



# ***PLANNING COMMISSION AGENDA REPORT***

MEETING DATE: July 24, 2023

ITEM NUMBER: PH-2

**SUBJECT: 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. 16<sup>TH</sup> STREET (THE MERCANTILE)**

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

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

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## **RECOMMENDATION**

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Class 1), Existing Facilities; and
2. Approve Planning Application 22-12, subject to conditions of approval.

## **APPLICANT OR AUTHORIZED AGENT**

The applicant is Aaron Brower and the authorized agent is Jim Fitzpatrick, on behalf of the property owner, Boatyard Fund, LLC.

## PLANNING APPLICATION SUMMARY

Location:	141 E. 16 <sup>th</sup> Street	Application Number(s):	PA-22-12
Request:	Planning Application 22-12 is for a Conditional Use Permit to operate a retail cannabis storefront business with delivery.		

### **SUBJECT PROPERTY:**

### **SURROUNDING PROPERTY:**

Zone:	C2 (General Business District)	North:	C1 (Local Business District)
General Plan:	General Commercial	South:	C2 (General Business District)
Lot Dimensions:	100 ft. x 300 ft.	East:	C2 (General Business District)
Lot Area:	30,000 sq. ft.	West:	C2 (General Business District)
Existing Development:	The property is developed with two one-story buildings totaling 7,659 square feet. The proposed cannabis storefront would be located in a 2,038-square-foot suite at the rear property.		

## DEVELOPMENT STANDARDS COMPARISON

Development Standard	Required/Allowed Zoning Dev. Standard	Proposed/Provided
Minimum Lot Size	12,000 sq. ft.	30,000 sq. ft.
Minimum Lot Width	60 ft.	100 ft.
Building Height	2 stories / 30 ft.	1 story / 15 ft.
<b>Setbacks:</b>		
Front	20 ft.	75 ft.
Side (interior)	15 ft. / 0 ft.	7 ft. 5 in. 0 ft. <sup>1</sup>
Rear (interior)	0 ft.	0 ft.
Parking	31 spaces <sup>2</sup>	33 spaces <sup>2</sup>
Floor area ratio (FAR)	0.20	0.25
1. The floor area ratio and one side setback of the building in the rear are legal non-conforming. 2. The existing surface parking lot is not striped and is non-conforming. The proposed number of parking spaces includes seven compact parking spaces and a credit of one space for installing a bike rack.		
CEQA Status	Exempt per CEQA Guidelines Section 15301 (Existing Facilities)	
Final Action	Planning Commission	

## **BACKGROUND**

The subject property is located at 141 E. 16<sup>th</sup> Street, west of Newport Boulevard, east of Superior Avenue, and north of Commercial Way. The site is zoned C2 (General Business District) and is surrounded by other C2 zoned properties. Properties located to the north, across E. 16<sup>th</sup> Street, are zoned C1 (Local Business District). The site has a General Plan Land Use Designation of General Commercial and is also located in the “19 West Urban Plan” area, which establishes an overlay zoning district that allows mixed-use commercial/residential development opportunities within the urban plan area. However, since the proposed project does not include a mixed-use “commercial/residential” component, the specific plan refers the project to the underlying zoning district requirements of the C2 Zone, and the City’s applicable Zoning Code for permitted uses and development standards.

Existing development on the subject property consists of an approximate 3,357-square-foot one-story building located on the southeast side of the property, a 4,302-square-foot one-story building located at the rear of the property, and a surface parking lot. The property has been primarily used in the past for boat building and repair (boatyard). The boatyard property was sold in December of 2021 to the current property owner. Surrounding uses include a mobile home park to the west, a motorcycle dealership to the north across E. 16<sup>th</sup> Street, a former home furnishings center to the east (now vacant), and a marine supply store and boat repair and storage facility to the south. The existing mobile home park, “Sea Breeze Villas”, is located directly adjacent to the subject property and several residential units are located within close proximity of the proposed use. The mobile home park is physically divided from the subject property by an existing six-foot block wall.

City records for the subject property include permits commencing in 1954. At that time, the property featured a residence along E. 16<sup>th</sup> Street and an approximate 2,600-square-foot nonresidential structure on the southeast side of the property. Over the years, various additions were approved and the residential building was demolished. The building in the rear that is proposed to be partially converted into a cannabis storefront appears to have been permitted following a variance in the 1960s. At that time, a 25-foot-rear setback was required and a variance was needed to construct the building within that setback. However, the rear structure is located in compliance with the current C2 Zoning District in that this District requires no rear yard setback.

This property and certain surrounding properties are located in an established “Opportunity Zone”. An “Opportunity Zone” is a federal program that provides tax incentives for investment in designated census tracts. Investments made by individuals through special funds in these zones would be allowed to defer or eliminate federal taxes on capital gains. Opportunity Zones incentivize investment and economic development in distressed communities by providing federal tax benefits to investors for qualified uses. The incentive enables a temporary deferral on capital gains for qualified investments through a Qualified Opportunity Fund (QOF) established with the Internal Revenue Service (IRS). Taking advantage of the “Opportunity Zone” benefits is the

responsibility of the property owner and/or business owner. To obtain these tax incentives, the property owner and/or business owners must work with the program administrations including, but not limited to, the Internal Revenue Service (IRS) and the California Department of Finance (DOF). According to the applicant, the property owner is currently investigating the benefits and may participate in the program.

The proposed retail cannabis storefront use with delivery, “The Mercantile”, would occupy a 2,038-square-foot suite within the existing 4,302-square-foot rear structure. Cannabis uses are not proposed in the remaining part of the rear structure nor within the other existing building on the property. The remaining suites would be occupied with tenants as allowed by the C2 zone.

There are no open Code Enforcement cases on this property.

### ***Nonconforming Development***

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

Improvements would be made to bring the rear 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 site is currently devoid of any landscaping. The applicant proposes to install 800 square feet of landscaping, including twelve trees, to bring it into closer conformance with minimum landscaping requirements. The existing surface parking lot is unstriped. The parking lot would be striped to meet the City’s commercial parking design standards, including establishing up to seven compact parking stalls to meet the requirement of one stall per 1,000 square feet of floor area. The property complies with all other applicable commercial zone development standards including the front and rear setbacks, building height, and lot width.

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

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

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

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

### ***Cannabis Equity Permit Program***

In 2021, concurrently with the adoption of the ordinance adding cannabis retail provisions to the Municipal Code, the City Council directed the City Manager or designee to develop and implement a cannabis social equity program to minimize barriers of entry into the industry for local persons that have been disproportionately impacted by cannabis prohibition/enforcement, and to positively impact those communities.

According to the City's established "Equity Permit Program", an eligible Equity applicant is defined as a legal United States' resident who meets the following criteria:

- Is a current resident of Costa Mesa and has been for the past consecutive five years;
- Has an annual household income at or less than the Orange County "Area Median" as specified by the State Department of Housing and Community Development (HCD);
- Was convicted of a felony in Orange County involving cannabis and/or marijuana for which the underlying cannabis or marijuana offence has subsequently been designated as a misdemeanor or infraction, or decriminalized pursuant to the provisions of the Control, Regulate and Tax Adult Use of Marijuana or federal law; and
- Can pass all other components of the City's specified background check process.

The applicant for this CUP satisfies the above criteria and his application was submitted subject to the City's Cannabis Equity Permit Program provisions. Similar to the incentives provided to the City's existing cannabis manufacturing applicants, social equity applicants meeting specific criteria were allowed to begin the cannabis permitting process one-month in advance of the general public.

In addition to the aforementioned early submittal application incentive, the City's equity program also waives the \$1,500 pre-application fee and an approximate \$20,000 cannabis business permit application fee. Lastly, to participate in the City's social equity program, the social equity individual must own and maintain a controlling interest of at least 51 percent in that company, and receive equal profits, and distributions or other payments proportionate to their ownership interests. This is intended to ensure an ongoing financial interest for the equity applicant.

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

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

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

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

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

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

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

The CUP application and required supportive materials were submitted by the applicant and reviewed for conformance with City standards and regulations by the Planning

Division, Building Division, Public Works Department (including Transportation and Engineering Divisions), Fire Department, and Police Department.

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

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

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

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

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

## **DESCRIPTION**

Planning Application 22-12 is a request for a CUP to allow a retail cannabis use with delivery and an MCUP for compact parking, at a 2,038-square-foot commercial suite located at 141 E. 16<sup>th</sup> Street. The affiliated State license is a Type 10 "storefront retailer" which also allows retail delivery. Upon approval of a CUP, CBP, City Business License, and State licenses, the business would sell pre-packaged cannabis and pre-packaged cannabis products directly to customers onsite, and via delivery to private addresses, 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 and non-storefronts (delivery) 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, and will not be detrimental to public health, safety, and welfare.

The subject site is located within a commercial zone (C2 – General Business District) where commercial development is specifically allowed to include cannabis retail storefronts subject to a conditional use permit. As defined in the CMMC, “this district is intended to provide for those uses which offer a wide range of goods and services which are generally less compatible with more sensitive land uses of a residential or institutional nature.” Pursuant to the CMMC, cannabis retail storefronts and non-storefronts are subject to extensive regulation (as specifically described in this report) which 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 specific findings related to neighborhood compatibility, health and safety, and land use compatibility. The analysis regarding CUP findings is provided below in this report.

### ***Minor Conditional Use Permit***

Pursuant to CMMC Section 13-94(b), “for nonresidential projects with more than twenty-five (25) required parking spaces, a maximum of ten (10) percent of required parking may be designated as small car spaces if authorized by minor conditional use permit”. Additionally, CMMC Section 13-94(c) requires that “in all zones, the small car spaces shall comply with City of Costa Mesa standards and shall be clearly marked “SMALL CAR ONLY” or “COMPACT” under the direction of the planning division. The distribution, location, and marking of small car spaces shall be subject to the approval of the planning division”.

Small car (compact) parking spaces can be authorized by a Minor Conditional Use Permit (MCUP), an application typically reviewed by the Zoning Administrator. However and for processing consistency purposes, the CUP for the proposed cannabis use, and MCUP for the small car (compact) parking are being processed concurrently. The proposed small car parking is necessary to necessary to comply with parking requirements and the proposed site plan complies with City parking design standards.

### ***Separation Requirements***

CMMC Section 13-200.93(e) stipulates that no cannabis retail storefront use shall be located within 1,000 feet from a K-12 school, playground, licensed child daycare, or homeless shelter, or within 600 feet from a youth center as defined in CMMC Title 9, Chapter VI, Section 9-485, that is in operation at the time of submission of a completed cannabis business permit application. All separation distances are measured in a straight line (“as the crow flies”) from the “premises” (with the exception of playgrounds), where the cannabis retail use is to be located, to the closest property line of the sensitive use(s). (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 the required separation from sensitive uses.

Staff analyzes the separation between a proposed storefront and sensitive uses during the pre-application process. For the subject application, staff issued a letter confirming that the proposed premises met the minimum separation requirements on December 6, 2021. Staff issued a Notice to Proceed letter on January 25, 2022. Should any sensitive uses be introduced within the minimum separation area after that time, the application is allowed to continue.

On July 18, 2023, staff received correspondence from a managing member of the mobile home park that is located adjacent to the subject site. The letter indicated that there is a tot lot within the park and therefore the proposed project would not meet the minimum separation requirements from a playground. Pursuant to CMMC Section 13-200.93(e), “no cannabis retail storefront use shall be located within one thousand (1,000) feet from a K-12 school, playground, child daycare, or homeless shelter, or within six hundred (600) feet from a youth center, *that is in operation at the time of submission of a completed cannabis business permit application* [emphasis added]. According to City records, the applicant submitted a completed cannabis business permit application on January 25, 2022. Staff visited the adjacent mobile home park site in December of 2021 and no playground or tot lot existed. In addition, staff has reviewed Google Streetview images taken in 2021, 2022, and 2023, and no playground or tot lot can be identified in the subject location identified by the correspondence. Therefore, staff believes the application is compliant with the aforementioned CMMC separation provisions.

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

The applicant proposes to update the building façade with new paint, doors, and lighting. Other proposed exterior improvements include:

- Constructing one new commercial driveway, sidewalk, and curb along E. 16<sup>th</sup> Street;
- Constructing an accessible path of travel from E. 16<sup>th</sup> Street to both buildings on the property;
- Repaving and restriping the surface parking lot to comply with the City’s Parking Design Standards including standards for compact parking stalls;
- Adding a bicycle rack to encourage multi-modal transportation;
- Constructing a new trash enclosure;
- Provide landscaping to bring the property into closer conformance with CMMC landscape requirements. The site is not currently landscaped. Landscaping would be installed along the street frontage and within the parking lot, including twelve

new canopy trees, a variety of drought-tolerant shrubs, and live groundcover. The applicant has provided a conceptual landscaping plan as part of their CUP plan submittal. A detailed landscaping plan would be reviewed during the building plan check process for consistency with the conceptual plan as conditioned, should the CUP be approved;

- Installing new security lighting and surveillance cameras. A preliminary lighting/photometric plan has been provided and will be further reviewed during the building plan check process, as conditioned.
- New business signs. 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.

***Interior Tenant Improvements***

The proposed interior improvements involve the construction of demising walls to create new rooms, mainly for “back-of-house” areas including an employee area, storage, and restroom. The proposed retail sales area is an open floor plan including a lobby that would be located by the front entrance. Below is a floor area summary of the 2,038-square-foot tenant space.

**Table 1 – Floor Plan Summary**

<b>Operational Area</b>	<b>Square Feet</b>
Lobby and Reception	242
Customer and Sales Area	1,231
Office/Employee Area	298
Restroom	75
Storage Room	177
Closet	15
<b>Total:</b>	<b>2,038</b>

***Customer and Employee Access***

Customer access is limited to the lobby and customer area (sales floor). Customer circulation into the proposed establishment includes entering the licensed premise through a door that connects directly to the lobby. A greeter employee would verify the customer’s identity and age before allowing the customer to enter the sales floor. After a customer’s identity and age is verified and their transaction is completed, they must leave the premise through the same door located in the lobby. As further conditioned, a security guard would monitor the area at all times to ensure that customers are following regulations.

All other areas of the premises would be accessible only to employees with the proper security credentials. Employees would enter and exit through either the main entrance or a limited-access door accessible on the northwest side of the building.

***Delivery Operations and Vendor Access***

During business hours, delivery and vendor vehicles would use the designated “loading” zone that is located adjacent to the building. When loading/unloading vehicles, delivery employees and licensed vendors would enter/exit through the access-controlled door located on the northwest portion of the building which is approximately 65 feet from the loading area. The applicant is proposing the use of two delivery vehicles; however, the applicant indicates that delivery will not be immediately offered. Vendors are required to check-in at the lobby and would only be allowed to enter the premise while accompanied by an employee with the proper security credential. Cannabis and cannabis products must be transported in secured containers between the licensed premise and delivery or distribution vehicles as conditioned. As conditioned, the access-controlled doors, product path of travel, and the loading/unloading area would be under camera surveillance at all times.

### ***Storefront/Delivery Operations***

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

- Display State license, CBP, and City business license in a conspicuous building location;
- Hours of operations are limited to 7:00 AM to 10:00 PM daily;
- 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 24-hours a day;
- The premises and the vicinity must be monitored by security and/or other staff to ensure that patrons immediately leave and do not consume cannabis onsite or within close proximity. The CMMC prohibits the consumption of cannabis or cannabis products in public areas; cannabis consumption is limited to non-public areas, such as within a private residence. State law further prohibits cannabis consumption and open container possession within 1,000 feet of sensitive uses and while riding in or driving a vehicle;
- There must be continuous video monitoring and recording of the interior and exterior of the premises;
- Adequate security lighting shall be provided and shall be designed to prevent offsite light spill;
- Onsite sales of alcohol or tobacco products and on-site consumption of alcohol, cannabis, and tobacco products is prohibited;
- No one under the age of 21 is allowed to enter the premises. If the business holds a retail medical cannabis license (M-license) issued by the State, persons over the age of 18 may be allowed with the proper medical approvals i.e. physician’s recommendation or medical card pursuant to CMMC Section 9-495(h)(6);
- Prior to employment, all prospective employees must successfully pass a background check conducted by the City, and the employee must obtain a City issued identification badge;

- Customers are only granted access to the retail area after their age and identity has been confirmed by an employee;
- Each transaction involving the exchange of cannabis goods between the business and consumer shall include the following information:
  - Date and time of transaction;
  - Name and employee number/identification of the employee who processed the sale;
  - List of all cannabis goods purchased including quantity; and
  - Total transaction amount paid.
- There must be video surveillance of the point-of-sale area and where cannabis goods are displayed and/or stored;
- Cannabis products shall not be visible from the exterior of the building;
- Free samples of cannabis goods are prohibited;
- When receiving new inventory from licensed distributors, employees will verify the distributor's identity and license prior to allowing them to enter the facility through an access-controlled door. After distributor's credentials have been confirmed, an employee will escort the distributor to the 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 and child-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 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 described the owners' professional 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 operations.

### ***Security Plan***

The applicant has submitted a professionally prepared security plan for the proposed retail cannabis establishment. The City's cannabis consultant reviewed the security plan and determined that appropriate security measures were included to address the City's security requirements pursuant to CMMC Title 9, Chapter VI, and State law. Since the security plan contains sensitive operational details that require limited public exposure to remain effective, the plan is not included as an attachment. However, the following is a list of general security measures that are required for the proposed cannabis retail establishment:

- At least one security guard will be on-site 24-hours a day;
- All employees, 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;
- All facility entry and exit points and locations where cash or cannabis products are handled or stored shall be under camera surveillance;
- Delivery vehicle drivers shall be at least age 21, have a current driver's license, successfully complete a live scan, and have a City-issued badge;
- The business operator shall ensure that all 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; and
- 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.

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

Retail cannabis uses are subject to the same parking ratio requirement as other retail establishments in the City (four spaces per 1,000 square feet of gross floor area). Based on this ratio, the 2,038-square-foot facility would be required to provide eight onsite parking spaces. The two buildings combined include 7,659 square feet of commercial square footage. When applying the City's general commercial parking requirement to both buildings at a ratio of four spaces per 1,000 square feet of gross floor area, the site would need to accommodate a minimum of 31 parking stalls.

The subject property is developed with a surface parking lot that is not striped to meet current codes. As part of the project scope, the parking lot will be redesigned and restriped in order to comply with current parking standards. The reconfigured parking lot would provide 32 parking spaces, of which up to seven would be small car spaces. With the addition of a new bike rack for a credit of one space, the parking lot would have 33 total spaces. The proposed parking configuration thus exceeds the number of parking spaces required by the CMMC. In addition, the project proposes a portion of the parking lot adjacent to the storefront to be striped for loading and unloading only. The loading area is not counted as a parking space. The property proposes one point of vehicular access via a new two-way driveway located on E. 16<sup>th</sup> Street. Pedestrian access would be provided by new sidewalk located along E. 16<sup>th</sup> Street and a new pedestrian path connecting the sidewalk to the building in the rear.

As with many new uses and based on many factors that are difficult to quantify, it is difficult to anticipate exact demand for a new use; however, if parking shortages or other parking-related problems occur, the business owner or operator will be required to monitor the parking lot and institute appropriate operational measures necessary to minimize or eliminate the problem in a manner deemed appropriate by the Director of Economic and Development Services (see "Operational Conditions" of Approval No. 7 in

the attached Resolution). Examples of parking demand management techniques include, but are not limited to, offsite parking for employees, 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***

The CMMC Section 13-275(e) indicates that any increase in traffic generation by a change of use that is required to obtain a discretionary permit shall be subject to review by the appropriate reviewing authority, which may impose fees to address increased trip generation. If required, the fee collected is used to fund the City's comprehensive transportation system improvement program. The purpose of the program is to ensure that the City's transportation system has the capacity to accommodate additional trips. The Citywide Traffic Impact 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) 11<sup>th</sup> Edition Trip Generation Manual for a pharmacy/drug store with drive-through. The City's traffic engineering review focuses on net trip increase for both the ADT and peak hour trips. Therefore, the trip generation is estimated for the previous/existing use(s) and is credited (subtracted) from the proposed use to estimate potential changes in trip generation for ADT and peak hour trips. The proposed use would be subject to a traffic impact fee based on net ADT. The estimated traffic impact fee is approximately \$41,747. The fee calculation would be finalized during the building permit plan check process and must be paid prior to building permit issuance.

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 peak is used to estimate the number of vehicular trips generated both in and out of a new or expanded development known as vehicle trip ends during a peak hour. Staff reviewed and determined that the proposed use does not meet the threshold of 100 peak hour trips requiring a traffic study based on the net peak hour trips.

### ***Odor Attenuation***

Cannabis products would arrive in State compliant packaging that is sealed and odor-resistant, and remain unopened while on the premises. However, a minimal amount of cannabis product would be removed from packaging for display purposes and would be placed in display containers. The proposed HVAC system would utilize activated carbon

filtration systems to completely filter the air within the building. As conditioned, the operator must replace the air filters at regular intervals, as directed in the manufacturer specifications. 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 odors in a manner deemed appropriate by the Director of Economic and Development Services. Lastly, cannabis products are not allowed to be disposed of in the exterior trash area.

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

The subject property abuts an existing residential mobile home park. Two existing mobile homes are situated within ten feet of the proposed licensed premise. The applicant has conducted outreach to the surrounding properties including the residential community. To ensure neighborhood compatibility, proposed project conditions and requirements include the following:

- Business hours are limited from 7 AM to 10 PM;
- Security lighting would be shielded and directed down/away from the residential properties to prevent light spill. As conditioned, a photometric study would be required to be submitted during plan check to demonstrate that light levels at the residential property are minimal;
- Post signs within the parking lot to remind customers and vendors to keep noise levels to a minimum (the security guard shall also be responsible for noise enforcement);
- Limit the hours that the business can dispose of waste at the trash enclosure to avoid noise impacts during sensitive hours i.e. dispose of trash between 8 AM and 8 PM; and
- A staff person or the required 24-hour security guard will monitor the site's parking areas to ensure that customers are quiet, turn off vehicle engines promptly, do not play loud music, and generally do not create excessive neighbor disturbances. The parking lot monitoring will be especially diligent to prevent noise and other neighbor disturbance during morning and evening business hours.

### **GENERAL PLAN CONFORMANCE**

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



improvements to public and private infrastructure are consistent with the goals, objectives, and policies contained in this Plan.

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

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

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

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

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

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

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

**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 adjacent to a mobile home park. As conditioned, the proposed use would be required to control odor, noise, limit trash enclosure access, and provide adequate security and parking lot monitoring to ensure compatibility between the proposed use and the adjacent residential uses.

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

**Consistency:** With the proposed storefront use, parking lot activity and associated noise could be greater than past boat building and repair operations. Conditions of approval requiring 24-hour onsite security, parking lot monitoring, signage regarding noise, and limiting the hours the exterior trash enclosure can be used are intended to ensure compatibility between the proposed use and adjacent residences.

## **REQUIRED FINDINGS**

Pursuant to Title 13, Section 13-29(g), Findings, of the Costa Mesa Municipal Code, in order to approve the project including, the Planning Commission must find that the evidence presented in the administrative record substantially meets specified CUP and MCUP 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 (C2 - General Business District) where commercial development is specifically allowed to include retail uses, including those with small car parking. 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. The proposed storefront would be located in an area where there is a mixture of commercial and residential uses. The previous use of the subject property was boat building, repair, and sales, and did not include a striped parking lot. Other existing uses in the immediate area include boatyards, vehicle sales and repair, and a mobile home community. Additionally, the proposed cannabis retail storefront use was 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 at the time the completed cannabis business permit was submitted (January 25, 2022). All proposed 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 mobile home park, and vehicle repair, sales, rental, and storage. The project would include features such as: odor control filters, limiting vendor deliveries and customer services to the hours between 7 AM and 10 PM, posting signs in the parking lot directing all to use consideration, having a security guard onsite at all times, having a staff member periodically monitor the parking lot, limiting the hours the trash enclosure can be used, and shielding security lighting down and away from residential uses. Therefore, as proposed

and conditioned, the proposed retail storefront would be substantially compatible with developments in the area.

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

The proposed cannabis retail storefront use with delivery and compact parking spaces 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, security devices shall be installed before operation, and site parking/circulation shall be constructed in compliance with local and State safety and accessibility standards. 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 delivery drivers, must pass a live scan background check and obtain an identification badge from the City. The conditions of approval include, but are not limited to, the aforementioned security measures to ensure that the use would not be materially detrimental to the health, safety and general welfare of the public or be otherwise injurious to property or improvements within the immediate neighborhood.

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

The proposed retail use is located within an existing commercial building on a property that has a General Plan land use classification of "General Commercial." It is the intent of this land use designation to permit a wide range of uses that serve both local and regional needs. 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 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. The proposed site improvements, such as landscaping and parking lot striping (including compact spaces), are designed to address existing non-conformities. No additional square footage is proposed; therefore, approving the CUP would not increase site density or intensity.

## **ENVIRONMENTAL DETERMINATION**

The project is categorically exempt from the provisions of California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 for the permitting

and/or minor alteration of Existing Facilities (Class 1). This project site contains an existing commercial building that has been used for commercial activities and the application does not propose an increase in floor area. The project is consistent with the applicable General Plan land use designation and policies as well as with the applicable zoning designation and regulations. The project also complies with all applicable business operational standards of Title 9 and 13 of the CMMC. Furthermore, none of the exceptions that bar the application of a categorical exemption pursuant to CEQA Guidelines Section 15300.2 applies. Specifically, the project would not result in a significant 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 should be continued to a future meeting to allow a redesign or additional analysis. In the event of significant modifications to the proposal, staff will return with a revised Resolution incorporating new findings and/or conditions.
3. Deny the project. If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission must deny the application, provide facts in support of denial, and direct staff to incorporate the denial findings into the Resolution. 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, three written public comments have been received. Any public comments received prior to the July 24, 2023 Planning Commission meeting will be provided separately.

## **CONCLUSION**

The proposed project is a retail cannabis storefront business with delivery and compact parking spaces at a developed commercial property. Staff and the City's cannabis consultant completed the Cannabis Equity Permit Program evaluation, Pre-application Determination, Business Plan and Security Plan evaluations, owner background checks, and thoroughly reviewed the CUP materials. If approved, the operation would be required to comply with all conditions of approval and extensive City and State regulations.

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

As proposed and conditioned, the use would be compatible with other uses in the C2 zone, the Zoning Code, and the City's General Plan. The required findings for the CUP and MCUP can be made, as described above, and therefore, staff recommends approval of Planning Application 22-12 subject to conditions of approval.