



PLANNING COMMISSION

AGENDA REPORT

MEETING DATE: FEBRUARY 27, 2023

ITEM NUMBER: PH-3

SUBJECT: PLANNING APPLICATION 22-34 FOR A CANNABIS MANUFACTURING, DISTRIBUTION, AND NON-STOREFRONT RETAIL FACILITY ("FABULOUS CREATIONS INC.") AT 3505 CADILLAC AVENUE, UNIT M-202)

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

PRESENTATION BY: CHRISTOPHER ALDANA, ASSISTANT 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 22-34, subject to conditions of approval.

APPLICANT OR AUTHORIZED AGENT

The applicant/authorized agent is Barry Fisher, for the property owner, 3505 Cadillac Ave. LLC.

BACKGROUND

The subject property is located on the west side of Cadillac Avenue near the westerly terminus of Sunflower Avenue. This City land use area is commonly known as the "Green Zone" which allows a variety of cannabis uses including manufacturing, distribution, and non-storefront uses (delivery only), subject to the issuance of City and State permits and licenses. The 13.9-acre property known as Cambridge Park (developed in 1982) is an industrial park with approximately 230,000 square feet of industrial, research and development, and office condominiums. Physical on-site

improvements include landscaping and surface parking shared among the businesses within Cambridge Park. The property is zoned Planned Development Industrial (PDI), and is surrounded by properties zoned Industrial Park (MP) to the north and east, the Interstate 405 Freeway to the south, and the Santa Ana River Trail to the west. The site has a General Plan Land Use Designation of Industrial Park (IP).

The proposed project is located in an existing 2,206-square-foot tenant space on the second floor of a multi-tenant industrial building (Building M). There are no open Code Enforcement cases at this proposed location. The existing industrial building currently contains seven tenant spaces (including the proposed use), all of which are cannabis distribution, manufacturing and/or non-storefront retail businesses, as shown in Table 1.

Table 1 – Building M Tenant List

Unit	Entity	Use	Case Number	Status
M101	Se7en Leaf, LLC	Manufacturing & Distribution	PA-18-03; A1	CBP issued; In operation
M102	Tranz, LLC	Manufacturing & Distribution	PA-18-19; A1	CUP approved
M201	Biosgrove Technology, Inc.	Distribution	PA-18-38	CBP issued; In operation
M202 (Applicant)	Fabulous Creations Inc.	Proposed Use: Manufacturing/ Distribution & Non-Storefront Retail (Direct Delivery)	PA-22-34	CUP pending
M103	Pure Labs, Inc.	Manufacturing & Distribution	PA-18-17; A1	CBP issued; In operation
M104	SCCC Group	Manufacturing/ Distribution & Non-Storefront Retail (Direct Delivery)	PA-20-18; A1	CUP approved
M204	New Normal Labs, LLC	Manufacturing & Distribution	PA-20-15	CUP approved

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, excluding the South Coast Collection (SOCO) property located at 3303 Hyland Avenue. This industrial area is known as the “Green Zone”. Measure X is codified in Titles 9 and 13 of the Costa Mesa Municipal Code (CMMC). Cannabis uses are also subject to State cannabis requirements.

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 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 only.

Cannabis Business Permit (CBP) Process

Prior to establishing a Cannabis business, an applicant is subject to an extensive submittal and application review process and must obtain all of the following City approvals before conducting business:

- Cannabis Business Permit Notice to Proceed:
- Conditional Use Permit (or Minor Conditional Use Permit in specific circumstances);
- Building Permits (and final inspections by multiple departments and the City’s cannabis consultant);
- Cannabis Business Permit; and
- Business License.

The initial phase of a Cannabis Business Permit review includes a background check of the proposed owner, and an evaluation of the proposed business plan and security plan by the City’s cannabis consultant, HdL Companies. The applicant has successfully completed these evaluations and staff issued a Notice to Proceed, which allows the

applicant to continue to the next step in the review, which is the submittal of a Conditional Use Permit (CUP) application.

If the CUP is approved, the applicant would begin the remaining steps of the CBP process. The applicant must obtain building permits, complete building improvements, demonstrate that all conditions of approval have been satisfied, and that all other requirements of the CMMC have been satisfied. After passing the final City inspection, the CBP would be issued. CBP approval is valid for a two-year period and must be renewed prior to expiration. During the two-year permit period, the Community Improvement Division (CID), along with other City staff, will conduct site visits to verify the operation complies with all CUP and CBP requirements. Violations identified during site visits may be grounds for the revocation of the CBP or for non-renewal of a CBP.

After obtaining the CBP, the applicant may apply for and obtain a City Business License. In addition to the CUP, CBP, and Business License, the applicant must obtain the appropriate licenses from the State Department of Cannabis Control prior to operating.

DESCRIPTION

Planning Application 22-34 is a request for a Conditional Use Permit (CUP) to operate a cannabis non-volatile manufacturing, distribution, and non-storefront retail (delivery) facility within a 2,206-square-foot, second floor tenant space located at 3505 Cadillac Avenue, Unit M-202. Unit M-202 is located directly above Unit M-102 (Tranz, LLC) and shares a common ground floor entrance/lobby area with direct access from the adjacent southerly parking area. Additionally, Unit M-202 also has a second entry door with access from the northerly parking lot area. This northerly entry door is located on the second-floor and is accessed from the ground level via an exterior stair access. The exterior stairway is also shared by the business operating in suite 201 (Biosgrove Technology, Inc.).

As indicated by the applicant, the business will be owned by three individuals. At this time, the owners will not be hiring any employees and the three owners will alone manage the proposed cannabis daily distribution, manufacturing and delivery operations. The applicant indicates that only the owners are anticipated to be on-site during business hours; however, as the business grows, employees may be added to the business. The owners intend on eventually purchasing a van for the distribution service; however and at this time, all business related distribution and deliveries would occur via the owner's personal vehicles.

Although manufacturing, distribution and delivery aspects of the proposed business are described below in detail, the applicant anticipates that a typical day would consist of one of the owners arriving to the site and parking their personal vehicle in the designated loading/unloading parking space. When a delivery is requested by phone, email or on the business website, the owner would use their vehicle to deliver products. If during the day a distribution of their products is needed, than the owner would use the same personal vehicle to complete the requested distribution service. At the end of the day, the owners would close the business and drive home their personal vehicle. As

conditioned, vehicles for delivery and distribution will be installed with secure storage areas for cannabis products. In addition and as also conditioned, all transfer of cannabis products from the licensed premises to the delivery/distribution vehicles will be within a secured container.

The required State licenses for the proposed cannabis business includes a Type 6 “manufacturer – non-volatile,” Type 9 “non-storefront retailer” and Type 11 “distributor.” A CUP and State license for the facility would allow the business to manufacture and transport cannabis products, as well as deliver pre-packaged cannabis and cannabis products directly to off-site customers, subject to conditions of approval and local and State requirements. Cannabis cultivation is not proposed and is prohibited in Costa Mesa.

ANALYSIS

As described in the applicant’s letter (Attachment 2) and illustrated on the proposed plans (Attachment 6), the proposed cannabis facility includes three main areas:

1. Manufacturing (75 square feet);
2. Distribution (515 square feet); and
3. Delivery (700 square feet).

In addition, a Common Area (916 square feet) serves all three operations, which includes a shared office, restroom, security closet, and shared employee lockers. Only minor changes are proposed to the interior floor plan (the closure of one doorway), and no exterior changes are proposed.

Manufacturing & Distribution Use

The manufacturing area is proposed within a 75-square-foot room, and manufacturing does not involve the use of hazardous materials for cannabis extraction. The cannabis business is primarily proposing to produce pre-rolled cannabis cigarettes (“pre-rolls”) which involves grinding cannabis flower that would be used for filling the pre-roll. The pre-rolls would be hand rolled using “RAW” brand filters and pre-roll wrapping paper. The applicant anticipates an estimated 1,000 pre-rolls would be produced each month.

The distribution area would be located within an approximate 500-square-foot portion of the proposed cannabis facility including a secure storage room and distribution office. Cannabis flower would be stored in the secure storage room and would be sorted for either final retail packaging or pre-roll manufacturing. Cannabis flower intended for retail (delivery and licensed storefronts) would be stored in the distribution area of the facility where it will be packaged and labeled for order fulfillment. Cannabis flower intended for manufacturing purposes would be transferred to the manufacturing area of the facility, as needed.

The distribution vehicle loading and unloading activity is proposed to occur within the existing shared southerly surface parking lot. The cannabis facility would have a designated loading/unloading area that is located approximately 60 feet from the front entrance. As proposed and conditioned, video surveillance cameras would be installed on the interior and exterior of the building with direct views of the loading and unloading area. As described above and conditioned in the Resolution, cannabis products will be transported securely from the licensed premises to the delivery/distribution vehicles, and the delivery and distribution vehicles will also be equipped with secure storage areas for cannabis products.

Below is a summary of the activities and product movement that are involved with the proposed manufacturing and distribution uses:

- Receipt of bulk shipments, including but not limited to, cannabis flower would be transported from the specified loading/unloading area into the premises, via the front entry located at the northern parking area (approximately 60-foot path of travel). All cannabis products will be transported within secured/locked storage/transport devices;
- Once received and validated per State requirements, bulk shipments are stored in the designated secured storage area until it is ready to be transferred to the manufacturing areas;
- Once transferred from the distribution to the manufacturing areas, the Type 6 non-volatile manufacturing would occur. Pursuant to the Type 6 State license, the following cannabis manufacturing is allowed:
 - Use non-volatile solvents for extraction or post-extraction processing;
 - Use mechanical methods for extraction;
 - Make cannabis products through infusion; and/or
 - Package and label cannabis products;
- Finished cannabis products are transported back to the distribution secure storage room while a sample batch undergoes laboratory testing by an authorized third-party testing facility; and
- Finished product scheduled for distribution to a licensed retail buyer would be staged within the distribution secure storage room

Non-Storefront Retail Use (Delivery)

A 700-square-foot delivery area is proposed that includes an office, secure storage room, and delivery dispatch room. The office would be used for general administrative purposes. The secure storage area will be the location of the facility where cannabis retail products are stored, and items that are ready for delivery will be stored in the delivery dispatch room. Pursuant to the Type 9 State license, only packaged cannabis products can be delivered directly to customers. Packaged cannabis products would arrive to the facility via in-house distribution and a portion of product will come from in-house manufacturing, and proceed through compliance testing. As described above and conditioned, loading and unloading of cannabis product into delivery vehicles is also

proposed to take place within the existing northern surface parking lot in the designated loading/unloading area.

All areas of the facility including the non-storefront retail use would be closed to the public and could only be accessed through secured or controlled access points in the facility with the proper security credentials. The applicable State and local operating requirements for non-storefront retail delivery operations are summarized below:

- All employees who deliver cannabis shall have valid identification and a copy of the CBP and State license at all times while making deliveries.
- All employees are at least 21 years of age.
- Delivery to consumers is limited to the hours between 7 a.m. – 10 p.m.
- All commercial cannabis retail businesses shall maintain proof of vehicle insurance for all vehicles being used to transport cannabis goods as required by State law.
- During delivery, the delivery employee shall not leave the State of California while possessing cannabis products and/or performing his or her duties for the cannabis retailer.
- A commercial cannabis retail business shall maintain a list of all deliveries, including the address delivered to, the amount and type of product delivered, and any other information required by the State.
- A manifest with all information required pursuant to local and State provisions shall accompany any delivery person at all times during the delivery process and delivery hours.
- Any delivery methods shall be made in compliance with State law, as amended, including use of a vehicle that has a dedicated GPS device for identifying the location of the vehicle (cell phones and tablets are not sufficient).
- Each delivery request shall be entered into a point-of-sale tracking system and have a receipt prepared by the commercial cannabis retail business with the following information:
 - Name and address of the commercial cannabis retail business;
 - The name of the employee who delivered the order;
 - The date and time the delivery request was made;
 - The complete customer's first name, retailed-assigned identification number, and delivery addresses;
 - A detailed description of the cannabis goods requested for delivery including the weight or volume, or any accurate measure of the amount of cannabis goods requested;
 - The total amount paid for the delivery including any fees or taxes;
 - The date and time delivery was made, and the signature of the person who received the delivery; and
 - At the time of the delivery, the person receiving the delivery provides identification and must be 21 years old.
- No cannabis delivery vehicle shall display signs, decals or any other form of advertisement.
- Inspections by an authorized City representative may be conducted anytime during regular business hours.

- Delivery must be made to a physical address that is not on publicly owned land, a school, a day care, or a youth center.
- The delivery employee shall not carry cannabis goods valued in excess of \$5,000 at any time with no more than \$3,000 of cannabis goods that are not already part of a customer order that was processed prior to leaving the premises.
- A direct employee of the licensed retailer must make delivery in person. An independent contractor, third-party courier service, or an individual employed through a staffing agency would not be considered directly employed by the licensed retailer.
- The delivery employee shall confirm the age of the buyer through entering government issued identification information into an electronic age verification system.

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 provided a professionally prepared security plan for the proposed cannabis facility. The City's cannabis consultant reviewed the proposed security plan and determined that appropriate security measures were included to address the City's security requirements pursuant to Chapter VI of CMMC Title 9 and State law. Since the security plan contains sensitive operational details that require limited 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 facility:

- Live scan background check for every employee including drivers;
- City-issued identification badge for each employee;
- Professionally installed and monitored exterior and interior surveillance cameras;
- Professionally installed, maintained, and monitored alarm system including panic buttons and window and door alarms;
- Surveillance footage must be maintained for a minimum of 90 days;
- Secured storage of cash, cannabis and cannabis products;
- Sensors that detect entry and exit from all secured areas;
- Emergency power supply;
- Emergency equipment and training;
- Driver and vehicle safety protocol;
- Vendor protocol (cash and product transportation); and
- Limited access areas and visitors check-in and security.

As proposed and conditioned, all facility entry and exit points, locations where cash or cannabis products are handled or stored shall be under camera surveillance. Additionally, the applicant shall submit to the City a list of all vehicles to be used for retail delivery purposes. The list shall identify the make, model, color, license plate number, and registered owner of each vehicle. The applicant shall submit an updated vehicle list each quarter with the required quarterly update to the employee roster pursuant to the CBP. Delivery vehicle drivers shall be at least age 21, have a current driver's license, successfully complete a live scan, and have a City-issued badge. The business operator shall ensure that all vehicles are properly maintained, all delivery drivers have a good driving record, and each driver conducts a visual inspection of the vehicle at the beginning of a shift.

Circulation and Parking

The existing surface parking lot was designed with the intent to be shared and to serve all of the businesses operating within the Cambridge Park industrial complex. The industrial complex was originally developed in 1981 and was required to provide 591 parking spaces based on the City's established industrial use parking requirement of three spaces per 1,000 gross square feet. There are 731 parking spaces provided in the existing surface lot, which exceeds the City's industrial floor area/parking requirement by 140 spaces. The delivery use involves no customer traffic so it would not further intensify the site or require additional parking. Therefore, the project does not require any additional parking stalls. Conditions of approval are included to ensure that if parking shortages or parking related issues arise that the business operator would be required to institute appropriate measures necessary to minimize or eliminate the parking problem to the satisfaction of the Director of Economic and Development Services or their designee.

GENERAL PLAN CONFORMANCE

Conformance with the City of Costa Mesa General Plan

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. This vision focuses on protecting and enhancing Costa Mesa's diverse residential neighborhoods, accommodating an array of businesses that serve both 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 specific 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 cannabis use would provide a new entrepreneurial business in Costa Mesa as allowed under Measure X and Measure Q (local voter approved ballot measures), new goods and services, and may potentially provide new employment opportunities in the community.

2. **Policy LU-6.3:** *Continue to prioritize commercial and industrial park use of properties north of I-405 and within the Airport Industrial District.*

Consistency: The proposed use would create new jobs and continue the industrial and commercial nature of an existing industrially-zoned property located north of I-405.

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 a growing industry and would be based in a location specifically identified for such uses by the City's electorate through Measure X and Measure Q. Therefore, approval would encourage new businesses and entrepreneurial opportunities in an area of the City identified for such by local voters.

REQUIRED 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 the Green Zone, an industrial area of the community where several types of cannabis uses are conditionally permitted, such as non-storefront retail (delivery), distribution, and manufacturing. The proposed use is a manufacturing, distribution and non-storefront (delivery) retail use proposed within the City's Green Zone. The other tenants in the building are also approved cannabis facilities. Similar to other industrial uses, the proposed delivery business would generally not generate customer traffic to the site. As proposed and conditioned, the cannabis use would be compatible with adjacent industrial and commercial uses, including several other adjacent cannabis uses. Compliance with conditions of approval, other local regulations, and State requirements would allow this use to operate with minimal impact on surrounding properties and uses.

- **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 manufacturing, distribution and non-storefront retail 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 Companies. Measures designed to maintain safety at the facility include—but are not limited to—window and door alarms, panic buttons, motion-detectors, limited access areas, a monitored video surveillance system covering all exterior entrances, exits, and all interior limited access spaces. As proposed and conditioned, video recordings shall be maintained for a minimum of 90 days As required by the CMMC and affirmed in the security plan, the business shall designate a security representative to be available to meet with the City Manager, Chief of Police, or their designees, regarding any security or operational concerns. The business employees, including delivery drivers and part-time staff, shall pass a live scan background check and obtain identification badges from the City. The recommended conditions of approval and local and State laws are intended 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 use is consistent with the General Plan goals and policies as discussed earlier in this report. The proposed use will be located within an existing building and there are no proposed additional square footage to the tenant space or to the building; therefore, there is no change in intensity. As stated in the General Plan Land Use Element, the City’s industrial designations “accommodate a variety of industrial and compatible office uses, as well as limited and supportive commercial uses.” The use is consistent with General Plan policies related to providing a mixture of commercial goods, services, and employment opportunities; prioritizing commercial and industrial uses at properties north of the I-405; and promoting the incubation of unique and specialized commercial and industrial businesses. In addition, the proposed use is a conditionally permitted use in the subject industrial zone.

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 (Class 1). This project site contains an existing industrial building and the proposed project only involves minor interior tenant improvements that would not expand the existing footprint or increase the square footage. The proposed use would not require any other exterior modification or off-site improvements to the industrial complex. Thus, the proposed use does not intensify the area in terms of Floor Area Ratio (FAR) or generate increased traffic that was not already anticipated for this area pursuant to the General Plan. The project also

complies with all applicable business operational standards of Article 9 and 13 of the CMMC. Furthermore, none of the exceptions that bar the application of a categorical exemption pursuant to CEQA Guidelines Section 15300.2 applies. Specifically, the project would not result in a cumulative impact; would not have a significant effect on the environment due to unusual circumstances; would not result in damage to scenic resources; is not located on a hazardous site or location; and would not impact any historic resources.

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 item should be continued to a future meeting to allow a redesign and/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 for denial into a Resolution for subsequent Planning Commission review/approval. If the project is denied, the applicant could not submit substantially the same type of application for at least 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 drafted, no written public comments have been received. Any public comments received prior to the Planning Commission meeting will be forwarded separately to the Planning Commission.

CONCLUSION

The proposed use is for a cannabis manufacturing, distribution and non-storefront retail (delivery only) facility in the City's Green Zone. As proposed and conditioned, the proposed use would be consistent with other industrial uses in the Green Zone. The use is consistent with the Zoning Code and the City's General Plan. In addition, the required findings for the Conditional Use Permit can be met as described above. Therefore, staff recommends approval of Planning Application 22-34, subject to conditions of approval.