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PLANNING COMMISSION
MEETING OF: May 12, 2020

APPROVED MINUTES

PLANNING COMMISSION
CITY OF SEBASTOPOL
MINUTES OF May 12, 2020

PLANNING COMMISSION:

The notice of the meeting was posted on May 07, 2020.

1. CALL TO ORDER: Chair Fernandez called the meeting to order at 7:00 p.m. and read an opening statement.

2. ROLL CALL:

Present: Chair Fernandez, Vice Chair Fritz, and Commissioners Kelley, Oetinger, Wilson, Lindenbusch and Haug
Absent: Commissioner Douch
Staff: Kari Svanstrom, Planning Director
Alan Montes, Associate Planner

3. APPROVAL OF PLANNING COMMISSION MINUTES: March 10, 2020

Vice Chair Fritz made a motion to approve the minutes as submitted.

Commissioner Oetinger seconded the motion.

The Commission voted on the motion as follows:

AYES: Chair Fernandez, Vice Chair Fritz, and Commissioners Oetinger, Wilson, Kelley, Lindenbusch, and Haug

NOES: None

ABSTAIN: None

ABSENT: Commissioner Douch

4. COMMENTS FROM THE PUBLIC ON ITEMS NOT ON AGENDA: There were none.

5. STATEMENTS OF CONFLICTS OF INTEREST: There were none.

6. PLANNING DIRECTOR'S REPORT (Update on Future Agendas, Action of Other Boards and City Council)

Director Svanstrom updated the Commission on the following:

- Recent and upcoming Council actions.
- The City's new Community and Economic Vitality consultant group called CoMission.
- The City's annual Level of Service report will likely come to the Commission at their next meeting.

Chair Fernandez asked Director Svanstrom what the City's current hours of operation are.

Director Svanstrom responded that the City is maintaining its normal business hours (7 a.m. to noon and 12:30 p.m. to 5:30 p.m., Monday through Thursday). City offices are closed to the public however, City staff is available via email and phone.

7. PUBLIC HEARING:

A. USE PERMIT: Jamil Allati (207 NORTH MAIN STREET) – Project #2020-026

– This is an application, submitted by Jamil Allati, requesting approval to continue to operate a nonconforming use, smoke shop, at 207 North Main Street, in the Downtown Core (CD) zoning district. The prior use was HomeBlown Glass, a smoke shop, which had operated in this location for approximately 8 years.

Associate Planner Montes presented the staff report.

The Commission asked questions of Associate Planner Montes and Director Svanstrom.

Chair Fernandez asked if the applicant wished to make a presentation.

The applicant, Jamil Allati, gave a presentation and was available for questions.

The Commission asked questions of Mr. Allati.

Hearing no further questions of the applicant, Chair Fernandez opened the public hearing.

Mary Lou Schmidt commented:

- Has been involved in a task force with the Gravenstein Health Action Committee Chapter to get a tobacco retail license legislation through the Sebastopol City Council.
- Had at least four meetings before the pandemic necessitated a stop to their forward motion in terms of Council priorities.
- Has been in deep discussion with the Vice Mayor and the City Manager.
- The draft has not gone through a formal process.
- It is up to the Council to decide what measure(s) they want to pick to try to stop this epidemic of vaping and tobacco use amongst young children.
- There are sixteen (16) licensed tobacco retailers in Sebastopol.
- If comparing to a town like Windsor, our concentration is three times greater.
- We're not lacking these kinds of establishments here.

- This shop, depending on where you measure from, would be very close to 1,000 feet from two schools (Analy and Laguna).
- Intends to move forward on getting a tobacco retail license legislation through the City Council.
- Those that have been working on this were surprised that the Commission and staff were not aware of this effort.
- One of the main things that have been proven to be successful in addressing teen addiction to tobacco is to really limit where they can get the equipment or the tobacco.
- Walked a lot of tobacco retailers and they all said that nobody gets in if they are not the new legal age of 21, it used to be 18.
- In addition, members of the military used to be able to purchase these items if they were 18 but that is no longer the case, they too need to be 21.
- When questioning teenagers, they will say that Sebastopol is one of the easiest places to get this equipment.
- We have quite a few of these shops already and we do not need another one.

Director Svanstrom noted the three-minute allowance for public speakers and asked Ms. Schmidt to wrap up her remarks.

Ms. Schmidt continued:

- Agrees with the Police Chief on the sale of kratom.
- As an ER nurse she would hate to see the addition of kratom availability here.
- In addition, this would be an intensification of use because the previous shop did not sell it.
- A State license is required for any kind of paraphernalia that is used for tobacco.
- The Public Health Division of Sonoma County is working with them.
- Available for questions.

Chair Fernandez thanked Ms. Schmidt for her comments and expressed a willingness to extend the three-minute allowance for public speakers due to the low number of attendees and given the fact that the Commission is relying on them for needed information.

Without objection from the rest of the Commission, the time allowance for public speakers was relaxed.

Marsha Sue Lustig, a resident of Sebastopol, deferred to Pam Granger, an expert in the field, and expressed being available for less technical questions after Ms. Granger speaks.

Pam Granger, Chair of Tobacco-Free Sonoma County Coalition, commented:

- Volunteers for the Tobacco-Free Sonoma County Coalition.
- The Coalition has been working with Gravenstein Health Action and other community members on the tobacco retail license legislation.
- Referred to written comments that she submitted to Director Svanstrom just as this meeting got underway.
- The letter that Ms. Lustig submitted made excellent points in terms of the public health issues related to youth tobacco and vaping as did the letter submitted by Ms. Schmidt.
- Conditional Use Permits (CUPs) in Sebastopol are probably the same as they are elsewhere.
- To maintain a CUP, the former owner would need to be in compliance with Federal, State and Local laws.

- If that is the case, the State has required a license since 2017.
- Members of the Coalition and the Gravenstein Health Action Committee visited the prior business in October 2019.
 - They did not have a license then and continued to operate until February of this year.
- Given that, it does not seem that the CUP had been lawfully maintained.
- Had staff had this information, that may have been an automatic disqualification from the use being grandfathered in.
- The prior business was not a public convenience or necessity.
- Ms. Schmidt just mentioned that there are sixteen licensed retailers in Sebastopol.
- Another one of these establishments is not needed.
- Analy is 0.3 miles away and the skatepark is 0.4 miles away from 207 North Main Street.
- There are all sorts of places and event that take place within the vicinity of this location.
- The prior business advertised a huge 'Back to School' sale.
- Businesses now have a huge online presence which is something that kids have clear access to.
- Knows that Sebastopol wants to be a healthy place for people to live, work, and play.
- With all due respect to the applicant, his business does not contribute to that goal.
- Thanked the Commission for their time.

Chair Fernandez thanked Ms. Schmidt for her comments.

Ms. Lustig commented:

- Was saddened to see that there was no knowledge of all the work they have been doing on getting a tobacco retail license through the City Council.
- It was heartening to hear that the Associate Planner had gone and looked at the video from the Council workshop.
- Would like to suggest, if nothing else, that this item be postponed allowing staff and the Commission to see the Council workshop which was very educational.
- There is clearly an overconcentration of this type of use here.
- Sebastopol has more of this type of use per capita than any other city in Sonoma County.
- The rest of the County is busy banning this.
- Tobacco is cheaper to buy in Sebastopol and people like to come here to buy it for that reason.
- The prior business had been identified as needing to be shutdown due to issues with tobacco sales.
- The crisis of this pandemic has led them to stand down from moving forward on this because the City has so many critical things going on, however, this application has moved forward, which is ironic.
- This application should not be rushed through.
- This would be a good time for the Commission to educate themselves on the crisis level at Analy and on the products that are being sold.
- The paraphernalia that is used for marijuana is the same as what is used for tobacco.
- Flavor cartridges were sold at the prior business which would have been a violation of their CUP.
- This information can be double checked by looking at County records.
- County of Sonoma Public Health is doing incredible work with their all hands on deck effort and having them address this application is an impossibility at this time.

- The prior use was in violation of their CUP.
- If this item were to be postponed to fact check these statements, the Commission would fine that this use is ineligible to continue in this location.
- Thanked the Commission for their time.

Chair Fernandez thanked Ms. Lustig for her comments.

Hearing nothing further, Chair Fernandez closed the public comment period and brought it back to the Commission for discussion.

Chair Fernandez asked the applicant, Mr. Allati, if he wished to respond to some of the points that were raised during public comment.

Mr. Allati commented:

- With regards to the comparison between Sebastopol and Windsor, the Town of Windsor does not allow smoke shops.
- If comparing Sebastopol to Santa Rosa, you will find that Santa Rosa has hundreds of smoke shops including allowances to sit and smoke in the city.
- Petaluma also has a higher concentration than Sebastopol.
- Any product, including vape and e-cigarettes can be purchased online, even by teenagers.
- Will control his business and will not be in violation of this things that the public commenters spoke on.
- They, or anyone else, are welcome to come into his store to check things to ensure that he is complying with his CUP.
- Thanked the Commission for the opportunity to respond.

Hearing nothing further, Chair Fernandez thanked Mr. Allati for his comments and asked for Commission discussion.

Vice Chair Fritz commented:

- The sale of kratom and CBD seem to be an intensification of the use in terms of what was allowed before under the previous CUP.
- Asked staff to respond to the sale of these items being an intensification of the use in terms of what was allowed before under the previous CUP.
- Should the Commission approve this, should a condition prohibiting the sale of CBD and kratom be added?

Assistant Planner Montes responded:

- Because it is unregulated, CBD can generally be sold in retail locations without a Use Permit.
- Sale of it would not be an intensification of its nonconformity.
- The Commission has discretion over how to handle it in terms of whether it should be considered an intensification.

Director Svanstrom added:

- The City's Police Chief was not concerned about the CBD because people don't generally overdose or have other issues with it, and it can be sold pretty much anywhere in town without a Use Permit.
- The Police Chief was concerned with the sale of kratom, so staff wanted to be sure to address that.

Vice Chair Fritz expressed confusion over the licensing requirements.

Director Svanstrom commented that Conditions of Approval #6 and 7 address those licensing requirements which are done through the County of Sonoma.

Vice Chair Fritz asked if the statement from the member of the public about the prior use not having the necessary licensing was correct.

Director Svanstrom responded that she did not know that staff did not verify that, and that she didn't want to speculate on that.

Vice Chair Fritz asked what effect their not being properly licensed would have, if that was the case, on their Use Permit.

Associate Planner Montes responded:

- The prior use did not have a Use Permit because when it was established it was considered a permitted use (before 2018) thus a Use Permit was not required.
- When zoning regulations changed, the use became a nonconforming use.
- Our ordinance does not include language about State and/or Federal licensing.

Director Svanstrom commented:

- Concurred and commented that that does not mean that they are not required to comply with State and/or Federal licensing requirements.
- The nonconforming section of our ordinance does not say anything regarding violations of a past owner disqualifying a use on change of ownership.
- A fairly new change to the nonconforming use section, adopted in 2018, requires a Use Permit on change of ownership.
- Because the City Council has this task force underway, and because we do not really know what will come out of it, it may make sense to continue this to see what comes out of that process rather than making a decision that could potentially be overturned by the City Council through an appeal process.
- This use is clearly something the Council does not want to encourage.

Commissioner Haug commented:

- Echoed Vice Chair Fritz's questions and concerns.
- It seems fairly clear that the sale of kratom would not be allowed and yet the applicant has indicated that his ability to sell CBD and kratom would make his business economically viable.
- Asked if the applicant has already applied for the required licensing or if they are in the process of doing so.
- As Vice Chair Fritz mentioned, the City is in the middle of a broader discussion that was ongoing regarding placing limitations on the sale of tobacco and related accessories which the Commission was not fully aware of until just prior to this meeting.
 - The Commission's deliberations should be informed by what comes out of that effort.
- It feels like the Commission is being asked to operate using information that is not aligned.
- Reiterated her concerns.

Commissioner Kelley commented:

- Expressed having issues around both kratom and CBD.
- CBD is a scam in many ways because it is unregulated, people think they are getting medicinal quality, and it is not working which means they are losing an opportunity to use a regulated medical grade product.

- Would be fine with the product being obtained by anyone licensed to sell a regulated product.
- Hearing people are using kratom medicinally as well.
- Problem with kratom is that it is really used as a mild hallucinogen, most people do not use it for pain.
- Works as a registered nurse.
- The Council is studying the amount of nicotine use in our young people.
- This applicant is not asking for tobacco or nicotine, but he is asking to sell paraphernalia that could be used with those.
- Unfortunately, the applicant is assuming he can survive selling these two products and Sebastopol does not need an outlet that sells them.

Commissioner Lindenbusch commented:

- Has been following some of the work that the City Council and advocates have been doing in terms of curbing teen tobacco use which is certainly an issue at Anay and Laguna.
- It is important that this applicant is not intending to sell any tobacco products.
- Has some issues with Condition of Approval #4 in part because it is not regulated which also means that it is not explicitly banned.
 - It is not banned by the DEA, by the State of California, by the County of Sonoma, or by the City of Sebastopol.
 - The burden of deciding about whether to schedule a drug should not fall on the shoulders of the Planning Commission.
 - If the Commission would deny Mr. Allati the ability to sell kratom in a store, when other stores in Sebastopol are selling it, removed him to compete in the market which does not actually deal with the root of the problem.
 - If kratom has been presented as a problem by the Sebastopol Police Department, the reasonable body to consider a ban on it would be the City Council.
 - Would advocate for the striking of Condition of Approval #4.
 - Kratom is in a regulatory limbo, along with CBD.
- This is a strong proposal that is ultimately within the tradition of what the prior business was.
- Does not want to continually compare this proposal to the prior business.
- While it is still a smoke shop, it is a different business.
- Prohibiting the sale of tobacco and banning the sale of kratom should be listed as a separate condition.

Commissioner Oetinger commented:

- Very concerned about the health of our young people in the community overall.
- Smoking is a big problem.
- Is also concerned because 207 North Main Street is on a direct route and children would pass by it regularly.
- Recognizes that this use has operated in this location previously.
- Our aspirations for the Downtown Core moving forward is to not have smoke shops.
- We all know that we want our future to be less influenced by smoking, cigarettes, and marijuana, particularly on our young people.
- We have an application in one department and a City that has already spent a lot of time working to come up with an ordinance that would prohibit this particular shop.
- It seems that we owe it to the applicant to either return their application fee, or to ask if their willing to wait until the Council's work on this is done.

- One the other hand, if we approve this business, it could ultimately be shut down under new legislation, if passed, which does not seem fair.
- Pleased to see that the applicant is willing to prohibit all persons under 21 from entering the building.
- Does not like any of the provisions for blocking the windows.
- Store windows, and the activities inside of stores should be visible, especially in our Downtown Core as it is important to how we feel about our environment, especially when walking down the street.
- If we think young people will be attracted to this, and I think they are, then we should not approve this business.
- There are a lot of questions about licensing that we need to have answered.
- Perhaps the City can deny this application until a future date.
- A smoke shop should not be so close to a High School.
- Would vote against this request on the basis that it is a smoke shop and we really do not want them.
- Also, it would be premature to go ahead and allow this business to open when we think the Council may take action to shut it down.
- Expressed agreeing with Commissioner Lindenbusch's comments on kratom.
- Feelings strongly about not obscuring the windows and about the 21-year age limit.

Commissioner Wilson commented:

- There are some things about the proposed use that he does not have a problem with (such as the sale of t-shirts, incense, jewelry, etc.).
- If we were to proceed with this, he would propose conditions, in addition to what staff has proposed, that:
 - Nobody under 21 could enter the building.
 - No tobacco or nicotine products will be sold.
 - No vaping products will be sold.
 - No e-cigarettes will be sold.
 - No e-pipes will be sold.
 - People are required to have licenses frequently. Adding a condition requiring that the license be obtained before the business can open and operate would seem to make sense.
 - Deferred to the Police Chief on kratom and would support a condition stating that kratom shall not be sold at this location as he would consider the sale of it an intensification over the prior use.
- The applicant has not expressed being opposed to any of those conditions, except for the condition about not being able to sell kratom .

Chair Fernandez commented:

- Shared the concern about Condition of Approval #4 which speaks to the Commission being the body to decide on prohibition as expressed by Commissioner Lindenbusch.
- If he were the applicant, he would be concerned about the potential outcome of these ongoing discussion at the Council level in terms of the possibility of their decision being retroactive which could impact his business.
- Agreed with Commissioner Oetinger about the Commission not comparing or penalizing the applicant for the prior business owner's business dealings.
- If the prior business owner's business dealings caused their Use Permit to be null, then that should be taken into consideration.

- Does not see how the Commission can make a decision without having the facts on any impacts to the Use Permit based on the prior business owner's dealings as well as the ongoing discussion at the Council level.

Chair Fernandez asked for further questions or comments from the Commission or staff.

Hearing none, Chair Fernandez asked if any member wished to make a motion.

Vice Chair Fritz commented:

- Would support a continuance so that the Commission can have a better understanding of what direction the Council is moving since they have been working on this matter.
- The City Council sets policy direction for the City.
- It does not make sense to decide without full knowledge of the issues at hand.

Commissioner Haug commented:

- Would also support a continuance.
- There needs to be more clarity around the sale of kratom because it does not seem fair to allow some people to sell it and others to not.
- Interested to know if the work the advocates are doing with the City Council will address kratom.

Commissioner Oetinger commented:

- If the Commission moves to deny this application, is the fact that we do not want the presence of smoke shops in our community for health and safety enough to deny the project based on the general welfare of the city.

Director Svanstrom responded that staff can use input from the Commission to draft findings for denial if that is the direction the Commission wishes to move.

Chair Fernandez commented:

- Understands that a continuance would not be ideal for the applicant.
- Sounds like this application would be denied if the Commission were to vote based on the information they have been provided.

Commissioner Oetinger made a motion to continue this application.

Commissioner Haug seconded the motion.

Chair Fernandez asked for discussion on the motion.

Commissioner Wilson asked how long the continuance would be for given that the group that the Commission is looking for guidance from is not meeting at this time.

Commissioner Oetinger responded that she was thinking of continuing this application for the purpose of understanding the conditions that may need to be changed and to have City staff return with alternatives to the Conditions of Approval based on the items the Commission has outlined.

Chair Fernandez asked if Commissioner Oetinger was thinking of continuing this to the next Commission meeting in that case.

Commissioner Oetinger responded that that could be enough time for the Commission to gain a better understanding of when the City Council might be considering this.

Commissioner Wilson responded that, based on what he has heard, that does not seem very likely.

Commissioner Oetinger commented that she would like a better understanding of when the Council expects to consider this matter so they can have some sort of timeframe.

Commissioner Lindenbusch commented that the City Council has some additional leeway under the provisions of the Brown Act to convene an additional meeting if it is necessary to provide additional clarification.

Chair Fernandez, seeing that Mr. Allati wished to comment, asked members of the Commission if they wished to hear from the applicant during this time of Commission discussion.

Vice Chair Fritz expressed being open to hearing what Mr. Allati has to say.

Members of the Commission concurred.

Chair Fernandez invited Mr. Allati to address the Commission.

Mr. Allati commented:

- Thanked the Commission for the opportunity to speak.
- If kratom is the problem, he can wait to sell it until that decision is made.
- Kratom is currently legal and does not require a Use Permit.
- Does not want to serve anyone under the age of 21.
- Deferred to the Commission on whether the window should be obscured.
- Is working with the City to open his business.
- Is already paying rent on this property.
- Cannot wait a year from now while paying rent for an empty space.
- Has already begun the process of prepping the space for his business.
- Hopes the Commission will allow him to open his business so he can support himself.
- Expressed a willingness to work these issues out if he can start operating his business.

Chair Fernandez asked staff if there is any question, based on staff's analysis, as to whether this project remains to be compatible as a nonconforming use that is allowed to continue operating based on the questions surrounding the prior business not having been in conformance.

Director Svanstrom responded on the two components that need to be met.

Chair Fernandez referred to the motion on the table to continue this application which was made by Commissioner Oetinger and seconded by Commissioner Haug.

Commissioner Oetinger commented that it is difficult to decide on an action without seeing the final conditions of approval they are being asked to consider.

Vice Chair Fritz commented:

- The Commission can and should go through the conditions and the amendments they have been discussing.
- If members of the Commission want to approve this with revised conditions, then the Commission should go over each condition, so everyone understands before being asked to vote on a motion.

Chair Fernandez called for a vote on the motion.

Commissioner Oetinger expressed concern for the applicant in that he is paying rent and being asked to wait longer.

Commissioner Oetinger withdrew her motion.

Commissioner Kelley asked Director Svanstrom a clarifying question on pending discussions at the Council level and how the outcome may impact this business if it were to be approved by the Commission.

Director Svanstrom asked Chair Fernandez to recognize Ms. Lustig as she may be able to provide some insight on Commissioner Kelley's question.

Ms. Lustig responded:

- Her understanding, from their representative attorney, is that the two locations that were discussed (HomeBlown Glass and Safeway) would be required to cease business if the ordinance were adopted as proposed.
- The others would be grandfathered and through attrition would be reduced to a number less than the original seventeen or sixteen (she gave five as an example).
- The two that were identified (HomeBlown Glass and Safeway) would go away due to their proximity to Analy.

Commissioner Kelley thanked Ms. Lustig for the information.

Commissioner Lindenbusch made a motion to approve striking Condition of Approval #4.

For purposes of discussion Chair Fernandez seconded the motion.

The Commission discussed the motion as follows:

Commissioner Oetinger asked if that motion would change their discussion about the entrance being clearly marked for persons age 21 or over.

Chair Fernandez asked Commissioner Lindenbusch if he wished to amend his motion.

Commissioner Lindenbusch amended his motion to strike Condition of Approval #4 and add a provision about only persons age 21 or over being served.

Chair Fernandez seconded the amended motion.

Commissioner Oetinger asked Associate Planner to read the language he had prepared on obscuring the windows.

Associate Planner Montes read the revised language.

Commissioner Lindenbusch expressed being in support of the original Condition of Approval #12 and expressed agreeing with Commissioner Oetinger on the importance of having open storefronts in our downtown.

Chair Fernandez asked about a condition having to do with the sale of tobacco.

At the request of Director Svanstrom, Associate Planner Montes read the revisions he had drafted to Condition of Approval #4 which addressed kratom, tobacco and nicotine. Based on Commission discussion, it sounds like they may want kratom removed.

Vice Chair Fritz commented that Commissioner Wilson commented on the prohibition of vaping products, e-cigarettes, e-pipes, etc. and if those are things the Commission doesn't want to allow, they should also be included in the prohibition.

Commissioner Lindenbusch responded that those items seem covered until the definition of tobacco products under Condition of Approval #6.

Director Svanstrom commented that Condition of Approval #6 requires the owner to get a license without saying whether it is allowed.

Commissioner Lindenbusch agreed to further amend his motion.

Chair Fernandez seconded the amended motion.

Commissioner Kelley commented that dispensaries sell a very limited number of vaporizer batteries making them less available for patients and adult users.

Commissioner Oetinger commented on past examples of Conditions of Approval that spoke to rereview/evaluation if complaints are received, or within a certain timeframe to ensure that no issues arise and asked if that could be included here.

Associate Planner commented:

- That type of language is not currently included.
- A Condition of Approval could be with that type of language if desired.
- Typically, if complaints are received, the City does have a right to bring the Conditional Use Permit back to the Commission for review and possible revocation if deemed necessary.
- Additional language requiring a follow up review within a designated timeframe may be necessary based on complaints, or after Council action, can certainly be added.

Commissioner Oetinger if he would be amenable to adding that to his motion.

Commissioner Lindenbusch responded that he would be supportive of that if that was the consensus of the Commission.

Commissioner Haug asked if language could be included which would not allow this CUP to be transferred to another party, if approved.

Director Svanstrom responded that generally, CUPs run with the land, not with the owner, however because this would be the continuation of a nonconforming use, a new property owner would have to come back for a new CUP. In addition, she suggested adding an explicit Condition of Approval to that effect to ensure clarity.

Chair Fernandez asked staff to read back the motion.

Assistant Planner Montes read back Commissioner Lindenbusch's motion, which was amended several times, as follows:

- Initially it was requested that Condition of Approval #4. be stricken but it was later requested that it be revised to eliminate the prohibition on kratom while being more explicit about the prohibition on nicotine, tobacco, vaping, vaping accessories, batteries, etc.
- The posting of signage requiring people entering the building to be age 21 or older.
- If complaints are received from the community, the Use Permit can be brought back to the Commission for review with the Planning Commission and possible revocation if necessary.
- Addition of a Condition of Approval which explicitly states that upon transfer of ownership, sale, etc. continuation of this use would require a new CUP.

Commissioner Wilson asked about language prohibiting e-cigarettes, e-pipes, etc.

Director Svanstrom added the following:

- The sale of nicotine, tobacco, vaping devices, e-cigarettes, e-pipes, and batteries for vaporizers is prohibited.

Commissioner Wilson responded in the affirmative.

Director Svanstrom asked if there was a desire to include a condition requiring rereview in a designated amount of time from the date of the businesses opening.

Commissioner Oetinger responded that she would like to include that based on their experience.

Director Svanstrom suggested that the condition require rereview six-months from the date of the business opening.

Commissioner Oetinger suggested rereview twelve- to eighteen- months from the date of the business opening given the circumstances.

Commissioners Lindenbusch and Haug agreed with twelve-months.

Hearing nothing further, Associate Planner read back the motion in full for Commission consideration.

Vice Chair Fritz referred to Condition of Approval #11 and commented:

- Because the applicant will not be allowed to sell tobacco or nicotine the language of it should be changed to focus on only approved signage being allowed.

Commissioner Lindenbusch commented that he would lean towards leaving Condition of Approval #11 as is due to some concern having been expressed regarding merchandise that may display the use of tobacco or nicotine (gave someone smoking as an example). He noted that Condition of Approval #12 eludes to the signage having to be permitted.

Commissioner Lindenbusch moved to approve the permit, with the conditions as read back by staff, and with Condition of Approval #11 being left as is.

Chair Fernandez seconded the amended motion.

The Commission voted on the motion as follows:

AYES: Commissioner Lindenbusch,
NOES: Vice Chair Fritz, Commissioner Haug, Commissioner Kelley,
Commissioner Oetinger, Commissioner Wilson and Chair Fernandez
ABSTAIN: None
ABSENT: Commissioner Douch

The motion did not carry.

Vice Chair Fritz commented that he had previously expressed support a motion for continuance, however, since it sounds like there is not a lot of support for that, he would support a motion for denial.

Commissioner Haug commented that she would support a motion for denial.

Commissioner Kelley commented that she would support a motion for denial as well with staff preparing findings for denial for consideration at a future meeting.

Commissioner Lindenbusch commented that he generally supports approval but would support a continuance as well.

Commissioner Oetinger expressed support for a motion to deny based on the health, safety, and general welfare of the city and its residents.

Commissioner Wilson commented:

- Would support approval of this application without the sale of kratom.
- If the will of the Commission is to deny this application, the Commission needs to be more specific than just the health, safety, and general welfare of the community.

Chair Fernandez suggested a finding having to do with the need for this type of business in the community.

Director Svanstrom commented that staff would develop relevant findings, based on Commission discussion, and return to the Commission with those findings for their consideration.

Chair Fernandez commented that he would support either a continuance or a denial.

Director Svanstrom outlined the results of the straw poll.

Vice Chair Fritz asked if a finding to reflect that the City has determined that this type of use is not something it wants to see in our Downtown Core could be crafted.

Director Svanstrom responded in the affirmative.

Vice Chair Fritz expressed concern over what appears to be an overconcentration of tobacco paraphernalia stores which he was not aware of prior to this being brought forward.

Chair Fernandez made a motion to continue this application.

Commissioner Oetinger seconded the motion.

Commissioner Wilson surmised that the motion to continue to the next meeting (May 26, 2020) was being made for the purpose of evaluating findings to deny this permit and application.

Director Svanstrom responded in the affirmative.

Chair Fernandez asked for discussion of the motion.

Commissioner Kelley commented that she would rather vote on the motion to deny this application rather than deferring it until findings are prepared.

Chair Fernandez asked staff if they had enough information for the Commission to vote to deny this application at this time.

Director Svanstrom requested that the Commission proceed with a continuance to allow staff to develop adequate findings for their consideration.

Chair Fernandez amended his motion to continue this application to direct staff to prepare findings for denial based on Commission deliberations this evening.

Commissioner Haug seconded the amended motion.

Hearing nothing further, the Commission voted on the motion as follows:

AYES: Chair Fernandez, Vice Chair Fritz, and Commissioners Oetinger,
Wilson, Kelley, Lindenbusch, and Haug

NOES: None

ABSTAIN: None

ABSENT: Commissioner Douch

8. ADJOURNMENT: Chair Wilson adjourned the meeting at 9:26 p.m. The next regularly scheduled Planning Commission meeting will take place on Tuesday, May 26, 2020, at 7:00 p.m.

Respectfully Submitted By:

Kari Svanstrom
Planning Director