



City of Costa Mesa

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 22-874

Meeting Date: 9/26/2022

TITLE:

PLANNING APPLICATION 21-29 FOR A RETAIL CANNABIS STOREFRONT BUSINESS LOCATED AT 170 EAST 17TH STREET, SUITES 115 AND 116 (CATALYST)

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

PRESENTED BY: NANCY HUYNH, SENIOR PLANNER

CONTACT INFORMATION: NANCY HUYNH, 714-754-5609; Nancy.Huynh@costamesaca.gov

RECOMMENDATION:

Staff recommends that the Planning Commission adopt a Resolution to:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Class 1), Existing Facilities; and
2. Approve Planning Application 21-29, subject to conditions of approval.

APPLICANT OR AUTHORIZED AGENT:

The applicant/authorized agent is Elliot Lewis of RD x Catalyst - Costa Mesa LLC, on behalf of the property owner, Jewell Brother Properties LLC.

BACKGROUND:

At the Planning Commission meeting on August 22, 2022, Planning Application 21-29 was requested to be continued by the applicant due to a noticing issue. The applicant requested to continue their project so that they could work with staff to address these issues. The Planning Commission voted 7-0 to continue the public hearing to their regular meeting on September 26, 2022. The details and analysis of the proposed project can be found in the August 22, 2022 Planning Commission staff report and attachments at the link below:

<https://costamesa.legistar.com/View.ashx?M=PA&ID=922027&GUID=087F0A0E-03A6-4E97-8C5D-DEFB294D6957>

Public comments received during the August 22, 2022 Planning Commission meeting can be found at the link below:

<https://costamesa.legistar.com/View.ashx?M=E3&ID=922027&GUID=087F0A0E-03A6-4E97-8C5D-DEFB294D6957>

This staff report focuses on providing analysis of issues raised as part of the public comments which were not already addressed in the prior staff report.

DESCRIPTION:

Planning Application 21-29 is a request for a Conditional Use Permit (CUP) to allow a retail cannabis use in an existing 2,559-square-foot tenant space within the existing multi-tenant commercial building located at 170 East 17th Street. The affiliated State license is a Type 10 "storefront retailer" license which also allows for retail cannabis delivery. However, the applicant is not proposing retail delivery services. Should the storefront wish to offer delivery services in the future, an amendment to the CUP would be required.

Upon approval of a CUP, CBP, City Business License, and State licenses, the business would sell pre-packaged cannabis and pre-packaged cannabis products directly to customers onsite, subject to conditions of approval and other City and State requirements.

ANALYSIS:

August 22, 2022 Planning Commission Staff Report

This staff report focuses on the previous continuance matter specifically relating to tenant noticing and a clarification of the commercial center's shared parking arrangement with the adjacent car wash located at 176 East 17th Street, which was raised in a public comment letter. For a comprehensive review of the proposed CUP request, please refer to the August 22, 2022 staff report for details such as CUP requirements, separation requirements, proposed exterior and interior changes, customer and employee access, proposed business operations, required security measures, required parking, and traffic and odor.

Tenant Noticing

Regarding the public noticing issue, the applicant has provided an updated public notice list that includes all occupants of the subject commercial building, and staff re-noticed 10 days prior to the September 26, 2022 public hearing.

Shared Parking with Adjacent Car Wash Property at 176 East 17th Street

The subject property (170 East 17th Street) is developed with 75 parking spaces (including credit for one existing bicycle rack) shared with all tenants of the subject commercial property and located on various commonly owned adjacent parcels. The CMMC required parking demand for the two buildings on-site (19,204 square feet total) is 77 parking spaces, and is therefore considered legal nonconforming. As mentioned in the August 22, 2022 report, the CMMC permits a conforming use to be located on a nonconforming property so long as any new site modifications do not result in greater site nonconformities, and such improvements bring the site into greater conformance with Code requirements. In addition, the CMMC requires that if a site is legal non-conforming in regard to parking, a use may not be replaced with a use that requires more parking, unless the additional parking is provided pursuant to the CMMC. Pursuant to the CMMC, the parking required for a vacuum and sewing machine sales and supply store (previous retail use) is the same as a cannabis retail establishment (four parking space per 1,000 square feet of floor area), and therefore no additional parking is required.

Prior to the previously scheduled Planning Commission review of this matter, staff received a public comment indicating that the adjacent car wash property located at 176 East 17th Street (which is under the same ownership as the subject property) also utilizes certain parking spaces at the subject property's parking lot. Staff reviewed City records and confirmed that in 1990, the Planning Commission approved a CUP for offsite parking at 170 East 17th Street in order to allow the car wash to construct a small customer waiting area. The conclusion of the Planning Commission review was that there was surplus parking available at 170 East 17th Street, and a total of six offsite parking spaces were approved for the car wash operation.

Including both the proposed and existing uses on-site, and the off-site parking permitted in 1990 by the Planning Commission for the car wash, the cumulative total required parking for the property at 170 East 17th Street is 83 spaces. However, and similar to the findings made by the Planning Commission in 1990, the uses at 170 East 17th Street generally do not utilize all of the provided parking, and there is sufficient parking for the proposed retail cannabis storefront and previously permitted/allowed uses based on actual operating conditions. Further, staff conducted several recent parking lot observations during various weekdays and on various hours of the day and found that the subject parking lot is generally utilized at approximately 50-percent.

GENERAL PLAN CONFORMANCE:

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

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

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

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

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

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

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

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

REQUIRED FINDINGS:

Pursuant to Title 13, Section 13-29(g), Findings, of the Costa Mesa Municipal Code, in order to approve the project, the Planning Commission must find that the evidence presented in the administrative record substantially meets specified findings as follows:

- *The proposed development or use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area.*

The subject site is located within a commercial zone (C2, General Business District) where commercial development is specifically allowed to include retail storefronts. In addition, the property is located on one of the City's primary commercial corridors which is predominantly intended for commercial uses. Pursuant to the CMMC, cannabis retail storefronts are permitted uses in the City's commercial zones and are subject to extensive regulation (as specifically described in the August 22, 2022 Planning Commission staff report). These regulations are adopted to prevent land use inconsistencies with adjacent properties. Additionally, the proposed cannabis retail storefront use is not located within 1,000 feet of a K-12 school, playground, licensed child daycare, or homeless shelter, or within 600 feet of a youth center. All retail sales would take place underroof, no outdoor storage or sales are proposed nor would be allowed and operations would be conditioned to be compliant with applicable local and State laws as well as to minimize potential impacts. Staff does not anticipate that the proposed retail cannabis use would be materially detrimental to the adjacent uses that include office uses, a variety of commercial/service uses and multi-tenant commercial centers. Existing businesses in these commercial centers consist of a variety of restaurants/bars, grocery store, pharmacy, massage and beauty parlors, general retail, medical and general offices, and automotive repair. In addition, staff does not anticipate that the use would be materially detrimental to the existing businesses onsite since the majority of the existing businesses have unique operating characteristics that generate minimal customer traffic resulting in available parking spaces onsite. Therefore, the retail cannabis use would be compatible with other properties within the area, and in compliance with local and State requirements.

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

The proposed cannabis retail storefront use would follow safety measures detailed in a professionally-prepared security plan. The security plan was evaluated for compliance by the City's cannabis consultant, HdL. Measures designed to maintain safety at the site include, but are not limited to, at least one security guard would be onsite at all times and security devices shall be installed before operation. Examples of security devices include window and door alarms, motion-detectors, limited access areas, and a monitored video surveillance system covering all exterior entrances, exits, and all interior limited access spaces. In addition, the business employees, and part-time staff, must pass a live scan background check and obtain an identification badge from the City. The conditions of approval include, but are not limited to, the aforementioned security measures to ensure that the use would not be materially detrimental to the health, safety and general welfare of the public or be otherwise injurious to property or improvements within the immediate neighborhood.

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

The proposed retail use is located within an existing commercial building on a property that has a General Plan land use classification of "General Commercial." Pursuant to CMMC

Sections 13-28(B) and 13-200.93(c)(1), subject to the approval of the Planning Commission, a CUP is required for the establishment of cannabis retail storefronts in a commercial zone. The subject site is located within a commercial zone (C2 - General Business District) where commercial development is specifically allowed to include retail storefronts. No additional square footage is proposed; therefore, approving the CUP would not increase site intensity. As stated in the General Plan Land Use Element, the City's commercial designations "accommodate the full range of commercial activity present and desired in Costa Mesa." The use is consistent with General Plan policies related to providing a mixture of commercial goods, services, and employment opportunities; expanding the City's tax base; and promoting the incubation of unique and specialized businesses.

ENVIRONMENTAL DETERMINATION:

The project is categorically exempt from the provisions of California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 for the permitting and/or minor alteration of Existing Facilities, involving negligible or no expansion of the existing or prior use. This project site contains an existing commercial building that has been used for commercial activities and the application does not propose an increase in commercial floor area or otherwise expand the prior commercial use. The project is consistent with the applicable General Plan land use designation and policies as well as with the applicable zoning designation and regulations.

ALTERNATIVES:

The Planning Commission has the following alternatives:

1. Approve the project. The Planning Commission may approve the project as proposed, subject to the conditions outlined in the attached Resolution.
2. Approve the project with modifications. The Planning Commission may suggest specific changes that are necessary to alleviate concerns. If any of the additional requested changes are substantial, the hearing should be continued to a future meeting to allow a redesign or additional analysis. In the event of significant modifications to the proposal, staff will return with a revised Resolution incorporating new findings and/or conditions.
3. Deny the project. If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission must deny the application, provide facts in support of denial, and direct staff to incorporate the findings into a Resolution for denial. If the project is denied, the applicant could not submit substantially the same type of application for six months.

LEGAL REVIEW:

The draft Resolution and this report have been approved as to form by the City Attorney's Office.

PUBLIC NOTICE:

Pursuant to Title 13, Section 13-29(d) of the Costa Mesa Municipal Code, three types of public notification have been completed no less than 10 days prior to the date of the public hearing:

1. **Mailed notice.** A public notice was mailed to all property owners and occupants within a 500-

foot radius of the project site. The required notice radius is measured from the external boundaries of the property.

2. **On-site posting.** A public notice was posted on each street frontage of the project site.
3. **Newspaper publication.** A public notice was published once in the Daily Pilot newspaper.

Public comments received after the August 22, 2022 Planning Commission meeting have been included as Attachment 7. Any additional public comments received prior to the September 26, 2022 Planning Commission meeting will be provided separately.

CONCLUSION:

The proposed project is a retail cannabis storefront business at an existing developed commercial property that is located on one of the City's commercial corridors and meets separation requirements established in CMMC 13-200.93(e). Staff and the City's cannabis consultant completed the Pre-application Determination, Business Plan and Security Plan evaluations, owner background checks, and thoroughly reviewed the CUP materials. If approved, the operation would be required to comply with all conditions of approval and extensive City and State regulations.

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

As proposed and conditioned, the use would be consistent with other commercial uses in the C2 zone, the Zoning Code, and the City's General Plan. The required findings for the CUP can be made, as described above, and therefore, staff recommends approval of Planning Application 21-29 subject to conditions of approval.