



# **PLANNING COMMISSION AGENDA REPORT**

MEETING DATE: NOVEMBER 28, 2022

ITEM NUMBER: PH-2

**SUBJECT: PLANNING APPLICATION 21-34 FOR A RETAIL CANNABIS  
STOREFRONT BUSINESS LOCATED AT 2332 NEWPORT  
BOULEVARD (FLOWER FACTORY)**

**FROM: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/  
PLANNING DIVISION**

**PRESENTATION BY: MICHELLE HALLIGAN, CONTRACT PLANNER**

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## **RECOMMENDATION**

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Class 1), Existing Facilities; and
2. Approve Planning Application 21-34, subject to conditions of approval.

## **APPLICANT OR AUTHORIZED AGENT**

The applicant/authorized agent is Christopher Glew on behalf of Newport Boulevard Enterprise LLC dba Flower Factory, and the property owner, Costa Mesa Commercial Group LLC.

## **PLANNING APPLICATION SUMMARY**

Location:	2332 Newport Boulevard	Application Number:	PA-21-34
Request:	Planning Application 21-34 for a Conditional Use Permit for the establishment of a cannabis retail storefront in the C1 (Local Business District) zone.		

### **SUBJECT PROPERTY:**

### **SURROUNDING PROPERTY:**

Zone:	C1 (Local Business District)	North:	C1 (Local Business District)
General Plan:	General Commercial	South:	C1 (Local Business District)
Lot Dimensions:	60' x 149'	East:	State Route 55
Lot Area:	8,940 sq. ft.	West:	R2-MD (Multiple-Family Residential District, Medium Density)
Existing Development:	3,790 sq. ft. one-story commercial building.		

## **DEVELOPMENT STANDARDS COMPARISON**

Development Standard	Required/Allowed C1 Zone	Provided/Proposed
Building Height	2 stories/30'	1 story/14'
Setbacks:		
Front	20'	20'
Side	15'/0'	Existing: 0'/0' Proposed: 35'10"/0'
Rear	0'	43'10"
Landscape Setback – front	20'	23'5" <sup>1</sup>
Parking	8 spaces	10 spaces <sup>2</sup>
Floor area ratio (FAR)	0.20	0.22 <sup>3</sup>
<sup>1</sup> The existing front setback is over 20 feet; however, no landscaping is provided. The existing front setback is entirely dedicated to parking, a legal non-conforming condition. Proposed improvements would provide landscaping and reduce the number of parking spaces within the front setback to only one accessible space. Landscaping would also be provided in the parking lot. These improvements would bring the property closer to conformance with landscaping requirements.		
<sup>2</sup> The proposed parking includes 9 parking stalls and one bicycle rack, which is credited as one standard parking space, for a total of 10 spaces. An additional parking stall that is exclusively for vendors/employees is also shown on the site plan and is not included in the parking total.		
<sup>3</sup> The existing FAR is 0.42. The applicant proposes to reduce the size of the building and bring the property closer to conformance with the maximum FAR.		
CEQA Status	Exempt per CEQA Guidelines Section 15301 (Existing Facilities)	
Final Action	Planning Commission	

## **BACKGROUND**

The subject site is located at 2332 Newport Boulevard, an approximately 9,000-square-foot midblock property along the east side segment of the corridor. The nearest cross streets are Wilson Street to the north and 23<sup>rd</sup> Street to the south. The site is zoned C1 (Local Business District) and is surrounded by C1 properties to the north and south and roadways to the west. Residential properties, zoned R2-MD (Multiple-Family Residential

District, Medium Density) are located across an alley to the immediate east. The site has a General Plan Land Use Designation of Commercial Residential.

Existing development on the subject property consists of a one-story, 3,790-square-foot commercial building that spans the entire width of the property. The applicant proposes to reduce the size of the building to 2,000 square feet. Reducing the building footprint reduces the overall commercial intensity of the site and allows more of the property to be dedicated to circulation, parking, required setbacks, and landscaping. The proposed retail establishment, "Flower Factory," would occupy the entire 2,000-square-foot building. The subject property is currently vacant. The previous occupant was a car rental business with up to one outdoor display vehicle, a use permitted by-right in the C1 zone without a discretionary approval.

The property is located on one of the City's primary commercial corridors, in between a multi-tenant commercial center and a medical office. Other nearby businesses along Newport Boulevard include restaurants, offices, beauty salons, a convenience store, an agricultural supply store, and other retailers. As with all of the commercial properties along the northbound 2300 block of Newport Boulevard, the rear of the subject property abuts an alley that is shared with single-family and multi-family residential uses.

There are no open Code Enforcement cases on the subject property.

The applicant partnered with Higher Ground, LLC, a Measure X operator in Costa Mesa's Green Zone. On February 22, 2021, the Planning Commission approved Planning Application 20-19 for cannabis product infusion, packaging, labeling, and distribution for the "Higher Ground" applicant at 3505 Cadillac Avenue, Unit F7. The CUP was amended in February 2022 to allow non-storefront retail (delivery directly to customers) at the same facility. There are no open Code Enforcement cases on the Measure X property.

### ***Non-Conforming Development***

The existing development is legal, non-conforming in terms of landscaping, side setback, parking, and floor area ratio (FAR). Therefore, the property is subject to the non-conforming provisions of the Costa Mesa Municipal Code (CMMC) Section 13-204. Pursuant to this Code Section, a conforming use may be located on a non-conforming property so long as the new site modifications do not result in greater site non-conformities. In addition, if the site is legal non-conforming in regards to parking, a use may not be replaced with a use that requires more parking, unless additional parking is provided pursuant to the CMMC. The previous use was a car rental business, which was subject to the same four stalls per 1,000 square feet parking ratio as the proposed retail establishment. Therefore, the site's legal nonconforming parking could remain.

Pursuant to the CMMC and General Plan, the maximum allowed FAR for the proposed use is 0.20 and the existing FAR is 0.42. The applicant proposes reducing the square footage of the building as well as significant upgrades to the site to reduce

nonconformities. Following improvements to the building, the resulting FAR would be 0.22, significantly closer to conforming to the CMMC. Reducing the size of the building would allow space for addressing other non-conformities as well. For example, the proposed improvements bring the site's parking into conformance with the required parking ratio, create a conforming side setback, and bring the site's landscaping closer into conformance with the landscaping requirements. The proposed improvements bring FAR into closer conformance and reduce the number of parking spaces located within the front yard setback to only one accessible space (required parking is not allowed within a front yard setback).

### ***City of Costa Mesa Medical Marijuana Measure (Measure X) and Costa Mesa Retail Cannabis Tax and Regulation Measure (Measure Q)***

In November 2016, Costa Mesa voters approved Measure X, allowing medical cannabis manufacturing, packaging, distribution, research and development laboratories, and testing laboratories in "Industrial Park" (MP) and "Planned Development Industrial" (PDI) zoned properties north of South Coast Drive and west of Harbor Boulevard ("The Green Zone," excluding the South Coast Collection property located at 3303 Hyland Avenue). Measure X is codified in Titles 9 and 13 of the CMMC.

In 2018, non-medical adult use cannabis became legal in California under the State's Medicinal and Adult-Use Cannabis Regulation and Safety Act (Proposition 64). On April 3, 2018, the City Council adopted Ordinance No. 18-04 to allow non-medical use cannabis facilities in the same manner and within the same geographic area as were previously allowed pursuant to Measure X.

On November 3, 2020, Costa Mesa voters approved Measure Q, the Costa Mesa Retail Cannabis Tax and Regulation Measure. This measure allowed the City to adopt regulations permitting storefront retail (dispensaries) and non-storefront retail (delivery) within the City subject to certain requirements. On June 15, 2021, the City Council adopted Ordinances No. 21-08 and No. 21-09 to amend Titles 9 and 13 of the CMMC to establish regulations for legal cannabis storefront and non-storefront uses. A "non-storefront" retailer sells packaged cannabis goods to customers through direct delivery.

### ***Cannabis Business Permit (CBP) Application Process***

The process to establish a retail cannabis business is subject to an extensive submittal and application review procedure. Retail cannabis applicants must obtain the following City approvals and obtain State approval before conducting business in Costa Mesa:

- Pre-Application Determination;
- CBP Notice to Proceed;
- Conditional Use Permit (CUP);
- Building Permit(s);
- Final City Inspections;
- CBP Issuance; and
- City Business License.

The “Pre-Application Determination” includes staff review of a detailed applicant letter that describes the proposed business, an existing site plan, statement attesting that there is/has been no unpermitted cannabis activity at the site within one year, and a detailed map demonstrating the proposed storefront’s distance from sensitive uses. Staff also visits the site at this time. Planning staff has completed the aforementioned pre-application review, visited the site, and issued a letter indicating that the application complies with the City’s required separation distances from sensitive uses and may proceed to submittal of a CBP.

Following completion of the pre-application review, the applicant submitted a CBP application for the initial phase of the CBP review. Staff’s initial CBP review includes:

- A background check of the business owner(s)/operator(s);
- An evaluation of the proposed business plan (including a capitalization analysis); and
- An evaluation of the proposed security plan by the City’s cannabis security consultant, HdL Companies (HdL).

The applicant successfully passed these evaluations and staff issued a “CBP Notice to Proceed,” which allows the applicant to submit a CUP application.

The CUP application and required supportive materials were submitted by the applicant and reviewed for conformance with City standards and regulations by the Planning Division, Building Division, Public Works Department (including Transportation and Engineering Divisions), Fire Department, and Police Department.

If the Planning Commission approves the CUP, the applicant may then begin the remaining steps of the CBP process, which include:

- Obtaining building permits;
- Completing tenant improvements; and
- Demonstrating through various City reviews/inspections that all conditions of approval have been satisfied, and that all other requirements of the CMMC have been met.

After passing the final City and HdL inspections, the CBP would be issued. CBP approval is valid for a two-year period and must be renewed (every two-years) prior to expiration. During the two-year CBP period, the Community Improvement Division (CID), along with other City staff, will conduct site inspections to verify that the business is operating in compliance with CUP and CBP requirements. Violations identified during site inspections may be grounds for revocation of issued permits or non-renewal of a CBP.

After obtaining the CBP, the applicant would apply for and obtain a City Business License through the Finance Department. Lastly, the applicant must obtain the appropriate license from the State Department of Cannabis Control (DCC) prior to operating.

Cannabis retail businesses are subject to a City established seven-percent gross receipts tax, which must be paid to the City of Costa Mesa’s Finance Department. Records and revenues are audited annually by the Finance Department and HdL Companies.

## **DESCRIPTION**

Planning Application 21-34 is a request for a CUP to allow a retail cannabis storefront in a one-story commercial building to sell pre-packaged cannabis and pre-packaged cannabis products directly to customers onsite at 2332 Newport Boulevard. The affiliated State license is a Type 10 “storefront retailer” license which also allows for retail cannabis delivery. However, the applicant is not proposing retail delivery services. Should the storefront wish to offer delivery services in the future, an amendment to the CUP would be required. As proposed, the retail establishment would operate between 7 AM and 10 PM.

Upon approval of a CUP, CBP, City Business License, and State licenses, the business would sell pre-packaged cannabis and pre-packaged cannabis products directly to customers onsite, subject to conditions of approval and other City and State requirements.

## **ANALYSIS**

### ***Conditional Use Permit Required***

Pursuant to CMMC Sections 13-28(B) and 13-200.93(c)(1), subject to the approval of the Planning Commission, a CUP is required for the establishment of cannabis retail storefronts in a commercial zone. The subject site is located within a commercial zone (C1 – Local Business District) where commercial development is allowed to include retail storefronts. As defined in the CMMC, “This district is intended to meet the local business needs of the community by providing a wide range of goods and services in a variety of locations throughout the City.” Pursuant to the CMMC, cannabis retail storefronts are subject to extensive regulation (as specifically described in this report). These regulations are adopted to prevent land use inconsistencies with adjacent properties. Pursuant to the CMMC, the approval of a CUP requires that the Planning Commission make findings related to neighborhood compatibility, health and safety and land use compatibility. The analysis regarding CUP findings is provided below in this report. Lastly, staff has drafted specific conditions of approval, included in the Resolution, to ensure site-specific land use compatibility.

### ***Separation Requirements***

CMMC Section 13-200.93(e) stipulates that no cannabis retail storefront use shall be located within 1,000 feet from a K-12 school, playground, licensed child daycare, or homeless shelter, or within 600 feet from a youth center as defined in CMMC Title 9, Chapter VI, Section 9-485, that is in operation at the time of submission of a completed cannabis business permit application. All separation distances are measured in a straight line from the “premises” where the cannabis retail use is to be located to the closest property line of the sensitive use(s). Premises is as defined in the State’s Business and Professions Code Section 26001(aq) as “*the designated structure or structures and land*

*specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee".* Therefore, the premises only includes the retail cannabis activity areas (including sales, storage, back-of-house and/or other ancillary areas) and excludes the parking lot and other areas that are not part of the area licensed by the State for commercial cannabis activity. The subject site complies with the required separation from sensitive uses.

### ***Exterior Tenant Improvements***

The existing building is legal non-conforming in terms of FAR, side setback, parking and landscaping. The applicant is proposing to reduce the size of the structure from 3,790 square feet to 2,000 square feet. This reduction in the footprint provides the opportunity to upgrade the property and reduce or remove other non-conformities. The FAR would change from 0.42 to 0.22, significantly closer in conformance with the development standard of 0.20. Reducing the building footprint would bring the side setback into conformance (an increase in side setback from zero to over 15-feet). The applicant proposes to add approximately 300 square feet of drought tolerant landscaping in the front setback and parking lot. As conditioned, a detailed landscaping plan would be reviewed during the plan check permitting process. Other exterior improvements to the structure include one new exterior wall and several new doors and new windows, designed to be consistent with the architectural style of the rest of the building.

The existing building spans the entire width of the property, significantly limiting circulation. Existing parking consists of five 90-degree stalls located in the front setback, requiring drivers to back onto Newport Boulevard in order to leave the property. Additional parking is provided in a parking lot in the rear, accessed via an alley across from residential development. The proposed improvements would remove the parking stalls from the front setback and replace them with landscaping and one accessible parking space. A new drive aisle and parking lot would be constructed to improve circulation and allow customers to exit the site via Newport Boulevard (instead of by using the alley). As conditioned, the existing access gate to the alley would be closed to customers to prevent customers from accessing/exiting the site via the alley.

Other proposed site improvements include installing bicycle racks, shielded security lighting, resurfacing and restriping the parking lot, and new business signage (signs would be reviewed and permitted separately per CMMC requirements). A preliminary lighting plan has been provided and would be further reviewed during the plan check process, as conditioned.

### ***Interior Tenant Improvements***

The proposed interior improvements include constructing demising walls to create "back of the house" spaces and new doors, new counters, and new finishes. The proposed areas where customers would be allowed include the check-in space, retail sales floor,

and restroom. The proposed “back-of-house” areas include an office, break room, and storage room. A summary of the proposed floor plan is provided in Table 1.

**Table 1 – Floor Plan Summary**

<b>Operational Area</b>	<b>Square Feet</b>
Check-In Space	164
Retail Sales Floor	1,200
Restroom	57
Office	204
Break Room	140
Storage	235
<b>Total</b>	<b>2,000 SF</b>

### ***Customer and Employee Access***

Customer access to the proposed establishment includes entering the licensed premise through a designated entrance door that faces the accessible stall in the front of the building and another designated door that faces the parking lot drive aisle. An employee at the check-in space would verify each customer’s age and identification. Customers would only be allowed in the retail sales area and restroom. After a customer’s transaction is completed, they must leave the premise. As further conditioned, a security guard would monitor the area at all times to ensure that customers are following regulations. All other areas of the premises would be accessible only to employees with the proper security credentials. Employees would enter through the access controlled door on the south side of the building.

### ***Vendor Access***

During business hours, vendor vehicles (such as licensed distributor vehicles that are used for delivering cannabis products to retail stores) would use the designated vendor parking space located approximately 30 feet to the access controlled door. All deliveries will have pre-committed arrival times set by the cannabis store operational managers.

Vendors would only be allowed to enter the premise while accompanied by an employee with the proper security credentials. In addition, a security guard would monitor the vendor vehicle until the loading/unloading activity has been completed and the vehicle departs the facility. As conditioned, the access-controlled vendor entry door, path of travel, and vehicle loading/unloading area would be under camera surveillance at all times.

### ***Storefront Operations***

The proposed business is required to comply with retail storefront and operational conditions/requirements as follows:

- Display State license, CBP, and City business license in a conspicuous building location;

- Shipments of cannabis goods may only be accepted during regular business hours (conditioned to be between 7:00 AM and 10:00 PM daily);
- Cannabis inventory shall be secured using a lockable storage system during non-business hours;
- At least one licensed security guard shall be on premises 24-hours a day;
- The premises and the vicinity must be monitored by security and/or other staff to ensure that patrons immediately leave and do not consume cannabis onsite or within close proximity. The CMMC prohibits the consumption of cannabis or cannabis products in public areas; cannabis consumption is limited to non-public areas, such as within a private residence. State law further prohibits cannabis consumption and open container possession within 1,000 feet of sensitive uses and while riding in or driving a vehicle;
- There must be continuous video monitoring and recording of the interior and exterior of the premises;
- Adequate security lighting shall be provided and shall be designed to prevent offsite light spill;
- Onsite sales of alcohol or tobacco products and on-site consumption of alcohol, cannabis, and tobacco products is prohibited;
- No one under the age of 21 is allowed to enter the premises. If the business holds a retail medical cannabis license (M-license) issued by the State, persons over the age of 18 may be allowed with the proper medical approvals i.e. physician's recommendation or medical card pursuant to CMMC Section 9-495(h)(6);
- Prior to employment, all prospective employees must successfully pass a background check conducted by the City, and the employee must obtain a City issued identification badge;
- Customers are only granted access to the retail area after their age and identity has been confirmed by an employee;
- Each transaction involving the exchange of cannabis goods between the business and consumer shall include the following information:
  - Date and time of transaction;
  - Name and employee number/identification of the employee who processed the sale;
  - List of all cannabis goods purchased including quantity; and
  - Total transaction amount paid.
- There must be video surveillance of the point-of-sale area and where cannabis goods are displayed and/or stored;
- Cannabis products shall not be visible from the exterior of the building;
- Free samples of cannabis goods are prohibited;
- When receiving new inventory from licensed distributors, employees will verify the distributor's identity and license prior to allowing them to enter the facility through an access-controlled door. After distributor's credentials have been confirmed, an employee will escort the distributor to the appropriate interior location and remain with them throughout the process.
- Cannabis goods to be sold at this establishment must be obtained by a licensed cannabis distributor and have passed laboratory testing;

- Cannabis product packaging must be labeled with required test results and batch number; and
- Packaging containing cannabis goods shall be tamper and child-resistant; if packaging contains multiple servings, the package must also be re-sealable.

### ***Business Plan***

The applicant has submitted a detailed business plan that was evaluated by the City's cannabis consultant (HdL). The business plan described the owners' experience, proof of capitalization, start-up budget, a three-year pro forma, target customers, key software, and daily operations. The business plan contains proprietary details and is therefore not included as an attachment to this staff report. The City's cannabis consultant determined that the applicant's business plan was appropriate for continued entitlement processing.

### ***Security Plan***

The applicant has submitted a professionally prepared security plan for the proposed retail cannabis establishment. The City's cannabis consultant reviewed the security plan and determined that appropriate security measures were included to address the City's security requirements pursuant to CMMC Title 9, Chapter VI, and State law.

Since the security plan contains sensitive operational details that require limited public exposure to remain effective, the plan is not included as an attachment. However, the following is a list of general security measures that are required for the proposed cannabis retail establishment:

- At least one security guard will be on-site 24-hours a day;
- All employees must pass a "Live Scan" background check;
- City-issued identification badges are required for employees;
- An inventory control system shall be maintained;
- Exterior and interior surveillance cameras shall be monitored and professionally installed;
- An alarm system shall be professionally installed, maintained, and monitored;
- Surveillance footage must be maintained for a minimum of 90 days;
- Cash, cannabis, and cannabis products shall be kept in secured storage areas;
- Sensors shall be installed that detect entry and exit from all secured areas;
- Security lighting (interior and shielded exterior) shall be installed;
- Emergency power supply shall be installed;
- Employees shall be trained for use with any/all emergency equipment;
- Employees and vendors will be trained regarding cash and product transportation protocol;
- Specific security measures for visitors/customers shall be required; and
- All facility entry and exit points and locations where cash or cannabis products are handled or stored shall be under camera surveillance.

### ***Parking and Circulation***

Retail cannabis establishments are subject to the same parking ratio as other storefronts in the City (four spaces per 1,000 square feet of gross floor area). Based on this ratio, the 2,000 square foot establishment would be required to have eight onsite parking spaces. The proposed site plan provides 10 parking stalls including credit for one bicycle rack. There is an existing public sidewalk at the front of the property along Newport Boulevard, which provides access to the site for pedestrians and bicyclists. The proposed parking exceeds the City's requirement by two spaces.

Parking is currently provided in the front setback via Newport Boulevard and in the rear via an alley, across from residential development. If approved, the building footprint would be reduced, allowing access to be provided by a new two-way driveway with customer access from Newport Boulevard. One accessible stall would be located in front of the building, several parallel stalls would be located along the drive aisle, and the parking area in the rear would be large enough for vehicles to turn around and exit via the new Newport Boulevard driveway. The proposed design would allow all ingress and egress to take place via Newport Boulevard. As proposed and conditioned, the existing vehicle gate along the alley would be closed to customer traffic so that all customers must enter and exit the premise from Newport Boulevard. As with many other businesses located along the northbound 2300 block of Newport Boulevard, the vehicle gate along the alley would be accessible for limited use such as trash pick-up, maintenance, etc.

Although the proposed site plan exceeds the City's parking requirement for a retail use, if parking shortages or other parking-related problems occur, the business owner or operator will be required to monitor the parking lot and institute appropriate operational measures necessary to minimize or eliminate the problem in a manner deemed appropriate by the Director of Economic and Development Services (see "Operational Conditions" of Approval No. 6 in the attached Resolution). Examples of parking demand management techniques include, but are not limited to, offsite parking for employees, reducing operating hours of the business, hiring an employee to monitor parking lot use and assist with customer parking lot circulation, offering delivery services to reduce in person store visits, and incentivizing employee carpooling/cycling/walking.

### ***Traffic***

The CMMC Section 13-275(e) indicates that any increase in traffic generation by a change of use that is required to obtain a discretionary permit, shall be subject to review by the appropriate reviewing authority, which may impose fees to address increased trip generation. If required, the fee collected is used to fund the City's comprehensive transportation system improvement program. The purpose of the program is to ensure that the City's transportation system has the capacity to accommodate additional trips. The Citywide Traffic Impact Fees on new and expanding developments is determined using estimated Average Daily Trips (ADT), which is the total number of vehicular trips both in and out of a development generated throughout an average weekday. The Transportation Services Division determined that the appropriate ADT for a cannabis retail establishment is approximately 108 trips per 1,000 square feet based on the

Institute of Transportation Engineers (ITE) 11<sup>th</sup> Edition Trip Generation Manual for a pharmacy/drug store with drive-through. The City's traffic engineering review focuses on net trip increase for both the ADT and peak hour trips. Therefore, the trip generation is estimated for the previous use and is credited (subtracted) from the proposed use to estimate potential changes in trip generation for ADT and peak hour trips. CMMC Section 13-275(a), specifies that "a traffic impact study shall be required for all development projects estimated by the Public Services Department to generate one hundred (100) or more vehicle trip ends during a peak hour." The highest peak hour trips in either the AM or PM peak is used to estimate the number of vehicular trips generated both in and out of a new or expanded development known as vehicle trip ends during a peak hour. Staff reviewed and determined that the proposed use does not meet the threshold of 100 peak hour trips requiring a traffic study based on the net peak hour trips, but there would likely be a Traffic Impact Fee (such fee calculations would consider the proposed decreases in existing floor area). The fee calculation would be finalized during the building permit plan check process and must be paid prior to building permit issuance.

### ***Odor Attenuation***

Cannabis products would arrive in State compliant packaging that is sealed and odor-resistant packaging, and remain unopened while on the premises. The storefront proposes to use carbon filters throughout the facility. If approved, the use would be conditioned so the operator must replace the air filters at regular intervals, as directed in the manufacturer specifications. Further, if cannabis odor is detected outside of the tenant space and/or off-site, the business owner/operator will be required to institute further operational measures necessary to eliminate off-site odors in a manner deemed appropriate by the Director of Economic and Development Services. Lastly, cannabis products would not be allowed to be disposed of in the exterior trash enclosure.

### ***Proximity to Residential***

Similar to several other commercial properties that front Newport Boulevard in this area of the City, the subject property is separated from residentially zoned properties (R2-MD, Multi-Family Medium Density and R2-HD, Multi-Family High Density) by an existing 20-foot public alley. Existing residential uses in the area include detached single family homes, attached condominiums, and multi-family units.

To ensure neighborhood compatibility, project conditions and requirements have been proposed and include the following:

- Business hours are limited from 7AM to 10PM.
- No customer traffic may enter or exit the premise from the public alley;
- Shield security lighting down and away from residential properties to prevent light spillover. As conditioned, a photometric study would be required to be submitted during plan check to demonstrate that light levels at the residential property are minimal;

- Post signs within the parking lot to remind customers and vendors to keep noise levels to a minimum;
- Limit the hours that the business can dispose of waste at the trash enclosure to avoid noise impacts during sensitive hours i.e. dispose of trash between 8AM and 8PM;
- The trash facility must be located and designed in a manner that does not result in odor impacts to the adjacent residential use. Only typical refuse shall be disposed in the trash receptacles, and disposal of cannabis products is prohibited. If odor complaints are received and confirmed by the City, odor impacts shall be eliminated in a manner deemed appropriate by the Director of Economic and Development Services; and
- An employee would monitor the site's parking areas to ensure that customers are quiet, turn of vehicle engines promptly, do not play loud music, slam car doors and generally do not create excessive neighbor disturbances. The employee would be especially diligent to prevent noise and other neighbor disturbance during morning and evening business hours.

## **GENERAL PLAN CONFORMANCE**

The Costa Mesa General Plan establishes the long-range planning and policy direction that guides change and preserves the qualities that define the community. The 2015-2035 General Plan sets forth the vision for Costa Mesa for the next two decades. This vision focuses on protecting and enhancing Costa Mesa's diverse residential neighborhoods, accommodating an array of businesses that both serve local needs and attract regional and international spending, and providing cultural, educational, social, and recreational amenities that contribute to the quality of life in the community. Over the long term, General Plan implementation will ensure that development decisions and improvements to public and private infrastructure are consistent with the goals, objectives, and policies contained in this Plan.

The following analysis evaluates the proposed project's consistency with applicable policies and objectives of the 2015-2035 General Plan.

1. **Policy LU-1.1:** *Provide for the development of a mix and balance of housing opportunities, commercial goods and services and employment opportunities in consideration of the need of the business and residential segments of the community.*

**Consistency:** The proposed use would provide a new entrepreneurial business in Costa Mesa located within a commercial area as allowed under Measure Q, and provides new goods and services and new employment opportunities in the community.

2. **Objective LU-6B:** *Encourage and facilitate activities that expand the City's revenue base.*

**Consistency:** Retail cannabis uses are expected to generate increased tax revenues in that cannabis sales are subject to a seven-percent local tax on gross receipts. Approval of the proposed cannabis retail storefront would allow business operations that would expand the City's revenue base. This revenue can then be used for community services and infrastructure improvements that serve the community.

3. **Policy LU-6.15:** *Promote unique and specialized commercial and industrial districts within the City which allow for incubation of new or growing businesses and industries.*

**Consistency:** The proposed use is part of the specialized and growing cannabis industry that is limited in the surrounding region. Approval of this CUP would facilitate a new local business opportunity in a specialized and expanding industry. The proposed retail cannabis business would occupy a vacant retail space that fronts a primary commercial corridor.

## **FINDINGS**

Pursuant to Title 13, Section 13-29(g), Findings, of the Costa Mesa Municipal Code, in order to approve the project, the Planning Commission must find that the evidence presented in the administrative record substantially meets specified findings as follows:

- *The proposed development or use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area.*

The subject site is located within a commercial zone (C1, Local Business District) where commercial development is specifically allowed to include retail storefronts. In addition, the property is located on one of the City's primary commercial corridors which is predominantly intended for commercial uses. Existing uses along this block include restaurants, offices, a convenience store, and an agricultural supply store. Pursuant to the CMMC, cannabis retail storefronts are permitted uses in the City's commercial zones and are subject to extensive regulation (as specifically described in this report). These regulations are adopted to prevent land use inconsistencies with adjacent properties. Additionally, the proposed cannabis retail storefront use is not located within 1,000 feet of a K-12 school, playground, licensed child daycare, or homeless shelter, or within 600 feet of a youth center. No outdoor storage or sales are proposed nor would be allowed. Operations would be conditioned to be compliant with applicable local and State laws as well as to minimize potential impacts.

The proposed use would also not be materially detrimental to the abutting residences because the project would include features to ensure neighborhood compatibility such as: prohibiting customers from entering or exiting via the rear alley, Limiting vendor deliveries between the hours of 7 AM to 10 PM, posting

signs in the parking lot directing all to use consideration when in or exiting the parking lot, having a 24-hour security guard, an employee monitoring customer activity, and shielding security lighting down and away from the residential uses to prevent potential lighting impacts. The storefront business would also include odor control measures as described in this report to minimize any odor impacts to the residences. Staff does not anticipate that the proposed retail cannabis use, as proposed and conditioned, would be materially detrimental to nearby uses that include offices, restaurants, multi-tenant commercial centers, and residences.

*Granting the conditional use permit will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.*

The proposed cannabis retail storefront use would follow safety measures detailed in a professionally-prepared security plan. The security plan was evaluated for compliance by the City's cannabis consultant, HdL. Measures designed to maintain safety at the site include, but are not limited to, at least one security guard would be onsite at all times and security devices shall be installed before operation. Examples of security devices include window and door alarms, motion-detectors, limited access areas, and a monitored video surveillance system covering all exterior entrances, exits, exterior loading and unloading, and all interior limited access spaces. In addition, the business employees, including part-time staff, must pass a live scan background check and obtain an identification badge from the City. The conditions of approval include, but are not limited to, the aforementioned security measures to ensure that the use would not be materially detrimental to the health, safety and general welfare of the public or be otherwise injurious to property or improvements within the immediate neighborhood.

- *Granting the conditional use permit will not allow a use, density or intensity which is not in accordance with the General Plan designation and any applicable specific plan for the property.*

The proposed retail use would occupy a vacant commercial building on a property that has a General Plan land use designation of "Commercial Residential." The General Plan defines this designation as "the eastside of Newport Boulevard between East 19th Street and Mesa Drive. It is the intent of this land use designation to allow a complementary mix of commercial and residential zoning along Newport Boulevard." The City's General Plan sets forth long-term policies that guide future development, whereas the Zoning Ordinance implements general plan policies through detailed development regulations, such as specific use types and building standards. Therefore, in determining General Plan compliance for the proposed cannabis retail storefront use, a comparison of the proposed use with the use, density and intensity allowed by the applicable zoning district is required. In this case, the applicable zoning district is "Local Business District" (C1). A variety of commercial uses are allowed in the C1 zone.

The proposed retail cannabis establishment would occupy a vacant commercial space. The proposed design would decrease the building footprint, improve onsite parking and circulation, and increase landscaping to bring the site into greater conformance with the CMMC. Therefore, approving the CUP would not increase development intensity; to the contrary, site intensification would be reduced by the proposed site improvements. The proposed use is consistent with General Plan policies related to providing a mixture of commercial goods, services, and employment opportunities; expanding the City's tax base; and promoting the incubation of unique and specialized businesses.

## **ENVIRONMENTAL DETERMINATION**

The project is categorically exempt from the provisions of California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 for the permitting and/or minor alteration of Existing Facilities, involving negligible or no expansion of the existing or prior use. This project site contains a commercial building that has been used for commercial activities. The application does not propose an increase in commercial floor area. The project is consistent with the applicable General Plan land use designation and policies as well as with the applicable zoning designation and regulations.

## **ALTERNATIVES**

The Planning Commission has the following alternatives:

1. Approve the project. The Planning Commission may approve the project as proposed, subject to the conditions outlined in the attached Resolution.
2. Approve the project with modifications. The Planning Commission may suggest specific changes that are necessary to alleviate concerns. If any of the additional requested changes are substantial, the hearing should be continued to a future meeting to allow a redesign or additional analysis. In the event of significant modifications to the proposal, staff will return with a revised Resolution incorporating new findings and/or conditions.
3. Deny the project. If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission must deny the application, provide facts in support of denial, and direct staff to incorporate the findings into a Resolution for denial. If the project is denied, the applicant could not submit substantially the same type of application for six months.

## **LEGAL REVIEW**

The draft Resolution and this report have been approved as to form by the City Attorney's Office.

## **PUBLIC NOTICE**

Pursuant to Title 13, Section 13-29(d) of the Costa Mesa Municipal Code, three types of public notification have been completed no less than 10 days prior to the date of the public hearing:

1. **Mailed notice.** A public notice was mailed to all property owners and occupants within a 500-foot radius of the project site. The required notice radius is measured from the external boundaries of the property.
2. **On-site posting.** A public notice was posted on each street frontage of the project site.
3. **Newspaper publication.** A public notice was published once in the Daily Pilot newspaper.

As of the date this report was circulated, one written public comment has been received and is attached to this report. Any public comments received prior to the November 28, 2022 Planning Commission meeting will be provided separately.

## **CONCLUSION**

The proposed project is a retail cannabis storefront business at a developed commercial property that is located on one of the City's primary commercial corridors. The location meets separation requirements established in CMMC 13-200.93(e). Staff and the City's cannabis consultant completed the Pre-Application Determination, Business Plan and Security Plan evaluations, owner background checks, and thoroughly reviewed the CUP materials. If approved, the operation would be required to comply with all conditions of approval and extensive City and State regulations.

If the Planning Commission approves the project, the applicant would next obtain building permits, complete tenant improvements, and pass City inspections prior to obtaining a CBP and City Business License. The CBP is valid for two years and must be continuously renewed, including inspections, prior to expiration. During each two-year CBP period, the Community Improvement Division, along with other City staff, will conduct site inspections to verify that the operation complies with CUP and CBP requirements. Violations identified during site inspections may be grounds for revocation of issued permits or non-renewal of a CBP.

As proposed and conditioned, the use would be consistent with other commercial uses in the C1 (Local Business District) zone and the City's General Plan. The required findings for the CUP can be made, as described above, and therefore, staff recommends approval of Planning Application 21-34 subject to conditions of approval.