



# **PLANNING COMMISSION AGENDA REPORT**

MEETING DATE: FEBRUARY 27, 2023

ITEM NUMBER: PH-2

**SUBJECT: PLANNING APPLICATION 21-36 FOR A RETAIL CANNABIS  
STOREFRONT BUSINESS LOCATED AT 167 CABRILLO STREET  
(CABRILLO COMMUNITY PROJECT LLC DBA NATIVE GARDEN)**

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

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

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## **RECOMMENDATION**

Staff recommends the Planning Commission review and consider the revised staff report and Resolution to:

1. Find that the project is exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Existing Facilities); and
2. Approve Planning Application 21-36, subject to conditions of approval.

## **APPLICANT OR AUTHORIZED AGENT**

The applicant/authorized agent is Christopher Glew on behalf of Cabrillo Community Project LLC dba Native Garden and the property owner, Palanjian Family Trust.

## **PLANNING APPLICATION SUMMARY**

Location:	167 Cabrillo Street	Application Number:	PA-21-36
Request:	Planning Application 21-36 for a Conditional Use Permit for the establishment of a cannabis retail storefront in the CL (Commercial Limited District) zone.		

### **SUBJECT PROPERTY:**

### **SURROUNDING PROPERTY:**

Zone:	CL (Commercial Limited District)	North:	R2-HD (Multiple-Family Residential, High Density)
General Plan:	Neighborhood Commercial	South:	CL (Commercial Limited District)
Lot Dimensions:	North: 67.59; South: 82.57' East: 87.54'; West: 72.53'	East:	CL (Commercial Limited District)
Lot Area:	7,180 SF	West:	CL (Commercial Limited District)
Existing Development:	One 1,050-square-foot single-story building.		

## **DEVELOPMENT STANDARDS COMPARISON**

Development Standard	Required/Allowed CL Zone	Proposed/Provided
Building Height	2 stories/30 ft. maximum	13'-8"
Setbacks:		
Front	20 ft. minimum	24'-11"
Side	15 ft. minimum (public street) 15 ft. minimum (interior)	34'-5" 9'-10" <sup>1</sup>
Rear	0 ft.	32'-10"
Landscape Setback – front	20 ft.	27'-10"
Parking	4 stalls	6 stalls <sup>2</sup>
Floor area ratio (FAR)	0.15 maximum	0.15
<sup>1</sup> The interior side setback was approved by Zoning Exception 80-124.		
<sup>2</sup> The proposed site plan includes bike racks for a credit of one parking stall, included in the proposed total.		
CEQA Status	Exempt per CEQA Guidelines Section 15270 (Disapproved Projects) or 15301 (Existing Facilities)	
Final Action	Planning Commission	

## **BACKGROUND**

Planning Application PA-21-36 was presented at the Planning Commission meeting on January 23, 2023. The staff recommendation was for project denial. After considering the information provided in the staff report, the applicant's presentation, and public comment, the Planning Commission voted 6-1 to continue the public hearing to their regular meeting on February 27, 2023. The Planning Commission specifically directed staff to return with a draft approval resolution with conditions of approval for Planning Commission consideration.

For a complete analysis of the site history, proposed project, site conditions and adjacent area conditions and uses, the January 23, 2023 Planning Commission staff report and attachments are available online via the following link:

- Staff Report and Resolution for Denial:  
<https://costamesa.legistar.com/View.ashx?M=PA&ID=1077538&GUID=9FA32ADF-FAAE-4555-9BB4-21B74D804B36>
- Video:  
[https://costamesa.granicus.com/player/clip/3939?view\\_id=14&redirect=true&h=bf172995f3dead1f3cf00ad9a8b75080](https://costamesa.granicus.com/player/clip/3939?view_id=14&redirect=true&h=bf172995f3dead1f3cf00ad9a8b75080)

## **ANALYSIS**

At the January 23, 2023 Planning Commission hearing, after receiving the staff presentation and considering public testimony, Commissioner Zich made a motion that was seconded by Commissioner Toler to continue Planning Application 21-36 to February 27, 2023. During Planning Commission discussion of the proposed motion, the majority of the Planning Commission generally commented that a denial of the application may not be warranted pending Planning Commission review of potential conditions of approval. The Planning Commission directed staff to develop conditions of approval for the Planning Commission to consider, and also provided the following specific comments regarding the project and its surroundings:

- Cabrillo Street serves both commercial and residential uses, and the revised analysis should “balance the rights of businesses with the expectations of the adjacent residential uses”;
- Since major commercial corridors are now being considered for residential uses, locating retail activities away from residential areas and only on major commercial corridors may not be desirable;
- The proposed cannabis use is consistent with the “Commercial Limited” Zoning District in that the proposal includes relocating the front entrance, providing landscaping on Cabrillo Street, and according to the applicant’s presentation includes a business model that provides considerable customer consultation that will ultimately slow-down customer turn-over;
- There are businesses such as a gym, a seafood restaurant and many other commercial uses located in close proximity to the Cabrillo Street residential neighborhood;
- The proposed cannabis retail storefront is not located in close proximity to the City’s commercial corridors, and includes a relatively small retail floor area; therefore, the proposed use can be considered a neighborhood serving business and could be consistent with the intent of the “Commercial Limited” Zoning District;
- The proposed cannabis retail storefront is consistent with Measure Q and the voter’s intent to allow cannabis operations in the City’s commercial zoning districts;

- Traffic and circulation impacts from the business should be considered by staff , and with specific emphasis on past vehicle collisions occurring in the area, and the circulation affects from “cut-through” traffic on Cabrillo Street; and
- The cannabis retail storefront may be potentially a viable use if hours of operations are modified/limited;

### ***Conditions of Approval***

Staff developed a Resolution for approval of the subject application based on the Planning Commission's comments, and included staff recommended conditions of approval. Per Operational Condition No. 2, the business would operate between the hours of 9 AM and 6 PM, seven days per week. This is generally consistent with the nearby uses operating in the Commercial Limited Zoning District and is two hours longer than the existing spa business currently operating at the site. The staff-proposed hours of operation is less than the maximum permitted hours allowed for cannabis retail establishments by the CMMC (7 AM and 10 PM) and two hours less than the applicant's originally proposed hours of operation (9 AM to 8 PM). However, the Planning Commission could also consider reducing the hours further in the morning or in the evening to improve neighborhood compatibility, or increasing the hours if the Commission believes that staff's proposed hours of operation are excessively conservative. In addition and similar to several other previous cannabis application approvals, staff has included a condition of approval that requires the applicant return in six months (from the date of opening) for a follow-up Planning Commission review. This CUP shall be placed on the Planning Commission agenda as a noticed public hearing item for a follow-up review, consideration of operations, and modifications to the conditions of approval. Prior to that hearing, staff may provide notice to the neighbors, obtain any information regarding calls for service, and request that the City's Transportation Division visit the site during peak traffic hour periods to determine any traffic and/or circulation issues. During this six-month review, the Planning Commission may also consider modifying the approved hours of operation as well as other conditions of approval and may make modifications necessary to ensure neighborhood compatibility based on evidence in the record.

Lastly, staff has conditioned the proposed business to comply with City's typical cannabis storefront 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 (9 AM and 6 PM);
- 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 controlled access door 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.

## **GENERAL PLAN CONFORMANCE**

Based on the comments provided by the Planning Commission at the January 23, 2023 public hearing, staff has revised the below applicable General Plan Conformance review to reflect the Planning Commission's feedback:

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 as allowed under Measure Q, and provides new goods and services and new employment opportunities in the community; therefore, the proposed use would be consistent with General Plan Policy LU-1.1.

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; therefore, the proposed use would be consistent with General Plan Policy LU-6B.

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. Approval of this CUP would facilitate a new local business opportunity in a specialized and expanding industry; therefore, the proposed use would be consistent with General Plan Policy LU-6.15.

4. **Policy LU-3.1:** *Protect existing stabilized residential neighborhoods, including mobile home parks (and manufactured housing parks), from the encroachment of incompatible or potentially disruptive land uses and/or activities.*

**Consistency:** The CMMC does not establish a minimum separation between retail cannabis uses and residential uses. The City's thorough, multi-step permitting process and project-specific conditions of approval decrease the potential for a cannabis storefront business to impact neighboring properties including residential uses. In addition, the 1,050-square-foot retail facility has a small footprint, an operational plan that would limit customer turn-over (according to the applicant), conditions of approval are proposed that will minimize impacts to traffic and parking, and the use would be located in an area that includes a variety of office, retail and other commercial uses in close proximity, and therefore would not result in an incompatible or potentially disruptive land use and/or activity.

Further and as conditioned, the proposed cannabis retail storefront would have limited hours of operation. Signs would also be posted in the parking lot to remind customers, employees, and vendors to exercise consideration for adjacent uses. Lastly, the use would be conditioned to have a security

guard present at all times. As a result, the use would operate similarly to other commercial uses in this area, and would not disrupt existing residential uses in the vicinity. Therefore, the proposed use would be consistent with General Plan Policy LU-3.1.

5. **Policy C-1.11:** *Reduce or eliminate intrusion of traffic related to non-residential development on local streets in residential neighborhoods.*

**Consistency:** The proposed cannabis storefront would be located at the intersection of Cabrillo Street and Fullerton Avenue, two streets where there is a mixture of commercial and residential uses. The general vicinity also includes a variety of retail, office, and restaurant uses. The City's Transportation Division staff determined that the projected number of vehicle trips that may result from the proposed use is 53 trips per day, which does not meet the threshold to warrant a traffic study. Furthermore, staff review of five years of neighborhood accident and complaint data does not indicate any existing transportation issues on Cabrillo Street. However, if a parking or circulation concern arises at the proposed business, draft operational condition of approval number 6 directs the business owner or operator to incorporate parking and circulation management techniques in a manner deemed appropriate by the Director of Economic and Development Services. Given the location of the proposed project in a mixed-use area, and trip generation estimates indicating 53 new trips per day, the proposed use would not result in the intrusion of traffic on a local street in a residential neighborhood, consistent with General Plan Policy C-1.11.

6. **Policy N-2.9:** *Limit hours and/or attenuation of commercial/entertainment operations adjacent to resident and other noise sensitive uses in order to minimize excessive noise to these receptors.*

**Consistency:** Although the proposed cannabis storefront would be located adjacent to a residential use and across the street from residential uses, the business operation would be limited in scope and hours. As conditioned, the proposed 1,050-square-foot cannabis establishment would be open less than the maximum hours allowed by the CMMC. Furthermore, the proposed retail storefront would be required to have onsite security at all times and parking lot signage reminding customers, employees, and vendors to exercise consideration. As stated in proposed operational condition of approval number 5, the use must operate "in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The operator shall institute appropriate security and operational measures as necessary to comply with this requirement." Therefore, the use would be consistent with General Plan Policy N-2.9.

## **FINDINGS**

Based on the comments provided by the Planning Commission at the January 23, 2023 public hearing, staff has revised the below required findings pursuant to Title 13, Section 13-29(g):

- *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 CL zone (Commercial Limited District) and the general vicinity includes a variety of commercial uses including office, retail, fitness, and restaurant uses. Pursuant to the CMMC, cannabis retail storefronts are conditionally permitted uses in the City's commercial zones and are subject to extensive regulation. 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. All retail sales would take place underroof, no outdoor storage or sales are proposed nor would be allowed.

The CMMC does not establish a minimum separation between retail cannabis uses and residential uses. Instead, the City's thorough, multi-step permitting process and project-specific conditions of approval decrease the potential for the proposed use to impact neighboring properties, including residential uses.

As conditioned, the use would operate under restricted hours in consideration of adjacent uses. Other conditions of approval are designed to further improve compatibility with other uses in the area, including but not limited to:

- At least one security guard shall be present at all times;
- Odor control devices and techniques shall be incorporated to ensure that odors from cannabis are not detected outside the property, anywhere on adjacent property or public right-of-way;
- A lighting plan shall be provided during plan check and exterior lighting shall be shielded down and away from adjacent properties;
- Signs regarding consideration and noise shall be posted in the parking lot;
- A parking management and security plan would be required for any grand opening or other high volume event; and
- The operator would be required to make changes to the business should noise or parking problems arise.

The proposed use would be substantially compatible with developments in the general area and would not be materially detrimental to other properties within the area.



- *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, and interior limited access spaces. In addition, the business employees must pass a live scan background check and obtain an identification badge from the City. As conditioned, the proposed use would feature air filtration devised so odors from cannabis are not detected outside the property. 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, or 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 be located in an existing commercial building on a property that has a General Plan land use classification of "Neighborhood Commercial." Given the limited customer area (approximately 400 square feet) of the proposed retail establishment, and being located several hundred feet from a major commercial corridor, the proposed use is considered a neighborhood-serving business as intended by the General Plan. No additional square footage is proposed and the current use is retail in nature, therefore approving the CUP would not increase site intensity.

The proposed use, as conditioned, is consistent with General Plan policies related to providing a mixture of commercial goods, services, and employment opportunities; expanding the City's tax base; promoting the incubation of unique and specialized businesses; protecting neighborhoods; reducing nonresidential traffic in residential neighborhoods; and reducing noise impacts on sensitive receptors.

## **ENVIRONMENTAL DETERMINATION**

The project is categorically exempt from the provisions of 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 an existing commercial building that has previously been used for commercial

activities and the application does not propose an increase in floor area and reflects a negligible expansion of the prior commercial use. 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 denied, staff will return at a subsequent Planning Commission meeting with a denial resolution that reflects the Planning Commission's decision for adoption. 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.

## **CONCLUSION**

The proposed project is a retail cannabis storefront at a developed commercial property that is located in the CL zone (Commercial Limited District). Although the property is located adjacent to several residential uses, the CMMC does not establish any minimum separations between retail cannabis and residential uses. Further, the proposed location meets all of the 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 proposed use is subject to conditions of approval and regulations to facilitate substantial compatibility with surrounding uses and developments. Lastly, the Planning Commission should consider if the staff recommended draft conditions of approval justifies approval of the application based on the required CUP findings, and/or direct staff to include further conditions.