

UNOFFICIAL MINUTES
PLANNING COMMISSION
WEDNESDAY, OCTOBER 9, 2019

A. CALL TO ORDER: The Planning Commission meeting was called to order by Chairperson Kyle Brown in the City Council Chambers at 7:03 p.m.

B. PLEDGE OF ALLEGIANCE: Chair Brown led the Pledge of Allegiance.

C. ROLL CALL: Roll was taken by Planning Manager Gonzalez.

COMMISSIONERS PRESENT: Chairperson Kyle Brown, Vice-Chair Ron VanderMolen; Commissioners Jorge Grajeda, Alfredo Camacho, Gwen Urey, Richard Bunce, Kristie Kercheval

COMMISSIONERS ABSENT: None

STAFF PRESENT: Planning Manager Gustavo Gonzalez, Senior Planner Ata Khan, Senior Planner Vinny Tam, Assistant Planner Lynda Lara

ITEM D
PUBLIC COMMENT:

None

ITEM E
CONSENT CALENDAR:

1. Time Extension (EXT 1269-2019) A request for a one-year time extension for Conditional Use Permit (CUP 9744-2018) to allow the construction of two detached single-family structures, construction of a six car garage and associated site improvements on a property located at 1538 South Towne Avenue in the R-1-E district.

Motion by Commissioner Bunce, seconded by Commissioner Grajeda, carried by a unanimous vote of the members present (7-0-0-0), to approve the consent calendar.

Roll Call Vote: Chair Brown – yes, Commissioner Grajeda – yes, Commissioner Camacho – yes, Commissioner Urey – yes, Commissioner Bunce – yes, Commissioner VanderMolen – yes, Commissioner Kercheval – yes.

ITEM F
HEARING ITEMS:

1. **Commercial Cannabis Permit Program Overlay District** establishing a Commercial Cannabis Permit Program Overlay District in the Pomona Zoning Ordinance (CODE 12664-2019); adopting

Determinations of Similarity pursuant to Section .501-A of Pomona Zoning Ordinance for commercial cannabis uses in M-1, M-2, C-2, C-3, and C-4 zoning districts (DOS 12653-2019, DOS 12654-2019, DOS 12655-2019, DOS 12656-2019, DOS 12657-2019, DOS 12658-2019); and adopting a Director's Interpretation pursuant to Section 2.2.1 of the Pomona Corridors Specific Plan for storefront retail commercial cannabis use in the Pomona Corridors Specific Plan.

Senior Planner Ata Khan provided a presentation on this item. (See Staff Report Item F-1)

Chair Brown encouraged his fellow Commissioners to review the package of comments provided. He alerted his colleagues and the public that his public comments from the Joint Session with the City Council were included because he wasn't unable to fully participate. He noted he did not sign any of the petitions.

Commissioner VanderMolen asked about the addition of the 29 parcels on east Foothill Blvd and if that included Mr. D's diner.

Senior Planner Khan responded by pointing out that the previous draft tract ended by Big 5 but now continues all the way to Towne Avenue by the the Pet Hotel and CVS parcel on both sides. He reported their methodology revealed there wasn't a single family non-conforming use there, so staff have recommended the addition of all 29 parcels.

Commissioner Grajeda asked if the Environmental Impact Report (EIR) from 2014 was sufficient.

Senior Planner Khan replied program EIRs are not limited on years the way Project EIRs are. He reported the findings of consistency staff conducted found that the 2014 EIR is still relevant to use.

Commissioner Grajeda asked if there will be code enforcement just for cannabis.

Senior Planner Khan replied that is not something he can answer. He spoke about there being potential tax revenue from commercial cannabis that the City could foreseeably use for code enforcement. He spoke the incompatibility of residential homes being up against industrial zones and shared that staff tried to limit the numbers of complaints that could come from code enforcement by eliminating those parcels.

Development Services Director Gutierrez added there isn't currently a designated code enforcement officer or team for cannabis, however, the cannabis program has built parameters and review processes in the cannabis business ordinance which are subject to the City Manager review and goes beyond what code compliance can do. She noted code compliance would do some of the initial inspections and noted there is only a potential for eight businesses, not hundreds of permits.

Commissioner Kercheval asked if staff heard from the City of Claremont.

Senior Planner Khan replied staff did not receive an official letter from the City of Claremont.

Commissioner Kercheval asked how similar nurseries are to cultivation of cannabis.

Senior Planner Khan replied a determination of the similarity of cultivation of cannabis to a nursery was found based on the raising of crops/growing of plants and similarities in both operations. He

shared staff also reviewed energy and water uses from an environmental perspective to see if those calculations were consistent with the General Plan studies for industrial uses and they were.

Chair Brown commented that in Pomona's zoning code for MY and M2 the raising of crops is not a permitted use. He stated the staff report mentions a 1969 determination of similarity approved by the Planning Commission for the raising of crops in all industrial zones, however, that document does not include findings of similarity, and the word "similarity" does not appear in this document. He asked staff how confident they are that this is a determination of similarity and is still valid and wasn't superseded by zoning ordinance revisions that were made during the development of the General Plan in the 1970s. He stated it surprises him that the raising of crops is allowed in Pomona's M industrial zones, but not in the M1 and M2 zones.

Senior Planner Khan replied staff don't have any reason to think that the similarity was revoked at any point in time. He spoke about the industrial zone is being Pomona's most permissive zone. He shared that when staff review allowing something in an industrial zone, they assess whether the use is any more or less intense than what is existing. He reported staff determined that the indoor cultivation slated for cannabis was not the most intense use for the industrial zone, therefore the framework of the code allows cultivation.

Chair Brown stated the raising of crops is a permitted use in all of Pomona's residential zones and open space zones. He asked if staff was suggesting that this determination of similarity would allow someone to purchase a multi-family residential structure or something in the R zone and setup indoor cultivation, not cannabis but tomatoes, and that would be a permitted use.

Senior Planner Khan replied the determination of similarity in this case is just for the M and C zones, because the residential zones already allow the raising of crops.

Chair Brown asked if staff thought that equating indoor cultivation with the raising of crops presents a concern.

Senior Planner Khan responded the City is not introducing in residential zones, so he would say no.

Commissioner Urey asked staff about the possibility of drive throughs because she didn't see anything in the ordinance.

Senior Planner Khan replied staff are looking into whether the State of California permit it and they haven't landed on a resolution. He stated Pomona is not contemplating drive throughs at this time, however, the overlay district does not prohibit them.

Commissioner Urey asked how the City would ban them if the overlay district doesn't prohibit.

Senior Planner Khan replied if the Planning Commission could recommend to be added to the overlay district.

Commissioner Urey reported the current draft ordinance language doesn't allow for other cities or guests to tour. She requested staff review that.

Senior Planner Khan responded they have offered tours to other cities. He shared for their tours they had to register, and we were given a guided tour. He noted they were not given a back-office tour of retail sites.

Development Services Director Gutierrez replied Commissioner Urey was reference the business ordinance which is not something before the Planning Commission, however, staff could address that in the implementation guide that we will be adding which adds clarifications to the business ordinance that it does not mean to prohibit other local jurisdictions or agencies from participating in research.

Commissioner Bunce reported the community has expressed concerns that the City cannot afford the staff to monitor the cannabis industry. He asked staff to what degree the tax revenue would cover the additional expense.

Development Services Director Gutierrez responded a significant amount of tax will be generated by this, but those dollars go into the General Fund and the allocation is the purview of the City Council. She stated there should be enough dollars to regulate this program.

Chair Brown asked if that has been studied.

Development Services Director Gutierrez replied a revenue estimate was prepared when the tax measure was passed based on eight permits.

City Attorney Marco Martinez shared the approach most City's take is like rental inspection ordinances, in that the municipality authorizes the collection of fees to fund a specific program and its inspections. He stated he doesn't believe Pomona's ordinances preclude the City Council from adopting an inspection fee specific to commercial cannabis. He stated the development of that program would include calculations about the number of inspections per year, time involved and the labor costs, including re-inspections to recommend a set fee. He stated that process is what typically funds a code enforcement officer.

Development Services Director Gutierrez shared staff is currently doing a study to determine what the permit fees will be for these applicants to apply. She noted an inspection fee could be built into that fee.

Commissioner Bunce expressed concerns about the environmental impacts and asked staff to speak more about how the bootleg cannabis industry is more of a peril to the environment. He asked staff where they found this comparison of bootlegging versus regulated cannabis environmental impacts.

Senior Planner Khan replied some of staff information came from the L.A. County Health Impact Assessment. He shared the assessment looked at licensed and unlicensed operators and general concluding that security and crime was significantly different in unlicensed operations. He stated there is an inherent incentive of safety and security for licensed operators to protect their facility and that directly leads to different outcomes. He reported staff looked at all the industrial uses in the City of Pomona, some of them heavily regulated at the County and State level and cannabis is probably equivalently or more so regulated. He stated that's important to note because unlicensed operators are extracting cannabis from a plant, without any safety or inventory control protocols, inspections, or certifications, which leads to different safety outcomes. He stated for retail there are concerns about banking, but staff are seeing that being addressed at both the State and Federal level. He

concluded that staff believe that unlicensed operators pose significantly greater safety risks from a land use perspective than licensed operators.

Commissioner VanderMolen asked about the ramifications of not approving this ordinance. He spoke about potential propositions on the 2020 ballot and the possibility of the state enforcing their own regulations. He asked if the State could propose their own overlay and what the City of Pomona would be subject to.

Development Services Director Gutierrez responded the Mayor has mentioned at public meetings that there is potential ballot measures that will be on the November 2020 ballot, which would allow three times what the City is currently considering (approximately 20 permits) if a cannabis permitting program is not in place in the City of Pomona.

Chair Brown confirmed with staff that they are not reviewing and approving the permitting process tonight.

Senior Planner Khan replied that is correct, tonight the Planning Commission is making a land use decision on an overlay district. He noted the sole purpose of the cannabis overlay district is to identify locations where cannabis activity would be allowed in the City of Pomona.

Chair Brown opened the public hearing. He read into the record the cards of those who indicated they did not wish to speak.

Sonia Sardodra – opposes industrial cannabis.

Enriqueta Velazquez – opposes industrial cannabis.

Joe Silva – opposes industrial cannabis.

Greg Lucas, owner of 1740 Gillette Road; stated he was excited to be included in the overlay, because additional security would no longer make his property a soft target. He shared all the problems he has witnessed in the area over the last several years (murder, fires, stolen copper). He stated he doesn't understand why his property was taken off the overlay, because there aren't children or other pedestrians. He spoke about it being a blighted area with homeless camps and where people dump stuff. He stated it's an industrial and office area where cannabis should be welcome. He requested the Planning Commission reconsider including this area.

Ron Williams, stated it is important that the Planning Commission understand what they are condoning. He shared his experience as a Sheriff's sergeant assigned to a narcotics bureau and working alongside the state to eradicate large scale outdoor grow operations in the National Forests. He reported he witnessed deforestation, damage to wildlife habitats, hazardous chemical pollution and water resources being diverted. He reported that California's approval of the recreational use of marijuana has proliferated indoor hydroponic grow in residential and commercial areas. He reported he witnessed extensive damage that rendered structures uninhabitable from moisture intrusion, mold growth, plant fertilizers, insecticides, and pest infestations (rodents, termites, and cockroaches) promoted by the wet greenhouse conditions, as well as, fires caused by faulty electrical and exploding high intensity grow lights. He expressed concerns about the health risks, cannabis potency (THC levels up to 75%) and spoke about evidence linking the rise of marijuana use with an increase in mental illness (paranoia, schizophrenia) and violent behavior. He requested the Planning Commission deny this measure because the potential health risks far exceed any financial gain.

Maria Elena Gonzalez, Clean and Green member, comments translated by Planning Manager Gonzalez; She stated Clean and Green is opposed to the cultivation and production of cannabis in certain areas of Pomona. She spoke about security not being enough, addiction and about youth access. She expressed concerns about the impacts to families, schools and society. She commented that producing one kilo of cannabis, equals almost 15 million tons of carbon dioxide, which is equivalent to driving across the country 11 times in an automobile. She spoke about the potential for explosions, fires, odors, waste being discarded in drainage canals, increased traffic and DUIs. She stated that a cash business creates a criminal environment. She asked that the City of Pomona ban the cultivation and production of cannabis.

Kathryn Kirui, Clean and Green Pomona member; spoke about indoor growing and stopping catastrophic climate change. She shared there is an international climate strike movement that grew through the work and persistence of young people who stand for a world that is in clear climate crisis. She asked if Pomona's response to the climate crisis will be to allow the indoor growing of cannabis, with its heavy use of water and heavy use of electricity for lighting, temperature control, and ventilation. She expressed concerns about Pomona having adequate staffing for code enforcement to monitor hazardous industrial businesses. She stated resource hogging cannabis growing and potentially hazardous cannabis manufacturing are not the right kind of industries for the City of Pomona.

Lisa Engdahl, President of Clean and Green Pomona; She stated Clean and Green Pomona opposes cannabis growing and processing in Pomona's industrial zones and neighborhoods. She stated it would be irresponsible to add cannabis as an industrial use at a time when there aren't enough resources to adequately inspect and enforce the current industrial facilities. She noted that inadequate enforcement results in hazards like fires (the recent major one at the recycling facility), dust, odors, environmental toxins and diesel exhaust that effect people's health and public safety. She spoke about Pomona being a vulnerable community and reported Cal EnviroScreen shows Pomona in the top 5% of the most polluted zip codes in the State of California. She spoke about the high crime rates, gang activity, human trafficking, and families facing financial challenges. She stated Pomona does not need the additional burden of industrial cannabis. She stated the proposed map places unjust burdens on Districts 2 and 3. She stated Pomona doesn't have a track record of shutting down nuisance industrial facilities, therefore she doesn't take comfort in the promise that a permit can be revoked. She requested the Planning commission prohibit industrial cannabis growing and processing in Pomona.

Donald Martiens, Clean and Green member; requested Pomona change their ordinance to prohibit the cultivation and processing of cannabis. He commented the ordinance seems to be well thought out however he has several concerns; 1) the ordinance does not force the City, County, State or Federal governments to frequently monitor cannabis businesses for environmental or safety regulations, and states that the City not liable for any conditions resulting from a permit, 2) the ordinance does not include a structure to monitor the operations of this business, nor provides funding for a regulatory monitoring structure, and 3) the ordinance doesn't include a community concerns reporting program (i.e. to report cannabis odors). He stated groups such as Clean and Green have complained about the lack of oversight of the businesses already within the City, therefore Pomona doesn't need to take on more businesses that have the potential to be disastrous.

Damiana Aldana, Clean and Green Pomona Board Member; She submitted and read aloud a letter from another board member, David Holmes. She clarified that her comments are directed solely at the manufacturing arm, not the retail aspects of cannabis business. She commented that cannabis is

a new industry without a lengthy health and safety track record, so she fails to see how an effective ordinance can be written when there may be unforeseen effects on the health of the community. She expressed concern that the unknowns about cannabis manufacturing will hurt the most vulnerable.

Dr. Haleema Shaikley, California licensed therapist; spoke against cannabis business in Pomona. She shared she is a member of the Compassionate Pomona Movement and stated she sees the act of bringing cannabis to Pomona as very uncompassionate. She stated Pomona needs education and other services and the compassionate cities movement is trying to address those needs. She commented cannabis is going to make it so that kids cannot critically think or function in schools. She noted that the 1,000 feet distance is from schools but does not take into consideration houses that people live in.

Rudy Valenzuela, 324 N. Towne Avenue; stated he has owned this property for 33 years and it has been unoccupied for over a year. He reported the first draft of the cannabis overlay map included his property, but the second map excludes it. He stated his property is far from all the sensitive uses, required by state law and Pomona municipal code and is located on the busy corner Towne and Monterey Ave. He noted it is a standard stand along building with an ample shaded parking. He stated Towne Ave and Monterey Ave need help and shared the problems he is encountering with homeless people setting up tents in his parking lot and trying to gain access to his building. He stated a tenant in this location was selected for a Pomona cannabis license they would be required to have a security guard present and monitor that corner 24 hours a day which would help the safety issues in the neighborhood and be a win for Pomona.

Joe Silva, agrees with Clean and Green Pomona and opposes industrial cannabis.

Ann Tomkins, stated she has the impression that the City was going to proceed cautiously, however, the environmental impacts of the different types of cannabis businesses are known. She confirmed the City would not be doing an EIR and stated she doesn't think staff can simply say this is just like another business and that the impacts are going to be the same. She noted that these types of legal businesses haven't been in the state for very long. She thought Pomona would be bringing in businesses that would not have any negative impacts on the community, but without environmental analysis that may not be true. She asked if the demand could be different for a legal retail operator, because they may draw different users, potentially having traffic impacts. She asked if there will be an opportunity for this to be analyzed in the future.

Jason Gorospe, Walnut Valley Commerce Center Owners Association; He stated Walnut Valley Commerce Center Owners Association is comprised of 35 owners and located on Valley Blvd. He reported these owners are opposed to this measure and so he is here in person to challenge this matter legally. He stated he has twenty opposition letters from owners of Walnut Valley Commerce Center from the following addresses: 4000 Valley Blvd, Units 104 and 105; 410 Valley Blvd. 100, 101, 103, 104, 105, 106, 109; 420 Valley Blvd 100 and 101; 430 Valley Blvd. 100, 101, 102, 103, 104, 106, 107, 108, 111, 112. He stated staff did a good job documenting all the regulations by the state and shared they know firsthand of all the issues these business owners must deal with daily. He stated the Walnut Valley Commerce Center owners are very concerned by the fact that there isn't an allocation towards code enforcement and ask that the Planning Commission take that into consideration.

Areen Ibranossian, urged the Commission listen to the comment made by Jessica Strange and read the letter that was submitted by NorCal Cannabis going into detail about issues with the draft maps.

Jessica Strange, NorCal Cannabis company; submitted a packet with attachments and referenced attachments 2-5 in her comments. She shared NorCal Cannabis Company is a California business currently operating legally throughout the distribution chain. She stated they have identified a property at 206 N. Towne Ave that would be an ideal commercial cannabis retail storefront location. She reported this location was initially included in the May 2019 draft zoning map and has since been arbitrarily removed. She detailed why their site is qualified and how the criteria provided in the staff report is inconsistently applied implying bias and favoritism. She stated the staff report indicated that parcels identified on the map were compared for consistency with the General Plan, however, their site in the workplace district edge in the General Plan, was removed from the map. She reported the proposed overlay map includes six parcels that are also located in the workplace district edge (see attachment 2) but an exception was made because these parcels are in the Corridor Specific Plan. She stated their parcel was eliminated because of the unknown future uses in this district, which also applies to the six referenced parcels, demonstrating the criteria was inconsistently applied. She requested their parcel at 206 N. Towne Ave also be considered for that exception. She commented that allowing storefront retail in an industrial area will have positive affects for disadvantaged neighborhoods.

Travis Pollock, AZ Premier Management owner; He shared AZ Premier Management is a privileged licensing consulting firm that helps prospective clients through the process of local and state licensing for cannabis businesses. He spoke about the importance of establishing zoning regulations that protect the community but are also reasonable for business constituents. He expressed concern that the current ordinance language favors a very small group of individuals. He reported his office identified only 9 of the 228 parcels permitted for retail/microbusiness on the cannabis map were listed for sale or lease and most of the other parcels are already occupied by established and national businesses. He stated the limited available properties are currently be assumed by corporate interests or the wealthiest individual, so instead of Pomona encouraging participation by local business owners and residents, the City is forbidding it through zoning regulations. He cited that communities that establish legal framework and allow cannabis businesses see an 19% drop in crime rate in their communities (Journal of Original Science and Urban Economics) and if the business ordinance only allows four retail facilities in a very limited portion of the City it will only do harm allowing black markets to flourish. He stated reasonable time/place and manner restrictions could be developed that encourage economic development for all while also protecting citizens, as well as, using the buffer regulations established for similar uses to prevent clustering and over concentration of licenses. He requested the Planning Commission take more of a comprehensive look at the language to help provide opportunities for all citizens and not just the wealthy.

Judith St. John, requested an exception for the F zone. She stated there is a provision to repeal ordinances citywide that prohibited medical marijuana cultivation. She reported the City has an agreement with Fairplex that states it will not to change the F zone in any way during the first three years and a citywide repeal would go against that agreement. She agreed with Green and Clean that Pomona needs to do an environmental impact report. She stated staff's recommendation against CEQA due to similarities is a stretch. She provided copies of a decision made by a California supreme court made about cannabis dispensaries in the City of San Diego and reported they must be called a project. She expressed concern that the ordinance does not include a right of appeal for the public. She stated she doesn't know how the City can get around CEQA because there are mitigations that are required (i.e. odor systems).

Eunice R. Russell, resident/business owner; shared she has been following cannabis since 2016, taking classes and investigating the process. She spoke about the difference in non-regulated and regulated, sensitive use distances (500 versus 1000 feet), about it being cash business and shared there are now ways to bank (in Colorado or Private banks), so there isn't a need for cash transactions. She reported all humans have a cannabinoid system (like a nervous or circulatory system), so people need to be educated about the medical aspects. She shared some real estate agents and business owners have created a foul market for Pomona, asking for percentages of businesses which is illegal. She stated the city staff has put together an excellent plan, especially with the 1000-foot restriction, therefore she is in favor and of the ordinance and benefits for the City of Pomona.

Miranda Sheffield, shared she requested a zip code analysis at a previous meeting and was told it was something that could be done, but didn't hear anything about that today. She stated she supports cannabis businesses coming to the City of Pomona but feels there are some elements that need to be explored. She spoke about the impacts on the working-class community, land uses, and understanding the crime with more of a social equity lens. She read a letter aloud from community member Nakeia Avery, regarding the cannabis zoning ordinance in District 6 and a parcel located at 2445 N. Garey Ave. Pomona, CA 90767.

Mike Escalera, called forward, not in attendance to speak.

Yianni Kosmides, owner Mr. D's Diner on Foothill Blvd; shared he used to be against the use of cannabis however his opinion changed in August 2018 after his grandmother was diagnosed with Stage 4 cancer and utilized cannabis infused candy and THC drop to live an additional nine months. He spoke about the factors that affect a restaurant's success, the number one being location. He shared they opened a restaurant (Mr. D's Diner) on the Foothill corridor because it was set to be rejuvenated with other restaurants a hotel, however, that has not happened. He spoke about there being a loitering problem that will only get worse if this property becomes vacant. He reported he has received several offers from cannabis retailers and that they did not choose to work with the highest bidder, but rather a group with several other locations that plans to invest a large amount of money improving the property. He noted this retailer also plans on having full time security and donating part of their revenue back to local organizations and charities. He thanked the City of Pomona for taking the step to move forward with cannabis and for considering his property. He stated he is personally brokering this deal and pledged to donate half of his commission to local charities.

Mireya Escobar, spoke in opposition of industrial cannabis. She stated she has not heard anything about educating the youth and preparing parents to talk to their children about cannabis. She stated she has not seen a mass distribution of information so that the residents of Pomona can take this issue into account. She stated she is not clear on the monetary distribution of funds related to this business. She expressed concerns about cannabis distribution because she found a backpack with medical marijuana in her yard four years ago that belonged to her 14-year-old neighbor.

Chair Brown closed the public hearing. He asked staff to answer questions he has based on the feedback from the community.

Development Services Director Gutierrez asked for a five minutes recess for staff to confer on some of those questions.

Chair Brown approved the recess at 9:09 p.m. and requested the meeting resume at 9:14 p.m.

Chair Brown called the meeting back to order at 9:15 p.m.

Chair Brown asked staff to speak about the EIR process and if this decision would end that process or if there would be additional actions.

Senior Planner Khan replied this is considered a project under CEQA (referencing the City of San Diego lawsuit) and stated that step was what determined whether the City would pursue a study or an exemption. He reported staff referred to the 15183 General Plan consistency finding, and the City's consultant reviewed the General Plan EIR and the overlay to see if there were any new significant impacts that weren't previously studied that would trigger subsequent review. He reported in this case it did not.

Chair Brown confirmed part of the Planning Commission deliberation is to determine whether those findings are accurate.

Development Services Director Gutierrez responded the Planning Commission is evaluating whether you agree with the consistency findings and what that means for future projects. She clarified that the latest program is setup so that these permitted uses would not require further CEQA review. She noted that applies unless a discretionary permit is required. She stated a new 10,000 square foot building in the M zone would require a CUP and that discretionary permit would be subject to further CEQA review.

Chair Brown asked if the Planning Commission is deciding tonight about the repeal of the medical marijuana provision, mentioned by Ms. St. John.

Senior Planner Khan replied that the Commission is not considering the repeal tonight. He reported there is a recommendation as part of the program that staff come back and clean up any instances of prohibitions and medicinal marijuana in the municipal and zoning code so that there are not any conflicts.

Chair Brown asked staff to talk about the general changes, not specific addresses, on the proposed zoning map.

Development Services Director Gutierrez replied the specific sites that were mentioned during public comment were included on previous maps and staff can address that. She informed the Planning Commission that there are parcels with sensitive uses that Senior Planner Khan included in his presentation that staff confirmed closed and therefore those were removed.

She reported that are sensitive uses brought up in the letters that fall into a grey area as to if they are primarily serving youth. She stated staff made determinations on a few of the grey areas, however, are requesting that the Commission weigh in on others and advise if they should remain on the map. She clarified that the zoning overlay map doesn't guarantee a location, it just means a parcel is eligible for a cannabis business, because there is still a burden on the applicant to prove that there are not any sensitive uses within a 1,000 feet at the time of application. She noted if a parcel is removed from the map from the beginning then it cannot be considered. She asked Senior Planner Khan to speak on the specific parcels on Towne Ave and in the Gillette area.

Senior Planner Khan reported that the two addresses mentioned on Towne Ave are in the workplace district edge. He reported staff haven't done a comprehensive zoning code updated in the area yet, therefore a precautionary measure was taken to not introduce a commercial use on parcels the City doesn't know what the future zoning will be. He reported the same applied to the Gillette area and shared there is a long-term projection of high density residential on those parcels. He stated if the Planning Commission looks at the workplace district edge and determines that use is a reasonable implementation of the General Plan than that area that could be included as part of tonight's action. He noted the reason the corridor parcels were added to the map in that same workplace district edge, was because there has already been a zoning code implementation of the 2014 General Plan in that area and an analysis was conducted to determine what that stretch of Holt should look like.

Development Services Director Gutierrez asked Senior Planner Khan to speak about the sensitive uses.

Senior Planner Khan reported staff didn't find any evidence that the martial arts business was serving youth, which resulted in the recommendation to add 12 parcels on West Holt. He reported staff also researched if a sensitive use was closed.

Development Services Director Gutierrez added the martial arts business has a business license, but staff haven't been able to get in contact with them to confirm if they are a primarily youth serving recreation use.

Senior Planner Khan stated Elite Boxing was another sensitive use that came up in a comment letter and at the time of writing the staff report the business hadn't been analyzed.

Commissioner Urey asked about the Mr. D' parcel.

Development Services Director Gutierrez replied Mr. D's is currently shown in sub-area 1. She reported those 29 parcels were added back onto the map because Options for Youth is no longer in operation.

Commissioner Urey asked about 2445 N. Garey Avenue.

Senior Planner Khan replied that is the address in the letter referencing Elite Boxing & Fitness is not primarily youth serving.

Commissioner Bunce commented they are being asked to vote on matter that is technical, and tonight will be a key decision. He spoke about seeing alcohol and cannabis used constructively and for their properties in a way that helps health and wellbeing rather than just irresponsible recreational use. He stated he has deep concerns for the environment of Pomona and the surrounding areas because they already have huge environmental issues. He spoke about staff doing their homework about the environmental impacts, looking at the City's regulations and capacities, as well as, the experiences of other cities. He shared he most concerned about the impact of the war on drugs and how it has fostered a thriving black market. He stated Prohibition has never worked. He spoke about overincarceration being a result of the war on drugs which impacted people of color and those in vulnerable positions of life. He stated he backs the proposal from staff.

Commissioner Grajeda spoke about going through this process for months and stated cannabis is here to stay. He thanked staff for the diligent work. He reported he is not happy with code enforcement and is concerned that CEQA doesn't require an EIR to be obtained. He commented this is a new business and the EIR referenced is six years old. He spoke about cannabis being a business that people either agree or disagree with, but regardless the industry will create good money and jobs for Pomona. He stated it is not an easy decision, but if the City doesn't decide then the State will come and decide for Pomona. He stated he supports the work of the Planning Department and trusts that City Council will have the best answer in the end.

Commissioner VanderMolen gave kudos to the staff for all their hard work on the maps, presentations and community meetings. He stated staff have put together something that is a viable, strong and smart alternative. He noted Pomona has had marijuana and cannabis throughout the City illegally for many years. He commented there will never be a perfect plan, but what they have now is a good start and it will hopefully add controls. He stated he supports the ordinance going onto the trusted hands of the City Council.

Commissioner Urey echoed her fellow commissioners' praise of staff. She stated she is supportive of a lot of what she has heard tonight, however, she is not willing to support moving forward because of the unknown environmental concerns, unknown code enforcement and the current issues in manufacturing zones. She stated she thinks the City is ready for retail, but she is not as confident with indoor cultivation and manufacturing due to the concerns expressed by many of the speakers tonight.

Commissioner Kercheval commented cannabis is not a totally terrible thing, there are benefits, but the concerns are real. She shared she has had people close to her have psychotic events. She spoke about there being a lot of retail proposed on Foothill Blvd, which is a prime piece of real estate. She stated she is concerned about what is happening along that corridor and how those Pomona businesses are struggling. She voiced concern about the value of adding a large cannabis retailer and the stigma associated with that at an entry point to Pomona. She stated she is concerned about security and the ability to police, sharing that she lives right above the 10 Freeway and when she calls the Police it's must be bad for them to come and if they do come it takes a long time for them to arrive. She noted the other surrounding cities can only respond as backup. She shared she visited retail places (large, right off the freeway, like Foothill) and experienced heavily armed guards with Kevlar vests and guns. She reported she did not feel comfortable and questioned if they were trained how to use their guns. She shared she has been to other smaller cannabis retailers located in industrial areas and they have a different feel; super friendly with less visible armed guards. She voiced she likes retail in industrial sections. She stated she likes Chairman Brown's idea of spreading retail throughout the districts and changing the map to allow one retail per district, rather than all concentrated in District 6. She recommended eliminating the Foothill area for retail. She stated the Commission didn't hear any opposition about Holt Avenue, but that area is working-class people who don't have time. She asked about adding a condition to use electric vehicles for delivery and if greenhouses were considered indoor or outdoor growing.

Senior Planner Khan responded there is a clause in the base code for the M zones that activity won't take place within an enclosed building, so that would be likely how the City would implement it; a purely indoor not a hybrid approach because that would be permitting other types of uses.

Commissioner Camacho reported he attended most of the cannabis meetings and was concerned about the large presence of business owners giving out their business cards. He stated Pomona is

already surrounded by great cities that don't deal with the regional problems. He reported the ballot measure that allowed cannabis was passed by 388 cities/counties out of the 540 in California and 2/3 explicitly outlawed cannabis, highlighting that people want it in California but not in their City. He reported the Health Impact Report referenced by staff to say there was no correlation between crime and youth access and other social determinants of health, actually looked at proximity with medical marijuana and didn't reference legal or illegal dispensaries. He reported that Pomona only has illegal dispensaries and all the legal ones are far away and west (Lincoln Park, Culver City, Long Beach, Los Angeles, Malibu, Maywood, West Hollywood and Pasadena). He stated he has reservations about putting dispensaries all over Pomona because the City has the most emergency room visits related to cannabis. He stated he is looking for factual evidence of how putting in legal dispensaries will drive out the illegal ones. He commented that cannabis business owners say that happens, but that's hearsay. He questioned that putting dispensaries in a retail setting will have the same amount of traffic, because of the proximity of other legal dispensaries to Pomona. He reported the eastern side of Holt and the area of Towne and San Antonio has the highest concentration of pedestrian related collisions. He stated he has a lot of reservations about that area (environmental, traffic, crime) and is against having retail cannabis on Holt.

Chair Brown thanked everybody for sharing their views and stated he was appreciative of interactions throughout this whole process. He spoke about the diversity of opinions and the contradictions that are inherent in this process, sending mixed signals to the community listing the following:

- The community is told that these uses will be assets to the community (increased tax revenue, enhancements to the neighborhood) while at the same time being told it's important to protect them from sensitive uses (children and vulnerable populations).
- The community is being told these uses are highly similar to other uses we have in the City, so much so that we need not amend the ordinance to allow them in commercial/industrial zones or do an environmental review, however, they are simultaneously being told it's not a good idea to locate them in all parts of our commercial and industrial zones.
- The community is being told that concerns of location residents must be considered along with the sensitive uses (as defined by the business ordinance), including non-conforming uses in our industrial zone, but they are not afforded that same consideration in other permitting processes in that zone.
- The community is being told that allowing legal operations will help eliminate illegal operations, but there are news reports filled with stories about the persistence of illegal operations in places like Los Angeles

He stated all this conflicting information makes it easy to understand the assortment of views around the cannabis issue and presents a conundrum for those who must decide. He clarified his critique is not a reflection of the dedication of the staff, rather it reflects the situation that is inherent in the City's system. He stated the City went through a process to delineate the overlay zone that was laid out in the business ordinance, starting with buffer distances around sensitive uses, then looking at commercial/industrial land that was available, which is a practical/reasonable approach that has been used for decades. He commented the process has been critiqued as biased, because the sensitive uses (as defined in the business ordinance) are assets that are not equitably distributed through the community, because not every neighborhood has the benefits of a park, day care centers and youth programs. He reported that schools and park programs tend to have a very stable presence in a community, however, private youth recreation centers are much more susceptible to market forces and are more likely to be in areas with greater discretionary income and cease operation. He noted that is going to continue to shift the data on a regular basis. He pointed out that

areas that lack these assets have been identified as possible locations and those that do have these assets were removed from further consideration, even though that asset is not guaranteed to persist. He stated this is drawn out by the fact that the City feels there should be a sensitive use requirement of 1,000 feet, double what was laid out in the state law. He spoke about public participation influencing the process when communities mobilized to speak out against zones in their neighborhood, effectively eliminating or reducing the zone and proposed overlay ordinance. He commented he has an obligation to consider those neighborhoods that didn't speak up. He agreed with Commissioner Camacho's and Commissioner Kercheval's concerns about Holt Ave and noted that community has not spoken up in this process. He stated practices laid out by City Council in the business ordinance, the 1000 foot distance from sensitive uses/other cannabis operations and limiting the number of permits, affords the best protection from a single area becoming saturated. He stated he is uncomfortable with the idea of an overlay zone that picks some commercial areas, but not other areas and cannot support a motion that codifies this overlay ordinance, because it seems to perpetuate some of the inequities he is concerned about. He shared he also has concerns about economic interests and their undue influence under the proposed overlay zone. He stated he doesn't see this zoning being revisited by City Council a couple years down and feels they will be stuck with is approved for years to come. He stated he is not opposed to the legalization of marijuana, rather opposed to the overly zone and the idea that the City can limit the use of it.

A motion was made by Commissioner Grajeda, seconded by Commissioner VanderMolen to approve the Commercial Cannabis Permit Program Overlay District establishing a Commercial Cannabis Permit Program Overlay District in the Pomona Zoning Ordinance (CODE 12664-2019).

Commissioner Kercheval thanked the Chair Brown for his thoughts, agrees it's a mess and stated she is open to another process.

City Attorney Martinez shared staff spoke about options to move forward in case there were differences of opinion among the Planning Commissioners. He clarified the Commission can entertain a motion to approve or deny the ordinance as a whole; however, there are concerns with specific items (i.e. overlay areas), a Commission could request to place specific recitals in the ordinance that would reflect their opposition. This would allow the Commission to vote on the remainder of the ordinance but would clearly indicate to City Council that "Commissioner X", while supporting the ordinance itself, opposes a specific element of the ordinance. He noted it would take consensus to add those recitals to the ordinance.

Chair Brown asked what happens if there is no affirmative vote for a recommendation.

City Attorney Martinez replied if an affirmative vote is not reached then that is the recommendation taken to City Council. He noted that state law says City Council is not required to consider an ordinance which doesn't have a positive recommendation from the Planning Commission, when the ordinance itself switches a property from one zone to another; however, an overlay zone doesn't do that it just adds another layer of zoning. He clarified City Council could consider your recommendation, move forward with the ordinance, make their own changes or send it back to Planning Commission.

Commissioner Kercheval asked if she can add a condition or modify Commissioner Grajeda's motion.

Legal City Attorney Martinez recommended Commissioner Kercheval ask the maker of the motion if he would be ok adding a recital that would describe her specific opposition and then let the body vote on the remainder.

Commissioner Kercheval responded she wants to eliminate the Mission, Holt and Foothill corridors.

City Attorney Martinez replied that could be a separate motion or acceptable to the maker of the motion. He commented it seems that other Commissioners agree and so the recital could name several Commissioners. He suggested the Commission take a straw vote and then see if the maker of the motion would be open to adding a recital to the ordinance that would describe that opposition and by who.

Chair Brown asked if Commissioner Grajeda is receptive of that amendment.

Commissioner Grajeda replied yes, however, he would like to clarify Commissioner Camacho's suggestion first.

Commissioner Urey replied Commission Camacho's concerns are different.

City Attorney Martinez responded that there could be more than one recital.

Commissioner Grajeda replied he would be happy to add recitals.

Chair Brown asked if the second, Commissioner VanderMolen, agrees.

Commissioner VanderMolen confirmed the amendment was to eliminate the specified areas.

Legal City Attorney Martinez replied the recital would not eliminate the areas; it would describe the specific opposition. He stated City Council would have the ordinance and see the overlay areas but know that specific Commissioners were opposed to the overlay for this area.

Commissioner VanderMolen replied he opposes the amendment. He stated he feels it needs to be an up or down vote at this point. He stated he is against taking things out after all this work and taking Holt and Foothill out isn't conducive to what they have been trying to do for all these months. He commented it's a little late to be criticizing. He stated the denial of the ordinance fixes none of the issues and it could be worse.

Commissioner Grajeda withdrew his motion for the purpose of having someone else make a motion that is more constructive and inclusive.

Commissioner Urey shared her view has changed after hearing that many of her fellow Commissioners are unhappy with most of the retail areas and she is not interested in voting for any part as it stands right now. She reported she also found Chair Brown's logic of the inequity of it all very compelling.

Commissioner Camacho agreed with Chair Brown and stated he noticed when staff parsed out the sensitive uses the most disadvantaged were left. He stated he agrees with Commissioner VanderMolen that a lot of work and time has been put into this, but today is the first time the Commissioners have had an opportunity to have an opinion. He stated he doesn't agree that the

Commission must send an up or down vote to the City Council, rather they need to make a recommendation. He stated he supports parsing the vote because he wants to send a strong message to City Council.

Motion by Commissioner Camacho, seconded by Commissioner Bunce to approve the Commercial Cannabis Permit Program Overlay District establishing a Commercial Cannabis Permit Program Overlay District in the Pomona Zoning Ordinance (CODE 12664-2019) with the recommendation by Commissioner Kercheval' to remove the parcels along Holt, Mission and Foothill Blvd.

Commissioner Camacho asked what would happen if there is a use in the business ordinance but there is no overlay that allows it.

City Attorney Martinez replied it's the zoning component that identifies where cannabis can go and it's a requirement for licenses to be issued.

Commissioner Bunce stated he isn't thrilled with the added complexity, but they can't allow perfect to be the enemy of the good. He commented that Chair Brown did a respectable job of challenging the staff's proposal. He stated the black market will not disappear when anything is made legal, equating it to the prohibition of alcohol and how it took a long time for illegal activity to stop and there were adjustment issues. He stated banking is very dynamic with a lot of changes coming. He commented the selection of the zones does reflect some of the sorry history of Pomona (red lining, social stratification), but it does not have to be so rigid. He disagreed that they are committing themselves to unjust zoning forever and feels they can monitor and recommend changes. He stated he is willing to vote for the modified motion.

Commissioner Grajeda asked if the second motion satisfies Chair Brown and Commissioner Urey's expectations of the zoning.

Commissioner Urey replied no.

Commissioner Grajeda asked if there are more modifications that can be done to address those concerns.

Commissioner Urey responded that initially she was interested in not having an overlay for indoor cultivation or industrial pieces and was happy with the retail, but now she agrees with Chair Brown that it needs to be done in a way other than having a list of parcels.

Commissioner Kercheval asked what will happen next if the Planning Commission says that they don't want this. She asked if the City Council could still pass the zone or if they would need to start over.

Development Services Director Gutierrez replied the current business ordinance is written in a way that a zoning ordinance is required to implement the business ordinance. She clarified it doesn't have to be an overlay, that was the mechanism the Planning Division chose to implement, but there does have to be designation of zones for which cannabis businesses can be allowed in. She reported the City could implement a zone change to create a specific cannabis zone or require CUPs for these uses.

Chair Brown requested to call the vote on the motion by Commissioner Camacho and Commissioner Bunce.

Commissioner Camacho asked staff if they would provide comments to the City Council if the Planning Commission votes this down.

Development Services Director Gutierrez replied the minutes will.

Motion by Commissioner Camacho, seconded by Commissioner Bunce, failed by a majority vote of the members present (5-2-0-0), to approve the Commercial Cannabis Permit Program Overlay District establishing a Commercial Cannabis Permit Program Overlay District in the Pomona Zoning Ordinance (CODE 12664-2019) with the recommendation to remove the parcels on Holt Ave, Mission and Foothill Blvd. and the staff recommendation to change the boundaries including the San Bernardino County parcels.

Roll Call Vote: Brown – no, Commissioner Grajeda – no, Commissioner Camacho – no, Commissioner Urey – no, Commissioner Bunce – yes, Commissioner VanderMolen – no, Commissioner Kercheval – yes.

ITEM G
PLANNING COMMISSION COMMUNICATION:

Commissioner Grajeda expressed thanks to staff for all the work they did on the cannabis ordinance. He commented he respects and appreciates all his colleague's opinions and will trust City Council.

Chair Brown reiterated his appreciation to staff and stated his concerns have nothing to do with their performance. He shared and read aloud a portion of the January 13, 1969 City Council meeting minutes, pertaining to a CUP for a scrap metal plant at 1352 E. Ninth Street (Mission Recycling). He spoke about the neighbor's concerns (noise and odors) with the hydraulic press and metal shears and noted the city's response to those concerns. He commented that hopefully the City is approaching things differently than they did in 1969.

ITEM H
DEVELOPMENT SERVICES DIRECTOR / PLANNING MANAGER COMMUNICATION:

Development Services Director Gutierrez reported this City received certification on the Housing Element that afternoon and the Pomona is now in full compliance with State Law. She reported the City of Pomona was successful in fending off additional litigation by the Thomas Singleton and North Towne Christian Church. She shared Best, Best, Krieger defended Pomona against a motion to enforce the judgment and settlement agreement and a judge ruled in the City's favor.

Planning Manager Gonzalez reported the City Council approved and adopted the 2018 Annual Progress Report for the Housing Element on Monday, which indicates how Pomona is doing on its

regional housing needs assessment numbers. He noted that having both pieces complete allows the City to pursue funding to do the next Housing Element update and a zoning code update.

ITEM I:
DISCUSSION:

None

ADJOURNMENT:

The Planning Commission meeting was adjourned by Chairperson Brown at 10:34 p.m. to the next regularly scheduled meeting of October 23, 2019 at 7:00 p.m. in the City Council Chambers.

Anita D. Gutierrez, AICP
Development Services Director

Jessica Thorndike, Transcriber

The minutes of this meeting are filed in the Planning Division of City Hall, located 505 South Garey Avenue, Pomona, CA, 91766.