

PLANNING COMMISSION REGULAR MEETING, TOWN OF PORTOLA VALLEY, FEBRUARY 7 2018, SCHOOLHOUSE, TOWN CENTER, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

Chair Targ called the Planning Commission regular meeting to order at 7:00 p.m. Interim Planning Director Cassidy called the roll.

Present: Commissioners Gilbert, Hasko, and Taylor; Vice Chair Goulden; Chair Targ

Absent: None

Staff Present: Arly Cassidy, Interim Planning Director  
Cara Silver, Town Attorney

ORAL COMMUNICATIONS

None.

OLD BUSINESS

1. Recommendation to Town Council on Proposed Ordinance Adding Chapter 18.39 [Cannabis Land Uses] and Amending Section 8.12.010 [Definition of Nuisance] of the Portola Valley Municipal Code

Town Attorney Cara Silver presented the recommendation by staff and the Cannabis Subcommittee regarding a proposed ordinance addition and section amendment, as detailed in the staff report.

Vice Chair Goulden reported on the Cannabis Subcommittee's discussions, research, studies, and findings regarding the need for local regulations and what is appropriate for Portola Valley. Chair Targ discussed the comments made by the Fire Marshal and San Mateo County Narcotics regarding the importance of being able to police and inspect at a localized level and whether or not Portola Valley has an administrative infrastructure able to address this emerging need. He said these considerations affect the scale by which the Town wants to approach cultivation, manufacturing, and distribution.

Chair Targ invited questions from the Commissioners.

Commissioner Gilbert asked if a greenhouse was considered indoor or outdoor. Town Attorney Silver said if a building has a roof and four walls and a foundation, it is considered indoor.

In response to Commissioner Gilbert's question, Town Attorney Silver and Interim Planning Director Cassidy explained the differences between RE and R1 zoning designations.

In response to Commissioner Hasko's question, Town Attorney Silver said the cannabis definition for the ordinance came from the State law, which is also used by the County.

Commissioner Hasko asked if the definition of youth center covered the Nathhorst Triangle. Town Attorney Silver said under the State definition of youth center, it would not apply to Nathhorst, so staff expanded that definition to include Town-owned properties that serve children, which would cover the Nathhorst Triangle Park. Chair Targ said the Nathhorst Triangle Park is used as a functional part of the school for pick-up and drop-off.

Commissioner Hasko asked if the requirement for 100 percent renewable energy was a difficult hurdle for growing 12 plants. Chair Targ said it should be trivial for those that haven't opted out of the Peninsula Clean Energy.

Commissioner Hasko asked if an applicant not living on the premises would need to co-apply with the owner of the property. Town Attorney Silver said that would be the typical way to handle those types of applications.

Commissioner Taylor said the requirement to use 100 percent renewable electricity was unclear.

Commissioner Taylor asked if there was a definition of odor and how it would be monitored or measured. Town Attorney Silver said one of the concerns with this provision is that it would be difficult to enforce. She said it is somewhat subjective, but code enforcement should be able to make a reasonable person judgment. Chair Targ said it became a serious enough issue in Colorado that they reduced the larger scale operations on residential properties down to a maximum of 12 plants, except under unusual circumstances. He said there is a standard nuisance ordinance that goes along with it with regard to odor. Chair Targ said the issue of odor, as with the issues of sound, has subjective components; however, the kind of enforcement around odors in terms of qualitative tests, comes down to a reasonable person's standard. Interim Planning Director Cassidy said the language is quite common and is a standard already in the code for noise. Commissioner Taylor said the noise ordinance, however, is measured and quantitative, whereas odor is different.

Hearing no further questions from the Commissioners, Chair Targ opened the public hearing and invited public comments.

Alison Polkinhorne, 19 Valley Oak. Ms. Polkinhorne asked if the permit process described was for delivery services or only for cultivation. Town Attorney Silver said a delivery service must receive a permit from the State, but does not need a Town permit. Ms. Polkinhorne said allowing a professional, discreet, safe, highly-regulated service to continue to function in this community for the people who need it is very important to her.

Max Polkinhorne, 19 Valley Oak. Mr. Polkinhorne thanked the Commission for agreeing to have an open and ongoing conversation about the current state of cannabis-related activities in Portola Valley. He said he agrees with the Commission's proposed ordinance to ban dispensaries in Portola Valley. He does support delivery service and suggests considering retail sales with tight safety and quality regulations via delivery services which have none of the downsides enumerated by the community and significant upsides as it allows the discreet delivery of medical cannabis to members of the community who may be housebound. He cited some of the key points of the new cannabis legislation put forth by the California Bureau of Cannabis Control and the California Department of Public Health, which go live March 1, 2018. He said if Portola Valley were to accommodate retail sales of cannabis products via delivery service, he thinks this would protect young people in the community, would not attract any sort of outside unwanted traffic, but would allow the community to serve its residents by offering local access to needed medication. He said he and his family have been in contact with veterans struggling with PTSD, people who are housebound due to disease, people living with chronic diseases, and others who rely on cannabis when other forms of medication have failed them.

Anne Kopf-Sill, 30 Minoca. Ms. Kopf-Sill was supportive of the subcommittee's recommendations. She asked for clarification on part of the map regarding the buffer zone.

Margaret Wilmer, 2 Portola Green Circle. Ms. Wilmer has a 7<sup>th</sup> grader at Corte Madera School and grew up here, also attending Corte Madera and CMS. Her father still lives on Portola Road in the idyllic house she grew up in, and she'd like to keep it that way. She said she is concerned with delivery trucks

and vans coming in with marijuana advertising and asked if there is any regulation around this. Town Attorney Silver said the current regulation does not address advertising on delivery businesses. She said it would be the delivery vehicles that are used in various cities, and there are First Amendment and constitutional issues with regard to regulating signs placed on vehicles. She noted, however, that the current delivery services use smaller unmarked cars for security reasons, so there has not been concern about it.

Kim Zamboldi, 30 Alhambra Court. Ms. Zamboldi thanked the Town with the thoughtfulness and speed in getting this ordinance prepared. She said she was particularly concerned about the Triangle as a dispensary spot and the expansion of the definition of a youth center was perfect. She asked if the next steps could be explained.

Jeff Booth, 250 Nathhorst Avenue. Mr. Booth said he has been a resident for 45 years. He said he is in general agreement. He asked if cultivation included growing, drying, trimming, extraction, etc., and if there were any restrictions in that process. Town Attorney Silver read the definition of cultivation in the proposed ordinance. Mr. Booth asked why a delivery service would be permitted, but not a retail site. He said in the discussions of setbacks in the Nathhorst Triangle that the Country Offices at the corner of Nathhorst and Alpine were not discussed. He said these offices are not in the normal flow for children. He said if a delivery service was housed there, it would seem to be an ideal spot and would certainly serve the community better than the long distance some of the services have to travel to get to Portola Valley. He said he would like to see a provision for a mandatory yearly review of the set of ordinances.

John Zussman, 5 Bear Paw. Mr. Zussman said he has lived in Portola Valley for 31 years. He said he is one of the 68 percent of the Portola Valley voters who voted in favor of Proposition 64 to allow cannabis products to be available in town and to allow cannabis businesses to operate in California. He commended the Town Council for allowing the community to consider entering the brave new world of cannabis. He commended the subcommittee for recommending that we stick our toe in the water and allow limited commercial cultivation. He said, however, this is one of those times when sticking our toe in the water isn't enough. He said this is labeled a commercial cannabis ordinance, which means commerce, which means business. He said with all the licenses, regulations, taxes, and fees that are mandated at both the State and local level, there is no way to operate a viable cannabis cultivation business with only 12 plants. He said if the Town wants to encourage and allow small-scale cannabis cultivation, then the limit of plants needs to be raised. He suggested using the same types of cultivation licenses, such as specialty cottage, as recommended by the State. He said instead of the 12-plant limitation, the Town ordinance could be aligned with the State ordinance, which allows for up to 25 plants for an outdoor license, 500 square feet for an indoor license, or 2,500 square feet for a greenhouse, also called a mixed light license. He said small scale cannabis cultivation may be the most unprofitable part of the cannabis ecosystem because the cannabis producers will compete with Big Ag cannabis operations. He said if the desire is for small scale cannabis cultivation to flourish, then they must be allowed to form microbusinesses. He said a microbusiness license would allow a business to grow, manufacture, distribute, and sell. He said this could encourage craft cannabis along the same level as a microbrewery, a micro-distillery, or a micro-winery, which is the only way small scale wine and beer production has been able to compete with Anheuser-Busch or Gallo, encouraging small scale operations that are craft and artisan based. He urged the Town to consider this license category to encourage small scale cannabis cultivation and businesses to prosper within Portola Valley while remaining consistent with the Town's small scale rural values and culture.

Tera Bonora, 229 Grove Drive. Ms. Bonora thanked the subcommittee for all of their work. She was supportive of their recommendations. She said she did not vote for Prop 64 and was completely against it. She said she supports personal use of cannabis. She was supportive of the Sequoias having a dispensary to help with the residents' medical issues. She said she was not supportive of commercial

dispensaries around children. She was supportive of a 12-plant limit to discourage small businesses growing and distributing. She said that could be reviewed in 5 or 10 years and consider raising the limit at that point. She said she moved to Portola Valley for the sense of community. She said there is an obligation to protect the children by not having access to cannabis. She asked if someone renting a house in Portola Valley would be allowed to have six plants unless otherwise stated in the lease agreement. Town Attorney Silver said whether the household is occupied by a tenant or owner, up to six plants can be grown in the house. She said landlords can put a restriction in their lease agreements to prevent that, but the Town would not enforce that restriction, and it would be a private matter. Ms. Bonora said she is concerned about wind blowing marijuana seeds onto her property.

Laurie Duvall, 350 Golden Oak Drive. Ms. Duvall thanked the Planning Commission and the subcommittee. She was supportive of the recommended ordinances and was particularly pleased with the delivery possibility.

Hearing no additional public comment, Chair Targ closed the public hearing and brought it back to the Commission for discussion.

Town Manager Dennis said if the Planning Commission makes a recommendation tonight, the item will be placed on the Town Council's next agenda on February 28. He said the Council will then deliberate, finish their discussions, and an ordinance will be put in place. If the Planning Commission is unable to finish the business tonight, it will be agendaized for the next Planning Commission meeting and then go to the Council. He said staff is committed to get this ordinance in place as quickly as possible.

Vice Chair Goulden said, in general, a distribution operation of any kind was not likely something that would interest Portola Valley or fit within the Town guidelines.

Vice Chair Goulden said the subcommittee did not feel like Portola Valley wanted to be pioneers in this area, which is fraught with potential concerns. He said the fact that Colorado arrived at the limit of 12 plants after a lot of experience was influential in their decision-making.

Commissioner Gilbert asked what Colorado learned and why they reduced the maximum plants allowed to 12. Chair Targ said along with the legislation that was enacted this past year, there were a series of findings made, and asked the Town Attorney to review them.

Town Attorney Silver said Colorado previously allowed unlimited growing on residential properties for medicinal purposes. They found there were a series of problems allowing an unlimited amount resulting in very large grows. Effective January 1, 2018, Colorado passed a law that ratcheted cultivation for medicinal use to 12 plants. Town Attorney Silver reviewed the series of findings: "The extended plant count and primary caregiver provisions have created a situation in which individuals are cultivating large quantities of marijuana in residential homes. These large-scale cultivation sites in residential properties create a public safety issue and are a public nuisance. A site in a residential property can overburden the home's electrical system, resulting in excessive power use and creating a fire hazard that puts first responders at risk. A site can also cause water damage and mold in the residential property. A site in a residential property can produce a noxious smell that limits the ability of others who live in the area to enjoy the quiet of their homes. Often the site is a rental home, and the renters cause significant damage to the home by retrofitting the home to be used as a large-scale cultivation site. When residential property is used for a large-scale cultivation site, it often lowers the value of the property and thus the property value of the rest of the neighborhood. Finally, a site in a residential property can serve as a target for criminal activity, creating an untenable public safety hazard. Large-scale, multi-national crime organizations have exploited Colorado laws, rented multiple residential properties for large-scale cultivation sites, and caused an influx of human trafficking and large amounts of weapons as well as the potential for violent crimes in residential

neighborhoods. Large-scale cultivation sites in residential properties have been used to divert marijuana out of state and to children.” Town Attorney Silver said Colorado adopted its marijuana laws a few years before California. Chair Targ asked Town Attorney Silver to include these findings and that portion of the ordinance with the transmittal the Planning Commission makes to the Town Council.

Commissioner Taylor asked if the Town was proposing one permit for one person, allowing 6 plants per person or 12 plants if for cultivation. Town Attorney Silver said the proposal is one permit per premises.

Chair Targ said the issue of microbusinesses were specifically raised by the head of the Narcotics Task Force for the San Mateo County Sheriff, who identified that if there is going to be an issue with organized crime, that’s where it will be located. The ad-hoc committee also considered the fact that Portola Valley would be the only jurisdiction in the vicinity that would allow a micro-enterprise, which might create an unusual concentration within this area. He said the idea of being a pioneer in certain aspects seemed appealing; however, with the admonition from the Sheriff and being a town without its own police department, it seemed too far forward from the ad hoc committee’s perspective.

Commissioner Gilbert said there appear to be substantially more restrictions for growing 12 plants outside for commercial use, in terms of wastewater, fire, and security that are not required for the 6 personal use plants. She asked if some of the restrictions required for 12 plants should also be considered for 6 plants. She said, for example, if the 6 plants are grown inside, there is no consideration regarding lighting impact, as there is for the 12 commercial plants. She said there seems to be some discontinuity between the two. Chair Targ asked Town Attorney Silver to explain the distinction between commercial restrictions required as a matter of State law versus the restrictions on personal cultivation. Town Attorney Silver said in order to grow more than six plants, a State license is required, which has a series of requirements. She said staff’s proposed ordinance includes requirements taken from the County ordinance since the same people will be enforcing the ordinance. She said there are requirements imposed by both the Town and the State. She said the policy question for the Commission is whether or not they want to replicate the State requirements or eliminate them and defer to the State to ensure that those safeguards will be put in place.

Commissioner Gilbert asked if plants are grown for personal use indoors if some protections can be put in place regarding lighting and the Fire Code. Town Attorney Silver said reasonable requirements can be put in place. Commissioner Taylor asked if there was a quantitative way of thinking about it, such as amps per plant. He said it did not seem right that 12 plants are subject to regulation, but 6 plants are not. Chair Targ said there is a desire to be consistent with State requirements as well as being consistent with County requirements. He said they did not want to create an island of regulation that puts the Town apart from the surrounding jurisdictions. They also wanted to take a gentle hand with respect to personal cultivation. He said someone trying to operate a grow operation with maximum intensity for personal cultivation in an unsafe manner seemed unlikely and was not a concern of the Fire Marshal. He said the two issues of consistency with the surrounding jurisdiction and the County and the non-objection on the part of the Fire Marshal were the two driving issues.

Vice Chair Goulden said for something small, six plants or less, the existing lighting ordinances and electrical codes were sufficient. He said although 12 plants are not much more, from the State law perspective, the regulations are different. Commissioner Taylor said someone could get the highest intensity lights as possible, which could draw a lot of power, for their six plants, and he wondered how these types of things would be normalized. He said it appeared that when it hit the commercial trigger point of 12 plants, extremely onerous restrictions were applied, but basically giving freehand to everyone else. He said it didn’t feel like a gradient, but very much a harsh step function.

Commissioner Hasko asked if the lighting concern was fire safety or light pollution. Vice Chair Goulden said it could be both. He said they felt the new lighting ordinance would probably handle greenhouses. He said the Fire Marshal's biggest concern was about fire safety related to illegal operations, where people are stringing electrical cords, over-powered circuits, removing fuse boxes, etc.

Commissioner Gilbert asked if a commercial applicant lived in Portola Valley, but not living on the property where they would be growing, would both the applicant and the person living on the property need to be on the application. Town Attorney Silver said that is not clear in the ordinance. Commissioner Gilbert suggested it should be specified in the ordinance. She said the tenants may change on a rental property where cannabis is being grown commercially, and the Town needs to know who is responsible. Commissioner Hasko said she is more concerned about the consent piece of it because there are properties in town where people are not there day-to-day and may or may not be as aware of what's going on on their property. She said if she was an owner, she would want to be aware there had been an application to grow on her property and that it would require her consent. She asked the Town Attorney to consider the legal liability.

Commissioner Taylor presented the scenario where a property owner gave consent, and an applicant has a renter who has committed a felony. He asked if the Town would know the renter as part of the chain, living on the same property where the cultivation is occurring. Town Attorney Silver said the ordinance could be written so that the tenant is also an applicant if that is the Commission's intent. She said the original staff recommendation was that the applicant needed to live on the property. The subcommittee's recommendation was that that may be too strict and suggested that the applicant needed to live in Portola Valley, but did not need to live on the site. Staff wanted some local person to call if a problem arose. Vice Chair Goulden said the subcommittee also discussed that it was reasonable to allow a resident who had a second property in Portola Valley to be able to use that second property for cultivation. Commissioner Gilbert said her concern was making sure the Town knew who was accountable and who was watching over the operation.

Commissioner Taylor asked what the intent was behind the requirement for an applicant to notify the Town if convicted of a crime. He asked if the Town just wanted to know if the applicant, the responsible party, had been convicted of a crime or if they also wanted to know if the applicant's tenants had been convicted of crimes. He confirmed with Town Attorney Silver that that requirement was for the applicant and not for who was in proximity to the cultivation.

Commissioner Gilbert asked regarding the 600-foot versus 1,000-foot buffer. She asked if any portion of a property was within 600 feet, would the entire property be disallowed for cultivation. Town Attorney Silver said that is how it is defined in the County and State law. Chair Targ said such a property would not be granted a State license anyway. Commissioner Gilbert asked why the County used 1,000 feet versus 600 feet. Town Attorney Silver said the County is anticipating larger-scale grows, but she does not know the genesis. Commissioner Gilbert asked if the subcommittee had discussed 600 versus 1,000 feet. Vice Chair Goulden said it was discussed as part of the youth centers, and it seemed like the 600 feet would be adequate if the definition of a youth center was expanded. He said they weren't adamantly wedded to 600 or 1,000 feet, and using 1,000 feet would affect more properties, but would not likely affect any public areas.

Commissioner Taylor asked if there was a definition of a youth-oriented area. Town Attorney Silver read Definition Y under Section 18.39.020. "Youth Center shall have the same meaning as defined by California Health and Safety Code Section 11353.1 and shall also include publicly owned facilities and properties that support activities for youth and children." She said that the added language captured Triangle Park. Commissioner Taylor asked why they couldn't just call out Nathhorst specifically. He said, for example, there is a small piece of Town-owned property at the top of Old La Honda that, if

children started playing there, could be considered Town-owned property that is a youth facility, and the 600 feet would then apply.

Commissioner Taylor said R-1 should not be excluded if they met the requirements. He asked why not use the existing prescription rather than the Zoning designation. Town Attorney Silver said the thought was there would be very few R-1 properties that would qualify, being smaller in size and not appropriate to support cultivation. She said it was felt it would be more transparent to say R-1 properties are going to be carved out of the ordinance rather than setting up a false expectation. Commissioner Gilbert asked what criteria R-1 properties would not meet. Town Attorney Silver said the buffer and size of the R-1 lots, with the proximity to neighbors being more intrusive. Commissioner Gilbert asked if the visibility issue applied to plants in the ground or also included planting in a greenhouse. Town Attorney Silver said the subcommittee wanted to encourage outdoor cultivation as opposed to greenhouse grows, especially in an R-1 neighborhood where the sudden construction of a big greenhouse would have more impact. Chair Targ said from the experience in Colorado and the observations of the Sheriff's Office, concentrating marijuana plants in a confined area with a limited number of vents tends to create more odor issues than if you have more dispersed open air. Greenhouses must also deal with light spill and impervious surface issues.

Chair Targ asked Commissioner Taylor, who lives in a higher density area, to share his thoughts about commercial cultivation in denser areas. Commissioner Taylor said the existing criteria, such as light spill and impervious surfaces, must and should be applied and should be made clear, and those restrictions would apply across the board, rather than arbitrarily restricting certain zoning designations. He agrees that a lot of the R-1 properties will not qualify, but does not think the zoning should be one of the restrictions. Chair Targ suggested the Commissioners think about if there should be a requirement regarding appropriate lot dimension, size, and areal extent. Commissioner Taylor asked, for example, if someone put up an allowable garden shed equivalent to a greenhouse, why they wouldn't be allowed to grow. In response to Chair Targ's question, Commissioner Taylor said he would be supportive of using the same sort of structure model in addition to the other requirements such as for odor, setbacks, height requirements, etc., and removing the zoning restriction entirely.

In response to Commissioner Gilbert's question, Interim Planning Director Cassidy said a homeowner's association could supersede the ordinance by being more restrictive.

Commissioner Taylor said he understands the reasons for keeping cannabis out of sight of the public through public nuisance, such as via trail easements, etc. He asked regarding the goal of keeping the cannabis out of sight of neighbors. He also asked regarding visibility versus distance. He said he understands the issue of not wanting children to walk by a property and see a grove of marijuana plants. He said, however, there are places he could stand and see a marijuana plant from a great distance. Chair Targ said there were people who objected to seeing turf from the top of Windy Hill and the same may be true for marijuana plants that could be discerned from a couple of miles away. Commissioner Taylor said he may be more comfortable with some kind of distance measure because it did not seem fair to object to something someone may be able to see from half a mile away. He did not think it is reasonable to make sure no one ever sees a marijuana plant, but rely more on the public nuisance factor of someone walking by a fence, seeing marijuana plants, and climbing over the fence to get to them.

Commissioner Hasko pointed out that the plants grow up to 10 feet tall. She said the trail system is as extensive as the road system and fencing is discouraged. She said there will be a lot of properties that children and visitors walk by. She said a distance requirement will not be enough. She said 10-foot plants will be visible, and people will know who grows. She understands that topography makes visibility difficult, but if outdoor cultivation is going to be allowed, she is concerned about the trail issue.

She said there were comments about going over fences to get to the plants, but Portola Valley is not supposed to be constructing incentives to build fences.

Commissioner Taylor said the fencing ordinance limits fences to 6 feet, but marijuana plants grow to 10 feet so additional plant screening would be necessary. Commissioner Gilbert said the ASCC has expressed concern about hedging along roads and the desire to open up the views. Chair Targ said the issue becomes magnified with more plants. He said the easier thing to do would be to not allow cultivation whatsoever and to obviate the whole discussion. He said it's also important to recall they are talking about five permits and there is a question of whether that means five permits per year cumulative or five permits total, and what the level of tolerance is for fencing, visibility, screening, and size. Commissioner Taylor said some of the tension is because they'd like to encourage outdoor growing rather than indoor growing. Commissioner Taylor asked if a 12-foot tall greenhouse would be allowed. Interim Planning Director Cassidy said they would be treated as any other structure. Commissioner Taylor said he would be supportive of the standard requirements for an auxiliary structure to be used for commercial purpose. Interim Planning Director Cassidy said they look at ceiling heights, how finished the structure is, if there's HVAC, the intent of the structure, etc., to determine if it is also considered additional floor area.

Commissioner Taylor asked if there were restrictions regarding business hours. Town Attorney Silver said that could be incorporated into the ordinance.

Commissioner Gilbert referred to Section 18.39.070.B, Commercial Cannabis Permit Requirement. She asked for clarification regarding "The proposed activity is no more objectionable than the listed activities ...". Town Attorney Silver said that appeared to be a drafting error and should be no more objectionable than the types of conditionally permitted uses that are permitted in that particular zone. Commissioner Gilbert said a normal CUP would list what can be done on the property, but this kind of property will not have an existing CUP. Chair Targ said it would still need to be consistent with the residential neighborhood and consistent with the other uses permitted by right within the zone. Interim Planning Director Cassidy said uses are listed various ways – permitted by right, which is very limited; accessory uses permitted; conditionally permitted uses; and others. She said if the desire is to specifically reference what that is, it should be clear if it's all other types of permitted uses or accessory, utility, conditionally permitted, or if it's one only.

Commissioner Gilbert said it appeared the ordinance used "permittee" when referencing both personal use and commercial cultivation; however, only commercial cultivation required a permit. Town Attorney Silver said she will correct that.

Commissioner Gilbert referred to 13.39.180.B, which referred to a penalty of three times the amount of permit fee. She asked what the permit fee would be. Town Attorney Silver said they have not yet determined the amount of the permit fee. Commissioner Gilbert's concern was that if the permit fee was low, the 3x penalty would not be a deterrent. Chair Targ said the issue was abatement or closing of the facility.

In response to Commissioner Hasko's question, Chair Targ said a person could have both 6 personal plants and 12 plants for commercial use.

Commissioner Taylor said the ordinance seemed onerous for a prospective commercial grower permittee. He said, for example, there is a requirement to have trash picked up within seven days. He asked if the Town could revoke a permit because the trash was picked up a day late due to a holiday. Town Attorney Silver said there would not be code enforcement activity in that situation. She said the intent behind the provision is that the Town doesn't want cannabis-related waste sitting in front of



somebody's property for long periods of time. Commissioner Taylor said the grower's cannabis related waste should be kept out of sight until pickup day.

Commissioner Taylor said another example of harshness was allowing only 30 days to rectify an incomplete application or the permit would be considered abandoned. He said there are only five permits being allowed, and he would like to assure an applicant that the Town's goal is to work with them to get their permit granted within the restrictions. He said the ordinance reads more harshly. Interim Planning Director Cassidy said most of the code is not written to specifically call out good faith effort, and there is an understanding that people are generally doing their best to follow the code. She said since there is not a patrolling code enforcement officer, and the Town does not take an active role in looking for violations, when violations are reported, the Town's general goal is to assume that good faith effort and the first contact is usually a courtesy notice and not the initiation of a notice of violation, which basically starts the clock for the person to come into compliance. She said there is generally a phone call, an email, or some informal contact letting the person know a complaint has been received and the Town would like to see it brought into conformance. She said the majority of complaints are addressed before a first notice of violation goes out. She said this is a more sensitive issue, and there will be more eyes on cultivation; however, she would assume the Town would continue their process with the assumption that when a complaint is made, someone will probably jump to address it, especially because it is a sensitive issue. Commissioner Taylor asked if a permittee has recourse if the Town tells them they have abandoned their permit and need to start over. He said there should be some mention of recourse options for the permittee. Chair Targ said staff is reasonable, and the accessibility to Town leadership and staff's treatment are relief valves that have worked effectively. He would recommend to leave things tighter and, if they are enforced in an unreasonable matter, they can be reviewed and titrated down rather than try to hit directly on the nose and try to define best efforts. He suggested letting the enforcement process play itself out through the discretion the Town has effectively exercised on a day-to-day basis. Commissioner Taylor agreed that they should not get into trying to define good faith and said he would like to see a relief valve offered in the ordinance. Chair Targ said it was not necessary because the Town Manager was always available, and if he was not responsive, people could reach out to the Councilmembers. He said he did not want to end up being the marijuana board of appeals. Town Attorney Silver said before a permit could be revoked or suspended, there is an appeal process. Commissioner Hasko said 18.39.030.A indicates permitting "cultivation of up to 12 cannabis plants on any single property in the R-E or M-R zoning districts." She said "for commercial activity" needs to be added there. Town Attorney Silver said she will correct that.

Commissioner Taylor asked if five permits per year was five new per year or five total growers per year and if there is a cap. Commissioner Gilbert said if she had a permit, she would want to know that she would have preference to renew the following year in order to be running a business. She said the yearly review could be a good way to start it because the Town will learn a lot about the process, the restrictions, etc. Chair Targ said they talked about a five-year sunset. He said the understanding of issues of enforcement and tolerance in Town will likely change over time, as well as the effectiveness of over- or under-regulation that may be embodied here. He said one year seems too short to allow for adequate ventilation or change in morays, and five years may be too long. In response to Commissioner Taylor's question, Chair Targ said he was talking about a sunset where something new would happen after a mandatory review; an action forcing a requirement to come to an end and then reconsider what has been done. Commissioner Gilbert said she was talking more of just a review at one year, particularly in terms of whether or not the restrictions are too onerous and need to be rephrased, or if a lot of neighbor complaints about a particular issue are received. Commissioner Hasko said for a cultivation permit, the applicant would need more than a year visibility to invest in it and agreed sunset may be the right mechanism to force renewal or revisitation. She said she was supportive of revisiting it, and optimizing will likely be needed, but the question is when there will be enough data. The Commission agreed with a review one year after the first permit is issued, followed by recommendations to the Town Council.

Commissioner Taylor asked if the information collected by the Town for the cannabis permits would be available to the DEA. Interim Planning Director Cassidy said it is a matter of public record, and all of the information on the application must be released.

Commissioner Taylor said the ordinance states a grower can be inspected at any time. He said he understood it was not likely the Town would come by at 2:00 a.m. to inspect a property, but suggested random inspection be limited to business hours. Interim Planning Director Cassidy said there is a scheduled inspection done by Town staff or an inspection on a complaint; however, people can call the police at any time to complain about noise, a party, large lights, etc., which would be answered immediately. She said this would carry forward and cover concerns about these businesses as well.

Commissioner Taylor said the Track and Trace had to be registered with the State and asked if the Town had access to that data. Town Attorney Silver said this is a new area of regulation, and it is assumed the Town can have access to those records, but it is not known for sure at this point. She said she is not sure the Track and Trace program is up and running yet.

With no further discussion items from the Commissioners, Chair Targ brought the discussion back to the Outstanding Issues for Discussion as listed in the staff report.

- Personal outdoor cultivation: Should the ordinance establish a numeric buffer from the adjacent properties or just contain a qualitative buffer (i.e., not be visible from public locations). (Ordinance Section 18.39.040 B.)

Commissioner Taylor said his assumption was that this was dealing with the attractive nuisance issue, not having easily accessible marijuana plants, rather than “I don’t like the look of marijuana plants.” Commissioner Taylor suggested restrictions about visibility along ordinary public view such as public trails, public street views, public parks, etc. Commissioner Gilbert agreed with a qualitative standard versus a specific distance because the distance would be different for different properties. Commissioner Hasko said although it might be known that marijuana is being grown on a property even though it’s screened, but she would prefer there be some effort to screen and not just rely on distance. Vice Chair Goulden said a Conditional Use Permit gives the Commission the leeway to make a decision, especially in the early permits, and he would prefer the Commission have the ability to use discretion while this is being figured out, using ordinary public view versus specific numeric buffers.

Chair Targ suggested striking the issues pertaining to screening, distance, and neighbor view and just use ordinary public view, setbacks, and proximity to youth centers.

Chair Targ said he was interested in concluding this this evening and asked staff if they had enough information and direction on the adjustments requested to the ordinance. Commissioner Gilbert said she would not likely be comfortable voting on this without seeing all the changes in writing. In response to Commissioner Taylor’s question, Interim Planning Director Cassidy said no one had applied to grow, but there has been interest expressed in a general sense for distribution. Town Attorney Silver said, with respect to timing, that Town Manager Dennis indicated the February 28 date is not firm, and there may not be enough time to notice it in the newspaper; it was more likely to be put out in March.

In response to Town Attorney Silver’s question, Chair Targ said a neighbor view is private and not an ordinary public view, from a publicly accessible spot. Commissioner Taylor cited examples of a public road or trail, but not standing atop Windy Hill looking down on all of Portola Valley.

- Should permittees be allowed to possess more than one permit (Ordinance Section 18.39.040 C.)

Commissioner Gilbert said since the limit was five total, one person should not be allowed to have more than one permit, at least initially. Commissioner Taylor agreed. He said if there is an initial rush of 15 applicants and only five permits are issued, then it may be reconsidered in a year. Vice Chair Goulden said part of the consideration was the amount of staff time this takes. He said they don't normally do five Conditional Use Permits a year, so staff could be overloaded if the number of permits allowed is too generous.

The Commission agreed on one permit per permittee.

- Should the "sensitive receptor" buffer be 600 feet (State law) or 1,000 feet (County buffer for larger parcels). (Ordinance Section 18.39.140 D.)

In response to Commissioner Gilbert's question, Town Attorney Silver said the 600-foot buffer does not apply to personal outdoor cultivation under State law, but the Town can apply a local regulation.

The Commission was in general agreement with a sensitive receptor buffer of 600 feet. Commissioner Hasko said it seemed odd to be able to grow personal outdoor plants near the schools and her impression of the commentary was the assumption that 600 feet was more broadly applicable to outdoor availability. She said it wouldn't reflect what the community may be comfortable with and being out of sight would definitely help. Chair Targ suggested coming up with bracketed language to be reviewed at the upcoming meeting.

- How many permits should be permitted on an annual basis. If five new permits are granted, what about renewals? Should the original five incumbents receive preference or should there be a rotation? (Ordinance Section 18.39.140 M.)

Commissioner Taylor proposed five permits the first year, five additional permits the second year, with a cap of 10 total. He said in the annual review, if there is a lot of interest, the Commission can rethink their position, but if there is none, then 10 could cover it forever. The Commission agreed that rather than a lottery system, the applications will be considered on a first-in basis. Interim Planning Director Cassidy asked if there should be a waiting list if there are more than five applications, or if those additional applications would automatically be in the second group to be considered in the second year. The Commission agreed with renewals of existing permittees first, with a lottery at the beginning of the second year for new applications. The total cap will be 10 unless reconsidered after review.

- Are the additional requirements relating to runoff, storm water, wastewater discharge, energy use and the like necessary or are they too onerous for just 12 plants? (Ordinance Section 18.39.140 Q-Y.)

The Commission agreed that the existing requirements should stay in place, and they will be better able to assess their necessity at the time of the first annual review. Commissioner Gilbert said she was still bothered by the fact there is such a big difference in the regulations between 6 and 12 plants, but was supportive of tabling that discussion until after the one-year review. Commissioner Taylor suggested keeping track of comments indicating the requirements are too onerous for prospective growers.

- Since record retention and Track and Trace Program are both required by the State, is it redundant for Town to also require. (Ordinance Section 18.39.150-18.39.160.)

Commissioner Taylor said since the State requires those records, it is redundant, but he wants to make sure the Town has access to that information. Commissioner Gilbert said it doesn't hurt to be

redundant because applicants would need to fulfill that requirement for the State anyway and it would just emphasize the importance of it.

- Should commercial cannabis Permittees be required to live on the property for cultivation or just in Portola Valley? (Ordinance Section 18.39.140 B.)

Commissioner Gilbert said she was leaning toward not requiring an owner to live on the property, but was concerned there may be a lot of other issues not fully considered, such as letting a friend grow and things getting out of control because someone is not watching what's going on. Commissioner Hasko said if somebody unknown to the owner applied for a permit to grow on the owner's property, there are property rights that could be asserted in addition to possible redress for doing things inappropriately through the Town's permitting process, but she doesn't feel she knows exactly what those boundaries are. She said it needs to be clear who is legally responsible for noncompliance – the owner or the tenant. Chair Targ suggested a unity in ownership between the applicant and the owner of the property, but they don't necessarily have to live on the property. Commissioner Taylor suggested requiring written owner consent with the permittee being responsible.

Town Attorney Silver said if there was an issue, most of their code enforcement activity is directed at the property, such as liens or violations. She said it is difficult to envision a situation where the property owner is not liable for the activity on the property. Interim Planning Director Cassidy said when an ASCC application comes in for an addition, the applicant can be anyone – the person living there, the owner, the architect – and anyone can sign a Memorandum of Understanding saying they agree to pay, but the property owner has to agree because in the end it does come back to the property owner as ultimately responsible for what occurs. It is the Town's responsibility to ensure that the property owner knows about and agrees to the proposal. She said when the Town does a site review, they contact the owner as listed on the application, and if there is a renter, the owner will contact the renter and get permission from them as well.

- What is the appropriate setback limits for public easements, trails and properties which the Town possesses a legal interest? (Ordinance Section 18.39.140)

The Commission agreed this was addressed with ordinary public view.

Commissioner Taylor asked if a trail could ever be considered a youth facility. Commissioner Hasko said there are certain trails designed as Safe Paths to School that get special attention for maintenance. Town Attorney Silver said it would affect a commercial grower within the 600-foot buffer unless the previous suggestion of being explicit regarding the youth facilities is adopted. Interim Planning Director Cassidy said they could map it, applying the 600-foot buffer to the Safe Routes to School and see where it lands.

Chair Targ said the Town possessing a legal interest does not seem like the appropriate item that gets to the issue of the excess property at the top of Old La Honda and the 35 miscellaneous pieces of property the Town owns. He suggested an explicit list be created to which they could add the Safe Routes to School.

- Should the ordinance have a sunset provision?

The Commission agreed a sunset provision was not necessary. The Commission agreed on a review at one year after the ordinance passes with recommendations to Council, and then yearly for five years.

Chair Targ asked if there should be designated business hours. Interim Planning Director Cassidy said there may be such designations for home occupations, but she would need to look into it further. Town Attorney Silver said that is typically addressed in the Conditional Use Permit process.

Chair Targ said an issue was raised about normalizing the different power requirements between personal cultivation and commercial cultivation and recommended waiting to evaluate in a year.

The Commission supported developing a list of youth-oriented facilities and Safe Routes to School and eliminating the zoning requirements generally.

The Commission agreed that neighbor views, distance views, and screening have been dealt with through ordinary public view.

The Commission agreed to add “permissible uses” to Section 18.39.070.B.2 for clarity.

The Commission agreed that in Section 18.39.030.A, the 12 plants be identified as commercial use and striking the R-E and M-R zoning.

The Commission agreed to add to the ordinance the requirement for a review in one year after the ordinance is adopted with recommendations provided to Council for action.

The Commission agreed on 12 plants for commercial growing; 5 permits per year with a maximum of 10, and a process for distributing the permits; a prohibition on manufacturing; a prohibition on microbusinesses; and a prohibition on distribution except for delivery service which is permitted unregulated, including with respect to signage.

The Commission thanked the ad hoc committee for all of their work and time spent on this issue.

Vice Chair Goulden moved to continue this item to the next agenda meeting. Seconded by Commissioner Taylor; the motion carried 5-0.

#### NEW BUSINESS [10:42 p.m.]

Chair Targ called for a brief recess.

#### 2. Review of Modification to the Town’s Ground Movement Potential Map, File # PLN GMM 3-2017, 380 Escobar Road, Freccia/Giblin

Interim Planning Director Cassidy presented the background of the proposal and staff’s recommendation to adopt the resolution approving the requested modifications to a portion of the Town’s Ground Movement Potential Map, as detailed in the staff report.

Chair Targ invited comment by the applicant. Hearing none, he invited questions from the Commission.

Commissioner Gilbert said the report noted the proposal is to change the designation on the adjacent property. Interim Planning Director Cassidy said the report noted that their findings could be reflected in a change to the adjacent property, but there is no current proposal to do so.

Commissioner Gilbert asked if the structures on the adjacent property were in the Md zone that is potentially changing to Ms. Interim Planning Director Cassidy said the applicant may have anecdotal information, but it has not been mapped.

Commissioner Gilbert asked if the owner of the adjacent property was noticed. Interim Planning Director Cassidy said a 300-foot buffer was noticed.

Hearing no additional questions, Chair Targ invited questions from the public. Hearing none, Chair Targ closed the public hearing and brought the issue back to the Commission for discussion.

Hearing none, Chair Targ called for a motion.

Vice Chair Goulden moved to approve Resolution 2018-3, A Resolution of the Planning Commission of The Town of Portola Valley Approving Modifications to The Ground Movement Potential Map. Seconded by Commissioner Gilbert; the motion carried 5-0.

### COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

#### 3. News Digest – Planning Issues of the Day

Interim Planning Director Cassidy introduced the News Digest and two articles included in the packet. She invited feedback from the Commission such as requests for additional information. She invited the Commission to suggest articles they'd like to see in future packets.

Interim Planning Director Cassidy announced that the San Mateo County Bicycle and Pedestrian Advisory Committee has one elected and two public seats open if anyone is interested. She said the deadline for public members to apply is February 21 and February 23 elected members.

APPROVAL OF MINUTES: January 17, 2018.

#### 4. Planning Commission Meeting of January 17, 2018

Commissioner Taylor moved to approve the minutes of the January 17, 2018, meeting, as amended. Seconded by Commissioner Gilbert, the motion carried 5-0.

ADJOURNMENT [11:00 p.m.]