and if so, they can do that.

Commissioner Gordon asked clarification on their authority if the Commission would approve the 25% increase but do it in several phases. He thought he heard her say they had that authority, but they were uncomfortable with it.

Planning Director Wehrmeister stated that they have that authority, but she would not feel comfortable with an approval that stated that, in five years, they could get a 10% increase.

Commissioner Gordon thought they were in favor of them doing it in phases in a shorter time period.

Planning Director Wehrmeister responded affirmatively.

Commissioner Gordon asked if it was three years or two years.

Planning Director Wehrmeister stated that it was arbitrary but she had three years in mind.

Commissioner Gordon understood, stating that it was arbitrary but in a reasonable way. He referred to the three factors they are supposed to consider in evaluating the rent increase, and he thought, with the first factor of prevailing rents for similar units, they had lots of data. On the third factor, the condition of the unit, he assumed they will get a report from the subcommittee.

Planning Director Wehrmeister responded that he was correct.

Commissioner Gordon thought he was handicapped on the second bullet point because of not having a hard copy, and asked that she point out where the data was regarding the rent component of the Bay Area Cost of Living Index of the DOL, or if she could summarize it in one sentence, that would be great.

Contract Planner Gnos stated that it was confusing because the terminology in the Municipal Code didn't match the current terminology in the Bay Area Cost of Living. She stated that the code says residential rent component and when you look at actual components, there was overall shelter index and rent of primary residence index. She thought rent of primary residence seemed more equivocal, and that increased by 6.4% in one year from December 2015 to December 2016, the most recent data at the time of doing the staff report. She added that they don't have that historically.

Commissioner Gordon stated that it didn't sound very helpful.

Contract Planner Gnos stated that it was not.

Commissioner Gordon thought the first and third prong will be more informative than the second prong because of lack of historical data. He stated that they would not extrapolate one year to the other years.

Contract Planner Gnos agreed, and stated that, even if it was 5% and you extrapolated it from 2008 until now, it would be a 48% increase. If 3%, it would be a 27% increase. She stated that, just looking at the round numbers, it gives them a ballpark.

Commissioner Baringer stated his question flows with Commissioner Clifford's concern about stepping the rental, stating that he didn't know if they had a definitive response from their attorney. He asked if it was possible to condition the increases by tying them to tangible improvements made at the property, with the understanding that the improvements would come either simultaneously or close to the rental increases. He thought they had asked that previously, but he wasn't sure they got an answer.

Asst. City Attorney Doherty stated that it was a good question. They did discuss it at the last meeting, and she had the opportunity to confirm that her position has remained unchanged, i.e., the Commission's authority with respect to the condo conversion ordinance relates to a rent increase and their discretion was to assess whether the rent increase was appropriate based on the three conditions that Commissioner Gordon addressed and conditioning the rent increase on tangible conditions of improvement goes beyond what the ordinance allows the Commission to consider.

Commissioner Baringer stated that, hypothetically, if they took a pragmatic approach, they could say no to the rent increase, repairs could be made and they could resubmit and they could reconsider at that time, in theory.

Asst. City Attorney Doherty agreed, adding that they can make their determination at this time based on the conditions of the unit.

Commissioner Baringer clarified that it was at the time the application was made to seek a rent increase.

Asst. City Attorney Doherty agreed, adding that also at the time of this hearing, based on the fact that the subcommittee has made observations on the conditions of the units and those observations can be considered in terms of the conditions existing today.

Commissioner Clifford stated that this was the first time he has ever done a slide presentation or subcommittee report. He referred to the three factors that the Commission can consider and stated that they appointed the subcommittee based on their experience in this area, mentioning their backgrounds specifically. He stated that the basic structures were slightly rundown, landscaping did not compare to comparable apartment units in the area, the office was in terrible shape, trash bins were overflowing on both visits.

Commissioner Baringer stated that they took a look at the entire property, including the parking areas. He stated that they were not striped to indicate where the parking areas were, with large areas where the asphalt was breaking up and needs to be removed and repaved. He stated that the electric car plug in stations mentioned at the previous meeting had not been installed.

Commissioner Clifford stated that there didn't appear to be any guest parking. He stated that the street curbs in the area are painted red, which prevents the apartment dwellers from having guests. He stated that the windows are need in resealing or replacements, with damage to the trim as well as water damage and mold. He stated that cement patio walls in one section were

sinking and tilting away from the building. He stated that the building didn't seem to have any seismic retrofits. He thought the area needed some level of fireproofing as the back wall of the parking spaces had plywood. He stated that the main electrical panels were heavily rusted, and under one building there was galvanized conduit that had become unmoored and was draping across the bottom of the building. He acknowledged that the laundry area was freshly painted, but the washers and dryers were in bad shape with heavy rust, with several not serviceable. He stated that there was mold damage in multiple rooms in the apartments, with water and dry rot around the windows, signs of water reaching an electrical baseboard heating unit, leaky faucets, with the tub in one unit running steadily and in another unit a steady drip, with dry rot in the floor at the base of the tub and at a window in another unit, sheetrock around one window disintegrating. There was corrosion on the shower frames in several units, with one ready for failure. He mentioned seeing a rat trap in one unit, which confirmed concerns about rodent problems. He referred to lack of maintenance in one unit, kitchen cabinet doors sagging in another, rotting countertop in another.

Commissioner Gordon thanked them for the presentation. He asked if they saw two units.

Commissioner Clifford responded affirmatively.

Commissioner Gordon asked how they selected the units.

Commissioner Clifford stated that they offered, and they didn't have the desire or authority to pound on other doors.

Commissioner Gordon asked if they had a way of knowing if these were representative of the other units, stating that they didn't know if two units out of 100 were representative. He was playing devil's advocate, and thought they might not be seeing a representative sample.

Commissioner Clifford stated that he has the same concern, adding that they had other people who sent letters and spoke at the last meeting who reported conditions similar to these two units. He did acknowledge that he still didn't have an idea of the percentage of the units that have the problems. He stated that these did, and others did report similar conditions.

Commissioner Baringer understood that it wasn't statistically relevant, but he thought it was significant that both of them were long term tenants, 11 and 13 years, and as a manager of buildings, he thought that they were allowed to exist like that for a long time indicated short coming problem in management problems. He asked, if you have a bad tenant, why they are there 11 and 13 years. He stated that they were talking about carpeting that had not been replaced in 11 years. He asked why they are the only ones out of 100. He stated that, on looking at the exterior, there was a pattern of poor maintenance and they happened to have access to two, but he thought they would recognize of others were good condition. He was seeing a pattern that causes him concern.

Commissioner Gordon asked if they had a sense that the occupants made their concerns known to the owners.

Commissioner Baringer stated that they both had expressed their concerns, adding that they couldn't corroborate that, but thought the owner could comment when he made his presentation. He mentioned that the owner could give them the ability to inspect every apartment, but that

wasn't how he wanted to spend the next month. He reiterated that there was a pattern to indicate that there were corrective steps that need to be taken if they are talking about market rate project to have market rate tenants, and he didn't think the maintenance was not to that level. He felt it could be at that level, as other properties in the area were at that level.

Chair Nibbelin opened the Public Hearing.

Mark Haesloop, applicant, stated that he was the applicant on behalf of the owners. He apologized for not being at the previous meeting. He went to his doctor and had emergency surgery the following morning. If present, he thought he could have answered a lot of the unanswered questions. He referred to the status of the project, stating that, while it was not germane to the application, there was a lot of interest in where they are. He stated that the map was recorded in 2014, creating a condominium under the government and civil code and municipal ordinances. He stated that the rest of the requirements were for sale and to be accomplished at the time of sale. He stated that they will be certified by certificates of occupancy on each unit before they are sold. He stated that there were subdivision reports with conditions that were put out by the state through the Bureau of Real Estate. He explained that the homeowners' association was incorporated, CCNRs recorded in April 2015, and the applicant applied to the Bureau of Real Estate for a phased subdivision, which means the project will be sold in six phases. He stated that a development of a marketing plan was needed to complete the sale. He stated that the prices will be established when they are ready to sell, and they will establish model homes, which will have new wall surfaces, floor coverings, etc., at several quality levels. He stated that they will have marketers available to owners to pick the quality they want. He stated that the common areas will also be subject to conditions of approval and will be met. He explained the standards of utilities and stated that the date of sale will be when they will be brought up to standard. He referred to the rental increase and issues mentioned at the previous meeting. He referred to the comparisons of this project with other projects in the area, mentioning that the city relies on the County Housing Authority and he stated that their reports on this project were no different over the past years than any other projects they have looked at. He stated that the subcommittee inspection was not a scientific sampling, and they did not request access to any other units. He stated that they believe the units inspected were problem tenants, mentioning some specifics in Unit 6 where inability to get access was the problem. He stated that they were concerned about that unit meeting fire codes for access. He stated that they have trouble with occupancy on another unit inspected which did not meet requirements. The occupants of one of the units stated they were moving and the owners offered them another unit to take care of the occupancy issue and were told the renters couldn't afford the larger unit and the owners said they would go in and do their normal refurbishment after they moved. The renters then changed their minds and now they were back to square one. He stated that he had a letter for the city which the property manager had tenants sign asserting that they were happy with the cooperation. He stated that they didn't have a set program for replacing every appliance, carpets, etc. after a certain number of years but did it on an as needed basis and, if they inspect and something needs to be replaced, it is replaced. They do an annual visual inspection when the property manager prepares work orders for things they see, and he had several forms. He stated that he can talk about the tenants' right of first refusal for sale, stating that he didn't know why it has taken so long to get a hearing and stating that they would have gotten several rent increases already if expedited. He stated that they were asking 25% increase or market or less. He stated that they will not be coming back under their program because within two years they will be at market. He stated that landlords cannot solve income inequality, and if they had

3,000 new housing units in Pacifica, they would not have a rental crisis or a city that anyone would recognize.

Wanda Whitaker, Pacifica, stated that she has been a resident at Marymount Gateway since 2003. She has a history and knows a lot about the property and she stated that there has been a problem, particularly with the trash bin, but it has gotten a lot better than it used to be. She stated that she has been through three managers and the last one has been much better than the other managers. She stated that, every time she has requested something, it has been taken care of. She referred to the forms Mr. Haesloop mentioned, and she stated that they got the forms from the previous manager to fill out for improvements. She stated that she has never had a problem asking them to do something for her and it has always been taken care of almost immediately. She stated that she has a problem with the rent increase and has not had a rent increase since 2008, with a previous one in 2005. She thought there were things happening legally that prevented any further increase in rent. She mentioned the raccoon and rodent problem, and they talked about the trash needing to be dumped at least three times a week. She stated that other people dump trash in that bin and it wasn't fair to the people who live there. She understood they need a rent increase to improve the property but she doesn't like the 25% which was very quick. She stated that she was speaking for those who cannot come to speak and are disabled, or on social security. She felt it should be a gradual process or 5%.

Chair Nibbelin acknowledged that they got a letter regarding the Marymount Summit Condos and dated July 2013 or 2017, referring to the experience of those signers with the management which stated that management was responsive to their requests and he passed that to the other Commissioners. He stated that he counted nine signatures on the letter.

Chair Nibbelin closed the Public Hearing.

Commissioner Gordon referred to the applicant's comment that they submitted a request for a rent increase in January 2016 and there was an undue delay, and he asked for staff's response.

Planning Director Wehrmeister stated that it has been in the Planning office for a long period of time. She stated that they have been busy with large legislative policy projects, and this was not deemed to be subject to the permit streamlining act as it was not a development project. She understood the applicant did not appreciate this, but they were able to take more time with it and carefully consider it.

Commissioner Gordon was glad he was back on his feet. He stated that he wasn't at the previous hearing either and he stated that, based on the record, there was a very large gap between market rate and the range of rents that are being charged. He mentioned that the subcommittee's report was stating that the units were dilapidated and it was the applicant's position that it was not representative. He assumed that there was a large gap between market rate and what they are charging.

Mr. Haesloop responded affirmatively.

Commissioner Gordon stated that it was in excess of 25%. He asked why they didn't do something about this earlier. He stated that the gap was growing every year in terms of the disparity between market rate and what they are charging.

Mr. Haesloop stated that they were not asleep at the switch.

Commissioner Gordon stated that they are not philanthropists.

Mr. Haesloop stated that the packet mentioned a lawsuit was filed a couple of years ago and it took years to wind its way through the court. He stated that the lawsuit was a direct result of the horribly written condo conversion ordinance that Pacifica has.

Commissioner Gordon stated that it sounded as if the complaint was that the city didn't follow the rules. He stated that he took offense that he was saying they didn't follow the rules but that it was the rules' fault.

Mr. Haesloop stated that, if you read the decision, the judge pointed out the rule and laws and he agreed with some of their points and with some of the defendants' points.

Commissioner Gordon asked what that had to do with his question.

Mr. Haesloop stated that they didn't want another lawsuit while that was pending concerning rent increases.

Commissioner Gordon didn't think that was very persuasive. He questioned how coming to Pacifica to request a rent increase would mean a lawsuit.

Mr. Haesloop stated that he didn't represent the developers in that lawsuit, but one issue was that the purpose of relocation provisions of the city's ordinance and the purpose of this particular provision of rent increase, was to prevent someone doing a condo conversion from jacking up the rent to force everyone out so they have a clean project to deal with. Because the conversion makes some people decide to leave, they have to give them certain benefits. He stated that, being told they have to pay relocation benefits for those who moved of their own free accord, they did not want to come to them with a rent increase as it would look like they were jacking up the rents to clear the place out.

Commissioner Gordon questioned how asking for rent increases to market rate could be perceived as jacking up rent. He was pursuing this point because he found it distasteful that they city delayed this for two years and they would have gotten a rent increase. He clarified that it was only 1 ½ years from time of submission and it was eight years between condo conversion and the initial application and he thought an eight-year delay was substantial and puts the tenants and the city in tough position. He stated that they were asked to approve a 25% rent increase instantly. He thought it would have been better to have something more gradual and he asked the reason why they didn't take the reasonable approach over time rather than eight years and come for one big one.

Mr. Haesloop stated that the primary reason was that the owners were very nervous about any rental increase until the lawsuit was over. He stated that it was their decision as to whether that was compelling or not. He questioned what this process looks like going forward. He stated that, by asking for 25%, within two years they will be at market and they won't come back. He asked, if they tell them they will give a one-time rent increase now and they have to come back again, whether it will take another 14-15 months to get a hearing. He thought they were weighing fairness.

Commissioner Gordon stated that he was getting ahead of himself. He reiterated that his question was why the delay and he stated that it sounds like his answer was that he was afraid of being sued.

Mr. Haesloop stated that he looks at the criteria for granting rent increase. He stated that there were three but a sense of inherent fairness is not one of the criteria.

Commissioner Clifford stated that he was glad to see he is back on his feet. He referred to the lawsuit, and he asked when that happened.

Mr. Haesloop stated that it was about six years ago.

Commissioner Clifford asked if that would be 2011.

Mr. Haesloop agreed that was about six years ago.

Chair Nibbelin stated that the information in the packet noted that the judge's order was dated July 2016. He asked if they were talking about the same lawsuit.

Mr. Haesloop stated that it was correct, adding that it took Judge Weiner quite a while to move through that situation.

Chair Nibbelin stated that he wanted to be clear on that point.

Commissioner Clifford assumed that six years ago is when it was started, dating back to 2011. He asked if that started because they were raising rent on some of the apartment or all of the apartments at that time. He concluded that was part of what the lawsuit was about.

Mr. Haesloop stated that the primary money issue in the lawsuit was whether or not they were required to pay moving expenses to people who moved of their own volition and had nothing to do with the conversion to condominium. He stated that the other issue was for new tenants coming in and not impacted. He stated that originally there were tenants who thought they were living in an apartment building, and you apply for your condominium conversion and there is a theory that some would not want to live in a condominium so would feel they have to move or they will be kicked out and have to move. He explained that those who were there when the condominium conversion notices were sent out would be entitled to relocation expenses if they were moving because of the conversion. He stated that the position of the plaintiffs was that new tenants who came in years later and knew because it was in the lease documents that they were moving into a condominium were not subject to the rent increase which was one issue before the court. He stated that the court said that all rent increases until you sell are subject to Planning Commission approval.

Commissioner Clifford asked if they were able to rent them at market rate at that point in time when new tenants came in. He asked, if someone voluntarily left their apartment, whether the condo association could rent that unit at the current market rate without coming to the Commission.

Mr. Haesloop agreed.

Commissioner Clifford stated that now it was roughly 20% of the tenants who were there when the Planning Commission approved the original condo conversion.

Mr. Haesloop believed the percentage of units he mentioned that have turned over in the interim is pretty accurate.

Commissioner Clifford stated that at some point 80% did get rent increases. He stated that he hasn't lost all of the money but some in terms of staying in apartments.

Mr. Haesloop stated that it was yes and no, explaining that someone who moved in to the apartment in 2010 with a bump up in rent had not had a rent increase since 2010.

Commissioner Clifford stated that he understands it graduates from when someone came in, but he wanted to be fair that not all of the tenants, specifically only 20% of the tenants, are still paying the rents in place in 2008.

Mr. Haesloop agreed, adding that their proposal was 25% or market, whichever is less. He stated that, if someone moved in last year and was very close to market, they are not getting a 25% increase. He stated that what the market rents were a year ago are in Ms. Gnos' report.

Chair Nibbelin stated that the County housing department has been out at some point in the past to look at this particular project, and he asked when they were last out there.

Contract Planner Gnos stated that the last report was from February that said no violations were observed.

Chair Nibbelin reiterated that she said no violations were observed as of February.

Commissioner Gordon thanked the applicant's representative and the woman who spoke for coming. He stated that there are so many issues in terms of their analysis. Keeping it simple, he concluded that they were reviewing the request for the rent increase under the code with three prongs to guide them, specifically prevailing for similar units. He found the word "similar" troublesome, as it begs the question of the third prong, which was the condition of the units. He stated that they were both connected. He stated that prevailing rents surveyed in the area show that the current rents being charged by the applicant are at least 25% below market. He stated that for the second prong, they determined that it didn't give them enough data as they only have hard data on the most recent year. He wasn't comfortable extrapolating. He then referred to the third prong, the condition of the unit, and the information the subcommittee reported to the Commission shows that, from what they saw, they weren't talking about units in tiptop shape. He stated that, in fairness to the applicant, they weren't talking about a large representative sample but from what they did see, he felt it was clear that the condition of the units from the subcommittee's report did not suggest that they should use the surveys as a fair benchmark. He assumed that the surveys are likely assuming a reasonable condition of the units. He concluded that he was not inclined at this time to consider a 25% increase. He was interested in thinking about it creatively. He was in favor of some increase now and then taking a look at the conditions of the unit at a later date to see if the balance of the 25% would be granted.

Commissioner Campbell stated that he generally agrees with Commissioner Gordon's sentiments. He was on the Planning Commission in 2008 when they approved the condo conversion plan, and he recalled the tenants coming up and being concerned. They had a plan in place, but the plan wasn't followed through, and there has been a lot of uncertainty over the years. He sees the need for a rent increase at some point. He stated that landlords need the money to do upkeep on the property, but he felt it was unfair to ask for 25% in one fell swoop, considering the length of time they didn't ask for one. He felt it was too much too fast, especially when it wasn't the tenants' fault that the condo conversion plan approved in 2008 wasn't followed through. He felt it was the owners' decision in response to the recession. He felt something less was appropriate, but he was stuck with a lack of data as to what it might be. He agreed that it was hard to make the case on similar units because these units aren't exactly in the best shape, having known a lot of landlords and been one himself, and when asking for rent increase you break out the bucket and paint and make it look nice. He stated that, if they were talking about the interiors only, he agreed it was a small sample and maybe not representative, but he felt the exterior reflects a general lack of attention to the upkeep.

Chair Nibbelin agreed with what his fellow commissioners have stated so far. He was generally of the view that property owners should be able to charge what the market will bear for the property they own. He then mentioned the factors that the ordinance lays forth, including the condition of units. He noted that the housing department found no violations, which he felt was a different question from whether or not the property was in the condition that was similar to other properties in the community. He stated that not having had significant rent increases over time is going to affect the condition of the exterior. He didn't know what to think about the interiors except for what he has heard from the subcommittee. He didn't have any reason to doubt the credibility or detail brought to them by the subcommittee but he acknowledged that it was a small subset. He stated that they heard from people who have no reason to be less than credible and stated that they have had a better experience with management. He felt there was evidence on either side, but he was not comfortable with the proposition that 25% to market at one time is appropriate under the circumstances. He acknowledged deference and respect to Mr. Haesloop, but he felt they should consider some of the equities involved in considering this matter. He thought 25% to market is inappropriate amount, given the information in the record. He thought something over a couple of years made sense, adding that three years is long, but maybe half now and the other half in another year would be an appropriate way to proceed.

Commissioner Baringer stated that his perspective on this has changed substantially from the last time they talked about it, primarily because they did an inspection of the property. If he had not done that, he might have come to a slightly different conclusion. He stated that, at the last hearing, he wasn't sure what their end game was. He wasn't sure if they were going to convert it to condos as they never got a commitment to do it, and never got a time line. He was operating under the assumption that they will be landlords for the foreseeable future and operate as apartment owners. He thought if they somehow figure out a way to convert and market it as a condo project, they can proceed on that basis. He was taking into consideration the condition of the property. He stated that they were only in two units. He thought they could have seen more, but in looking at the overall condition compared to other properties, he felt it clearly comes up short. He didn't know that they could justify a rent increase based on the condition. He stated that, if they have to take the three-pronged approach into consideration, the condition of the property is the one he feels is obvious. He acknowledged that to quantify it was more complex as they are trying to compare it to similar properties and they ask what that means and what was similar, etc. He stated that they can't tie rent increases with any assurance that it would be put

back into the property so the conditions would improve. He would be more comfortable with a slightly more aggressive increase if he could condition it. He stated that, based on an 8-10 year run of what looks to be mediocre to poor maintenance, he wasn't sure how that would work out. He also didn't understand why the Planning Commission was talking about what rents people should be charging on their property. He felt it was a policy matter and should be decided by the Council and he felt that this will end up there anyway.

Commissioner Gordon responded to Commissioner Baringer stating he would be much more comfortable with a result that tied a future rent increase with some tangible improvement in the unit.

Commissioner Baringer acknowledged that the Asst. City Attorney told them they cannot do it.

Commissioner Gordon agreed, adding that his notion was to approve a partial rent increase now with the notion that a subsequent increase would be approvable upon the review of the three prongs, one of the prongs being the condition of the unit.

Commissioner Baringer understood, asking the Asst. City Attorney if they were creating a form substance issue by this discussion.

Asst. City Attorney Doherty asked him to repeat his question.

Commissioner Gordon stated that he was contemplating an outcome where they grant a portion, such as half now and the balance at a subsequent time in the future, such as 12-18 months later, subject to a finding that the three prongs still support that increase of the balance.

Asst. City Attorney Doherty stated that he was contemplating two things; the conditioning the project with the improvements or requiring that the applicant come back to the Planning Commission for a new determination in which the finding referenced is made. She felt the latter was what was already contemplated in the ordinance and the former would be conditioning the project with required improvements which goes beyond the actual rent increase request.

Commissioner Gordon asked confirmation that No. 2 is okay but No. 1 is not.

Asst. City Attorney Doherty responded affirmatively, clarifying Commissioner Gordon's second idea requires a finding be made that would bind future Planning Commission to conditions that are not contemplated in the ordinance and it was not something she would recommend that they do. She stated that they could direct the applicant to come back with a new application in a certain period of time and they can put on the record that the Planning Commission, as it sits today, will consider the condition of the units at that time in determining whether the future rent increase would be authorized by the Planning Commission.

Chair Nibbelin stated that they were just talking about filing another application, stating that they will approve "X" at this time because they believe the records supports "X" and if they want more come back later.

Asst. City Attorney Doherty responded affirmatively.

Commissioner Clifford stated that was one of his questions. He stated that the other side of the question was whether they could let the applicant come back with a plan for the use of a percentage of any increase they give them that is actually documented and applied to improving what the Commission wants improved and everyone would benefit as they would get their rent increase, the tenants would get better conditions in which to live and everything would be a done deal situation. He thought it would have to be coming from the applicant, not the Commission in terms of a plan on how to accomplish that.

Asst. City Attorney Doherty thought it was adding a condition to their approval or alternatively it would be a non-formal direction, not in the form of a resolution or a formal action, asking the applicant to come back at a future date with a subsequent application.

Commissioner Clifford stated that he would consider a lesser amount at this time, and then have them come back in a year or so. He shared concerns that, based on what he saw, it has clearly been a lot of years since any substantial maintenance has been done on the overall complex.

Commissioner Campbell asked if they say 10% is right for this time, and then leave it at that and a year from now they decide that was too low and they want to come back.

Asst. City Attorney Doherty agreed, adding that the ordinance vests the Planning Commission with the discretion to determine whether the rent increase proposed is appropriate and that necessarily implies that a lesser rent increase may be determined to be appropriate by the Planning Commission and that was precisely what they are doing if they say 10%.

Commissioner Campbell stated that nothing stops the applicant on their own initiative in a year to come back.

Asst. City Attorney Doherty agreed that nothing stops the applicant from coming back with an application with a different component such as the ones proposed today as some of the features of their application are not required by the ordinance.

Commissioner Campbell asked where the 10% number is derived from.

Chair Nibbelin thought it was an important issue.

Commissioner Campbell stated that, if they can get at a number that is grounded in data and fact, that was how he would handle it.

Asst. City Attorney Doherty stated that they would like the Commission to direct staff to return with additional recitals or language if they are going to change the 25% that establishes the basis for their determination.

Chair Nibbelin asked if there was any addition discussion with respect Commissioner Campbell's input. He thought that was one possible way. He stated that he can see a discount from the 25%. He believes it was good that they have market data and it does reflect that 25% is not an unreasonable number, putting aside the amount of time that has passed and whether they should have moved with various diligences. He understood his fellow commissioners with respect to some discounting appropriate given the conditions of the project as a whole. He thought some of the numbers they are discussing seem extreme by way of a discount. He was thinking that maybe

20% cap might be appropriate allocated over a couple of years and would be something he was comfortable with, having 10% immediately, 10% in a year and, in the interim, if there was a thought that more was a higher rent level, the applicant could file an application at that time.

Commissioner Campbell liked that approach but his only concern was if the conditions do not improve and then the next 10% is automatic in year 2, adding that he didn't want to condition anything.

Chair Nibbelin stated that it would require them to be okay with the proposition that 20% is appropriate today. He recognized that people did not share that view but that was his.

Commissioner Gordon liked Commissioner Campbell's suggestion and Chair Nibbelin's suggestion. He was in a slightly different place. He stated that the applicant requested 25% and he would be comfortable cutting that in half and just granting 12.5% now and, if the applicant wants to come back and ask for more, he was open to that.

Chair Nibbelin stated that, if that was a motion, he would second it.

Commissioner Gordon asked if staff had any input on his proposed motion in terms of grounding it.

Chair Nibbelin also asked if they need to bring it back.

Asst. City Attorney Doherty stated that the Planning Director alerted here that she misspoke. She had erroneously stated that the item does need to return. They want direction from the Commission on some additional recitals that they might deem appropriate if they change the 25% amount and, given the general direction, they will review the minutes of the meeting, craft the additional language from the Commission and they would amend the resolution in paragraph 1A to reflect the percentage increase they direct.

Chair Nibbelin guessed that some of whereas clauses would go in the area of the work that the subcommittee did with respect to establishing the condition of the premises, with respect to common areas and units subjected to being looked at and information received in the staff report about how this project relates to other projects in Pacifica. He thought they would be concerned about the impact of an increase like the increase mentioned, with an inclination to spread it over time in any event so that it addresses those concerns.

Commissioner Clifford thought that with 12.5% , some tenants would qualify for 10% increase only.

Chair Nibbelin agreed, stated that they have market tied to that.

Commissioner Clifford stated that 62 and over at a certain time and/or the disabled that are part of the proposal. He was concerned about going to 12.5% when those people currently would only get a 10% increase over time.

Planning Director Wehrmeister stated she would interpret the action that any change from the 25% would apply to Recital 1A but not amend Recital 1C which separately provides that tenants

who are over age 62 on August 14, 2014, etc., will not have their rent increased more than 10% and that would still apply.

Commissioner Clifford assumed that would still exist.

Planning Director Wehrmeister responded affirmatively.

Commissioner Clifford stated that he wanted to clear that up.

Chair Nibbelin thanked him for raising that matter.

Commissioner Campbell stated that this would be so much easier if the exterior of the building was in good shape because they could make that similar comparison but they don't have it which makes it hard. He asked how busy it will make them if that was challenged.

Asst. City Attorney Doherty stated that the record should support the number they pick and they have been provided with certain evidence regarding similar rents in comparable properties, and they must make a determination as to what amount, if any, is warranted, given what the record shows regarding comparable properties.

Commissioner Campbell concluded that she was saying they have sufficient data to make this decision at this time.

Asst. City Attorney Doherty responded affirmatively.

Commissioner Baringer didn't agree that they have the data that they can make a strong case for how they come down on this at 10%, 12.5%, etc. He stated that, at the core from an analytical standpoint, putting aside the emotional and subjectivity of what the condition might be, he didn't know if they can compare it, but standing in the street and looking at one on side of the road and look at the ones on the other side of the road, they don't compare favorably. The next question is what data they have to justify discounting from what the better conditioned units are. He thought, at the end of the day, they will come up as a group with a number and the applicant will have to decide how he wants to proceed.

Asst. City Attorney Doherty agreed, adding that they not stray too far from what they know about the ordinance which is that it contains subjective criteria and it requires a measured and subjective approach to what is appropriate, given the record before them. She stated that her suggestion that there was sufficient evidence to make a determination, that evidence is based on the language of the ordinance, which is quite broad.

Commissioner Baringer thought he might have misunderstood. He thought she was saying that there was enough data for them to do the calculus and come up with a number that can be supported other than just a subjective viewpoint.

Asst. City Attorney Doherty suggested that the ordinance before them would have them utilize the evidence before them to make their determination. She stated that it was not a facial challenge to the ordinance. The ordinance is as drafted.

Commissioner Baringer understood.

Commissioner Gordon thought it was simple. He stated that the ordinance says three prongs, and one of the prongs is condition of the unit. They had a subcommittee go out, take photographs, do onsite inspections and give a report. He felt that was objective data on which they can base a finding. He stated that he came in being open minded to the application. When the subcommittee presented that slide show he was taken aback and it was hard to watch. He felt they should slash the applicant's request in half, given the evidence that went to the third prong. He felt it was supportable and he was comfortable with it.

Commissioner Campbell was comfortable with that.

Commissioner Gordon stated that he will make a motion.

Asst. City Attorney Doherty stated that she would like to see if she can accurately capture what they just did with respect to adding something to the resolution. She stated that they might direct staff to add a recital which states that whereas the Planning Commission considered the condition of the property and the prevailing rents for similar units and determined that, based upon the record, showing the condition of the property and prevailing rents for similar units, a rent increase of 25% is not warranted.

Chair Nibbelin thought that would be an appropriate finding.

Asst. City Attorney Doherty asked that, in the motion, if he can please reference the change to paragraph 1A of the resolution.

Chair Gordon suggested that someone else make the motion as he didn't have the full packet. He had only printed out excerpts.

Asst. City Attorney Doherty stated that she can try to help him craft a motion.

Chair Nibbelin stated that it sounded like the motion is to adopt the resolution, included on page 95 to include the additional findings that the Asst. City Attorney just articulated for them, amending paragraph 1A of the resolution, such that existing tenants may experience rent increase of up to 12.5% or market rate, whichever is less; existing tenants with month to month leases will not experience no rent increase for at least one year. He stated that the change in the paragraph was from 25% to 12.5%. He stated that the rest of the resolution of paragraph 1 remains unchanged.

Commissioner Gordon stated so moved; Commissioner Clifford seconded the motion.

The motion carried **5-0**.

Ayes: Commissioners Baringer, Campbell, Gordon, Clifford
and Chair Nibbelin

Noes: None

2. TA-105-17

Text Amendment TA-105-17, Initiated by the City of Pacifica, to Amend Various Pacifica Municipal Code Provisions to Conform with Amendments Enacted by the California Legislature to Government Code Section 65852.2 Concerning Accessory Dwelling Unit (i.e., Second Residential Unit) Permitting by Local Agencies; the Amendment to be Considered Would Affect Residential Property Citywide. Recommended CEQA Action: Statutory Exemption (CEQA Guidelines Section 15282(H); and “General Rule” Exemption (CEQA Guidelines Section 15061 (B)(3).

Assoc. Planner Murdock presented the staff report.

Chair Nibbelin opened the Public Hearing.

Alfred Tetzner, Pacifica, stated he was speaking on the ADU and associated parking problems. He stated that he did a massive remodel on his house when he built on his property and was required by the city to put in off street parking as part of his permit process for two people living on the property. He stated that he has seen two neighbors who have built illegal in-law units. He stated that it was not legal as part of the Fairmont Association CC&Rs. He stated that, with one property, there were at least seven cars on the street. With another property with two tenants, there were four cars on the street. He stated that they rarely use their garages to park their cars and with the narrow streets, it was almost impossible to get a fire truck down the streets. He stated that one neighbor was building a permitted exercise room with complete decking and will have a few tenants living in it. He stated that they laugh at the street sweeper who makes his way down the center of the street, never touching curbs at this point. He stated that they could save some money by cutting that out on his street. He stated that, in his previous residence, he had one person with nine roommates double parking on a court and he could not get his car in and out of his own garage, and he sees that in his future if they allow this to happen. He asked that they make anyone who has the additional ADU permit provide off street parking, at least two cars for every bedroom and he asked that they make it a requirement. He felt getting them off the street would be a wonderful thing. He was curious how this will affect the FARs, setbacks, height allowances. He stated that the property across his street has a connecting foundation from the main property down to the bottom and, if the foundation is connected, he asked if it allows for a height variation, adding that it was at least 20 feet, more than any other height allowances in the neighborhood.

Rachelle St. Onge, Pacifica, stated that she lived on Heathcliff Drive in Manor for many years. She submitted an application for the accessory dwelling unit. She stated that the passage of SB 1069 was an answered prayer for her family’s financial needs. She stated that having an ADU on her property will provide rental income that will help her family, as well as benefit the community housing demand. She understood the majority of the concern was about street parking. She stated that parking has never been an issue on her street. She stated that there are neighbors with 2-3 cars and still there is plenty of street parking. She took pictures on her street. She stated that her house was one of the old houses that was non-conforming with only a one-car garage, and they were suggesting a minimum of two space requirement, but that was not possible for her house and she hopes they take that into consideration. She stated that her ADU was small and only comfortable for one person. She addressed the concern that approving the ADU may set precedents and could be challenging for neighborhoods with parking that was difficult or problematic but she thought it should be reviewed on a case by case basis. She stated that, in

regard to public transportation, there was a bus stop less than a quarter mile from her house. She hoped they take her concerns into consideration. She asked if they wanted to see the pictures.

Chair Nibbelin stated that if she wanted to submit them, they can be part of the record.

Chair Nibbelin then closed the Public Hearing.

Chair Nibbelin stated that they had several items that were “bring backs and followups” and he wondered if the Commission could get a sense of whether they were comfortable with what staff has done with respect to those particular items and focus on the three items under subsection F of the staff report.

Commissioner Clifford stated that the only one he has concerns about was the transit maps. He appreciated what was done. He recalled there were several parts where there was only one bus a day, and he was concerned that it might be too small to use in saying they can allow ADUs. He didn't think the bus service was significant.

Chair Nibbelin asked if he was referring to the table that had the school days that reflected three runs. He didn't know of any that were just one.

Assoc. Planner Murdock stated that the standard they drafted required daily bus service. They established a very low threshold because they were walking a fine line. He stated that the state law did not allow them to establish service levels for public transit and what limited information they have suggests that the legislative author of the state law indicated that he was not in favor of allowing local agencies to set service level standards. He stated that they have taken a sensible and appropriate step by saying for it to be transit there needs to be transit and it needs to be every day and not selective. He stated that their study revealed that there are five daily bus routes all year long. He stated that the lowest service level was 15 buses per day, and only the 15 buses or greater were counted in the definition because all the other bus routes that may have three trips per day as school routes don't run year round, but only during the school year and were not mapped and did not result in parking exemptions for ADUs proposed on those areas.

Commissioner Campbell stated he agreed with the proposal and he will bring his comments later.

Chair Nibbelin had one comment with respect to the first five items. He was of the view that, if there was weekday service, that was adequate to qualify for service within the meaning of what the Government Code articulates. He thought they should consider weekday service so they can rely on a weekday bus and make other arrangements for weekends. He wasn't comfortable excluding the weekday routes.

Commissioner Baringer stated that he has not changed his position on this. He felt it was hugely flawed and basically wipes out single family zoning in our community. He stated that they have had no input and the state Legislature has enacted this to solve a statewide problem without any consideration of the character of local jurisdictions. He stated that, if someone buys a single family home in Linda Mar and then it is two on a lot or a multifamily neighborhood, that changes the entire character of the investment and he was opposed to it. He thought the problem was that, down the road at the time of the full impact if this comes full circle, it will have a lot of problems. He stated that he has been on record that we should fight it and say no. He didn't know how they take into consideration the impact on our infrastructure. He stated that there is a

parking problem. He was sympathetic to individuals who from a financial standpoint would benefit from this and it was important to their lifestyle. He gets that, but that wasn't how real estate development works in a residential environment. He stated that they could also be over burdening our water system etc. He felt there will be substantial adverse parking impacts. He also stated that the projects will go forward without any public hearings and people won't have an opportunity to weigh in on what their neighbors are going to do. He stated that this was a city where they have elections on someone wanting to build apartment buildings. He didn't understand why this has gotten as far as it has other than the mantra that the state has enacted it so we have to march like robots and say yes. He was opposed to it and will oppose it at this time.

Commissioner Gordon thought Commissioner Baringer made some good comments. He felt Assoc. Planner Murdock's report was helpful and thorough, adding that he sets the gold standard in terms of his analysis and presentation. He was in agreement with Commissioner Baringer but there is the law of preemption and federal preempts state and state preempts local and they were on the short end of the stick. He encouraged him to try to think of ways to make this less bad. He stated that his biggest concern was driving through the street with cars parked everywhere and putting more cars parked there would make it impassable. He sees that areas within the coastal zone will have some discretion to take into account impacts on street parking.

Assoc. Planner Murdock agreed, adding that he can elaborate to clarify the point.

Commissioner Gordon agreed.

Assoc. Planner Murdock stated that the state ADU law says that it shall not modify or effect the Coastal Act except that Coastal Development permit applications shall not be subject to public hearings. He stated that they have drafted the ordinance so that the Planning Director would consider the administrative Coastal Development permit which would be required for an accessory dwelling unit. While it would involve a public notice, but wouldn't be a public hearing. He stated that a unique procedure of these permits would be a written comment period so the public would have an opportunity to write in, indicating their issues, and the Planning Director would have an opportunity to evaluate that and within limited discretion could weigh in when making the findings for approval for the Coastal Development permit and balancing all the evidence. He stated that they have drafted two supplemental findings in addition to the regular CDP findings related to parking. They are triggered if the accessory dwelling unit does not provide the off street parking that would otherwise be required, were it not for some exemption. He stated that they consider that a balanced approach and gives people options if they can provide the parking. If they don't provide it, then they have a higher threshold for the Planning Director's review. He stated that the circumstances are quite different outside of the coastal zone.

Commissioner Gordon asked clarification that what he just said applies to the coastal zone. He asked, in terms of the Coastal Zone, if there would be a notice requirement so if there is an ADU application in the Coastal Zone, the neighbors get notice of it.

Assoc. Planner Murdock agreed, clarifying that it was in the appeals zone of the Coastal Zone. He stated that, as the code was written for ADUs, outside of the appeals zone of the Coastal Zone, which is a narrow segment and includes all of Pedro Point, as long as it meets all of the zoning standards, it can be exempt from the administrative CDP requirement. Within the Coastal Zone appeal zone, including all of Pedro Point, sections of Sharp Park, the Fairmont neighborhood, it

would require the public notification process and the written comment period and discretionary review process.

Commissioner Gordon questioned the Fairmont area.

Assoc. Planner Murdock stated that there was a portion of the West Fairmont neighborhood, but he didn't think there were any homes that can be constructed currently but technically it was within that neighborhood.

Commissioner Gordon thought they have been as creative as possible to create some measure of review, even if not to the Planning Commission.

Assoc. Planner Murdock stated that for the areas within the appeal zone of the Coastal Zone, it was yes, but he thought they have a much more conservative reading of the state law when it comes to areas that are not subject to coastal development permit requirements. He stated that they don't believe there was a way to impose a discretionary review process on those types of applications.

Commissioner Campbell stated that he read the California handbook and it didn't remark on the ability of cities to enact restrictions based on public health and safety.

Assoc. Planner Murdock thought that was generally correct. There was a specific provision that comes to mind that talks about traffic flow and public safety. He stated that there may be others that the City Attorney can comment on.

Commissioner Campbell stated that he was thinking of Vallemar where they have the major thoroughfare in the back of Vallemar, Reina del Mar, and it was restricted with no parking on either side, because the roadway was so narrow. He thought there were a lot of streets like that throughout the city where the streets are too narrow. He asked what the standard roadway width requirement was in the city.

Assoc. Planner Murdock thought the Fire Code requires 20 feet from curb to curb and in such cases, you cannot park on the street. He stated that many of the streets in certain portions do not comply with that standard. He stated that the standards increase dramatically to provide for on street parking. He didn't remember specifically, but 26 or 28 feet to park on one side and 32 or greater for parking on both sides. He stated that it was a significant difference from the built condition in parts of Pacifica.

Commissioner Campbell stated that was where he was headed. He stated they had that restrictions in Vallemar because a fire truck couldn't get up the street once and someone passed away as a result, adding that they need code enforcement on that street. He asked if there was a way to say no ADUs on streets where the street doesn't meet minimum width requirements that the city has and there is a public health and safety issue that the city hasn't acknowledged, and they have had one fatality because of it.

Asst. City Attorney Doherty stated that the state law allows local agencies to designate areas where ADUs are allowed based on public safety and traffic flow. If the Commission were to make findings that determined that ADUs in a specific area impeded traffic flow or public safety, they could limit ADUs in those areas.

Chair Nibbelin asked if that would require the Commission setting some criteria. He referred to Commissioner Campbell referencing street below a certain threshold or require a street by street assessment.

Asst. City Attorney Doherty stated that they could designate areas where it was permitted in the ADU ordinance and would be based on including features that impede public health and safety.

Chair Nibbelin stated that one concern is that the law contemplates at least the presumption that people occupying the units will be using public transit and presumably not have vehicles. He was having difficulty squaring that presumption with relying on that provision in the government code.

Asst. City Attorney Doherty added one more consideration, which was that the legislative intent of AB 2299 and SB 1069 was to allow as many ADUs as possible and the HCD memo supports that. She stated that in designated areas where ADUs are impermissible based on traffic flow and public safety, there needs to be a very strong nexus between the record establishing that there will be public health and safety issues and prohibition on ADUs in that area. She mentioned that one city she worked with considered restricting ADUs on one-way streets in which there were legal non-conforming lot sizes that were smaller than standard lot sizes, and it was not in an area where public transportation was located and they could make findings that definitely established it would create health and safety concerns related to law enforcement and public safety equipment not being able to make their way through the narrow street.

Commissioner Campbell stated that was the presumption they need to take seriously. He acknowledged that she provided one example of how to rebut the presumption. He thought that was one factor they could take into account as to whether the streets could get emergency vehicles through them, considering the width and cars parked on both sides. He asked if they could talk about that in the context of real world scenarios or do you just look at the street without cars parked on both sides.

Assoc. Planner Murdock stated that he didn't understand the question.

Commissioner Campbell withdrew the question. He felt that they should explore this and asked if they can rebut the presumption, considering some of the streets in Pacifica are so narrow, such as Vallemar, Pedro Point, Rockaway and are filled with substandard lots. He thought, if you do allow ADUs on the narrow streets, people will be supposedly taking public transit from a half mile away. He didn't think it will happen, but he thought we have to assume it will happen. He thought, even with that, they have some increased element of a safety issue. He stated that, even without the ADUs, we have issues where he dares them to get an emergency vehicle up some of the streets now. He didn't want to make that worse. He wondered if there was a way to explore that.

Assoc. Planner Murdock thought there was. He stated that staff would hope there was a clear understanding of the counter policy considerations for allowing ADUs in as many places as possible, to provide more affordable housing for people in the current environment. He thought, to do such an analysis would have an exclusionary effect over large portions of the city, potentially, and it may have the effect of prohibiting ADUs throughout nearly the entire city. He stated that they haven't performed that analysis yet. He stated that the proposal in the next

section that the Commission will deliberate, requiring the primary dwelling unit to meet the off street parking requirements, was based on traffic flow and was not analyzed from a public safety standpoint *per se*, in the same fashion he was advocating an analysis for fire access and first responder access.

Asst. City Attorney Doherty added that, to make it clear that they were all on the same page, the conversation about public health and safety and traffic flow only applies to attached and detached ADUs. ADU that are created in the existing floor space of the primary dwelling unit must be permitted without consideration of public health and safety and traffic flow.

Commissioner Baringer asked how they do the calculus on traffic flow, such as it is a last guy in analysis. He stated that there was obviously a number when it becomes untenable. He felt the streets were not designed for double the development that is currently in place. He asked how they reach a level where they say they can't accommodate any more units from a traffic standpoint.

Assoc. Planner Murdock stated that they have not done such an analysis and it wasn't a quantitative traffic study type of analysis. They were looking at other factors, mentioning a few examples.

Commissioner Baringer asked if there has to be some type of analysis that was more quantitative than empirical, although he agreed with what he was saying. He stated that, while it was a practical approach, they might need something more quantitative that was done by a traffic engineer. He stated that there has to be some type of nexus to draw between absolute capacity of infrastructure and doubling the demand with no input. He asked if that was being done, as to what do they do if they exceed the capacity of our current infrastructure, continue to allow them or say no more or analyze where we are.

Asst. City Attorney Doherty stated that the same state provision which allows local agencies to consider public health and safety and traffic flow also allows public agencies' ability to designate areas where ADUs are allowed based on water and sewer.

Commissioner Baringer asked if that was like Carmel-by-the-Sea where they have a limited amount of water supply and they can prohibit ADUs because they don't have enough to build real houses, much less ADUs.

Asst. City Attorney Doherty stated that she wrote Carmel's ADU ordinance and they didn't.

Commissioner Baringer stated that he was shocked.

Commissioner Gordon stated that his concern was in the narrow streets and trying to fashion some kind of objective criteria. He knew the street to which Commissioner Campbell was referring where you were not allowed to park on the street because it was too narrow and someone did die when emergency vehicles couldn't pass through the street because of the cars parked on the street. He stated that it happened a couple of years ago in his neighborhood. He stated that his concern was the narrow streets. He asked why they couldn't use some criteria and assume the worst case scenario where you have an average sized car parked on both sides of the street, then there has to be clearance for an emergency vehicle to get through. He stated that the street where the fatality happened, parking was only allowed on one side of the street, and there

was a big truck and the fire truck couldn't get through. He stated that the analysis would have to depend on the street and the parking that was allowed. He stated that you would need a minimum street width requirement which would be justified by health and safety concerns.

Assoc, Planner Murdock stated that he thought it was possible to do that analysis. He stated that they haven't performed it yet, and he would have some reservations about performing it because he was confident that the outcome would be large chunks of the city where ADUs may not be permitted and he didn't know how that looks compared to the legislative intent to allow them in as many places as possible. He stated that they can't prohibit them and is fairly certain they cannot have the effect of prohibiting them. He stated that, when they hit that line, he would want to consult with the City Attorney's Office and see how Ms. Doherty feels about that. He stated that they can perform that type of analysis.

Commissioner Gordon stated that there are also streets that are wide such as Linda Mar Blvd.

Assoc. Planner Murdock agreed, but stated that to use that specific example with the revised transit map, most sections of Linda Mar and Park Pacifica will have to provide off street parking for their ADU unless it meets one of the other exemptions, and on that basis, it was exceedingly difficult to provide additional off street parking on a 5000-sq. foot Linda Mar rancher site. He stated that you then have layer upon layer of requirements until finally they are effectively prohibiting ADUs when they are not saying they were prohibiting ADUs. He has that concern as they add on additional factors.

Commissioner Gordon thought it would be terrible to enact an ordinance creating a public nuisance where you allow cramping of a street that would prevent emergency vehicles from passing through. He realizes that he is concerned about the cumulative effect, but he stated that if they were grounding what they were doing in objective data, objective criteria and real world experience, he was less concerned.

Assoc. Planner Murdock understood where he was coming from, and he offered his consideration that he has a concern that the more stringent you try to be on the front end, the more likely you are to incentivize bad actors to take advantage of what he thinks are two key loopholes in the state law and by extension in the ordinance, i.e., you can perform an addition to the home for a purpose other than an ADU, come in anytime after it has been finalized by the city and say now it's an ADU and since it is created within the existing area of a structure, you do not have to provide any parking. He stated that a similar problem results from accessory structures which could be created in all kinds of other configurations that are unpalatable to a single family neighborhood, including as close as 18 inches to the property line, call it a shed and convert it later. He didn't think there were a lot of good ways to get around this problem entirely. He thought having a balanced approach is good but trying to go too far will have some unintended consequences further down the road.

Commissioner Campbell agreed, stating that he could see that happening. He knows there are bad actors who do that in town. He wouldn't want to prevent the data collection on the important safety issue based on the potential actions of bad actors. Then they win. He thought they should focus their efforts on the vast majority of law abiding Pacificans who will try to do the right thing and give them clear direction. He stated that he would like to see how much of Pacifica is affected by this and he would be interested in playing out the string a little bit, if it does burden 50% of the city, or prevent 50% of what would have been an ADU area from being an ADU area

and they get sued by someone. He asked if they have decent facts to defend. He concluded that was why God invented lawyers. If we get sued, we will have some data to defend ourselves if we do this. He concluded that it was a real public health and safety issue.

Chair Nibbelin thought it was a good state law and a public policy that was important and something that should be encouraged. He was concerned about safety matters, but if there was real data and he was hearing that there were some significant concerns with respect to safety, and he felt they should have concrete, discrete data around what the safety issues are and we ought to develop some exceptions to the general rules that are narrow to address the specific safety concerns that may exist. He thought they have a clear state policy. He was nervous about throwing the city in front of litigation or cutting against what was a pretty clear legislative intent expressed. He felt, if there were things that can be done or data that exists that suggests that we have a public safety or significant traffic flow issue and he thinks they need to address them and develop appropriate standards to deal with that. He would hate to see large swaths of the city rendered exempt from general rules favoring ADUs.

Assoc. Planner Murdock asked Commissioners Gordon and Campbell about the areas they were thinking of with narrow streets and safety concerns and would they estimate that most of the homes do or do not have two car garages currently.

Commissioner Campbell stated that most of the homes have one car garages.

Assoc. Planner Murdock thought one way to go about this and resulting in a similar effect was to embrace one of the other recommendations that would be based on a different set of analyses and factors about requiring the two-car garage to be eligible for an ADU as opposed to basing it off of the narrowness of the streets or other health and safety factors. He stated that if he was thinking of the same areas, they are likely to be effected by both of these almost equally because most of the homes in the neighborhoods with narrow streets do not have two car garages in most instances that he can think of, and there may be another alternative that yields almost identical outcome that may be somewhat easier to justify from a finding standpoint. He stated that it would be a heavy lift to go citywide and figure out the widths of every street. He wasn't sure the Planning Department has such a resource or a list and he wasn't sure how readily the sister departments could produce such an analysis.

Commissioner Gordon asked what he was proposing.

Assoc. Planner Murdock stated that they have a slide for that. He stated that they can get to it now or wait. He stated that they identified the three areas in the state law and the ordinance where staff feels they still have room to exercise local discretion in crafting the ordinance. He stated that, in terms of the condition of the existing primary dwelling unit at the site where the ADU is being contemplated, when they drafted the first version of the ordinance, they embraced what they understood was the intent of the state law to allow ADUs in as many places as possible. With limited requirements for what they need to do, they need to comply with the ADU standards and staff was going to turn a blind eye to the condition of the primary dwelling unit. Because they know so much of the community was constructed before incorporation, before rigorous zoning standards, etc., and they know that they could have the effect of ruling out accessory dwelling units in large portions of the city if they took too strict of a line on the condition of the existing primary dwelling unit. He stated that, the Commission's feedback about parking led them to go back and analyze the state law and the ordinance and to be fair, they have some

discretion related to traffic flow and public safety as mentioned earlier. He stated that one potential option for the Commission is to change the components of the existing proposed ordinance that would be permissive for the non-conforming primary dwelling unit that is existing. When it does not have a two-car garage, it would not be eligible for construction of an accessory dwelling unit, more specifically an attached or detached ADU, but perhaps not one created within the existing floor area of the primary dwelling unit. He stated that his question is whether they should require the primary unit to meet the off street parking requirement. He stated that, since ADUs are only to be constructed on sites with existing single family homes, that would mean the single family home has to have a two car side by side garage, minimum 18 feet wide by 19 feet deep. He stated that it is a bit like a unicorn in some parts of the city, but they are out there and homes built today would have to comply with this. He stated that so much of the housing stock having not been built within the last 20-60 years or more, many of them do not comply with this. He stated that, when considering this, they would need to know if certain reduced dimensions were acceptable. He asked if they would be okay with 16 feet wide by 18 feet deep. He stated that, in his experience in reviewing plan checks, it was not uncommon to have a 16-foot wide garage, 17 feet deep or 18 feet deep, as very few comply with 18 feet wide by 19 feet deep. He stated that it would have a big impact but could be meaningful if they were trying to make sure that the existing development pattern is not unduly burdening the street for parking before they authorize development that would perhaps generate additional vehicles. They would also be asked if tandem parking would be acceptable in these cases. If it is a one-car Vallemar garage but it was clear through to the back yard, could they add on in a tandem configuration to provide the second car and would they accept that to allow them to construct an ADU. He stated that there was some wiggle room but the question was whether they were requiring them to have two off street garage spaces before they would entertain an application for an ADU. He stated that it was a policy option that the Commission has and they would also need to know if they would be willing to grant a parking exception or a minor modification to waive one of the spaces. Staff's recommendation was not to allow that as they think it was relatively easy in the scheme of permits to make the findings to grant these kinds of exceptions and to do so would frustrate the Commission's intent if it went this route. He stated that staff hopes to get answers to these questions. He stated that they also have the possibility of the loopholes they talked about. He stated that they shouldn't draft all the laws to address bad actors but should assume people will abide by the law and they have mechanisms to try to ensure that, but there were some apparent loopholes within the state law and the framework that it provides.

Commissioner Gordon stated that he knew they were talking about different overlays. He asked confirmation that this analysis didn't apply to areas that have serviceable transit because everything was waived there.

Assoc. Planner Murdock thought so, then checked and confirmed that, if they were talking about an attached ADU which was constructed by adding on to an existing structure or a detached ADU, these findings would allow the city to prohibit an ADU, even if it was located within a half mile of transit. He stated that the other scenario is an ADU created within the existing floor area of a primary dwelling unit or accessory structure, which the City would still need to allow regardless of this particular finding.

Commissioner Clifford thought they would have a more defensible position if they were talking about health and safety versus a single car garage. He stated that there are a lot of streets with single car garages that are wide enough to accommodate additional parking on the street but there are streets as mentioned, that would not be safe with additional parking on the street. He stated

that, if they are concerned about over regulating to the point that they don't have enough to look like they are complying with the state law, he would be more comfortable going with health and safety than the single car garage.

Chair Nibbelin asked if they would be relying on health and safety to the extent that they were going to go this route anyway. He stated that they were talking about traffic flow and the rationale for requiring the garages in the first place.

Asst. City Attorney Doherty stated that the rationale was to ensure that the ADU was in keeping with the city's conforming parking standards for the primary dwelling units as opposed to the ADU.

Chair Nibbelin asked how that runs up against state law that was attempting to put aside local community concerns or standards to some extent.

Asst. City Attorney Doherty stated it was a good question. She stated that the state law would allow a local agency to apply its building code standards and as the primary dwelling unit parking standards are similar to some of the construction standards required under the building code, staff would consider this provision to be insuring that the properties on which an ADU is proposed to be located be brought up to code in order for the ADU to be constructed.

Chair Nibbelin stated that he has always conceived that the building code was being different from parking standards.

Asst. City Attorney Doherty thought that it was the same idea. In order to construct an ADU, one must bring the primary dwelling unit up to code, including conforming parking standards. She stated that state law does not expressly prohibit that, although it doesn't expressly allow for that either. She stated that it was a lenient interpretation of the state laws.

Commissioner Campbell thought that was interesting. He stated that, for attached ADUs, this method of trying to get at the parking situation, if within a half mile of transit, doesn't apply. He asked, if you are doing an attached ADU, whether this parking requirement would not apply.

Assoc. Planner Murdock stated that it would. He stated that there were three ADU categories contemplated in state law, the detached ADU which everyone understands, the attached ADU which everyone understands until you introduce the third category which is created within the existing floor area. Even though they sound similar, they are different. The attached ADU, as it is contemplated in the state law and the city's ordinance, requires construction of additional floor area whether on the ground or above. Existing floor area means you don't get a building permit to add on anything, as you are converting and carving down your 1200 square foot house to 900 square feet to make a 300 square foot ADU. He stated that there are the three categories and this would not apply to the third category created within the existing living area.

Commissioner Campbell understood, then mentioned the public health and safety route of street widths, and asked if the same analysis applies to all three categories.

Assoc. Planner Murdock stated that was his understanding from consultation with Ms. Doherty. The state law would not allow them to impose these additional findings or standards if the ADU is created within the existing living area of the primary dwelling unit or accessory structure.

Chair Nibbelin referred to the hour and asked whether they would be in position to give guidance to staff, and start with respect to off street parking for primary dwelling units. He stated that this particular provision is discussed under subsection F on pages 261, 262 of the packet. He stated that it was I as it is obvious that it will have to come back to the Commission, or is it contemplated in what they have drafted now.

Assoc. Planner Murdock stated that staff felt comfortable with the scenarios outlined. If the Commission wanted a different line of analysis, based on street widths and the direct health and safety concerns related to that, they have not performed that analysis and would need to come back.

Chair Nibbelin asked if the ordinance in the packet that they could be acting on contemplates the scenario that he laid out.

Assoc. Planner Murdock responded affirmatively, explaining that they have not drafted the language but, with clear direction from the Commission, they could make those changes to the ordinance that they take to the City Council without returning to the Planning Commission.

Chair Nibbelin stated that the question was about how they feel about this. He thought taking it one at a time might be the best way on how they feel about it in particular. He asked the Commission for their perspective on it.

Commissioner Campbell asked if he wanted to go down the line.

Chair Nibbelin agreed, and started with Commissioner Clifford.

Commissioner Gordon didn't think that was the best process as they need four votes for each prong to give direction.

Chair Nibbelin stated that he was trying to figure out if there is support for this. He stated that they could take a vote on an overall motion, but he thought it might be efficient so staff has a clear perspective on how they feel about each point.

Assistant City Attorney Doherty stated that they don't need a motion on these four items. They just need a motion on the ordinance, with or without these four items.

Chair Nibbelin stated that a fair answer would be that he needs to think about it some more.

Commissioner Clifford agreed that he needs to think about it some more.

Commissioner Campbell stated that he wants his cake and eat it too. He wants to go through this but also wants for staff to explore the health and safety traffic road width issue, or a Plan B. If they come back and say that it will be \$1 million study that they can't do it. He didn't know enough now to say it was untenable, but he likes the idea of looking at road widths and public health and safety more than this one because there are streets where there are a lot of two-car garage homes, big garages, terrible street parking, big safety issues. The same thing with Rockaway but Vallemar was a little different with a lot of one-car garages. He stated that there are some streets where you are going to have the one car garage where you could put ADUs and

they are going to be unfairly singled out and there will be streets with two cars and they are going to add more ADUs and it will make it worse. He stated that was why he liked the road width approach.

Chair Nibbelin understood.

Commissioner Gordon stated that, in terms of the street width approach, he didn't want Assoc. Planner Murdock to go out for two straight weeks to every street in Pacifica. He wondered if there was a way to approach that by taking a sampling of streets and put the burden on the applicant that the street complies with these standards and could save them the burden of doing that. He was in favor of exploring that and felt it got to the issues much more directly. He stated that, if the streets are wide enough, he didn't have any concerns. He was in favor of a strict approach, but did acknowledge his comment that 17 x 18 was more common than 18 x 19. He was okay with carving it out a little bit but, otherwise, was into a strict interpretation of that.

Commissioner Baringer felt that he was for anything they can do to make it more restrictive so they have the opportunity to have a thoughtful discussion on development like they do on everything else they do. He explained that his primary opposition to this was that it takes away the opportunity for them as a community to have a thoughtful discussion on things like where the road is too narrow and there is a real life safety issue, and he felt they should have the opportunity to have that conversation. He felt whatever conclusion comes from that depends on how that conversation goes, but to have that conversation preempted and turned it into a by-right situation which is going to create a problem downstream to which he is opposed. He would like the minimum requirements applied which they would require if they were constructing on a raw lot.

Chair Nibbelin stated that, if there was data that supports his point regarding public safety, specifically the narrow streets, he was open to that, and he would vote against this as he did not agree with it and thought it was unduly restrictive.

Commissioner Campbell stated that, if they had to go this route, he would support it. He would be against tandem parking, having lived in a neighborhood with tandem parking as it didn't work and was a horrible quality of life issue because you have cars driving beneath your bedroom window.

Chair Nibbelin asked Assoc. Planner Murdock if he had a slide relating to distance between structures, asking if that was something they could talk about.

Assoc. Planner Murdock responded affirmatively, stating that they identified the ability to exercise some local discretion that was relative to the development standards for ADUs, specifically the distance between structures and staff thought it would provide an opportunity to arrive at a more orderly layout for sites where an ADU is proposed. He stated that it would apply primarily, if not exclusively, to detached ADUs and attached ADUs would comply with the main building setbacks, the 5 feet on the sides already and would yield a 10-foot separation between its site and the dwelling units on the neighboring sites but would have essentially a zero foot separation between the primary dwelling unit and the ADU just by the nature of it being an attached ADU. For detached ADUs, staff felt that a 10-foot separation would be analogous to the separation that occurs between primary dwelling units in single family neighborhoods. The minimum separation you would expect is 10 feet, 5 feet to your side of the property line and another 5 feet from the property line to the neighbor's dwelling unit. He stated that, currently, the

ordinance proposes 5 feet, and he thought 10 feet seemed reasonable and defensible. He asked if the Commission would entertain a variance or a minor modification to reduce this standard if there was some unique topographical or other site specific constraint that would prevent satisfying the 10-foot requirement and would otherwise deny someone the ability to pursue an ADU. He stated that the more fundamental rights and considerations need to be made with any development in providing relief. He stated that this was a case that staff would support including an opportunity for a variance. He stated that it would be a discretionary permit and would come before the Planning Commission and, as drafted, the Commission would consider all the normal factors for a variance but would not be allowed to consider the use of the site as an ADU, but only evaluating the physical constraints.

Commissioner Clifford agreed with staff's recommendations and recognized there would be times when a variance would meet the conditions as presented.

Commissioner Campbell agreed with Commissioner Clifford's comments.

Commissioner Gordon also agreed.

Commissioner Baringer agreed with that.

Chair Nibbelin stated that he didn't agree with the change.

Assoc. Planner Murdock stated that the third area was the maximum accessory dwelling unit floor area, referring to concern on the part of the Commission at the last public hearing that, for detached ADUs, the 1,200 square foot maximum contemplated in state law was inappropriate and would result in detached ADUs that were too large and would dwarf certain existing primary dwelling units. He stated that there was not a clear opportunity to impose a lower restriction in state law but there is some basis for that in the California Department of Housing and Community Development memo that was attached, making passing reference to having some other reduced maximum size. He stated that it was up to the Commission if they wanted to rely on the state's guidance memo, but staff recommended that they not rely on that. He stated that staff recommended not going below the 850 sq. feet mentioned in the memo and staff asked if the Commission would consider other standards.

Commissioner Baringer asked if they could have a third standard on total lot coverage.

Assoc. Planner Murdock stated that they could but staff had indicated they should comply with the underlying zoning district's lot coverage. He stated that, for the R1 zone, it was 40%. He couldn't wrap his head around imposing a more restrictive lot coverage because of an ADU.

Commissioner Baringer stated that, if they came up with 850 square feet along with the existing structure being more than 40% coverage, it would be a disqualifier.

Assoc. Planner Murdock stated that it would already under the ordinance as presently drafted, and you would have to comply with the lot coverage restriction.

Commissioner Baringer thought they had some exemptions on that and ADUs could exceed the lot coverage ratios in Pacifica.

Assoc. Planner Murdock stated that he does not recall that to be the case.

Chair Nibbelin asked if they had any guidance to staff on this matter. He asked why staff didn't recommend going in this direction and specifically that it was ambiguous on their authority to take this action.

Assoc. Planner Murdock thought that was the case and staff believed that 1,200 sq. feet was the limit set forth in state law.

Commissioner Clifford liked the idea of bringing it down to 850, which he thought was the maximum Pacifica had now and, if an ADU meets handicapped accessible standards, they can go to 850. He thought going to 1,200 on a standard lot will be pushing the lot coverage. He was concerned about landing up with a whole new development inside an existing development.

Assoc. Planner Murdock thought the chance of that happening was very low. He stated that if you take a 5,000 sq. foot lot and take out the setbacks from the front of 15 feet, sides 5 feet, rear 20 feet, even with a small 1,000 sq. existing primary dwelling unit, you end up with a 40% lot coverage having a maximum coverage of 2,000 sq. feet. He stated that if you add setbacks, the minimum 10 feet separation, the maximum you would have would be 1,000 square feet before you add in all the restrictions, and the chance of seeing a 1,200 square foot mega ADU in a 5,000 square foot lot is very low. He acknowledged the possibility but didn't think it would be likely. He thought that, on a 10,000 square foot lot constructing an ADU, you may see a 1,200 square foot detached accessory structure.

Commissioner Campbell thought that was still a lot for a 5,000 square foot. He asked about substandard lots.

Assoc. Planner Murdock stated that, at the outset, staff drafted the ordinance to be as permissive as they could in implementing their interpretation of the Legislature's intent, and drafted it to turn a blind eye to non-conformities that exist in existing site and structures. He stated that, if they can construct the ADU to comply with all the standards for the ADU, staff would issue a building permit, adding that they didn't provide any special dispensation for sites with non-conformities or reduced lot sizes, and they had to meet the standards or they can't build it.

Commissioner Campbell stated that he would still go with the 850, because there were too many substandard lots and he felt 850 was sufficient.

Chair Nibbelin assumed he was in support of matters described in the maximum floor area.

Commissioner Campbell responded affirmatively.

Commissioner Gordon stated that he will agree with the commissioners who have spoken so far.

Chair Nibbelin stated that he was opposed to it and he felt it was too much of a stretch as he understands the laws and didn't agree with it in principle.

Commissioner Baringer stated that, if you have 40% coverage, 850 in some areas is about all you are going to be able to do anyway as you will exceed the 40%. Doing the math, he concluded that, if you have 5,000 square foot lot and a 1,200 square foot house, 850 will put you at 41%

coverage, and in the majority of the community, that is all they will be able to do anyway. He liked the lot coverage approach as it allows for some flexibility and deal with the reality of how big the lot is.

Assoc. Planner Murdock stated that they took steps to address the scaling question and proportionate relationship question. With the last revision, they instituted a height restriction that said the ADU cannot exceed the height of the primary dwelling unit or 25 feet, whichever is less. If attached, it can go up to the 35 foot height limit, but he thought the combined approach of lot coverage, height restrictions, setbacks, distance between structures, they were not likely to get 1,200 square foot ADUs on 5,000 square foot lots. He felt they would potentially be exposing the city to risk by taking such an aggressive departure but he was sure that was noted by the Commission and they will make a recommendation as they see fit.

Chair Nibbelin stated he was changing his mind.

Commissioner Campbell stated that Assoc. Planner Murdock has made a persuasive case on that and after hearing that exchange, he will change his mind.

Commissioner Gordon stated that he would also.

Chair Nibbelin stated that his understanding of where they were at this point was that the ordinance on which they would vote incorporates these three points they just discussed and he was a little concerned about the maximum floor area because he thought the Commission's consensus was that they would not support that if a motion was made. He asked if that was "baked" into the ordinance.

Assoc. Planner Murdock wasn't sure he understood the position on the floor area. He thought they had at least three votes in favor of keeping it at 1,200 square feet, adding that Commissioners Campbell and Gordon changed their position.

Chair Nibbelin meant that they were not in favor of deviating from the 1,200 square feet.

Assoc. Planner Murdock stated that would result in no change to the ordinance as drafted.

Planning Director Wehrmeister clarified that Items A through E were written or not written into the ordinance, and the three items under Section F were not written into the ordinance, pending direction.

Chair Nibbelin stated that the proposal based on the direction they have gotten was that they would be able to incorporate changes reflecting the Commission's position into the ordinance that ultimately goes to the City Council.

Planning Director Wehrmeister stated that was their intention coming into the meeting, but she thought the discussion regarding the health and safety street width issue is something they need to bring back. She thought she was understanding that they need to do further research on the last outstanding policy consideration.

Chair Nibbelin asked if it was the desire of the Commission to get more information on that in light of the two-car garage that might obviate a big piece of that.

Commissioner Campbell agreed because it was an important public health and safety issue that they should explore.

Chair Nibbelin thought that was the guidance of the Commission.

Planning Director Wehrmeister thought they might want a continuation. She suggested the second meeting in August, the 21st, might give them enough time.

Chair Nibbelin stated he would be looking forward to it.

Commissioner Clifford moved that they continue this item to August 21; Commissioner Campbell seconded the motion.

The motion carried **5-0**.

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

NEW PUBLIC HEARINGS:

3. TA-108-17

TEXT AMENDMENT TA-108-17, Initiated by the City of Pacifica to Consider Amendments to Title 9, Chapter 4, Article 28 of the Pacifica Municipal Code to Require the Installation of Electric Vehicle Charging Stations. The Text Amendment Would Affect Property Citywide. The Planning Commission Will Consider the Text Amendment and Make a Recommendation to the City Council. Recommended CEQA Action: "General Rule" Exemption, CEQA Guidelines Section 15061 (B)(3): and Class 1, 3 and 4 Categorical Exemptions, CEQA Guidelines Sections 15301, 15303 and 15304 (F).

Asst. Planner O'Connor presented the staff report.

Commissioner Clifford asked if they considered having any charging stations at current gas stations and how they might be laid out. He stated that he was seeing apartment buildings, parking garages, but not commercial gas stations containing these facilities.

Planning Director Wehrmeister stated that she wasn't sure how to answer that as that was a business that sells gas not charging vehicles. She stated that her answer is that, as vehicles change more and more, if they see those types of businesses diversifying, there is nothing in the ordinance that would preclude or prohibit them from installing such stations if they choose.

Asst. Planner O'Connor added that, as the ordinance is written, if a new gas station was to be established or went under a major alteration, based on the number of parking spaces they would be required to establish for employees as required by the code, they would be required to install the EV ready spaces on site which could be used by visitors or the employees.

Commissioner Baringer asked if they are going to require some free and some for a fee.

Asst. Planner O'Connor stated that the ordinance doesn't get into the usage fees which is up to the property owner on how they want to handle that.

Commissioner Baringer explained that he thought, if it is fee based and you are requiring it in commercial endeavors, he understood that. He also wondered if they were going to require it in residential developments, such as apartments, etc.

Asst. Planner O'Connor stated that the 2016 Cal Green building code addresses that use.

Commissioner Baringer asked if retrofitting was a requirement at this point or if there would be a trigger if there was going to be a substantial rehab which might trigger it.

Asst. Planner O'Connor stated that he was correct.

Chair Nibbelin opened the Public Hearing and, seeing no one, closed the Public Hearing.

Commissioner Gordon stated that he was excited about the potential text amendment and was glad to see Pacifica moving in that direction. He appreciated the work of the climate action plan.

Asst. Planner O'Connor stated that there was a task force to create the plan but no longer together.

Commissioner Gordon stated that he appreciated that, adding that he has seen charging stations all over the place but not in Pacifica. He stated that he has driven an electric car for four years and thought they came in handy. He was in favor and ready to make a motion.

Chair Nibbelin suggested he make his motion.

Commissioner Gordon moved that the Planning Commission adopt the resolution included in Attachment B recommending that the City Council amend Title 9, Chapter 4, Article 28 of the Pacifica Municipal Code to establish regulations for electric vehicle charging spaces and electric vehicles charging stations, that the zoning amendments are exempt from the California Environmental Quality Act and incorporate all maps and testimony into the record by reference ; Commissioner Campbell seconded the motion.

The motion carried **5-0**.

Ayes: Commissioners Baringer, Campbell, Gordon, Clifford
and Chair Nibbelin.

Noes: None

COMMISSION COMMUNICATIONS:

Commissioner Clifford reported on the City Council meeting where they voted to place the marijuana initiative on the ballot, adding that they did make a couple of changes. He stated that Commissioner Campbell would be happy that they asked the Police Chief to work up a social host ordinance to make people who purchase the marijuana responsible for its safe keeping so it doesn't wind up in the hands of minors. He stated that there was another change and staff could elaborate on.

Planning Director Wehrmeister stated that there was one change to the zoning ordinance to require that any site applying for a marijuana use permit put up a notification sign in the window as they see with ABC licenses.

Chair Nibbelin thanked the Planning Director for the report and Commissioner Clifford for attending the meeting on behalf of the Commission.

STAFF COMMUNICATIONS:

Planning Director Wehrmeister stated that the Fassler EIR comment period closes on July 24 and once they go through the comments received, they will have another update. She stated that the Commission and staff received a letter from the Fairmont Homeowners Association stating that they felt every property in the Fairmont subdivision should receive public notice of hearings. She stated that staff received it and they reviewed it with Counsel and they are meeting the legal requirements for public noticing.

Chair Nibbelin thanked her for the report and the work keeping them on track as this was a needy agenda.

ADJOURNMENT:

There being no further business for discussion, Commissioner Gordon moved to adjourn the meeting at 10:17 p.m.; Commissioner Campbell seconded the motion.

The motion carried **5-0**.

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

Respectfully submitted,

Barbara Medina
Public Meeting Stenographer

APPROVED:

Planning Director Wehrmeister