



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: December 11, 2023 ITEM NUMBER: PH-4

SUBJECT: PLANNING APPLICATION 22-22 FOR A CONDITIONAL USE PERMIT TO OPERATE A RETAIL CANNABIS STOREFRONT BUSINESS WITH DELIVERY LOCATED AT 1858 NEWPORT BOULEVARD (“EVOLV HERBAL”)

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

PRESENTATION BY: MICHELLE HALLIGAN, CONTRACT PLANNER

**FOR FURTHER INFORMATION CONTACT: MICHELLE HALLIGAN
714.754.5608
Michelle.Halligan@costamesaca.gov**

RECOMMENDATION

Staff recommends the Planning Commission adopt a Resolution to:

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

APPLICANT OR AUTHORIZED AGENT

The applicant/authorized agent is Mark Adams, on behalf of the property owner, 1858 Newport Boulevard Trust.

PLANNING APPLICATION SUMMARY

Location:	1858 Newport Boulevard	Application Number(s):	PA-22-22
Request:	Planning Application 22-22 is for a Conditional Use Permit to operate a retail cannabis storefront business with delivery.		

SUBJECT PROPERTY:

SURROUNDING PROPERTY:

Zone:	C2 (General Business District)	North:	C2 (General Business District)
General Plan:	General Commercial	South:	C2 (General Business District)
Lot Dimensions:	176 x 50	East:	R2-HD (Multiple-Family Residential District, High Density) P (Off-Street Parking District)
Lot Area:	8,800 SF	West:	PDC (Planned Development Commercial)
Existing Development:	The property is developed with an existing 2,280-square-foot single-story single tenant commercial building.		

DEVELOPMENT STANDARDS COMPARISON

Development Standard	Required/Allowed ZONE Dev. Standard	Proposed/Provided
Building Height	2 Stories / 30 ft.	1 story / 15 ft.
Setbacks:		
Front	20 ft.	8 ft. ¹
Side	15 ft. / 0 ft.	2 ft. / 0 ft. ¹
Rear	0 ft.	105 ft. 5 in.
Landscaping - front	20 ft.	8 ft. ¹
Parking	9 spaces	11 spaces ²
Floor area ratio (FAR)	0.20	0.26 ¹
1 The existing front and one side setback and the floor area ratio are legal nonconforming. 2 The proposed parking space count includes one credit for bike racks.		
CEQA Status	Exempt per CEQA Guidelines Section 15301 (Class 1, Existing Facilities)	
Final Action	Planning Commission	

BACKGROUND

The subject site is an 8,800-square-foot property located at 1858 Newport Boulevard, generally bounded by Flower Street to the north, Broadway to the south, and a public alley to the east. The site is zoned C2 (General Business District) and is surrounded by other commercially-zoned properties to the north and south, and across Newport Boulevard to the west the property is zoned Planned Development Commercial. The properties to the east are zoned “R2-HD” (Multiple-Family Residential District, High Density) and “P” (Off-Street Parking District). The site has a General Plan Land Use Designation of “General Commercial”. The subject property is located on one of the City’s primary commercial corridors. The existing surrounding uses include a jewelry store, cannabis storefront, restaurants, fitness studio, pet supply store, and grocery store. The Triangle Square shopping and entertainment center is located directly across Newport Boulevard. Residential development is located across the public alley to the rear of the site.

Existing development on the subject property consists of a one-story, 2,280-square-foot single-tenant commercial building oriented toward Newport Boulevard. An existing surface parking lot located behind the building, with direct access from an alley, provides on-site parking. The building is currently vacant. The previous occupant was a psychic. The subject retail cannabis storefront with delivery establishment (“Evolv Herbal”) proposes to occupy the entire building.

Nonconforming Development

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

Improvements would be made to bring this structure into compliance with current building and safety codes and parking lot landscaping requirements; however, and as specifically allowed by the CMMC, the existing site nonconformities can remain pursuant to the City’s legal nonconforming provisions. The proposed use would not increase the building square footage, and therefore the floor area ratio would not increase. The existing legal nonconforming front setback would not change; however, the applicant is proposing to improve the front setback with new landscaping. New landscaped planters, including several trees, are proposed in the parking lot to bring the site into greater Code conformance. As proposed, the property would comply with other applicable development standards including rear setback, building height, and parking.

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

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

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

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

Cannabis Business Permit (CBP) Application Process

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

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

The “Pre-Application Determination” includes staff review of a detailed applicant letter that describes the proposed business, an existing site plan, statement attesting that there is/has been no unpermitted cannabis activity at the site within one year, and a detailed map demonstrating the proposed storefront’s distance from sensitive uses. Staff also visits the site at this time. Planning staff has completed the aforementioned pre-application review, visited the site, and issued a letter indicating that the application

complies with the City's required separation distances from sensitive uses and may proceed to submittal of a CBP.

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

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

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

The CUP application and required supportive materials were submitted by the applicant and reviewed for conformance with City standards and regulations by the Planning Division, Building Division, Public Works Department (including Transportation and Engineering Divisions), Fire Department, and Police Department.

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

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

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

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

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

DESCRIPTION

Planning Application 22-22 is a request for a CUP to allow a retail cannabis use within an existing 2,280-square-foot commercial building located at 1858 Newport Boulevard. The affiliated State license is Type 10 “storefront retailer” which also allows retail delivery. Upon approval of a CUP, CBP, City Business License, and State licenses, the business would sell pre-packaged cannabis and pre-packaged cannabis products directly to customers onsite, and via delivery to private addresses, subject to conditions of approval and other City and State requirements. According to the applicant, the proposed cannabis use will “focus on low-psychoactive products that elderly customers enjoy”.

ANALYSIS

Conditional Use Permit Required

Pursuant to CMMC Sections 13-28(B) and 13-200.93(c)(1), subject to the approval of the Planning Commission, a CUP is required for the establishment of cannabis retail storefronts and non-storefronts (delivery) in a commercial zone. To obtain a CUP, an applicant must show that the proposed use is compatible with the City’s applicable zoning and General Plan provisions/policies, and will not be detrimental to public health, safety, and welfare.

The subject site is located within a commercial zone (C2 – General Business District) where commercial development is specifically allowed to include cannabis retail storefronts subject to a conditional use permit. As defined in the CMMC, “this district is intended to meet the local business needs of the community by providing a wide range of goods and services in a variety of locations throughout the City.” Pursuant to the CMMC, cannabis retail storefronts and non-storefronts are subject to extensive regulation (as further described in this report) which are adopted to prevent land use inconsistencies with adjacent properties. Pursuant to the CMMC, the approval of a CUP requires that the Planning Commission make specific findings related to neighborhood compatibility, health and safety, and land use compatibility. The analysis regarding CUP findings is provided below in this report.

Separation Requirements

CMMC Section 13-200.93(e) stipulates that no cannabis retail storefront use shall be located within 1,000 feet from a K-12 school, playground, licensed child daycare, or homeless shelter, or within 600 feet from a youth center as defined in CMMC Title 9, Chapter VI, Section 9-485, that is in operation at the time of submission of a completed cannabis business permit application. All separation distances are measured in a straight line (“as the crow flies”) from the “premises” where the cannabis retail use is to be located to the closest property line of the sensitive use(s) (with the exception of playgrounds). (For playgrounds, the required separation distance is measured from a 30-foot radius from the exterior physical boundaries of the playground equipment area.) Premises is as

defined in the State's Business and Professions Code Section 26001 as *the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.* Therefore, the premises only include the retail cannabis activity areas (including sales, storage, back-of-house and/or other ancillary areas) and excludes the parking lot and other areas that are not part of the area licensed by the State for commercial cannabis activity. The subject site complies with the required separation from sensitive uses.

Exterior Tenant Improvements

The applicant proposes minor updates to the building façade with new windows, doors, paint, and removing an unpermitted structure from the south side of the building. Other proposed exterior improvements include:

- Improve the site landscaping to bring the property into closer conformance with the CMMC landscape requirements. The existing front landscaping planters would be enhanced with new plants. In addition, 312-square-feet of new landscaped planters would be installed in the parking lot including three 24-inch box palm trees, a variety of drought tolerant shrubs, and living groundcover. The applicant provided a conceptual landscaping plan as part of their CUP plan submittal. A detailed landscaping plan would be reviewed during the building plan check process for consistency with the conceptual plan as conditioned, should the CUP be approved;
- Striping the surface parking lot to comply with the City's Parking Design Standards;
- Adding a bicycle rack adjacent to Newport Boulevard to encourage multi-modal transportation;
- Replacing chain-link fencing with wrought iron or a similar, high quality product;
- Constructing a new trash enclosure; and
- Installation of security lighting and surveillance cameras. A preliminary lighting/photometric plan has been provided and will be further reviewed during the building plan check process, as conditioned.

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

Interior Tenant Improvements

The proposed interior improvements involve removing existing walls as well as the construction of new demising walls to create rooms for the specific use, including a waiting room, storage, offices, restroom, and retail sales floor. A floor area summary of the proposed space is provided in Table 1 on the following page.

Table 1 – Floor Plan Summary

Operational Area	Square Feet
Waiting Room	220
Retail Showroom	1,293
Office	135
Storage	350
Breakroom	207
Restroom	75
Total	2,280

Customer and Employee Access

Customer access is limited to the waiting room and retail showroom. Customer circulation into the proposed establishment includes entering the licensed premise through the waiting room. Customers would be able to enter the waiting room from the parking lot and from the pedestrian pathway connecting to Newport Boulevard. A greeter employee would verify the customer's identity and age before allowing the customer to enter the retail showroom. After a customer's identity and age is verified and their transaction is completed, they must leave the premise. As further conditioned, a security guard would monitor the area at all times to ensure that customers are following regulations.

All other areas of the premises would be accessible only to employees with the proper security credentials. Employees would enter through the customer entrances or an employee only access-controlled door that leads directly from the parking lot into the back-of-house areas.

Delivery and Vendor Access

During business hours, delivery and vendor vehicles would use the loading/unloading area proposed in the rear of the building that is directly adjacent to an access-controlled door. This designated parking space would only be used for delivery and vendor vehicle loading/unloading purposes and is not included in the proposed total number of parking spaces.

When loading/unloading vehicles, delivery employees would enter/exit through the access-controlled door, while vendors would only be allowed to enter the premise while accompanied by an employee. As conditioned, the access-controlled doors, path of travel, and vehicle loading/unloading area would be under camera surveillance at all times, and the required on-site security guard would also monitor the delivery and vendor operations.

Storefront/Delivery Operations

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

- Display State license, CBP, and City business license in a conspicuous building location;
- Hours of operations are limited to 7:00 AM to 10:00 PM Monday through Sunday;
- Shipments of cannabis goods may only be accepted during regular business hours;
- Cannabis inventory shall be secured using a lockable storage system during non-business hours;
- At least one licensed security guard shall be on premises 24-hours a day;
- The premises and the vicinity must be monitored by security and/or other staff to ensure that patrons immediately leave and do not consume cannabis onsite or within close proximity. The CMMC prohibits the consumption of cannabis or cannabis products in public areas; cannabis consumption is limited to non-public areas, such as within a private residence. State law further prohibits cannabis consumption and open container possession within 1,000 feet of sensitive uses and while riding in or driving a vehicle;
- There must be continuous video monitoring and recording of the interior and exterior of the premises;
- Adequate security lighting shall be provided and shall be designed to prevent offsite light spill;
- Onsite sales of alcohol or tobacco products and on-site consumption of alcohol, cannabis, and tobacco products is prohibited;
- No one under the age of 21 is allowed to enter the premises. If the business holds a retail medical cannabis license (M-license) issued by the State, persons over the age of 18 may be allowed with the proper medical approvals i.e. physician's recommendation or medical card pursuant to CMMC Section 9-495(h)(6);
- Prior to employment, all prospective employees must successfully pass a background check conducted by the City, and the employee must obtain a City issued identification badge;
- Customers are only granted access to the retail area after their age and identity has been confirmed by an employee;
- Each transaction involving the exchange of cannabis goods between the business and consumer shall include the following information:
 - Date and time of transaction;
 - Name and employee number/identification of the employee who processed the sale;
 - List of all cannabis goods purchased including quantity; and
 - Total transaction amount paid.
- There must be video surveillance of the point-of-sale area and where cannabis goods are displayed and/or stored;
- Cannabis products shall not be visible from the exterior of the building;
- Free samples of cannabis goods are prohibited;
- When receiving new inventory from licensed distributors, employees will verify the distributor's identity and license prior to allowing them to enter the facility. After distributor's credentials have been confirmed, an employee will escort the distributor to the receiving area and remain with them throughout the process.

- Cannabis goods to be sold at this establishment (either storefront or delivery) must be obtained by a licensed cannabis distributor and have passed laboratory testing;
- Cannabis product packaging must be labeled with required test results and batch number;
- Packaging containing cannabis goods shall be tamper-resistant; if packaging contains multiple servings, the package must also be re-sealable;
- When processing orders for cannabis delivery, employees will collect the pre-packaged materials, load products into a secured container and transport the containers to delivery vehicles outside the building. Video surveillance cameras will be installed with direct views of the path of travel and loading and unloading area. All loading and unloading of delivery vehicles will be monitored by the required security guard;
- Cannabis deliveries must be made in-person by an employee of the licensed retailer. An independent contractor, third-party courier service, or an individual employed through a staffing agency would not be considered employed by the licensed retailer;
- The applicant shall maintain proof of vehicle insurance for any and all vehicles being used to deliver cannabis goods;
- During delivery, the employee shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers;
- A delivery employee shall not leave the State of California while possessing cannabis products and while performing their duties for the cannabis retailer;
- The business shall maintain a list of all deliveries, including the address delivered to, the amount and type of product delivered, and any other information required by the State;
- Any delivery method shall be made in compliance with State law, as amended, including use of a vehicle that has a dedicated global positioning system (GPS) device for identifying the location of the vehicle (cell phones and tablets are insufficient);
- Signs, decals or any other form of advertisement on the delivery vehicles are prohibited;
- Deliveries must be made to a physical address that is not on publicly owned land and cannot be a school, a day care, homeless shelter, or a youth center; and
- A cannabis delivery employee shall not carry cannabis goods valued in excess of \$5,000 at any time, with no more than \$3,000 of cannabis goods that are not already part of a customer order that was processed prior to leaving the premises.

Business Plan

The applicant has submitted a detailed business plan that was evaluated by the City's cannabis consultant (HdL). The business plan described the owners' experience, proof of capitalization, start-up budget, a three-year pro forma, target customers, key software, and daily operations. The business plan contains proprietary details and is therefore not

included as an attachment to this staff report. The City's cannabis consultant determined that the applicant's business plan was appropriate for the proposed retail operations.

Security Plan

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

- At least one security guard will be on-site 24-hours a day;
- All employees, including drivers, must pass a "Live Scan" background check;
- City-issued identification badges are required for employees;
- An inventory control system shall be maintained;
- Exterior and interior surveillance cameras shall be monitored and professionally installed;
- An alarm system shall be professionally installed, maintained, and monitored;
- Surveillance footage must be maintained for a minimum of 90 days;
- Cash, cannabis, and cannabis products shall be kept in secured storage areas;
- Sensors shall be installed that detect entry and exit from all secured areas;
- Security lighting (interior and exterior) shall be installed;
- Emergency power supply shall be installed;
- Employees shall be trained for use with any/all emergency equipment;
- Delivery drivers shall be trained on delivery safety protocols;
- Employees and vendors will be trained regarding cash and product transportation protocol;
- Visitor/customer specific security measures shall be required;
- All facility entry and exit points and locations where cash or cannabis products are handled or stored shall be under camera surveillance;
- The applicant shall submit a list of all vehicles to be used for retail delivery purposes to the Costa Mesa Police Department. The list shall identify the make, model, color, license plate number, and registered owner of each vehicle. The applicant shall submit an updated vehicle list each quarter with the required quarterly update to the employee roster pursuant to the CBP.
- Delivery vehicle drivers shall be at least age 21, have a current driver's license, successfully complete a live scan, and have a City-issued badge; and
- The business operator shall ensure that all delivery vehicles are properly maintained, all delivery drivers have a good driving record, and each driver conducts a visual inspection of the vehicle at the beginning of a shift.

Parking and Circulation

Retail cannabis uses are subject to the same parking ratio requirement as other retail establishments in the City (four spaces per 1,000 square feet of gross floor area). Based on this ratio, the 2,280-square-foot facility would be required to provide nine onsite parking spaces. As proposed, the property would provide eleven parking spaces (including a one-space credit for a bicycle rack), which would exceed the minimum required parking by two spaces.

Based on staff observations, parking demand for cannabis operations generally appear to be similar to other retail operations; however, if parking shortages or other parking-related problems occur, the business owner or operator will be required to monitor the parking lot and institute appropriate operational measures necessary to minimize or eliminate the problem in a manner deemed appropriate by the Director of Economic and Development Services (see “Operational Conditions” of Approval No. 7 in the attached Resolution). Examples of parking demand management techniques include, but are not limited to, offsite parking for employees, reducing operating hours of the business, hiring an employee to monitor parking lot use and assist with customer parking lot circulation, encouraging delivery services to reduce in person store visits, and incentivizing employee carpooling/cycling/walking.

Similar to many of the retail businesses in this area located along Newport Boulevard, the proposed site has one point of vehicular ingress and egress along an alley that is located at the rear of the property. There is an existing public sidewalk at the front of the property along Newport Boulevard, which provides access to the site for pedestrians and bicyclists.

Traffic

CMMC Section 13-275(e) indicates that any increase in traffic generation by a change of use that is required to obtain a discretionary permit, shall be subject to review by the appropriate reviewing authority, which may impose fees to address increased trip generation. If required, the fee collected is used to fund the City’s comprehensive transportation system improvement program. The purpose of the program is to ensure that the City’s transportation system has the capacity to accommodate additional trips. The Citywide Traffic Impact Fee related to new and expanding developments is determined using estimated Average Daily Trips (ADT), which is the combined total number of vehicular trips both in and out of a development generated throughout an average weekday. The Transportation Services Division determined that the appropriate ADT for a cannabis retail establishment is approximately 108 trips per 1,000 square feet based on the Institute of Transportation Engineers (ITE) 11th Edition Trip Generation Manual for the most similar use “pharmacy/drug store with a drive-through”. The City’s traffic engineering review focuses on net trip increase for both the ADT and peak hour trips. Therefore, the trip generation is estimated for the previous/existing use(s) and is credited (subtracted) from the proposed use to estimate potential changes in trip generation for ADT and peak hour trips. The proposed use would be subject to a traffic impact fee based on net ADT. The estimated traffic impact

fee is approximately \$27,500. The fee calculation would be finalized during the building permit plan check process and must be paid prior to building permit issuance.

CMMC Section 13-275(a), specifies that “a traffic impact study shall be required for all development projects estimated by the Public Works Department to generate one hundred (100) or more vehicle trip ends during a peak hour.” The highest peak hour trips in either the AM or PM is used to estimate the number of vehicular trips generated both in and out of a new or expanded development known as vehicle trip-ends during a peak hour. The City’s Transportation Department staff determined that the proposed use does not meet the threshold of 100 peak hour trips requiring a traffic study based on the net peak hour trips.

Odor Attenuation

Cannabis products would arrive in State compliant packaging that is sealed and odor-resistant, and remain unopened while on the premises. However, a minimal amount of cannabis product would be removed from packaging for display purposes and would be placed in display containers. The proposed facility would provide carbon air filtration to eliminate odor from escaping the tenant space. As conditioned, the operator must replace the air filters at regular intervals, as directed in the manufacturer specifications. Cannabis products are not allowed to be disposed of in the exterior trash enclosure. Further, as conditioned, if cannabis odor is detected outside of the building or off-site, the business owner/operator will be required to institute further operational measures necessary to eliminate off-site odors in a manner deemed appropriate by the Director of Economic and Development Services.

Proximity to Residential

The subject commercial property abuts an alley that bisects the subject property with residential development. A parking lot, six-foot-tall vehicle gate, a 20-foot wide alley, and six-foot-tall fencing are the existing physical buffers/barriers that divide and separate the proposed storefront and nearby residential properties. The shortest distance between the proposed storefront and the closest residential building is approximately 127 feet. To ensure neighborhood compatibility, proposed project conditions and requirements include the following:

- Business hours are limited to the hours between 7 AM and 10 PM Monday through Sunday;
- Security lighting is shielded and directed down/away from residential properties to prevent light spill. As conditioned, a photometric study would be required to be submitted during plan check to demonstrate that light levels at the residential property are minimal;
- Signage posted within the parking lot to require customers and vendors to keep noise levels to a minimum (the security guard shall also be responsible for noise enforcement);

- Disposal of waste at the exterior trash enclosure shall not be allowed between 8 PM and 8 AM;
- The vehicle gate shall remain closed between the hours of 10 PM and 7 AM; and
- A staff person or the required 24-hour security guard will regularly monitor the site's parking areas to ensure that customers are quiet, turn off vehicle engines promptly, do not play loud music, and generally do not create excessive neighbor disturbances. The parking lot monitoring will be especially diligent to prevent noise and other neighbor disturbance during morning and evening business hours.

GENERAL PLAN CONFORMANCE

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

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

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

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

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

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

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

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

Consistency: The subject property is located approximately 127 feet from residential development and for many years provided retail and commercial services. As conditioned, the proposed use would operate during limited hours, be required to control odor, noise, close the vehicle gate to customers between 10 PM and 7 AM, and provide 24-hour onsite security at all times to ensure compatibility between uses.

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

Consistency: The proposed project is located on one of the City's commercial corridors. Conditions of approval requiring 24-hour onsite security, signage regarding restricting noise, and limiting the hours of operation are intended to ensure compatibility between the proposed use and nearby residential uses. The adjacent commercial uses include another cannabis storefront, restaurants, specialized retail, grocery store, and a fitness studio.

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. Pursuant to the CMMC, cannabis retail storefronts are conditionally permitted uses in the City's commercial zones and are subject to extensive regulation (as specifically described in this report). These regulations are adopted to prevent land use inconsistencies with adjacent properties. Additionally, the proposed cannabis retail storefront use is not located within 1,000 feet of a K-12 school, playground,

licensed child daycare, or homeless shelter, or within 600 feet of a youth center. All retail sales would take place underroof, no outdoor storage or sales are proposed nor would be allowed, and operations would be conditioned to be compliant with applicable local and State laws, as well as to minimize potential impacts. Staff does not anticipate that the proposed retail cannabis use would be materially detrimental to the adjacent uses that include a restaurant, jewelry store, cannabis storefront, grocery store, fitness studio, Triangle Square, and residences. To ensure neighborhood compatibility, especially with residential uses across the alley, proposed project conditions and requirements have been included such as posting parking lot signs to remind customers to keep noise levels to a minimum, shielding security lighting down/away from neighboring properties, and limiting business hours from 7 AM to 10 PM. 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 with delivery 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, including delivery drivers 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. No additional square footage is proposed; therefore, approving the CUP would not increase site density or intensity. As stated in the General Plan Land Use Element, the City's commercial designations "accommodate a full range of commercial activity present and desired in Costa Mesa." The use is consistent with General Plan policies related to providing a mixture of commercial goods,

services, and employment opportunities; expanding the City's tax base; and promoting the incubation of unique and specialized businesses.

ENVIRONMENTAL DETERMINATION

The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, for the permitting and/or minor alteration of Existing Facilities, involving negligible or no expansion of the existing or prior use. This project site contains an existing commercial building that has been used continuously for commercial activities. The application does not propose an increase in commercial floor area or otherwise expand the prior commercial use. The project is consistent with the applicable General Plan land use designation and policies as well as with the applicable zoning designation and regulations. Furthermore, none of the exceptions that bar the application of a categorical exemption pursuant to CEQA Guidelines Section 15300.2 applies. Specifically, the project would not result in a cumulative impact; would not have a significant effect on the environment due to unusual circumstances; would not result in damage to scenic resources; is not located on a hazardous site or location; and would not impact any historic resources.

ALTERNATIVES

The Planning Commission can consider the following decision alternatives:

1. **Approve the project.** The Planning Commission may approve the project as proposed, subject to the conditions outlined in the attached Resolution.
2. **Approve the project with modifications.** The Planning Commission may suggest specific changes that are necessary to alleviate concerns. If any of the additional requested changes are substantial, the hearing 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 ten 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.

Any public comments received prior to the December 11, 2023, Planning Commission meeting may be viewed at this link: <https://costamesa.legistar.com/Calendar.aspx>

CONCLUSION

The proposed project is a retail cannabis storefront business with delivery at a developed commercial property that meets specific 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.

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 22-22 subject to conditions of approval.