



CITY OF COSTA MESA

PLANNING COMMISSION

Agenda

Monday, February 24, 2025

6:00 PM

**City Council Chambers
77 Fair Drive**

The Commission meetings are presented in a hybrid format, both in-person at City Hall and as a courtesy virtually via Zoom Webinar. If the Zoom feature is having system outages or experiencing other critical issues, the meeting will continue in person.

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4. Additionally, members of the public who wish to make a written comment on a specific agenda item, may submit a written comment via email to the PCPublicComments@costamesaca.gov. Comments received by 12:00 p.m. on the date of the meeting will be provided to the Commission, made available to the public, and will be part of the meeting record.

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All cell phones and other electronic devices are to be turned off or set to vibrate. Members of the audience are requested to step outside the Council Chambers to conduct a phone conversation.

Free Wi-Fi is available in the Council Chambers during the meetings. The network username available is: CM_Council. The password is: cmcouncil1953.

As a LEED Gold Certified City, Costa Mesa is fully committed to environmental sustainability. A minimum number of hard copies of the agenda will be available in the Council Chambers. For your convenience, a binder of the entire agenda packet will be at the table in the foyer of the Council Chambers for viewing. Agendas and reports can be viewed on the City website at <https://costamesa.legistar.com/Calendar.aspx>.

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PLANNING COMMISSION REGULAR MEETING

FEBRUARY 24, 2025 – 6:00 P.M.

**JEFFREY HARLAN
CHAIR**

**JON ZICH
VICE CHAIR**

**ANGELY ANDRADE
PLANNING COMMISSIONER**

**ROBERT DICKSON
PLANNING COMMISSIONER**

**KAREN KLEPACK
PLANNING COMMISSIONER**

**DAVID MARTINEZ
PLANNING COMMISSIONER**

**JOHNNY ROJAS
PLANNING COMMISSIONER**

**TARQUIN PREZIOSI
ASSISTANT CITY ATTORNEY**

**SCOTT DRAPKIN
ASSISTANT DIRECTOR**

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

ANNOUNCEMENTS AND PRESENTATIONS

PUBLIC COMMENTS – MATTERS NOT LISTED ON THE AGENDA
Comments are limited to three (3) minutes, or as otherwise directed.

PLANNING COMMISSIONER COMMENTS AND SUGGESTIONS

CONSENT CALENDAR:

All matters listed under the Consent Calendar are considered to be routine and will be acted upon in one motion. There will be no separate discussion of these items unless members of the Planning Commission, staff, or the public request specific items to be discussed and/or removed from the Consent Calendar for discussion. The public can make this request via email at PCPublicComments@costamesaca.gov and should include the item number to be addressed. Items removed from the Consent Calendar will be discussed and voted upon immediately following Planning Commission action on the remainder of the Consent Calendar.

1. [**JULY 24, 2023 UNOFFICIAL MEETING MINUTES**](#) [**25-198**](#)

RECOMMENDATION:

Planning Commission approve the regular meeting minutes of July 24, 2023

Attachments: [July 24, 2023 Unofficial Meeting Minutes](#)

PUBLIC HEARINGS:

1. [**A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL GIVE 25-195 FIRST READING TO AN ORDINANCE TO AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE PERTAINING TO ACCESSORY DWELLING UNITS TO CONFORM TO RECENT REVISIONS TO STATE LAW \(CODE AMENDMENT PCTY-24-0002\)**](#)

RECOMMENDATION:

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.174 and CEQA Guidelines Section 15282(h), and
2. Recommend that the City Council adopt an Ordinance approving Code Amendment PCTY-24-0002, amending Title 13 of the Costa Mesa Municipal Code (Zoning Code) pertaining to Accessory Dwelling Units.

Attachments: [Agenda Report](#)

[1. Draft Resolution](#)

[2. Draft Ordinance 12725](#)

[3. Tracked Changes Ordinance \(Exhibit A to Ordinance\)](#)

[4. September 11, 2024 HCD Letter](#)

[5. October 10, 2024 Response Letter to HCD](#)

[6. Costa Mesa ADU Ordinance Letter - 27 Jan 2025](#)

2. [APPEAL OF THE DIRECTOR OF DEVELOPMENT SERVICES 25-196 DETERMINATION THAT CONDITIONAL USE PERMIT PA-21-23 TO ESTABLISH A CANNABIS STOREFRONT LOCATED AT 1687 ORANGE AVENUE \(KING'S CREW\) HAS EXPIRED](#)

RECOMMENDATION:

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the appeal is not subject to the California Environmental Quality Act per California Public Resources Code Section 15268; and
2. Uphold the Director of Development Services determination that Conditional Use Permit PA-21-23 has expired pursuant to Costa Mesa Municipal Code Sections 13-29(k)(2) and Conditional Use Permit Condition of Approval No. 2.

Attachments: [Agenda Report](#)

- [1. Planning Commission Draft Resolution](#)
- [2. Appeal Application](#)
- [3. Notice of Expiration of CUP](#)
- [4. Request for Continuation](#)

3. [CONDITIONAL USE PERMIT PCUP-24-0011 FOR A RETAIL 25-197 CANNABIS STOREFRONT BUSINESS WITH DELIVERY \("GREEN MART"\) LOCATED AT 1912 HARBOR BOULEVARD](#)

RECOMMENDATION:

Staff recommends the Planning Commission:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1) Existing Facilities; and
2. Approve Conditional Use Permit PCUP-24-0011 based on findings of fact and subject to the conditions of approval as contained in the Resolution.

Attachments: [Agenda Report](#)

- [1. Planning Commission Draft Resolution](#)
- [2. Applicant Letter](#)
- [3. Aerial Map](#)
- [4. Zoning Map](#)
- [5. Site Photos](#)
- [6. Project Plans](#)

OLD BUSINESS: NONE.

NEW BUSINESS: NONE.

DEPARTMENTAL REPORTS:

1. PUBLIC WORKS REPORT
2. DEVELOPMENT SERVICES REPORT

CITY ATTORNEY REPORTS:

1. CITY ATTORNEY REPORT

ADJOURNMENT

PLANNING COMMISSION MEETING:

Costa Mesa Planning Commission meets on the second and fourth Monday of each month at 6:00 p.m.

APPEAL PROCEDURE:

Unless otherwise indicated, the decision of the Planning Commission is final at 5:00 p.m., seven (7) days following the action, unless an affected party files an appeal to the City Council, or a member of City Council requests a review. Applications for appeals are available through the City Clerk’s Office; please call (714) 754-5225 for additional information.

CONTACT CITY STAFF:

77 Fair Drive, Costa Mesa, CA 92626
Planning Division (714) 754-5245
planninginfo@costamesaca.gov



CITY OF COSTA MESA

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 25-198

Meeting Date: 2/24/2025

TITLE:

JULY 24, 2023 UNOFFICIAL MEETING MINUTES

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/
PLANNING DIVISION

RECOMMENDATION:

Planning Commission approve the regular meeting minutes of July 24, 2023

**MEETING MINUTES OF THE CITY OF
COSTA MESA PLANNING COMMISSION**

July 24, 2023

CALL TO ORDER

The Chair called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE TO THE FLAG

Commissioner Zich led the Pledge of Allegiance.

ROLL CALL

Present: Chair Adam Ereth, Vice Chair Russell Toler, Commissioner Angely Andrade, Commissioner Jonny Rojas, Commissioner Jimmy Vivar, Commissioner Jon Zich

Absent: None

Officials Present: Development Services Director Jennifer Le, Assistant Director of Development Services Scott Drapkin, Assistant City Attorney Tarquin Preziosi, Assistant Planner Gabriel Villalobos, Contract Planner Michelle Halligan, City Engineer Seung Yang and Recording Secretary Anna Partida

ANNOUNCEMENTS AND PRESENTATIONS:

None.

PUBLIC COMMENTS – MATTERS NOT LISTED ON THE AGENDA:

Alexander Haberbush, an attorney representing east side Costa Mesa residents and businesses, opposed the clustering of four cannabis retailers at Newport Boulevard and Broadway, arguing it would create a "cannabis row." He warned of increased crime, reduced property values, quality of life issues, and displacement of long-standing businesses. While not opposing cannabis businesses in Costa Mesa, he objected to their over-concentration in one area and urged the city to deny future applications. He promoted a Change.org petition and Facebook group advocating against this saturation and warned of potential legal action if the city proceeds.

Wendy Simao expressed frustration over excessive noise from Gym 12, which leaves its doors open, allowing loud music and workout sounds to disrupt the neighborhood. She urged the city to address the issue, citing ongoing disturbances and potential fire safety violations.

Speaker three highlighted concerns about challenges facing Costa Mesa residents, including legal threats over cannabis shops and housing mandates imposed by the state. They criticized California's housing requirements, which demand 11,412 new units, including 4,000 low-income units, without considering resources like police, fire, or infrastructure. They supported a 2024 ballot initiative by "Our Neighborhood Voices," aiming to give cities more control over housing decisions and push back against state mandates. The speaker urged residents to learn more and get involved by visiting ourneighborhoodvoices.com.

COMMISSIONER COMMENTS AND SUGGESTIONS:

Commissioner Zich acknowledged residents' frustration when they feel their concerns are ignored, emphasizing that he takes such issues seriously and has worked with staff to address them. He encouraged residents to engage early in decision-making processes, such as before elections or ordinance finalizations, but noted it's never too late to voice concerns. Zich mentioned that a council member is interested in revisiting the Cannabis Ordinance and urged continued community involvement.

Chair Ereth thanked the public for their engagement and shared his enjoyment of recent community events like the concerts at Fairview Park. He highlighted the issue of noise complaints about Gym 12, requesting an update from city staff. The update revealed that code enforcement has conducted approximately 40 site visits but has not observed any violations of the Noise Ordinance.

CONSENT CALENDAR:

No member of the public nor Planning Commissioner requested to pull a Consent Calendar item.

- 1. APRIL 26, 2021 UNOFFICIAL MEETING MINUTES**
- 2. MAY 10, 2021 UNOFFICIAL MEETING MINUTES**
- 3. JULY 12, 2021 UNOFFICIAL MEETING MINUTES**
- 4. JULY 26, 2021 UNOFFICIAL MEETING MINUTES**
- 5. AUGUST 9, 2021 UNOFFICIAL MEETING MINUTES**
- 6. NOVEMBER 8, 2021 UNOFFICIAL MEETING MINUTES**
- 7. NOVEMBER 22, 2021 UNOFFICIAL MEETING MINUTES**
- 8. AUGUST 23, 2021 UNOFFICIAL MEETING MINUTES**
- 9. SEPTEMBER 13, 2021 UNOFFICIAL MEETING MINUTES**
- 10. SEPTEMBER 27, 2021 UNOFFICIAL MEETING MINUTES**

MOVED/SECOND: Toler/Ereth

MOTION: Approve recommended action for Consent Calendar Items

The motion carried by the following roll call vote:

Ayes: Ereth, Toler, Andrade, Rojas, Zich

Nays: None

Absent: Vivar
Abstained: None
Motion carried: 5-0

ACTION: The Planning Commission approved all Consent Calendar items.

PUBLIC HEARINGS:

1. PLANNING APPLICATION 23-06 AND ZONING APPLICATION 23-09 TO MODIFY AND EXPAND EXISTING MORTUARY OPERATIONS INTO 766 W 19TH ST FOR THE NEPTUNE SOCIETY LOCATED AT 758 W 19TH ST

Project Description: Planning Application 23-06 is a request for a Conditional Use Permit for an existing mortuary (Neptune Society) to expand into the adjacent property located at 766 West 19th Street. The applicant is also requesting a to amend the existing Conditional Use Permit allow embalming at this location.

Environmental Determination: The project is exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Class 1), Existing Facilities.

No ex-parte communications reported.

Gabriel Villalobos, Assistant Planner, presented the staff report.

The Commission asked questions of staff including:

Commissioner Zich asked staff to clarify details about a conditional use permit (CUP) request for 766 West 19th Street. He sought confirmation on whether current activities at the site, such as embalming and storage, were unauthorized under the existing entitlement for the adjacent 758 West 19th Street property. Staff explained that embalming services are not currently permitted, and the CUP seeks to extend the allowable uses to include these activities and connect both properties. Zich also inquired why the unapproved activities occurred at 766 West 19th, with staff suggesting the applicant may provide better insights.

Commissioner Rojas asked about odor control measures for a proposed activity involving embalming at a site that has been inactive for 20 years. Staff explained that while odors are unlikely due to cold storage and minimal on-site duration of up to two days, ventilation systems and mitigation measures have been included as standard precautions. Staff emphasized that the site has had no odor complaints historically and anticipates no issues, but conditions were added to address potential concerns proactively.

The Chair opened the Public Hearing.

Scott Long, applicant, stated he had read and agreed to the conditions of approval.

The Commission asked questions of the applicant including:

Commissioner Zich asked the applicant why they were operating temporary cold storage at 766 West 19th Street without city approval. The applicant explained that the use was unapproved, as they had mistakenly assumed their contractor had updated the CUP when they acquired the property. They clarified that the site is currently used for minimal temporary storage of files, furniture, and decedents, and they are now seeking approval to legalize this use and add embalming services.

The Chair opened public comments.

No public comments.

The Chair closed public comments.

The Chair closed the Public Hearing.

Vice Chair Toler made a motion. Seconded by Commissioner Andrade.

MOVED/SECOND: Toler/Andrade

MOTION: Approve staff's recommendation.

The motion carried by the following roll call vote:

Ayes: Ereth, Toler, Andrade, Rojas, Zich

Nays: None

Absent: Vivar

Recused: None

Motion carried: 5-0

ACTION: The Planning Commission adopted 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 (Existing Facilities); and
2. Approve Planning Application 23-06 and Zoning Application 23-09, subject to conditions of approval.

RESOLUTION PC-2023-21 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING PLANNING APPLICATION 23-06 AND ZONING APPLICATION 23-09 TO MODIFY AND EXPAND EXISTING MORTUARY OPERATIONS INTO 766 W 19TH STREET FOR THE NEPTUNE SOCIETY LOCATED AT 758 W 19TH STREET

The Chair explained the appeal process.

Commissioner Vivar joined the meeting at 6:37 p.m.

2. PLANNING APPLICATION 22-12 FOR A CONDITIONAL USE PERMIT TO OPERATE A RETAIL CANNABIS STOREFRONT BUSINESS WITH DELIVERY, AND A MINOR CONDITIONAL USE PERMIT FOR COMPACT PARKING LOCATED AT 141 E. 16TH STREET (THE MERCANTILE)

Project Description: Planning Application 22-12 is a request for a Conditional Use Permit to allow an approximately 1,191-square-foot retail cannabis storefront use with delivery within an existing single-story commercial building located at 141 E. 16th Street.

Environmental Determination: The project is exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Class 1), Existing Facilities.

Five ex-parte communications reported.

Commissioner Vivar had email correspondence with the applicant.

Commissioner Zich met on site with the applicants representative and had a phone conversation with the applicant.

Commissioner Andrade received an email from the applicant and spoke with surrounding neighbors.

Vice Chair Toler, spoke on the phone with the owner of the adjacent property.

Chair Ereth, spoke with the owner of the adjacent property and a member of the public. He received an email from the applicant's representative and spoke with the applicant over the phone.

Michelle Halligan, Contract Planner, presented the staff report.

The Commission asked questions of staff including discussion of:

Commissioner Zich asked staff several questions about a cannabis application and its associated site. He inquired why the west half of a back building was chosen for the premises instead of the east half, which the applicant could address. Commissioner Zich confirmed that the applicant met the social equity program criteria, validated by city staff, a cannabis consultant, and a background check. He questioned why the item was only now being reviewed, over a year after a notice to proceed was issued, and staff explained the program's phased process and

review procedures. Finally, Commissioner Zich asked about parking requirements, noting the inclusion of seven compact spaces, and staff clarified that compact spaces were necessary to avoid creating non-conformance while accommodating all businesses on-site.

Commissioner Andrade inquired about a site visit to the adjacent mobile home park and its alleged tot lot. Staff and the commissioner noted that during visits and reviews of historical aerial and street views, no tot lot or playground equipment was visible, only a dirt area and shed. Commissioner Andrade expressed concern over the lack of clarity in defining what qualifies as a playground, especially for low-income residents who might use simple, informal spaces for play. The discussion highlighted the difficulty in determining sensitive uses in such areas.

Commissioner Vivar asked staff about the timing and processing of a cannabis application, noting the delay between a notice to proceed in January 2022 and the current hearing. Staff explained that equity applicants couldn't bypass Measure X Phase One applications and detailed the timeline differences between location approval (CBP) and readiness for Planning Commission review (CUP). Commissioner Vivar also inquired about the applicant's ownership stake (at least 51% required) and how the city ensures ongoing compliance with equity requirements, which is monitored quarterly. Finally, he confirmed that the proposed trash enclosure would be located away from the mobile home park, adjacent to a vacant commercial property.

Chair Ereth asked staff multiple questions related to the cannabis application, addressing fee waivers for social equity applicants, environmental concerns, and compliance with city and state regulations. Staff explained that fee waivers incentivize participation by individuals previously penalized under cannabis laws, and no evidence suggests the site requires remediation, though further testing would occur before ground-breaking. On the topic of sensitive uses, staff confirmed that site visits and historical records revealed no evidence of a tot lot or playground at the adjacent mobile home park before the cannabis business permit (CBP) application was deemed complete. Chair Ereth also raised concerns about Safe Routes to School, sidewalk infrastructure, and potential traffic impacts, which staff acknowledged and noted would involve traffic impact fees and sidewalk installation. Finally, Chair Ereth sought clarity on the criteria for defining a playground, which staff stated includes permanent recreational equipment, with no historical evidence of such at the site.

Commissioner Andrade sought clarification on the public's concerns about the site's inclusion in Measure K's overlay and its implications for zoning and land use changes. Staff confirmed that the site falls within Measure K's boundaries, allowing for potential high-density residential or commercial reinvestment without requiring a public vote. However, the site is not identified as a Housing Element opportunity site in the city's General Plan for meeting Regional Housing Needs Assessment (RHNA) objectives. Staff suggested the exclusion might be due to the site's

existing urban plan designation, which already permits mixed-use development, including live-work spaces.

Chair Ereth asked if staff had been instructed to study potential amendments to the cannabis code by the City Council. Staff clarified that at the last City Council meeting, a council member requested an agenda item to discuss whether the council majority wanted staff to explore possible changes to the cannabis regulations. However, no research or work is currently being conducted by staff, as the City Council has not yet decided whether to proceed with such a study.

Commissioner Vivar asked about health-related code violations at the former boatyard site and whether they involved environmental concerns or contaminants. Staff clarified that the violations were related to unpermitted living conditions for occupants, not environmental pollutants or contaminants, and these issues have since been resolved.

The Chair opened the Public Hearing.

Jim Fitzpartick, applicant's representative, stated he had read and agreed to the conditions of approval.

The Commission asked questions of the applicant including:

Commissioner Vivar questioned the applicant about the cannabis project and its ownership structure, operations, and community engagement. He expressed concern over the social equity applicant, Mr. Brower, owning the minimum 51% stake and not having an active operational role. The applicant defended the arrangement, citing Mr. Brower's efforts to assemble an experienced team and the financial demands of the project. Commissioner Vivar also asked about the business's strategy to differentiate itself in a competitive market, to which the applicant emphasized location, technology for efficiency, and a strong supply chain. Regarding delivery, the applicant clarified that the entitlement was included but not being launched immediately. Finally, Commissioner Vivar inquired about engagement with the Sea Breeze manager, and the applicant stated they had addressed concerns about odor and believed objections were unfounded.

Commissioner Zich asked the applicant about the decision to use the west half of the building for the cannabis business instead of the east half. The applicant explained there was no specific preference, as both halves of the building are nearly identical, and the choice was more circumstantial during the permit submission process. Commissioner Zich also asked about the intended use for the other half of the building, which the applicant said is planned for retail, potentially by one of the owners. Regarding hours of operation, Commissioner Zich inquired if reducing them to 9 p. m. was considered, and the applicant stated that their hours aligned with neighboring businesses' hours (7 a. m. to 10 p. m.), which had strong community support.

Commissioner Rojas asked about the operational experience of the 49% ownership team involved in the cannabis business. The applicant highlighted key members: Vivian Nguyen, an experienced cannabis distributor in Santa Ana with strong supply chain relationships; Maritza, with eight years of compliance and accounting experience; and Dave Dwight, an operational partner who runs a prominent cannabis store in Santa Ana known for being the first to unionize and a major tax contributor. The applicant emphasized their expertise in retail operations and compliance.

Commissioner Andrade asked the applicant how the cannabis business plans to support nearby recovery centers and organizations serving vulnerable populations, such as Barn Life, Tree House Recovery, and SOS. The applicant responded that these facilities had not raised objections, and they noted letters of support from two of them. Commissioner Andrade also inquired about the business's accessibility to local residents, especially considering the area's socioeconomic diversity. The applicant emphasized plans for neighborhood discounts and a "good neighbor policy" to ensure affordability while disputing the characterization of the area as low-income, citing outreach to working professionals and residents in higher-value properties. Commissioner Andrade sought clarification on potential long-term impacts of a high-end cannabis business in the area, which the applicant suggested were minimal based on community feedback and data from other cities.

Chair Ereth questioned the applicant about the decision to pursue retail cannabis over housing development, community outreach efforts, design details, and environmental considerations. The applicant explained that housing development would require assembling multiple parcels, a complex undertaking, and emphasized the site's opportunity zone designation, which supports business use. They highlighted extensive community outreach, including events and direct engagement, though dissent letters emerged late. On design, the applicant clarified that the existing six-foot wall would remain unchanged despite differing renderings, as higher walls could impede airflow and light. A Phase One environmental review found no issues, and the applicant expressed readiness for further discussions on design and community concerns.

The Chair called for a quick recess at 8:20 p. m.

The Chair called the meeting back to order at 8:30 p. m.

The Chair opened public comments.

Derek Smith spoke in support of the item.

Ashley Anderson spoke in opposition of the item.

Steve Schweiger spoke in opposition of the item.

Lynette Cervantes spoke in opposition of the item.

Wendy Leece spoke in opposition of the item.

Matthew Carver spoke in opposition of the item.

The Chair closed public comments.

Commissioner Ereth questioned the applicant to clarify conflicting statements regarding support from Barn Life Recovery and its representative, Matthew Carver. The applicant provided a letter from Mr. Carver dated June 22, 2023, expressing support for Aaron Brower and the cannabis project. However, Mr. Carver later called in during public comment to state his opposition to the project. The applicant suggested that Mr. Carver's position might have changed due to external pressures, such as input from his landlord. Chair Ereth read the letter aloud, which highlighted Mr. Carver's past support for Mr. Brower and his work but sought to reconcile the apparent contradiction between the written letter and Mr. Carver's verbal opposition. The applicant acknowledged the challenges faced by recovery centers in publicly supporting cannabis-related businesses, attributing the shift to social and professional sensitivities.

Commissioner Rojas sought clarification from the applicant about the conflicting statements from Matthew Carver of Barn Life Recovery, who provided a letter supporting the project but later called in to oppose it. The applicant acknowledged the discrepancy, attributing it to a possible change of heart, which they believed was influenced by the general trepidation of the recovery community regarding retail cannabis locations. Commissioner Rojas emphasized the importance of clarity and transparency in public proceedings, noting the Planning Commission's responsibility to consider community concerns about addiction recovery centers, nearby housing, and the welfare of residents. The applicant reaffirmed that the letter was initially in support but conceded that opinions might have shifted, stressing that the change was not intentional or nefarious. Commissioner Rojas highlighted the need for the record to reflect these dynamics to ensure informed decision-making.

Commissioner Vivar questioned the applicant to clarify the circumstances surrounding the conflicting support and opposition from Matthew Carver of Barn Life Recovery. Commissioner Vivar asked who communicated with Mr. Carver, when the conversations took place, and whether the specific location of the proposed cannabis business was disclosed during those discussions. The applicant confirmed they had spoken with Mr. Carver on several occasions about a month prior to gathering support letters and stated that the location, directly across the street, was disclosed during those conversations. However, the applicant acknowledged that Mr. Carver's letter was more of a personal

endorsement rather than explicitly tied to the business's address. Commissioner Vivar concluded the questioning by confirming these details for the record.

The applicant emphasized the project's potential to improve safety and parking issues on 16th Street while contributing to a traffic impact fund. They clarified that Aaron Brower, the social equity applicant, fulfills program criteria and plays a strategic role in the business rather than being involved daily. The applicant highlighted that the City Council intentionally excluded residential and recovery center buffers in cannabis regulations, a decision approved by voters, and noted similar projects near residential zones have been approved with less local support. Mr. King added that the project could address existing challenges, such as homelessness near recovery centers, and serve as a step toward revitalizing the area. Both representatives requested an opportunity to discuss any additional conditions before the hearing closed.

Commissioner Andrade asked staff about the rationale behind requiring 24-hour security at cannabis retail sites. Staff explained that while there was significant discussion leading to the adoption of the ordinance, they were unaware of any specific documented rationale beyond general concerns for business safety. Commissioner Andrade also questioned how the city defines "new and growing businesses" as part of its approval rationale under LU 6, particularly given the number of cannabis businesses already approved. Staff responded that cannabis remains a new and unique industry for Costa Mesa, with the first storefront opening less than a year ago, and thus continues to fit the "new and growing" category.

Chair Ereth asked staff about the zoning designations where cannabis retail is allowed in other Orange County cities and how that relates to the rationale for 24-hour security requirements. Staff explained that Santa Ana places cannabis storefronts in industrial zones, some of which have high visibility, while Stanton allows up to five storefronts (with unspecified zoning), and La Habra only permits cannabis delivery, not storefronts. Chair Ereth noted that Costa Mesa appears to be unique in allowing retail cannabis in commercial zones (C1, C2), which often abut residential areas, potentially heightening security concerns compared to industrial zones.

The Chair closed the Public Hearing.

Commissioner Vivar made a motion to Deny PA-22-12. Seconded by Commissioner Andrade.

The Commission discussed the motion including:

Commissioner Andrade supported the motion. She emphasized upcoming discussions on housing and homelessness as a chance to reconsider rezoning. Commissioner Andrade also raised concerns about ambiguities in defining sensitive uses, such as playgrounds, and how COVID-era staff visits may have

influenced site assessments. For these reasons, she endorsed the motion to pause and re-evaluate.

Commissioner Zich opposed the motion, emphasizing voter approval of cannabis businesses and noting previous opportunities to include residential and recovery home buffers in the ordinance, which were not adopted. He argued the proposed use is less disruptive than the site's historical uses and that the property owner's intent should guide land use. Commissioner Zich highlighted project benefits like sidewalk installation and dismissed concerns about sensitive uses, noting staff's thorough review. He concluded that the project complies with city ordinances and represents a substantial improvement.

Commissioner Rojas acknowledged the complexity of the issue and the valid arguments on both sides. He highlighted the tension between property owner rights and community desires and expressed frustration over the absence of sensitive-use provisions in the code. While uncertain about the playground concerns, Commissioner Rojas recognized the project's benefits, including site improvements, and ultimately determined there was no legal basis to support the motion.

Vice Chair Toler aligned with Commissioners Zich and Rojas, noting that the project is a major improvement for the area compared to its current condition. He dismissed concerns about the lot due to lack of evidence and emphasized that the property is zoned commercial, which permits this use. Commissioner Toler stressed the importance of respecting the property owner's rights and, based on the project's compliance with city code, found no reason to support the motion.

Chair Ereth made an alternate motion to continue the item to a future date. Seconded by Commissioner Andrade.

Chair Ereth spoke in favor of his motion to continue the item to a future date, citing upcoming discussions on the inclusionary housing ordinance and staff's review of the cannabis code. He highlighted the importance of pausing to align decisions with potential policy changes and City Council guidance. Chair Ereth acknowledged the thoughtful deliberations of his colleagues and emphasized that delaying the decision would ensure better-informed outcomes in line with evolving priorities.

Commissioner Andrade reiterated her support for pausing, citing the future implications of having 24 cannabis storefronts and concerns about over-saturation. She emphasized the need to address community challenges, particularly in underserved areas like the west side of Costa Mesa. Commissioner Andrade also stressed the importance of considering how planning decisions align with broader city goals, such as affordability, safe routes to school, and the city's long-term legacy.

Commissioner Vivar supported the motion, citing the need for further review considering upcoming housing discussions and potential Measure Q amendments. He stressed the importance of consistent decision-making and noted that public participation or lack thereof should not be assumed as approval or rejection, especially for underserved communities. Commissioner Vivar also highlighted public concerns about equitable treatment of residents and the evolving implementation of Measure Q.

Chair Ereth clarified that his motion was to continue the item to a future date. He inquired about the timeline for a final inclusionary housing ordinance, to which Director Le responded that the upcoming joint study session on Wednesday would determine next steps, but no specific timing could be provided yet.

Commissioner Zich opposed the motion to continue, asserting that if one does not support the application, the appropriate action would be to deny it outright rather than delay it. He argued that the upcoming inclusionary housing ordinance study session would not provide new information relevant to this application, as it focuses on low-income housing percentages rather than rezoning or land use changes. Commissioner Zich emphasized that zoning provides landowners with certainty and that delaying the decision due to unrelated future discussions is unfair. He dismissed assumptions about the lack of public participation being tied to work or language barriers, noting there is no evidence to support such claims. While expressing frustration with the approach, he indicated he would propose a substitute motion if the motion to continue failed.

MOVED/SECOND: Ereth/Andrade

MOTION: To continue the item to the next regularly scheduled Planning Commission meeting.

The motion carried by the following roll call vote:

Ayes: Ereth, Andrade, Rojas, Vivar

Nays: Toler, Zich

Absent: None

Recused: None

Motion carried: 4-2

ACTION: Continue the item to the next regularly scheduled Planning Commission Meeting.

OLD BUSINESS:

None.

NEW BUSINESS:

None.

DEPARTMENTAL REPORTS

1. Public Works Report – Mr. Yang highlighted the final concert at Fairview Park, scheduled for Tuesday, July 25, and efforts to encourage walking and biking to the event. Public Works will install a temporary two-way cycle track on the west side of Placentia Avenue, from Fairview Park to Victoria Street, operational from noon until the concert's conclusion. Additionally, delineators will be placed in bicycle lane buffers along Placentia and Adams Avenue to enhance safety. Costa Mesa Police Department will assist with traffic management. This one-day pop-up demonstration aims to create safer spaces for biking and walking by separating them from vehicular traffic.
2. Development Services Report – None.

CITY ATTORNEY'S OFFICE REPORT

1. City Attorney – None.

ADJOURNMENT AT 9:43 PM

Submitted by:

SCOTT DRAPKIN, SECRETARY
COSTA MESA PLANNING COMMISSION



CITY OF COSTA MESA

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 25-195

Meeting Date: 2/24/2025

TITLE:

A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL GIVE FIRST READING TO AN ORDINANCE TO AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE PERTAINING TO ACCESSORY DWELLING UNITS TO CONFORM TO RECENT REVISIONS TO STATE LAW (CODE AMENDMENT PCTY-24-0002)

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES
DEPARTMENT/PLANNING DIVISION

PRESENTED BY: CHRIS YEAGER, SENIOR PLANNER

CONTACT INFORMATION: CHRIS YEAGER, 714-754-4883;
Christopher.Yeager@costamesaca.gov

RECOMMENDATION:

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.174 and CEQA Guidelines Section 15282 (h), and
2. Recommend that the City Council adopt an Ordinance approving Code Amendment PCTY-24-0002, amending Title 13 of the Costa Mesa Municipal Code (Zoning Code) pertaining to Accessory Dwelling Units.



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: February 24, 2025

ITEM NUMBER: PH-1

SUBJECT: A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL GIVE FIRST READING TO AN ORDINANCE TO AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE PERTAINING TO ACCESSORY DWELLING UNITS TO CONFORM TO RECENT REVISIONS TO STATE LAW (CODE AMENDMENT PCTY-24-0002)

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

PRESENTATION BY: CHRIS YEAGER, SENIOR PLANNER

**FOR FURTHER INFORMATION CONTACT: CHRIS YEAGER
714-754-4883
Christopher.Yeager@costamesaca.gov**

RECOMMENDATION:

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.174 and CEQA Guidelines Section 15282(h), and
2. Recommend that the City Council adopt an Ordinance approving Code Amendment PCTY-24-0002, amending Title 13 of the Costa Mesa Municipal Code (Zoning Code) pertaining to Accessory Dwelling Units.

APPLICANT OR AUTHORIZED AGENT:

The subject Code Amendment is a City-initiated request.

BACKGROUND:

On January 1, 2020, the City of Costa Mesa Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) [Urgency Ordinance](#) went into effect allowing for ADUs and JADUs to be constructed citywide in residential and mixed-use zones. The Urgency Ordinance was adopted on December 17, 2019. Details about the meeting are found in the following link:

<https://www.costamesaca.gov/government/mayor-city-council/archived-agendas-videos-and-minutes/2019-agendas-videos-minutes>

On March 2, 2021, City Council adopted Ordinance 2021-03 which provided the framework of the City's current ADU standards. The staff report is linked:

<http://ftp.costamesaca.gov/costamesaca/council/agenda/2021/2021-03-02/CC-8.pdf>

On February 21, 2023, City Council modified the ordinance to comply with new State laws that went into effect at that time. Following adoption, the ordinance was provided to the California Department of Housing and Community Development (HCD) for review as required by State law. The staff report is linked,

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=6031044&GUID=965EA92D-CA6D-48F1-A84D-3C77DA936D66>

On September 11, 2024, a letter from the HCD (Attachment 2) was sent to the City requesting modifications to the ADU Ordinance to conform with recently-adopted State law. Pursuant to HCD direction and revised State law, City staff subsequently sent a response to HCD outlining proposed revisions to the ordinance (Attachment 3).

In addition to code amendments requested by HCD, City staff proposes additional amendments to the ordinance to comply with recently adopted State Laws pertaining to ADUs including Senate Bill (SB) 477, SB 1211, and Assembly Bill (AB) 2533.

- [SB 477](#): This bill primarily aims to reorganize and renumber California's ADU statutes to make them clearer and more understandable for local governments and the public.
- [SB 1211](#): This bill provides more flexibility for developing ADUs on multifamily properties. It allows the demolition of both covered and uncovered parking spaces for ADUs without requiring replacement parking. It also increases the number of detached ADUs allowed on existing multifamily lots from two to eight ADUs provided that the number of ADUs does not exceed the number of existing primary units.
- [AB 2533](#): This bill focuses on the legalization of unpermitted ADUs and Junior ADUs that were built before January 1, 2020. It aims to simplify the process for homeowners to bring their unpermitted ADUs into legal compliance.

On January 27, 2025, the Planning Commission received a presentation and provided feedback on the proposed ordinance. Since the hearing, the ordinance has been updated to incorporate comments provided by commissioners and the public including recommendations made from the California Housing Defense Fund (CalHDF) in their attached letter. Additional analysis and details about the meeting are provided below and in the following link:

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=7104638&GUID=38429968-1C83-4987-A2F2-56E18D4CD203>

DESCRIPTION

To comply with the Government Code as enacted by the State Legislator and to respond to HCD's Ordinance review letter, staff proposes to amend the City's ADU regulations. The Code Amendments are limited to proposed modifications to Section 13-35 ("Accessory Dwelling Units") of Title 13 of the Municipal Code. Amendments are proposed throughout the Ordinance including renumbering referenced government code sections, clarifying the number of ADUs and size of ADUs, removing regulatory requirements for JADUs, and modifying and clarifying various ADU/JADU development standards.

ANALYSIS

The existing ADU Ordinance (Costa Mesa Municipal Code Section 13-35) consists of sections devoted to (a) *Purpose, General Plan Consistency, and Definitions*, (b) *ADU Standards*, (c) *JADU Standards*, and (d) *General Development Standards*. Overall, the structure and intent of the ADU Ordinance is proposed to remain the same. Attachment 1 includes the proposed ordinance with deletions shown in "~~striketrough~~" and additions shown "underlined". Below is a summary of the proposed ADU Ordinance changes in each section of Costa Mesa Municipal Code Section (CMMC) 13-35:

(a) Purpose, General Plan Consistency, Definitions.

This section has no proposed modifications.

(b) Accessory Dwelling Units

CMMC Section 13-35(b) includes general standards for ADUs. The section includes a variety of amendments including clarifying the ministerial nature of ADU approvals, clarifying the number of ADUs permitted on a lot, and clarifying maximum sizes of ADUs.

"Single-Family" Development

Pursuant to CMMC Section 13-35(b)(4)(a), the City's current ADU provisions allow a maximum of one ADU and one JADU on a single-family dwelling lot. HCD's letter indicated that the City must revise the ordinance to allow for "one converted ADU", "one

detached, new construction ADU” and “one JADU” on a single-family lot. Therefore, changes are proposed in the draft ordinance to reflect compliance with State law and would allow for an additional ADU on a single-family dwelling lot.

“Multifamily” Development

Pursuant to CMMC Section 13-35(b)(4)(b), the current ADU provisions allow a maximum of two detached ADUs on multiple-family dwelling properties and does not allow for ADUs within new construction multifamily residences. Assembly Bill 1211 recently modified State ADU law to allow up to eight detached ADUs on multifamily lots, with the caveat that the number of detached ADUs does not exceed the number of existing primary units on the lot. In addition, new construction multifamily dwellings are permitted to construct one ADU within the structure. Therefore, changes are proposed in the draft ordinance to allow up to eight detached ADUs and to allow one ADU within a new multifamily dwelling structure on a multifamily lot to reflect State law.

Multifamily “Maximum Size” Detached ADU

Pursuant to CMMC Section 13-35(b)(5)(b), the City’s detached multifamily ADU maximum size is limited to 800 square feet unless only one ADU is proposed (instead of two currently permitted), in which case the detached ADU could be 1,200 square feet. HCD’s letter indicated that this standard needed to be updated to comply with State ADU law. To respond to this HCD comment, staff updated CMMC Section 13.35(b)(5)(b) to be consistent with Government Code Section 66321, which restricts local ADU ordinances to allowing a minimum detached ADU of 850 square feet, or 1,000 square feet if it provides more than one bedroom. Therefore, the proposed amendments to the City’s ADU “maximum size” standards for detached ADUs on a multifamily lot have been updated to specifically reflect State law.

Underlying Zone

Pursuant to CMMC Section 13-35(b)(2), ADUs are required to conform to the development standards of the underlying zone unless otherwise provided in the ADU Ordinance. Pursuant to the Government Code and as indicated in the HCD letter, only certain development standards can be applied to ADUs, and local ADU requirements cannot preclude the development of certain ADUs. Therefore, Section 13-35(b)(2) relating to “underlying zone” has been removed, and the City ADU requirements and standards have been updated throughout to specifically account for local standard exemptions.

“Short-term Rentals Prohibited”

As discussed further below, regarding “Recorded Covenants”, the City is not permitted to require a deed restriction for ADU projects. The deed restriction section included a provision which prohibited short-term rentals for ADUs. Since the section has been modified, CMMC Section 13-35(b)(8) has been added to prohibit ADU rentals of less than 31 days.

(c) Junior ADUs

"Short-term Rentals Prohibited"

Pursuant to CMMC Section 13-35(c)(4), "a Junior ADU shall not be rented for periods of less than 31 days unless otherwise authorized by the municipal code". HCD's letter indicates that Government Code Section 66333 does not provide rental term limits for JADUs and thus, "prohibiting short term rentals is inconsistent with State JADU Law". City staff disagrees with this comment provided by HCD in that allowing JADUs to be rented for short-term housing would reduce the number of local long-term housing units in the City. Specifically, the loss would result in the potential removal of more affordable long-term housing units in Costa Mesa for the benefit of short-term vacation rental operations such as "VRBO" and "Airbnb".

As permitted in the attached HCD Letter, the City may adopt an ordinance without the requested changes if findings are included in the resolution adopting the ordinance that explains the reasons why the City believes that the ordinance complies with State ADU law.

Staff has included the following reasons/findings in the draft ADU ordinance update:

Pursuant to Government Code Section 66310, the legislature has determined the following: (1) ADUs and JADUs are "a valuable form of housing in California"; (2) ADUs and JADUs "provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods"; (3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security"; (4) "Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California"; (5) "California faces a severe housing crisis"; (6) "The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners"; (7) "Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character"; and (8) Accessory dwelling units are an essential component of California's housing supply. Thus, allowing JADUs to be rented for short-term rentals that are facilitated by online marketplaces would reduce and threaten the availability of the City's long-term housing, including affordable housing, within the City during the State housing crisis, and therefore allowing the prohibition of short-term lodging of the City's JADUs is consistent with State ADU law, specifically Government Code Section 66310.

(d) Development Standards

CMMC Section 13-35(d) provides development standards that are applicable to ADUs, including, but not limited to, standards related to: setbacks, height, stairways and balconies, architectural standards, and garage conversions. However, Government Code Section 66323 specifies specific ADUs which are not subject to local development standards. Therefore, and as requested by the HCD, the proposed Ordinance (CMMC Section 13-35(d) and 13-35(d)(1)) has been revised to exempt the following ADUs from local standards: (1) all converted ADUs (converted accessory structures are eligible for a 150 square foot expansion for purposes of ingress and egress), (2) all converted JADUs, (3) 800 square foot or less new-construction detached units with four-foot setbacks and height not exceeding 18 feet (two additional feet of height may be permitted to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary unit) with single-family primary dwellings, and (4) detached units with multifamily primary dwelling structures not exceeding 18 feet (two additional feet of height may be permitted to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary units). The aforementioned ADUs are subject to the State government code standards which include applicable four-foot side and rear setbacks, separate entry, and applicable height restrictions; and no additional standards may be applied to these units.

"Recorded Covenants"

Pursuant to CMMC Section 13-35(d)(5), a recorded covenant (deed restriction) is required as a condition of issuing building permits for ADUs and JADUs. The recorded restriction prohibits separate sales of ADUs and JADUs, restricts the units to the maximum size allowed by the code and prohibits short-term rentals. Pursuant to the HCD ADU Handbook, Cities may not impose deed restrictions on ADUs. Therefore, CMMC Section 13-35(d)(5) has been modified to apply to JADUs only.

"Architectural Standards"

Similar to several current State housing laws, the State ADU provisions only allows for objective development ADU standards. Therefore, various City ADU development standards have been modified including architectural standards which have changed to require matching materials, finishes, and colors of the primary dwelling(s). In addition, garage conversion design standards have been modified to be recommendations.

"Parking"

Pursuant to Assembly Bill 1211, CMMC Section 13-35(d)(14)(b) has been modified to clarify that an ADU may be constructed in the place of any required uncovered parking space without requiring replacement parking spaces. The City's current code (pursuant to previous State ADU law) only allows for the removal of garage and carport parking spaces without replacement. The revised code allows any parking space in any form to be removed and not replaced in conjunction with the development of an ADU.

GENERAL PLAN CONFORMANCE

The City's approved 6th Cycle Housing Element includes Program 3E which states to "continue to promote the construction of ADUs as part of an overall housing plan". The proposed ordinance amendment is consistent with the General Plan in that it provides greater opportunities for ADUs pursuant to current State ADU law.

ENVIRONMENTAL DETERMINATION

The project is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code Section 21080.174 and CEQA Guidelines Section 15282(h), "the adoption of an ordinance regarding second units in a single-family or multifamily zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 if the Government Code" relating to "granny" housing and "second unit ordinances" are exempt from the requirements of CEQA. Similarly, the ministerial approval of an ADU would not be a "project" pursuant to CEQA purposes (See Guidelines Section 15378), and environmental review is not required with the review/approval of individual ADU applications.

ALTERNATIVES

The Planning Commission has the following alternatives:

1. **Recommend City Council approval with modifications.** The Planning Commission may recommend approval with modifications provided that the revisions are consistent with State law.
2. **Recommend that the City Council not adopt the changes to the City's ADU provisions.** The Planning Commission may recommend that the City Council not adopt the proposed Code amendments.
3. **Continue the Ordinance review to a date certain.** The Planning Commission may continue the item to a date certain with direction for staff to return with additional information, changes and/or clarifications for Planning Commission consideration.

PUBLIC NOTICE

Pursuant to government Code Section 65854(a), a 1/8th page public notice was published once in the Daily Pilot newspaper no less than 20 days prior to the February 24, 2025, public hearing.

CONCLUSION

The proposed adoption of the Accessory Dwelling Unit Code Amendment would allow for clarifications and compliance with State law for the construction and conversion of new ADUs and JADUs.

ATTACHMENTS

1. Draft Resolution
2. Draft Ordinance
3. Tracked Changes Ordinance (Exhibit A to Ordinance)
4. September 11, 2024 HCD Letter
5. October 10, 2024 Response Letter to HCD
6. January 27, 2025 California Housing Defense Fund Letter

RESOLUTION NO. PC-2025-**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA RECOMMENDING THAT THE CITY COUNCIL GIVE FIRST READING TO AN ORDINANCE APPROVING CODE AMENDMENT PCTY-24-0002 AMENDING CHAPTER V, ARTICLE 1, SECTION 13-35 (ACCESSORY DWELLING UNITS) OF TITLE 13 OF THE COSTA MESA MUNICIPAL CODE TO CONFORM TO RECENT REVISIONS TO STATE LAW**

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

WHEREAS, in response to multiple housing laws relating to accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs), including AB 68, AB 881, SB 13, AB 587, and AB 670, the City adopted Ordinance 2021-03 on March 3, 2021 to establish and amend the City's laws in relation to ADUs and JADUs;

WHEREAS, by adopting its own ADU and JADU laws, the City was able to retain some authority to regulate ADUs and JADUs that it might not otherwise have;

WHEREAS, the City adopted Ordinance 2023-03 on February 21, 2023, in response to additional State housing laws including AB 2221 and SB 987 which became effective January 1, 2023;

WHEREAS, the Department of Housing and Community Development (HCD) was provided the modified ordinance and submitted a letter on September 11, 2024 to the City requesting modifications to the ordinance, which requires additional modification to the City's ADU and JADU provisions;

WHEREAS, additional housing State laws including SB 477, SB 1211, AB 2533 and AB 1033 were approved by the State in 2024, become effective January 1, 2025, and also requires additional modification to the City's ADU and JADU laws, and have been considered with the City's proposed ADU and JADU provisions;

WHEREAS, the City has acknowledged all HCD comments in the proposed Ordinance with the exception of prohibiting the use of JADUs for short-term rentals. Pursuant to Government Code Section 66310, the legislature has determined the following: (1) ADUs and JADUs are "a valuable form of housing in California"; (2) ADUs and JADUs "provide housing for family members, students, the elderly, in-home health

care providers, the disabled, and others, at below market prices within existing neighborhoods”; (3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security”; (4) “Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California”; (5) “California faces a severe housing crisis”; (6) “The state is falling far short of meeting current and future housing demand with serious consequences for the state’s economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners”; (7) “Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character”; and (8) Accessory dwelling units are, therefore, an essential component of California’s housing supply. Thus, allowing JADUs to be rented for short-term rentals that are facilitated by online marketplaces would reduce and threaten the availability of housing, including affordable housing, within the City during the State housing crisis, and therefore allowing the prohibition of short-term rentals of the City’s JADUs is consistent with State ADU law, specifically Government Code Section 66310;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on February 24, 2025 with all persons having the opportunity to speak for and against the proposal; and,

NOW THEREFORE, THE COSTA MESA PLANNING COMMISSION RESOLVES AS FOLLOWS:

1. Adoption of this resolution is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Public Resources Code Section 21080.174 and CEQA Guidelines Section 154282(h), “the adoption of an ordinance regarding second units in a single-family or multifamily zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 if the Government Code” relating to “granny” housing and “second unit ordinances” are exempt from the requirements of CEQA. Similarly, the ministerial approval of an ADU would not be a “project” pursuant to CEQA purposes (See Guidelines Section 15378), and environmental review is not required with the review/approval of individual ADU applications.

2. The Planning Commission recommends the City Council adopt the ordinance attached hereto as Exhibit A.

BE IT FURTHER RESOLVED that the CEQA exemption for this project reflects the independent judgement of the Planning Commission.

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 24th day of February, 2025.

Jeffrey Harlan, 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-2025-__ was passed and adopted at a regular meeting of the City of Costa Mesa Planning Commission held on February 24, 2025 by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

Scott Drapkin, Secretary
Costa Mesa Planning Commission

Resolution No.

ORDINANCE NO. 2025-xx

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING CODE AMENDMENT PCTY-24-0002 AMENDING CHAPTER V, ARTICLE 1, SECTION 13-35 (ACCESSORY DWELLING UNITS) OF TITLE 13 OF THE COSTA MESA MUNICIPAL CODE TO CONFORM TO RECENT REVISIONS TO STATE LAW

THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA DOES HEREBY FIND AND DECLARE AS FOLLOWS:

WHEREAS, updates to the City's Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) provisions are required to provide consistencies between the City's Zoning Code and the State law; and

WHEREAS, in response to the implementation of State and local law regarding ADUs and JADUs, City staff and the California Department of Housing and Community Development (HCD) found inconsistencies in the City's ADU provisions that require updating; and

WHEREAS, recently adopted State housing laws, including SB 477, SB 1211, AB 2533, and AB 1033, require updates to the City's ADU and JADU provisions; and

WHEREAS, the City has acknowledged all HCD comments in the proposed Ordinance with the exception of prohibiting the use of JADUs for short-term rentals. Pursuant to Government Code Section 66310, the legislature has determined the following: (1) ADUs and JADUs are "a valuable form of housing in California"; (2) ADUs and JADUs "provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods"; (3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security"; (4) "Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California"; (5) "California faces a severe housing crisis"; (6) "The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners"; (7) "Accessory dwelling units offer lower cost housing to meet the needs of

existing and future residents within existing neighborhoods, while respecting architectural character”; and (8) Accessory dwelling units are, therefore, an essential component of California’s housing supply. Thus, allowing JADUs to be rented for short-term rentals that are facilitated by online marketplaces would reduce and threaten the availability of housing, including affordable housing, within the City during the State housing crisis, and therefore allowing the prohibition of short-term rentals of the City’s JADUs is consistent with State ADU law, specifically Government Code Section 66310; and

WHEREAS, Government Code section 66316 provides in part, “if a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void;” and

WHEREAS, this Ordinance is necessary to implement State and local ADU provisions, establish the minimum development standards in the Costa Mesa Municipal Code to regulate ADUs, and to ensure consistency with State law.

Now, therefore, THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY ORDAINS AS FOLLOWS:

Section 1: Code Amendment. Section 13-35 (Accessory Dwelling Units). Chapter V, Article 1, Section 13-35 (Accessory Dwelling Units) of Title 13, Planning, Zoning and Development of the Costa Mesa Municipal Code, as specified in Exhibit A, attached hereto and incorporated herein by this reference, is hereby amended as set forth therein.

Section 2. Repeal. All portions of prior ordinances, including those within Urgency Ordinance 19-19, to the extent that they are inconsistent with the terms of this Ordinance are hereby repealed and replaced by this Ordinance.

Section 3. Compliance with CEQA. Adoption of this Ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), in that the adoption of an ordinance regarding second units in a single-family or multifamily zone by a city or county to implement the provisions of Sections 65852.1, 65852.150 and 65852.2 is exempt from the requirements of CEQA. In addition, the proposed ordinance amendment is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) in that there is no possibility that the minor updates to the City’s ADU provisions will have a significant impact on the environment.

Section 4. Inconsistencies with State Law. Any provision of this Ordinance which is inconsistent with State law shall be interpreted in a manner which is the most limiting on the ability to create ADUs or Junior ADUs, but which is consistent with State law. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Costa Mesa hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 6. Effective Date. This Ordinance shall take effect on the 31st day after adoption.

Section 7. Certification. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted in the manner required by law.

Section 8. Transmit Ordinance to HCD. The City Clerk is directed to send a copy of this ordinance to the Department of Housing and Community Development within 60 days of the adoption of this Ordinance.

PASSED AND ADOPTED this _____ day of _____, 2025

John Stephens, Mayor

ATTEST:

APPROVED AS TO FORM

Brenda Green, City Clerk

Kimberly Hall Barlow, City Attorney

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

I, Brenda Green, City Clerk of the City of Costa Mesa, do hereby certify that the above and foregoing is a true and correct copy of Ordinance No. 2025-xx ____ introduced at a regular meeting of the City Council of the City of Costa Mesa held on the ____ day of ____, 2025, and was thereafter adopted at a regular meeting held on the ____ day of ____, 2025, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

Said ordinance has been published or posted pursuant to law.

Witness my hand and the official seal of the City of Costa Mesa this ____ day of ____, 2025.

Brenda Green, City Clerk

§ 13-35 **Accessory dwelling units.**

(a) *Purpose, general plan consistency, definitions.*

(1) *Purpose and interpretation.* The intent of this section is to ensure that accessory dwelling units (ADUs) and Junior ADUs remain as an accessory uses in residential and mixed-use zones, that the structures on parcels are organized to accommodate an ADU and/or Junior ADU, and that such dwelling units do not adversely impact surrounding residents or the community. This section **13-35** is intended to retain the ability of the city to regulate ADUs in terms of design, aesthetics, massing and integration with existing structures and to comply with the requirements of state law.

(2) *General plan consistency.* In adopting these standards, the city recognizes that the approval of dwelling units may, in some instances, result in dwelling densities exceeding the maximum densities prescribed by the general plan. The city finds that this occurrence is consistent with the general plan, as allowed under state planning and zoning law applicable to ADUs, and that the amendment furthers the goals, objectives, and policies of the general plan housing element.

(3) *Definitions.* For purpose of this section **13-35** only:

a. The terms "accessory dwelling unit" (ADU), "public transit," "passageway" and "tandem parking" all have the same meaning as that stated in Government Code section ~~65852-266313~~ as that section may be amended from time to time.

b. "Junior ADU" shall have the same meaning as that stated in Government Code section ~~65852-2266313(dh)(4)~~ as that section may be amended from time to time.

c. A structure is considered "existing" if a building permit was issued and finalized before an ADU or JADU application is submitted under this section.

d. The terms "single-family dwelling" and "multifamily dwelling" exclude all detached accessory structures.

e. The term "single-family dwelling" is a dwelling (excluding any ADU or Junior ADU) that is not attached to another dwelling. Single-family dwellings may include detached single-family homes where there is more than one primary dwelling on a lot.

f. A "multifamily dwelling" is a dwelling (excluding any ADU or Junior ADU) within a multifamily dwelling structure.

g. A "multifamily dwelling structure" is a structure which contains at least two lawful dwellings within the structure, excluding ADUs and Junior ADUs. Storage rooms, boiler rooms, passageways, attics, basements, garages and other non-habitable spaces are considered within a "multifamily dwelling structure" if such non-habitable spaces are within the same structure as at least two other multifamily dwellings.

(b) Accessory dwelling units.

(1) Residential and mixed use zones only. ADUs are permitted in single-family, multifamily, and mixed-use zones (i.e., zones where single-family and/or multifamily dwellings are allowed), and only on a legal lot with proposed or existing residential dwelling(s) which will remain on site. By way of illustration only, the zones where accessory dwellings are allowed are shown on the Citywide Land Use Matrix at section 13-30. If there is any conflict between the requirement that ADUs be approved in (and only in) zones where single-family and multifamily dwellings are allowed and the Land Use Matrix, the former shall control.

~~(2) Underlying zone. Except as otherwise provided in this section, ADUs shall conform to the development standards of the underlying zone.~~ Reserved.

(3) Ministerial. Any application for an ADU that meets the requirements of this section shall be approved ministerially by the city by applying the standards herein and without a public hearing or notice of decision or zoning approval in compliance with government code section 66317.

(4) Maximum number of dwelling units. The following is the maximum number of ADUs and or Junior ADUs allowed on any lot. ~~Only one category may be used per lot including lots that include a mixture of single-family and multiple family dwellings with the exception as allowed in subsection c below.~~

a. Single-family. One detached, new construction ADU, one conversion ADU, and one junior ADU. ~~Only one ADU and only one Junior ADU may be permitted on a lot with a proposed or existing single-family dwelling subject to the following:~~

1. Conversion within a single-family dwelling.

(i) An ADU ~~or and~~-Junior ADU may be within the existing footprint of a lawful single-family dwelling. Alternatively, an ADU may be within a lawfully constructed existing detached accessory structure; in this case up to 150 square feet may be added beyond the physical dimensions of the existing accessory structure solely to accommodate ingress and egress to the ADU; and

(ii) ~~Each such ADUs and Junior ADUs~~ must have independent exterior access from the single-family dwelling, and have side and rear setbacks sufficient for fire safety; ~~or and~~

2. New construction (attached or detached). One new construction ADU may be permitted on a lot with proposed or existing single-family dwelling. One new construction Junior ADU may be allowed on the lot if the Junior ADU is to be in a single-family dwelling that meets all applicable legal standards.

b. Multifamily. ~~Junior ADUs are not allowed on a lot with more than one residence. One ADUs are not is~~ allowed within new construction residences where, after construction, there will be at least two residences on the lot (e.g. detached residential structures, duplexes, apartments); up to two ADUs are allowed with such structures pursuant to subsection 32, below. For lots with an existing legal multifamily dwelling (e.g., a legal non-conforming multifamily dwelling), the applicant may have ADU(s) pursuant to ~~one of~~ the following:

1. Maximum ADUs within existing multifamily dwelling structure. No more than 25%, with any partial unit rounded down) of the number of existing multifamily dwelling units on the lot, but at least one unit, shall be permitted as ADU(s) constructed within the enclosed nonlivable space (e.g., a space in a dwelling not intended for human habitation, including living, sleeping, eating, cooking, or sanitation)~~storage rooms, boiler rooms, hallways, attics, basements, or garages~~) of the existing multifamily dwelling structures; or

2. Maximum attached ADUs. ~~No more than one attached ADU is permitted. The attached ADU shall be included in the number of detached ADUs. The ADU shall be attached to the multifamily dwelling structure; or~~

~~3.2. Maximum detached ADUs. No more than two eight detached ADUs are permitted, provided that the number of accessory dwelling units allowable pursuant to this clause shall not exceed the number of existing units on the lot.. Both The units shall be detached from every residence on site (but need not be detached from each other) with the exception of one ADU, which may be attached to the multifamily dwelling structure. This section shall apply to detached structures that are converted and new construction detached ADUs. Conversion detached ADUs are not subject to height, setbacks, and maximum square footage; or~~

~~4. Maximum mixed (detached/within) ADUs. No more than 25%, with any partial unit rounded down) of the number of existing multifamily dwelling units on the lot, but at least one unit, shall be permitted as ADU(s) constructed within the enclosed nonlivable space (e.g., storage rooms, boiler rooms, hallways, attics, basements, or garages) of the existing multifamily dwelling structures; and no more than two ADUs that are detached from each multifamily dwelling structure on site.~~

~~e. Common interest developments. One conversion ADU may be permitted per unit on lots developed with common interest developments.~~

(5) Maximum size.

a. Single-family.

1. Detached. For lots with a proposed or existing single-family dwelling, a detached ADU shall not have more than 1,200 square feet.

2. Attached. An ADU attached to a single-family dwelling shall be no more than the greater of 50% of the square footage of the existing single-family dwelling or 1,000 square feet.

b. Multifamily, exterior new construction.

1. Detached. For lots with an existing legal multifamily dwelling structure the maximum square footage for a detached ADU is 850 square feet or 1,000 square feet for an ADU that provides more than one bedroom, except as allowed in Government Code Section 66323.; ~~proposing one new construction detached ADU, the ADU shall not exceed 1,200 square feet. For lots with an existing or~~

~~proposed legal multifamily dwelling structure proposing two detached ADUs, the ADUs shall not exceed 800 square feet; or~~

2. Attached. For lots with an existing legal multifamily dwelling structure, an attached ADU shall not exceed the greater of 1,000 square feet or 50% of the average floor area of the existing multiple family dwelling units.

c. Interior conversions. Notwithstanding subsections a and b immediately above, ADUs which are converted from space entirely within lawful existing structures, and ADUs entirely within proposed lawful single-family dwellings, are not subject to a limit on maximum square footage.

(6) Minimum size.

a. ADUs may be efficiency units. Notwithstanding the general limitation on efficiency units being no smaller than 220 square feet, ADUs may also be less than 220 square feet, provided that they are no smaller than 150 square feet, and comply with all other legal requirements.

(7) Conversions of dwelling units.

a. Total conversion of single-family dwelling. An entire existing single-family dwelling may be converted to an ADU if the ADU complies with all applicable requirements of this section and a new single-family residence with a total gross floor area exceeding that of the ADU is constructed in full compliance with code requirements.

b. Partial conversion/addition. A portion of the existing single-family or multifamily dwelling may be converted to an ADU with new additional square footage, which additional square footage shall comply with all standards applicable to ~~attached ADUs~~ the underlying zone, and all converted square footage shall comply with standards applicable to conversions. The maximum square footage of the ~~attached ADU~~ shall be based upon the size of the existing dwelling before construction of the ADU addition.

(8) Short-term rentals prohibited. An ADU shall not be rented for periods of less than 31 days.

(c) Junior ADUs.

(1) Rule. Junior ADUs shall comply with the requirements of this subsection, in addition to the requirements of subsection (d) of this section ~~13-35~~.

(2) Maximum size. A Junior ADU shall not exceed 500 square feet in gross floor area.

(3) Owner occupancy requirement. The owner of a parcel proposed for a Junior ADU shall occupy as a primary residence either the primary dwelling unit or the Junior ADU. Owner-occupancy is not required if the owner is a governmental agency, land trust, or "housing organization" as that term is defined in **Government Code** section 65589.5(k)(2), as that section may be amended from time to time.

(4) Short-term rentals prohibited. A Junior ADU shall not be rented for periods of less than 31 days unless otherwise authorized by the municipal code.

(5) Location of Junior ADU. A Junior ADU shall be entirely within an existing or proposed single-family dwelling, including an attached garage.

(6) Kitchen requirements. A Junior ADU shall include an efficiency kitchen, including a cooking facility with appliances, outlet for a small refrigerator, food preparation counter and storage cabinets that are of reasonable size in relation to the size of the Junior ADU.

(7) Parking. No additional parking is required beyond that already required for the primary dwelling.

(8) Fire protection; utility service. For the purposes of any fire or life protection ordinance or regulation or for the purposes of providing service for water, sewer, or power, a Junior ADU shall not be considered a separate or new unit, unless the Junior ADU was constructed in conjunction with a new single-family dwelling. No separate connection between the Junior ADU and the utility shall be required for units created within a single-family dwelling, unless the Junior ADU is being constructed in connection with a new single-family dwelling.

(9) Exterior and interior access. The Junior ADU shall include an exterior entrance separate from the main entrance to the single-family dwelling. If the Junior ADU shares bathroom facilities with the main dwelling, the Junior ADU shall also have interior entry to the main dwelling's living area.

(d) Development standards and requirements. The following development standards shall not apply to a unit built subject to Government Code section 66323 (a), which includes: 1.) all converted units ADUs (converted accessory structures are eligible for a

150 square foot expansion for purposes of ingress and egress), 2.) all converted JADUs, 3.) maximum 800--square--foot, new-construction, detached ADUs with four-foot side and rear setbacks and height not exceeding 18 feet (two additional feet of height may be permitted to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary unit), with single-family primary dwellings, and 4.) detached units with multifamily primary dwelling structures with four-foot side and rear setbacks and height not exceeding 18 feet (two additional feet of height may be permitted to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary units). Otherwise, All ADUs and Junior ADUs must comply with the following requirements unless the below standards and requirements preclude the development of an 800 square foot ADU with four-foot side and rear setbacks:

(1) Ministerial project. Any application for an ADU or Junior ADU that meets the requirements of this section or as permissible in Government Code Section 66332 shall be approved without a public hearing.

(2) Application by owner. An application for a building permit for an ADU or Junior ADU building permit shall be made by the owner of the parcel on which the primary unit sits and shall be filed with the city on a city-approved application form and subject to the established fee set by city council resolution as it may be amended from time to time.

(3) Separate sale prohibited. Except as otherwise provided by law (e.g., Government Code section ~~65852.26~~), ADUs and Junior ADUs may not be sold or otherwise conveyed separate from the primary residence.

(4) Utilities.

a. All ADUs and Junior ADUs must be connected to public utilities (or their equivalent), including water, electric, and sewer services.

b. Except as provided in subsection c immediately below, the city may require the installation of a new or separate utility connection between the ADU and the utility. For Junior ADUs, see subsection (c)(8), above.

c. No separate connection between the ADU and the utility shall be required for units created within a single-family dwelling, unless the ADU is being constructed in connection with a new single-family dwelling.

d. Each ADU and Junior ADU shall have a separate mailing address as assigned by the City.

(5) Recorded covenants. ~~Before obtaining a building permit, Prior to final inspection and occupancy of JADUs,~~ the owner shall file with the county recorder, in a form approved by the city attorney, a covenant which does all of the following:

a. Prohibit the sale of the ADU and Junior ADU separate from the single-family residence; and

b. Unless subsequently prohibited by an amendment to state law, ~~for ADUs approved on or after January 1, 2025,~~ the JADU shall be considered legal only as long as either the primary residence or the JADU is occupied by the owner of record unless the owner is another governmental agency, land trust, or housing organization ~~or state law is amended to prohibit such requirements.~~ Junior ADUs require owner occupancy of either the single-family dwelling or the Junior ADU; and

c. Restrict the ADU or JADU to the maximum size allowed by Municipal Code section 13-35, as it may be amended from time to time; and

~~d. Unless authorized by this Code, prohibit renting the ADU for periods less than 31 days; and~~

de. Confirm that the restrictions shall be binding upon any successor in ownership of the property, and lack of compliance shall result in legal action against the property owner for noncompliance.

(6) Passageway. No passageway shall be required in conjunction with the construction of an ADU.

(7) Building permits required. Applications for ADUs and Junior ADUs shall conform to the requirements for, and shall obtain, a building permit consistent with the requirements of Title 5 (Buildings and Structures). By way of reference only, current requirements generally require all dwellings to have no less than 220 square feet. Fire sprinklers shall not be required if they are not required for the primary residence; if, however, the ADU is attached to the primary dwelling, and if an addition to the dwelling would require sprinklers for an addition to the primary dwelling in the same location, then sprinklers shall be required.

(8) Setbacks.

a. None. No setbacks are required for either: (1) those portions of ADUs that are created by converting existing living area or existing accessory structures to a new ADU; or (2) constructing new ADUs in the same

location, while not exceeding the existing dimensions of an existing structure, including height. Notwithstanding the foregoing, ADUs shall, at minimum, comply with setbacks that are sufficient for fire and life safety.

b. Other setbacks. For all other ADUs, there shall be a minimum of setbacks of four feet from side and rear property lines and full compliance with all applicable front yard setbacks for the underlying zone (except as required by (Gov. Code, § 66321, subd. (b)(3))). Second floor ADUs shall provide setbacks in conformance with the underlying zone. All mechanical equipment associated with the ADU shall maintain the minimum setbacks.

c. Distance between structures. The minimum required distance between a detached ADU and the primary dwelling unit, and all other structures on the property, including garages, shall be six feet unless otherwise established by the California Building Code.

(9) Height. Except as authorized in subsection b, below, in no event may any portion of a new construction ADU exceed 27 feet or two stories, ~~or exceed the height of any other dwelling that could legally be on the property. In all cases, a height of at least 18 feet shall be allowed for ADUs. An additional two feet in height may be permitted to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.~~ Furthermore, except as authorized in subsection a and b, below, an ADU shall be entirely only on the first floor.

a. Second floor or two-stories. An ADU on a lot which has an existing lawfully constructed dwelling, may be in whole or in part on a second floor, or be a two-story ADU, if all five of the following occur:

- 1.** All portions of the ADU structure on a second floor are at least 25 feet from the front property line; and
- 2.** Each stairwell for the ADU is interior or complies with subsection **(10)**, below; and
- 3.** The second floor of any portion of the ADU, if built above a detached garage, does not exceed the footprint of the garage; and
- 4.** No windows are installed on the second floor on side elevations if such windows are within 25 feet of a neighboring dwelling and face the neighboring property unless such windows have a minimum sill height of at least five feet; and

5. The second floor (or the entire two story ADU as applicable) meets the setbacks applicable to additions for the underlying zone.

b. *Within structure.* The ADU is built entirely within either:

1. A proposed or existing lawfully constructed single-family dwelling, except that an external stairwell to the ADU which meets all requirements of this Code, including the requirements of subsection **(10)**, below, may be constructed to allow access to the ADU; or

2. The non-habitable space of an existing multifamily structure or within an accessory structure on a lot with a multifamily structure.

(10) *Exterior stairways, balconies.*

a. *Exterior stairways.* A new exterior stairway to a second-floor ADU shall not be visible from the public right of way at the front of the property. Second floor landings using an exterior stairway shall be kept to the minimum size required to comply with applicable codes. Stairways and landings shall incorporate screening materials designed to eliminate views into abutting properties. Stairways and landings, which exceed building code minimum sizes, are prohibited. Stairways and landings shall not be counted toward residential open space requirements.

b. *Balconies.* New balconies which face the street and are located at the front of the main residential structure are permitted provided that the balcony be set back a minimum of 20 feet from the front property line. On corner properties, balconies may face the side street provided that they maintain the setback for the underlying zone. Balconies within 25 feet of a neighboring residence shall incorporate screening to ensure there are no direct views into the abutting property. New construction balconies that are not facing the front of the property or a side street, are prohibited.

c. *Roof decks.* No new roof decks are allowed for ADUs.

(11) *Architectural standards.*

a. *Attached and detached ADUs.* ~~Each Attached and detached ADU which is attached to the primary dwelling shall appear to be part of the primary dwelling. It shall have the same design, materials, finishes, and colors as the primary dwelling and shall be in accordance with code design standards and guidelines applicable to the zone.~~

~~b. Detached ADUs. Any detached ADU shall be compatible in exterior appearance with the primary unit or units in terms of design, materials, finishes, and colors within the same property on which it is proposed to be constructed, in accordance with code design standards and guidelines applicable to the zone.~~

~~c. New construction Junior ADUs. New construction Junior ADUs shall match exterior appearance with the primary unit in terms of design, materials, finishes, and colors within the same property on which it is proposed to be constructed, in accordance with code design standards and guidelines applicable to the zone.~~

(12) Recommended Garage conversions, design considerations.

a. No-blank-Blank facade. When a garage is converted to an ADU, if the facade of the converted garage is visible from a public right-of-way, the following design considerations are recommended: facade shall implement at least one of the following:

1. Be covered with landscaping that covers at least 50% of the wall, or

2. Include openings of at least 10% of the facade with at least one door that complies with section (13) below or one window which matches the material and design of the existing windows on the residence.

b. Driveway. The driveway may only be removed if it is replaced with landscaping or open space, and the curb cut and driveway apron are removed and replaced with a curb and gutter which meet city standards. Partial driveway removals may be permitted if the remaining driveway provides the minimum parking dimensions per subsection (14) below.

(13) Entry. The entrance to an ADU or Junior ADU shall match the materials and color of the primary residence(s), not be located on the same building elevation as the main entrance of the primary residence(s) and shall be located along the building side, rear, or within the interior of the property, unless the economic and development services director approves an alternative configuration due to unique development circumstances.

(14) Parking.

a. The owner may provide parking that is at least eight and a half (8.5) feet wide and 18 feet long and may be provided as:

1. Tandem parking on an existing driveway in a manner that does not encroach onto a public sidewalk; or

2. Within a setback area or in locations determined feasible by the city. Locations will be determined infeasible based upon specific site or regional topographical or fire and life safety conditions, or that such parking is not permitted anywhere else in the city.

b. When any parking space or parking structure ~~an existing garage, carport, or covered parking structure~~ is converted or demolished in conjunction with the construction of an ADU or converted to an ADU, the off-street parking spaces do not have to be replaced, notwithstanding any other provision of this code to the contrary (e.g., the definition of "driveway" in section 13-6, Table 20-8(c) a driveway does not lose its status as a lawful "driveway" if it leads to a structure that was either converted from a garage into either an ADU or Junior ADU or demolished in conjunction with the construction of an ADU or Junior ADU. In no event shall the demolition of a parking space or parking structure ~~garage~~ be considered "in conjunction with" the construction of an ADU if the ADU will not be constructed within any portion of the footprint of the demolished garage.

(15) *Non-conforming.* The city shall not require, as a condition of a permit for an ADU or Junior ADU the correction of nonconforming development standards.

~~(16) *Short-term rentals prohibited.* ADUs and Junior ADUs shall not be rented for a term of less than 31 days, unless otherwise authorized by this Code.~~

(167) *Open space and landscaping.* ADUs which exceed 800 square feet in gross floor area shall meet the open space requirements of section 13-32 and shall be subject to provide landscaping as required in section 13-106.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov



September 11, 2024

Barry Curtis
Economic and Development Services Director
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Dear Barry Curtis:

RE: Review of Costa Mesa's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, §§ 66313 - 66342)

Please Note: As of March 25, 2024, with the Chaptering of Senate Bill (SB) 477 (Chapter 7, Statutes of 2024), the sections of Government Code relevant to State ADU and junior accessory dwelling unit (JADU) Law have been renumbered (Enclosure 1).

Thank you for submitting the City of Costa Mesa (City) accessory dwelling unit (ADU) Ordinance No. 2023-03 (Ordinance), adopted February 22, 2023, to the California Department of Housing and Community Development (HCD). HCD has reviewed the Ordinance and submits these written findings pursuant to Government Code section 66326, subdivision (a). HCD finds that the Ordinance does not comply with State ADU and JADU Laws in the manner noted below. Under section 66326, subdivision (b)(1), the City has up to 30 days to respond to these findings. Accordingly, the City must provide a written response to these findings no later than October 11, 2024.

The Ordinance addresses many statutory requirements; however, HCD finds that the Ordinance does not comply with State ADU Law in the following respects:

1. *Statutory Numbering* - The Ordinance contains several references to code sections that were deleted by SB 477, effective March 25, 2024. These include Government Code sections 65852.2, 65852.22 and 65852.26. The contents of these sections were relocated to Government Code, Title 7, Division 1, Chapter 13 (sections 66310-66342, see Enclosure). The City must amend the Ordinance to refer to the correct code sections
2. Section 13.35 (b)(3) – *Ministerial Approval* – The Ordinance states, “Any application for an ADU that meets the requirements of this section shall be approved ministerially by the city by applying the standards herein and without a public hearing or notice of decision or zoning approval.” However, Government

Code section 66317, subdivision (a) states, “The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot.” It later requires that “If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subdivision (a), the permitting agency shall, within the time period described in subdivision (a), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.”

The City must amend the Ordinance to add these provisions.

3. Section 13.35 (b)(4)a. and (b)(4)b. – *Unit Allowance* – The Ordinance states that, “Only one category may be used per lot...” when introducing the different formats of allowable units with single family dwellings. Later, the Ordinance states “...the applicant may have ADUs pursuant to one of the following...” when introducing the formats of units allowable with multifamily dwellings.

Government Code section 66323, subdivision (a), states, “Notwithstanding sections 66314 to 66322, inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following: (1) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling...(A) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single family dwelling or existing space of a single-family dwelling or accessory structure.” Subparagraph (2) permits “[o]ne detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks.” The use of the term “any” followed by an enumeration of by-right ADU types permitted indicate that any of these ADU types can be combined on a lot zoned for single-family dwellings.

This permits a homeowner, who meets specified requirements, to create one converted ADU; one detached, new construction ADU; and one JADU. Thus, if the local agency approves an ADU that is created from existing (or proposed) space, and the owner subsequently applies for a detached ADU (or vice versa) that meets the size and setbacks pursuant to the subdivision, the local agency cannot deny the application, nor deny a permit for a JADU under this section. HCD notes that the Legislature, in creating the list, did not use “or” or “one of” to indicate only one or another would be applicable to the exclusion of the other.

This subdivision also applies to ADUs created pursuant to Government Code section 66323, subdivisions (a)(3) and (4), on lots with proposed or existing multifamily dwellings. Limiting single-family lots to one ADU would prevent

property owners from creating ADUs by-right under subdivision (a). Therefore, the City must amend the Ordinance to allow state-mandated by-right ADU combinations. Therefore, the City must amend the Ordinance to comply with State ADU Law.

4. Section 13.35 (b)(4) – *JADUs and Multifamily* – The Ordinance states, “Junior ADUs are not allowed on a lot with more than one residence.” However, Government Code section 66333, subdivision (a) requires that local ordinances “limit the number of junior accessory dwelling units to *one per residential lot* zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.” If the underlying lot is zoned for single-family residences, then statute permits a maximum of one JADU per lot (not per single-family residence on the lot). Therefore, the City must amend the language to note that lots zoned for single family residences may have a single JADU per lot.
5. Section 13.35 (b)(4) – *Multifamily* – The Ordinance states, “ADUs are not allowed within new construction residences where, after construction, there will be at least two (2) residences on the lot (e.g. detached residential structures, duplexes, apartments). . . .” However, Government Code section 66314, subdivision (d)(2) permits one ADU subject to local development standards on a lot if “[t]he lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.” Therefore, the City’s restriction on ADUs with new construction multifamily residences conflicts with statute. The City must remove this reference.
6. Section 13.35 (b)(5)(b) – *Maximum Sizes* – The Ordinance states, “For lots with an existing legal multifamily dwelling structure proposing one (1) new construction detached ADU, the ADU shall not exceed one thousand two hundred (1,200) square feet. For lots with an existing or proposed legal multifamily dwelling structure proposing two (2) detached ADUs, the ADUs shall not exceed eight hundred (800) square feet. . . .” However, local design standards may not preclude a unit created subject to Government Code section 66323; therefore, the maximum sizes stated in this section may not apply to any unit created subject to Government Code section 66323, subdivision (a)(4). The City must amend the Ordinance to comply with State ADU Law.
7. Section 13.35 (b)(4)c. – *Common Interest Developments* – The Ordinance states, “One conversion ADU may be permitted per unit on lots with common interest developments.” However, ADU law applies to any lot that is zoned to allow residential development. Civil Code Section 4751, subdivision (a) states “Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an

accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Article 2 (commencing with Section 66314) or Article 3 (commencing with Section 66333) of Chapter 13 of Division 1 of Title 7 of the Government Code, is void and unenforceable. “ Therefore, this section is inconsistent with development allowances permissible under Government Code sections 66314 and 66323. State ADU Law provides for the creation of detached and attached ADUs, not just conversions, in areas zoned to allow single-family and multifamily dwelling residential use. The City must amend the Ordinance to comply with State ADU Law.

8. Section 13.35 (c)(4) and (d)(16) – *JADU Rental Terms* – The Ordinance states, “A Junior ADU shall not be rented for periods of less than 31 days unless otherwise authorized by the municipal code.” It later states “ADUs and Junior ADUs shall not be rented for a term of less than thirty-one (31) days, unless otherwise authorized by this code.” However, Government Code section 66333 does not provide rental term limits for JADUs and is thus inconsistent with State JADU Law. Therefore, the City must amend the Ordinance accordingly.
9. Section 13.35 (c)(5) – *Attached Garage* – The Ordinance states, “A Junior ADU shall be entirely within an existing or proposed single-family dwelling.” However, Government Code section 66333, subdivision (d) expands this allowance to state “For purposes of this subdivision, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” Therefore, the City must amend the Ordinance accordingly.
10. Section 13.35 (d) – *Development Standards* – The Ordinance states, “All ADUs and Junior ADUs must comply with the following requirements....” However, local design standards provided by the Ordinance pursuant to Government Code section 66314, may not preclude a unit built subject Government Code section 66323 (a), which includes all converted units, all JADUs, 800 square foot new-construction detached units with four-foot setbacks with single-family primary dwellings, and detached units with multifamily primary dwelling structures. The City must note the exceptions.
11. Section 13.35 (d)(3) – *Separate Sale* – The Ordinance states, “Except as otherwise provided by law, (e.g. Government Code section 65852.26), ADUs... may not be sold or otherwise conveyed separate from the primary residence.” Please note that with the adoption of AB1033, the City now has the option to adopt an ordinance to govern the separate sale of an ADU from its primary dwelling.
12. Section 13.35 (d)(5) – *Deed Restrictions* – The Ordinance requires a covenant as a precondition to a building permit. However, Government Code section

66315 states, “No additional standards, other than those provided in Section 66314, shall be used, or imposed....” A deed restriction would be an “additional standard” and thus cannot be imposed. Therefore, the City must remove this section.

13. Section 13.35 (d)(5)b. – *Owner-Occupancy* – The Ordinance requires owner-occupancy “for ADUs approved on or after January 1, 2025....” However, effective January 1, 2024, Government Code section 66315 states “No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement...” The City must remove this section to comply with the State ADU Law.
14. Section 13.35 (d)(8)b., 13.35 (d)(9)a.1. - *Front Setbacks* – The Ordinance requires “Minimum of setbacks of four (4) feet from side and rear property lines and full compliance with all applicable front yard setbacks for the underlying zone. Second floor ADUs shall provide setbacks in conformance with the underlying zone.” It later requires that “All portions of the ADU structure on a second floor are at least twenty-five (25) feet from the front property line....” However, Government Code section 66321, subdivision (b) prohibits “Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” Therefore, the City’s application of front setback restrictions that would preclude such a unit would be inconsistent with State ADU Law. The City must amend the Ordinance accordingly.
15. Section 13.35 (d)(9) – *Height* – The Ordinance states, “Except as authorized in subsection b, below, in no event may any portion of a new construction ADU exceed two (2) stories or exceed the height of any other dwelling that could legally be on the property. In all cases, a height of at least eighteen (18) feet shall be allowed for ADUs. An additional two feet in height may be permitted to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.”

However, Government Code section 66321, subdivision (b)(4)(D) requires “A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling.” Additionally, section 66321, subdivision (b)(4)(B) requires the allowance of “an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit” under the conditions of that

subsection. Therefore, the City must amend the Ordinance to comply with State ADU Law.

16. Section 13.35 (d)(10) a. – *Exterior Stairways* – The Ordinance states, “A new exterior stairway to a second floor ADU shall not be visible from the public right of way at the front of the property.” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66323, may not preclude a unit built subject Government Code section 66323, which includes all converted units, all JADUs, 800 square foot new construction detached units with four-foot setbacks, and detached units with multifamily primary dwelling structures. Visibility restrictions on a stairway necessary to serve such a unit may not preclude the unit or its stairway. Therefore, the City must note that section 66323 units are excepted and should add “when feasible” to the existing language.
17. Section 13.35 (d)(11)(b) – “*Compatible*” – The Ordinance states, “Any detached ADU shall be compatible in exterior appearance with the primary unit or units in terms of design, materials, finishes, and colors....” However, Government Code section 66314, subdivision (b)(1) requires that a local agency “Impose objective standards on accessory dwelling units”. Government Code section 66313, subdivision (h) defines “Objective standards” as “standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” As “compatible” is a term that is subjective, this section is inconsistent with State ADU Law. Therefore, the City must amend the Ordinance to remove subjective terminology.
18. Section 13.35 (d)(11)c. – *JADUs and Exterior Appearance* – The Ordinance states, “Junior ADUs shall match exterior appearance with the primary unit in terms of design, materials, finishes, and colors within the same property on which it is proposed to be constructed....” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323, which includes all JADUs. Therefore, the City must remove this section.
19. Section 13.35 (d)(12) – *Garage Conversion* – The Ordinance requires design standards in the event of a garage conversion. However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323, which includes all converted units and all JADUs, both of which may be created in garages. Therefore, the City’s design standards may not preclude converted units. The City must note the exceptions.

20. Section 13.35 (d)(13) – *Entry* – The Ordinance requires that entry for ADUs and JADUs “...not be located on the same building elevation as the main reentrance of the primary residence(s) and shall be located along the building side, rear, or within the interior of the property...” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323. The City must note the exceptions.

21. Section 13.35 (d)(17) – *Open Space and Landscaping* – The Ordinance requires that, “ADUs which exceed eight hundred (800) square feet in gross floor area shall meet the open space requirements of section 13-32 and shall be subject to provide landscaping...” However, and as above, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323. The City must note the exceptions.

Please note that the City has two options in response to this letter. The City can either amend the Ordinance to comply with State ADU Law¹ or adopt the Ordinance without changes and include findings in its resolution adopting the Ordinance that explain the reasons the City believes that the Ordinance complies with State ADU Law despite HCD’s findings². If the City fails to take either course of action and bring the Ordinance into compliance with State ADU Law, HCD must notify the City and may notify the California Office of the Attorney General that the City is in violation of State ADU Law³.

HCD appreciates the City’s efforts in the preparation and adoption of the Ordinance and welcomes the opportunity to assist the City in fully complying with State ADU Law. Please contact Mike Van Gorder, of our staff, at (916) 776-7541 or at mike.vangorder@hcd.ca.gov if you have any questions or would like HCD’s technical assistance in these matters.

Sincerely,



Jamie Candelaria
Senior Housing Accountability Manager
Housing Policy Development Division

¹ Gov. Code, § 66326, subd. (b)(2)(A).

² Gov. Code, § 66326, subd. (b)(2)(B).

³ Gov. Code, § 66326, subd. (c).

State ADU/JADU Law Statutory Conversion Table

New Government Code Sections	Previous Government Code Sections
Article 1. General Provisions	
66310	65852.150 (a)
66311	65852.150 (b)
66312	65852.150 (c)
66313	General Definition Section 65852.2 (j) 65852.22 (j)
Article 2. Accessory Dwelling Unit Approvals	
66314	65852.2(a)(1)(A), (D)(i)-(xii), (a)(4)-(5)
66315	65852.2 (a)(8)
66316	65852.2 (a)(6)
66317	65852.2 (a)(3), (a)(7)
66318	65852.2 (a)(9), 65852.2 (a)(2)
66319	65852.2 (a)(10)
66320	65852.2 (b)
66321	65852.2 (c)
66322	65852.2 (d)
66323	65852.2 (e)
66324	65852.2 (f)
66325	65852.2 (g)
66326	65852.2 (h)
66327	65852.2 (i)
66328	65852.2 (k)
66329	65852.2 (l)
66330	65852.2 (m)
66331	65852.2 (n)
66332	65852.23.
Article 3. Junior Accessory Dwelling Units	
66333	65852.22 (a)
66334	65852.22 (b)
66335	65852.22 (c)
66336	65852.22 (d)
66337	65852.22 (e)
66338	65852.22 (f)-(g)
66339	65852.22 (h)
Article 4. Accessory Dwelling Unit Sales	
66340	65852.26 (b)
66341	65852.26 (a)
66342	65852.2 (a)(10)



CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT

October 10, 2024

Jamie Candelaria
 Department of Housing and Community Development
 Housing Policy Development Division
 2020 W. El Camino Avenue, Suite 500
 Sacramento, CA 95833

**RE: Review of Costa Mesa's Accessory Dwelling Unit (ADU) Ordinance under ADU Law
 (Gov. Code, Section 65852.2)**

Dear Jamie Candelaria:

Thank you for your review of the City of Costa Mesa's accessory dwelling unit (ADU) ordinance, which was adopted February 22, 2023 as Ordinance No. 2023-23. The City of Costa Mesa is proud of its successful ADU program, which, in some respects, is more permissive than the Government Code and resulted in more ADU production than would otherwise have occurred.

City staff has reviewed Housing and Community Development's (HCD) September 11, 2024 letter and intends to comply with State law and newly adopted bills pertaining to ADUs. Notwithstanding this, there are some comments provided by the State that the staff believes would be detrimental to our common goal of providing additional housing units in Costa Mesa.

Please review the attached outline for staff's proposed approach to achieve compliance with State Law. To reduce the need for further ordinance changes and additional reviews by HCD, we hereby request HCD technical assistance by reviewing our proposed modifications prior its adoption.

To ensure that our staff is responsive to HCD's letter, we would appreciate receiving any additional comments/suggestions on our approach by December 1, 2024. Should we not hear from HCD by then, staff will assume that HCD concurs with our approach and we will proceed with our recommended updates.

Staff appreciates HCD for bringing these necessary changes to our attention and its forthcoming efforts to review our draft ordinance. Should you have any follow up suggestions or comments, please contact Senior Planner Chris Yeager at (714) 754-4883 or christopher.yeager@costamesaca.gov.

Sincerely,

Scott Drapkin
 Assistant Director of Development Services

cc. mike.vangorder@hcd.ca.gov

Building Division 714.754.5273 · Community Improvement Division 714.754.5638
 Housing & Community Development 714.754.4870 · Planning Division 714.754.5245
www.costamesaca.gov

Proposed Ordinance Revisions Pursuant to HCD Letter Dated Sept. 11, 2024

1. **Statutory Numbering** - The Ordinance contains several references to code sections that were deleted by SB 477, effective March 25, 2024. These include Government Code sections 65852.2, 65852.22 and 65852.26. The contents of these sections were relocated to Government Code, Title 7, Division 1, Chapter 13 (sections 66310-66342, see Enclosure). The City must amend the Ordinance to refer to the correct code sections.

Proposed Revision

Update code sections accordingly.

2. **Section 13.35 (b)(3) – Ministerial Approval** – The Ordinance states, “Any application for an ADU that meets the requirements of this section shall be approved ministerially by the city by applying the standards herein and without a public hearing or notice of decision or zoning approval.” However, Government Code section 66317, subdivision (a) states, “The permitting agency shall either approve or deny the application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot.” It later requires that “If a permitting agency denies an application for an accessory dwelling unit or junior accessory dwelling unit pursuant to subdivision (a), the permitting agency shall, within the time period described in subdivision (a), return in writing a full set of comments to the applicant with a list of items that are defective or deficient and a description of how the application can be remedied by the applicant.” The City must amend the Ordinance to add these provisions.

Proposed Revision

Ministerial. Any application for an ADU that meets the requirements of this section shall be approved ministerially by the city by applying the standards herein and without a public hearing or notice of decision or zoning approval in compliance with government code section 66317.

3. **Section 13.35 (b)(4)a. and (b)(4)b. – Unit Allowance** – The Ordinance states that, “Only one category may be used per lot...” when introducing the different formats of allowable units with single family dwellings. Later, the Ordinance states “...the applicant may have ADUs pursuant to one of the following...” when introducing the formats of units allowable with multifamily dwellings.

Government Code section 66323, subdivision (a), states, “Notwithstanding sections 66314 to 66322, inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following: (1) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling...(A) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single family dwelling or existing space of a single-family dwelling or accessory structure.” Subparagraph (2) permits “[o]ne

detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks.” The use of the term “any” followed by an enumeration of by-right ADU types permitted indicate that any of these ADU types can be combined on a lot zoned for single-family dwellings.

This permits a homeowner, who meets specified requirements, to create one converted ADU; one detached, new construction ADU; and one JADU. Thus, if the local agency approves an ADU that is created from existing (or proposed) space, and the owner subsequently applies for a detached ADU (or vice versa) that meets the size and setbacks pursuant to the subdivision, the local agency cannot deny the application, nor deny a permit for a JADU under this section. HCD notes that the Legislature, in creating the list, did not use “or” or “one of” to indicate only one or another would be applicable to the exclusion of the other.

This subdivision also applies to ADUs created pursuant to Government Code section 66323, subdivisions (a)(3) and (4), on lots with proposed or existing multifamily dwellings. Limiting single-family lots to one ADU would prevent property owners from creating ADUs by-right under subdivision (a). Therefore, the City must amend the Ordinance to allow state-mandated by-right ADU combinations. Therefore, the City must amend the Ordinance to comply with State ADU Law.

Proposed Revision

(4) *Maximum number of dwelling units.* The following is the maximum number of ADUs and or Junior ADUs allowed on any lot. Only one category may be used per lot including lots that include a mixture of single-family and multiple family dwellings with the exception as allowed in subsection “c” below.

a. *Single-family.* ~~Only one~~ ADUs and ~~only one~~ Junior ADUs may be permitted on a lot with a proposed or existing single-family dwelling subject to the following:

1. *Conversion within a single-family dwelling.*

(i) An ADU or Junior ADU may be within the existing footprint of a lawful single-family dwelling. Alternatively, an ADU may be within a lawfully constructed existing ~~detached~~ accessory structure; in this case up to one hundred fifty (150) square feet may be added beyond the physical dimensions of the existing accessory structure solely to accommodate ingress and egress to the ADU; and

(ii) ~~Each such~~ ADUs and Junior ADUs must have independent exterior access from the single-family dwelling, and have side and rear setbacks sufficient for fire safety; or

2. *New construction.* One (1) new construction ADU may be permitted on a lot with proposed or existing single-family dwelling. One (1) new

construction Junior ADU may be allowed on the lot in lieu of a conversion Junior ADU, if the new construction Junior ADU is to be in a single-family dwelling that meets all applicable legal standards.

4. Section 13.35 (b)(4) – JADUs and Multifamily – The Ordinance states, “Junior ADUs are not allowed on a lot with more than one residence.” However, Government Code section 66333, subdivision (a) requires that local ordinances “limit the number of junior accessory dwelling units to *one per residential lot* zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.” If the underlying lot is zoned for single-family residences, then statute permits a maximum of one JADU per lot (not per single-family residence on the lot). Therefore, the City must amend the language to note that lots zoned for single family residences may have a single JADU per lot.

Proposed Revision

No Changes. The Government Code and the CMMC have the same intent. HCD’s ADU handbook identifies that “lots with multiple detached single-family dwellings are not eligible to have JADUs”. The changes reflected in comment No. 3 above, would allow for JADUs to be converted or constructed as permitted by State Law.

5. Section 13.35 (b)(4) – Multifamily – The Ordinance states, “ADUs are not allowed within new construction residences where, after construction, there will be at least two (2) residences on the lot (e.g. detached residential structures, duplexes, apartments)...” However, Government Code section 66314, subdivision (d)(2) permits one ADU subject to local development standards on a lot if “[t]he lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.” Therefore, the City’s restriction on ADUs with new construction multifamily residences conflicts with statute. The City must remove this reference.

Proposed Revision

Multifamily. Junior ADUs are not allowed on a lot with more than one residence. One ADUs are not is allowed within new construction residences where, after construction, there will be at least two residences on the lot (e.g. detached residential structures, duplexes, apartments); up to two ADUs are allowed with such structures pursuant to subsection 3, below. For lots with an existing legal multifamily dwelling (e.g., a legal non-conforming multifamily dwelling), the applicant may have ADU(s) pursuant to one of the following:

6. Section 13.35 (b)(5)(b) – Maximum Sizes – The Ordinance states, “For lots with an existing legal multifamily dwelling structure proposing one (1) new construction detached ADU, the ADU shall not exceed one thousand two hundred (1,200) square feet. For lots with an existing or proposed legal multifamily dwelling structure proposing two (2) detached ADUs, the ADUs shall not exceed eight hundred (800) square feet...” However, local design standards may not preclude a unit created subject to Government Code section 66323; therefore, the maximum sizes stated in this section may not apply to any

unit created subject to Government Code section 66323, subdivision (a)(4). The City must amend the Ordinance to comply with State ADU Law.

Proposed Revision

Multifamily, exterior construction.

1. Detached. For lots with an existing legal multifamily dwelling structure ~~proposing one new construction detached ADU, the ADU shall not exceed 1,200 square feet. For lots with an existing or proposed legal multifamily dwelling structure proposing two detached ADUs, the ADUs shall not exceed 800 square feet~~the maximum square footage for either an attached or detached ADU is 800 square feet or 1,000 square feet for an ADU that provides more than one bedroom; or

7. Section 13.35 (b)(4)c. – Common Interest Developments – The Ordinance states, “One conversion ADU may be permitted per unit on lots with common interest developments.” However, ADU law applies to any lot that is zoned to allow residential development. Civil Code Section 4751, subdivision (a) states “Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Article 2 (commencing with Section 66314) or Article 3 (commencing with Section 66333) of Chapter 13 of Division 1 of Title 7 of the Government Code, is void and unenforceable.” Therefore, this section is inconsistent with development allowances permissible under Government Code sections 66314 and 66323. State ADU Law provides for the creation of detached and attached ADUs, not just conversions, in areas zoned to allow single-family and multifamily dwelling residential use. The City must amend the Ordinance to comply with State ADU Law.

Proposed Revision

No Changes. The provision allows for additional ADUs than what would be permissible by the Government Code. The Government code would allow for one of the units to construct ADUs in a “first come, first serve” basis. This code section allows for each individual unit within the Common Interest Development to convert space into an ADU.

8. Section 13.35 (c)(4) and (d)(16) – JADU Rental Terms – The Ordinance states, “A Junior ADU shall not be rented for periods of less than 31 days unless otherwise authorized by the municipal code.” It later states “ADUs and Junior ADUs shall not be rented for a term of less thirty-one (31) days, unless otherwise authorized by this code.” However, Government Code section 66333 does not provide rental term limits for JADUs and is thus inconsistent with State JADU Law. Therefore, the City must amend the Ordinance accordingly.

Proposed Revision

The City strongly disagrees with the comment provided by HCD. The intent seems to infer that HCD is in favor of removing housing units to allow for short term vacation rentals which has been proven to reduce the number of available housing units. The City is committed to providing housing and believes that allowing JADUs to be used as short-term rentals, will reduce the number of units available in the City. In light of this, the City respectfully encourages HCD to revisit their comment and modify its position. Should HCD continue to demand this change, staff would propose the following revision:

CMMC Section 13.35(c)(4) ~~Short-term rentals prohibited. A Junior ADU shall not be rented for periods of less than 31 days unless otherwise authorized by the municipal code. Reserved.~~

CMMC Section 13-35(d)(16) ~~Short-term rentals prohibited. ADUs and Junior ADUs~~ shall not be rented for a term of less than thirty-one (31) days, unless otherwise authorized by this code.

9. Section 13.35 (c)(5) – Attached Garage – The Ordinance states, “A Junior ADU shall be entirely within an existing or proposed single-family dwelling.” However, Government Code section 66333, subdivision (d) expands this allowance to state “For purposes of this subdivision, enclosed uses within the residence, such as attached garages, are considered a part of the proposed or existing single-family residence.” Therefore, the City must amend the Ordinance accordingly.

Proposed Revision

No Changes. CMMC Section 13-35(a)(3)(d) defines “single-family dwelling” and “multifamily dwelling” as excluding all detached accessory structures. The section has been implemented to mean that attached accessory structures are included in the definition of single-family dwelling and multifamily dwelling.

10. Section 13.35 (d) – Development Standards – The Ordinance states, “All ADUs and Junior ADUs must comply with the following requirements...” However, local design standards provided by the Ordinance pursuant to Government Code section 66314, may not preclude a unit built subject Government Code section 66323 (a), which includes all converted units, all JADUs, 800 square foot new-construction detached units with four-foot setbacks with single-family primary dwellings, and detached units with multifamily primary dwelling structures. The City must note the exceptions.

Proposed Revision

~~Development standards. The following standards shall not preclude a unit built subject to Government Code section 66323 (a), which includes all converted units, all JADUs, 800 square foot new-construction detached units with four-foot setbacks with single-family primary dwellings, and detached units with multifamily primary dwelling structures. Otherwise, All ADUs and Junior ADUs must comply with the following requirements:~~

11. Section 13.35 (d)(3) – Separate Sale – The Ordinance states, “Except as otherwise provided by law, (e.g. Government Code section 65852.26), ADUs... may not be sold or otherwise conveyed separate from the primary residence.” Please note that with the adoption of AB1033, the City now has the option to adopt an ordinance to govern the separate sale of an ADU from its primary dwelling.

The City is aware of the adoption of AB1033.

12. Section 13.35 (d)(5) – Deed Restrictions – The Ordinance requires a covenant as a precondition to a building permit. However, Government Code section 66315 states, “No additional standards, other than those provided in Section 66314, shall be used, or imposed...” A deed restriction would be an “additional standard” and thus cannot be imposed. Therefore, the City must remove this section.

Proposed Revision

Recorded covenants. ~~Before obtaining a building permit~~Prior to occupancy, the owner shall file with the county recorder, in a form approved by the city attorney, a covenant which does all of the following:

13. Section 13.35 (d)(5)b. – Owner-Occupancy – The Ordinance requires owner-occupancy “for ADUs approved on or after January 1, 2025...” However, effective January 1, 2024, Government Code section 66315 states “No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement...” The City must remove this section to comply with the State ADU Law.

Proposed Revision

~~Unless subsequently prohibited by an amendment to state law, for ADUs approved on or after January 1, 2025, the ADU shall be considered legal only as long as either the primary residence or the ADU is occupied by the owner of record or state law is amended to prohibit such requirements. Junior ADUs require owner occupancy of either the single family dwelling or the Junior ADU; and Reserved~~

14. Section 13.35 (d)(8)b., 13.35 (d)(9)a.1. - Front Setbacks – The Ordinance requires “Minimum of setbacks of four (4) feet from side and rear property lines and full compliance with all applicable front yard setbacks for the underlying zone. Second floor ADUs shall provide setbacks in conformance with the underlying zone.” It later requires that “All portions of the ADU structure on a second floor are at least twenty-five (25) feet from the front property line...” However, Government Code section 66321, subdivision (b) prohibits “Any requirement for a zoning clearance or separate zoning review or any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, front setbacks, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit with

four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.” Therefore, the City’s application of front setback restrictions that would preclude such a unit would be inconsistent with State ADU Law. The City must amend the Ordinance accordingly.

Proposed Revision

See No. 10 above.

15. Section 13.35 (d)(9) – Height – The Ordinance states, “Except as authorized in subsection b, below, in no event may any portion of a new construction ADU exceed two (2) stories or exceed the height of any other dwelling that could legally be on the property. In all cases, a height of at least eighteen (18) feet shall be allowed for ADUs. An additional two feet in height may be permitted to accommodate a roof pitch on the ADU that is aligned with the roof pitch of the primary dwelling unit.”

However, Government Code section 66321, subdivision (b)(4)(D) requires “A height of 25 feet or the height limitation in the local zoning ordinance that applies to the primary dwelling, whichever is lower, for an accessory dwelling unit that is attached to a primary dwelling.” Additionally, section 66321, subdivision (b)(4)(B) requires the allowance of “an additional two feet in height to accommodate a roof pitch on the accessory dwelling unit that is aligned with the roof pitch of the primary dwelling unit” under the conditions of that subsection. Therefore, the City must amend the Ordinance to comply with State ADU Law.

Proposed Revision

No Changes. The CMMC allows for an ADU to have a maximum height of “any other dwelling that could legally be constructed on the site”. The maximum height for residential buildings throughout the City is 27 feet or more which exceeds the Government Code and is therefore more permissive.

16. Section 13.35 (d)(10) a. – Exterior Stairways – The Ordinance states, “A new exterior stairway to a second floor ADU shall not be visible from the public right of way at the front of the property.” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66323, may not preclude a unit built subject Government Code section 66323, which includes all converted units, all JADUs, 800 square foot new construction detached units with four-foot setbacks, and detached units with multifamily primary dwelling structures. Visibility restrictions on a stairway necessary to serve such a unit may not preclude the unit or its stairway. Therefore, the City must note that section 66323 units are excepted and should add “when feasible” to the existing language.

Proposed Revision

See No. 10 above.

17. Section 13.35 (d)(11)(b) – “Compatible” – The Ordinance states, “Any detached ADU shall be compatible in exterior appearance with the primary unit or units in terms of design, materials, finishes, and colors....” However, Government Code section 66314, subdivision (b)(1) requires that a local agency “Impose objective standards on accessory dwelling units”. Government Code section 66313, subdivision (h) defines “Objective standards” as “standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal.” As “compatible” is a term that is subjective, this section is inconsistent with State ADU Law. Therefore, the City must amend the Ordinance to remove subjective terminology.

Proposed Revision

See No. 10 above.

18. Section 13.35 (d)(11)(c) – JADUs and Exterior Appearance – The Ordinance states, “Junior ADUs shall match exterior appearance with the primary unit in terms of design, materials, finishes, and colors within the same property on which it is proposed to be constructed....” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323, which includes all JADUs. Therefore, the City must remove this section.

Proposed Revision

JADUs are meant to be converted from existing space. Converted JADUs are converted from existing space and therefore, match what is already there. [CMMC Section 13-35\(a\)\(4\)\(a\)\(2\)](#) allows for “One new construction Junior ADU may be allowed on the lot if the Junior ADU is to be in a single-family dwelling that meets all applicable legal standards.” Therefore, the following is proposed:

CMMC Section 13-35(d)(11)(c) Junior ADUs. New construction Junior ADUs shall match exterior appearance with the primary unit in terms of design, materials, finishes, and colors within the same property on which it is proposed to be constructed, in accordance with code design standards and guidelines applicable to the zone.

19. Section 13.35 (d)(12) – Garage Conversion – The Ordinance requires design standards in the event of a garage conversion. However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323, which includes all converted units and all JADUs, both of which may be created in garages. Therefore, the City’s design standards may not preclude converted units. The City must note the exceptions.

Proposed Revision

See No. 10 above.

20. Section 13.35 (d)(13) – Entry – The Ordinance requires that entry for ADUs and JADUs “...not be located on the same building elevation as the main reentrance of the primary residence(s) and shall be located along the building side, rear, or within the interior or the property....” However, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323. The City must note the exceptions.

Proposed Revision

See No. 10 above.

21. Section 13.35 (d)(17) – Open Space and Landscaping – The Ordinance requires that, “ADUs which exceed eight hundred (800) square feet in gross floor area shall meet the open space requirements of section 13-32 and shall be subject to provide landscaping....” However, and as above, local design standards provided by the Ordinance pursuant to Government Code sections 66314 through 66322, inclusive, may not preclude a unit built subject Government Code section 66323. The City must note the exceptions.

Proposed Revision

See No. 10 above.

Proposed Ordinance Revisions Pursuant to Recent Bills

In addition to the ordinance review provided by HCD, the City is moving forward to modify its ordinance to comply with the recently adopted State Laws pertaining to ADUs including SB1211 and AB 2533. Below, you will find how the City intends to modify its ordinance to comply.

1. SB1211 – Replacement Parking - The bill amends Government Code section 66314(d)(11) to extend the prohibition on requiring replacement parking when any parking space (whether covered or uncovered) is demolished or converted to accommodate an ADU. Previously, only garages and carports were covered, but SB 1211 expands this to include all types of parking spaces

Proposed Revision

CMMC Section 13-35(d)(14)(b) Parking. When ~~an existing garage, carport, or covered parking structure~~ a parking space or parking structure is converted or demolished in conjunction with the construction of an ADU or converted to an ADU, the off-street parking spaces do not have to be replaced, notwithstanding any other provision of this code to the contrary (e.g., the definition of "driveway" in section 13-6, Table 20-8(c) a driveway does not lose its status as a lawful "driveway" if it leads to a structure that was either converted from a garage into either an ADU or Junior ADU or demolished in conjunction with the construction of an ADU or Junior ADU. In no event shall the demolition of a ~~garage parking space or parking structure~~ structure be considered "in conjunction with" the construction of an ADU if the ADU will not be constructed within any portion of the footprint of the demolished ~~garage parking space or parking structure~~.

2. SB1211 – Non-Livable Space - The bill introduces a definition for "livable space" in Government Code section 66313(e) to clarify which portions of multifamily buildings can be converted into ADUs. "Livable space" is defined as any space intended for human habitation, such as areas for living, sleeping, cooking, or sanitation.

Proposed Revision

CMMCS Section 13-35(b)(4)(b)(1) Maximum ADUs within existing multifamily dwelling structure. No more than 25%, with any partial unit rounded down) of the number of existing multifamily dwelling units on the lot, but at least one unit, shall be permitted as ADU(s) constructed within the enclosed nonlivable space (e.g., a space in a dwelling not intended for human habitation, including living, sleeping, eating, cooking, or sanitation) ~~storage rooms, boiler rooms, hallways, attics, basements, or garages~~) of the existing multifamily dwelling structures; or

3. SB1211 – Increase in Detached ADUs -The bill amends Government Code section 66323(a)(4)(A) to increase the maximum number of detached ADUs allowed on lots with existing multifamily dwellings. The previous limit was two detached ADUs per lot; SB 1211

increases this to allow up to eight detached ADUs or one detached ADU per primary dwelling unit on the lot, whichever is less.

Proposed Revision

CMMCS Section 13-35(b)(4)(b)(3) Maximum Detached ADUs. No more than ~~two~~ eight detached ADUs are permitted, provided that the number of accessory dwelling units allowable pursuant to this clause shall not exceed the number of existing units on the lot. ~~Both~~ The units shall be detached from every residence on site (but need not be detached from each other). This section shall apply to detached structures that are converted and new construction detached ADUs. Conversion detached ADUs are not subject to height, setbacks, and maximum square footage; or

4. AB2533 – Legalizing Unpermitted ADUs and JADUs -This bill focuses on the legalization of unpermitted ADUs and Junior ADUs (JADUs) that were built before January 1, 2020. It aims to simplify the process for homeowners to bring their unpermitted ADUs into compliance.

Proposed Revision

CMMCS Section 13-35(d)(1) Ministerial project. Any application for an ADU or Junior ADU that meets the requirements of this section or as permissible in Government Code Section 66332 shall be approved without a public hearing.



Jan 27, 2025

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

By Email: PCPublicComments@costamesaca.gov; karen.klepack@costamesaca.gov;
jon.Zich@costamesaca.gov; johnny.rojas@costamesaca.gov;
angely.vallarta@costamesaca.gov; david.martinez@costamesaca.gov;

CC: cityclerk@costamesaca.gov; scott.drapkin@costamesaca.gov;
loriann.farrellharrison@costamesaca.gov; kimberly.barlow@costamesaca.gov;
planninginfo@costamesaca.gov

Re: Proposed amendments to the City's Accessory Dwelling Unit and Junior Accessory Dwelling Unit Regulations

Dear Costa Mesa Planning Commission,

The California Housing Defense Fund ("CalHDF") submits this letter as a public comment concerning item 1 on the agenda for the Planning Commission meeting scheduled for January 27, 2025, an amendment to the City's regulations for ADUs and JADUs. This proposed ordinance fails to comply with state law in several ways, and the City should address these problems before approving the ordinance.

Background

The law gives local governments authority to enact zoning ordinances that implement a variety of development standards on ADUs. (Gov. Code, § 66314.) The standards in these local ordinances are limited by state law so as not to overly restrict ADU development. (See *id.*) Separately from local ADU ordinances, Government Code section 66323 establishes a narrower set of ADU types that local governments have a ministerial duty to approve. "Notwithstanding Sections 66314 to 66322 ... a local agency shall ministerially approve" these types of ADUs. (*Id.* at subd. (a).) This means that ADUs that satisfy the minimal requirements of section 66323 must be approved regardless of any contrary provisions of the local ADU ordinance. (*Ibid.*) Local governments may not impose their own standards on such ADUs. (Gov. Code, § 66323, subd. (b) ["A local agency shall not impose any objective development or design standard that is not authorized by this section upon any accessory dwelling unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a)."].)

2221 Broadway, PH1, Oakland, CA 94612
hi@calhdf.org

In addition, ADUs that qualify for the protections of Government Code section 66323, like other ADUs, must be processed by local governments within 60 days of a complete permit application submittal. (Gov. Code, § 66317, subd. (a).)

State law also prohibits creating regulations on ADU development not explicitly allowed by state law. Government Code Section 66315 states, “No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.”

Impermissible Underlying Standards

City code section 13-35(b)(2) imposes all underlying city zoning standards on ADUs, except as modified by that section. City code section 13-35(b)(7) applies underlying city zoning standards on additions to existing dwellings to facilitate the conversion of space to ADUs. Neither of these provisions are allowed by state law.

As discussed *supra*, Government Code section 66323 mandates that the City approve a specific class of ADUs subject only to specified height and setback requirements, notwithstanding any local code requirements to the contrary. This means, for example, that the City cannot impose landscaping regulations, floor area ratio regulations, parking requirements, front setbacks, etc. on ADUs that qualify for the protections of Government Code section 66323.

Furthermore, Government Code section 66323, subdivision (a)(1) provides for an expansion of 150 square feet for the purposes of ingress and egress. As discussed *supra*, the City may not impose any zoning requirements on such an expansion.

Impermissible Size Limitations

City code section 13-35(b)(5)(a)(1) limits detached ADUs in conjunction with a single-family home to 1,200 square feet, and code section 13-35(b)(5)(b)(1) limits detached ADUs in conjunction with multifamily dwellings to 850 square feet or 1,000 square feet for an ADU that provides more than one bedroom.

However, these limits are not allowed for ADUs subject to the protections of Government Code section 66323, subdivisions (a)(1) and (a)(4). In the case of section 66323, subdivision (a)(1), state law does not allow a maximum unit size for a conversion of a portion of an existing structure into an ADU on a single-family property. For section 66323, subdivision (a)(4), state law does not allow a size limitation for any detached ADUs constructed on multifamily properties, provided they comply with the specified height and

setback requirements.

Impermissible Deed Restriction Requirement

City code section 13-35(d)(5) requires a deed restriction to be placed on the property prior to final inspection and occupancy of an ADU. This is a clear violation of Government Code section 66323, which prohibits any standards not explicitly authorized in that section. Deed restrictions are also not permitted by Government Code section 66315, which forbids standards not listed in section 66314, and it is unclear why the City would want applicants to go through the trouble of filing such a deed restriction, other than to discourage ADU development by increasing development cost.

The California Department of Housing and Community Development (“HCD”) has communicated that such deed restrictions are unlawful. The January 2025 HCD ADU [Handbook](#) specifically forbids deed restrictions as a condition of ADU development (see page 22).

Additionally, such deed restrictions imposed on ADUs (or on other accessory structures) are unenforceable. This is due to the absence of horizontal privity between the Town and the applicant. In other words, since the Town does not own the applicant’s property at the time of the application, and does not own a neighboring property to whose benefit the proposed restriction(s) redound, black letter property law bars the restrictions from binding future property owners. (See, e.g., *Scaringe v. J. C. C. Enters* (1988) 205 Cal.App.3d 1536 [describing the types of privity relationship between covenanting parties that allow enforcement of a deed restriction]; see also Civ. Code, §§ 1460 et seq.)

Impermissible Development Standards

CalHDF notes that City code section 13-35(d) states, “The following standards shall not preclude a unit built subject to Government Code section 66323 (a), which includes all converted ADUs, all converted JADUs, 800-square-foot, new-construction, detached ADUs with four-foot setbacks with single-family primary dwellings, and detached units with multifamily primary dwelling structures. Otherwise, all ADUs and Junior ADUs must comply with the following requirements:”

However, “shall not preclude” does not have the same meaning as “shall not apply to.” The wording of this paragraph strongly implies that the standards in section 3-35(d) apply to all ADUs, unless they would prohibit an ADU covered by Government code section, 66323 subdivision (a). This is not permissible. The City must explicitly exempt ADUs eligible for the protections of Government Code section 66323, subdivision (a) from all development standards other than the basic height and setback standards contained in state law.

This means that the following development standards cannot be imposed on ADUs subject to the protections of Government Code section 66323, subdivision (a):

- **Setbacks.** City code section 13-35(d)(8)(b) requires all ADUs to comply with front setbacks based on the underlying zoning district, and second floor portions of ADUs to comply with all setback requirements of the underlying zoning district. City code section 13-35(d)(9)(a) separately imposes a 25 foot front setback and the underlying zoning setback requirements on the second floor of an ADU. City code section 13-35(d)(9)(a)(4) imposes fenestration requirements on the 2nd floor portion of ADUs. None of these requirements are permitted for ADUs eligible for the protections of Government Code section 66323, as discussed *supra*. Government Code section 66323 requires that local agencies allow ADUs up to 20 feet in height in some circumstances. If the applicant can create two stories out of such a structure, then the City may not impose any regulations on the second floor other than what is explicitly allowed by section 66323. See page 18 of the ADU [Handbook](#) for further information.
- **Building-to-Building Separation.** City code section 13-35(d)(8)(c) requires all ADUs to be six feet from all other structures on the property. This requirement is not permitted for ADUs eligible for the protections of Government Code section 66323, as discussed *supra*. See page 18 of the ADU [Handbook](#) for further information. Additionally, building-to-building separation is separately regulated by the building code.
- **Architectural Standards.** City code sections 13-35(d)(11), 13-35(d)(12)(a), and 13-35(d)(13) impose design standards on all ADUs and new construction JADUs. However, as discussed *supra*, if the ADU or JADU qualifies for the protections of Government Code section 66323, subd. (a)(1), then the city must approve it ministerially, via building permit only, and cannot impose any such design regulations, as this section of state law only permits specified height and setback regulations, as discussed *supra*. Additionally, section 13-35(d)(12)(a) is phrased as a design “consideration.” Regardless of how this is phrased, a city official may not deny an application for a section 66323 ADU based on this standard.
- **Landscaping.** City code section 13-35(d)(17) imposes landscaping requirements on all ADUs that exceed 800 square feet. However, such requirements may not be imposed on any ADUs that qualify for the protections of Government Code section 66323, subdivision (a). It should be noted that while Government Code section 66323, subdivision (a)(2) has a size limit of 800 square feet, there are no size limits for ADUs described in subdivisions (a)(1), (a)(3), and (a)(4). The City therefore may not impose landscaping requirements on ADUs that qualify for the protections of those subdivisions, whether or not they exceed 800 square feet in size.



CalHDF appreciates the City's effort to implement state law governing ADU construction. However, the City should amend its ordinance to ensure that it complies with state law.

CalHDF is a 501(c)3 non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at www.calhdf.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dylan Casey", with a long horizontal flourish extending to the right.

Dylan Casey
CalHDF Executive Director

A handwritten signature in black ink, appearing to read "James M. Lloyd", with a long horizontal flourish extending to the right.

James M. Lloyd
CalHDF Director of Planning and Investigations



CITY OF COSTA MESA

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 25-196

Meeting Date: 2/24/2025

TITLE:

APPEAL OF THE DIRECTOR OF DEVELOPMENT SERVICES DETERMINATION THAT CONDITIONAL USE PERMIT PA-21-23 TO ESTABLISH A CANNABIS STOREFRONT LOCATED AT 1687 ORANGE AVENUE (KING'S CREW) HAS EXPIRED

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES
DEPARTMENT/PLANNING DIVISION

PRESENTED BY: GABRIEL VILLALOBOS, ASSISTANT PLANNER

CONTACT INFORMATION: GABRIEL VILLALOBOS, 714-754-5610;
GABRIEL.VILLALOBOS@costamesaca.gov

RECOMMENDATION:

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the appeal is not subject to the California Environmental Quality Act per California Public Resources Code Section 15268; and
2. Uphold the Director of Development Services determination that Conditional Use Permit PA-21-23 has expired pursuant to Costa Mesa Municipal Code Sections 13-29(k)(2) and Conditional Use Permit Condition of Approval No. 2.



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: February 24, 2025

ITEM NUMBER: PH-2

SUBJECT: APPEAL OF THE DIRECTOR OF DEVELOPMENT SERVICES DETERMINATION THAT CONDITIONAL USE PERMIT PA-21-23 TO ESTABLISH A CANNABIS STOREFRONT LOCATED AT 1687 ORANGE AVENUE (KING'S CREW) HAS EXPIRED

FROM: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTATION BY: GABRIEL VILLALOBOS, ASSISTANT PLANNER

**FOR FURTHER INFORMATION CONTACT: GABRIEL VILLALOBOS
714-754-5610**

GABRIEL.VILLALOBOS@costamesaca.gov

RECOMMENDATION:

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the appeal is not subject to the California Environmental Quality Act per California Public Resources Code Section 15268; and
2. Uphold the Director of Development Services determination that Conditional Use Permit PA-21-23 has expired pursuant to Costa Mesa Municipal Code Sections 13-29(k)(2) and Conditional Use Permit Condition of Approval No. 2.

APPLICANT OR AUTHORIZED AGENT:

The applicant/authorized agent is Laurie Holcolmb on behalf of Gold Flora Partners Costa Mesa LLC and the property owner, Orange Ave Investors, LLC.

BACKGROUND:

Pursuant to Costa Mesa Municipal Code (CMMC) Sections 9-494 and 13-200.93(c)(1), a conditional use permit (CUP) is required for the establishment of cannabis retail storefronts in Costa Mesa. On September 12, 2022, by a vote of 5-2, the Planning Commission approved CUP PA-21-23 and Resolution No. PC-2022-22, to allow the establishment of a retail cannabis storefront at 1687 Orange Avenue, subject to conditions of approval and local and State regulations.

A detailed description of the proposed use is provided in the September 12, 2022, Planning Commission Agenda Report linked below. The meeting minutes and video are also linked below.

- [September 12, 2022 Planning Commission Agenda Report](#)
- [September 12, 2022 Planning Commission Minutes](#)
- [September 12, 2022 Planning Commission Video](#)

As described further below, Section 13-29(k)(2)(a) of the CMMC and project Resolution Condition of Approval No. 2 establishes an expiration date of two years from the effective date of the CUP approval if specific actions by the applicant have not occurred. If the actions have not occurred and/or not expected to occur timely, the CMMC also permits an extension of time process based on the filing by the applicant a written request for an extension of time. The applicant did not file for an extension of time and on September 19, 2024, the application expired pursuant to the CMMC and a project condition of approval.

Public Hearing Continuation

On February 10, 2025, a Planning Commission public hearing was held which included this item on the agenda. Prior to the hearing date, the applicant requested a continuance of the item to allow for additional time to research records and correspondences to staff regarding the permit expiration. The Planning Commission approved the request for continuation to the February 24, 2025, Planning Commission hearing by a vote of 7-0. As of the date this report was written, staff has not received any additional applicant submittal/information.

ANALYSIS

Application for Appeal

Pursuant to CMMC Section 2-300 (Appeal and Review Procedure), “the purpose of this chapter is to provide an orderly and fair method of appeal and review of decisions of the staff, committees, commissions and council of the City”. The City’s appeal

procedures also requires that a decision on planning matters pursuant to Title 13 shall be made by the Planning Commission.

On December 9, 2024, Laurie Holcomb, an owner of Gold Flora Partners Costa Mesa LLC, filed an appeal of the City's planning mater decision that the CUP had expired; provided as Attachment 2 to this report. The "reasons for requesting appeal" was stated as:

"Additional time is needed to address Southern California Edison's comments regarding the power distribution to the building. SCE originally indicated that they would be replacing the pole transformer to accommodate the project. After further discussion, SCE changed their position and will be keeping the existing transformer with modifications. As a result, our current plans cannot be used and we will need to revise most of the existing circuits, lighting schedule, single line diagram and the pane schedule".

Time Limits and Extensions

Project Resolution Condition of Approval No. 2, which follows the language of CMMC Section 13-29(k), states:

Approval of the planning/zoning application is valid for two years from the effective date of this approval and will expire at the end of that period unless the applicant establishes the use by one of the following actions:

- 1) A building permit has been issued and construction has commenced, and has continued to maintain a valid building permit by making satisfactory progress as determined by the Building Official; or*
- 2) A certificate of occupancy has been issued; or*
- 3) The use is established and a business license has been issued.*

A time extension can be requested no less than thirty (30) days or more than sixty (60) days before the expiration date of the permit and submitted with the appropriate fee for review to the Planning Division. The Director of Development Services may extend the time for an approved permit or approval to be exercised up to 180 days subject to specific findings listed in Title 13, Section 13-29 (k)(6). Only one request for an extension of 180 days may be approved by the Director. Any subsequent extension requests shall be considered by the original approval authority.

An application for building permits for the subject project was originally submitted on May 1, 2023, under application BC23-00238. There were four rounds of Building Department review between May 2023 and April 2024 to address the City's corrections.

On May 17, 2024, the Building Technician requested a “clean” set of plans for final stamping (approval). On July 31, 2024, the Building Technician again requested a clean set of plans for final approval. The applicant did not provide the final set of plans for stamping and the building permit fees have not been paid in full.

As indicated above, the CMMC and project Condition of Approval No. 2 allows the applicant to, before the two-year expiration of the permit, request a time extension of up to 180 days subject to the Director of Development Services approval and specific findings in CMMC 13-29(k)(6), and also allows a subsequent time extension to be approved by the Planning Commission if needed for time beyond the aforementioned 180 days and initial two-year period. The applicant nor anyone acting on their behalf filed a written CUP extension of time, nor met any of the three requirements to establish the use pursuant to CMMC 13-29(k)(2)(b) and Condition of Approval No. 2. Therefore, on September 19, 2024, Conditional Use Permit Application PA-21-23 expired, and on December 2, 2024, the City issued a notice of expiration to the applicant.

GENERAL PLAN CONFORMANCE

As described in the September 12, 2022, Agenda Report, the proposed use is consistent with the City of Costa Mesa 2015-2035 General Plan.

ENVIRONMENTAL DETERMINATION

As described in the September 12, 2022, Agenda Report and Resolution No. 2022-22, the proposed cannabis storefront use is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Class 1), Existing Facilities.

The determination that a CUP has expired is a “ministerial” decision and is not subject to the California Environmental Quality Act pursuant to California Public Resources Code Section 21068.

LEGAL REVIEW

The draft Resolution has been approved as to form by the City Attorney’s Office.

PUBLIC NOTICE

Pursuant to CMMC Section CMMC 2-308 (*Notice of Appeal or Review*), notice of the hearing for the appeal or review shall be given in the same manner as any required notice for the hearing at which the decision subject to the appeal or review was made. As provided with the original Planning Commission review, pursuant to CMMC Section 13-29(d), 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 this report, no written public comments have been received. Any public comments received prior to the February 10, 2025, Planning Commission meeting will be provided separately.

CONCLUSION

Land use and building permit expirations serve to ensure that construction projects are completed within a reasonable timeframe, preventing prolonged disruptions to the community by prompting project owners to actively progress and finish their work, rather than letting projects linger indefinitely. Permit expirations also assist in maintaining safety standards by requiring re-evaluation of the project if significant time passes without substantial progress.

Both the CMMC and the project conditions of approval include specific regulations related to expiration of the subject permit. Included in these regulations, time extensions are permitted; however, the applicant nor anyone acting on their behalf requested a CUP extension and therefore the land use permit expired pursuant to the CMMC.

The applicant asserts that the “reason for requesting appeal” is due to project development issue related to project associated “power distribution to the building”; however, this “reason” is not relevant to the matter of permit expiration. Since the applicant did not file an extension of time, the CMMC requires that the permit be expired. Importantly, the CMMC does not provide any mechanism to re-activate a land use permit after expiration; except, the re-submittal of a new application. Pursuant to CMMC Section 13-29(k)(7), “after the expiration of the permit or approval, no further work shall be done on the site and no further use of the site shall occur until a new permit or approval, or other city permits or approvals are first obtained”.

The Planning Commission review of this matter is generally limited to if the Director of Development Services determination is consistent with the applicable CMMC sections and project conditions of approval. Essentially, “did the applicant submit a request for a time extension”. If the Planning Commission cannot determine that an extension of time was filed, than the Planning Commission should uphold the Director of Development Services determination that the CUP application pursuant to the CMMC is expired.

ATTACHMENTS

1. Draft Resolution
2. Appeal Application
3. Notice of Expiration of CUP
4. Request for Continuation

RESOLUTION NO. PC-2025-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA, TO DENY THE APPEAL AND UPHOLD THE DIRECTOR OF DEVELOPMENT SERVICES DETERMINATION THAT CONDITIONAL USE PERMIT APPLICATION PA-21-23 FOR A RETAIL CANNABIS STOREFRONT BUSINESS LOCATED AT 1687 ORANGE AVENUE (KING'S CREW) HAS EXPIRED

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

WHEREAS, appeal application PAPL-25-0001 was filed by Laurie Holcomb, representing Gold Flora Partners Costa Mesa LLC, and the property owner, Orange Ave Investments, LLC, requesting an appeal of the Director of Development Services determination that Conditional Use Permit PA-21-23 to operate a cannabis retail storefront business within an existing 2,778-square-foot commercial building located at 1687 Orange Avenue has expired;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on September 12, 2022 with all persons having the opportunity to speak for and against the Conditional Use Permit, and the project was approved by the Planning Commission on a 5-2 vote;

WHEREAS, Costa Mesa Municipal Code Section 13-29(k)(2)(a) and Condition of Approval No. 2, approval of the planning application is valid for two years from the effective date and expires at the end of that period unless the applicant establishes the use by one of the following actions: 1) a building permit has been issued and construction has commenced, and has continued to maintain a valid building permit by making satisfactory progress as determined by the Building Official, 2) a certificate of occupancy has been issued, or 3) the use is established and a business license has been issued;

WHEREAS, as of September 20, 2024, two years passed from the effective date of the CUP, and the application expired as none of the required actions for extension or establishing the use were taken, nor has the applicant filed for an extension of time;

WHEREAS, the City issued a Notice of Expiration on December 2, 2024;

WHEREAS, an appeal of the Director of Development Services determination of the expiration of the CUP was filed on December 9, 2024;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on February 24, 2025 with all persons having the opportunity to speak for and against the appeal;

WHEREAS, the determination that a Conditional Use Permit has expired based on standard applicable regulations of the Costa Mesa Municipal Code (CMMC) and project conditions of approval is a “ministerial” decision and is therefore exempt from the California Environmental Quality Act pursuant to California Public Resources Code Section 15268;

NOW, THEREFORE, based on applicable evidence in the record, project conditions of approval and regulations pursuant to the Cost Mesa Municipal Code, the Planning Commission hereby **DENIES** the appeal and upholds the Director of Development Services determination that Conditional Use Permit PA-21-23 is expired.

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 24th day of February, 2025.

Jeffrey Harlan, 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-2025-___ was passed and adopted at a regular meeting of the City of Costa Mesa Planning Commission held on February 10, 2025 by the following votes:

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

ABSTAIN: COMMISSIONERS

Scott Drapkin, Secretary
Costa Mesa Planning Commission



City of Costa Mesa

RESERVE FOR FILING STAMP
CITY CLERK
24 DEC -9 PM 3:23
CITY OF COSTA MESA

- Appeal of Planning Commission Decision:
 - \$1,220.00 (Tier 1)¹
 - \$3,825.00 (Tier 2)²
- Appeal of Non-Planning Commission Decision:
 - \$690.00 (Tier 1)¹
 - \$3,825.00 (Tier 2)²

File with: City Clerk
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
714-754-5225

APPLICATION FOR APPEAL OR REVIEW

Applicant Name* Gold Flora Partners Costa Mesa, LLC

Address 3165 Red Hill Avenue, Costa Mesa, CA 92626

Phone 949-252-1908 Ext: 300

REQUEST FOR: APPEAL REVIEW**

Decision of which appeal or review is requested: (give application number, if applicable, and the date of the decision, if known.)

Conditional Use Permit PA-21-23, 1687 Orange Ave.

Decision by: Scott Drapkin

Reasons for requesting appeal or review:

Additional time is needed to address Southern California Edison's comments regarding the power distribution to the building. SCE originally indicated that they would be replacing the pole transformer to accommodate the project. After further discussion, SCE changed their position and will be keeping the existing transformer with modifications. As a result, our current plans cannot be used and we will need to update our electrical plans to a 240/120V 3Ph, 4W panel and gear. In addition, we will need to revise most of the existing circuits, lighting schedule, single line diagram and the panel schedule.

Date: 12-9-2024

Signature:

*If you are serving as the agent for another person, please identify the person you represent and provide proof of authorization.
**Review may be requested only by Planning Commission, Planning Commission Member, City Council, or City Council Member

For office use only – do not write below this line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:
If appeal or review is for a person or body other than City Council/Planning Commission, date of hearing of appeal or review

Updated September 2023

¹ Includes owners and/or occupants of a property located within 500 feet of project site (excluding owners and/or occupants of the project site).

² Includes the project applicant, owners and/or occupants of the project site, and owners and/or occupants of a property located greater than 500 feet from the project site.



December 2, 2024

Gold Flora Partners Costa Mesa, LLC
 Greg Gamet
 3165 Red Hill Avenue
 Costa Mesa, CA 92626
 greg@goldflora.com

Orange Ave Investors, LLC
 250 Newport Center Drive, Suite 300
 Newport Beach, CA 92660
 jamie@dmpproperties.com

Sent via USPS Certified Mail and Email

Subject: Notice of Expiration of Conditional Use Permit PA-21-23, 1687 Orange Avenue

Dear Mr. Gamet;

This is a notice that Conditional Use Permit (CUP) PA-21-23, to allow a cannabis storefront use at 1687 Orange Avenue expired by operation of law on September 20, 2024, pursuant to the provisions of both Costa Mesa Municipal Code (CMMC) section 13-29(k) and the project conditions of the approval. The Costa Mesa Planning Commission approved the subject CUP by Resolution No. PC-2022-22 on September 12, 2022, which approval became effective on September 19, 2022. However, condition of approval (COA) No. 2, which follows the language of CMMC section 13-29(k), states:

Approval of the planning/zoning application is valid for two years from the effective date of this approval and will expire at the end of that period unless the applicant establishes the use by one of the following actions:

- 1) a building permit has been issued and construction has commenced, and has continued to maintain a valid building permit by making satisfactory progress as determined by the Building Official,
- 2) a certificate of occupancy has been issued, or
- 3) the use is established and a business license has been issued.

A time extension can be requested no less than 30 days or more than sixty (60) days before the expiration date of the permit and submitted with the appropriate fee for review to the Planning Division. The Director of Development Services may extend the time for an approved permit or approval to be exercised up to 180 days subject to specific findings listed in Title 13, Section 13-29 (k)(6). Only one request for an extension of 180 days may be approved by the Director. Any subsequent extension requests shall be considered by the original approval authority.

77 FAIR DRIVE, POST OFFICE BOX 1200, COSTA MESA CA. 92628-1200

Building Safety Division (714) 754-5273

Community Improvement Division (714) 754-5638

Housing & Community Development (714) 754-4870

Planning Division (714) 754-5245

www.costamesaca.gov

1 | Page

As of the date of this letter, neither you nor anyone acting on your behalf has timely requested a CUP extension, nor have any of the three requirements to establish the use pursuant to COA No. 2, and as required by CMMC section 12-29(k)(2)(b), been satisfied. Accordingly, pursuant to CMMC section 13-29(k), the subject CUP expired on September 20, 2024, and is therefore null, void and of no force and effect. Please be advised that pursuant to section 12-29(k)(7), no further work shall be done on the site and no further use of the site shall occur until a new permit or approval, or other city permits or approvals are first obtained.

If you wish to appeal this determination, an appeal must be filed, accompanied by the appeal fee, with the City Clerk, 77 Fair Drive, Costa Mesa, CA before 5:00 p.m. on December 9, 2024, pursuant to the provisions of CMMC Title 2, Chapter IX, sections 2-300 to 2-314. Please contact the City Clerk's Office at 714-754-5225 if you have any questions.

Sincerely,



Scott Drapkin

Assistant Development Services Director

Cc: Tarquin Preziosi, Esq., Assistant City Attorney

Enclosure - Copy of Resolution No. PC-2022-22 re: PA-21-23

RESOLUTION NO. PC-2022-22

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING PLANNING APPLICATION 21-23 FOR A STOREFRONT RETAIL CANNABIS BUSINESS (KING'S CREW) IN THE C1 ZONE AT 1687 ORANGE AVENUE

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA 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 21-23 was filed by Greg Gamet with Gold Flora Costa Mesa LLC, authorized agent for the property owner, Orange Ave Investors LLC, requesting approval of the following:

A Conditional Use Permit to operate a storefront retail cannabis business within an existing 2,778-square-foot commercial building located at 1687 Orange Avenue. 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 September 12, 2022 with all persons having the opportunity to speak for and against the proposal;

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), the project is exempt from the provisions of CEQA per Section 15301 (Class 1), for Existing Facilities, as described specifically in the staff report;

WHEREAS, the CEQA categorical exemption for this project reflects the independent judgement of the City of Costa Mesa.

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-2022-22 was passed and adopted at a regular meeting of the City of Costa Mesa Planning Commission held on September 12, 2022 by the following votes:

AYES: de Arakal, Zich, Ereth, Rojas, Toler

NOES: Russell, Vivar

ABSENT: None

ABSTAIN: None



Scott Drapkin, Secretary
Costa Mesa Planning Commission

Resolution No. PC-2022-22

EXHIBIT A

FINDINGS

- A. The proposed project complies with Costa Mesa Municipal Code Section 13-29(g)(2) because:

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: 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. Pursuant to the CMMC, cannabis retail storefronts are conditionally 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. All retail sales would take place underroof, no outdoor storage or sales are proposed nor would be allowed and operations would be conditioned to be compliant with applicable local and State laws as well as to minimize potential impacts. Staff does not anticipate that the proposed retail cannabis use would be materially detrimental to the adjacent uses that include a variety of commercial uses and multi-tenant commercial centers. The proposed offsite parking spaces would not negatively impact the adjacent commercial center's operations given that there is surplus parking available. Therefore, the retail cannabis use would be compatible with other properties within the area, and in compliance with local and State requirements.

Finding: 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.

Facts in Support of Finding: 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 all 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. 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.

Finding: 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.

Facts in Support of Finding: The proposed retail use is located within an existing commercial building on a property that has a General Plan land use classification of "General Commercial." No additional square footage is proposed; therefore, approving the CUP would not increase site intensity. As stated in the General Plan Land Use Element, the City's commercial designations "accommodate the full range of commercial activity present and desired in Costa Mesa." The 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.

- B. 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 been used for commercial activities and the application does not propose an increase in floor area or otherwise expand 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.
- C. The project is subject to a traffic impact fee, pursuant to Chapter XII, Article 3 Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT B

CONDITIONS OF APPROVAL

General

- Plng.
1. The use of this property as a cannabis storefront business shall comply with the approved plans and terms described in the resolution, these conditions of approval, and applicable sections of the Costa Mesa Municipal Code (CMMC). The Planning Commission may modify or revoke any planning application based on findings related to public nuisance and/or noncompliance with conditions of approval [Title 13, Section 13-29(o)].
 2. Approval of the planning/zoning application is valid for two years from the effective date of this approval and will expire at the end of that period unless the applicant establishes the use by one of the following actions: 1) a building permit has been issued and construction has commenced, and has continued to maintain a valid building permit by making satisfactory progress as determined by the Building Official, 2) a certificate of occupancy has been issued, or 3) the use is established and a business license has been issued. A time extension can be requested no less than 30 days or more than sixty (60) days before the expiration date of the permit and submitted with the appropriate fee for review to the Planning Division. The Director of Development Services may extend the time for an approved permit or approval to be exercised up to 180 days subject to specific findings listed in Title 13, Section 13-29 (k) (6). Only one request for an extension of 180 days may be approved by the Director. Any subsequent extension requests shall be considered by the original approval authority.
 3. No person may engage in any cannabis business or in any cannabis activity within the City including delivery or sale of cannabis or a cannabis product unless the person:
 - a. Has a valid Cannabis Business Permit from the City;
 - b. Has paid all Cannabis Business Permit and all application fees and deposits established by resolution of the City Council, including annual Community Improvement Division inspection deposits;
 - c. Has obtained all applicable planning, zoning, building, and other applicable permits from the relevant governmental agency which may be applicable to the zoning district in which such cannabis business intends to operate;
 - d. Has obtained a City business license pursuant to Chapter I of the Municipal Code;
 - e. Is in compliance with all requirements of the Community Improvement Division regarding the property;
 - f. Has obtained any and all licenses required by State law and/or regulations; and
 - g. Has satisfied all CUP conditions of approval.

4. Any change in the operational characteristics of the use shall be subject to Planning Division review and may require an amendment to the Conditional Use Permit, subject to either Zoning Administrator or Planning Commission approval, depending on the nature of the proposed change.
5. No cultivation of cannabis is allowed anywhere on the premises.
6. The uses authorized by this Conditional Use Permit must be conducted in accordance with all applicable State and local laws, including, but not limited to compliance with the most current versions of the provisions of the California Code of Regulations that regulate the uses permitted hereby. Any violation thereof shall be a violation of the conditions of this permit and may be cause for revocation of this permit.
7. Except for operations allowed by this Conditional Use Permit and under an active Cannabis Business Permit and State Type 10 license, no permit holder or any of its employees shall sell, distribute, furnish, and/or otherwise provide any cannabis or cannabis product to any person, firm, corporation, group or any other entity, unless that person or entity is a lawful, bona fide customer, or it possesses all currently valid permits and/or licenses required by both the State of California and applicable local governmental entity to lawfully receive such cannabis and to engage in a "cannabis activity" as defined by Costa Mesa Municipal Code sec. 9-485. The permit holder shall verify that the recipient, regardless of where it is located, of any cannabis or cannabis product sold, distributed, furnished, and/or otherwise provided by or on behalf of the permit holder, possesses all required permits and/or licenses therefor.
8. The applicant shall defend, indemnify, and hold harmless the City, its elected and appointed officials, agents, officers and employees from any claim, action, or proceeding (collectively referred to as "proceeding") brought against the City, its elected and appointed officials, agents, officers or employees arising out of, or which are in any way related to, the applicant's project, or any approvals granted by City related to the applicant's project. The indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and cost of suit, attorney's fees, and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, the City and/or the parties initiating or bringing such proceeding. This indemnity provision shall include the applicant's obligation to indemnify the City for all the City's costs, fees, and damages that the City incurs in enforcing the indemnification provisions set forth in this section. City shall have the right to choose its own legal counsel to represent the City's interests, and applicant shall indemnify City for all such costs incurred by City.
9. If any section, division, sentence, clause, phrase or portion of this approval is 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.
10. The use shall operate in accordance with the approved Security Plan. Any changes to the Security Plan must be submitted to the Planning Division with

a written explanation of the changes. If the Director determines that changes are substantial, a modification to the Cannabis Business Permit and/or amendment to the CUP may be required.

11. A parking management plan, including techniques described in Operational Condition of Approval No. 6, must be approved by the Director of Economic and Development Services or designee prior to any grand opening or other high volume event on the subject property.
- Bldg. 12. Development shall comply with the requirements of the following adopted codes: 2019 California Residential Code, 2019 California Building Code, 2019 California Electrical Code, 2019 California Mechanical Code, 2019 California Plumbing Code, 2019 California Green Building Standards Code and 2019 California Energy Code (or the applicable adopted, California Residential Code, California Building Code, California Electrical Code, California Mechanical Code, California Plumbing Code, California Green Building Standards and California Energy Code at the time of plan submittal or permit issuance) and California Code of Regulations also known as the California Building Standards Code, as amended by the City of Costa Mesa. Requirements for accessibility to sites, facilities, buildings and elements by individuals with disability shall comply with chapter 11B of the 2019 California Building Code.
- CBP 13. The operator shall maintain a valid Cannabis Business Permit and a valid Business License at all times. The Cannabis Business Permit application number associated with this address is MQ-21-17. Upon issuance, the Cannabis Business Permit will be valid for a two-year period and must be renewed with the City prior to its expiration date, including the payment of permit renewal fees. No more than one Cannabis Business Permit may be issued to this property.
14. The use shall operate in accordance with the approved Business Plan. Any changes to the Business Plan must be submitted to the Planning Division with a written explanation of the changes. If the Director determines that changes are substantial, a modification to the Cannabis Business Permit and/or amendment to the CUP may be required.
15. A Cannabis Business Permit may be revoked upon a hearing by the Director of Economic and Development Services or designee pursuant to Section 9-120 of the CMMC for failing to comply with the terms of the permit, the applicable provisions of the CMMC, State law or regulation and/or any condition of any other permit issued pursuant to this code. Revocation of the Cannabis Business Permit shall trigger the City's proceedings to revoke the Conditional Use Permit and its amendments. The Conditional Use Permit granted herein shall not be construed to allow any subsequent owner/operator to continue operating under PA-21-23 until a valid new Cannabis Business Permit is received from the City of Costa Mesa.
16. A change in ownership affecting an interest of 51 or more percent, or an incremental change in ownership that will result in a change of 51 or more percent over a three year period, shall require submittal and approval of a

new Cannabis Business Permit. A change in ownership that affects an interest of less than 51 percent shall require approval of a minor modification to the Cannabis Business Permit.

- State 17. The business must obtain any and all licenses required by State law and/or regulation prior to engaging in any cannabis activity at the property.
18. The applicant shall obtain State License Type 10 prior to operating. The uses authorized by this Conditional Use Permit must be conducted in accordance with all applicable State and local laws, including, but not limited to compliance with the most current versions of the provisions of the California Code of Regulations that regulate the uses permitted hereby. Any violation thereof shall be a violation of the conditions of this permit and may be cause for revocation of this permit.
19. Suspension of a license issued by the State of California, or by any of its departments or divisions, shall immediately suspend the ability of a cannabis business to operate within the City, until the State of California, or its respective department or division, reinstates or reissues the State license. Should the State of California, or any of its departments or divisions, revoke or terminate the license of a cannabis business, such revocation or termination shall also revoke or terminate the ability of a cannabis business to operate within the City. This Conditional Use Permit will expire and be of no further force and effect if any State issued license remains suspended for a period exceeding six (6) months. Documentation of three violations during routine inspections or investigations of complaints shall result in the Community Improvement Division scheduling a hearing before the Director of Development Services to consider revocation of the Cannabis Business Permit.
20. Persons under the age of twenty-one (21) years shall not be allowed on the premises of this business, except as otherwise specifically provided for by state law and CMMC Section 9-495(h)(6). It shall be unlawful and a violation of this CUP for the owner/operator to employ any person who is not at least twenty-one (21) years of age.
- PD 21. Every manager, supervisor, employee or volunteer of the cannabis business must submit fingerprints and other information specified on the Cannabis Business Permit for a background check by the Costa Mesa Police Department to verify that person's criminal history. No employee or volunteer may commence paid or unpaid work for the business until the background checks have been approved. No cannabis business or owner thereof may employ any person who has been convicted of a felony within the past 7 years, unless that felony has been dismissed, withdrawn, expunged or set aside pursuant to Penal Code sections 1203.4, 1000 or 1385, or who is currently on probation or parole for the sale, distribution, possession or manufacture of a controlled substance.
- CID 22. Should any employee, volunteer or other person who possesses an identification badge be terminated or cease their employment with the business, the applicant shall return such identification badge to the City of

Costa Mesa Community Improvement Division within 24 hours, not including weekends and holidays.

23. The property owner and applicant shall use "Crime Prevention Through Environmental Design" techniques to reduce opportunities for crime, loitering and encampments on the property as deemed appropriate by the Community Improvement Manager and Director of Economic and Development Services.
- Finance 24. This business operator shall pay all sales, use, business and other applicable taxes, and all license, registration, and other fees and permits required under State and local law. This business operator shall cooperate with the City with respect to any reasonable request to audit the cannabis business' books and records for the purpose of verifying compliance with the CMMC and this CUP, including but not limited to a verification of the amount of taxes required to be paid during any period.
25. The following records and recordkeeping shall be maintained/conducted:
 - a. The owner/operator of this cannabis business shall maintain accurate books and records, detailing all of the revenues and expenses of the business, and all of its assets and liabilities. On no less than an annual basis, or at any time upon reasonable request of the City, the owner/operator shall file a sworn statement detailing the number of sales by the cannabis business during the previous twelve month period (or shorter period based upon the timing of the request), provided on a per-month basis. The statement shall also include gross sales for each month, and all applicable taxes paid or due to be paid.
 - b. The owner/operator shall maintain a current register of the names and the contact information (including the name, address, and telephone number) of anyone owning or holding an interest in the cannabis business, and separately of all the officers, managers, employees, agents and volunteers currently employed or otherwise engaged by the cannabis business. The register required by this condition shall be provided to the City Manager upon a reasonable request.
 - c. The owner/operator shall maintain an inventory control and reporting system that accurately documents the present location, amounts, and descriptions of all cannabis and cannabis products for all stages of the retail sale process. Subject to any restrictions under the Health Insurance Portability and Accountability Act (HIPPA), the owner/operator shall allow City officials to have access to the business's books, records, accounts, together with any other data or documents relevant to its permitted cannabis activities, for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data or documents will be produced no later than twenty-four (24) hours after receipt of the City's request, unless otherwise stipulated by the City.
 - d. The owner/operator shall have in place a point-of-sale tracking system to track and report on all aspects of the cannabis business including, but not limited to, such matters as cannabis tracking, inventory data,

and gross sales (by weight and by sale). The owner/operator shall ensure that such information is compatible with the City's record-keeping systems. The system must have the capability to produce historical transactional data for review by the City Manager or designees.

- Insp.
26. The City Manager or designees may enter this business at any time during the hours of operation without notice, and inspect the location of this business as well as any recordings and records required to be maintained pursuant to Title 9, Chapter VI or under applicable provisions of State law.
 27. Inspections of this cannabis business by the City will be conducted, at a minimum, on a quarterly basis. The applicant will pay for the inspections according to the adopted Fee Schedule.
 28. Quarterly Fire & Life Safety Inspections will be conducted by the Community Risk Reduction Division to verify compliance with the approved operation. The applicant will pay for the inspection according to the Additional Required Inspections as adopted in the Fee Schedule.
 29. Annual Fire & Life Safety Inspections will be conducted by the Fire Station Crew for emergency response pre-planning and site access familiarization. The applicant will pay for the inspection according to the adopted Fee Schedule.
 30. Pursuant to Title 9, Chapter VI, it is unlawful for any person having responsibility for the operation of a cannabis business, to impede, obstruct, interfere with, or otherwise not to allow, the City to conduct an inspection, review or copy records, recordings or other documents required to be maintained by a cannabis business under this chapter or under State or local law. It is also unlawful for a person to conceal, destroy, deface, damage, or falsify any records, recordings or other documents required to be maintained by a cannabis business under this chapter or under State or local law.

Prior to Issuance of Building Permits

1. Plans shall be prepared, stamped and signed by a California licensed Architect or Engineer.
2. The conditions of approval and ordinance or code provisions of Planning Application 21-23 shall be blueprinted on the face of the site plan as part of the plan check submittal package.
3. Prior to the Building Division issuing a demolition permit, the applicant shall contact the South Coast Air Quality Management District (AQMD) located at:
21865 Copley Dr.
Diamond Bar, CA 91765-4178
Tel: 909- 396-2000
Or visit its website:
<http://www.costamesaca.gov/modules/showdocument.aspx?documentid>

- =23381. The Building Division will not issue a demolition permit until an Identification Number is provided by AQMD.
4. 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. Building and mechanical permits must be obtained from the Building Division prior to work commencing on any part of the odor control system.
 5. Plan check submittal shall include air quality/odor control device specification sheets. Plan check submittal shall also include a landscape plan that complies with CMMC requirements, includes drought-tolerant plants and/or California native plants, parking lot striping in conformance with CMMC requirements, and trash enclosure.
 6. No signage shall be installed until the owner/operator or its designated contractor has obtained permits required from the City. Business identification signage shall be limited to that needed for identification only. Business identification signage shall not include any references to cannabis, whether in words or symbols. All signs shall comply with the CMMC.
 7. The plans and business operator shall comply with the requirements of the 2019 California Fire Code, including the 2019 Intervening Update and referenced standards as amended by the City of Costa Mesa.
 8. The Traffic Impact Fee as calculated by the Transportation Services Division shall be paid in full.
 9. Construction documents shall include a temporary fencing and temporary security lighting exhibit to ensure the site is secured during construction and to discourage crime, vandalism, and illegal encampments.
 10. The applicant shall submit a lighting plan to the Planning Division for review and approval. The lighting plan shall show locations of all security lighting. As determined by the Director of Economic and Development Services or their designee, a photometric study may be required to demonstrate compliance with the following: (a) lighting levels on the property including the parking lot shall be adequate for safety and security purposes (generally, at least 1.0 foot candle), (b) lighting design and layout shall minimize light spill at the adjacent residential property line and at other light-sensitive uses (generally, no more than 0.5-footcandle at the property line), and (c) glare shields may be required to prevent light spill.
 11. Two (2) sets of detailed landscape and irrigation plans, which meet the requirements set forth in Costa Mesa Municipal Code Sections 13-101 through 13-108, shall be required as part of the project plan check review and approval process. Plans shall be forwarded to the Planning Division for final approval prior to issuance of building permits.
 12. Obtain a permit from the City of Costa Mesa, Engineering Division, at the time of plans submittal and then reconstruct P.C.C. driveway approach per City of Costa Mesa Standards as noted on the Site Plan. Location and dimensions are subject to the approval of the Transportation Services

- Manager. Accessibility compliance required for all new driveway approaches.
- PC Modified 13. The applicant shall contact the Orange County Health Care Agency and implement any actions necessary to comply with State and local laws and regulations pertaining to hazardous materials, if applicable to the proposed tenant improvement. The applicant shall submit documentation confirming communications with the Orange County Health Care Agency and include any proposed actions (if required) as part of the building plan submittal in conformance with this condition.
- PC 14. A direct pedestrian connection from the offsite parking spaces (as identified on the CUP site plan) to the licensed premise shall be provided and shown on the final construction drawings.

Prior to Issuance of a Certificate of Use/Occupancy

1. The operator, contractors, and subcontractors must have valid business licenses to do business in the City of Costa Mesa. Final occupancy and utility releases will not be granted until all such licenses have been obtained.

Prior to Issuance of Cannabis Business Permit

1. The applicant shall contact the Planning Division for a facility inspection and provide a matrix of conditions of approval explaining how each was met prior to issuance of a Cannabis Business Permit.
2. The applicant shall pay the public notice fee (\$1 per notice post card) and the newspaper ad publishing cost.
3. The final Security Plan shall be consistent with the approved building plans.
4. Each entrance to the business shall be visibly posted with a clear and legible notice stating the following:
 - a. That smoking, ingesting, or otherwise consuming cannabis on the premises or in the areas adjacent to the cannabis business is prohibited;
 - b. That no person under the age of twenty-one (21) years of age is permitted to enter upon the premises;
 - c. That loitering by persons outside the facility both on the premises and within fifty (50) feet of the premises is prohibited; and
 - d. The premise is a licensed cannabis operation approved by the City of Costa Mesa. The City may also issue a window/door sticker, which shall be visibly posted.
5. The owner/operator shall obtain and maintain at all times during the term of the permit comprehensive general liability insurance and comprehensive automotive liability insurance protecting the permittee in an amount of not less than two million dollars (\$2,000,000.00) per occurrence, combined single limit, including bodily injury and property damage and not less than two million dollars (\$2,000,000.00) aggregate for each personal injury liability, products-completed operations and each accident, issued by an

insurance provider admitted and authorized to do business in California and shall be rated at least A-:viii in A.M. Best & Company's Insurance Guide. Such policies of insurance shall be endorsed to name the City of Costa Mesa as an additional insured. Proof of said insurance must be provided to the Planning Division before the business commences operations. Any changes to the insurance policy must be submitted to the Planning Division within 10 days of the date the change is effective.

6. The applicant shall submit an executed Retail Cannabis Business Permit Defense and Indemnity Agreement on a form to be provided by the City.
7. The applicant shall post wayfinding signs within the parking lot directing customers to the surplus offsite parking spaces located in the adjacent property at 171-187 East 17th Street. These parking spaces shall be signed for cannabis storefront customers. The language of the wayfinding and parking identification signs shall be reviewed and approved by the Planning Division prior to installation.

Operational Conditions

1. No product deliveries to the facility shall occur after 10:00 PM and before 7:00 AM.
2. Onsite sales to customers is limited to the hours between 7:00 AM and 10:00 PM.
3. At least one security guard shall be onsite at all times.
4. The operator shall maintain free of litter all areas of the property under which applicant has control.
5. The use shall be conducted, at all times, 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.
6. If parking shortages or other parking-related problems develop, the business owner or operator will be required to institute appropriate operational measures necessary to minimize or eliminate the problem in a manner deemed appropriate by the Director of Economic and Development Services or designee. Temporary or permanent parking management strategies include, but are not limited to, reducing operating hours of the business, hiring an additional employee trained in traffic control to monitor parking lot use and assist with customer parking lot circulation, and offering discounts for online and phone orders,.
7. All employees must wear an identification badge while on the premises of the business, in a format prescribed by the City Manager or designee. When on the premises, badges must be clearly visible and worn on outermost clothing and above the waist in a visible location.
8. Vendor product loading and unloading shall only take place within direct unobstructed view of surveillance cameras, located in close proximity to the vendor entry door, as shown on an exhibit approved by the Director of Economic and Development Services or designee. No loading and unloading

of cannabis products into or from the vehicles shall take place outside of camera view. The security guard shall monitor all on-site loading and unloading of vehicles. Video surveillance cameras shall be installed on the exterior of the building with direct views of the vendor entry door and the entire parking lot. Any modifications or additional vehicle loading and unloading areas shall be submitted to the Director of Economic and Development Services or designee for approval.

9. Vendor vehicle standing, loading and unloading shall be conducted so as not to interfere with normal use of streets, sidewalks, driveways and on-site parking.
10. The sale, dispensing, or consumption of alcoholic beverages on or about the premises is prohibited.
11. No outdoor storage or display of cannabis or cannabis products is permitted at any time.
12. Cannabis shall not be consumed on the property at any time, in any form.
13. The owner/operator shall prohibit loitering on and within fifty (50) feet of the property.
14. No cannabis or cannabis products, or graphics depicting cannabis or cannabis products, shall be visible from the exterior of the property.
15. The owner or operator shall maintain air quality/odor control devices by replacing filters on a regular basis, as specified in the manufacturer specifications.
16. If cannabis odor is detected outside the building, the business owner or operator shall institute corrective measures necessary to minimize or eliminate the problem in a manner deemed appropriate by the Director of Economic and Development Services.
17. Cannabis liquid or solid waste must be made unusable and unrecognizable prior to leaving a secured storage area and shall be disposed of at facility approved to receive such waste.
18. Each transaction involving the exchange of cannabis goods between the business and consumer shall include the following information: (1) Date and time of transaction; (2) Name and employee number/identification of the employee who processed the sale; (3) List of all cannabis goods purchased including quantity; and (4) Total transaction amount paid.
19. Prior to operation, the applicant shall submit plans and obtain City approval for the installation of a bicycle storage area for a minimum of two employee bicycles and personal storage lockers for employees who bike to work within the interior of the building.
20. A parking attendant shall be required to monitor the parking lot and control the flow of traffic including directing customers to the available offsite parking spaces in the adjacent property at 171-187 East 17th Street. The parking attendant shall be stationed near the driveway entrance.
21. Should the offsite parking provided at 171-187 East 17th Street be terminated, the applicant must notify the Director of Economic and Development Services in writing 30 days prior to termination and shall secure other equivalent offsite

PC
Modified

parking to address parking shortages, subject to review and approval by the Economic and Development Services Director or designee.

22. Employees shall park offsite at the office location addressed 3165 Red Hill Avenue as described in the staff report and be shuttled to/from work. Sufficient parking for employees shall be maintained at this location or other equivalent location subject to review and approval by the Economic and Development Services Director or designee. Prior to issuance of a Cannabis Business Permit, the applicant shall provide a plan for the employee offsite parking to be approved by the Economic and Development Services Director or designee (the plan shall include the address, existing uses, number of spaces, shuttle process and other information that is deemed necessary by the Planning Division to confirm that the employee parking is available and will adequately operate).

- PC
23. After six-months of business operations, the Planning Commission shall review the CUP, specifically in regard to parking and circulation. Planning Division staff shall provide a verbal report to the Planning Commission regarding the status of the business' parking and circulation management. If necessary, the Planning Commission may impose additional conditions of approval or modify existing ones to ensure the parking and circulation are managed efficiently.

VILLALOBOS, GABRIEL

From: Greg Gamet <greg@goldflora.com>
Sent: Friday, February 7, 2025 11:14 AM
To: DRAPKIN, SCOTT; VILLALOBOS, GABRIEL
Cc: Ray Dorame; Daniel Bower
Subject: FW: PAPL-25-0001 (1687 ORANGE AVE Costa Mesa)
Attachments: PH-3.pdf

Scott and Gabriel,

Thank you for the phone call to today.

I am writing this email to request a two-week delay for the Planning and Zoning Commission meeting we have on or schedule for this Monday. As we discussed. We are gathering information that pertains to our meeting.

Please let me know if you have any questions.

Thank You,
GG



Greg Gamet
Chief Compliance Officer
3165 Red Hill Avenue
Costa Mesa, CA 92626
Cell: (720).352.2380
Greg@goldflora.com

From: VILLALOBOS, GABRIEL <GABRIEL.VILLALOBOS@costamesaca.gov>
Sent: Thursday, February 6, 2025 2:26 PM
To: Greg Gamet <greg@goldflora.com>; Laurie Holcomb <laurie@goldflora.com>
Cc: Dan Thompson <dthompson@blackstarfinancial.com>; Ray Dorame <rdorame@blackstarfinancial.com>
Subject: RE: PAPL-25-0001 (1687 ORANGE AVE Costa Mesa)

Good Afternoon,

I have attached the staff report and resolution for this Monday's upcoming Planning Commission hearing, please review and let me know if you have any questions.



Gabriel Villalobos
 Assistant Planner
 Economic & Development Services Department
 77 Fair Drive | Costa Mesa | CA 92626 | (714) 754-5610

“The City of Costa Mesa serves our residents, businesses and visitors while promoting a safe, inclusive, and vibrant community.”

City Hall is open to the public 8:00 a.m. to 5:00 p.m. Monday through Thursday and alternating Fridays, except specified holidays. Appointments can be made online at www.costamesaca.gov/appointments.

Costa Mesa is launching a new permit and license processing system called TESSA in August. TESSA will replace our existing system and all land use, building and business license applications currently in process will be transferred to the new system. To learn more about TESSA, visit our FAQ page at <https://www.costamesaca.gov/tessa>



From: Greg Gamet <greg@goldflora.com>
Sent: Monday, January 20, 2025 8:55 AM
To: VILLALOBOS, GABRIEL <GABRIEL.VILLALOBOS@costamesaca.gov>; Laurie Holcomb <laurie@goldflora.com>
Cc: Dan Thompson <dthompson@blackstarfinancial.com>; Ray Dorame <rdorame@blackstarfinancial.com>
Subject: RE: PAPL-25-0001 (1687 ORANGE AVE Costa Mesa)

Gabriel,

Please confirm receipt of the below. I am responding to an email thread with you to see if this will go through.

Gabriel,

I hope you are enjoying MLK Day.

Please find the attached attachment today I received saying we have an out standing invoice.

Please also find the second attachment that shows this was paid.

Please Advise,
 GG

From: VILLALOBOS, GABRIEL <GABRIEL.VILLALOBOS@costamesaca.gov>
Sent: Tuesday, January 7, 2025 3:55 PM
To: Laurie Holcomb <laurie@goldflora.com>

Cc: Greg Gamet <greg@goldflora.com>

Subject: FW: PAPT-25-0001 (1687 ORANGE AVE Costa Mesa)

Good Afternoon,

Wanted to forward this email again to all contacts to make sure we can get the requested information. Please feel free to reach out to me with any questions regarding the project status and processing timeline.



Gabriel Villalobos

Assistant Planner

Economic & Development Services Department

77 Fair Drive | Costa Mesa | CA 92626 | (714) 754-5610

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From: VILLALOBOS, GABRIEL

Sent: Monday, January 6, 2025 5:42 PM

To: 'greg@goldflora.com' <greg@goldflora.com>

Subject: PAPT-25-0001 (1687 ORANGE AVE Costa Mesa)

Good Evening Greg,

I am the project planner that has been assigned to review the appeal request for the CUP application PA-21-23. I wanted to notify you that planning staff is working on this item and will have it scheduled for the next available Planning Commission hearing date that is feasible so that a determination can be made on the requested appeal. One very important item I will need for you in order to make sure that we are able to successfully schedule this item for the soonest possible decision date is a new set of mailing labels as this request must be publicly noticed. I have attached to this message a hand out with information on what the requirements are for the mailing labels, we are requiring that mailing labels for all property owners as well as occupants within a 500-foot radius of the project site be prepared in addition to a radius map and certification letter from one of the businesses included in the hand out. Unfortunately we are unable to use previously submitting labels so a new set would need to be created. In order to meet submittal deadlines, I also must ask that these labels are expedited and prepared as soon as possible so that we can meet submittal deadlines for both the planning commission as well as the newspaper which must include an ad posting. Ideally we would need the labels no later than January 13th, which unfortunately only gives us less than a week to make. Please let me know if this is possible so that I can coordinate with the rest of the team as needed. Lastly, an invoice for the required processing fees for the appeal have also been invoiced for this request. When given the chance, please make the payment so we can ensure that all items are handled as soon as feasibly possible. Please feel free to let me know if you have any additional questions for me, thanks!



Gabriel Villalobos

Assistant Planner

Economic & Development Services Department

77 Fair Drive | Costa Mesa | CA 92626 | (714) 754-5610

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TESSA
TOTALLY ELECTRONIC SELF-SERVICE APPLICATION



CITY OF COSTA MESA

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 25-197

Meeting Date: 2/24/2025

TITLE:

CONDITIONAL USE PERMIT PCUP-24-0011 FOR A RETAIL CANNABIS STOREFRONT BUSINESS WITH DELIVERY (“GREEN MART”) LOCATED AT 1912 HARBOR BOULEVARD

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES
DEPARTMENT/PLANNING DIVISION

PRESENTED BY: MICHELLE HALLIGAN, SENIOR PLANNER

CONTACT INFORMATION: MICHELLE HALLIGAN, 714-754-5608;
Michelle.Halligan@costamesaca.gov

RECOMMENDATION:

Staff recommends the Planning Commission:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1) Existing Facilities; and
2. Approve Conditional Use Permit PCUP-24-0011 based on findings of fact and subject to the conditions of approval as contained in the Resolution.



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: February 24, 2025

ITEM NUMBER: PH-3

SUBJECT: CONDITIONAL USE PERMIT PCUP-24-0011 FOR A RETAIL CANNABIS STOREFRONT BUSINESS WITH DELIVERY ("GREEN MART") LOCATED AT 1912 HARBOR BOULEVARD

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

PRESENTATION BY: MICHELLE HALLIGAN, SENIOR PLANNER

**FOR FURTHER INFORMATION CONTACT: MICHELLE HALLIGAN
714-754-5608
Michelle.Halligan@costamesaca.gov**

RECOMMENDATION:

Staff recommends the Planning Commission:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1) Existing Facilities; and
2. Approve Conditional Use Permit PCUP-24-0011 based on findings of fact and subject to the conditions of approval as contained in the Resolution.

APPLICANT OR AUTHORIZED AGENT:

The applicant is Keith Scheinberg on behalf of RDK Group Holdings, LLC and the property owner, Dave Ruffel.

PLANNING APPLICATION SUMMARY

Location:	1912 Harbor Boulevard	Application Number:	PCUP-24-0011
Request:	PCUP-24-0010 is for a Conditional Use Permit for the establishment of a cannabis retail storefront with delivery.		

SUBJECT PROPERTY:

SURROUNDING PROPERTY:

Zone:	C1 (Local Business District)	North:	C1 (Local Business District)
General Plan:	Commercial Residential	South:	C1 (Local Business District)
Lot Dimensions:	50' x 130'	East:	PDC (Planned Development Commercial) C2 (General Commercial)
Lot Area:	6,500 SF	West:	C2 (General Commercial)
Existing Development:	The property is developed with a 2,400-square-foot single-story commercial building.		

DEVELOPMENT STANDARDS COMPARISON

Development Standard	Required/Allowed C1 Zone	Provided/Proposed
Building Height	2 stories/30'	1 story/12'-8"
Setbacks:		
Front	20'	60'-5"
Side	15'/0'	6'/0' ¹
Rear	0'	4'-9"
Landscape Setback - front	20'	0 ¹
Parking	75	57 ^{1,2}
Floor area ratio (FAR)	0.20	0.37 ¹
1: Landscape setback, one side setback, parking, and FAR are legal nonconforming 2: The subject site shares a surface parking lot with five adjacent properties. The proposed parking count includes a bike rack credit of one space. Under AB 2097, the project is located within a half-mile of a major transit stop and is therefore exempt from the City's parking requirements.		
CEQA Status	Exempt per CEQA Guidelines Section 15301 (Class 1, Existing Facilities)	
Final Action	Planning Commission	

BACKGROUND

The subject property is an approximate 6,500-square-foot site located at 1912 Harbor Boulevard. The midblock site has street frontage on Harbor Boulevard and is located between 19th Street and Bernard Street. A 20-foot-wide alley with access from Harbor Boulevard and West 19th Street also provides access to the rear of the subject property (including access to several parking spaces in a shared parking lot). The site is zoned C1 (Local Business District) and is surrounded by C1 properties to the north and south. There is a property zoned PDC (Planned Development Commercial) and a property zoned C2 (General Commercial) located to the east and Properties located to the west across Harbor Boulevard are zoned C2 (General Commercial). The site has a General Plan Land Use Designation of Commercial Residential.

Existing development on the subject property consists of a 2,400-square-foot, one-story commercial building (see the below Image 1) with surface parking located in the front and rear of the building. Vehicular access to the site is provided by three common access driveways from Harbor Boulevard. The proposed cannabis retail establishment with delivery (“Green Mart”) would occupy the entire building. Although currently vacant, the previous tenant was a barbeque equipment store. The subject property is located along one of the City’s primary commercial corridors which includes a variety of uses. Neighboring uses include, but are not limited to, retail stores, offices, medical offices, car dealerships, residences, and a cannabis storefront.

Image 1 - Existing Condition, 1912 Harbor Boulevard



Non-Conforming Development

The existing development is legal nonconforming in terms of a side-setback, landscaping, parking, and floor area ratio, and therefore is subject to the nonconforming provisions of the Costa Mesa Municipal Code Section 13-204. Pursuant to this code section, a conforming use may be located on a nonconforming property as long as the new site modifications do not result in greater site nonconformities, and proposed improvements bring the site into greater conformance with Code requirements.

Improvements would be made to bring this structure into compliance with current building and safety codes; however, and as specifically allowed by the CMMC, the existing site nonconformities can remain pursuant to the City’s legal nonconforming provisions. The applicant is proposing to bring the property into closer conformance by removing an unpermitted 145-square-foot enclosed area, adding a bike rack for a credit of one parking space, and adding 274-square-foot of landscaping. Proposed improvements are further described later in this report.

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 provisions are included 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 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 cannabis storefront retail (dispensaries) and non-storefront retail (delivery) within the City subject to numerous operational 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. On May 7, 2024, the City Council adopted Ordinances No. 24-03 and No. 24-04 to amend the City’s retail cannabis provisions in Titles 9 and 13.

Cannabis Business Permit (CBP) Application Process

The process to establish a retail cannabis business is subject to an extensive submittal and application review procedure. Pursuant to the CMMC, 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 regulated sensitive uses. Staff also conducts a site visit 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 can 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 City's 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 regularly by the Finance Department and HdL Companies.

DESCRIPTION

Conditional Use Permit application PCUP-24-0011 is a request to allow a 2,400-square-foot retail cannabis storefront with delivery in an existing commercial building at 1912 Harbor Boulevard. The affiliated State license is a Type 10 “storefront retailer” license. If the CUP is approved and the operator also obtains a CBP, City Business License, and State license, the business would be allowed to sell pre-packaged cannabis and pre-packaged cannabis products to customers onsite and by delivery, 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. To obtain a CUP, an applicant must show that the proposed use is compatible with the City’s applicable zoning and General Plan provisions/policies/findings, and will not be detrimental to public health, safety, and welfare.

The subject site is located within a commercial zone (C1 - Local Business District) where commercial development is allowed to include retail uses. 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 further 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. Proposed uses subject to CUPs will generally have site-specific conditions of approval to ensure the required findings can be met. A detailed project analysis regarding CUP findings is provided below in this report.

Separation Requirements

The proposed project location was evaluated based on the separation requirements in effect during the pre-application submittal. At that time, CMMC Section 13-200.93(e) stipulated 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 application.

Additionally, on June 7, 2024, the City Council adopted Ordinance No. 2024-03, amending Title 13 pertaining to cannabis storefronts. Among other local cannabis regulatory changes, the amendment included increasing the minimum distance between a cannabis storefront and youth center from 600 to 1,000 feet and established a minimum separation of 250 feet between a cannabis storefront and properties zoned for residential use (no minimum distance was required prior). The subject site is located more than 1,000 feet from a youth center and approximately 27 feet from a property zoned PDC (Planned Development Commercial), where a master plan allowed the development of multifamily residences and a parking structure. However, the project location was determined to be in compliance with the separation requirements prior to the effective date of the revised Ordinance, and therefore the project is exempted from recently adopted changes regarding minimum distance from a property zoned for residential use.

All separation distances are measured in a straight line (“as the crow flies”) from the “premises” where the cannabis retail use is to be located to the closest property line of the sensitive use(s) (with the exception of playgrounds). For playgrounds, the property line is a 30-foot radius from the exterior physical boundaries of the playground equipment area. Premises is as defined in the State’s Business and Professions Code Section 26001 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 include 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 required separations from sensitive uses.

Exterior Improvements

The applicant proposes to update the commercial building into conformance with the Building Code, and improve the building façade with new awnings, doors, and paint. Other proposed or conditioned exterior improvements include:

- Restriping the parking lot at 1912 Harbor Boulevard to be compliant with the City’s Parking Design Standards;
- Constructing a drive approach on the property that is consistent with the City’s Public Works Standards;
- Removing the unpermitted enclosure and securing the space with a wrought iron or similar fencing material;
- Adding a bicycle rack to encourage multi-modal transportation;
- Adding irrigated landscaping planters to include at least one new 24-inch box tree and live, drought-tolerant plants. A detailed landscaping plan would be reviewed during the building plan check process; and
- Installing security lighting and surveillance cameras.

Proposed business signs would be reviewed and permitted separately per the City’s sign code requirements. Pursuant to Condition of Approval No. 6 (Prior to Issuance of Building Permits), business signage shall not include references to cannabis, whether in words or symbols. A rendering of the proposed exterior is provided in Image 2.

Image 2 - Proposed Exterior



Interior Tenant Improvements

The proposed interior remodel includes improvements such as, but not limited to, demolishing existing demising walls, construction of new walls, constructing a second restroom, adding commercial showroom finishes, and installation of an odor control system. A proposed floor area summary is provided in Table 1.

Table 1 - Floor Plan Summary

Operational Area	Square Feet
Lobby	138
Retail Area	1,196
Receiving	80
Storage	342
Offices	200
Breakroom	100
Restrooms	120
Hallways	224
Total	2,400

Customer and Employee Access

Customer access would be limited to the lobby and retail area. Customer circulation into the proposed establishment includes entering the licensed premise through the door fronting Harbor Boulevard into the lobby. An employee would verify the customer's identity and age before allowing the customer to enter the retail sales area. After a customer's identity and age is verified and their transaction is completed, they must exit the retail sales area through an exit directly into the lobby. Customers would have to leave the premise through the front door. As further conditioned, staff and a security guard would monitor the area 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 customer entrance or two access-controlled entrances that lead directly into the back-of-house area. Employees would be able to exit through the access-controlled doors or through the main entrance/exit.

Vendor Delivery Operations and Access

All vendors (licensed distributors) will have pre-committed arrival times set by the storefront's operational managers for product delivery. A limited access (secured) door is located on the south side of the building. All vendor vehicles will load and unload at the closest non-accessible parking space located approximately 45 feet from the limited access door. Vendors would only be allowed to enter the premise while accompanied by an employee with the proper security credentials. The access-controlled door, product 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 the City's adopted retail storefront operational requirements as follows:

- Display State license, CBP, and City business license in a conspicuous building location;
- The hours of operations are limited to 7:00 AM to 10:00 PM Monday through Sunday;
- Shipments of cannabis goods may only be accepted during regular business hours;
- Cannabis inventory shall be secured using a lockable storage system during non-business hours;
- At least one licensed security guard shall be on premises during business hours;

- 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 shipping and receiving area and remain with them throughout the process;
- Cannabis goods to be sold at this establishment (either storefront or delivery) 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;

- Packaging containing cannabis goods shall be tamper-resistant; if packaging contains multiple servings, the package must also be re-sealable;
- When processing orders for cannabis delivery, employees will collect the pre-packaged materials, load products into a secured container and transport the containers to delivery vehicles outside the building. Video surveillance cameras will be installed with direct views of the path of travel and loading and unloading area. All loading and unloading of delivery vehicles will be monitored by the required security guard;
- Cannabis deliveries must be made in-person by an employee of the licensed retailer. An independent contractor, third-party courier service, or an individual employed through a staffing agency would not be considered employed by the licensed retailer;
- The applicant shall maintain proof of vehicle insurance for any and all vehicles being used to deliver cannabis goods;
- During delivery, the employee shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers;
- A delivery employee shall not leave the State of California while possessing cannabis products and while performing their duties for the cannabis retailer;
- The 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;
- Any delivery method shall be made in compliance with State law, as amended, including use of a vehicle that has a dedicated global positioning system (GPS) device for identifying the location of the vehicle (cell phones and tablets are insufficient);
- Signs, decals or any other form of advertisement on the delivery vehicles are prohibited;
- Deliveries must be made to a physical address that is not on publicly owned land and cannot be a school, a day care, homeless shelter, or a youth center; and
- A cannabis 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.

Business Plan

The applicant has submitted a detailed business plan that was evaluated by the City's cannabis consultant (HdL). The business plan describes the owner's 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 the proposed retail storefront use.

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. In May of 2024, the City Council adopted Ordinance No. 2024-04 amending Title 9 of the Municipal Code, which included a modification to the cannabis storefront security guard requirement from 24 hours per day to only during business hours, unless the Chief of Police determines otherwise. Therefore, and pursuant to the Municipal Code, staff has conditioned the proposed operations to provide security only during business operation, unless otherwise directed by the Chief of Police to maintain security twenty-four (24) hours per day.

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 all cannabis retail storefronts:

- One security guard will be on-site during business hours, unless otherwise directed by the Chief of Police to have a security onsite twenty-four (24) hours per day;
- All employees, including drivers, 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 exterior) shall be installed;
- Emergency power supply shall be installed;
- Employees shall be trained for use with any/all emergency equipment;
- Delivery drivers shall be trained on delivery safety protocols;
- Employees and vendors will be trained regarding cash and product transportation protocol;
- Visitor/customer specific security measures shall be required;
- All facility entry and exit points and locations where cash or cannabis products are handled or stored shall be under camera surveillance;
- The applicant shall submit a list of all vehicles to be used for retail delivery purposes to the Costa Mesa Police Department. 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; and
- The business operator shall ensure that all delivery 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

Vehicular access to the aforementioned properties is provided via the shared parking lot and three driveways located along Harbor Boulevard. Access and parking is also provided at the rear of the subject property via a public alley that is accessed from Harbor Boulevard and West 19th Street.

On December 12, 2016, the City of Costa Mesa Planning Commission approved PA-16-65, a CUP for shared parking for the subject property and five adjacent parcels (1912 through 1942 Harbor Boulevard), and to allow a deviation from parking requirements to facilitate the expansion of an existing massage business. Pursuant to the CMMC Section 13-6, when there is a mixture of uses within a single development that share the same parking facilities, the total requirement for parking is determined by the Costa Mesa shared parking analysis procedures which is adopted by City Council Resolution. In 2016, the shared parking for the site and adjacent properties was considered by the Planning Commission and determined to meet the parking requirements pursuant to the City's parking provisions. Further, CMMC Section 13-204 permits that when a use is changed that requires the same amount of parking as the previous use, no additional parking is required. The previous and proposed use at 1912 Harbor Boulevard are both retail uses and subject to the same parking ratio requirement (four spaces per 1,000 square feet of gross floor area), and therefore the project complies with the City's parking standards.

Lastly, Assembly Bill 2097 (AB 2097) was signed into law by Governor Newsom and became effective on January 1, 2023. The primary objective of this legislation is to limit local governments from imposing minimum parking regulations on commercial and residential projects that are located within 0.5 miles of a major transit stop. AB 2097 defines "major transit stop" as an existing rail or bus rapid transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 20 minutes or less during the morning and afternoon peak commute periods. Staff reviewed the nearby public transit facilities and determined that the subject property is located within 0.5 miles of a major transit stop (near the intersection of Harbor Boulevard and W. 19th Street). Therefore, pursuant to AB 2097 the City of Costa Mesa cannot impose a minimum parking requirement on this land use entitlement.

As proposed and conditioned, the applicant would install a bike rack to encourage multimodal transportation. As also conditioned, vendor and delivery vehicles would schedule or coordinate arrivals (phone, text, etc.) to ensure adequate parking is available on the subject property, and if parking shortages or other parking-related problems occur that are related to the proposed cannabis storefront, 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. 7 in the attached Resolution). Examples of parking demand management techniques include, but are not limited to, reducing operating hours of the business during peak hour parking lot demand periods, hiring an employee to monitor parking lot use and assist with customer parking lot circulation, encouraging delivery services to reduce in person store visits, and incentivizing employee carpooling/cycling/walking.

Traffic

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 Fee related to new and expanding developments is determined using estimated Average Daily Trips (ADT), which is the combined 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) 11th Edition Trip Generation Manual for the most similar use - "pharmacy/drug store with drive-through".

CMMC Section 13-275(a), specifies that "a traffic impact study shall be required for all development projects estimated by the Public Works 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 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 would have 8.75 net peak hour trips and therefore does not meet the threshold of 100 peak hour trips requiring a traffic study. However, the proposed use would be subject to a traffic impact fee, which is estimated to be \$28,670. The fee calculation would be finalized during the building permit plan check process and must be paid prior to building permit issuance.

Odor Attenuation

If approved, cannabis products would arrive in State compliant packaging that is odor-resistant sealed and remain unopened while on the premises. Pursuant to the CMMC, “odor control devices and techniques shall be incorporated in all cannabis businesses to ensure that odors from cannabis are not detectable off site”. Further, as conditioned, if cannabis odor is detected outside of the building 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 or their designee. Lastly, cannabis products are subject to State mandated waste protocols and are not allowed to be disposed of in any exterior trash enclosure.

Proximity to Residential

Similar to many commercial areas in the City, this area is developed with a mixture of commercial and residential uses. To ensure compatibility with residences in the area, proposed project conditions and requirements include the following:

- The business hours are limited from 7 AM to 10 PM;
- Security lighting is shielded and directed down/away from adjacent properties. As conditioned, a photometric study would be required to be submitted during plan check to demonstrate that light levels are appropriate;
- Operator shall post signs in the parking lot at 1912 Harbor Boulevard to remind customers and vendors to keep noise levels to a minimum (the security guard shall also be responsible for noise enforcement);
- A security guard shall be onsite during hours of operation; and
- A staff person or the security guard will regularly monitor the site’s parking lot to ensure that customers are quiet, turn off vehicle engines promptly, do not play loud music, etc.

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 commercial goods, and employment opportunities on the subject commercial property. The Municipal Code, amended in 2024, allows the processing of cannabis storefront applications that passed the pre-application phase prior to the May 2024 cannabis Ordinance amendments, up to 35 approvals. Currently there are 26 approved CUPs for cannabis storefronts, of which 12 are open. The proposed use passed the pre-application phase prior to the May 2024, and if approved would not result in the exceedance of the cannabis storefront limit established by the City Council in 2024.

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

Consistency: Retail cannabis uses are subject to a unique local tax that does not apply to other retail businesses in Costa Mesa. Retail cannabis uses are expected to generate increased tax revenues due to a seven-percent local tax on gross receipts. Most of this revenue will be used for community services and infrastructure improvements that serve the community. A half percent of the retail cannabis tax funds the City's Arts and Culture Master Plan and another half percent is set aside for the City's First Time Homebuyers Fund.

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 industry that is limited in Orange County. Out of 34 cities in the county, only four have cannabis storefronts--Costa Mesa, Laguna Woods, Santa Ana, and Stanton. Approval of this CUP would facilitate a business opportunity in a specialized and expanding industry along one of the City's primary commercial corridors.

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 subject property is located along Harbor Boulevard in an area categorized by a mixture of uses. As conditioned, the proposed use would operate during limited hours, operator would post signs regarding

noise in the parking lot, be required to control odor, and to provide onsite security during business hours, in addition to 24-hour video camera surveillance and other security features. The cannabis operation conditions of approval and the State and local cannabis regulations exceed typical requirements for other retail uses.

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 Conditional Use Permit 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 uses. In addition, the property is located on one of the City's primary commercial corridors that is predominantly intended for commercial uses. Pursuant to the CMMC, cannabis retail storefronts are permitted uses in the C1 zone and are subject to extensive regulation as described in this report.

All retail sales would take place under the roof, no outdoor storage or sales are proposed nor would be allowed, and operations would be conditioned to be compliant with applicable local and State laws, as well as to minimize potential impacts on neighboring properties. Staff does not anticipate that the proposed retail cannabis use would be materially detrimental to uses in the vicinity such as restaurants, retail stores, offices, medical offices, car dealerships, and residences.

Lastly, the proposed use would not be materially detrimental to adjacent uses because the project would include features to ensure compatibility such as following a photometric plan so security lighting is shielded from adjacent properties, having a security guard onsite during hours of operation, and implementing odor control measures. As proposed and conditioned, the retail cannabis use would be compatible with other properties within the area, and in compliance with local and State requirements.

- *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 that would be onsite during the hours of operation 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 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 that indicates they have passed certain employee requirements. 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 property has a General Plan land use designation of "Commercial Residential". The intent of this land use designation is to allow a mix of commercial and residential uses. As stated in the General Plan Land Use Element, the City's commercial designations "accommodate a full range of commercial activity present and desired in Costa Mesa." The proposed storefront 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 specialized businesses. 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, including a retail cannabis storefront, subject to a CUP. No additional square footage is proposed; therefore, the proposed use would not increase the floor area ratio (building intensity) or increase the number of residential units onsite (density).

The subject site is located within the boundaries of the 19 West Urban Plan. The Urban Plan establishes an overlay that allows commercial and residential mixed-use development on properties with a minimum size of one-acre through a Master Plan, where such development is not permitted by the underlying

zoning. The proposed project is not a mixed-use development and therefore is not utilizing any provisions of the 19 West Specific Plan.

ENVIRONMENTAL DETERMINATION

The project is categorically exempt from the provisions of the 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 an existing commercial building that has been used historically for commercial activities. The application does not propose an increase in commercial floor area or otherwise expand 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. 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 can consider the following decision 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 could 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, no public comments have been received. Any public comments received prior to the February 24, 2025, Planning Commission meeting will be provided separately.

CONCLUSION

The proposed project is a retail cannabis storefront at an existing commercial property that is located on one of the City's primary commercial corridors. 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 site and building improvements, and pass City inspections prior to obtaining a CBP and City Business License. The CBP would be 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, conducts site inspections to verify that the operation complies with CUP and CBP requirements.

As proposed and conditioned, the use would be consistent with other commercial uses in the C1 zone, the Zoning Code, and the City's General Plan. The required findings for

the CUP can be made, as described above, and therefore, staff recommends approval of PCUP-24-0011 subject to conditions of approval.

RESOLUTION NO. PC-2025-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING PLANNING APPLICATION PCUP-24-0011 FOR CONDITIONAL USE PERMIT FOR A STOREFRONT RETAIL CANNABIS BUSINESS WITH DELIVERY (GREEN MART) IN THE C1 ZONE AT 1912 HARBOR BOULEVARD

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA 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 PCUP-24-0011 was filed by Keith Sheinberg representing RDK Holdings, LLC, and the property owner, Dave Ruffel, requesting approval of the following:

A Conditional Use Permit to operate a cannabis retail storefront retail and delivery business within a 2,400-square-foot, one-story commercial building located at 1912 Harbor Boulevard. The business would sell pre-packaged cannabis and pre-packaged cannabis products directly to customers onsite and through delivery, subject to conditions of approval and other City and State requirements;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on February 24, 2025 with all persons having the opportunity to speak for and against the proposal;

WHEREAS pursuant to the California Environmental Quality Act (CEQA), the project is exempt from the provisions of CEQA per Section 15301 (Class 1), for Existing Facilities, as described specifically in the staff report;

WHEREAS, the CEQA categorical exemption for this project reflects the independent judgement of the City of Costa Mesa.

NOW, THEREFORE, based on the evidence in the record and the findings contained in Exhibit A, and subject to the conditions of approval contained within Exhibit B, the Planning Commission hereby **APPROVES** Planning Application PCUP-24-0011 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the staff report for Planning Application PCUP-24-0011 and upon applicant's compliance with each and all of the conditions in Exhibit B, and compliance of all applicable State, and local laws. Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

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 24th day of February, 2025.

Jeffrey Harlan, 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-2025- was passed and adopted at a regular meeting of the City of Costa Mesa Planning Commission held on February 24, 2024 by the following votes:

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

ABSTAIN: COMMISSIONERS

Scott Drapkin, Secretary
Costa Mesa Planning Commission

Resolution No. PC-2025-

EXHIBIT A

FINDINGS

- A. The proposed project complies with Costa Mesa Municipal Code Section 13-29(g)(2) Conditional Use Permit findings:

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: The subject site is located within a commercial zone (C1, Local Business District) where commercial development is specifically allowed to include retail uses. In addition, the property is located on one of the City's primary commercial corridors that is predominantly intended for commercial uses. Pursuant to the CMMC, cannabis retail storefronts are permitted uses in the C1 zone and are subject to extensive regulation as described in this report.

All retail sales would take place under the roof, no outdoor storage or sales are proposed nor would be allowed, and operations would be conditioned to be compliant with applicable local and State laws, as well as to minimize potential impacts on neighboring properties. Staff does not anticipate that the proposed retail cannabis use would be materially detrimental to uses in the vicinity such as restaurants, retail stores, offices, medical offices, car dealerships, and residences.

Lastly, the proposed use would not be materially detrimental to adjacent uses because the project would include features to ensure compatibility such as following a photometric plan so security lighting is shielded from adjacent properties, having a security guard onsite during hours of operation, and implementing odor control measures. As proposed and conditioned, the retail cannabis use would be compatible with other properties within the area, and in compliance with local and State requirements. **Finding:** 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.

Facts in Support of Finding: 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 that would be onsite during the hours of operation 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 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 that indicates they have passed certain employee requirements. 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..

Finding: 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.

Facts in Support of Finding: The property has a General Plan land use designation of "Commercial Residential". The intent of this land use designation is to allow a mix of commercial and residential uses. As stated in the General Plan Land Use Element, the City's commercial designations "accommodate a full range of commercial activity present and desired in Costa Mesa." The proposed storefront 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 specialized businesses. 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, including a retail cannabis storefront, subject to a CUP. No additional square footage is proposed; therefore, the proposed use would not increase the floor area ratio (building intensity) or increase the number of residential units onsite (density).

The subject site is located within the boundaries of the 19 West Urban Plan. The Urban Plan establishes an overlay that allows commercial and residential mixed-use development on properties with a minimum size of one-acre through a Master

Plan, where such development is not permitted by the underlying zoning. The proposed project is not a mixed-use development and therefore is not utilizing any provisions of the 19 West Specific Plan.

- B. The project is categorically exempt from the provisions of the 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 an existing commercial building that has been used historically for commercial activities. The application does not propose an increase in commercial floor area or otherwise expand 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. 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.

- C. The project is subject to a traffic impact fee, pursuant to Chapter XII, Article 3 Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT B

CONDITIONS OF APPROVAL

General

- Plng.
1. The use of this property as a cannabis storefront business shall comply with the approved plans and terms described in the resolution, these conditions of approval, and applicable sections of the Costa Mesa Municipal Code (CMMC). The Planning Commission may modify or revoke any planning application based on findings related to public nuisance and/or noncompliance with conditions of approval [Title 13, Section 13-29(o)].
 2. Approval of the planning/zoning application is valid for two years from the effective date of this approval and will expire at the end of that period unless the applicant establishes the use by one of the following actions: 1) a building permit has been issued and construction has commenced, and has continued to maintain a valid building permit by making satisfactory progress as determined by the Building Official, 2) a certificate of occupancy has been issued, or 3) the use is established and a business license has been issued. A time extension can be requested no less than 30 days or more than sixty (60) days before the expiration date of the permit and submitted with the appropriate fee for review to the Planning Division. The Director of Development Services may extend the time for an approved permit or approval to be exercised up to 180 days subject to specific findings listed in Title 13, Section 13-29 (k) (6). Only one request for an extension of 180 days may be approved by the Director. Any subsequent extension requests shall be considered by the original approval authority.
 3. No person may engage in any cannabis business or in any cannabis activity within the City including delivery or sale of cannabis or a cannabis product unless the person:
 - a. Has a valid Cannabis Business Permit from the City;
 - b. Has paid all Cannabis Business Permit and all application fees and deposits established by resolution of the City Council, including annual Community Improvement Division inspection deposits;
 - c. Has obtained all applicable planning, zoning, building, and other applicable permits from the relevant governmental agency which may be applicable to the zoning district in which such cannabis business intends to operate;
 - d. Has obtained a City business license pursuant to Chapter I of the Municipal Code;

- e. Is in compliance with all requirements of the Community Improvement Division regarding the property;
 - f. Has obtained any and all licenses required by State law and/or regulations; and
 - g. Has satisfied all CUP conditions of approval.
4. Any change in the operational characteristics of the use shall be subject to Planning Division review and may require an amendment to the Conditional Use Permit, subject to either Zoning Administrator or Planning Commission approval, depending on the nature of the proposed change.
 5. No cultivation of cannabis is allowed anywhere on the premises.
 6. The uses authorized by this Conditional Use Permit must be conducted in accordance with all applicable State and local laws, including, but not limited to compliance with the most current versions of the provisions of the California Code of Regulations that regulate the uses permitted hereby. Any violation thereof shall be a violation of the conditions of this permit and may be cause for revocation of this permit.
 7. Except for operations allowed by this Conditional Use Permit and under an active Cannabis Business Permit and State Type 10 license, no permit holder or any of its employees shall sell, distribute, furnish, and/or otherwise provide any cannabis or cannabis product to any person, firm, corporation, group or any other entity, unless that person or entity is a lawful, bona fide customer, or it possesses all currently valid permits and/or licenses required by both the State of California and applicable local governmental entity to lawfully receive such cannabis and to engage in a "cannabis activity" as defined by Costa Mesa Municipal Code sec. 9-485. The permit holder shall verify that the recipient, regardless of where it is located, of any cannabis or cannabis product sold, distributed, furnished, and/or otherwise provided by or on behalf of the permit holder, possesses all required permits and/or licenses therefor.
 8. The applicant, the property owner and the operator (collectively referred to as "indemnitors") shall each jointly and severally defend, with the attorneys of City's choosing, indemnify, and hold harmless the City, its elected and appointed officials, agents, officers and employees from any claim, legal action, or proceeding (collectively referred to as "proceeding") brought against the City, its elected and appointed officials, agents, officers or employees arising out of City's approval of the project, including but not limited to any proceeding under the California Environmental Quality Act. The indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and cost of suit, attorney's fees, and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, the City and/or the parties initiating or bringing such

proceeding. This indemnity provision shall include the indemnitors' joint and several obligation to indemnify the City for all the City's costs, fees, and damages that the City incurs in enforcing the indemnification provisions set forth in this section.

9. If any section, division, sentence, clause, phrase or portion of this approval is 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.
10. The use shall operate in accordance with the approved Security Plan. Any changes to the Security Plan must be submitted to the Planning Division with a written explanation of the changes. If the Director determines that changes are substantial, a modification to the Cannabis Business Permit and/or amendment to the CUP may be required.
11. A parking and security management plan, including techniques described in Operational Condition of Approval No. 7, must be approved by the Director of Economic and Development Services or designee prior to any grand opening or other high-volume event on the subject property.
- Bldg. 12. Development shall comply with the requirements of the following adopted codes: 2022 California Residential Code, 2022 California Building Code, 2022 California Electrical Code, 2022 California Mechanical Code, 2022 California Plumbing Code, 2022 California Green Building Standards Code and 2022 California Energy Code (or the applicable adopted, California Residential Code, California Building Code, California Electrical Code, California Mechanical Code, California Plumbing Code, California Green Building Standards and California Energy Code at the time of plan submittal or permit issuance) and California Code of Regulations also known as the California Building Standards Code, as amended by the City of Costa Mesa. Requirements for accessibility to sites, facilities, buildings and elements by individuals with disability shall comply with chapter 11B of the 2022 California Building Code.
- CBP 13. The operator shall maintain a valid Cannabis Business Permit and a valid Business License at all times. The Cannabis Business Permit application number associated with this address is MQ-22-0003. Upon issuance, the Cannabis Business Permit will be valid for a two-year period and must be renewed with the City prior to its expiration date, including the payment of permit renewal fees. No more than one Cannabis Business Permit may be issued to this property.
14. The use shall operate in accordance with the approved Business Plan. Any changes to the Business Plan must be submitted to the Planning Division with a written explanation of the changes. If the Director determines that changes are substantial, a modification to the Cannabis Business Permit and/or amendment to the CUP may be required.

15. A Cannabis Business Permit may be revoked upon a hearing by the Director of Economic and Development Services or designee pursuant to Section 9-120 of the CMMC for failing to comply with the terms of the permit, the applicable provisions of the CMMC, State law or regulation and/or any condition of any other permit issued pursuant to this code. Revocation of the Cannabis Business Permit shall trigger the City's proceedings to revoke the Conditional Use Permit and its amendments. The Conditional Use Permit granted herein shall not be construed to allow any subsequent owner/operator to continue operating under PCUP-24-0010 until a valid new Cannabis Business Permit is received from the City of Costa Mesa.
16. A change in ownership affecting an interest of 51 or more percent, or an incremental change in ownership that will result in a change of 51 or more percent over a three-year period, shall require submittal and approval of a new Cannabis Business Permit. A change in ownership that affects an interest of less than 51 percent shall require approval of a minor modification to the Cannabis Business Permit.
- State 17. The business must obtain any and all licenses required by State law and/or regulation prior to engaging in any cannabis activity at the property.
18. The applicant shall obtain State License Type 10 prior to operating. The uses authorized by this Conditional Use Permit must be conducted in accordance with all applicable State and local laws, including, but not limited to compliance with the most current versions of the provisions of the California Code of Regulations that regulate the uses permitted hereby. Any violation thereof shall be a violation of the conditions of this permit and may be cause for revocation of this permit.
19. Suspension of a license issued by the State of California, or by any of its departments or divisions, shall immediately suspend the ability of a cannabis business to operate within the City, until the State of California, or its respective department or division, reinstates or reissues the State license. Should the State of California, or any of its departments or divisions, revoke or terminate the license of a cannabis business, such revocation or termination shall also revoke or terminate the ability of a cannabis business to operate within the City. This Conditional Use Permit will expire and be of no further force and effect if any State issued license remains suspended for a period exceeding six (6) months. Documentation of three violations during routine inspections or investigations of complaints shall result in the Community Improvement Division scheduling a hearing before the Director of Development Services to consider revocation of the Cannabis Business Permit.
20. Third parties are prohibited from providing delivery services for non-storefront retail.
21. Persons under the age of twenty-one (21) years shall not be allowed on the premises of this business, except as otherwise specifically provided

for by state law and CMMC Section 9-495(h)(6). It shall be unlawful and a violation of this CUP for the owner/operator to employ any person who is not at least twenty-one (21) years of age.

- PD 22. Every manager, supervisor, employee or volunteer of the cannabis business must submit fingerprints and other information specified on the Cannabis Business Permit for a background check by the Costa Mesa Police Department to verify that person's criminal history. No employee or volunteer may commence paid or unpaid work for the business until the background checks have been approved. No cannabis business or owner thereof may employ any person who has been convicted of a felony within the past 7 years, unless that felony has been dismissed, withdrawn, expunged or set aside pursuant to Penal Code sections 1203.4, 1000 or 1385, or who is currently on probation or parole for the sale, distribution, possession or manufacture of a controlled substance.
- CID 23. Should any employee, volunteer or other person who possesses an identification badge be terminated or cease their employment with the business, the applicant shall return such identification badge to the City of Costa Mesa Community Improvement Division within 24 hours, not including weekends and holidays.
24. The property owner and applicant shall use "Crime Prevention Through Environmental Design" techniques to reduce opportunities for crime, loitering and encampments on the property as deemed appropriate by the Community Improvement Manager and Director of Economic and Development Services.
- Finance 25. This business operator shall pay all sales, use, business and other applicable taxes, and all license, registration, and other fees and permits required under State and local law. This business operator shall cooperate with the City with respect to any reasonable request to audit the cannabis business' books and records for the purpose of verifying compliance with the CMMC and this CUP, including but not limited to a verification of the amount of taxes required to be paid during any period.
26. The following records and recordkeeping shall be maintained/conducted:
- a. The owner/operator of this cannabis business shall maintain accurate books and records, detailing all of the revenues and expenses of the business, and all of its assets and liabilities. On no less than an annual basis, or at any time upon reasonable request of the City, the owner/operator shall file a sworn statement detailing the number of sales by the cannabis business during the previous twelve month period (or shorter period based upon the timing of the request), provided on a per-month basis. The statement shall also include gross sales for each month, and all applicable taxes paid or due to be paid.

- b. The owner/operator shall maintain a current register of the names and the contact information (including the name, address, and telephone number) of anyone owning or holding an interest in the cannabis business, and separately of all the officers, managers, employees, agents and volunteers currently employed or otherwise engaged by the cannabis business. The register required by this condition shall be provided to the City Manager upon a reasonable request.
- c. The owner/operator shall maintain an inventory control and reporting system that accurately documents the present location, amounts, and descriptions of all cannabis and cannabis products for all stages of the retail sale process. Subject to any restrictions under the Health Insurance Portability and Accountability Act (HIPPA), the owner/operator shall allow City officials to have access to the business's books, records, accounts, together with any other data or documents relevant to its permitted cannabis activities, for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data or documents will be produced no later than twenty-four (24) hours after receipt of the City's request, unless otherwise stipulated by the City.
- d. The owner/operator shall have in place a point-of-sale tracking system to track and report on all aspects of the cannabis business including, but not limited to, such matters as cannabis tracking, inventory data, and gross sales (by weight and by sale). The owner/operator shall ensure that such information is compatible with the City's record-keeping systems. The system must have the capability to produce historical transactional data for review by the City Manager or designees.

- Insp. 27. The City Manager or designees may enter this business at any time during the hours of operation without notice, and inspect the location of this business as well as any recordings and records required to be maintained pursuant to Title 9, Chapter VI or under applicable provisions of State law. If the any areas are deemed by the City Manager or designee to be not accessible during an inspection, not providing such access is cause for the City to begin a cannabis business permit (CBP) and/or conditional use permit (CUP) and/or business license revocation process as prescribed by the applicable Municipal Code revocation procedures.
28. Inspections of this cannabis business by the City will be conducted, at a minimum, on a quarterly basis. The applicant will pay for the inspections according to the adopted Fee Schedule.
29. Quarterly Fire & Life Safety Inspections will be conducted by the Community Risk Reduction Division to verify compliance with the

approved operation. The applicant will pay for the inspection according to the Additional Required Inspections as adopted in the Fee Schedule.

30. Annual Fire & Life Safety Inspections will be conducted by the Fire Station Crew for emergency response pre-planning and site access familiarization. The applicant will pay for the inspection according to the adopted Fee Schedule.
31. Pursuant to Title 9, Chapter VI, it is unlawful for any person having responsibility for the operation of a cannabis business, to impede, obstruct, interfere with, or otherwise not to allow, the City to conduct an inspection, review or copy records, recordings or other documents required to be maintained by a cannabis business under this chapter or under State or local law. It is also unlawful for a person to conceal, destroy, deface, damage, or falsify any records, recordings or other documents required to be maintained by a cannabis business under this chapter or under State or local law.
32. Prior to the installation of any exterior mural at the subject property, the applicant shall provide draft mural plans to the City. Once directed by staff to proceed, the applicant would apply for a Mural Permit through the Totally Electronic Self Service Application (TESSA), to be considered by the Arts Commission. If the application is approved by the Arts Commission, prior to installation, the Planning Commission shall have the opportunity to consider if the mural is consistent with local and State cannabis provisions, and the project conditions of approval. The Planning Commission review shall be agendaized for a regular meeting of the Planning Commission but shall not require a noticed public hearing.

Prior to Issuance of Building Permits

1. Plans shall be prepared under the supervision of a registered California Architect or Engineer. Plan shall be stamped and signed by the registered California Architect or Engineer.
2. The conditions of approval and ordinance or code provisions of PCUP-24-0011 shall be blueprinted on the face of the site plan as part of the plan check submittal package.
3. Prior to the Building Division issuing a demolition permit, the applicant shall contact the South Coast Air Quality Management District (AQMD) located at:
21865 Copley Dr.
Diamond Bar, CA 91765-4178
Tel: 909- 396-2000
Or visit its website:
<http://www.costamesaca.gov/modules/showdocument.aspx?docume>

[ntid=23381](#). The Building Division will not issue a demolition permit until an Identification Number is provided by AQMD.

4. 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. Building and mechanical permits must be obtained from the Building Division prior to work commencing on any part of the odor control system. Air in the areas where cannabis is stored shall be classified as Class 3 air (air posed a significant sensory-irritation intensity, or offensive odor). Class 3 air is permitted to be recirculated within the space of origin but shall not be recirculated or transferred to other spaces. [CMMC 2021-09(g)8, CMC 403.9, 403.9.3, 311.3, ASHRAE 62.1:5.16, 62.1:5.16.1, 62.1:5.16.3.3].
5. Plan check submittal shall include, but not be limited to:
 - Landscaping plans including at least one 24-inch box tree (non-palm) other living plants such as living ground cover, with an emphasis on drought-tolerant plants.
 - A permanent bike rack that is publicly accessible.
 - A drive approach that is consistent with the City's Public Works Standard 514.
 - Removing the unpermitted enclosure and secure the space with fencing (wrought iron or a similar material for visibility and security).
 - Odor control device specifications and locations.
 - Security camera installation locations.
 - A lighting plan showing all proposed exterior lighting fixtures and specifications, including security lighting.
 - A photometric study. Lighting levels on the property including the parking lot shall be adequate for safety and security purposes (generally, at least 1.0 foot candle), lighting design and layout shall minimize light spill at the property line and glare shields may be required to prevent light spill.
6. No signage shall be installed until the owner/operator or its designated contractor has obtained permits required from the City. Business identification signage shall be limited to that needed for identification only. Business identification signage shall not include any references to cannabis, whether in words or symbols. All signs shall comply with the CMMC.
7. Each entrance to a cannabis retail business shall be visibly posted with one clear and legible notice up to twelve (12) inches by eighteen (18) inches in size, indicating that smoking, ingesting, or otherwise consuming cannabis on the premises or in the areas adjacent to the cannabis business is prohibited. The word "cannabis" is allowed to be

used up to two times on each of these specific notices. Letter height in the notice shall be limited to up to two (2) inches in size. All notice lettering shall be the same font and color.

8. The plans and business operator shall comply with the requirements of the applicable California Fire Code, including any referenced standards as amended by the City of Costa Mesa.
9. Obtain a permit from the City of Costa Mesa, Engineering Division, at the time of development and then reconstruct P.C.C. driveway approach per City of Costa Mesa Standards as shown on the Offsite Plan to comply with A.D.A. Location and dimensions are subject to the approval of the Transportation Services Manager.
10. The applicant shall submit a Traffic Impact Fee to the Transportation Division prior to issuance of building permits. The fee is required in an amount determined by the Transportation Division pursuant to the prevailing schedule of charges adopted by the City Council. The fee is calculated with consideration of standardized trip generation ratios for proposed uses and includes credits for existing uses. The estimated Traffic Impact Fee for this application is \$28,670.00. The fee will be calculated at the time of issuance of building permits and based upon the prevailing schedule of charges in effect at that time.
11. Construction documents shall include a temporary fencing and temporary security lighting exhibit to ensure the site is secured during construction and to discourage crime, vandalism, and illegal encampments.

Prior to Issuance of a Certificate of Use/Occupancy

1. The operator, contractors, and subcontractors must have valid business licenses to do business in the City of Costa Mesa. Final occupancy and utility releases will not be granted until all such licenses have been obtained.

Prior to Issuance of Cannabis Business Permit

1. The applicant shall contact the Planning Division for a facility inspection and provide a matrix of conditions of approval explaining how each was met prior to issuance of a Cannabis Business Permit.
2. The applicant shall pay the Planning Commission public notice fee (\$1 per notice post card) and the newspaper ad publishing cost.
3. The final Security Plan shall be consistent with the approved building plans.
4. Each entrance to the business shall be visibly posted with a clear and legible notice stating the following:

- a. That smoking, ingesting, or otherwise consuming cannabis on the premises or in the areas adjacent to the cannabis business is prohibited;
 - b. That no person under the age of twenty-one (21) years of age is permitted to enter upon the premises of the cannabis business unless the business holds a retail medical cannabis license (M-license) issued by the state;
 - c. That loitering by persons outside the facility both on the premises and within fifty (50) feet of the premises is prohibited; and
 - d. The premise is a licensed cannabis operation approved by the City of Costa Mesa. The City may also issue a window/door sticker, which shall be visibly posted.
5. The owner/operator shall obtain and maintain at all times during the term of the permit comprehensive general liability insurance and comprehensive automotive liability insurance protecting the permittee in an amount of not less than two million dollars (\$2,000,000.00) per occurrence, combined single limit, including bodily injury and property damage and not less than two million dollars (\$2,000,000.00) aggregate for each personal injury liability, products-completed operations and each accident, issued by an insurance provider admitted and authorized to do business in California and shall be rated at least A-:viii in A.M. Best & Company's Insurance Guide. Such policies of insurance shall be endorsed to name the City of Costa Mesa as an additional insured. Proof of said insurance must be provided to the Planning Division before the business commences operations. Any changes to the insurance policy must be submitted to the Planning Division within 10 days of the date the change is effective.
 6. The applicant shall submit an executed Retail Cannabis Business Permit Defense and Indemnity Agreement on a form to be provided by the City.
 7. The applicant shall post signs within the parking lot directing the use of consideration such as no loud voices, loud music, revving car engines, etc. The language of the parking lot signs shall be reviewed and approved by the Planning Division prior to installation.

Operational Conditions

1. No product deliveries to the facility shall occur after 10:00 PM and before 7:00 AM.
2. Onsite sales hours of operations are limited to 7:00 AM to 10:00 PM Monday through Sunday.
3. The applicant shall submit an updated delivery vehicle list each quarter with the quarterly update to the employee roster which is required pursuant to the CBP. The number of delivery vehicles parked onsite shall

not exceed the number of available onsite surplus parking spaces. Delivery vehicles shall not be parked on City streets.

4. At least one security guard will be onsite during business operation, unless directed by the Chief of Police or designee to maintain a security guard twenty-four (24) hours per day;
5. The operator shall maintain free of litter all areas of the property under which applicant has control.
6. The use shall be conducted, at all times, in a manner that will allow the quiet and safe enjoyment of the surrounding neighborhood. The operator shall institute appropriate security and operational measures as necessary to comply with this requirement.
7. If parking shortages or other parking-related problems develop based on the operations approved under this application, the business owner or operator will be required to institute appropriate operational measures necessary to minimize or eliminate the problem in a manner deemed appropriate by the Director of Economic and Development Services or designee. Temporary or permanent parking management strategies include, but are not limited to, reducing operating hours of the business, hiring an additional employee trained in traffic control to monitor parking lot use and assist with customer parking lot circulation, and offering discounts for online and phone orders.
8. While working, employees shall not park on residential streets unless doing so temporarily to make a cannabis delivery.
9. All employees must wear an identification badge while on the premises of the business, in a format prescribed by the City Manager or designee. When on the premises, badges must be clearly visible and worn on outermost clothing and above the waist in a visible location.
10. The 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 each shift.
11. The operator shall ensure that deliveries are grouped to minimize total vehicle trips.
12. During each delivery stop, the delivery vehicle shall be parked in a safe manner (i.e., not impeding traffic circulation), the engine shall be turned off and the vehicle shall be locked.
13. Delivery/vendor vehicle loading and unloading shall only take place within direct unobstructed view of surveillance cameras, located in close proximity to the limited access entry door, as shown on an exhibit approved by the Director of Economic and Development Services or designee. No loading and unloading of cannabis products into or from the vehicles shall take place behind the building, in the alley, or outside of camera view. The security guard shall monitor all on-site loading and unloading of vehicles. Video surveillance cameras shall be installed on the exterior of the building with direct views of the vendor entry door and the entire parking lot. Any

modifications or additional vehicle loading and unloading areas shall be submitted to the Director of Economic and Development Services or designee for approval.

14. Delivery/vendor vehicle standing, loading and unloading shall be conducted so as not to interfere with normal use of streets, sidewalks, driveways, and alleys.
15. The sale, dispensing, or consumption of alcoholic beverages on or about the premises is prohibited.
16. No outdoor storage or display of cannabis or cannabis products is permitted at any time.
17. Cannabis shall not be consumed on the property at any time, in any form.
18. The owner/operator shall prohibit loitering on and within fifty (50) feet of the property.
19. No cannabis or cannabis products, or graphics depicting cannabis or cannabis products, shall be visible from the exterior of the property, or on any of the vehicles owned or used as part of the cannabis business.
20. The owner or operator shall maintain air quality/odor control devices by replacing filters on a regular basis, as specified in the manufacturer specifications.
21. If cannabis odor is detected outside the building, the business owner or operator shall institute corrective measures necessary to minimize or eliminate the problem in a manner deemed appropriate by the Director of Economic and Development Services.
22. Cannabis liquid or solid waste must be made unusable and unrecognizable prior to leaving a secured storage area and shall be disposed of at facility approved to receive such waste. No cannabis products shall be disposed in the exterior trash enclosure. If any damaged or expired cannabis products must be disposed, the owner or operator shall return the damaged or expired cannabis products to the original licensed distributor or vendor and follow all applicable State and City regulations.
23. Each transaction involving the exchange of cannabis goods between the business and consumer shall include the following information: (1) Date and time of transaction; (2) Name and employee number/identification of the employee who processed the sale; (3) List of all cannabis goods purchased including quantity; and (4) Total transaction amount paid.
24. All cannabis products shall be secured in a locked container during transportation between the facility and delivery and vendor vehicles. Prior to a vendor's arrival, vendors are required to give notice to facility personnel. Upon arrival, authorized facility personnel shall escort the vendor to the facility.
25. A staff person shall be required to periodically monitor the exterior including the parking lot, especially during the evening, to ensure

customers and vendors are using consideration when entering or leaving the business.

26. Employees, customers, vendors, etc. are prohibited from parking, loading vehicles, or unloading vehicles in the alley.

RDK GROUP HOLDINGS LLC

1927 Harbor Blvd #393

Costa Mesa, CA 92627

kmsesq@hotmail.com

January 11th, 2025

To Whom It May Concern,

We are thrilled to present our application for a Cannabis Business Permit (CBP) within the City of Costa Mesa. Our team at Green Mart is excited about the opportunity to establish a high-quality, professionally managed retail cannabis store at 1912 Harbor Blvd, Costa Mesa, CA 92627. As residents, we are deeply committed to serving our community by providing safe access to cannabis products and contributing positively to the neighborhood.

Our primary goal is to create a safe and welcoming environment for all Costa Mesa residents, regardless of their knowledge and experience with cannabis. We understand the importance of responsible cannabis consumption and are dedicated to setting a high standard for other operators in the city. By offering a professionally run dispensary, we aim to be a reliable cannabis retailer that prioritizes the safety and well-being of our customers and the broader community.

High-Quality Products

Our dispensary will span approximately 2,300 square feet and feature a wide variety of high-quality cannabis products. We will offer edibles, lotions, creams, extracts, pre-rolls, tinctures, and live plant products, including live resin cartridges, disposable vapes, and flower. Additionally, we will provide ancillary products like vape batteries, chargers, and other glassware. To further active community involvement and engagement, we also plan to offer branded merchandise such as hoodies, hats, and totes.

Experienced Management/Ownership Team

Our management team comprises seasoned professionals with extensive experience in both the cannabis industry and other sectors, ensuring a high level of expertise and commitment to excellence.

Mikael Marczak

Mikael Marczak's entrepreneurial journey spans over 15 years, marked by significant contributions across various industries. Originating from Sweden, Mikael moved to Costa Mesa in 2000 and has called it home ever since. With a deep-seated passion for innovation and excellence, he has

established himself as a versatile business leader. Mikael has co-founded several iconic cannabis businesses and organizations throughout the United States such as Dime Industries, Evergreen Management, Sauce Essential, Paragon LLC, and MKM Management.

In the cannabis sector, Mikael's expertise shines through as owner and founder of Dime Industries, a luxury cannabis vape brand. Since 2016, Dime Industries has received over 30 awards due to Mikael's commitment to quality and reliability that consistently exceed industry standards. His extensive experience in manufacturing cannabis products has made him a respected figure in the industry expanding Dime Industries from California to nine additional US states, including Canada. Mikael's ability to forge successful collaborations with top-performing brands like Wonderbrett and TopShelf Cultivation has elevated consumer favorites. Additionally, Mikael has ownership of the license for SLO Driver, a renowned concentrate and extraction brand.

Beyond cannabis, Mikael has demonstrated his business acumen as a successful real estate agent and owner of a student loan consolidation firm. His diverse entrepreneurial background highlights his adaptability and strategic thinking, essential qualities for navigating the complexities of any industry. Mikael's comprehensive expertise positions him as an invaluable asset for any new business seeking a cannabis license. His proven track record of innovation, quality, and strategic partnerships ensures that he can provide the insight and leadership needed to drive growth and success in this dynamic market.

Keith Scheinberg

Attending The New Mexico Military Institute from High School through Junior College gave Keith the discipline and structure needed to develop into an entrepreneur and innovative pioneer, specializing in the recovery equipment industry. He has a Bachelor of Science in Biology with an emphasis in genetics from San Diego State University. His talents and knowledge were quickly utilized by SDSU, where he taught freshman chemistry, and by Johnson and Johnson in numerous research and development grants. Johnson and Johnson awarded Keith and his team research grants to create a prototype for synthetic blood to be used during surgery. His team was also awarded several US Military contracts to develop a Fluorine-based fire retardant blanket for the Navy.

After graduating from Chapman University School of Law and passing the CA bar, his passion for innovating health recovery grew. Keith quickly advanced in the design and creation of several recovery modality inventions. He founded Cryo Innovations in 2015 and quickly provided the cryotherapy industry with the safest, most technologically advanced, and most profitable full-body cryo sauna on the market. He was involved in navigating complex legal issues with the healthcare industry, it became his specialty.

Retail Layout and Customer Experience

Our site plan and design concept focus on creating a functional, aesthetically pleasing, and efficient retail space. The layout includes ample storage and a welcoming retail area that facilitates quick and easy shopping. Customers will experience fast service with clearly labeled products and knowledgeable staff ready to assist with any questions about cannabis and consumption methods. Our goal is to make the shopping experience as seamless and informative as possible.

Security and Accessibility

We have prioritized security and accessibility in our planning. The property, previously used for retail purposes, benefits from a recorded reciprocal parking agreement with the city and county, ensuring sufficient parking facilities for our patrons. To ease the parking burden on the center, we will hire only Costa Mesa Employees and provide them with e-bikes to get to and from work. Our building plans include advanced security measures and marked parking signage.

Commitment to the Community

We believe that reliable cannabis retailers play a crucial role in the community by providing safe and legal access to high-quality products that consumers can use for various purposes. Our commitment extends beyond retail operations; we aim to be a positive force in Costa Mesa, contributing to the local economy and enhancing the quality of life for our neighbors.

In summary, our proposed dispensary will be a valuable addition to Costa Mesa. We are confident in our ability to meet and exceed the highest standards of safety, professionalism, and community engagement. We look forward to the opportunity to serve our community and are hopeful for your support and approval of our application.

Thank you for considering our application.

Best regards,

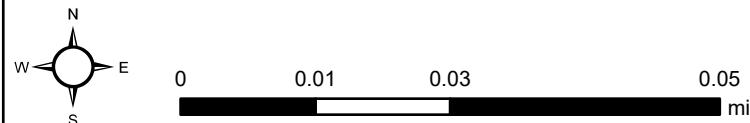
A handwritten signature in black ink, appearing to read 'Keith Scheinberg', with a long horizontal flourish extending to the right.

Keith Scheinberg, Manager RDK HOLDINGS LLC

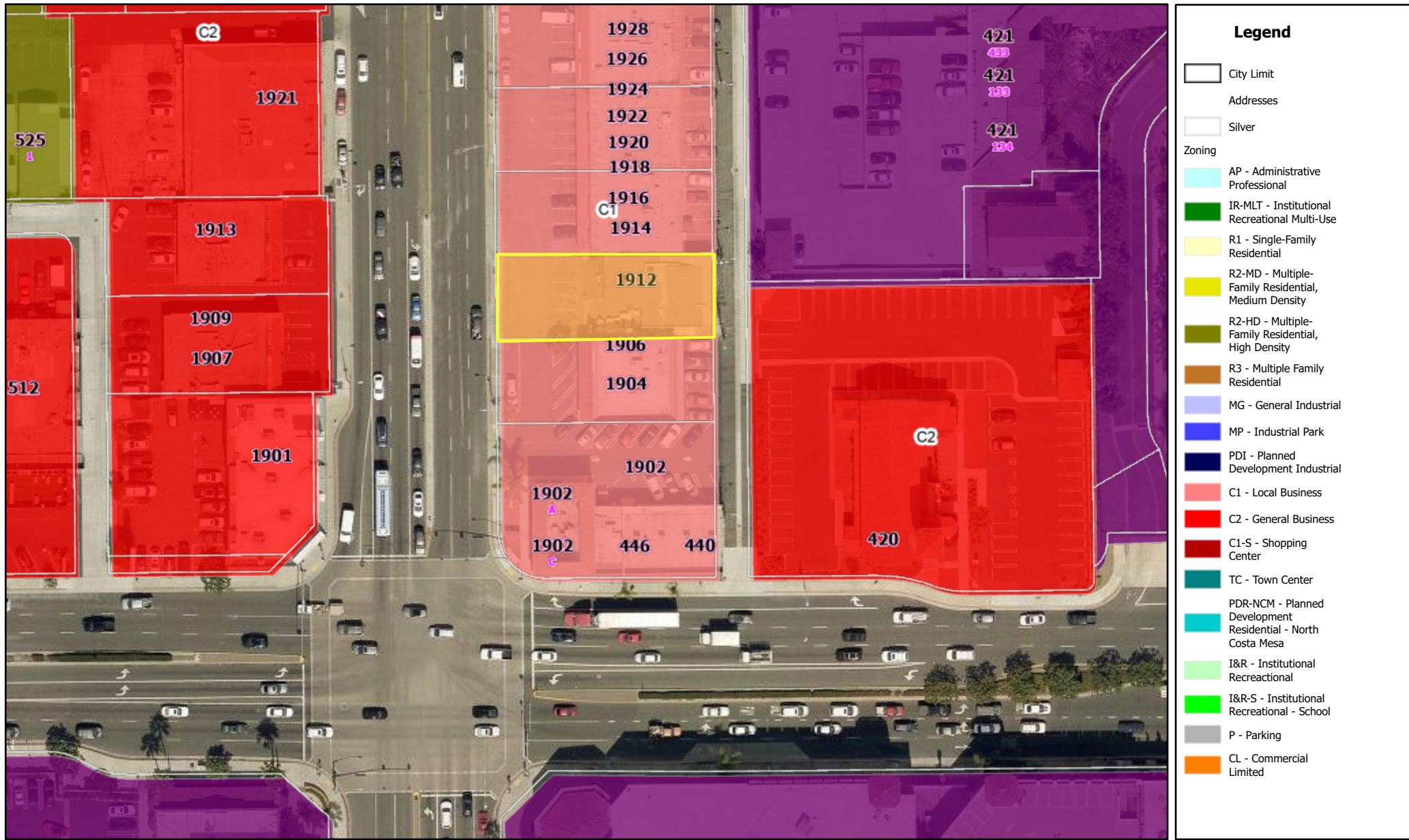
Aerial Map - 1912 Harbor Boulevard

Legend

-  City Limit
-  Addresses
-  Silver

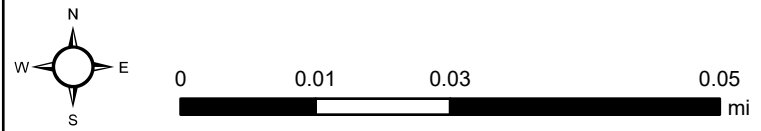


The City of Costa Mesa makes no guarantee as to the accuracy of any of the information provided and assumes no liability for any errors, omissions, or inaccuracies.



Legend

-  City Limit
-  Addresses
-  Silver
- Zoning**
-  AP - Administrative Professional
-  IR-MLT - Institutional Recreational Multi-Use
-  R1 - Single-Family Residential
-  R2-MD - Multiple-Family Residential, Medium Density
-  R2-HD - Multiple-Family Residential, High Density
-  R3 - Multiple Family Residential
-  MG - General Industrial
-  MP - Industrial Park
-  PDI - Planned Development Industrial
-  C1 - Local Business
-  C2 - General Business
-  C1-S - Shopping Center
-  TC - Town Center
-  PDR-NCM - Planned Development Residential - North Costa Mesa
-  I&R - Institutional Recreational
-  I&R-S - Institutional Recreational - School
-  P - Parking
-  CL - Commercial Limited



The City of Costa Mesa makes no guarantee as to the accuracy of any of the information provided and assumes no liability for any errors, omissions, or inaccuracies.

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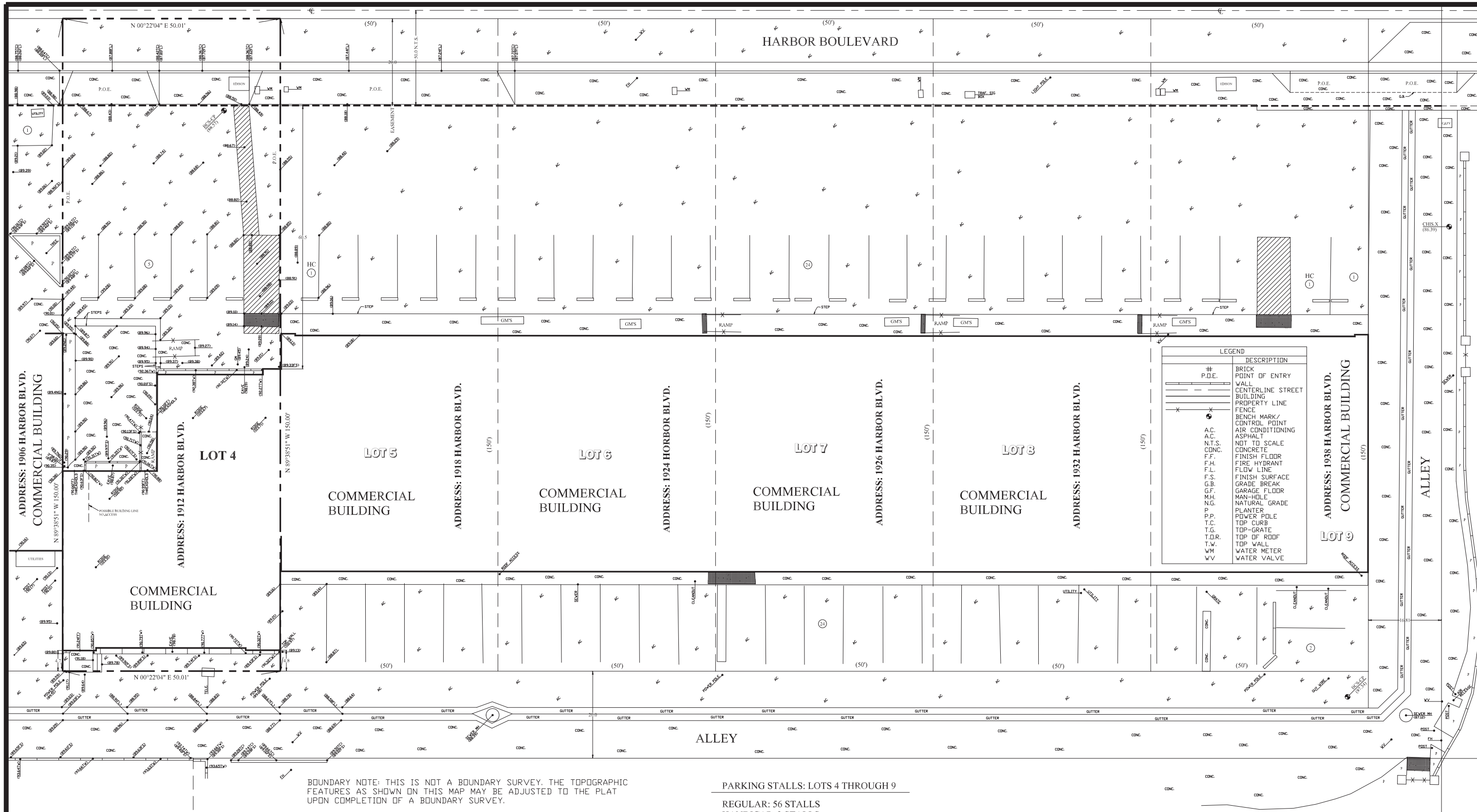
SITE PHOTOS 1912 HARBOR BOULEVARD



View of the existing building from the parking lot along Harbor Boulevard.



View of the existing building (right) from the alley. Photo facing south toward Triangle Square.

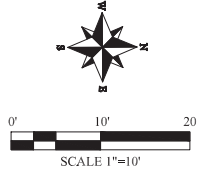


BOUNDARY NOTE: THIS IS NOT A BOUNDARY SURVEY. THE TOPOGRAPHIC FEATURES AS SHOWN ON THIS MAP MAY BE ADJUSTED TO THE PLAT UPON COMPLETION OF A BOUNDARY SURVEY.

EASEMENT NOTE: THE PLAT FOR THIS SURVEY WAS PREPARED WITHOUT A TITLE REPORT. UNPLOTTED EASEMENTS MAY EXIST ON THE SUBJECT PROPERTY.

SURVEYOR OR ENGINEER SHALL PERMANENTLY MONUMENT PROPERTY CORNERS OR OFFSETS BEFORE STARTING GRADING.

PARKING STALLS: LOTS 4 THROUGH 9
 REGULAR: 56 STALLS
 HANDICAP: 2 STALLS



TOPOGRAPHICAL SURVEY
 ADDRESS: 1912 HARBOR BOULEVARD
 COSTA MESA
 CALIFORNIA

DRAWN BY: M.M.
 CHECKED BY: M.M.
 OWNER: KEITH SCHEINBERG
 LEGAL DESCRIPTION:
 LOT 4
 TRACT NO. 809
 M.M. 24/25
 APN#: 419-205-13

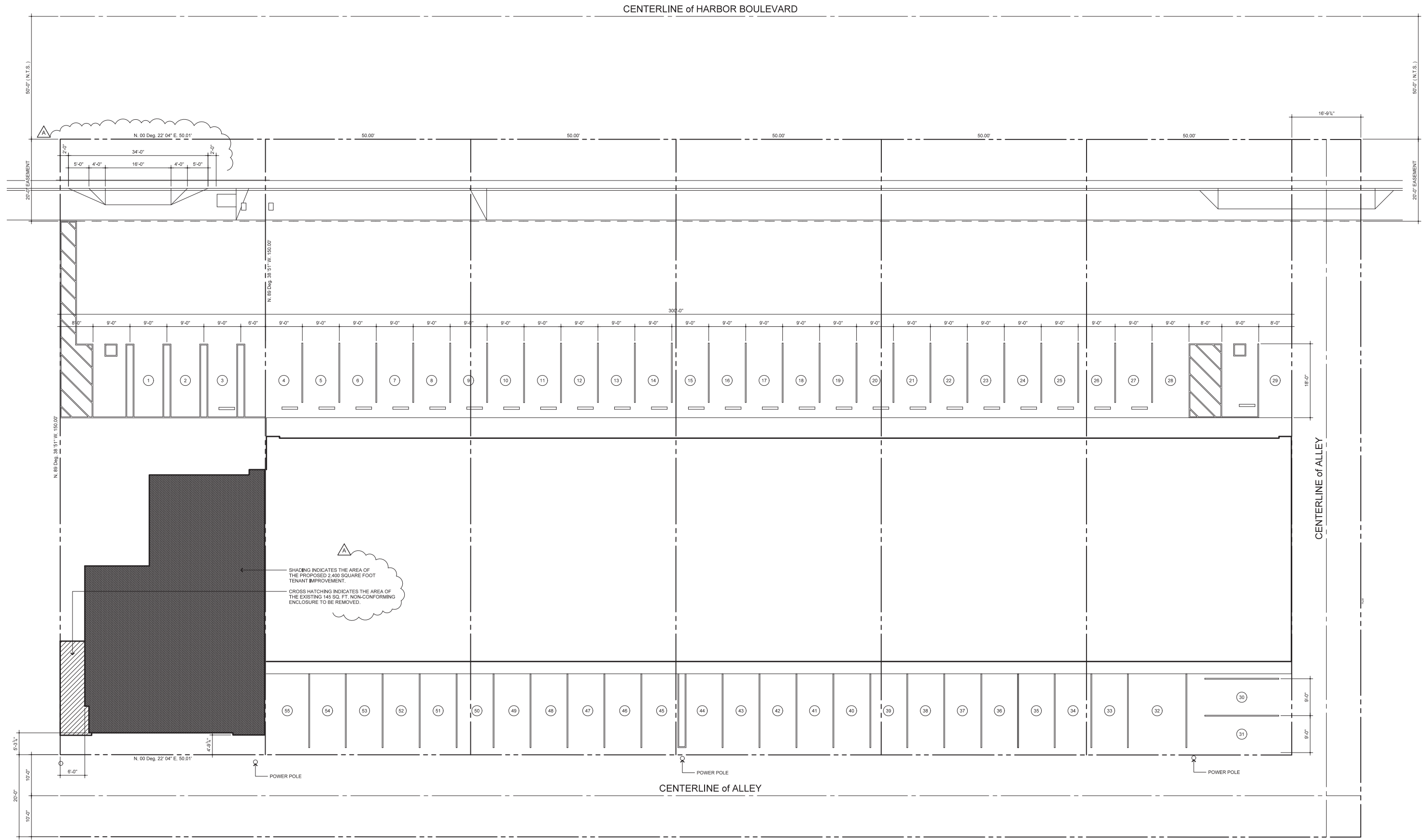
PURPOSE: REMODEL
 BENCH MARK:
 BENCH MARK #: 1E-100-74
 DATUM: NAVD83
 ELEVATION: 95.626
 DESCRIPTION: DESCRIBED BY DCS 2001 - FOUND 3 3/4" DCS ALUMINUM BENCHMARK DISK STAMPED "1E-100-74", SET IN THE SOUTHERLY CORNER OF A 4 FT. BY 8 FT. CONCRETE CATCH BASIN. MONUMENT IS LOCATED IN THE EASTERLY CORNER OF THE INTERSECTION OF NEWPORT BOULEVARD AND BROADWAY, 77 FT. NORTHEASTERLY OF THE CENTERLINE OF BROADWAY AND 54 FT. SOUTHEASTERLY OF THE CENTER OF THE CENTER MEDIAN ALONG NEWPORT BOULEVARD. MONUMENT IS SET LEVEL WITH THE SIDEWALK.

BEACH CITY SURVEYING

MIKE MIEDEMA
 L.S. 8421
 EXPIRATION DATE: 12/31/2024

MIKE MIEDEMA L.S. 8421
 427 E. 17TH ST., #F-238
 COSTA MESA, CA 92627
 (949) 285-9065 CELL
 BEACHCITYSURVEYOR@GMAIL.COM

JOB #: SAME AS ADDRESS
 DATE: 8/5/2024
 PAGE 1 OF 1
 SHEET: SURVEY



SHADING INDICATES THE AREA OF THE PROPOSED 2,400 SQUARE FOOT TENANT IMPROVEMENT.
CROSS HATCHING INDICATES THE AREA OF THE EXISTING 145 SQ. FT. NON-CONFORMING ENCLOSURE TO BE REMOVED.

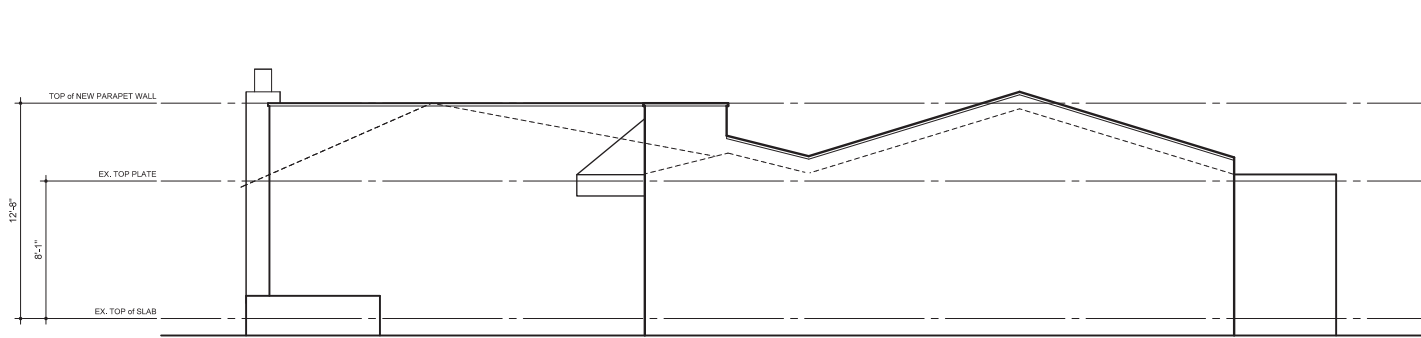
CONDITIONAL USE PERMIT PCUP-24-0011
GREEN MART
PROJECT ADDRESS:
1912 HARBOR BOULEVARD
COSTA MESA, CALIFORNIA

SHEET TITLE
SITE PLAN

12/5/2024 4:20 PM
RAJ Project #
2024-11
REVISIONS
CUP PLAN CHECK
12/5/2024

SP.1

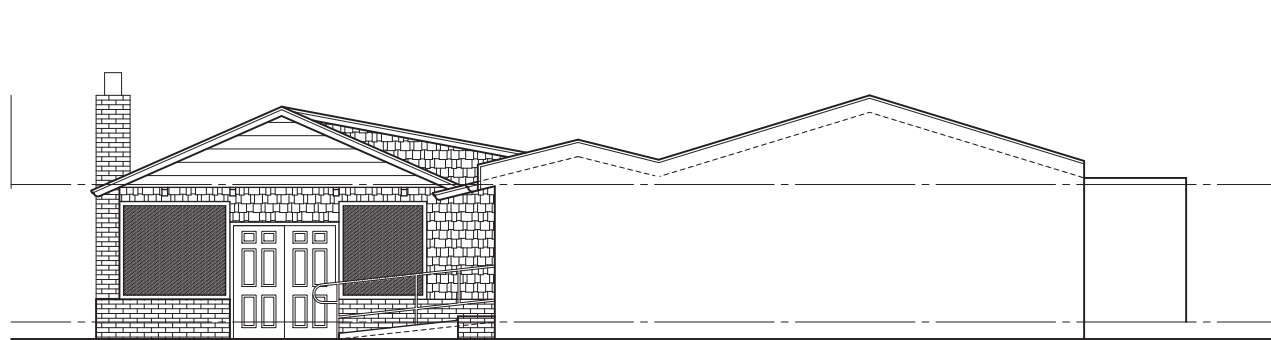
SITE PLAN
Scale: 1/8" = 1'-0"



PROPOSED RIGHT SIDE Scale: 1/4" = 1'-0"



PROPOSED FRONT Scale: 1/4" = 1'-0"



EXISTING RIGHT SIDE Scale: 1/4" = 1'-0"



EXISTING FRONT Scale: 1/4" = 1'-0"

R. A. JEHEBER
RESIDENTIAL DESIGN, INC.
410 32nd Street, Suite 202
Newport Beach, California 92663
949.723.4393 (rajeheber@gmail.com)

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SHEET TITLE
EXTERIOR ELEVATIONS

CONDITIONAL USE PERMIT PCUP-24-0011
GREEN MART
PROJECT ADDRESS:
1912 HARBOR BOULEVARD
COSTA MESA, CALIFORNIA

Print Date & Time	12/5/2024 4:20 PM
Printed By	2024-11
REVISIONS	
△ CUP PLAN CHECK	12/5/2024

A4.0

