

RESOLUTION NO. PC-2023-

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF COSTA MESA, CALIFORNIA DENYING PLANNING
APPLICATION 21-36 FOR A STOREFRONT RETAIL
CANNABIS BUSINESS (NATIVE GARDEN) IN THE CL ZONE
AT 167 CABRILLO STREET**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA
HEREBY FINDS AND DECLARES AS FOLLOWS:

WHEREAS, in November 2020, the Costa Mesa voters approved Measure Q; which allows for storefront and non-storefront retail cannabis uses in commercially zoned properties meeting specific location requirements, and non-storefront retail cannabis uses in Industrial Park (MP) and Planned Development Industrial (PDI) zoned properties;

WHEREAS, on June 15, 2021, the City Council adopted Ordinance Nos. 21-08 and No. 21-09 to amend Titles 9 and 13 of the Costa Mesa Municipal Code (CMMC) to establish regulations for cannabis storefront and non-storefront uses;

WHEREAS, Planning Application 21-36 was filed by Christopher Glew, authorized agent for the property owner, Palanjian Family Trust, requesting approval of the following:

A Conditional Use Permit to operate a storefront retail cannabis business within an existing 1,050-square-foot commercial building located at 167 Cabrillo Street. 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;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on January 23, 2023 with all persons having the opportunity to speak for and against the proposal;

WHEREAS, the project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and CEQA does not apply to this project because it has been rejected and will not be carried out, pursuant to Public Resources Code section 21080(b)(5) and CEQA Guidelines Section 15270(a).

NOW, THEREFORE, based on the evidence in the record the Planning Commission hereby **DENIES** Planning Application 21-36 with respect to the property described above as set forth in Exhibit A.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the document in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

PASSED AND ADOPTED this 23rd day of January, 2023.

Chair
Costa Mesa Planning Commission

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, Scott Drapkin, Secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution No. PC-2023- was passed and adopted at a regular meeting of the City of Costa Mesa Planning Commission held on January 23rd, 2023 by the following votes:

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

ABSTAIN: COMMISSIONERS

Scott Drapkin, Secretary
Costa Mesa Planning Commission

Resolution No. PC-2023-

EXHIBIT A

FINDINGS

- A. Pursuant to CMMC Section 13-29(g), when granting an application for a conditional use permit, the Planning Commission shall find that the evidence presented in the administrative record substantially meets certain required findings. The Applicant failed to meet its' burden to demonstrate that the proposed project would comply with all of the requirements of Section 13-29(g)(2) and therefore the Planning Commission was unable to make the required findings to approve the proposed use for each and every reason set forth herein below:

Finding: *"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."*

Facts in Support of Findings for Denial: The subject site is located within the CL zone (Commercial Limited District). As defined in the CMMC, the CL zone is an area in which special precautions shall be taken due to the proximity of residential development or the potential for traffic circulation hazards. A cannabis storefront is a use that is conditionally permitted in the CL zone subject to conformance with required findings. This discretionary decision-making process allows/requires the Planning Commission to carefully review the proposed cannabis storefront operation and location.

As intended by the CMMC, this area of the CL zone generally functions as a buffer between residential uses on Cabrillo Street and commercial activity on East 17th Street. The closest commercial corridor to the subject property is the north side of East 17th Street. The existing development pattern on the north side is for businesses to be oriented toward the street, with parking in the rear to buffer less intense uses from activities along East 17th Street. To-date, all of the approved cannabis storefront CUPs in Costa Mesa, with or without delivery, are appropriately located along or adjacent to arterial roadways in the C1 (Local Business District) or C2 (General Business District). The proposed cannabis storefront at 167 Cabrillo Street is the first cannabis retail establishment to be located at the intersection of two local streets and the first to be located in the CL zone.

Additionally, the subject site is located adjacent to a residential use and across from residential developments on Cabrillo Street. Adjacent nonresidential uses predominantly include services, not retailers. Other businesses operating in this immediate area of the CL zone are low-to-moderate traffic uses and/or have business practices that limit their impact on residents, such as limited hours of operation, encouraging or requiring appointments, and conducting activities at clients' properties (offsite). Unlike those operations,

the proposed cannabis storefront would operate 11 hours per day, between 9 AM and 8 PM and without a mechanism to regulate customer traffic. As with other commercial uses adjacent to residential development, noise would be a potential concern, especially given the proposed intensification of the use and increased hours open to the public.

The applicant has failed to demonstrate that the proposed cannabis storefront would not be substantially compatible with other developments in the neighborhood and the proposed use has the potential to be materially detrimental to other properties in the area. Conditions of approval may be able to reduce potential impacts, but without a significant change in the proposed operation, the use would not be substantially compatible with the neighborhood.

Finding: *“Granting the conditional use permit or minor 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.”*

Facts in Support of Findings for Denial: 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, and interior limited access spaces. In addition, the business employees, and part-time staff, must pass a live scan background check and obtain an identification badge from the City. When operating in accordance with the professionally prepared security plan and in conformance with local and State laws, the proposed use would not be materially detrimental to public health and safety; however, the applicant has failed to demonstrate that the more intensive change in commercial use proposed would not be detrimental to the general welfare of the public and/or injurious to property or improvements to the immediate residential uses.

Finding: *“Granting the conditional use permit or minor 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.”*

Facts in Support of Findings for denial: The proposed retail use would be located in an existing commercial building on a property that has a General

Plan land use classification of Neighborhood Commercial. This classification is defined as follows: "The Neighborhood Commercial designation is intended to serve convenience shopping and service needs of local residents. Appropriate uses include markets, drug stores, retail shops, financial institutions, service establishments, and support office uses. Restaurants, hotels, and motels may be appropriate if properly located, designed, and operated to avoid adverse impacts to surrounding uses. Since Neighborhood Commercial uses are intended to serve nearby residential neighborhoods, the uses permitted should be among the least intense of the commercial uses." The use is consistent with General Plan policies that pertain to providing a mixture of commercial goods, services, and employment opportunities, expanding the City's tax base, and promoting the incubation of specialized businesses. However, the proposed use is inconsistent with General Plan policies C-1.11 and N-2.9 as described in the staff report. Further, the proposed cannabis retail storefront is not the "least intense of commercial uses", would intensify the use of the site and activity in the neighborhood, and is not compatible with the resident serving intention of the CL Zoning District. Therefore the applicant has failed to demonstrate that proposed use and intensity is in accordance with the General Plan.

B. CEQA does not apply to denied projects per CEQA Guidelines Section 15270(a) and Public Resources Code Section 2180(b)(5).

C. The disapproved project is not subject to a City of Costa Mesa traffic impact fee.