



CITY OF COSTA MESA

PLANNING COMMISSION

Agenda

Monday, November 13, 2023

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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Note regarding agenda-related documents provided to a majority of the Commission after distribution of the agenda packet (GC §54957.5): Any related documents provided to a majority of the Commission after distribution of the Agenda Packets will be made available for public inspection. Such documents will be posted on the city's website and will be available at the City Clerk's office, 77 Fair Drive, Costa Mesa, CA 92626.

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.

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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

NOVEMBER 13, 2023 – 6:00 P.M.

ADAM ERETH
ChairRUSSELL TOLER
Vice ChairJOHNNY ROJAS
Planning CommissionerANGELY ANDRADE VALLARTA
Planning CommissionerKaren Klepack
Planning CommissionerJON ZICH
Planning CommissionerJENNIFER LE
Director of Economic and
Development ServicesJIMMY VIVAR
Planning CommissionerTARQUIN PREZIOSI
Assistant City Attorney**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.

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. [NOVEMBER 28, 2022 UNOFFICIAL MEETING MINUTES](#) [23-1450](#)

RECOMMENDATION:

Planning Commission approve Minutes of a regular meeting of November 28, 2022.

Attachments: [November 28, 2022 Unofficial Meeting Minutes](#)

2. [JUNE 12, 2023 UNOFFICIAL MEETING MINUTES](#) [23-1451](#)

RECOMMENDATION:

Planning Commission approve Minutes of a regular meeting of June 12, 2023.

Attachments: [June 12, 2023 Unofficial Meeting Minutes](#)

3. [JUNE 26, 2023 UNOFFICIAL MEETING MINUTES](#) [23-1452](#)

RECOMMENDATION:

Planning Commission approve Minutes of a regular meeting of June 26, 2023.

Attachments: [June 26, 2023 Unofficial Meeting Minutes](#)

4. [OCTOBER 23, 2023 UNOFFICIAL MEETING MINUTES](#) [23-1453](#)

RECOMMENDATION:

Planning Commission approve Minutes of a regular meeting of October 23, 2023.

Attachments: [October 23, 2023 Unofficial Meeting Minutes](#)

PUBLIC HEARINGS:

1. [**A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL GIVE FIRST READING TO AN ORDINANCE TO AMEND TITLE 13 \(PLANNING, ZONING, AND DEVELOPMENT\) OF THE COSTA MESA MUNICIPAL CODE \(CMMC\) TO MODIFY THE CITY'S OUTDOOR DINING PROVISIONS**](#)

RECOMMENDATION:

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is categorically exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule) in that the updates to the City's outdoor dining provisions will not have a significant impact on the environment.
2. Recommend that the City Council give first reading to an Ordinance approving Code Amendment No. 2023-XX, amending portions of the Costa Mesa Municipal Code (Zoning Code) relating to outdoor dining areas.

Attachments: [Agenda Report](#)

- [1. Draft Planning Commission Resolution](#)
- [2. Draft Ordinance](#)
- [3. Track Changes](#)
- [4. Exhibit A to the Ordinance](#)

2. [AN ORDINANCE AMENDING TITLE 13 \(PLANNING, ZONING AND DEVELOPMENT\) OF THE COSTA MESA MUNICIPAL CODE TO ESTABLISH AFFORDABLE HOUSING REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENT PROJECTS](#) 23-1458

RECOMMENDATION:

Staff recommends the Planning Commission:

1. Receive staff presentation and public comment and provide feedback regarding the draft content of Ordinance No. 2023-XX, which would amend Costa Mesa Municipal Code (CMMC) Title 13 to establish affordable housing requirements for new residential development projects; and
2. Continue the item to a date certain for staff to return with a final Draft Ordinance for recommendation to the City Council.

Attachments: [Agenda Report](#)

- [1. Draft Content of Ordinance No. 2023-XX](#)
- [2. KMA Supplemental Analysis](#)
- [3. Density Bonus Chart](#)
- [4. Affordable Housing Rents and Incomes](#)
- [5. Orange County Cities Comparison Table](#)

OLD BUSINESS: NONE.

NEW BUSINESS: NONE.

DEPARTMENT REPORTS:

1. PUBLIC WORKS REPORT
2. DEVELOPMENT SERVICES REPORT

CITY ATTORNEY REPORTS:

1. CITY ATTORNEY

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 #: 23-1450

Meeting Date: 11/13/2023

TITLE:

NOVEMBER 28, 2022 UNOFFICIAL MEETING MINUTES

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/ PLANNING
DIVISION

RECOMMENDATION:

Planning Commission approve Minutes of a regular meeting of November 28, 2022.

UNOFFICIAL UNTIL APPROVED

**MEETING MINUTES OF THE CITY OF
COSTA MESA PLANNING COMMISSION****November 28, 2022****CALL TO ORDER**

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

PLEDGE OF ALLEGIANCE TO THE FLAG

Commissioner Rojas led the Pledge of Allegiance.

ROLL CALL

Present: Chair Byron de Arakal, Commissioner Adam Ereth, Commissioner Jonny Rojas, Commissioner Dianne Russell, Commissioner Russell Toler, Commissioner Vivar

Absent: Vice Chair Jon Zich

Officials Present: Director of Economic and Development Services Jennifer Le, Assistant Director of Development Services Scott Drapkin, Assistant City Attorney Tarquin Preziosi, City Engineer Seung Yang, Transportation Services Manager Jennifer Rosales, Senior Planner Nancy Huynh, Contract Planner Michelle Halligan, and Recording Secretary Anna Partida

ANNOUNCEMENTS AND PRESENTATIONS:

None.

PUBLIC COMMENTS:

None.

COMMISSIONER COMMENTS AND SUGGESTIONS:

Commissioner Ereth and Commissioner Vivar thanked the public for joining the meeting.

Commissioner Russell noted Caltrans is holding a hearing on December 5th at the Norma Hertzog Center in regards to a potential protective bike lane from Broadway Avenue into Newport Beach. She encouraged the public to attend.

CONSENT CALENDAR:

None.

PUBLIC HEARINGS:

1. PLANNING APPLICATION 21-33 FOR A CONDITIONAL USE PERMIT TO OPERATE A RETAIL CANNABIS STOREFRONT BUSINESS LOCATED AT 675 PAULARINO AVENUE, SUITES 5, 6, AND 7 (STIIIZY)

Project Description: Planning Application 21-33 is a request for a Conditional Use Permit (CUP) to allow a retail cannabis storefront business in an existing 2,992-square-foot tenant space within a multi-tenant commercial building located at 675 Paularino 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 regulations.

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

Two ex-parte communications reported:

Commissioner Russell had a phone conversation with the applicant's representative.

Commissioner Vivar received an email from the applicant's representative, but was not able to respond.

Nancy Huynh, Senior Planner, presented the staff report.

Commission and Staff:

Commissioner Toler, Ereth and Vivar were all pleased with the City map that was included in the presentation that showed approved and denied retail Cannabis Storefront CUP sites.

Commissioner Vivar asked for clarification on the current tenant leases at the site, which he received.

Chair de Arakal asked whether there is an acceptable ADA path of travel from the storefronts to the trash enclosure.

Scott Drapkin, Assistant Development Services Director, noted the City has been asking applicants to make sure their plans are updated to reflect current ADA compliance rules for interior and exterior improvements.

The Chair opened Public Hearing.

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Mr. Tak Sato, applicant, stated he read and agreed to the conditions of approval.

Commission, Applicant and Staff:

Mr. Sato thanked staff and provided a brief presentation of this application. He also introduced their Director of Development, Cyrus Pi.

Commissioner Vivar asked why the applicant is opening a second location in Costa Mesa and whether the applicant will open additional stores in the City.

Mr. Pi noted their other location is a partnership with another retailer, and this store will be operated solely by their company. He also noted this store will serve a different trade area and location in the City.

Commissioner Vivar asked whether the applicant had spoken to the building owner at 688 Paularino Street who had expressed concerns of their business moving into the location.

Mr. Pi answered that this is first he has heard of this, so no he has not spoken to the business owner mentioned.

Commissioner Vivar expressed his appreciation that the applicant is making relocation accommodations for the tenants at the site.

Mr. Pi noted one tenant is moving into another vacant unit at the site and the other is moving into a vacant unit across the street, so there will be no disruptions in the business operations for either tenant.

Commissioner Erath asked the applicant why they had picked this location that was already occupied by a tenant.

Mr. Sato noted the tenants were already talking with their landlord about moving to other locations or suites, so they were able to secure the three suites for their business without forcing out the current tenants.

Discussion ensued regarding the public outreach and two open houses that the applicant held at the site. The applicant noted the other tenants and attendees spoke favorably of having security guards at the site for safety and to deter parking from the hotel across the street.

Chair de Arakal asked whether the applicant will pull permits for the tenant improvements inside the building.

Mr. Sato answered if their CUP is approved tonight, then they will apply for the building permits.

The Chair opened Public Comments.

PUBLIC COMMENT:

Andrew Bachler, resident of Costa Mesa, spoke in favor of the application.

Mike Wong, Costa Mesa business owner, spoke in favor of the application.

Jason Ball, co-owner of the property, spoke in favor of the application.

Speaker 1, resident of Costa Mesa, spoke in favor of the application.

The Chair closed public comments.

The Chair closed the Public Hearing.

Chair de Arakal made a motion to approve the staff recommendation, seconded by Commissioner Russell.

Chair de Arakal spoke in favor of his motion.

Commissioner Russell was pleased that the property owner was able to relocate the sushi restaurant into another location across the street and spoke in favor of the motion.

Commissioner Rojas spoke in favor of the motion and was appreciative that current businesses were preserved and able to relocate. This is key for him, for any future applications going forward.

Commissioner Ereth and Commissioner Vivar spoke in favor of the application and the applicant's presentation.

Commissioner Vivar encouraged the applicant to reach out to the business owner at 688 Paularino who had concerns regarding their business.

MOVED/SECOND: de Arakal/Russell

MOTION: Move staff's recommendation.

The motion carried by the following roll call vote:

Ayes: de Arakal, Ereth, Rojas, Russell, Toler, Vivar

Nays: None

Abstain: None

Absent: Zich

Motion carried: 6-0

ACTION: The Planning Commission adopted a resolution to:

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1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) Guidelines Section 15301 (Class 1), Existing Facilities; and
2. Approve Planning Application 21-33, subject to conditions of approval.

RESOLUTION PC-2022-31 – A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING PLANNING APPLICATION 21-33 FOR A STOREFRONT RETAIL CANNABIS BUSINESS (STIIIZY) IN THE C1 ZONE AT 675 PAULARINO AVENUE, SUITES 5, 6, AND 7

The Chair explained the appeal process.

2. PLANNING APPLICATION 21-34 FOR A RETAIL CANNABIS STOREFRONT BUSINESS LOCATED AT 2332 NEWPORT BOULEVARD (FLOWER FACTORY)

Project Description: Planning Application 21-34 is a request for a Conditional Use Permit to allow a retail cannabis storefront use within an existing commercial building located at 2332 Newport Boulevard. The existing building is 3,790 square feet. The applicant proposes to reduce the size of the building to 2,000 square feet and bring the property into greater conformance with development standards. The proposed use would be subject to Costa Mesa's regulations, conditions of approval, and State regulations.

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

Three ex-parte communications reported:

Commissioner Ereth had a phone call with Chris Fewell.

Commissioner Vivar received an email from the applicant's representative.

Commissioner Russell had a conversation with the applicant's representative at the property.

Michelle Halligan, Contract Planner, presented the staff report via Zoom.

Commission and staff:

Commissioner Rojas asked whether the only vehicle access entry and exit into the parking area would be from Newport Boulevard, since the back gate will remain closed.

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Ms. Halligan confirmed the only entry on Newport Boulevard and only emergency vehicles would have access through the back gate via a Knox box.

Commissioner Vivar asked for confirmation of the driveway entry width to the business.

Transportation Services Manager, Jennifer Rosales noted the width at 25 feet.

Discussion ensued regarding the parking configuration, drive aisle width, ADA parking compliance, and garbage truck access.

Commissioner Vivar asked whether a sidewalk would be provided at the entrance to the business to protect patrons from the parking area.

Ms. Halligan noted a 5-foot sidewalk is proposed at the entrance to business, which would also be ADA compliant.

Commissioner Ereth asked whether the parking turnaround in the back of the property is sufficient for the volume of cars expected for the business.

Ms. Rosales noted staff had reviewed the turnaround and it is adequate for the site and looking at the peak hour traffic volumes projected for the site, they did not see an issue.

Discussion ensued regarding traffic impact fees for the site.

Commissioner Ereth asked if the prior car rental facility at the location was still in business at the time this cannabis business intended to occupy the location.

Ms. Halligan noted they were not in business at that time.

Discussion ensued regarding free samples, and tax revenue percentages.

Commissioner Ereth requested clarification on why the back entrance will be blocked off from customer traffic.

Ms. Halligan noted the use of the property has changed to retail and wanted to mitigate any traffic leaving from the back entrance into alley, which backs to residential uses.

Chair de Arakal asked for clarification on the type of parking configuration at the site.

Ms. Halligan noted the business will have parallel parking on site.

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Discussion ensued on different parking configurations, parking requirements and onsite circulation.

The Chair opened the Public Hearing.

Mr. Christopher Glew, authorized agent, stated he read and agreed to the conditions of approval.

Commission, Applicant and Staff:

Mr. Glew thanked staff and provided an overview of the application.

Commissioner Russell noted two entrances into business and asked if the public would still be serviced by one main desk inside, which Mr. Glew confirmed.

Commissioner Vivar asked for clarification on the number of bike racks on site.

Mr. Glew noted one large bike rack that can hold up to 11 bikes will be located in the front of the business.

Discussion ensued regarding walking and biking incentives for customers and employees.

Commissioner Ereth questioned if the applicant had received feedback at their open house from the residential neighbors located behind their location adjacent to the alley.

Mr. Glew noted they had received favorable reactions from visitors identifying themselves as residential neighbors and received one concerned email from a business owner, which they addressed.

Discussion ensued regarding debit card transactions for payments and hiring from local communities.

Commissioner Ereth asked the applicant to clarify on how the business will pay their tax.

Mr. Glew noted that their business pays taxes on total gross receipts. He noted all the City's that they are located in are structured in this same way.

Mr. Drapkin noted that taxes are based on total gross receipts, and he will confirm with the City's Finance department.

Chair de Arakal asked how many employees would be in the store at any given time.

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Mr. Glew answered at least two to three, excluding security staff that is outside.

Discussion ensued regarding parking for employees and a shuttle service for employees so they do not take available parking spots for customers.

The Chair opened Public Comments.**PUBLIC COMMENTS:**

Richard Austin, Costa Mesa resident, did not support the business at this location. He noted parking difficulties in the area and three drug rehabilitation homes very close to this location. He thought it was a very difficult location to enter and exit.

Judy Pham, adjacent business owner, spoke in opposition to the application. She noted the difficulty in parking in the area, and the problem of homeless individuals around the property and alleyway.

The Chair closed Public Comments.

Chair de Arakal noted his concern for parking at the site and customers utilizing adjacent properties to park and asked the applicant how they will mitigate the parking concerns.

Mr. Glew noted the exterior signage and parking monitors they will use to direct customers to the correct parking spots on their property only. Customers will be denied access to the store if they walk in from an adjacent property until they move their vehicle and park in their lot.

Commissioner Russell asked how many customers they guess may be in their store at any time.

Mr. Glew thought at least 20 per hour at peak times.

Discussion ensued regarding their target market at that location and length of time per customer visit.

Discussion ensued regarding signage to the business and directional signage for parking at the site.

Commissioner Ereth noted his concerns of customers potentially driving in the alley late at night and disturbing the residential neighbors and asked how the applicant can mitigate those concerns.

Mr. Glew noted if that becomes an issue they could have their traffic flagger stand in the alleyway or down the street to direct customers away, but he noted GPS

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directs customers toward Newport Boulevard and away from alley. He did not think this will be a problem for the site.

The Chair closed the Public Hearing.

Jennifer Le, Director of Economic and Development Services, confirmed with the Finance Department that gross receipts reflect the actual price that the item is sold for.

The Chair re-opened the Public Hearing per Commissioner Vivar's request.

Commissioner Vivar asked Ms. Rosales the angle of the cars exiting the site and if there will be sufficient driveway width to accommodate that.

Ms. Rosales noted the driveway width is 25 feet, which gives enough room for vehicles to exit and enter the site at the same time. The drive aisle is 20 feet, which meets the City's standards.

The Chair closed the Public Hearing.

Commissioner Toler made a motion, seconded by Chair de Arakal.

Chair de Arakal asked to change the language of Operational Condition of Approval Number six to require the hiring of an employee trained in traffic control irrespective if there is a problem, and to add a condition that after six months of operations the Planning Commission would review the CUP at a public hearing.

The maker of the motion agreed to these modifications to the motion.

MOVED/SECOND: Toler/de Arakal

MOTION: Move the staff's recommendation with modified language to Operational Conditions of Approval number six and adding a Condition of Approval.

The motion carried by the following roll call vote:

Ayes: de Arakal, Rojas, Russell, Toler, Vivar

Nays: Ereth

Abstain: None

Absent: Zich

Motion carried: 5-1

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 (Class 1), Existing Facilities; and
2. Approval Planning Application 21-34, subject to conditions with modified language to Operational Condition number 6, and added Conditional of approval.

ADDED CONDITIONS:

Operational Condition of Approval number six to read: 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, employee shuttle service from an approved location with excess parking, reducing operating hours of the business, hiring an employee trained in traffic control to monitor parking lot use and assist with customer parking lot circulation, encouraging customers to take advantage of online ordering for a faster pick-up, limiting the number of employees that park onsite, and incentivizing employee carpooling/cycling/walking.

Added Condition of Approval number 31 to read: After six months of operations (open to customers), the Planning Commission shall review the CUP at a public hearing.

RESOLUTION PC-2022-32 – A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING PLANNING APPLICATION 21-34 FOR A STOREFRONT RETAIL CANNABIS BUSINESS (FLOWER FACTOR) IN THE C1 ZONE AT 2332 NEWPORT BOULEVARD.

The Chair explained the appeal process.

Chair called for a recess at 8:01 p.m.

Chair reconvened the meeting at 8:11 p.m.

3. PLANNING APPLICATION 22-21 FOR A RETAIL CANNABIS STOREFRONT BUSINESS LOCATED AT 2001 HARBOR BOULEVARD, SUITES 101-103 (SOUTH COAST SAFE ACCESS)

Project Description: Planning Application 22-21 is a request for a Conditional Use Permit (CUP) to allow a 3,720 square-foot retail cannabis storefront on the first floor of an existing two-story multi-tenant commercial building. The affiliated State license is a Type 10 “storefront retailer” license, which also allows for retail cannabis delivery. However, the applicant is proposing a retail storefront without delivery to customers. Upon approval of a CUP, CBP, City Business License, and State license, 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. The proposed business operations are from 7 AM to 10 PM daily.

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Environmental Determination: The ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15301 (Class1), Existing Facilities.

The Planning Commission indicated that there were no ex-parte communications.

Michelle Halligan, Contract Planner, presented the staff report.

Commission and Staff Discussion included:

Commissioner Ereth enquired about the previous, no longer existing, illegal cannabis business that was located at the site. He enquired about the type of counseling that was provided at the nearby counseling center and the recovery programs. He discussed with staff how the recovery counseling was factored in neighborhood compatibility. Staff responded with information on the amount of time since the shutdown of the illegal cannabis facility and provided confirmation of compensation for the city's abatement efforts. Staff confirmed the types of counseling provided, which included individual, family, group and recovery counseling. Staff stated that the municipal code does not establish a minimum distance between a cannabis storefront and a facility that provides drug recovery.

Commissioner Vivar enquired about the illegal, no longer existing, cannabis dispensary and if the landlord was aware of the illegal operation in their establishment. He also enquired about the staff proposed rear gate condition of approval. Staff responded that the property owner had worked with the police department and issued the legal paperwork to proceed with the eviction of the illegal dispensary. Staff explained the gate was primarily used by the electronics warehouse use located behind the property and staff did not want restrict their access during day time business hours.

Chair de Arakal enquired about the reduction of 18 parking spaces in 1986 and future possible parking requirements. Staff responded that the applicant would need to modify the CUP for any future proposed site use/parking changes.

PUBLIC COMMENT:

The Chair opened the public hearing.

Applicant team: Ronald Long

Ronald Long stated he read and agreed to the conditions of approval.

Commission, Staff and Applicant discussion included:

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Commissioner Rojas asked the applicant whether they had conversations or received feedback from the counseling facility during their community outreach. The applicant responded that they did not.

Commissioner Toler asked the applicant whether they have had any interactions with the counseling center. The applicant responded they did not interact with the counseling center.

Commissioner Vivar asked the applicant whether the mailers they sent out to the surrounding neighbors were sent in both English and Spanish. He asked the applicant whether they were aware of the counseling service when they decided to lease the space. The applicant responded that they only sent out mailers in English. The applicant stated they were not aware of the counseling service when they were leasing out the space.

Commissioner Ereth asked the applicant about their open house and their reasoning for choosing the hours of 5:00 p.m. to 6:00 p.m. for the open house. He asked the applicant about the feedback they received from the public at the open house. He also asked whether there was any displacement of other tenants for the applicant to lease that space. The applicant responded that they should have held a longer open house, and that they received positive feedback from the community. The applicant stated to their understanding the units had been vacant for years.

The Chair opened public comments.

No public comments.

The Chair closed public comments.

Chair de Arakal asked staff about the counseling service in the building, when it was approved, and operational parameters. Staff stated they are required to provide vanpool for their patients and the counseling facility was approved to have patients on site Monday through Friday from the hours of 9:00 a.m. to 9:00 p.m.

The Chair closed public hearing.

Commissioner Toler made motion to approve.

The motioned died for lack of a second.

Commissioner Vivar made a motion to deny, seconded by Commissioner Ereth.

Commissioner Comments on the Motion for denial:

UNOFFICIAL UNTIL APPROVED

Commissioner Vivar stated the applicant did not do adequate work to ensure compatibility with the existing counseling service center. He also stated the outreach was inadequate.

Commissioner Ereth stated the application was not substantially compatible with the surrounding uses and could potentially be materially detrimental to the surrounding businesses and neighborhood.

Commissioner Rojas stated his fellow commissioners voiced his concerns and stated the application did not satisfy the required findings for approval.

Commissioner Toler stated he was not in support of the denial motion. He stated he could not differentiate this proposed application with others cannabis applications that the Commission has approved. He stated that much of the concerns mentioned in the meeting were misconceptions, and that it was business owners' responsibility to figure out on-site parking arrangements.

Commissioner Russell stated that the proposed application is located in close proximity to the counseling facility. However, she said the counseling management was notified, yet did not reach out to the commission with concern. She stated she was not in support of the denial motion.

Chair de Arakal stated he cannot make a finding for substantial compatibility. De Arakal stated that even though there was no sensitive use separation requirements he does not agree with putting a retail store front adjacent from a counseling center with recovery and rehabilitation programs.

The Chair called for the question.

MOVED/SECOND: Vivar/Ereth

MOTION: Moved to Deny Planning Application 22-21.

The motion carried by the following roll call vote:

Ayes: de Arakal, Ereth, Rojas, Vivar

Nays: Toler, Russell

Abstain: None

Absent: Zich

Motion carried: 4-2

ACTION: Planning Commission adopted a motion to deny Planning Application 22-21.

RESOLUTION PC-2022-33 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA DENYING PLANNING APPLICATION 22-21 FOR A RETAIL CANNABIS STOREFRONT BUSINESS LOCATED AT 2001 HARBOR BOULEVARD, SUITES 101-103 (SOUTH COAST SAFE ACCESS)

UNOFFICIAL UNTIL APPROVED

The Chair explained the appeal process.

OLD BUSINESS: None.

NEW BUSINESS: None.

DEPARTMENTAL REPORT(S)

1. Public Services Report – Mr. Yang announced the start of the construction to the improvements at the intersection of Newport Boulevard and Industrial Way.
2. Development Services Report – None.

CITY ATTORNEY’S OFFICE REPORT(S)

1. City Attorney – None.

ADJOURNMENT AT 9:13 PM

Submitted by:

SCOTT DRAPKIN, SECRETARY
COSTA MESA PLANNING COMMISSION



CITY OF COSTA MESA

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 23-1451

Meeting Date: 11/13/2023

TITLE:

JUNE 12, 2023 UNOFFICIAL MEETING MINUTES

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/
PLANNING DIVISION

RECOMMENDATION:

Planning Commission approve Minutes of a regular meeting of June 12, 2023.

UNOFFICIAL UNTIL APPROVED

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

June 12, 2023

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE TO THE FLAG

Commissioner Vivar led the Pledge of Allegiance.

ROLL CALL

Present: Vice Chair Russell Toller, Commissioner Angely Andrade Commissioner Jonny Rojas, Commissioner Vivar, Commissioner Jon Zich

Absent: Chair Adam Ereth, Commissioner Tim Taber

Staff Present: Assistant Director of Development Services Scott Drapkin, Assistant City Attorney Tarquin Preziosi, Principal Planner Phayvanh Nanthavongdouangsy, City Engineer Seung Yang and Recording Secretary Anna Partida

ANNOUNCEMENTS AND PRESENTATIONS:

INTRODUCTION TO 2021 AND 2022 GENERAL PLAN ANNUAL PROGRESS REPORT

Principal Planner Phayvanh Nanthavongdouangsy, presented informational slide show.

Commission and staff:

Discussion ensued on low income housing and additional dwelling units.

PUBLIC COMMENTS:

Wendy Simo, spoke on the noise levels coming from 12 GYM during the early morning hours, the gym blocking fire exit by propping door open with fan, and the interruption of her sleep schedule.

COMMISSIONER COMMENTS AND SUGGESTIONS:

UNOFFICIAL UNTIL APPROVED

Commissioner Vivar clarified his position on parking on sites and parking standards in general.

Commissioner Andrade extended invitation to the public and commission join the June 15th community event for the Ketchum-Libolt park discussion.

CONSENT CALENDAR:

1. **JULY 11, 2022 UNOFFICIAL MEETING MINUTES**
2. **OCTOBER 24, 2022 UNOFFICIAL MEETING MINUTES**
3. **SEPTEMBER 26, 2022 UNOFFICIAL MEETING MINUTES**
4. **MAY 08, 2023 UNOFFICIAL MEETING MINUTES**
5. **GENERAL PLAN CONFORMITY FOR THE PROPOSED VACATION OF AN UTILITY EASEMENT LOCATED AT 1940 WALLACE AVENUE (ASSESSOR'S PARCEL NUMBER 422-203-10)**
6. **GENERAL PLAN CONFORMITY FOR A PROPOSED UTILITY EASEMENT VACATION LOCATED AT 2156 MYRAN DRIVE (ASSESSOR'S PARCEL NUMBER 422-203-10)**

Vice Chair Toler made motion to approve all items on the Consent Calendar as written. Seconded by Commissioner Rojas.

MOVED/SECOND: Toler/ Rojas

MOTION: To approve all items on the Consent Calendar as written.

The motion carried by the following roll call vote:

Ayes: Toler, Andrade, Rojas, Vivar, Zich

Nays: None

Absent: Ereth, Taber

Abstained: None

Motion carried: 5-0-2

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 15061(b)(3); and
2. Find that the proposed utility easement vacation is in conformance with the City of Costa Mesa General Plan.

RESOLUTION NO. PC-2023-18 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA FINDING THAT THE PROPOSED VACATION OF EXCESS UTILITY EASEMENT AREA

UNOFFICIAL UNTIL APPROVED

LOCATED AT 1940 WALLACE AVENUE IS IN CONFORMANCE WITH THE CITY OF COSTA MESA GENERAL PLAN

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 15061(b)(3); and
2. Find that the proposed utility easement vacation is in conformance with the City of Costa Mesa General Plan.

RESOLUTION NO. PC-2023-19 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA FINDING THAT THE PROPOSED VACATION OF EXCESS UTILITY EASEMENT AREA LOCATED AT 2156 MYRAN DRIVE IS IN CONFORMANCE WITH THE CITY OF COSTA MESA GENERAL PLAN

PUBLIC HEARINGS

None.

DEPARTMENTAL REPORT(S)

1. Public Services Report – None.
2. Development Services Report – Mr. Drapkin informed the commission that on July 11th an Inclusionary Housing Review study session has been scheduled. He also informed the Commission on Commissioner Taber's resignation from the Planning Commission.

CITY ATTORNEY'S OFFICE REPORT(S)

1. City Attorney – None.

ADJOURNMENT AT 6:30 P.M.

Submitted by:

SCOTT DRAPKIN, SECRETARY
COSTA MESA PLANNING COMMISSION



CITY OF COSTA MESA

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 23-1452

Meeting Date: 11/13/2023

TITLE:

JUNE 26, 2023 UNOFFICIAL MEETING MINUTES

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT

RECOMMENDATION:

Planning Commission approve Minutes of a regular meeting of June 26, 2023.

UNOFFICIAL UNTIL APPROVED

MEETING MINUTES OF THE CITY OF COSTA MESA PLANNING COMMISSION

June 26, 2023

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE TO THE FLAG

Vice Chair Toler led the Pledge of Allegiance.

ROLL CALL

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

Absent: None.

Staff Present: Assistant Director of Development Services Scott Drapkin, Assistant City Attorney Tarquin Preziosi, Principal Planner Phayvanh Nanthavongdouangsy, City Engineer Seung Yang and Recording Secretary Anna Partida

ANNOUNCEMENTS AND PRESENTATIONS: None.

PUBLIC COMMENTS:

Cynthia McDonald, spoke on an Our Neighborhood Voices event that she attended. She urged the public to visit ourneighborhoodvoices.com to get more information on the initiative.

Wendy Simo, spoke on the noise levels coming from 12 GYM during the early morning hours, the gym blocking fire exit by propping door open with fan, and the interruption of her sleep schedule the noise is causing.

Speaker three, spoke in support of Wendy Simos public comment. She stated she wanted to reiterate Cynthia McDonald public comment and encouraged the public to visit myneighborhoodvoices.com to get information on the initiative.

Hank Castignetti, spoke on the Fairview Park Railroad and the benefits it brings to the community. Encouraged the public to join them from 10:00am-3:30pm on the third week of the month.

UNOFFICIAL UNTIL APPROVED

COMMISSIONER COMMENTS AND SUGGESTIONS:

Commissioner Vivar thanked the public speakers for their comments. He asked Public works about the roundabout on Myer. He asked the Development Service Directors when the Commission will start reviewing Measure Q items that have been approved.

Commissioner Zich, spoke on Wendy Simos comments. He commented on the Our Neighborhood Voices initiative. He asked staff if the City plans on taking any formal action to inform the community about the initiative.

Vice Chair Toler, thanked the public speakers and to those who made the Fish Fry happen. He spoke on the bike lanes leading up to the event.

CONSENT CALENDAR:

Chair Ereth pulled consent calendar item number three.

Commissioner Zich Pulled Consent Calendar item number four.

1. **NOVEMBER 14, 2022 UNOFFICIAL MEETING MINUTES**
2. **MAY 22, 2023 UNOFFICIAL MEETING MINUTES**

Commissioner Vivar made motion to approve minutes as written. Seconded by Chair Ereth.

MOVED/SECOND: Vivar/ Ereth

MOTION: To approve all items on the Consent Calendar as written.

The motion carried by the following roll call vote:

Ayes: Ereth, Toler, Andrade, Rojas, Vivar, Zich

Nays: None

Absent: None

Abstained: None

Motion carried: 6-0

ACTION: Planning Commission approved the Unofficial Meeting Minutes.

4. PLANNING APPLICATION 22-04 DENIAL RESOLUTION

Discussion ensued on the reason the denial resolution is under consent calendar and if future denial resolutions will be added as a consent calendar item.

MOVED/SECOND: Zich/ Toler

MOTION: To approve all items on the Consent Calendar as written.

The motion carried by the following roll call vote:

Ayes: Ereth, Toler, Andrade, Rojas, Vivar, Zich

UNOFFICIAL UNTIL APPROVED

Nays: None
 Absent: None
 Abstained: None
 Motion carried: 6-0

ACTION: Planning Commission approved PA-22-04 Denial Resolution.

3. **2021 AND 2022 ANNUAL REVIEW OF THE COSTA MESA 2015-2035 GENERAL PLAN**

Phayvanh Nanthavongdouangsy, Principal Planner, presented an informative slideshow on the General Plan.

Discussion ensued on Project Home Key funds, Land Use Policy, Circulation, underground parking structures, protection for neighborhoods, housing rehabilitation, reduction of green gasses, retaining school sites, live work units, General Plan Policies, conservation goal, City green initiatives, objectives, redevelopment opportunities, code enforcement, Fairview Developmental Center, developer incentives, enforcement of City regulations, revitalization of motels to housing, air quality improvement, and walkability.

Chair opened Public comments.

Cynthia McDonald, thanked the commission for pulling the item and voiced her concerns on the City missing deadlines with HCD.

Speaker Two, stated he appreciated the question and discussion between the commission and staff. He spoke on the arena numbers, the housing element and structure height limits.

Speaker three, stated she agreed with the prior two speakers. She commented on displacements and voiced her concerns on not having enough low and very low income housing for the community.

Discussion ensued on the vision for the future of Costa Mesa.

Vice chair Toler made a motion to move staff recommendation. Seconded by Commissioner Vivar.

MOVED/SECOND: Toler/ Vivar

MOTION: To approve all items on the Consent Calendar as written.

The motion carried by the following roll call vote:

Ayes: Ereth, Toler, Andrade, Rojas, Vivar, Zich

Nays: None

Absent: None

Abstained: None

UNOFFICIAL UNTIL APPROVED

Motion carried: 6-0

ACTION: The Planning Commission adopted a Resolution to: recommend City Council approve the requisite documentation for submittal to the State Office of Planning and Research (OPR) and the State Department of Housing and Community Development (HCD).

PUBLIC HEARINGS

1. PLANNING APPLICATION 22-07 FOR A CONDITIONAL USE PERMIT TO OPERATE A RETAIL CANNABIS STOREFRONT BUSINESS WITH DELIVERY LOCATED AT 2013 NEWPORT BOULEVARD (STRAINS)

No exparte communications reported.

Description: Planning Application 22-07 is a request for a Conditional Use Permit to allow an approximately 3,361-square-foot retail cannabis storefront use with delivery within an existing single-story commercial building located at 2013 Newport Boulevard.

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.

Commission and Staff:

Discussion ensued on relocation of previous tenant, gate closer, hours of use for outdoor patio for employees, parking monitor, building structure, 24-hour security guard, wall height, noise concerns, and hours of operation.

The Chair opened the Public Hearing.

Applicant stated she read and agreed to the conditions of approval.

Commission, Applicant and Staff:

Discussion ensued on community outreach, security, odor, parking, walkability, local hiring and employee benefits and pay.

The Chair opened Public comments:

Public Comment:

Speaker one, spoke in support of the item.

The Chair closed Public Comment

UNOFFICIAL UNTIL APPROVED

Commission and Staff:

Discussion ensued on reduction of hours, distance from proposed Project Home Key opening down the street.

The Chair closed the Public Hearing.

Commissioner Andrade made motion Approve project PA-22-07 with a reduction of hours. Seconded by Commissioner Vivar.

Chair Ereth made a substitute motion to approve the item as written. Seconded by Vice Chair Toler.

Discussion ensued on consistency in approval of projects, the applicant's community outreach, criteria of approval for projects, hours, proximity to sensitive uses and proximity to residential.

MOVED/SECOND: Ereth/Toler

MOTION: to move staff's recommendation.

The motion carried by the following roll call vote:

Ayes: Ereth, Toler, Rojas, Vivar, Zich

Nays: Andrade

Absent: None

Abstained: None

Motion carried: 5-1

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 (Class 1), Existing Facilities; and
2. Approve Planning Application 22-07, subject to conditions of approval.

RESOLUTION NO. PC-2023-20 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING PLANNING APPLICATION 22-07 FOR A STOREFRONT RETAIL CANNABIS BUSINESS WITH DELIVERY (STRAINS) IN THE C2 ZONE AT 2013 NEWPORT BOULEVARD

DEPARTMENTAL REPORT(S)

1. Public Services Report – Mr. Yang provided information for the community meeting for Fairview Road being held on Wednesday, June 28, 2023 from 6:00 p.m. – 7:00 p.m.

UNOFFICIAL UNTIL APPROVED

2. Development Services Report – Director Le informed the Commission on the second Joint Study Session for the Inclusionary Housing Ordinance.

CITY ATTORNEY’S OFFICE REPORT(S)

1. City Attorney – None.

ADJOURNMENT AT 9:45 P.M.

Submitted by:

SCOTT DRAPKIN, SECRETARY
COSTA MESA PLANNING COMMISSION



CITY OF COSTA MESA

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 23-1453

Meeting Date: 11/13/2023

TITLE:

OCTOBER 23, 2023 UNOFFICIAL MEETING MINUTES

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/
PLANNING DIVISION

RECOMMENDATION:

Planning Commission approve Minutes of a regular meeting of October 23, 2023.

UNOFFICIAL UNTIL APPROVED

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

October 23, 2023

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE TO THE FLAG

Commissioner Rojas led the Pledge of Allegiance.

ROLL CALL

Present: Chair Adam Ereth, Vice Chair Russell Toller, Commissioner Angely Andrade, Commissioner Karen Klepack, Commissioner Jonny Rojas, Commissioner Vivar, Commissioner Jon Zich

Absent: None

Officials Present: Assistant Director of Development Services Scott Drapkin, Assistant City Attorney Tarquin Preziosi, Associate Planner Christopher Yeager, Assistant Planner Gabriel Villalobos, Assistant Planner Christopher Aldana, City Engineer Seung Yang and Recording Secretary Anna Partida

ANNOUNCEMENTS AND PRESENTATIONS:

None.

PUBLIC COMMENTS – MATTERS NOT LISTED ON THE AGENDA:

Wendy Simao, spoke on the noise coming from 12 Gym.

COMMISSIONER COMMENTS AND SUGGESTIONS:

Commissioner Klepack, encouraged the public to get engaged with the Fairview Developmental Center plan meetings.

Commissioner Vivar, echoed Commissioners Zich comments on 12 Gym from a previous meeting. He commented on the public comment from Wendy Simao. He stated he attended a sneak peek of the North gate market and shared his enthusiasm for its intended opening in November.

Commissioner Zich thanked Commissioner Vivar for his support.

UNOFFICIAL UNTIL APPROVED

Commissioner Andrade echoed Commissioner Vivar's comments on Northgate sneak peek opening and echoed Commissioners Klepack's comments on Fairview. She informed the public it was "Hunger and Homelessness Awareness Week" and gave information on resources for the public to gain more information on the matter.

Vice Chair Toler spoke about a "Strong Towns" event he attended and encouraged the public to visit the strongtowns.org website to get more information.

Chair Ereth shared his support with Vice Chair's comments on Strong Towns. He stated he also attended Northgate Markets sneak peek. He mentioned native plant reforestation that happened at Fairview park. He encouraged the public to attend Neighboring initiative meetings that are presented by Trellis. He asked staff about the sound engineer report for 12 Gym.

CONSENT CALENDAR:

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

- 1. APPROVAL OF MEETING MINUTES: OCTOBER 9, 2023**
- 2. APPROVAL OF MEETING MINUTES: JUNE 13, 2022**

Commissioner Vivar stated he found a minor clerical error in the voting results section.

Commissioner Vivar made motion to approve Consent Calendar items with minor edit to the June 13, 2022 meeting minutes. Seconded by Vice Chair Toler.

MOVED/SECOND: Vivar/Rojas

MOTION: Approve recommended action for Consent Calendar Items.

The motion carried by the following roll call vote:

Ayes: Ereth, Toler, Andrade, Klepack Rojas, Vivar, Zich

Nays: None

Absent: None

Abstained: None

Motion carried: 7-0

ACTION: Planning Commission approved the minutes of the regular meeting of the October 9, 2023 and June 13, 2022 with minor edit.

PUBLIC HEARINGS

- 1. PLANNING APPLICATION 23-10 FOR A RETAIL CANNABIS NON-STOREFRONT AND CANNABIS DISTRIBUTION FACILITY ("GIPSOL CANNABIS") LOCATED AT 3505 CADILLAC AVE, UNIT O-105**

UNOFFICIAL UNTIL APPROVED

Project Description: Planning Application 23-10 is a request for a conditional use permit (CUP) to operate a cannabis non-volatile manufacturing and distribution facility within a 2,590-square-foot tenant space in a multi-tenant industrial office building located at 3505 Cadillac Avenue, Unit O-105.

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 discussion of: the meaning of limited customer access, information that is publicly available, volatile solvents, business operations, white label services, whether the City is liable for the good sold, and requirements for the business.

The Chair opened the Public Hearing.

Eric Gibson, applicant, stated he had read and agreed to the conditions of approval.

The Commission asked questions of the applicant including discussion of: how products are traced by the state, white labeling, business name for signage, and how applicant will conduct their business.

The Chair opened public comments.

No public comments.

The Chair closed public comments.

The Chair closed the Public Hearing.

Commissioner Vivar made a motion. Seconded by Commissioner Rojas.

The Commission discussed the motion including: no additional comments.

MOVED/SECOND: Vivar/Rojas

MOTION: Approve staff's recommendation.

The motion carried by the following roll call vote:

Ayes: Ereth, Toler, Andrade, Rojas, Taber, Vivar Zich

Nays: None

Absent: None

UNOFFICIAL UNTIL APPROVED

Recused: None
Motion carried: 7-0

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 (Class 1), Existing Facilities; and
2. Approve Planning Application 23-10, subject to conditions.

RESOLUTION PC-2023-26 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING PLANNING APPLICATION 23-10 FOR A RETAIL CANNABIS NON-STOREFRONT AND CANNABIS DISTRIBUTION FACILITY (“GIPSOL CANNABIS”) LOCATED AT 3505 CADILLAC AVE, UNIT O-105

The Chair explained the appeal process.

2. **PLANNING APPLICATION 23-12 AND TENTATIVE PARCEL MAP 2023-167 FOR A CONVERSION OF AN EXISTING BUILDING AT 200 EAST BAKER STREET INTO A NON-RESIDENTIAL COMMON INTEREST DEVELOPMENT AND TO ALLOW A FOOD AND BEVERAGE USE IN THE MP (INDUSTRIAL PARK) ZONE**

Project Description: Planning Application 23-12 is a request for a Conditional Use Permit for the conversion of an existing office building into 11 non-residential condominium units on one lot with ancillary common spaces. The proposed conversion would result in 11 units ranging in size from 1,661 to 8,380 square feet. A deviation from the zoning code is being requested to maintain the existing non-conforming parking dimensions. A parcel map is proposed to facilitate the non-residential condominium project and is required to be recorded prior to the sale of the condominium units. The project also requests a Minor Conditional Use Permit to permit a 1,031-square-foot food and beverage establishment and 553-square-foot outdoor dining patio at the front of the building within one of the non-residential condominium units.

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

One ex-parte communications reported:

Commissioner Zich met with property owners on site.

Christopher Yeager, Associate Planner, presented the staff report.

UNOFFICIAL UNTIL APPROVED

The Commission asked questions of staff including discussion of: parking deviation and its requirements, internal sprinkler systems, café operations, fees to the association for the building, and number of parking spaces.

The Chair opened the Public Hearing.

Cory Walker and Tim Cottage, applicants, stated they had read and agreed to the conditions of approval.

The Commission asked questions of the applicant including discussion of: parking deviation request, Condo Owner Association rules and voting, current tenants plans, tenant ownership, ADA compliance, number of units for sale, tree removal, reconfiguration of parking lot, reason for selling and not leasing units in the building, drought tolerant and replacement vegetation.

The Chair called for a break at 7:55p.m.

The Chair Reconvened at 8:05p.m.

The Chair opened public comments.

No public comments.

Ex-parte communications: during break commissioner Andrade had a conversation with applicant about keeping as many trees as possible.

The Chair closed public comments.

The Commission asked questions of the applicant including discussion of: reason for the removal of trees to bring the parking lot up to code, parking lot reconfiguration, number of units, traffic impacts, drive aisle width, design, and safety.

The Chair closed the Public Hearing.

Chair Ereth made a motion. Seconded by Commissioner Andrade.

The Commission discussed the motion including: keeping to code, trees, number of parking spaces, parking deviation, and ownership opportunity.

Commissioner Zich made substitute motion. Failed for lack of second.

MOVED/SECOND: Ereth/Andrade

MOTION: Approve staff's recommendation.

The motion carried by the following roll call vote:

Ayes: Ereth, Toler, Andrade, Rojas, Taber, Vivar Zich

UNOFFICIAL UNTIL APPROVED

Nays: None
 Absent: None
 Recused: None
 Motion carried: 7-0

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 (Class 1), Existing Facilities, and 15315 (Class 15), Minor Land Divisions; and
2. Approve Planning Application 23-12 and Tentative Parcel Map 2023-167, subject to conditions and changing of report to say 12 units (instead of 11).

RESOLUTION PC-2023-27 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING PLANNING APPLICATION 23-12 AND TENTATIVE PARCEL MAP 2023-167 FOR A CONVERSION OF AN EXISTING BUILDING AT 200 EAST BAKER STREET INTO A NON-RESIDENTIAL COMMON INTEREST DEVELOPMENT AND TO ALLOW A FOOD AND BEVERAGE USE IN THE MP (INDUSTRIAL PARK) ZONE FOR PROPERTY AT 200 EAST BAKER STREET

The Chair explained the appeal process.

3. **PLANNING APPLICATION 23-11 AND TENTATIVE PARCEL MAP 23-03 FOR A COMMON INTEREST DEVELOPMENT CONSISTING OF TWO, TWO-STORY SINGLE-FAMILY DWELLING UNIT CONDOMINIUMS AT 161 CECIL PLACE**

Project Description: Planning Application 23-11 & Tentative Parcel Map 23-03 is a request to allow for individual ownership (common interest Development approval) of two previously approved single-family dwelling units at 161 Cecil Place.

Environmental Determination: The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15303 (Class 3, B) New Construction/ Small Conversion & 15332 (Class 32) – In-Fill Development Projects.

No ex-parte communications reported.

The Chair called for break at 8:47p.m.

The Chair reconvened at 8:53p.m.

Christopher Aldana, Assistant Planner, presented the staff report.

UNOFFICIAL UNTIL APPROVED

The Commission asked questions of staff including discussion of: reasons for not dividing the lot, towing company contract, and clarification on areas the occupants will own.

The Chair opened the Public Hearing.

Josh Martinez and Jack Harran, applicants, stated they had read and agreed to the conditions of approval.

The Commission asked questions of the applicant including discussion of: number of bedrooms in each unit, sale price, reasons for not dividing the property, and homeowner association conflict resolution.

The Chair opened public comments.

No public comments.

The Chair closed public comments.

The Chair closed the Public Hearing.

Commissioner Vivar made a motion. Seconded by Commissioner Rojas.

The Commission discussed the motion including: unit size, homeownership, and design.

MOVED/SECOND: Vivar/Rojas

MOTION: Approve staff's recommendation.

The motion carried by the following roll call vote:

Ayes: Ereth, Toler, Andrade, Rojas, Taber, Vivar Zich

Nays: None

Absent: None

Recused: None

Motion carried: 7-0

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 15315 (Class 15) – Minor Land Divisions.
2. Approve Planning Application 23-11 and Tentative Parcel Map 23-03, subject to conditions.

RESOLUTION PC-2023-28 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING PLANNING APPLICATION 23-11 AND TENTATIVE PARCEL MAP 23-03 FOR

UNOFFICIAL UNTIL APPROVED

**A COMMON INTEREST DEVELOPMENT CONSISTING OF TWO, TWO-STORY
SINGLE FAMILY DWELLING UNIT CONDOMINIUMS AT 161 CECIL PLACE**

OLD BUSINESS:

None.

NEW BUSINESS:

None.

DEPARTMENTAL REPORTS

1. Public Works Report – None.
2. Development Services Report – Mr. Drapkin informed the Commission on upcoming projects and plans for an update on Planning Commission by laws to change meeting day.

CITY ATTORNEY'S OFFICE REPORT

1. City Attorney – None.

ADJOURNMENT AT 9:38 PM

Submitted by:

SCOTT DRAPKIN, SECRETARY
COSTA MESA PLANNING COMMISSION



CITY OF COSTA MESA

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 23-1454

Meeting Date: 11/13/2023

TITLE:

A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL GIVE FIRST READING TO AN ORDINANCE TO AMEND TITLE 13 (PLANNING, ZONING, AND DEVELOPMENT) OF THE COSTA MESA MUNICIPAL CODE (CMMC) TO MODIFY THE CITY'S OUTDOOR DINING PROVISIONS

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/ PLANNING DIVISION

PRESENTED BY: CAITLYN CURLEY, ASSISTANT PLANNER

**CONTACT INFORMATION: CAITLYN CURLEY, 714-754-5692;
caitlyn.curley@costamesaca.gov**

RECOMMENDATION:

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is categorically exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule) in that the updates to the City's outdoor dining provisions will not have a significant impact on the environment.
2. Recommend that the City Council give first reading to an Ordinance approving Code Amendment No. 2023-XX, amending portions of the Costa Mesa Municipal Code (Zoning Code) relating to outdoor dining areas.



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: NOVEMBER 13, 2023 ITEM NUMBER: PH-1

SUBJECT: A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL GIVE FIRST READING TO AN ORDINANCE TO AMEND TITLE 13 (PLANNING, ZONING, AND DEVELOPMENT) OF THE COSTA MESA MUNICIPAL CODE (CMMC) TO MODIFY THE CITY'S OUTDOOR DINING PROVISIONS

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

PRESENTATION BY: CAITLYN CURLEY, ASSISTANT PLANNER

**FOR FURTHER INFORMATION CONTACT: CAITLYN CURLEY
714-754-5692
caitlyn.curley@costamesaca.gov**

RECOMMENDATION

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is categorically exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule) in that the updates to the City's outdoor dining provisions will not have a significant impact on the environment.
2. Recommend that the City Council give first reading to an Ordinance approving Code Amendment No. 2023-XX, amending portions of the Costa Mesa Municipal Code (Zoning Code) relating to outdoor dining areas.

APPLICANT OR AUTHORIZED AGENT

The subject Code Amendment is a City initiated request.

BACKGROUND

On June 2, 2020, the City Council adopted Urgency Ordinance No. 2020-15 which allowed establishments where food and beverages are served to offer a temporary outdoor dining area as a means to provide economic and social relief in response to the COVID-19 pandemic and the associated public health-related restrictions. For example, during COVID-19 pandemic public health rules required restaurants' indoor areas to close, or to be reduced to social distancing requirements. The City's adopted Urgency Ordinances allowed restaurants to reallocate its unused indoor capacity due to COVID regulations to newly-established or existing expanded outdoor dining areas. Urgency Ordinance 2020-15, as extended by Urgency Ordinance No. 2022-08, is attached to this staff report. The Urgency Ordinance's effective period has been extended several times and will expire on December 31, 2023.

To date and as permitted by the Urgency Ordinance, the City has issued 49 temporary use permits allowing existing food and beverage serving establishments to establish dining areas outdoors through a streamlined administrative "temporary use" permitting process. The fee for this administrative permit was \$250 and was typically issued by the Planning Divisions within a few days.

These outdoor dining areas have been permitted to occupy private parking lots, oversized walkways, and interior plazas, courtyards or other areas where outdoor dining could be accommodated onsite. Outdoor dining areas were not allowed within setbacks or required landscaped areas and were also required to close between 11PM and 6AM if located within 200 feet of residential uses (other requirements also applied). One temporary use permit/encroachment permit was also issued for outdoor dining located within the public right of way utilizing on-street parking areas. Approximately half of these establishments have transitioned back to their pre-pandemic indoor operating conditions, with 22 of the approved temporary outdoor dining areas still in use.

On November 1, 2022, City Council provided staff the following comments as part of the motion to extend the sunset date of the Urgency Ordinance to December 31, 2023 (the November 1, 2022 City Council Report, Minutes and video are linked below):

- A general emphasis was placed on both establishing creative standards to retain existing outdoor dining areas established during the COVID-19 pandemic, and encourage new outdoor dining areas; and
- Councilmembers also called for standards permitting live music, encouraging the incorporation of landscaping into outdoor dining area designs, and directed staff to prepare an ordinance for Council adoption.

November 1, 2022 City Council Report:

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=5899704&GUID=FAFA9180-B0C7-44AB-8E22-1602F74B323D>

Minutes:

<https://costamesa.legistar.com/View.ashx?M=M&ID=980821&GUID=59A4FB5E-7223-4819-91A3-D3228A962C20>

Video:

https://costamesa.granicus.com/player/clip/3915?view_id=14&redirect=true&h=aa81818ba2c0c7d30698e076b4f506ce

Subsequently, at the City Council's goal setting retreat held on March 10, 2023, the Council reviewed and updated its six-month strategic objectives. After discussion of priorities and staff capacity, the Council prioritized and focused staff on the completion of housing-related objectives. The outdoor dining ordinance was specifically discussed and was not identified as an immediate priority. In addition, a due date was not specified. However, recognizing that the Urgency Ordinance would expire in December 2023, the City Council asked staff to bring an ordinance back to the City Council to bridge the gap between the expiring Urgency Ordinance and a more comprehensive future outdoor dining ordinance. This item is intended to address the City Council's request.

DESCRIPTION

As proposed, amendments to the City's outdoor dining provisions will occur in two phases to meet the City Council's directive. The first phase, which is proposed in this Zoning Code amendment, will establish a permitting process and development standards for outdoor dining areas located on private properties within private parking lots, courtyards, oversized walkways, interior landscaped areas, and setback areas. Among other provisions included in the Draft Ordinance, the provisions provide for a streamlined permitting process, with parking regulation exemptions to incentivize outdoor dining in the City. The second phase requires extensive additional analysis and will focus on permitting outdoor dining in a public-right-of-way ("outdoor dining parklets"). Phase two will be presented to the Planning Commission and City Council for consideration at a later date.

ANALYSIS

The proposed Zoning Code amendment is attached to this staff report as Attachment 4. It allows the currently operating outdoor dining areas approved during the pandemic to become permanent, as well as establishing development standards and a streamlined approval processes for the installation of new outdoor dining areas. Attachment 3 includes a copy of the proposed ordinance amendments with "~~strikethrough~~" formatting for proposed removed code language and "underline" formatting for proposed added code language.

Active Temporary Use Permits

As mentioned earlier in this staff report, there are 22 outdoor dining areas that remain as approved through the COVID-19 Temporary Use Permit process. Of these, seven are installed in an area covering parking spaces, three occupy parking lot drive aisles and eleven are located elsewhere on private properties. Outdoor dining areas located within parking lots currently occupy three to ten parking stalls and utilize approximately 29% of required

parking stalls, on average. Almost all of the active outdoor dining areas are located within 200 feet of a residential zone, with six of the 22 located immediately adjacent to residential areas.

As proposed, the active Temporary Outdoor Permits for outdoor dining areas that were approved pursuant to Urgency Ordinance 2020-15 may continue to operate as approved subject to compliance with all building, fire and health code standards. City staff will work with these establishments to ensure that all safety code standards are met in a timely manner. Staff will also re-evaluate and work with establishments where existing active permits involve the use of parking lot drive aisles and/or other conditions that may necessitate limitations based on public safety.

**TABLE 1
OUTDOOR DINING AREAS PERMITTED PER URGENCY ORDINANCE 2020-15**

	Business	Address	Space Used	Required Parking	Percent Required Parking Covered
1	Pasta Connection	1969 Harbor Blvd	Walkway	NA	NA
2	El Matador	1768 Newport Blvd	Private Parking	20	20%
3	Baja Fish Tacos	171 E 17th St	Walkway	NA	NA
4	Avila's El Ranchito	2101 Placentia Ave	Private Parking	39	0%
5	Salty Bear Brewing	2948 Randolph	Courtyard	NA	NA
6	Breakfast Republic	410 E. 17th Street	Drive Aisle	NA	NA
7	Taco Mesa	647 W. 19th	Paved Area	NA	NA
8	The CAMP	2937 Bristol Street	Drive Aisle	NA	NA
9	Garduno's	298 E 17th St, Suite A	Courtyard	NA	NA
10	Dick Church's	2698 Newport Blvd	Private Parking	48	13%
11	SOCO Collections	3313 Hyland Avenue	Courtyard	NA	NA
12	Green Cheek Beer Company	2957 Randolph Ave Unit B	Private Parking	15	67%
13	Ourbar and Kitchen	2000 Newport	Street Setback	NA	NA
14	Goat Hill Tavern	1830 Newport Blvd	Private Parking	20	30%
15	The Boulevard	1824-1826 Newport Blvd	Private Parking	13	46%
16	Mogu	2969 Fairview	Walkway	NA	NA
17	Strut	719 W 19th St	Walkway	NA	NA
18	Semi Tropic Wines	820 W. 19th St	Drive Aisle	NA	NA
19	Bootleggers Brewery	696 Randolph Ave	Private Parking	12	33%

20	Uroko Café	3030 Bristol St	Walkway	NA	NA
21	Oak and Coal	333 E 17 th St	Walkway	NA	NA
22	Eat Chow	1802 Newport Blvd	Parklet – Public Right of Way	NA	NA
Note: Any future modifications to these outdoor dining areas shall be approved by the City and must be in compliance with the CMMC.					

Current Municipal Code Provisions Applicable to Outdoor Dining

The Costa Mesa Municipal Code regulates outdoor dining pursuant to Article 4 (“Establishments Where Food or Beverages are Served”), and states:

“Outdoor seating areas are permitted provided that the area does not encroach into required street setback, parking and circulation, or interior landscaped areas; except as approved through the issuance of a minor conditional use permit or as allowed in certain planned development zones. Shade structures for approved outdoor seating areas must comply with all setback requirements but, with approval of a minor conditional use permit, may encroach into the required street setback if it is either attached to the main building (e.g., an awning) or supported with a detached ground-mounted structure. To allow views to remain open and unobstructed, such detached shade structures shall not obstruct more than fifty (50) percent of the façade area along the property line(s) with either vertical (e.g., posts) or horizontal elements (e.g., planters, sloped awnings) with a minimum twenty-four (24) inches between the shade cover and any fences, walls, or other similar structures such that the outdoor seating area is not enclosed. Additionally, all Building and Fire Code requirements shall be satisfied.”

In addition, Costa Mesa Municipal Code Section 13-89 applies parking requirements to outdoor dining areas (if the total “public area” is greater than 300 square feet) at a rate of 10 spaces per 1,000 square foot gross floor area (12 spaces per 1,000 square feet if the space is greater than 3,000 square feet in area). The Code allows a business to apply for a “deviation” in parking requirements due to “unique operating characteristics” through the Minor Conditional Use Permit process, subject to Zoning Administrator approval. This process allows for flexibility in parking requirements and may involve preparation of a parking evaluation by a third party to support the provision of less onsite parking. Ultimately, the restaurant must demonstrate that the parking provided is sufficient to address parking demand and otherwise meet required MCUP findings (described below). If available parking is already limited onsite, providing sufficient parking for an expanded outdoor seating area can be an obstacle.

Proposed Outdoor Dining Streamlined Approval Process

The proposed draft ordinance amendments include a new table [Table 13-47 (b)] that outlines a streamlined approval process for food and beverage establishments to obtain permits for outdoor dining areas. Pursuant to Table 13-47(b), the final review authority depends on the proposed location and design of the outdoor dining area, and stipulates either Planning Division, or Zoning Administrator review of a Minor Conditional Use Permit (MCUP).

CMMC Table 13-47 (b)

LOCATION OF OUTDOOR DINING AREAS AND OPERATIONAL CHARACTERISTICS	Approval Process
Courtyard Area	Planning Division
Required Setback Area – Outdoor dining area up to 50% of public area.	Planning Division
Required Setback Area – Outdoor dining area more than 50% of public area.	Minor Conditional Use Permit
Parking Area - Outdoor dining area up to 50% of public area and does not remove more than two parking spaces or 10% of required parking whichever is less.	Planning Division
Parking Area – Outdoor dining area more than 50% of indoor public area.	Minor Conditional Use Permit
Parking Area – Outdoor dining area removes two or more parking spaces, or removes more than 10% of required parking, whichever is less.	Minor Conditional Use Permit

Based on previously submitted applications, staff anticipates that most outdoor dining applications can be approved administratively by the Planning Division; however, staff believes that certain outdoor dining designs and/or characteristics that have a greater potential to cause impacts are best reviewed subject to public noticing and required MCUP findings, and potential conditions of approval that go beyond minimum codified requirements. For example and as proposed, outdoor dining areas proposed in parking lots with more than a 50 percent increase in existing indoor food and beverage public area and/or the removal of two or more parking spaces/or 10 percent of required parking spaces (whichever less) requires approval of an MCUP. The following three MCUP findings are required pursuant to the CMMC:

1. *“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”;*
2. *“Granting the conditional use permit or minor conditional use permit will not be materially detrimental to the health, safety and general welfare of the public or*

otherwise injurious to property or improvements within the immediate neighborhood”; and

3. *“Granting the conditional use permit or minor conditional use permit will not allow a use, density or intensity which is not in accordance with the general plan designation and any applicable specific plan for the property”.*

Proposed Outdoor Dining Development Standards

As directed by the City Council, the proposed Draft Ordinance modifies the current CMMC Section 13-48 provisions to create standards that retain existing outdoor dining areas established during the COVID-19 pandemic, and incentivize and encourage the development of new outdoor dining areas. The proposed Draft Ordinance includes numerous provisions relating to outdoor dining development standards, including, but not limited to:

1. Prioritizing locations of outdoor dining areas and requiring the selection of preferred options when available;
2. Maintenance of outdoor dining areas;
3. Exempting outdoor dining areas from the “Food or Beverage” required parking standards;
4. Requiring that outdoor dining areas and improvements comply with applicable building, fire and health codes;
5. Restricting outdoor dining areas from parking lot drive aisles and other vehicle circulation areas;
6. Operational hour restrictions;
7. Noise Ordinance compliance;
8. Lighting standards; and
9. Aesthetic standards for outdoor dining areas including, but not limited to, barriers and landscaping.

GENERAL PLAN CONFORMANCE

The proposed ordinance is in conformance with the City’s General Plan including:

1. **Policy CD-8.3:** Encourage the use of entrance patios, courtyards, plazas, arcades, fountains, porches, tower elements, covered walks and other features in commercial areas. Promote pedestrian amenities.

Consistency. The development standards in this ordinance promote the placement of outdoor dining areas within existing patios, courtyards and plazas. The outdoor dining development standards and streamlined approval process that was in place through Urgency Ordinance 2020-15 have shown to be beneficial in supporting pedestrian activities and progress toward promoting walkable

communities and supporting the economic viability of local food establishments. The outdoor dining areas function as inviting open public spaces where customers can safely experience the City's numerous local dining establishments. In its simplest design, outdoor dining areas produce an environment where there are more "eyes on the street" which in turn creates an atmosphere where people can feel safe and secure in public spaces.

2. **Policy LU-6.7:** Encourage new and retain existing businesses that provide local shopping and services.

Consistency. By providing a process for eating establishments to permanently retain the outdoor dining areas approved during the COVID-19 pandemic , and for new outdoor dining areas to be installed, this ordinance will promote the economic vitality of new and existing restaurants in the City.

3. **Policy LU-6.9:** Provide efficient and timely review of development proposals while maintaining quality customer service standards for the business, development and residential community.

Consistency. The changes incorporated by this ordinance are designed to eliminate certain barriers to the installation of outdoor dining areas, such as requiring a lower level of review, and waiving parking requirements for outdoor dining areas, therefore lowering the review time and cost of constructing an outdoor dining area. Additionally, the development standards incorporated into the ordinance are designed to protect surrounding uses while promoting restaurants.

ENVIRONMENTAL DETERMINATION:

The proposed Ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule) in that there is no possibility that the minor updates to the City's Municipal Code provisions will have a significant impact on the environment.

ALTERNATIVES:

The Planning Commission has the following alternatives:

1. Recommend City Council approval. The Planning Commission may recommend City Council approval of the proposed modifications as drafted in the attached draft Ordinance.
2. Recommend City Council approval with modifications. The Planning Commission may recommend approval with modifications.
3. Recommend that the City Council not adopt the changes to the City's outdoor dining provisions. The Planning Commission may recommend that the City Council not adopt the proposed Code amendments.

4. 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.

LEGAL REVIEW:

The proposed Resolution, draft Zoning Code Amendment and report have been prepared in conjunction with and review by the City Attorney's Office.

NOTICE:

Pursuant to Title 13, Section 13-29(d), of the Costa Mesa Municipal Code, a 1/8th page public notice was published once in the Daily Pilot newspaper no less than 10 days prior to the November 13, 2023 public hearing. No public comments have been received in response to the notice.

CONCLUSION

The proposed code amendments relating to outdoor dining permits are consistent with the direction of City Council, consistent with the General Plan, and are proposed to incentivize the development of permanent outdoor dining areas and establish development standards for new and existing outdoor dining areas.

RESOLUTION NO. PC-2023-

**A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL
GIVE FIRST READING TO AN ORDINANCE TO AMEND TITLE
13 (PLANNING, ZONING, AND DEVELOPMENT) OF THE
COSTA MESA MUNICIPAL CODE TO MODIFY THE CITY'S
OUTDOOR DINING PROVISIONS**

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

WHEREAS, in response to the COVID-19 pandemic, the City Council adopted Urgency Ordinance No. 2020-15 and further extended the provisions by Ordinance No. 2022-08, temporarily suspending the permit requirements and development standards for outdoor activities and parking contained in the zoning code applicable to dining patios, places of religious assembly, and waiver of valet parking.

WHEREAS, Urgency Ordinance No. 2022-08 will expire on December 31, 2023.

WHEREAS, due to the COVID-19 pandemic, significant social shifts have occurred, creating a greater interest in outdoor dining.

WHEREAS, outdoor dining has been found to promote private and public economic interests, protect the public safety and general welfare, and create a community-oriented and pedestrian friendly dining environment.

WHEREAS, the City Council has expressed its desire to promote small businesses, placemaking and pedestrian friendly design.

WHEREAS, a duly noticed public hearing was held by the Planning Commission on November 13, 2023 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 CEQA Guidelines Section 15061(b)(3) (General Rule) in that there is no possibility that the minor updates to the City's outdoor dining provisions will have a significant impact on the environment.
2. The Planning Commission recommends the City Council approve the ordinance attached hereto as Exhibit A.

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

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 13th day of November, 2023.

Adam Ereth, Chair
Costa Mesa Planning Commission

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

I, Scott Drapkin, Secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution No. PC-2023- __ was passed and adopted at a regular meeting of the City of Costa Mesa Planning Commission held on November 13, 2023 by the following votes:

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

ABSTAIN: COMMISSIONERS

Scott Drapkin, Secretary
Costa Mesa Planning Commission

Resolution No. PC-2023-__

ORDINANCE NO. 2023-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA APPROVING CODE AMENDMENT PCTY-23-0002 AMENDING TITLE 13 (PLANNING, ZONING, AND DEVELOPMENT) OF THE COSTA MESA MUNICIPAL CODE TO MODIFY THE CITY'S OUTDOOR DINING PROVISIONS

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Findings. The City Council finds and declares as follows:

WHEREAS, in response to the COVID-19 pandemic, the City Council adopted Urgency Ordinance No. 2020-15, temporarily suspending the permit requirements and development standards for outdoor activities and parking contained in the zoning code applicable to dining patios, places of religious assembly, and waiver of valet parking; and

WHEREAS, Urgency Ordinance No. 2020-15 will expire on December 31, 2023; and

WHEREAS, due to the COVID-19 pandemic, significant social shifts have occurred, creating a greater interest in outdoor dining; and

WHEREAS, outdoor dining has been found to promote private and public economic interests, protect the public safety and general welfare, and create a community-oriented and pedestrian friendly dining environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY ORDAINS AS FOLLOWS:

SECTION 2: Code Amendment. Title 13 (Planning, Zoning and Development). 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 3. Repeal. All portions of prior ordinances, including those within Urgency Ordinance 2020-15, to the extent that they are inconsistent with the terms of this Ordinance are hereby repealed and replaced by this Ordinance.

SECTION 4. Compliance with CEQA. Adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule) in that there is no possibility that the minor updates to the City's outdoor dining provisions will have a significant impact on the environment.

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.

PASSED AND ADOPTED this _____ day of _____, 2023

Mayor

ATTEST:

APPROVED AS TO FORM

Brenda Green, City Clerk

Kimberly Hall Barlow, City Attorney

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. 2023-XX ____ introduced at a regular meeting of the City Council of the City of Costa Mesa held on the ____ day of ____, 2023, and was thereafter adopted at a regular meeting held on the ____ day of ____, 2023, 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 ____, 2023.

Brenda Green, City Clerk

November 13, 2023

City of Costa Mesa Municipal Code Amendment No. 2023-XXX

DRAFT VERSION:

Draft Ordinance with “~~strikethrough~~” formatting for proposed removed code language and “underline” formatting for proposed added code language.

CHAPTER V. DEVELOPMENT STANDARDS

ARTICLE 4. ESTABLISHMENTS WHERE FOOD OR BEVERAGES ARE SERVED

13-46. Purpose.

The purpose of this article is to regulate and provide development standards for establishments where food or beverages are served. The proximity of residential uses to these types of establishments is a concern of this article. Where the distance criterion of two hundred (200) feet from residentially-zoned property is given in this article, it shall be measured from the property line of the site to the property line of the nearest residentially-zoned property. This article also establishes requirements for outdoor dining areas to support long-term economic viability of local establishments, promote vitality in the City’s commercial areas, promote progress towards creating walkable communities by facilitating pedestrian-friendly and safe public spaces, and facilitate and incentivize enhanced dining experiences.

(Ord. No. 97-11, § 2, 5-5-97)

13-47. Permitted and conditionally permitted uses.

Establishments where food or beverages are served are subject to the review and approval procedures shown in Table 13-47 (a) and (b). In instances where more than one (1) review procedure is applicable to an establishment, the more stringent procedure shall apply.

TABLE 13-47 (a)

PERMITTED AND CONDITIONALLY PERMITTED USES

LOCATION AND OPERATIONAL CHARACTERISTICS	C1-S	C1	C2	CL	TC	PD	MG	MP
Establishments with 300 square feet or less of <u>indoor</u> public area. ³	P ^{1,2} or P	P	P	MC	P ¹ or P	P ¹ or P	P	P
Establishments with more than 300 square feet of <u>indoor</u> public area. ³	P ¹ or P	P	P	MC	P ¹ or P	P ¹ or P	MC	MC
EXCEPTIONS								
Located within 200 feet of a residential zone. (Subject to the requirements of section 13-49 , Development Standards for Establishments Within 200 Feet of Residentially Zoned Property) ³	P ¹ or P	P	P	MC	P ¹ or P	P ¹ or P	P	P
Sale of alcoholic beverages for on-site consumption after 11:00 p.m. and/or provision of live entertainment or dancing located within 200 feet of a residential zone. ³	P ¹ or C	C	C	C	P ¹ or C	P ¹ or C	C	C
Sale of alcoholic beverages for on-site consumption after 11:00 p.m. and/or provision of live entertainment or dancing located not within 200 feet of a residential zone. ³	P ¹ or MC	MC	MC	MC	P ¹ or MC	P ¹ or MC	MC	MC
Drive-through operations. (Subject to the requirements of section 13-50 , Development Standards for Drive-Through Operations) ³	P ¹ or MC	MC	MC	MC	P ¹ or MC	P ¹ or MC	MC	MC
Establishments with less than 300 <u>square</u> feet of <u>indoor</u> public area located in a multi-tenant center where 30% or more of the tenants are similar businesses, i.e., establishments with less than 300 <u>square</u> feet of <u>indoor</u> public area. ³	P ¹ or MC	MC	MC	MC	P ¹ or MC	P ¹ or MC	MC	MC

LOCATION AND OPERATIONAL CHARACTERISTICS	C1-S	C1	C2	CL	TC	PD	MG	MP
Establishments with a micro brewery ³	P ¹ or C	C	C	C	P ¹ or C	P ¹ or C	C	C

¹ Pursuant to an approved master plan which specifies these operational characteristics and/or location of the business.

² For the purposes of this table, the symbols shall have the following meaning: P=Permitted; MC=Minor Conditional Use Permit; C=Conditional Use Permit.

³ Outdoor dining and seating areas may be considered as part of a proposed land use if allowed in the zoning district, and pursuant to the provisions, regulations and standards of this Article.

(Ord. No. 97-11, § 2, 5-5-97)

TABLE 13-47 (b)

Outdoor Dining Area Permitting Process ¹

<u>LOCATION OF OUTDOOR AREAS AND OPERATIONAL CHARACTERISTICS</u>	<u>Approval Process</u>
<u>Courtyard Area</u>	<u>P²</u>
<u>Setback Area – Expansion of up to 50% of indoor public area outdoors. ¹</u>	<u>P²</u>
<u>Setback Area – Expansion of more than 50% of indoor public area outdoors. ¹</u>	<u>MC²</u>
<u>Parking Area - Expansion of up to 50% of indoor public area outdoors and does not remove more than two parking spaces or 10% of existing parking whichever is less. ¹</u>	<u>P²</u>
<u>Parking Area – Expansion of more than 50% of indoor public area outdoors. ¹</u>	<u>MC²</u>
<u>Parking Area - removal of two or more parking spaces, or removal of more than 10% of on-site parking, whichever is less. ¹</u>	<u>MC²</u>

¹ Temporary Use Permits for outdoor dining areas approved through Urgency Ordinance 2020-15 may continue to operate as approved but shall comply with applicable Building and Fire Code requirements within six months from the time of Ordinance No. 2023-0002 adoption, with

an allowed six-month extension of time. Any modifications to these outdoor dining areas shall be approved pursuant to this Article.

² For the purposes of this table, the symbols shall have the following meaning: P=Permitted; MC=Minor Conditional Use Permit; C=Conditional Use Permit.

13-48. General development standards.

Establishments where food or beverages are served are subject to the following development standards.

(a) Outdoor dining areas are permitted provided that the area does not encroach into required setbacks. Existing and newly constructed establishments that propose new outdoor dining areas within courtyard, parking, setback or interior landscaped areas may be approved pursuant to this Article. Development standards provided in Section 13-48 (b)(1) applies to all outdoor dining areas. Additional development standards apply to outdoor dining areas within parking areas (Section 13-48 (a)(2)) and setback areas (Section 13-48 (a)(3)). Outdoor seating areas are permitted provided that the area does not encroach into required street setback, parking and circulation, or interior landscaped areas; except as approved through the issuance of a minor conditional use permit or as allowed in certain planned development zones. Shade structures for approved outdoor seating areas must comply with all setback requirements but, with approval of a minor conditional use permit, may encroach into the required street setback if it is either attached to the main building (e.g., an awning) or supported with a detached ground-mounted structure. To allow views to remain open and unobstructed, such detached shade structures shall not obstruct more than fifty (50) percent of the façade area along the property line(s) with either vertical (e.g., posts) or horizontal elements (e.g., planters, sloped awnings) with a minimum twenty-four (24) inches between the shade cover and any fences, walls, or other similar structures such that the outdoor seating area is not enclosed. Additionally, all Building and Fire Code requirements shall be satisfied.

(1) Development Standards for all Outdoor Dining Areas:

- a. Subject to the discretion of the reviewing authority, and where practical, feasible and safe, outdoor dining areas shall be located on a development site with preference given in the order of (1) existing courtyards, plazas, or oversized walkways (2) existing setbacks and (3) existing parking areas.
- b. Where practical, feasible and safe, outdoor dining areas shall be located on a development site with preference given to areas that can be seen from the public rights-of-way or pedestrian activity areas, compared to areas that cannot be seen from these locations.

- c. Outdoor dining areas shall be maintained in good condition, kept clean and shall not result in conditions which are harmful or injurious to the public health, safety and welfare.
- d. Outdoor dining areas shall be removed and the areas returned to previous conditions if the corresponding food and beverage establishment is replaced by a non-food and beverage establishment, or if the outdoor dining area is no longer in use.
- e. Outdoor dining areas and their corresponding restaurant must comply with all applicable Building and Fire Safety code requirements at the time of their construction. Outdoor dining areas approved under Urgency Ordinance No. 2020-15 must comply with all applicable Building and Fire Safety requirements within six months from the time of Ordinance No. 2023-0002 adoption, with an allowed six-month extension of time.
- f. All outdoor dining areas shall observe State and local health guidelines for restaurants.
- g. Outdoor dining areas shall not be counted as gross floor area when calculating required parking for an establishment where food or beverages are served.
- h. Outdoor dining areas shall be located adjacent to their applicable food or beverage establishment. In this case, "adjacent" includes locations separated from the subject restaurant by a single pedestrian walkway and/or single vehicular drive aisle, or a single pedestrian walkway and/or two parking spaces perpendicular to the building and outdoor dining area. Outdoor dining areas may be located further from the subject restaurant when authorized by a minor conditional use permit.
- i. A minimum 4-foot-wide pedestrian access to the entryways of all establishments on the subject property shall be provided.
- j. Pedestrian ingress/egress to the subject establishments or businesses may not be obstructed.
- k. Any proposed outdoor dining area covers (including but not limited to canopies, tents or shade covers) will require Fire and Building Department's approval prior to installation and shall not be located within required setbacks. Umbrellas shall be exempt from this requirement. Outdoor dining area covers/structures may encroach into a setback area with approval of a minor conditional use permit. To allow views to remain open and unobstructed, such shade structures shall not obstruct more than fifty (50) percent of the façade area along the property line(s) with

either vertical (e.g., posts) or horizontal elements (e.g., planters, sloped awnings) with a minimum twenty-four (24) inches between the shade cover and any fences, walls, or other similar structures such that the outdoor seating area is not enclosed.

- l. Outdoor areas may be temporarily enclosed during inclement weather with temporary structures as approved by the City's Building and Fire Department.
- m. Outdoor dining areas may not encroach into drive aisles or other vehicle circulation areas.
- n. Any service of alcoholic beverages in outdoor dining areas will be subject to approval by the California Department of Alcoholic Beverage Control and shall adhere to all requirements and standards implemented by said State agency.
- o. Outdoor dining will be required to be closed between 11 PM and 6 AM; unless approved as part of a use permit as indicated in Table 13-47(a).
- p. Noise concerns shall be addressed in a timely manner pursuant to Title 13, Chapter XIII of the Costa Mesa Municipal Code. A contact phone number shall be posted at the establishment's entrance and outdoor dining area so any noise concerns can be reported to the business operator. Outdoor dining areas shall be subject to review by authorized City officials to ensure that noise complaints and/or potential noise ordinance violations are addressed. If necessary, modifications of the operating characteristics of outdoor dining areas may be required. If any noise complaints and/or noise ordinance violations are not adequately addressed, approvals for outdoor dining areas may be revoked at the discretion of the appropriate review authority per Table 13-29(c).
- q. Approval of live entertainment and music (amplified or non-amplified) in outdoor dining areas shall be subject to Table 13-47(a).
- r. Lighting for outdoor dining areas shall comply with the following:
 - i. Lighting levels in the outdoor dining area shall be adequate for safety and security purposes, and shall be turned off when outdoor dining areas are not open for use.
 - ii. Lighting design and layout shall minimize light spill at any adjacent residential property lines and at other light-sensitive uses. Glare shields or other design features may be required to prevent light spill onto residential properties and other light-

sensitive uses.

- s. Barriers or other improvements installed as part of the outdoor dining area shall be consistent with the aesthetic of the subject property. The materials, design, color and any other feature of shall complement the design of the subject food or beverage establishment, and surrounding site development.
- t. Landscaping shall be installed around outdoor dining areas to the greatest extent possible. Planter boxes may be used to satisfy this requirement. Landscaping installed as part of an outdoor dining area shall complement existing landscaping onsite and shall comply with the City's landscape standards and all applicable State and Federal requirements.
- u. Outdoor dining shall be permitted in both conforming and nonconforming developments, subject to this Article.

(2) Development standards for outdoor dining areas within existing setback areas:

- a. To the greatest extent possible, outdoor dining areas should maintain a minimum three (3) foot-wide landscape barrier dimension between the dining area, any pedestrian or vehicular path of travel or neighboring property.
- b. Outdoor dining barriers located adjacent to the public right-of-way shall be designed in a way as to not visually enclose the outdoor dining area. Methods for achieving this include, but are not limited to, utilizing clear glass, wrought iron, picket fencing materials and/or landscaping for barriers, and limiting the height of the barriers to five (5) feet, outside of the traffic visibility triangle. Barriers shall not impede traffic visibility from property and public right of way.
- c. Any landscaping (including trees) removed as a result of a new proposed outdoor dining area shall be replaced on-site (in similar size), unless determined infeasible by the Planning Division.

(3) Development Standards for Outdoor Dining Areas within private parking areas:

- a. Outdoor dining areas within existing private parking areas may occupy parking spaces in compliance with Table 13-47 (b). New development may receive a parking credit of up to two (2) parking spaces, or 10% of required parking spaces, whichever is less, to accommodate an outdoor

dining area.

- b. Outdoor dining areas within private parking areas must comply with all parking and circulation standards.
- c. Walls, planters and other barriers associated with outdoor dining areas within private parking areas shall be designed in a way as to not visually enclose the outdoor dining area. Methods for achieving this include, but are not limited to, utilizing clear glass, wrought iron or picket fencing materials, and limiting the height of the barriers to five (5) feet, outside of the traffic visibility triangle. Barriers shall not impede traffic visibility from property and public right of way.

(c) ~~(b)~~ All establishments shall comply with the applicable standards and review procedures indicated in Table 13-47, as well as with all other development standards of the appropriate zoning district.

(d) ~~(e)~~ Seasonal events that include live entertainment, dancing, and/or amplified music may be allowed without a conditional use permit or live entertainment permit provided that it complies with the following standards. Each establishment is limited to four (4) nonconsecutive events per calendar year.

- (1) The event shall not exceed one day in duration;
- (2) The event shall be conducted entirely indoors; and
- (3) The event shall comply with Chapter XII, noise control.

(Ord. No. 97-11, § 2, 5-5-97; Ord. No. 98-5, § 12, 3-2-98; Ord. No. 05-3, § 1e., 2-7-05; Ord. No. 21-20, § 1, 12-7-21)

13-49. Development standards for establishments within two hundred feet of residentially-zoned property.

Establishments where food or beverages are served that are within two hundred (200) feet of residentially-zoned property shall comply with the following development standards, unless the standards are modified through the issuance of a minor conditional use permit or conditional use permit.

- (a) All exterior lighting shall be shielded and/or directed away from residential areas.
- (b) Outdoor public communication systems shall not be audible in adjacent residential areas.

- (c) Trash facilities shall be screened from view and designed and located appropriately to minimize potential noise and odor impacts to adjacent residential areas.
- (d) Outdoor seating areas shall be oriented away or sufficiently buffered from adjacent residential areas.
- (e) For new construction, a landscaped planter area, a minimum of five (5) feet in width, shall be provided as an additional buffer to adjacent residential areas. The planter area shall contain appropriate plant materials to provide an immediate and effective screen. Plant materials shall meet with the approval of the planning division. For remodels, the planning division may also require the construction of a landscaped planter area to buffer adjacent residential areas, if feasible.
- (f) For new construction, all interior property lines abutting residentially-zoned property shall have a minimum six-foot high masonry wall, as measured from the highest grade. An eight-foot high masonry wall may be required, based on the establishment's operational characteristics, in order to provide additional protection to adjacent residential uses. A planning application may be required for walls exceeding six (6) feet in height. For remodels, the planning division may also require the construction of a masonry wall to buffer adjacent residential areas, if feasible.
- (g) Hours of operation for customer service shall not occur any time between 11:00 p.m. and 6:00 a.m.
- (h) Truck deliveries shall not occur anytime between 8:00 p.m. and 7:00 a.m. (Ord. No. 97-11, § 2, 5-5-97)

13-50. Development standards for drive-through operations.

Establishments with drive-through operations shall comply with the following development standards, unless the standards are modified through the issuance of a minor conditional use permit.

- (a) Drive-through lanes shall not obstruct the circulation routes necessary for ingress or egress from the property, parking areas (including back-out of parking spaces), and pedestrian walkways.
- (b) Each drive-through lane shall be striped, marked or otherwise distinctly delineated, and shall be a minimum of eleven (11) feet wide.
- (c) On-site entrances to drive-through lanes shall be set back a minimum of twenty-five (25) feet from drive approaches from public or private streets or alleys.
- (d) Each drive-through lane shall be a minimum of one hundred sixty (160) feet in length, unless modified by the zoning administrator. The length of the drive-through lane shall be measured from its entrance point to the pick-up window.

(e) Vehicle stacking areas of drive-through lanes shall be a minimum distance of ten (10) feet from outdoor seating and play areas.

(f) Application for a minor conditional use permit shall include an operation statement indicating the physical improvements and operational measures proposed to minimize idling vehicle emissions.

(g) Establishments within two hundred (200) feet of residentially-zoned property shall also be subject to the development standards contained in section 13-49, Development standards for establishments within two hundred feet of residentially-zoned property. (Ord. No. 97-11, § 2, 5-5-97)

13-51. Applicability.

(a) The provisions of this article shall apply to all new establishments where food or beverages are served which are proposed. The provisions of this article shall not apply to existing uses, even when they undergo a change of ownership, unless one (1) or more of the conditions described in subsection (b) are met.

(b) The provisions of this article shall apply, as appropriate, to any existing use where food or beverages are served under the following circumstances:

- (1) A change of operational characteristics that includes one (1) or more of the following items:
 - a. An extension of the hours of operation for customer service between 11 p.m. and 6 a.m., if the establishment is within two hundred (200) feet of residentially-zoned property.
 - b. The introduction of the sale of alcoholic beverages for on-site consumption between 11 p.m. and 2 a.m.
 - c. The introduction of live entertainment or dancing, or the cumulative expansion of one hundred (100) square feet or more of the area devoted to dancing during the lifetime of the establishment.
 - d. The introduction of drive-through operations or the expansion of the existing drive-through operations.
 - e. Alterations resulting in a cumulative increase of one hundred (100) square feet or more in the floor area devoted to customer service, e.g., food and/or beverage service or entertainment, during the lifetime of the establishment.
 - f. A change from any type of alcoholic beverage control license to any of the following alcoholic beverage control license types: 40 (on-sale beer);

42 (on-sale beer and wine for public premises), 48 (on-sale general for public premises); or 61 (on-sale beer for public premises) provided that the establishment is open for customer service anytime between the hours of 11 p.m. and 2 a.m.

- (2) A cumulative expansion of one hundred (100) square feet or more of the gross floor area during the lifetime of the establishment.

(3) The construction of new, or additional, outdoor dining area(s).

- (4) ~~(3)~~ Discretionary review by the final review authority shall be limited to the change in operational characteristics or the expansion in the area devoted to customer service. (Ord. No. 97-11, § 2, 5-5-97; Ord. No. 00-4, § 1, 2-22-00)

CHAPTER VI. OFF-STREET PARKING STANDARDS

ARTICLE 2. NON-RESIDENTIAL DISTRICTS

13-89. PARKING REQUIRED.

The minimum amount of off-street parking as established in Table 13-89 shall be provided at the time:

- (a) Any building and/or structure is constructed;
- (b) Any building or structure is enlarged or increased in capacity by adding gross floor area, gross leasable area or seats;
- (c) A specific use is proposed for a building site; or
- (d) An existing use is changed to one which requires additional parking.

At all times, with the exception of the provisions of section [13-98](#), Declaration of land use restriction, parking shall be provided according to the requirements of Table 13-89.

TABLE 13-89

NON-RESIDENTIAL PARKING STANDARDS

<i>USE</i>	<i>PARKING RATIO PER GROSS FLOOR AREA</i> <i>(except as noted otherwise)</i>
Retail; offices; central administrative offices; establishments where food or beverages are served with a maximum of 300 square feet of public area ¹	4 spaces per 1,000 square feet with a minimum of 6 spaces ²
Office buildings exceeding 2 stories in height and 100,000 square feet in area	3 spaces per 1,000 square feet
Banks; savings and loans; credit unions	5 spaces per 1,000 square feet with a minimum of 6 spaces
Medical and dental offices; acupuncture; massage	6 spaces per 1,000 square feet with a minimum of 6 spaces
Furniture and appliance stores with floor area greater than 5,000 square feet	2 spaces per 1,000 square feet with a minimum of 20 spaces
Churches; theaters; mortuaries; auditoriums; services and fraternal clubs and lodges; amphitheaters and other similar places of assembly	Within the main auditorium or assembly area: 1 space for each 3 fixed seats or 1 space for every 35 square feet of seating area if there are no fixed seats. 18 lineal inches of bench shall be considered equal to 1 fixed seat.
Racquetball and tennis facilities	3 spaces per court plus parking required for incidental uses such as restaurants which shall be calculated as noted below
Establishments where food or beverages are served with more than 300 square feet of public area ^{1, 4}	10 spaces per 1,000 square feet for the first 3,000 square feet; ² 12 spaces per 1,000 square feet for each additional 1,000 square feet above the first 3,000 square feet. ²
Health clubs; spas; figure salons; skating rinks; game arcades	Parking requirement is 10 spaces per 1,000 square feet
Bowling alleys	3 spaces per lane plus parking required for incidental uses such as restaurants which shall be calculated as noted under "Establishments where food or beverages are served"
Trade schools; business colleges; dancing and music academies	10 spaces per 1,000 square feet
Motels	1 space for each rentable unit without cooking facilities. Each rentable unit with

USE	PARKING RATIO PER GROSS FLOOR AREA (except as noted otherwise)
	cooking facilities shall be governed by residential parking standards
Hotels	1 space for each 2 rentable units plus 10 spaces per 1,000 square feet for the first 3,000 square feet, and 20 spaces per 1,000 square feet for each additional 1,000 square feet above the first 3,000 square feet for restaurant, banquet, meeting room and kitchen spaces
Establishments with live entertainment; i.e., go-go dancers, topless dancers, bikini dancers	1 parking space for each person for the first 100 persons as authorized by capacity signs posted by the fire department; 1 parking space for each 2 persons for every 101 to 300 persons as authorized by capacity signs posted; 1 parking space for each 3 persons for every 301 plus persons as authorized by capacity signs posted by the fire department.
Shopping centers with a minimum of 600,000 square feet of contiguous gross leasable area:	
Main structure or group of abutting structures Retail Establishments where food or beverages are served occupying 5% or less of the total contiguous gross leasable area Establishments where food or beverages or served in excess of 5% of the total contiguous gross leasable area Office Space occupying 10% or less of the total contiguous gross leasable area Office Space in excess of 10% of the total contiguous gross leasable area Theaters (cumulative)	 5 spaces per 1,000 square feet of gross leasable area 1 space per 1,000 square feet of gross leasable area 5 spaces per 1,000 square feet of gross leasable area None 4 spaces per 1,000 square feet of gross leasable area with a minimum of 6 spaces

USE	PARKING RATIO PER GROSS FLOOR AREA (except as noted otherwise)
750 seats and less More than 750 seats Uses within freestanding structures Establishments where food or beverages are served All others	5 spaces per 1,000 square feet of gross leasable area 5 spaces per 1,000 square feet of gross leasable area plus 3 spaces for each additional 100 seats 10 spaces per 1,000 square feet of gross leasable area Pursuant to this table
Mixed use developments	When there are mixed uses within a single development which share the same parking facilities, the total requirement for parking should be determined as outlined in “City of Costa Mesa Procedure for Determining Shared Parking Requirements” which are included herein by this reference and which may be amended from time to time by resolution of the city council. A greater reduction in parking than would be allowed under this procedure may be approved by minor conditional use permit where it can be demonstrated that less parking is needed due to the hours of operation or other unusual features of the users involved. For mixed-use developments located in the mixed-use overlay zone, refer to the applicable urban plan for parking rates.
Industrial	3 parking spaces shall be provided per 1,000 square feet of gross floor area for the first 25,000 square feet of building; 2 parking spaces shall be provided per 1,000 square feet of gross floor area between 25,000 and 50,000 square feet of building; and one and one-half parking spaces shall be provided per 1,000 square feet of gross floor area over 50,001 square feet of building.

USE	PARKING RATIO PER GROSS FLOOR AREA (except as noted otherwise)
Garden centers; plant nurseries	4 spaces per 1,000 square feet of gross floor area; and 2 spaces per 1,000 square feet of outdoor display area.
Smoking lounges	17 spaces per 1,000 square feet

1 Establishments limited to seating for twelve (12) or fewer persons prior to June 4, 1997, shall remain at that seating limit unless additional parking is provided pursuant to this Zoning Code.

2 The outdoor patio seating area(s) shall **not** be included in the floor area calculations for purposes of determining the required parking.

3 The final review authority may apply a maximum credit of one parking space due to the provision of bicycle racks. This credit shall only apply to the overall parking supply and not to multiple uses.

When the approval of a use permit is required, the final review authority may require additional parking spaces at a ratio not to exceed thirty (30) spaces per one thousand (1,000) square feet of floor area of the entire building. Factors that may warrant additional parking include, but are not limited to, the provision of entertainment and/or dancing, or substantial ratio of floor area devoted to bar as compared to restaurant use. The maximum parking rate shall be applicable to uses that have substantially maximized the building's occupancy due to design and provision of concentrated uses.

4 When the approval of a use permit is required, the final review authority may require additional parking spaces at a ratio not to exceed thirty (30) spaces per one thousand (1,000) square feet of floor area of the entire building. Factors that may warrant additional parking include, but are not limited to, the provision of entertainment and/or dancing, or substantial ratio of floor area devoted to bar as compared to restaurant use. The maximum parking rate shall be applicable to uses that have substantially maximized the building's occupancy due to design and provision of concentrated uses.

(Ord. No. 97-11, § 2, 5-5-97; Ord. No. 98-5, § 16, 3-2-98; Ord. No. 02-4, § 1j, 3-18-02; Ord. No. 06-9, § 1g., 4-18-06; Ord. No. 12-4, § 1, 5-15-12; Ord. No. 15-10, § 2C, 9-15-15; Ord. No. 21-20, § 1, 12-7-21)

CHAPTER V. DEVELOPMENT STANDARDS**ARTICLE 4. ESTABLISHMENTS WHERE FOOD OR BEVERAGES ARE SERVED****13-46. Purpose.**

The purpose of this article is to regulate and provide development standards for establishments where food or beverages are served. The proximity of residential uses to these types of establishments is a concern of this article. Where the distance criterion of two hundred (200) feet from residentially-zoned property is given in this article, it shall be measured from the property line of the site to the property line of the nearest residentially-zoned property. This article also establishes requirements for outdoor dining areas to support long-term economic viability of local establishments, promote vitality in the City's commercial areas, promote progress towards creating walkable communities by facilitating pedestrian-friendly and safe public spaces, and facilitate and incentivize enhanced dining experiences.

(Ord. No. 97-11, § 2, 5-5-97)

13-47. Permitted and conditionally permitted uses.

Establishments where food or beverages are served are subject to the review and approval procedures shown in Table 13-47 (a) and (b). In instances where more than one (1) review procedure is applicable to an establishment, the more stringent procedure shall apply.

TABLE 13-47 (a)

PERMITTED AND CONDITIONALLY PERMITTED USES

<i>LOCATION AND OPERATIONAL CHARACTERISTICS</i>	<i>C1-S</i>	<i>C1</i>	<i>C2</i>	<i>CL</i>	<i>TC</i>	<i>PD</i>	<i>MG</i>	<i>MP</i>
Establishments with 300 square feet or less of indoor public area. ³	P ^{1,2} or P	P	P	MC	P ¹ or P	P ¹ or P	P	P
Establishments with more than 300 square feet of indoor public area. ³	P ¹ or P	P	P	MC	P ¹ or P	P ¹ or P	MC	MC
EXCEPTIONS								
Located within 200 feet of a residential zone. (Subject to the requirements of section 13-49, Development	P ¹ or P	P	P	MC	P ¹ or P	P ¹ or P	P	P

LOCATION AND OPERATIONAL CHARACTERISTICS	C1-S	C1	C2	CL	TC	PD	MG	MP
Standards for Establishments Within 200 Feet of Residentially Zoned Property) ³								
Sale of alcoholic beverages for on-site consumption after 11:00 p.m. and/or provision of live entertainment or dancing located within 200 feet of a residential zone. ³	P ¹ or C	C	C	C	P ¹ or C	P ¹ or C	C	C
Sale of alcoholic beverages for on-site consumption after 11:00 p.m. and/or provision of live entertainment or dancing located not within 200 feet of a residential zone. ³	P ¹ or MC	MC	MC	MC	P ¹ or MC	P ¹ or MC	MC	MC
Drive-through operations. (Subject to the requirements of section 13-50, Development Standards for Drive-Through Operations) ³	P ¹ or MC	MC	MC	MC	P ¹ or MC	P ¹ or MC	MC	MC
Establishments with less than 300 square feet of indoor public area located in a multi-tenant center where 30% or more of the tenants are similar businesses, i.e., establishments with less than 300 square feet of indoor public area. ³	P ¹ or MC	MC	MC	MC	P ¹ or MC	P ¹ or MC	MC	MC
Establishments with a micro brewery ³	P ¹ or C	C	C	C	P ¹ or C	P ¹ or C	C	C

¹ Pursuant to an approved master plan which specifies these operational characteristics and/or location of the business.

² For the purposes of this table, the symbols shall have the following meaning: P=Permitted; MC=Minor Conditional Use Permit; C=Conditional Use Permit.

³ Outdoor dining and seating areas may be considered as part of a proposed land use if allowed in the zoning district, and pursuant to the provisions, regulations and standards of this Article.

(Ord. No. 97-11, § 2, 5-5-97)

TABLE 13-47 (b)

Outdoor Dining Area Permitting Process ¹

LOCATION OF OUTDOOR AREAS AND OPERATIONAL CHARACTERISTICS	Approval Process
Courtyard Area	P ²
Setback Area – Expansion of up to 50% of indoor public area outdoors. ¹	P ²
Setback Area – Expansion of more than 50% of indoor public area outdoors. ¹	MC ²
Parking Area - Expansion of up to 50% of indoor public area outdoors and does not remove more than two parking spaces or 10% of existing parking whichever is less. ¹	P ²
Parking Area – Expansion of more than 50% of indoor public area outdoors. ¹	MC ²
Parking Area - removal of two or more parking spaces, or removal of more than 10% of on-site parking, whichever is less. ¹	MC ²

¹ Temporary Use Permits for outdoor dining areas approved through Urgency Ordinance 2020-15 may continue to operate as approved but shall comply with applicable Building and Fire Code requirements within six months from the time of Ordinance No. 2023-0002 adoption, with an allowed six-month extension of time. Any modifications to these outdoor dining areas shall be approved pursuant to this Article.

² For the purposes of this table, the symbols shall have the following meaning: P=Permitted; MC=Minor Conditional Use Permit; C=Conditional Use Permit.

13-48. General development standards.

Establishments where food or beverages are served are subject to the following development standards.

(a) Outdoor dining areas are permitted provided that the area does not encroach into required setbacks. Existing and newly constructed establishments that propose new

outdoor dining areas within courtyard, parking, setback or interior landscaped areas may be approved pursuant to this Article. Development standards provided in Section 13-48 (b)(1) applies to all outdoor dining areas. Additional development standards apply to outdoor dining areas within parking areas (Section 13-48 (a)(2)) and setback areas (Section 13-48 (a)(3)).

(1) Development Standards for all Outdoor Dining Areas:

- a. Subject to the discretion of the reviewing authority, and where practical, feasible and safe, outdoor dining areas shall be located on a development site with preference given in the order of (1) existing courtyards, plazas, or oversized walkways (2) existing setbacks and (3) existing parking areas.
- b. Where practical, feasible and safe, outdoor dining areas shall be located on a development site with preference given to areas that can be seen from the public rights-of-way or pedestrian activity areas, compared to areas that cannot be seen from these locations.
- c. Outdoor dining areas shall be maintained in good condition, kept clean and shall not result in conditions which are harmful or injurious to the public health, safety and welfare.
- d. Outdoor dining areas shall be removed and the areas returned to previous conditions if the corresponding food and beverage establishment is replaced by a non-food and beverage establishment, or if the outdoor dining area is no longer in use.
- e. Outdoor dining areas and their corresponding restaurant must comply with all applicable Building and Fire Safety code requirements at the time of their construction. Outdoor dining areas approved under Urgency Ordinance No. 2020-15 must comply with all applicable Building and Fire Safety requirements within six months from the time of Ordinance No. 2023-0002 adoption, with an allowed six-month extension of time.
- f. All outdoor dining areas shall observe State and local health guidelines for restaurants.
- g. Outdoor dining areas shall not be counted as gross floor area when calculating required parking for an establishment where food or beverages are served.
- h. Outdoor dining areas shall be located adjacent to their applicable food or beverage establishment. In this case, "adjacent" includes locations separated from the subject restaurant by a single pedestrian walkway and/or single vehicular drive aisle, or a single pedestrian walkway and/or

two parking spaces perpendicular to the building and outdoor dining area. Outdoor dining areas may be located further from the subject restaurant when authorized by a minor conditional use permit.

- i. A minimum 4-foot-wide pedestrian access to the entryways of all establishments on the subject property shall be provided.
- j. Pedestrian ingress/egress to the subject establishments or businesses may not be obstructed.
- k. Any proposed outdoor dining area covers (including but not limited to canopies, tents or shade covers) will require Fire and Building Department's approval prior to installation and shall not be located within required setbacks. Umbrellas shall be exempt from this requirement. Outdoor dining area covers/structures may encroach into a setback area with approval of a minor conditional use permit. To allow views to remain open and unobstructed, such shade structures shall not obstruct more than fifty (50) percent of the façade area along the property line(s) with either vertical (e.g., posts) or horizontal elements (e.g., planters, sloped awnings) with a minimum twenty-four (24) inches between the shade cover and any fences, walls, or other similar structures such that the outdoor seating area is not enclosed.
- l. Outdoor areas may be temporarily enclosed during inclement weather with temporary structures as approved by the City's Building and Fire Department.
- m. Outdoor dining areas may not encroach into drive aisles or other vehicle circulation areas.
- n. Any service of alcoholic beverages in outdoor dining areas will be subject to approval by the California Department of Alcoholic Beverage Control and shall adhere to all requirements and standards implemented by said State agency.
- o. Outdoor dining will be required to be closed between 11 PM and 6 AM; unless approved as part of a use permit as indicated in Table 13-47(a).
- p. Noise concerns shall be addressed in a timely manner pursuant to Title 13, Chapter XIII of the Costa Mesa Municipal Code. A contact phone number shall be posted at the establishment's entrance and outdoor dining area so any noise concerns can be reported to the business operator. Outdoor dining areas shall be subject to review by authorized City officials to ensure that noise complaints and/or potential noise

ordinance violations are addressed. If necessary, modifications of the operating characteristics of outdoor dining areas may be required. If any noise complaints and/or noise ordinance violations are not adequately addressed, approvals for outdoor dining areas may be revoked at the discretion of the appropriate review authority per Table 13-29(c).

- q. Approval of live entertainment and music (amplified or non-amplified) in outdoor dining areas shall be subject to Table 13-47(a).
 - r. Lighting for outdoor dining areas shall comply with the following:
 - i. Lighting levels in the outdoor dining area shall be adequate for safety and security purposes, and shall be turned off when outdoor dining areas are not open for use.
 - ii. Lighting design and layout shall minimize light spill at any adjacent residential property lines and at other light-sensitive uses. Glare shields or other design features may be required to prevent light spill onto residential properties and other light-sensitive uses.
 - s. Barriers or other improvements installed as part of the outdoor dining area shall be consistent with the aesthetic of the subject property. The materials, design, color and any other feature of shall complement the design of the subject food or beverage establishment, and surrounding site development.
 - t. Landscaping shall be installed around outdoor dining areas to the greatest extent possible. Planter boxes may be used to satisfy this requirement. Landscaping installed as part of an outdoor dining area shall complement existing landscaping onsite and shall comply with the City's landscape standards and all applicable State and Federal requirements.
 - u. Outdoor dining shall be permitted in both conforming and nonconforming developments, subject to this Article.
- (2) Development standards for outdoor dining areas within existing setback areas:
- a. To the greatest extent possible, outdoor dining areas should maintain a minimum three (3) foot-wide landscape barrier dimension between the dining area, any pedestrian or vehicular path of travel or neighboring property.

- b. Outdoor dining barriers located adjacent to the public right-of-way shall be designed in a way as to not visually enclose the outdoor dining area. Methods for achieving this include, but are not limited to, utilizing clear glass, wrought iron, picket fencing materials and/or landscaping for barriers, and limiting the height of the barriers to five (5) feet, outside of the traffic visibility triangle. Barriers shall not impede traffic visibility from property and public right of way.
 - c. Any landscaping (including trees) removed as a result of a new proposed outdoor dining area shall be replaced on-site (in similar size), unless determined infeasible by the Planning Division.
- (3) Development Standards for Outdoor Dining Areas within private parking areas:
 - a. Outdoor dining areas within existing private parking areas may occupy parking spaces in compliance with Table 13-47 (b). New development may receive a parking credit of up to two (2) parking spaces, or 10% of required parking spaces, whichever is less, to accommodate an outdoor dining area.
 - b. Outdoor dining areas within private parking areas must comply with all parking and circulation standards.
 - c. Walls, planters and other barriers associated with outdoor dining areas within private parking areas shall be designed in a way as to not visually enclose the outdoor dining area. Methods for achieving this include, but are not limited to, utilizing clear glass, wrought iron or picket fencing materials, and limiting the height of the barriers to five (5) feet, outside of the traffic visibility triangle. Barriers shall not impede traffic visibility from property and public right of way.

(c) All establishments shall comply with the applicable standards and review procedures indicated in Table 13-47, as well as with all other development standards of the appropriate zoning district.

(d) Seasonal events that include live entertainment, dancing, and/or amplified music may be allowed without a conditional use permit or live entertainment permit provided that it complies with the following standards. Each establishment is limited to four (4) nonconsecutive events per calendar year.

- (1) The event shall not exceed one day in duration;
- (2) The event shall be conducted entirely indoors; and
- (3) The event shall comply with Chapter XII, noise control.

(Ord. No. 97-11, § 2, 5-5-97; Ord. No. 98-5, § 12, 3-2-98; Ord. No. 05-3, § 1e., 2-7-05; Ord. No. 21-20, § 1, 12-7-21)

13-49. Development standards for establishments within two hundred feet of residentially-zoned property.

Establishments where food or beverages are served that are within two hundred (200) feet of residentially-zoned property shall comply with the following development standards, unless the standards are modified through the issuance of a minor conditional use permit or conditional use permit.

- (a) All exterior lighting shall be shielded and/or directed away from residential areas.
- (b) Outdoor public communication systems shall not be audible in adjacent residential areas.
- (c) Trash facilities shall be screened from view and designed and located appropriately to minimize potential noise and odor impacts to adjacent residential areas.
- (d) Outdoor seating areas shall be oriented away or sufficiently buffered from adjacent residential areas.
- (e) For new construction, a landscaped planter area, a minimum of five (5) feet in width, shall be provided as an additional buffer to adjacent residential areas. The planter area shall contain appropriate plant materials to provide an immediate and effective screen. Plant materials shall meet with the approval of the planning division. For remodels, the planning division may also require the construction of a landscaped planter area to buffer adjacent residential areas, if feasible.
- (f) For new construction, all interior property lines abutting residentially-zoned property shall have a minimum six-foot high masonry wall, as measured from the highest grade. An eight-foot high masonry wall may be required, based on the establishment's operational characteristics, in order to provide additional protection to adjacent residential uses. A planning application may be required for walls exceeding six (6) feet in height. For remodels, the planning division may also require the construction of a masonry wall to buffer adjacent residential areas, if feasible.
- (g) Hours of operation for customer service shall not occur any time between 11:00 p.m. and 6:00 a.m.
- (h) Truck deliveries shall not occur anytime between 8:00 p.m. and 7:00 a.m. (Ord. No. 97-11, § 2, 5-5-97)

13-50. Development standards for drive-through operations.

Establishments with drive-through operations shall comply with the following development standards, unless the standards are modified through the issuance of a minor conditional use permit.

- (a) Drive-through lanes shall not obstruct the circulation routes necessary for ingress or egress from the property, parking areas (including back-out of parking spaces), and pedestrian walkways.
- (b) Each drive-through lane shall be striped, marked or otherwise distinctly delineated, and shall be a minimum of eleven (11) feet wide.
- (c) On-site entrances to drive-through lanes shall be set back a minimum of twenty-five (25) feet from drive approaches from public or private streets or alleys.
- (d) Each drive-through lane shall be a minimum of one hundred sixty (160) feet in length, unless modified by the zoning administrator. The length of the drive-through lane shall be measured from its entrance point to the pick-up window.
- (e) Vehicle stacking areas of drive-through lanes shall be a minimum distance of ten (10) feet from outdoor seating and play areas.
- (f) Application for a minor conditional use permit shall include an operation statement indicating the physical improvements and operational measures proposed to minimize idling vehicle emissions.
- (g) Establishments within two hundred (200) feet of residentially-zoned property shall also be subject to the development standards contained in section 13-49, Development standards for establishments within two hundred feet of residentially-zoned property. (Ord. No. 97-11, § 2, 5-5-97)

13-51. Applicability.

- (a) The provisions of this article shall apply to all new establishments where food or beverages are served which are proposed. The provisions of this article shall not apply to existing uses, even when they undergo a change of ownership, unless one (1) or more of the conditions described in subsection (b) are met.
- (b) The provisions of this article shall apply, as appropriate, to any existing use where food or beverages are served under the following circumstances:
 - (1) A change of operational characteristics that includes one (1) or more of the following items:

- a. An extension of the hours of operation for customer service between 11 p.m. and 6 a.m., if the establishment is within two hundred (200) feet of residentially-zoned property.
 - b. The introduction of the sale of alcoholic beverages for on-site consumption between 11 p.m. and 2 a.m.
 - c. The introduction of live entertainment or dancing, or the cumulative expansion of one hundred (100) square feet or more of the area devoted to dancing during the lifetime of the establishment.
 - d. The introduction of drive-through operations or the expansion of the existing drive-through operations.
 - e. Alterations resulting in a cumulative increase of one hundred (100) square feet or more in the floor area devoted to customer service, e.g., food and/or beverage service or entertainment, during the lifetime of the establishment.
 - f. A change from any type of alcoholic beverage control license to any of the following alcoholic beverage control license types: 40 (on-sale beer); 42 (on-sale beer and wine for public premises), 48 (on-sale general for public premises); or 61 (on-sale beer for public premises) provided that the establishment is open for customer service anytime between the hours of 11 p.m. and 2 a.m.
- (2) A cumulative expansion of one hundred (100) square feet or more of the gross floor area during the lifetime of the establishment.
 - (3) The construction of new, or additional, outdoor dining area(s).
 - (4) Discretionary review by the final review authority shall be limited to the change in operational characteristics or the expansion in the area devoted to customer service. (Ord. No. 97-11, § 2, 5-5-97; Ord. No. 00-4, § 1, 2-22-00)

CHAPTER VI. OFF-STREET PARKING STANDARDS

ARTICLE 2. NON-RESIDENTIAL DISTRICTS

13-89. PARKING REQUIRED.

The minimum amount of off-street parking as established in Table 13-89 shall be provided at the time:

- (a) Any building and/or structure is constructed;

- (b) Any building or structure is enlarged or increased in capacity by adding gross floor area, gross leasable area or seats;
- (c) A specific use is proposed for a building site; or
- (d) An existing use is changed to one which requires additional parking.

At all times, with the exception of the provisions of section 13-98, Declaration of land use restriction, parking shall be provided according to the requirements of Table 13-89.

TABLE 13-89
NON-RESIDENTIAL PARKING STANDARDS

<i>USE</i>	<i>PARKING RATIO PER GROSS FLOOR AREA</i> <i>(except as noted otherwise)</i>
Retail; offices; central administrative offices; establishments where food or beverages are served with a maximum of 300 square feet of public area ¹	4 spaces per 1,000 square feet with a minimum of 6 spaces ²
Office buildings exceeding 2 stories in height and 100,000 square feet in area	3 spaces per 1,000 square feet
Banks; savings and loans; credit unions	5 spaces per 1,000 square feet with a minimum of 6 spaces
Medical and dental offices; acupuncture; massage	6 spaces per 1,000 square feet with a minimum of 6 spaces
Furniture and appliance stores with floor area greater than 5,000 square feet	2 spaces per 1,000 square feet with a minimum of 20 spaces
Churches; theaters; mortuaries; auditoriums; services and fraternal clubs and lodges; amphitheaters and other similar places of assembly	Within the main auditorium or assembly area: 1 space for each 3 fixed seats or 1 space for every 35 square feet of seating area if there are no fixed seats. 18 lineal inches of bench shall be considered equal to 1 fixed seat.
Racquetball and tennis facilities	3 spaces per court plus parking required for incidental uses such as restaurants which shall be calculated as noted below
Establishments where food or beverages are served with more than 300 square feet of public area ^{1, 4}	10 spaces per 1,000 square feet for the first 3,000 square feet; ²

<i>USE</i>	<i>PARKING RATIO PER GROSS FLOOR AREA</i> <i>(except as noted otherwise)</i>
	12 spaces per 1,000 square feet for each additional 1,000 square feet above the first 3,000 square feet. ²
Health clubs; spas; figure salons; skating rinks; game arcades	Parking requirement is 10 spaces per 1,000 square feet
Bowling alleys	3 spaces per lane plus parking required for incidental uses such as restaurants which shall be calculated as noted under "Establishments where food or beverages are served"
Trade schools; business colleges; dancing and music academies	10 spaces per 1,000 square feet
Motels	1 space for each rentable unit without cooking facilities. Each rentable unit with cooking facilities shall be governed by residential parking standards
Hotels	1 space for each 2 rentable units plus 10 spaces per 1,000 square feet for the first 3,000 square feet, and 20 spaces per 1,000 square feet for each additional 1,000 square feet above the first 3,000 square feet for restaurant, banquet, meeting room and kitchen spaces
Establishments with live entertainment; i.e., go-go dancers, topless dancers, bikini dancers	1 parking space for each person for the first 100 persons as authorized by capacity signs posted by the fire department; 1 parking space for each 2 persons for every 101 to 300 persons as authorized by capacity signs posted; 1 parking space for each 3 persons for every 301 plus persons as authorized by capacity signs posted by the fire department.
Shopping centers with a minimum of 600,000 square feet of contiguous gross leasable area:	
Main structure or group of abutting structures	

USE	PARKING RATIO PER GROSS FLOOR AREA (except as noted otherwise)
<p>Retail</p> <p>Establishments where food or beverages are served occupying 5% or less of the total contiguous gross leasable area</p> <p>Establishments where food or beverages are served in excess of 5% of the total contiguous gross leasable area</p> <p>Office Space occupying 10% or less of the total contiguous gross leasable area</p> <p>Office Space in excess of 10% of the total contiguous gross leasable area</p> <p>Theaters (cumulative)</p> <p>750 seats and less</p> <p>More than 750 seats</p> <p>Uses within freestanding structures</p> <p>Establishments where food or beverages are served</p> <p>All others</p>	<p>5 spaces per 1,000 square feet of gross leasable area</p> <p>1 space per 1,000 square feet of gross leasable area</p> <p>5 spaces per 1,000 square feet of gross leasable area</p> <p>None</p> <p>4 spaces per 1,000 square feet of gross leasable area with a minimum of 6 spaces</p> <p>5 spaces per 1,000 square feet of gross leasable area</p> <p>5 spaces per 1,000 square feet of gross leasable area plus 3 spaces for each additional 100 seats</p> <p>10 spaces per 1,000 square feet of gross leasable area</p> <p>Pursuant to this table</p>
<p>Mixed use developments</p>	<p>When there are mixed uses within a single development which share the same parking facilities, the total requirement for parking should be determined as outlined in "City of Costa Mesa Procedure for Determining Shared Parking Requirements" which are included herein by this reference and which may be amended from time to time by resolution of the city council. A greater reduction in parking than would be allowed under this procedure may be approved by minor conditional use permit where it can be demonstrated that less parking is needed due to the hours of</p>

USE	PARKING RATIO PER GROSS FLOOR AREA (except as noted otherwise)
	operation or other unusual features of the users involved. For mixed-use developments located in the mixed-use overlay zone, refer to the applicable urban plan for parking rates.
Industrial	3 parking spaces shall be provided per 1,000 square feet of gross floor area for the first 25,000 square feet of building; 2 parking spaces shall be provided per 1,000 square feet of gross floor area between 25,000 and 50,000 square feet of building; and one and one-half parking spaces shall be provided per 1,000 square feet of gross floor area over 50,001 square feet of building.
Garden centers; plant nurseries	4 spaces per 1,000 square feet of gross floor area; and 2 spaces per 1,000 square feet of outdoor display area.
Smoking lounges	17 spaces per 1,000 square feet

1 Establishments limited to seating for twelve (12) or fewer persons prior to June 4, 1997, shall remain at that seating limit unless additional parking is provided pursuant to this Zoning Code.

2 The outdoor patio seating area(s) shall not be included in the floor area calculations for purposes of determining the required parking.

3 The final review authority may apply a maximum credit of one parking space due to the provision of bicycle racks. This credit shall only apply to the overall parking supply and not to multiple uses.

When the approval of a use permit is required, the final review authority may require additional parking spaces at a ratio not to exceed thirty (30) spaces per one thousand (1,000) square feet of floor area of the entire building. Factors that may warrant additional parking include, but are not limited to, the provision of entertainment and/or dancing, or substantial ratio of floor area devoted to bar as compared to restaurant use. The maximum parking rate shall be applicable to uses that have substantially maximized the building's occupancy due to design and provision of concentrated uses.

4 When the approval of a use permit is required, the final review authority may require additional parking spaces at a ratio not to exceed thirty (30) spaces per one thousand (1,000) square feet of floor area of the entire building. Factors that may warrant additional parking include, but are not limited to, the provision of entertainment and/or dancing, or substantial ratio of floor area devoted to bar as compared to restaurant use. The maximum parking rate shall be applicable to uses that have substantially maximized the building's occupancy due to design and provision of concentrated uses.

(Ord. No. 97-11, § 2, 5-5-97; Ord. No. 98-5, § 16, 3-2-98; Ord. No. 02-4, § 1j, 3-18-02; Ord. No. 06-9, § 1g., 4-18-06; Ord. No. 12-4, § 1, 5-15-12; Ord. No. 15-10, § 2C, 9-15-15; Ord. No. 21-20, § 1, 12-7-21)



CITY OF COSTA MESA

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 23-1458

Meeting Date: 11/13/2023

TITLE:

AN ORDINANCE AMENDING TITLE 13 (PLANNING, ZONING AND DEVELOPMENT) OF THE COSTA MESA MUNICIPAL CODE TO ESTABLISH AFFORDABLE HOUSING REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENT PROJECTS

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/
PLANNING DIVISION

PRESENTED BY: NANCY HUYNH, PRINCIPAL PLANNER

CONTACT INFORMATION: NANCY HUYNH, 714.754.5609; Nancy.Huynh@costamesaca.gov

RECOMMENDATION:

Staff recommends the Planning Commission:

1. Receive staff presentation and public comment and provide feedback regarding the draft content of Ordinance No. 2023-XX, which would amend Costa Mesa Municipal Code (CMMC) Title 13 to establish affordable housing requirements for new residential development projects; and
2. Continue the item to a date certain for staff to return with a final Draft Ordinance for recommendation to the City Council.



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: NOVEMBER 13, 2023 ITEM NUMBER: PH-2

SUBJECT: AN ORDINANCE AMENDING TITLE 13 (PLANNING, ZONING AND DEVELOPMENT) OF THE COSTA MESA MUNICIPAL CODE TO ESTABLISH AFFORDABLE HOUSING REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENT PROJECTS

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

PRESENTATION BY: NANCY HUYNH, PRINCIPAL PLANNER

FOR FURTHER INFORMATION **NANCY HUYNH**

714.754.5609

CONTACT: Nancy.Huynh@costamesaca.gov

RECOMMENDATION

Staff recommends the Planning Commission:

1. Receive staff presentation and public comment and provide feedback regarding the draft content of Ordinance No. 2023-XX, which would amend Costa Mesa Municipal Code (CMMC) Title 13 to establish affordable housing requirements for new residential development projects; and
2. Continue the item to a date certain for staff to return with a final Draft Ordinance for recommendation to the City Council.

APPLICANT OR AUTHORIZED AGENT

The subject Ordinance is a City-initiated effort to implement Program 2A of the City's adopted 2021-2029 6th Cycle Housing Element.

BACKGROUND

On November 15, 2022, the City Council adopted the 2021-2029 6th Cycle Housing Element which includes over 40 programs that work together to form a cohesive and comprehensive housing strategy to address housing needs for the community. The City's demographics show that approximately half of the population earn a lower income and half of renters in the City experience housing cost burdens and overpayment. Program 2A of the Housing Element calls for the City to consider adoption of an inclusionary housing ordinance. An inclusionary or affordable housing ordinance would generally require new housing projects in the City to provide a certain percentage of its housing units as affordable units to moderate, low, and/or very low-income households.

To better understand the potential benefits and impacts of an affordable housing ordinance, staff retained an expert housing consultant, Keyser Marston Associates Inc. (KMA), to evaluate and make policy recommendations for a potential ordinance. KMA prepared a Financial Evaluation (FE) report which is an analysis to determine the financial impact on a housing development project if affordable housing is required. Based on that impact, the FE determines the supportable affordable housing requirement that the City could impose on new residential developments without being "confiscatory". In short, it is important for a City's affordable housing ordinance to balance the need for the development of affordable housing without encumbering the development of housing in general.

City Council and Planning Commission Joint Study Sessions

On May 16, 2023 and subsequently on July 26, 2023, City Council and Planning Commission held two joint study sessions to consider preparing an affordable housing ordinance for Costa Mesa. The first study session provided a general overview of affordable housing program best practices while the second study session focused on the preliminary findings of KMA's draft FE.

May 16, 2023 Joint Study Session

At the May 16, 2023 joint study session, staff and Kathe Head with KMA presented major components of an affordable housing ordinance, legal requirements, compliance options, and a discussion of policy considerations. The overview included target income and affordability levels, typical affordable housing ordinance standards, alternative compliance options, and in-lieu fee payment considerations.

City Council, Planning Commission, and members of the public provided their comments at the study sessions. Comments included concern with rising rental costs, balancing the need for affordable housing with the development community's need to pursue profitable housing projects, a desire to create incentives beyond the State's density bonus program to encourage the production of housing units such as reduced

parking requirements, path for homeownership, and deeper affordability in rental projects as well as focus on the Fairview Development Center. Following the discussion, City Council directed staff to complete the draft FE and requested a follow-up study session once the draft FE and policy recommendations had been completed by KMA.

The May 16, 2023 study session agenda report and meeting video are included in the links below:

- May 16, 2023 Study Session Agenda Report:
<https://costamesa.legistar.com/View.ashx?M=F&ID=11974698&GUID=90360909-8600-4286-A076-E5B7F45794D4>
- May 16, 2023 Study Session Meeting Video:
https://costamesa.granicus.com/player/clip/3993?view_id=14&redirect=true&h=dc14b3b0c827980057c8fbbc40502a38

July 26, 2023 Joint Study Session

At the follow-up joint study session, staff and KMA presented the preliminary findings of the completed draft FE and their policy recommendations based on the draft FE's findings. The policy recommendations included the minimum project size that would be subject to an affordable housing requirement, set-aside percentage(s) for the minimum number of affordable units, target affordability level(s), covenant periods, and alternative compliance options.

City Council and Planning Commission provided staff with their feedback on the proposed policy recommendations to be considered in a draft ordinance.

The July 26, 2023 study session agenda report and meeting video are included in the links below:

- July 26, 2023 Study Session Agenda Report:
<https://costamesa.legistar.com/View.ashx?M=F&ID=12177354&GUID=A49D2109-3609-4770-A7CE-76223D45F377>
- July 26, 2023 Study Session Meeting Video:
https://costamesa.granicus.com/player/clip/4019?view_id=14&redirect=true&h=a7972baf3ae0c1909cbb73e6a43d05fe

Stakeholders Meetings

As part of staff's analysis and research regarding the potential impacts and opportunities of an affordable housing ordinance in Costa Mesa, throughout the process staff met on multiple occasions with local affordable housing advocate groups and local housing developers with expertise in land development and affordable housing.

Staff conducted a total of 17 stakeholder meetings which included meetings prior to and after the joint study sessions and during staff's preparation of the draft ordinance. The meetings were conducted both in person at City Hall and virtually through Zoom. Staff and KMA also met with developers that have specific experience in developing housing projects in Costa Mesa and specifically discussed cost projections in the FE to ensure those projections were reflective of actual residential project costs.

Most stakeholders were generally accepting or supportive of an affordable housing program in Costa Mesa and understood the need for one. Below is a summary of feedback from these stakeholders meetings.

Deeper Affordability: Housing advocates expressed a desire to focus policy on providing affordable housing for households with the deeper affordability income levels (very-low and extremely-low incomes) since there is a larger need for affordable units at the much lower income level especially for those with fixed incomes such as the elderly and working families. While the very-low or extremely-low income households may be income eligible to qualify for an affordable unit provided at the low-income level, the affordable rent associated with the low-income unit would be higher than what a very-low or extremely-low income household could feasibly afford. Essentially, the housing market is currently not fulfilling the demand for units at the deeper affordability level. As such, housing advocates have expressed that deeper affordability should be required for rental housing projects, but not for ownership housing since it is common best practice to target the moderate-income affordability level for ownership housing.

Homeownership: Some housing advocates expressed an interest in seeing more homeownership opportunities in the City given the current imbalance of rentals to ownership housing. There were concerns about the narrow margins for most ownership projects and potentially slowing the development of ownership housing projects if the affordable housing requirement applied to these projects. It was preferred that the affordable housing ordinance either not apply to ownership housing or allow payment of in-lieu fees by right (and not require onsite production of ownership units).

Incentives: Stakeholders concurred that the State's density bonus will be utilized more often if an affordable housing requirement is adopted and understood that the City is required by law to grant development standard concessions/incentives under the State density bonus. Some suggested including additional incentives such as expediting processing by identifying a staff team responsible only for housing entitlement projects in the City, streamlining processes by using "by-right development" and objective design standards (as opposed to discretionary processes which take time and increase risk), offering flexibility in affordable unit design standards, allowing concurrent review of entitlement planning applications and building permit plan check, and/or fee waivers were also mentioned. Some councilmembers also requested reviewing what other local incentives the City could provide beyond the State's density bonus.

In-Lieu Fees: Stakeholders were supportive of providing in-lieu fees as an alternative compliance option. It was discussed that the fee should be an appropriate amount because if too high, it could deter housing projects. It was also discussed that the in-lieu fee is more beneficial for and should be applied to smaller housing projects. Housing developers encouraged the City to adopt in-lieu fees that have the ability to be responsive to market conditions and can be updated frequently. Developers suggested that the City also review other jurisdictions in-lieu fee amounts to ensure feasibility and comparable fee amounts.

Land Costs: Housing developers as well as housing advocates had concerns that an affordable housing program would reduce the price developers can pay to acquire property since the cost of producing affordable units would be factored into the land price a housing developer is willing to pay to acquire property for a housing project. This can lead to a competitive disadvantage on properties that contain a viable commercial or industrial use. It can also lead to a land owner choosing to keep the property rather than sell the land for housing development. This potential exists with or without an affordable housing requirement; however, an affordable housing requirement that is set too high can inadvertently disincentivize both housing and affordable housing by making a housing proposal more costly and thus less competitive for land acquisition. Housing developers discussed with staff the need to induce land owners to sell their land for residential development and housing advocates agreed that this is a consideration when setting affordable housing set-aside percentages.

Staff and KMA scheduled one-on-one meetings with housing developers who were willing to share specific information regarding its housing project pro forma projections and suggested that the FE's projections for existing land value of an improved commercial or industrial property were lower than land developers were experiencing. As a result, KMA obtained additional data representing a broader range of existing commercial and industrial uses that are common in Costa Mesa and conducted additional analysis. Ultimately, KMA concurred that using a higher existing improved land value in the FE was supportable and a more conservative approach in an area like Costa Mesa where land value is high, vacant land is scarce, and housing developers are competing for land that is already improved and operating and in many cases making a low risk profit for the land owner.

Financial Evaluation - Supplemental Analysis

Based on the stakeholders feedback, staff and KMA augmented the FE analysis specifically for the higher density rental project prototypes. KMA's additional analysis is provided as a supplemental analysis memorandum to the FE and is attached to this report for reference (Attachment 2). A copy of the preliminary draft FE dated July 11, 2023 is included in the link below:

- KMA Draft FE (July 11, 2023):
<https://www.costamesaca.gov/home/showpublisheddocument/54969/638253773340200000>

The draft FE dated July 11, 2023 included an analysis of a prototype for rental housing at 60 units per acre based on a property north of the I-405 Freeway currently used as a surface parking lot and was calculated as vacant land for land value purposes. Based on that prototype analysis, the supportable requirement was 19% at low income and 12% at very low income. However, nearly all of the potential housing opportunity sites identified in the Housing Element are existing improved commercial and industrial properties with existing office, warehouse, or other land uses (especially north of the I-405 Freeway). Therefore, although accurate, the vacant land prototype analysis may not best reflect the real estate opportunities available in Costa Mesa and the associated higher land values.

To that end, KMA's supplemental analysis for the rental housing prototype evaluates multiple scenarios based on improved commercial and industrially zoned property as well as higher density housing ranges at 60, 75, and 90 units per acre, which are feasible in certain areas of the City primarily north of the I-405 Freeway.

As a result, and as a more conservative approach based on the supplemental analysis, the supportable affordable housing requirement for a rental housing project would be:

60+ Housing Units per Acre

- 11% Low Income, or
- 7% Very Low Income

Under 60 Housing Units per Acre

- 6% Low Income, or
- 4% Very Low Income

This supplemental analysis is a more conservative approach and takes into consideration current market conditions and the lack of vacant land in Costa Mesa and the likelihood that future housing projects will be located on property currently used for office, warehouse or other similar non-residential uses. Once adopted, the affordable housing ordinance would be re-evaluated on a continued basis to ensure the requirements reflect market conditions which could be higher under a stronger market in the future.

DESCRIPTION

The proposed ordinance establishes the City of Costa Mesa's Affordable Housing Program which would facilitate the development and availability of housing affordable to a range of households with varying income levels. This goal is accomplished by requiring new residential developments in Costa Mesa to provide a minimum number of its proposed units as affordable units. The proposed ordinance would amend Article 1 (Residential Districts) of Title 13 to establish an affordable housing requirement applicable to any new residential developments on property that has experienced a rezone to allow housing or increased density and which meet the specified project

threshold size. The ordinance would also add a new chapter to Title 13, Chapter XVII (Affordable Housing Ordinance) which establishes the minimum affordable housing requirements and standards including threshold size, set-aside percentage(s), affordability level(s), affordable unit standards, and affordable housing agreements.

Pursuant to CMMC Section 13-10(i)(2a), the Planning Commission is authorized to recommend to the City Council proposed amendments to Title 13 (Zoning Code); thus, the proposed affordable housing ordinance amending portions of Title 13 is presented for Planning Commission consideration and recommendation to City Council.

ANALYSIS

The proposed draft Affordable Housing Ordinance is based on the policy direction from City Council and Planning Commission, findings and policy recommendations from the City's expert consultant, KMA, including industry best practices based on years of expertise evaluating and preparing affordable housing programs, input from local residents, housing developers and housing advocates, and staff's research on affordable housing programs including existing successful programs in other neighboring cities and throughout California. (Refer to Attachment 5 for a comparison of the neighboring local cities' affordable housing requirements and the City's draft requirements.) Based on this, staff developed an Affordable Housing Ordinance that balances the continued need for market rate housing developments in the City while also addressing the community's need for more affordable housing options.

Incentive-Based Local Density Bonus Program

The City's Affordable Housing Program has been structured as an "incentive based program" that uses rezoning of commercial/industrial property for housing to create value and incentivize housing production while coupling rezoning with a requirement to provide a portion of the project's units as affordable housing. This program structure is in effect a density bonus program.

To implement the program, the City would implement its rezoning program described in the City's approved Housing Element, rezoning non-residentially zoned properties located along major commercial and industrial corridors to allow for housing. The rezoning would allow housing to be developed at densities that support ownership and rental housing products on property where housing is not currently allowed. The rezone and increase in density creates opportunities for new homes that presently do not exist because of the lack of available properties that allow residential uses and the historically low maximum allowable density in Costa Mesa (maximum of 20 units per acre pursuant to the City's General Plan). Rezoning would create value, incentivizing land owners to sell and housing developers to build. In doing so, the City would require a portion of the added value to be used to provide the required affordable units under the City's Affordable Housing Program.

To that end, the proposed Affordable Housing Program is envisioned to only apply to properties that are rezoned to allow for residential uses or otherwise receive approval for housing at an increased density compared to what is allowed today. Although some councilmembers and commissioners expressed interest in applying the program city-wide, staff recommends the ordinance be focused on properties experiencing a rezone for housing or increased density compared to its underlying zone since these properties are much more likely to see interest due to improved housing project feasibility.

The ordinance could be applied to new residential projects proposed anywhere in the City. However, outside of the rezone areas, this would change the program from incentive-based to applying a new requirement to an existing property that already allows for residential development which would likely have mixed results.

Affordable Housing Program Components

New residential projects (ownership or rental housing) proposed in the City that meet the project threshold size would be subject to requirements and standards established in the Affordable Housing Program. The program would require developers to provide affordable units onsite within their market rate housing project or fulfill their obligation with an acceptable alternative compliance option equivalent to onsite production of affordable units such as payment of in-lieu fees.

Below is summary of the key affordable housing requirements proposed in the attached draft ordinance including:

- Applicability and Exemptions
- Threshold Size
- Set Aside Percentage and Affordability Levels
- Covenant Period
- Alternative Compliance Standards

Each program component is discussed below.

Applicability and Exemptions

Certain residential projects would be exempt from the affordable housing requirements including projects with less than ten units, residential condominium conversions of existing rental housing to ownership, and any project proposed within the boundaries of the Fairview Development Center Specific Plan. (The Fairview Developmental Center Specific Plan will include affordable housing requirements that are specific to that property, which is State owned and prioritized for housing. Affordable housing requirements for that property are anticipated to provide deeper affordability and a higher set aside percentage.)

Threshold Size

Ten (10) or more units – Residential projects (ownership or rental housing) proposed with ten or more units would be subject to the Affordable Housing Program.

The majority of housing projects approved in the City from 2014 to 2021 were one or two units and were infill projects on residentially zoned sites located within existing residential neighborhoods. Of the other housing projects, which were either located in the City's urban plan areas or along major commercial or industrial corridors, all were more than ten units. Many of these other housing projects are also located within or adjacent to the anticipated "rezone areas." Setting the threshold size at 10 units would exempt the smaller infill residential projects (common interest and small lot developments) which are typically under 10 units and ownership housing projects in existing established neighborhoods.

Set-aside Percentage and Required Affordability Levels

The percentage of a project's total housing units that are required to be affordable (referred to as the affordable housing "set aside") are proposed to vary depending on a site's zoning and allowable density (i.e. the number of housing units allowed per acre). This proposed approach reflects the density anticipated in the commercial and industrial areas of the City identified for potential rezoning in the Housing Element. The range of densities proposed in Housing Element acknowledges that not all areas of the City could support or be compatible with higher density housing at 60+ units per acre. Rather, lower scale housing projects that tend to fall between 40 to 50 du/acre range are envisioned along commercial and industrial corridors such as Harbor Boulevard and in the SoBECA area, while only the area north of the I-405 Freeway is envisioned to be compatible with projects at higher densities between 60 and 90 du/acre.

Due to differences in the varying characteristics between project types anticipated to be developed in Costa Mesa, and the relative sizes of the projects, the FE found that higher density projects can generally support a higher affordable housing set aside while lower density projects can generally support a lower set aside percentage. Based on the Financial Evaluation as supplemented the following set-aside requirement is proposed for rental housing projects in two density ranges:

Rental Housing:

60+ Housing Units per Acre Zone:

- 11% Low Income, or
- 7% Very Low Income

Under 60 Housing Units per Acre Zone:

- 6% Low Income, or
- 4% Very Low Income

Attachment 4 shows household incomes and rents for both the low and very-low income categories as defined by the State in 2022. As an example, for a four-person household based, a household with an income of approximately \$108,000 per year falls into the “low income” category while a household with an income of approximately \$67,000 per year fall into the “very low income” category. Rents for a “low income” two-bedroom housing unit would be approximately \$2,000 per month and approximately \$1,200 per month for a “very low income” housing unit.

A frequent comment made by housing advocates, councilmembers, and commissioners during the study sessions and stakeholders meeting was to target the affordable housing requirement at the very-low income level. Given that approximately one third of the households in Costa Mesa fall into very-low and extremely-low income categories, targeting deeper affordability is appropriate. However, it should also be noted that approximately one-fifth of Costa Mesa households fall into “low income” income categories so focusing only on very-low income could affect access to affordable housing options for these households. The low-income category also has a higher supportable set aside percentage and therefore could produce a greater number of affordable units compared to the very-low income category. Therefore, the Planning Commission and City Council may view a greater number of additional affordable units at the low-income level (compared to a lower number of housing units at deeper affordability levels) as a desirable trade off since both scenarios fill a need.

The proposed ordinance includes a required set aside at both the low income and very low-income level, to allow the developer to choose an option. Ultimately, this is a policy decision.

Ownership Housing

For ownership housing projects of any size (but at least ten units), onsite production of affordable units is not required. Instead, the developers of ownership housing projects may choose to pay an in-lieu fee. The in-lieu fee payment would be based on a fee schedule adopted by City Council. The in-lieu fee study is in progress and will be finalized after the Planning Commission and City Council decide on the underlying affordable housing requirements.

The draft FE results found that the affordability gap (difference between the market rate unit sales price and the moderate income affordable sales price) for ownership housing projects is extremely broad (between \$557,000 to \$745,000) that it limited the supportable percentage of units that could be required to be sold to moderate income households. By allowing the payment of in-lieu fees by right, it promotes the opportunities for the development of market rate ownership housing projects that tend to be lower to medium density.

In-lieu Fees and Housing Fund

The in-lieu fee schedule would be adopted by City Council concurrently with an affordable housing ordinance. Fees can be reviewed and updated frequently as part of the City's budget process and master schedule of fees.

The in-lieu fees collected would be placed into a dedicated Housing Fund (as proposed in the draft ordinance) that could only be used to fund affordable housing projects and programs. The City Council would identify appropriate expenditures of those housing funds at the time the fund is created and through the annual budget process. The funds could be used to support new affordable housing projects, deeper affordability or household assistance programs like a first-time homebuyer program. The Housing Fund would be managed by dedicated housing staff who would implement the programs identified by the Council.

Stakeholders provided feedback as to which of these Housing Fund projects and programs would best achieve long-term housing goals given limited housing funds. Ultimately, this is a policy matter and would be decided on by the Council at the time the Housing Fund is created, and then reconsidered through the annual budget process.

Covenant Period

Rental Housing Projects:

- 55 years minimum

The required covenant period for affordable units in rental housing projects is a minimum of 55 years. This means the affordable rental units must remain affordable for at least 55 years and will continue to remain as affordable until the land use changes to a non-residential use.

Alternative Compliance Options

Rental Housing Projects:

- Payment of in-lieu fees – applicable for projects with fewer than 100 units
- Offsite production
- Land dedication

The in-lieu fee payment option is only available to rental projects with less than 100 units because smaller projects have less units to spread the cost of constructing affordable units so may not feasibly be able to provide onsite affordable units. Offsite production and land dedication are also available alternative options since developers may find it to be more economically feasible to fulfill their obligation with land that they may already own (or could acquire). Offsite production units must be within a reasonable distance of the market rate project and constructed concurrently.

Ownership Housing Projects:

- Payment of in-lieu fees – applicable to all ownership housing projects
- Onsite construction of rental units – interspersed with market rate units or on a separate parcel within market rate project site
- Offsite production
- Land dedication

It is likely that developers of ownership housing would select the in-lieu fees. However, it is best practice to include alternative compliance options. As such, KMA recommended onsite production of affordable rental units within the market rate ownership project as one option since it would provide affordable units in the equivalent form of rental units. Similarly, offsite production and land dedication are also available options for ownership housing developers to provide additional flexibility for program compliance.

Affordable Unit Design Standards

Affordable units would be required to be comparable to the market rate units including unit sizes, proportional bedroom mix, floor plan design, finishes/materials, and access to and enjoyment of residential community amenities. In addition, the affordable units would be required to be constructed and available at the same time as the market rate units. A certificate of occupancy for the project would not be issued until construction of the affordable units are completed.

The draft ordinance includes these unit design standards to ensure that affordable units are not designed differently than market rate units. However, the draft ordinance would provide the final review authority with the flexibility to allow slight deviations from these standards if doing so would be beneficial for the Affordable Housing Program. During the stakeholders meetings with housing developers, it was expressed that providing reasonable design flexibility while maintaining the goal of comparable quality of affordable units could potentially allow developers to provide more affordable units or deeper affordability.

Parking Requirements

Rental Housing Projects:

- Parking reduction – minimum of 1.75 spaces per rental unit; lower parking requirement may be considered if supported by a parking study

Parking requirements are important in the context of housing policy because they affect the financial feasibility of a housing project. As a result, the City's per unit parking requirement is incorporated into KMA's evaluation of housing prototypes. In some cases, KMA's evaluation concluded that at existing required parking rates (an average 2.19 spaces per unit) and considering allowable densities and existing improved land value, many projects incorporating affordable housing "don't pencil". The rental project prototypes analyzed in the FE and the supplemental analysis assumed a parking rate of

1.45 to 1.9 spaces per unit in order to make it financially feasible to include a significant number of affordable housing units.

This is important when considering that housing developers also indicated during the City's stakeholder meetings that the City's parking requirements appear to be high compared to the actual demand for parking. Some indicated that for multi-family projects an actual demand of 1.5 to 1.9 spaces per unit was typical. As such, concurrently with the drafting of the proposed ordinance, staff conducted a review of parking requirements with the intent of "right sizing" parking requirements to actual demand.

The City hired an expert parking consultant, LSA, who analyzed the City's existing parking requirements and recommended that an average of 1.75 spaces for multi-family developments would be appropriate based on nationally recognized parking data, analysis of surrounding cities' parking requirements, and empirical parking counts obtained at existing apartment communities both in Costa Mesa and nearby cities.

Reducing parking requirements would allow a developer to construct more market rate units to offset the costs of the required affordable units, thereby increasing the potential for financially feasible housing projects. Therefore, staff recommends that a code amendment modifying the City's residential parking requirements be brought forward separately but concurrently with the Affordable Housing Program. In the meantime, the draft affordable housing ordinance would establish an average of 1.75 spaces per unit parking requirement for multifamily (rental) housing projects and allow the flexibility for the decision-making body to consider a lower parking requirement to match actual demand when supported by a professionally-prepared parking study.

A study of parking requirements for ownership housing types is currently underway and would also be brought forward separately.

City Housing Team and Concurrent Processing for Housing Projects

In our meetings, stakeholders indicated that concurrent ("at risk") review of entitlement applications and building permit construction plans would help to reduce a project's timeline. The City does not currently allow for concurrent processing as part of normal operations so that Building plan check staff resources can be focused on projects that already have approved entitlements and are ready to move forward with construction. Since a project's entitlement(s) are typically approved before the plan check review may commence, allowing concurrent processing would expedite a project's review and allow it to commence construction in a more efficient timeline, thereby reducing a developer's carrying costs and making housing and affordable housing projects more financially feasible.

The Department is already restructuring its existing entitlement staff to create a housing-focused team as part of its overall program to improve efficiencies and customer service and promote housing opportunities in Costa Mesa. Staff will be

recommending that the City Council consider allocating resources to allow for concurrent processing of entitlement and building construction plans when requested by the applicant.

GENERAL PLAN CONFORMANCE

The following analysis evaluates the General Plan and its goals, objectives, and policies for consistency and compliance with the proposed Affordable Housing Ordinance:

1. **Housing Goal #2:** *Facilitate the creation and availability of housing for residents at all income levels and for those with special housing needs.*
2. **Policy HOU-2.1:** *Facilitate the development of housing that meets the needs of all segments of the population including affordable housing and households with specialized needs.*
3. **Policy HOU-2.2:** *Promote the use of State density bonus provisions to encourage the development of affordable housing for lower and moderate-income households, as well as senior housing through the dissemination of informational materials and discussions with project applicants.*
4. **Policy HOU-2-4:** *Encourage housing programs and future actions that address the need for affordable housing options as well as the housing needs of Costa Mesa's senior resident population and the large households population.*

Adoption of the proposed affordable housing ordinance would support the above policies identified in the City's adopted 2021-2029 Housing Element as well as further achieve the goal of facilitating housing for all income levels in the community and especially for the lower income households. Upon adoption of the ordinance, the Affordable Housing Program would be established to implement the requirements of the ordinance as well as monitor implementation and compliance with the affordable housing requirements and applicable State law(s). Adoption of the Ordinance would fulfil the goal of Program 2A of the 2021-2029 General Plan Housing Element.

ENVIRONMENTAL DETERMINATION

The Code Amendment and Ordinance were reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures. The Planning Commission's recommendation regarding the Ordinance are exempt pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule) because a recommendation is not a final action and the recommended ordinance will not have a significant effect on the environment.

LEGAL REVIEW

The staff report and draft Ordinance has been reviewed and approved as to form by the City Attorney's Office.

PUBLIC NOTICE

Pursuant to Title 13, Section 13-29(d), of the Cost Mesa Municipal Code, a 1/8th page public notice was published once in the Daily Pilot newspaper no less than 10 days prior to the November 13, 2023 public hearing.

As of this report, no written public comments have been received. Any public comments received prior to the Planning Commission meeting will be provided separately.

CONCLUSION

The adoption of the proposed Affordable Housing Ordinance would establish affordable housing requirements for new rental and ownership residential development projects proposed with ten or more units as well as create the City's Affordable Housing Program including minimum requirements, standards, and agreements for affordable housing units. Its adoption would fulfil the goal of Program 2A of the 2021-2029 General Plan Housing Element.

ARTICLE 1. RESIDENTIAL DISTRICTS

13-38.1. Affordable housing requirements for new residential developments.

For any proposed single or multiple-family residential or mixed use projects with ten (10) dwelling units or more, the affordable housing requirements set forth in Chapter XVII (Affordable Housing Ordinance) of Title 13 shall apply unless exempted otherwise.

CHAPTER XVII. AFFORDABLE HOUSING ORDINANCE

13-326. Purpose.

The purpose of this ordinance is to establish an Affordable Housing Program that facilitates the development and availability of housing affordable to a broad range of households with varying income levels within the City to meet current and future affordable housing needs.

13-327. Applicability.

This ordinance shall apply to properties that receive City approval of a General Plan Amendment, Zone Change or other land use or development approval which allows for residential development and an increase in residential density as compared to the land uses and density that exists on the site at the time of the effective date of this Ordinance, provided, however, that this Ordinance shall not be applied in a manner that conflicts with applicable State law.

13-328. Exemptions.

The requirements of this ordinance shall not apply to the following:

- (a) New Residential Projects with less than ten (10) units;
- (b) Conversions of existing multi-family residential developments such as apartments to residential common interest developments (condominiums) for ownership housing pursuant to Section 13-42;
- (c) The reconstruction of any residential structures that have been destroyed by fire, flood, earthquake or other act of nature provided that the reconstruction does not increase the number of existing dwelling units by ten (10) or more;

- (d) Residential building additions, repairs or remodels provided that such work does not increase the number of existing dwelling units by ten (10) or more; and
- (e) Residential projects or mixed-use projects having residential units and located within the boundaries of the Fairview Development Center Specific Plan.

13-328. Fairview Development Center Specific Plan.

All residential projects or mixed-use development projects having residential units and located within the boundaries of the Fairview Development Center Specific Plan shall be subject to the affordability requirements established by the provisions of the Specific Plan at the time of its adoption and are not subject to the requirements of this ordinance.

13-329. Definitions.

As used in this article or chapter the following words shall have the following meanings:

Affordable Housing Agreement. A legally binding agreement between an owner, an applicant (if not the owner), and the City, a Declaration of Restrictions or other equivalent documents in a form satisfactory to the Director of Economic and Development Services and City Attorney and suitable for recording, and setting forth those provisions necessary to ensure that the requirements of the ordinance are, and will continue to be, satisfied and otherwise meeting the requirements of this ordinance.

Affordable Housing Trust Fund. The fund into which all in-lieu fees are deposited for the purposes of furthering affordable housing within the City. Such funds shall only be used for purposes of furthering affordable housing.

Affordable Rent. The maximum affordable housing cost minus any housing costs that are imposed on the tenant on a mandatory basis. The affordable housing cost is based on the percentages of AMI identified in the following table, as adjusted for household size appropriate for the unit (as defined in California Health and Safety Code Section 50052.5), multiplied times 30%:

Income Category	Percentage of AMI
Low Income	80%

Affordable Sales Price. The maximum price that can be charged to a Moderate Income Household based on the calculation methodology defined in California Health and Safety Code Section 50052.5.

Applicant. A person or entity who applies for approvals for a Residential Project, and if the applicant does not own the property on which the Residential Project is proposed, also means the owner.

Area Median Income (AMI). The median household income of households in Orange County, adjusted for household size, as determined by the California Housing and Community Development department (HCD).

Building Permit. Full structural building permits as well as partial permits such as foundation-only permits.

Certificate of Occupancy. Indicates that construction is complete and the City Building Official or his or her designee has approved for occupancy.

City Manager. The City Manager of Costa Mesa or his or her designee.

Director of Economic and Development Services. The Director of Economic and Development Services for the City of Costa Mesa or his or her designee.

Density Bonus. An increase in the number of units permitted in a proposed Residential Project provided pursuant to California State Density Bonus Law as set forth in Government Code Section 65915 et seq.

Extremely Low-Income Household. A household with a Gross Annual Household Income that does not exceed 30% of AMI for Orange County as defined in California Health and Safety Code Section 50106.

Gross Annual Household Income. All income from whatever source for all adult household members, which is anticipated to be received during the 12 month period following the date of the determination of gross income. The applicable sources of income

are defined in California Code of Regulations Title 25 Housing and Community Development Section 6914.

Housing Element. The current Housing Element of the City's General Plan prepared in accordance with State housing law.

Affordable Housing Plan. A plan containing all of the information specified and submitted in conformance with this ordinance specifying the manner in which Inclusionary Units will be provided.

Inclusionary Unit. A dwelling unit that is required to be rented at the Affordable Rent or sold at the Affordable Sales price to extremely low, very low, low- and moderate-income households.

In-lieu Fee. The fee payable as an alternative to the construction of on-site Inclusionary Units.

Low-income Households. A household with a Gross Annual Household Income between 51% and 80% of AMI for Orange County as defined in California Health and Safety Code Section 50079.5.

Market-rate Unit. A dwelling unit offered on the open market at the prevailing market-rate for purchase or rental.

Moderate-income Household. A household with a Gross Annual Household Income between 81% and 120% of AMI for Orange County as defined in California Health and Safety Code Section 50093.

Rental Project. A Residential Project that is intended to be rented to tenants upon completion.

Residential Project. A project undertaken for the purpose of development of land for residential purposes that requires the issuance of a discretionary or ministerial approval or permit, including a permit for construction, and that will include ten (10) or more dwelling units.

Very Low-income Households. A household with a Gross Annual Household Income that does not exceed 50% of AMI for Orange County, as defined in California Health and Safety Code Section 50105.

13-330. Affordable Housing Requirements.

The following requirements and standards shall apply to any Residential Project subject to this ordinance:

(a) *Project Threshold.* The affordable housing requirements is applicable to any proposed Residential Projects with ten (10) dwelling units or more.

(b) *Set-aside Requirement and Affordability Level.* The minimum number of dwelling units required to be set aside as Inclusionary Units and the required affordability level(s) of the units are specified as follow:

(1) *Rental Residential Projects.* A developer of a rental residential project shall fulfill their obligation with onsite production of affordable rental units at either low or very-low income levels and the minimum set-aside requirement shall be calculated based on the proposed project's base density.

a. Rezone areas at 60 or more dwelling units per acre: at least 11% of the total applicable dwelling units proposed shall be affordable at the low-income level or at least 7% at the very-low income.

b. Rezone areas at under 60 dwelling units per acre: at least 6% of the total applicable dwelling units proposed shall be affordable at the low-income level or at least 4% at the very-low income.

c. For any partial Inclusionary Unit calculated, the developer shall pay a fractional in-lieu fee payment in accordance with the adopted in-lieu fee schedule or round up the calculation to the highest whole number.

(2) *Ownership Residential Projects.* A developer of an ownership residential project may choose to fulfill their obligation with payment of in-lieu fees, on-site production of affordable ownership units, offsite production of affordable rental units, or dedication of land. On-site production of Inclusionary Units is not required for ownership residential projects.

- a. The applicable in-lieu fee calculation for ownership residential projects shall be based on the requirements set forth in Section 13-331(a).
 - b. Should a developer of an ownership residential project choose to fulfill their obligation with on-site production of affordable ownership units, the minimum set-aside requirement shall be at least 8% at the moderate-income level. All applicable requirements pursuant to this ordinance for onsite production of Inclusionary Units shall also apply.
- (3) *Parcel or Lot Merger.* In the event a developer merges two or more adjoining properties into one property under common ownership and the resulting cumulative number of housing units is increased to 10 or more, the affordable housing requirements shall apply.
- (c) *Covenant Period.* The Inclusionary Units shall remain affordable for a minimum period as specified in the subsection below or as stated in the Affordable Housing Agreement or other agreement(s).
- (1) For rental residential projects, the Inclusionary Units must remain affordable for not less than fifty-five (55) years. After fifty-five (55) years the affordability covenant may be removed only if the property is redeveloped as a non-residential use.
 - (2) For ownership residential projects that fulfill their obligation with on-site production of Inclusionary Units, the Inclusionary Units must remain affordable for not less than forty-five (45) years.
- (d) *Timing of Construction.* The Inclusionary Units shall be constructed and occupied concurrently with or prior to the construction and occupancy of market rate units. The developer shall provide a Construction Phasing Plan as part of their project plans for review by the Director or their designee prior to the submittal of plans for a building permit. In phased developments, the Inclusionary Units may be constructed and occupied in proportion to the number of dwelling units in each phase of the market rate development project.

- (e) *Unit Size*. The size of the Inclusionary Units shall be the same size as the market rate units. The final review authority may consider and approve Inclusionary Units no more than 15% smaller in square footage than the average square footage of the market rate units.
- (f) *Bedroom Mix*. The bedroom mix of the Inclusionary Units shall be proportional to the market rate units or as otherwise agreed in the Affordable Housing Agreements or other approved agreements with the City. The final review authority may consider and approve a different bedroom mix as long as there is a balanced mix of unit types.
- (g) *Design*. All exterior and interior improvements including floor plan design, finishes/materials, etc. for the Inclusionary Units shall be comparable, if not same, to the market rate units. The Inclusionary Units shall have same access to and enjoyment of all community amenities/facilities in the Residential Project. The final review authority may consider and approve alternative exterior and/or interior design improvements for the Inclusionary Units as long as it is comparably the same to the market rate units.
- (h) *Location*. Inclusionary Units shall be dispersed and evenly distributed throughout a residential development and not clustered in a particular area of the development. Inclusionary Units within Residential Project that share a common entrance or access shall not have separate entrances or access for market rate and Inclusionary Units.
- (i) *Certificate of Occupancy*. No certificate of occupancy will be issued for any corresponding market rate unit in a new residential project prior to completion of the required Inclusionary Units (including offsite) and/or payment of in-lieu fees.

13-331. Alternative Compliance Procedures.

The following are the alternative options to fulfill the requirements of this ordinance if onsite production of Inclusionary Units is determined by the Director or their designee to be economically infeasible and would impose an extreme hardship. The Director or their designee's determination shall be made based upon evidence of economic hardship provided by the developer.

(a) *In-Lieu Fees.* The payment of in-lieu fees may be used to fulfill the affordable housing requirement for the following Residential Projects: Ownership housing development projects with ten (10) or more dwelling units; rental housing development projects with one-hundred (100) or fewer dwelling units; and any fractional number of Inclusionary Units required.

(1) In-lieu fees shall be paid prior to the issuance of the first building permit for the Residential Project unless specified and/or agreed elsewhere in recorded agreement(s) with the City. For phased developments, the developer may pay a pro rata share of the in-lieu fee concurrently with the issuance of a building permit for each phase.

(2) In-lieu fees shall be paid according to a fee schedule adopted by the City Council. The in-lieu fee schedule shall be adjusted periodically on an annual basis or as determined by the City Council or their designee and shall be adopted by resolution.

(3) All in-lieu fees collected shall be deposited in the City's Affordable Housing Trust Fund. The in-lieu fees collected and all earnings from investment of such fees, shall be expended exclusively to provide or assure continued provision of affordable housing in the City through including but not limited to acquisition, construction, development assistance, rent subsidies, or first-time homebuyer programs and for the associated costs of administering these programs.

(b) *Offsite Construction.* Inclusionary Units may be constructed offsite only upon a determination by the Director or their designee that onsite production of Inclusionary Units is economically infeasible. If this alternative compliance option is chosen, then the offsite Inclusionary Units must be constructed prior to or concurrently with construction of the market rate Residential Project.

(1) The offsite Inclusionary Units shall comply with all applicable requirements pursuant to this ordinance for onsite production of Inclusionary Units.

- (2) The offsite location shall be located within the City of Costa Mesa boundaries and shall be located within a reasonable distance from the market rate development project that is subject to the affordable housing requirement.
- (c) *Onsite Construction of Rental Units for Ownership Projects.* A developer of a market rate ownership project may construct affordable rental units concurrently with the market rate ownership units. The affordable rental units may be interspersed or located on a separate parcel within the market rate ownership project site and shall comply with all applicable requirements pursuant to this ordinance for onsite production of units.
- (d) *Land Dedication.* A developer may dedicate, without cost to the City, land (single or multiple parcels) within the City of Costa Mesa boundaries that is sufficient to accommodate the number of Inclusionary Units required by the market rate project. The following requirements are applicable to any land proposed to be dedicated to the City to fulfill the affordable housing requirement:
- (1) The property shall be located in the City of Costa Mesa;
 - (2) The General Plan and zoning standards shall allow for residential use at a density sufficient to allow for the market rate project's required number of Inclusionary Units to be constructed;
 - (3) The land shall be suitable in terms of size, configuration, and physical characteristics including existing utilities, streets, and other infrastructure improvements necessary to allow for the market rate project's required number of Inclusionary Units to be constructed;
 - (4) The value of the land shall be equivalent or comparable to the in-lieu fee that would be applicable to the proposed Residential Project;
 - (5) The developer shall provide property related report(s) to demonstrate the suitability and value of the land to be dedicated including but not limited to title report, appraisal report, and environmental site assessment(s).

13-332. Affordable Housing Agreement and Affordable Housing Plan.

The developer shall prepare and submit a draft Affordable Housing Agreement and Affordable Housing Plan as part of the proposed Residential Project's planning

application(s). The Director or their designee shall review and determine if the plan and agreement are complete and in substantial conformance with the requirements of this ordinance. This section shall not apply to Residential Projects where the developer fulfills their obligation with payment of in-lieu fees or land dedication.

(a) *Affordable Housing Plan Requirements.* The developer shall submit a plan detailing how the requirements of this ordinance will be implemented. The plan shall include the following information but not limited to:

- (1) The location, structure, proposed tenure (rental or ownership) and size of the proposed market rate and Inclusionary Units;
- (2) The total number of affordable units to be provided and the calculations used to determine the number of required Inclusionary Units;
- (3) A floor plan and site plan depicting the location of the Inclusionary Units;
- (4) The income level targets for each Inclusionary Units;
- (5) The mechanisms that will be used to assure that the Inclusionary Units remain affordable for the required term as specified in Section 13-330(b);
- (6) A marketing plan for the process by which qualified households will be reviewed and selected to either purchase or rent Inclusionary Units; and
- (7) Construction schedule with the anticipated completion and opening date and as applicable for phased Residential Projects, a phasing plan.

(b) *Affordable Housing Agreement Requirements.* The developer shall submit an agreement prepared in a form to the satisfactory of the City Attorney and shall be a legally binding agreement between the developer and the City, executed by the City Manager or their designee. Upon final project approval, the developer shall execute and record the Affordable Housing Agreement prior to the issuance of a building permit. The agreement shall include the following information but not limited to:

- (1) Description of the development, including whether the Inclusionary Units will be rented or owner-occupied;

- (2) The number, size and location of the Inclusionary Units, or any approved alternative;
- (3) A covenant that includes the affordability terms, resale restrictions, deeds of trust, rights of first refusal or rental restrictions, options to purchase, and/or other relevant financial and administration documents that shall be recorded against the property; and
- (4) Provisions for the ongoing administration and monitoring of Inclusionary Units.

13-333. Affordable Housing Trust Fund.

All in-lieu fees, promissory note repayments, shared appreciation payments and other funds collected under this ordinance shall be deposited into a separate account to be designated as the City of Costa Mesa Affordable Housing Trust Fund. The City may elect to deposit funds from other sources into this Affordable Housing Trust Fund. The moneys and all earnings from investments of the moneys in the Affordable Housing Trust Fund shall be expended exclusively to provide housing affordable to extremely low-income, very low-income, low-income and/or moderate-income households in the City and administration and compliance monitoring of the affordable housing program.

13-334. Density Bonus.

Pursuant to the California State Density Bonus Law (Government Code Section 65915 et seq), if the developer is proposing to provide affordable ownership and/or rental units in exchange for an increase in density, concessions, incentives, or waivers/modifications of development standards, the affordable units required to fulfill the density bonus may also count as Inclusionary Units required in this ordinance provided they also meet, or exceed, the requirements outlined in Section 13-330.

13-335. Parking Requirements.

For rental housing projects subject to this ordinance, the parking requirements shall be an average of 1.75 spaces per unit. A developer of rental housing that provides Inclusionary Units is not required to comply with the parking requirements set forth in Section 13-35. A lower parking requirement may be allowed if supported by a parking study prepared by a traffic engineering firm with expertise in parking trends and demands.

13-336. Concurrent Processing.

Concurrent processing of planning application(s) and plan check application(s) may be allowed at the discretion of the Director or their designee when the planning application(s) have been deemed complete. The developer shall be required to enter into a Hold Harmless Agreement with the City prior to any concurrent review.

13-337. Compliance Monitoring.

To ensure that Inclusionary Units constructed pursuant to this ordinance are properly maintained and continue to comply with the applicable provisions of this ordinance, the developer or responsible party at the time shall submit annual compliance reports to the City for review. In addition, the City shall conduct periodic on-site audits to ensure compliance with all applicable laws, policies and agreements. The City Council may adopt fees for the costs of monitoring and compliance review, which shall be deposited into the Affordable Housing Trust fund for that purpose.

13-338. Administrative Procedures.

The City Manager or their designee is authorized to initiate any administrative procedures including but not limited to establishing additional administrative rules, regulations, policies, guidelines, standards, and/or any other subject necessary to implement this ordinance.

13-339. Enforcement.

- (a) The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this ordinance including but not limited to:
 - (1) Actions to revoke, deny or suspend any permit, including a building permit, certificate of occupancy, or discretionary approval;
 - (2) Actions to recover from any violator of this ordinance, civil fines, restitution to prevent unjust enrichment from a violation of this ordinance, and/or enforcement costs, including attorney's fees;
 - (3) Eviction or foreclosure; and
 - (4) Any other appropriate action for injunctive relief or damages.

(b) Failure of any city official, employee, or agent to fulfill the requirements of this ordinance shall not excuse any person, owner, household or other party from the requirements of this ordinance.

DRAFT



KEYSER MARSTON ASSOCIATES

MEMORANDUM

ADVISORS IN:

Real Estate
Affordable Housing
Economic Development

BERKELEY

Debbie M. Kern
David Doezenia

LOS ANGELES

Kathleen H. Head
Kevin E. Engstrom
Julie L. Romey
Tim R. Bretz

SAN DIEGO

Paul C. Marra
Linnie A. Gavino

EMERITUS

A. Jerry Keyser
Timothy C. Kelly

To: Jennifer Le, Director of Economic and Development Services
City of Costa Mesa

From: Kathleen Head

Date: November 6, 2023

Subject: Inclusionary Housing Financial Evaluation: Supplemental Analysis

Keyser Marston Associates, Inc. (KMA) prepared an Inclusionary Housing: Financial Evaluation (Financial Evaluation) report dated July 11, 2023. The purpose of the Financial Evaluation was to assess the viability of enacting an Inclusionary Housing program in conjunction with zoning code amendments that will expand housing development opportunities in overlay areas defined in the approved Sixth Cycle Housing Element (Housing Element).

BACKGROUND

The Financial Evaluation analyzed the impact the proposed zoning code amendments could potentially have on the values supported by properties located in the overlay areas. It is the City's goal to create Inclusionary Housing obligations that are offset by incentives and benefits provided by the City.

The Financial Evaluation included an analysis of a prototype apartment development based on a property north of the 405 freeway that is identified as an opportunity site in the Housing Element. The property is zoned for business park development and is currently used as a surface parking lot. Based on a prototype developed at a density of 60 units per acre, the Financial Evaluation concluded that the following Inclusionary Housing requirements could be supported:

Supportable Inclusionary Housing Requirements 60 Unit Per Acre Prototype Apartment Development Business Park Zoning – Current Surface Parking Lot	
Low Income	19%
OR	
Very Low Income	12%

Notably, the Financial Evaluation also analyzed a 60 unit per acre apartment development prototype based on a property that is currently developed with an auto related use. The results of that analysis are summarized in the following table:

Supportable Inclusionary Housing Requirements 60 Unit Per Acre Prototype Apartment Development Existing Auto Related Use	
Low Income	12%
OR	
Very Low Income	7%

It is important to understand that the existing land use represents the only variation between the two prototypes identified above. As can be seen, this variable creates a significant impact on the Inclusionary Housing requirements that can be supported.

SUPPLEMENTAL ANALYSES

City of Costa Mesa (City) staff and KMA participated in several meetings with developers active in apartment development to discuss the results of the Financial Evaluation. Following these meetings City staff requested that KMA prepare the supplemental analyses to evaluate the following issues:

1. The large number of industrial and office properties that are located in the overlay areas;

2. Apartment development densities identified as optimal by the developer participants;
and
3. Parking configurations.

Prototype Assumptions

KMA tested the following prototypes in this supplemental analysis:

1. Property characteristics:
 - a. The site size is set at four acres.
 - b. The property is currently zoned for industrial or office development.
2. The following density alternatives were evaluated:
 - a. 60 units per acre;
 - b. 75 units per acre; and
 - c. 90 units per acre.
3. The parking configuration assumptions are:
 - a. For the 60 unit per acre and 75 unit per acre alternatives it was assumed that the project is a wrap style served by above ground parking spaces.
 - b. For the 90 unit per acre scenario the parking was assumed to be provided in one level of subterranean parking.

Key Findings

KMA reached the following conclusions based on the results of the supplemental analysis:

60 UNIT PER ACRE ALTERNATIVE

The estimated property acquisition costs for industrial/office properties are only slightly lower than the land value supported by apartment development at a density of 60 units per acre.

This limits the potential for imposing an Inclusionary Housing obligation to an approximately 4% low income standard.

75 UNIT PER ACRE ALTERNATIVE

The developers indicated that a wrap style apartment development, at a density in the range of 75 units per acre, is the most viable project type under current market and financial conditions. This represents a 25% density bonus if it is assumed that the base zoning density is set at 60 units per acre.

KMA evaluated the following income and affordability standards:

1. A scenario that sets low income rents at the 80% of area median income (AMI) standard applied by Assembly Bill 1505:
 - a. It would be necessary for a City to create a local density bonus to allow the 80% of AMI standard to be applied.
 - b. The analysis supports an 11% low income requirement.
2. A scenario based on the 7% very low income requirement imposed by the Government Code Section 65915 et seq. (Section 65915) density bonus.

90 UNIT PER ACRE ALTERNATIVE

Ninety (90) units per acre is the maximum Section 65915 density bonus that can be achieved if the base zoning is set at 60 units per acre. Factors that influence the viability of this alternative are:

1. The cost premiums associated with a more intense construction type;
2. The need to provide subterranean parking; and
3. The Section 65915 requirement to set aside 15% of the base zoning units at very low income.

The combination of these factors currently renders this alternative less financially viable than the 75 unit per acre alternative.

CONCLUSIONS

It is the City's goal to create an Inclusionary Housing program that provides sufficient incentives to create opportunities for new housing development to occur. To that end, it is necessary to create benefits and incentives that offset the financial impacts created by the imposition of affordable housing requirements. It is KMA's practice to take a conservative approach in identifying the affordable housing requirements that can be supported.

The preceding supplemental analysis is based on overlay areas proposed to be rezoned to allow residential development at a density of 60 units per acre. Based on market and financial conditions it should be anticipated that activity will be focused on apartment development.

As discussed previously in this analysis, the existing land use creates a significant impact on the Inclusionary Housing requirements that can be supported. The differences are summarized in the following table:

Supportable Inclusionary Housing Requirements 60 Units Per Acre Base Zoning Alternatives Apartment Development			
Existing Land Use	Low Income	OR	Very Low Income
Vacant Business Park Land	19%		12%
Existing Auto Related Use	12%		7%
Industrial/Office Property	4%		NA

The KMA supplemental analysis concluded that density in the range of 75 units per acre currently provides the strongest opportunity for maximizing the Inclusionary Housing requirements while not constraining housing development opportunities. The supportable requirements are:

1. An 11% low income requirement assuming the income and affordability standards are set at 80% of AMI; or
2. A 7% very low income requirement, which comports with the requirements imposed by the Section 65915 density bonus.

RECOMMENDATIONS

Based on the results of the July 11, 2023 Financial Evaluation and this supplemental analysis memorandum, KMA recommends that the following Inclusionary Housing requirements be imposed:

Supportable Inclusionary Housing Requirements 60 Units Per Acre Base Zoning Alternatives Apartment Development			
Overlay Areas	Low Income	OR	Very Low Income
Density at 60 Units Per Acre or Greater	11%		7%
Density at Less than 60 Units Per Acre	6%		4%

DENSITY BONUS CHART*

AFFORDABLE UNIT PERCENTAGE**	VERY LOW INCOME DENSITY BONUS	LOW INCOME DENSITY BONUS	MODERATE INCOME DENSITY BONUS***	LAND DONATION DENSITY BONUS	SENIOR****	FOSTER YOUTH/ DISABLED VETS/ HOMELESS	COLLEGE STUDENTS
5%	20%	-	-	-	20%	-	-
6%	22.5%	-	-	-	20%	-	-
7%	25%	-	-	-	20%	-	-
8%	27.5%	-	-	-	20%	-	-
9%	30%	-	-	-	20%	-	-
10%	32.5%	20%	5%	15%	20%	20%	-
11%	35%	21.5%	6%	16%	20%	20%	-
12%	38.75%	23%	7%	17%	20%	20%	-
13%	42.5%	24.5%	8%	18%	20%	20%	-
14%	46.25%	26%	9%	19%	20%	20%	-
15%	50%	27.5%	10%	20%	20%	20%	-
16%	50%	29%	11%	21%	20%	20%	-
17%	50%	30.5%	12%	22%	20%	20%	-
18%	50%	32%	13%	23%	20%	20%	-
19%	50%	33.5%	14%	24%	20%	20%	-
20%	50%	35%	15%	25%	20%	20%	35%
21%	50%	38.75%	16%	26%	20%	20%	35%
22%	50%	42.5%	17%	27%	20%	20%	35%
23%	50%	46.25%	18%	28%	20%	20%	35%
24%	50%	50%	19%	29%	20%	20%	35%
25%	50%	50%	20%	30%	20%	20%	35%
26%	50%	50%	21%	31%	20%	20%	35%
27%	50%	50%	22%	32%	20%	20%	35%
28%	50%	50%	23%	33%	20%	20%	35%
29%	50%	50%	24%	34%	20%	20%	35%
30%	50%	50%	25%	35%	20%	20%	35%
31%	50%	50%	26%	35%	20%	20%	35%
32%	50%	50%	27%	35%	20%	20%	35%
33%	50%	50%	28%	35%	20%	20%	35%
34%	50%	50%	29%	35%	20%	20%	35%
35%	50%	50%	30%	35%	20%	20%	35%
36%	50%	50%	31%	35%	20%	20%	35%
37%	50%	50%	32%	35%	20%	20%	35%
38%	50%	50%	33%	35%	20%	20%	35%
39%	50%	50%	34%	35%	20%	20%	35%
40%	50%	50%	35%	35%	20%	20%	35%
41%	50%	50%	38.75%	35%	20%	20%	35%
42%	50%	50%	42.5%	35%	20%	20%	35%
43%	50%	50%	46.25%	35%	20%	20%	35%
44%	50%	50%	50%	35%	20%	20%	35%
100%*****	80%	80%	80%	35%	20%	20%	35%

*All density bonus calculations resulting in fractions are rounded up to the next whole number.

**Affordable unit percentage is calculated excluding units added by a density bonus.

***Moderate income density bonus applies to for sale units, not to rental units.

****No affordable units are required for senior units.

***** Applies when 100% of the total units (other than manager's units) are restricted to very low, lower and moderate income (maximum 20% moderate).

SUMMARY TABLE

HOUSEHOLD INCOMES & AFFORDABLE HOUSING COSTS
 INCLUSIONARY HOUSING: FINANCIAL EVALUATION
 COSTA MESA, CALIFORNIA

I. Household Incomes

Number of Persons in the Household	Moderate Income	Low Income	Very Low Income
1	\$100,050	\$75,900	\$47,450
2	\$114,300	\$86,750	\$54,200
3	\$128,600	\$97,600	\$61,000
4	\$142,900	\$108,400	\$67,750
5	\$154,350	\$117,100	\$73,200
6	\$165,750	\$125,750	\$78,600
7	\$177,200	\$134,450	\$84,050
8	\$188,650	\$143,100	\$89,450

II.

Affordable Rents

	Studio Units	One-Bedroom Units	Two-Bedroom Units	Three-Bedroom Units
Moderate Income	\$2,201	\$2,515	\$2,807	\$3,101
Low Income	\$1,576	\$1,800	\$2,003	\$2,208
Very Low Income	\$951	\$1,085	\$1,199	\$1,315

III.

Affordable Sales Prices

	Two-Bedroom Units	Three-Bedroom Units	Four-Bedroom Units
Moderate Income	\$439,900	\$465,800	\$490,600
Low Income	\$203,300	\$210,300	\$216,100

APPENDIX C

INCLUSIONARY HOUSING PROGRAM SURVEYS - ORANGE COUNTY
INCLUSIONARY HOUSING: FINANCIAL EVALUATION
COSTA MESA, CALIFORNIA

Jurisdiction	Compliance Options	Set Aside %	On-site % Varies	Rental Development			Ownership Development			In-Lieu Fee
				Threshold Project Size	% of AMI	Covenant Period	Threshold Project Size	% of AMI	Covenant Period	
Brea	Create on-site units; pay in-lieu fee. City provides incentives to mitigate the impact of the requirement.	10%	No	20	Undefined Percentages of Very Low & Low Income	55	20	120%	10	Calculated per project. Based on the Affordability Gap
Huntington Beach	Create on-site units; create off-site units; preserve or rehab existing housing; pay in-lieu fee.	10%	No	3	80%	55	3	120%	45	Sliding Scale: 3 to 30 units. In-Lieu Fee allowed for projects up to 100 units. Rental: \$3.58 to \$35.80/SF Ownership: \$2.54 to \$25.36/SF. The per SF measurement caps at 2,000 SF.
Irvine	Projects with fewer than 50 units can create on-site units; convert market rate housing to affordable housing; extend the term of an existing affordable project; pay in-lieu fee; transfer units to a nonprofit housing agency; create off-site units; donate land. Projects with 50+ units must produce the affordable units on site.	15%	No	Ordinance applies to all housing projects. 50 unit threshold for the production requirement	5% @ 50% + 5% @ 80% + 5% @ 120%. Defined credits for deeper affordability & # of bedrooms.	30	Ordinance applies to all housing projects. 50 unit threshold for the production requirement	5% @ 50% + 5% @ 80% + 5% @ 120%. Defined credits for deeper affordability & # of bedrooms.	30	Calculated per project. The calculation methodology is based on the average land value in Irvine, the average density of housing in Irvine, and a defined predevelopment cost allowance. Formula: $[(\text{Land Value} \div \text{Density}) + \text{Predevelopment Allowance}] \times \text{Percentage Share of Cost related to affordable units not being produced}$
Laguna Beach	Create on-site; pay in-lieu fee.	25%	No	2-subdivision 3-other	Low and Moderate		2-subdivision 3-other	Low and Moderate		\$247,317 per affordable rental unit. \$348,197 per affordable ownership unit or lot.
Laguna Woods	Create on-site units; create off-site units; pay in-lieu fee; donate land.	15%	No	5	7.5% @ VL + 7.5% @ Low	45	5	10% @ Low + 5% @ Mod	45	In-lieu fee is allowed for ownership housing developments that can prove to the City Council's satisfaction that including affordable units is financially infeasible. The fee is calculated based on: the median price of homes sold in Laguna Woods during the last quarter of the previous calendar year minus the affordable price for a 2-bedroom unit.
La Habra	Create on-site units; create off-site units; pay in-lieu fee; acquisition/rehabilitation.	15%	No	10	9% Mod or 6% VL & Low	55	10	110%	45	\$6.50 per square foot of total building area

APPENDIX C

INCLUSIONARY HOUSING PROGRAM SURVEYS - ORANGE COUNTY
INCLUSIONARY HOUSING: FINANCIAL EVALUATION
COSTA MESA, CALIFORNIA

Jurisdiction	Compliance Options	Set Aside %	On-site % Varies	Rental Development			Ownership Development			In-Lieu Fee
				Threshold Project Size	% of AMI	Covenant Period	Threshold Project Size	% of AMI	Covenant Period	
San Clemente	Create on-site units; create off-site units, pay in-lieu fee; donate land.	4%	No	6	Very Low	30	6	Very Low	30	Based on the greater of 1% of construction costs as determined by the Building Division or 2% of the affordability gap determined by the formula in the Housing Element.
San Juan Capistrano	Create on-site units; create off-site units; preserve or rehab existing housing; pay in-lieu fee; donate land.	10%	No	2		55	2		55	Based on 90% of the Affordability Gap, which is updated monthly based on benchmark market prices
Santa Ana	Only applies to changes in land use and zoning designations. Create on-site units; off-site units; pay in-lieu fee.	Rental: 5% / 15% & Own: 5%	No	5	15% @ Low or 10% @ VL or 5% @ ELI or 5% Low + 3% VL +2% ELI	55	5	120%	55	Fee charged per sf of habitable area: 5-9: \$6.00; 10-14: \$9.00; 15-19: \$12; 20+: \$15. Discounts for use of skilled and trained labor force
Costa Mesa	Initially applies to rezone areas. Create on-site units; create off-site units; pay in-lieu fee; donate land.	Rental: 60+ du/ac - 11% or 7%; rental: <60 du/ac - 6% or 4% & Own: 8% in-lieu fee	No	10	11% @ Low or 7% @ VL or 6% @ Low or 4% VL	55	10	Moderate	45	(In-lieu fee study in progress)