



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: NOVEMBER 28, 2022

ITEM NUMBER: PH-3

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

**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 22-21, subject to conditions of approval.

APPLICANT OR AUTHORIZED AGENT

The applicant/authorized agent is Randall Longwith on behalf of Access Costa Mesa, Inc. dba South Coast Safe Access, and the property owner, Vaccher Family Trust.

PLANNING APPLICATION SUMMARY

Location:	2001 Harbor Boulevard, Suites 101-103	Application Number:	PA-22-21
Request:	Planning Application 22-21 for a Conditional Use Permit for the establishment of a cannabis retail storefront in the C2 (General Business District) zone.		

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:	124.36' x 363.40'	East:	R2-HD (Multiple-Family Residential District, High Density)
Lot Area:	45,192 Sq. Ft.	West:	C1 (Local Business District)
Existing Development:	15,139 sq. ft. first floor, 5,947 sq. ft. second floor (21,086 sq. ft.) two-story multi-tenant commercial building		

DEVELOPMENT STANDARDS COMPARISON

Development Standard	Required/Allowed C2 Zone	Proposed/Provided
Building Height	2 stories/30'	2 stories/30'
Setbacks:		
Front	20'	20'
Side	0'/15'	0'/76'
Rear	0'	25'
Landscape Setback – front	20'	20'
Parking	66 spaces ¹	67 spaces ²
Floor area ratio (FAR)	0.20	0.47 ³
¹ PA-86-130 allowed the construction of the building with a variance decreasing the required parking by 18 stalls. 66 spaces are required per PA-86-130. ² The proposed parking includes 66 spaces and bicycle racks for a credit of one parking stall, for 67 spaces total. ³ The existing FAR is legal non-conforming, as discussed below.		
CEQA Status	Exempt per CEQA Guidelines Section 15301 (Existing Facilities)	
Final Action	Planning Commission	

BACKGROUND

The subject property is located at 2001 Harbor Boulevard. The approximate one-acre midblock property is located on the west side of Harbor Boulevard, bounded by Charle Street to the west. The nearest cross streets are Hamilton Street to the north and Bernard Street to the south. The site is zoned C2 (General Business District) and is surrounded by C2 zoned properties to the north and south. Other commercial properties, zoned C1 (Local Business District), are located across Harbor Boulevard to the east. Residential properties, zoned R2-HD (Multiple-Family Residential District, High Density) are located across Charle Street to the west. The site has a General Plan Land Use Designation of General Commercial.

Existing development on the subject property consists of a two-story, 21,086-square-foot commercial building. The first floor includes 4,667 square feet of retail/office space and a 6,752-square-foot warehouse. The second floor includes 5,947 square feet of retail/office space. A 66-space surface parking lot with ingress/egress on Harbor Boulevard and Charle Street is shared by the existing businesses. Planning Application 86-130 allowed the construction of the current building as well as a variance from parking requirements due to the unique characteristics of an approximately 6,700-square-foot warehouse operation in the rear of the building.

The proposed retail establishment, "South Coast Safe Access," would occupy suites 101, 102 and 103, a 3,720-square-foot area of the first floor, adjacent to Harbor Boulevard. The subject suites are currently vacant and were previously occupied by a Pilates studio.

In June of 2019, the Costa Mesa Police Department, in coordination with Code Enforcement and other City staff, conducted an on-site investigation of an illegal cannabis establishment at the subject site and closed the unpermitted business at this location. Pursuant to CMMC Section 13-200.93(e)(4), *"If an unpermitted and/or illegal cannabis activity has existed on a property no cannabis business may be permitted on that property unless three hundred sixty-five (365) days has elapsed since that unpermitted and/or illegal cannabis activity has vacated the property, and the owner of that property has compensated the City for any and all expenditure of public funds and resources, including all costs, expenses (including, but not limited to, the salaries of peace and/or code enforcement officers) and/or attorney's fees, incurred in investigating, abating or attempting to abate the unpermitted use or uses, whether or not any type of civil, criminal or administrative proceedings have been commenced against the property, provided however if the owner of the property is required to evict that use, the three hundred sixty-five (365) days shall begin to run from the date of the filing of an unlawful detainer complaint, in which case the a permit may be issued after the three hundred sixty-five (365) days had elapsed and that use is no longer occupying the property"*. Staff have confirmed that the unpermitted cannabis use has been vacated for more than one year, and that the City has since been compensated for the expenditure of public funds as required by Section 13-200.94(e)(4).

Current other uses in the building include electronics sales, repair, and warehousing, offices, and counseling for individuals, families, and groups. On October 26, 2020, the Planning Commission approved Zoning Application 20-07, a Minor Conditional Use Permit for the counseling use located in suites 200, 210, and 220. The counseling use is subject to conditions of approval, including providing shuttle services for group counseling clients.

The property is located on one of the City's primary commercial corridors and the surrounding uses predominantly include multi-tenant commercial centers. Existing businesses in these commercial centers generally include an abundance of automotive uses, pharmacies, medical offices, and restaurants. The far end of the subject property abuts Charle Street, which is developed with multifamily residences. The nearest

residentially zoned properties (R2-HD, Multi-Family High Density) are located across Charle Street. However, the proposed storefront is located in the tenant suites closest to Harbor Boulevard, which is approximately 350 away from the residential zone. In addition, other commercial tenants and the parking lot of the subject property further separate the residentially zoned properties along Charle Street from the proposed storefront.

There are no open Code Enforcement cases on the subject property.

The storefront operator has partnered with a Measure X operator, CMX Distribution, Inc. Planning Application 17-40, the CUP for CMX Distribution, Inc., was approved by the Planning Commission on February 26, 2018. The operator received a Cannabis Business Permit on March 21, 2018. There are no active Code Enforcement cases at the Measure X facility.

Non-Conforming Development

The existing development does not meet Code requirements in terms of the parking and floor area ratio (FAR). Both the parking variance and FAR were approved through Planning Application 86-130. Pursuant to Costa Mesa Municipal Code (CMMC) Section 13-204, a conforming use may be located on a nonconforming property so long as the new site modifications do not result in greater site nonconformities. In addition, if the site is legal non-conforming in regards to parking, a use may not be replaced with a use that requires more parking, unless additional parking is provided pursuant to the CMMC.

The variance established an allowed 18-stall reduction in required parking based on the reduced parking demand of 6,700 square feet of warehousing operations for an electronics business. The remaining portions of the building were parked at a ratio of four spaces per 1,000 square feet of gross floor area, which is consistent with the required parking ratio for a cannabis storefront establishment.

Improvements would be made to bring this structure into compliance with current building and safety codes; however, and as specifically allowed by the CMMC, the existing site nonconformities can remain pursuant to the City's legal nonconforming provisions and pursuant to PA 86-130. The applicant is proposing to bring the property into closer conformance by providing additional site landscaping.

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 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 review. Staff’s initial CBP review includes:

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

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

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

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

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

After passing the final City and HdL inspections, the CBP 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 22-21 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. Should the storefront wish to offer delivery services in the future, an amendment to the CUP would be required.

ANALYSIS

Conditional Use Permit Required

Pursuant to CMMC Sections 13-28(B) and 13-200.93(c)(1), subject to the approval of the Planning Commission, a CUP is required for the establishment of cannabis retail storefronts in a commercial zone. The subject site is located within a commercial zone (C2 – General Business District) where commercial development is allowed to include retail storefronts. As defined in the CMMC, “This [C2] district is intended to provide for those uses which offer a wide range of goods and services which are generally less compatible with more sensitive land uses of a residential or institutional nature.” Pursuant to the CMMC, cannabis retail storefronts are subject to extensive regulation (as specifically described in this report). These regulations are adopted to prevent land use inconsistencies with adjacent properties. Pursuant to the CMMC, the approval of a CUP requires that the Planning Commission make findings related to neighborhood compatibility, health and safety and land use compatibility. The detailed analysis regarding CUP findings is provided further below in this report. Lastly, staff has drafted specific conditions of approval, included in the Resolution, to ensure site-specific land use compatibility.

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 from the “premises” where the cannabis retail use is to be located to the closest property line of the sensitive use(s). Premises is as defined in the State’s Business and Professions Code Section 26001(aq) 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 includes 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 is proposing only minor changes to the exterior, which include installing bicycle racks, surveillance cameras, shielded security lighting, resealing and restriping the parking lot, and new business signage (signs would be reviewed and permitted separately per CMMC requirements). A preliminary lighting plan has been provided and would be reviewed further during the plan check process, as conditioned. As conditioned, the landscaped areas throughout the parking lot would be improved with the addition of drought tolerant groundcover. The lawns along Harbor Boulevard would be replaced with drought tolerant plants. As conditioned, at least 75 percent of the front landscape would be required to be planted with live groundcover. Rocks and other ground cover deemed

acceptable by the Planning Division may constitute the remaining 25 percent. A detailed landscaping plan would be reviewed during the plan check permitting process.

Interior Tenant Improvements

The proposed interior improvements include constructing demising walls and adding a door to an existing wall to create a connection from the proposed public area to the proposed “back of the house” area. The proposed areas where customers would be allowed include the reception area/check-in, retail sales floor, and restrooms. The proposed and restricted “back-of-house” areas include an employee entry room, office, break room, restroom, and storage. A summary of the spaces within the proposed floor plan is provided in Table 1.

Table 1 – Floor Plan Summary

Operational Area	Square Feet
Reception/Check-In	655
Retail Sales Area	1,769
Restrooms	193
Employee Entry	122
Office	499
Break Room	213
Employee Restroom	99
Other	170
Total	3,720 SF

Customer and Employee Access

Customers would only be allowed in the reception/check-in area, retail sales area, and customer restroom. Customer access to the proposed establishment includes entering the licensed premise through a designated entrance door that faces the parking lot. An employee would verify the customer’s identity and age in the reception area before allowing the customer to enter the retail sales floor. After a customer’s identity and age is verified and their transaction is completed, they must leave the premise through a designated exit door that faces the parking lot. 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 access-controlled entrance located west of the public entrance and exit.

Vendor Access

During business hours, vendor vehicles (such as licensed distributor vehicles that are used for delivering products to retail stores) would park in the surface parking lot. As conditioned, vendors would use the designated loading/unloading spaces located closest to the access-controlled vendor entry, which is approximately 60 feet from the door. All deliveries will have pre-committed arrival times set by the cannabis store operational managers. In addition, the security guard would monitor the vendor vehicle until the loading/unloading activity has been completed and the vehicle departs the facility. As conditioned, the access-controlled vendor entry door, path of travel, and vehicle loading/unloading area would be under camera surveillance at all times. Vendors would only be allowed to enter the premise through the limited access entrance while accompanied by an employee with the proper security credentials.

Storefront 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;
- Business hours of operation are from 7:00 AM and 10:00 PM daily;
- Shipments of cannabis goods may only be accepted during regular business hours (7:00 AM and 10:00 PM daily);
- Vehicle gate in the rear of the property, adjacent to Charle Street, shall be closed and locked between the hours of 6:00 PM and 8:00 AM;
- Cannabis inventory shall be secured using a lockable storage system during non-business hours;
- At least one licensed security guard shall be on premises 24-hours a day;
- The premises and the vicinity must be monitored by security and/or other staff to ensure that patrons immediately leave and do not consume cannabis onsite or within close proximity. The CMMC prohibits the consumption of cannabis or cannabis products in public areas; cannabis consumption is limited to non-public areas, such as within a private residence. State law further prohibits cannabis consumption and open container possession within 1,000 feet of sensitive uses and while riding in or driving a vehicle;
- There must be continuous video monitoring and recording of the interior and exterior of the premises;
- Adequate security lighting shall be provided and shall be designed to prevent offsite light spill;
- Onsite sales of alcohol or tobacco products and on-site consumption of alcohol, cannabis, and tobacco products is prohibited;
- No one under the age of 21 is allowed to enter the premises. If the business holds a retail medical cannabis license (M-license) issued by the State, persons over the age of 18 may be allowed with the proper medical approvals i.e. physician's recommendation or medical card pursuant to CMMC Section 9-495(h)(6);

- Prior to employment, all prospective employees must successfully pass a background check conducted by the City, and the employee must obtain a City issued identification badge;
- Customers are only granted access to the retail area after their age and identity has been confirmed by an employee;
- Each transaction involving the exchange of cannabis goods between the business and consumer shall include the following information:
 - Date and time of transaction;
 - Name and employee number/identification of the employee who processed the sale;
 - List of all cannabis goods purchased including quantity; and
 - Total transaction amount paid.
- There must be video surveillance of the point-of-sale area and where cannabis goods are displayed and/or stored;
- Cannabis products shall not be visible from the exterior of the building;
- Free samples of cannabis goods are prohibited;
- When receiving new inventory from licensed distributors, employees will verify the distributor's identity and license prior to allowing them to enter the facility through an access-controlled door. After distributor's credentials have been confirmed, an employee will escort the distributor to the appropriate interior location and remain with them throughout the process.
- Cannabis goods to be sold at this establishment 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; and
- Packaging containing cannabis goods shall be tamper and child-resistant; if packaging contains multiple servings, the package must also be re-sealable.

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 continued entitlement processing.

Security Plan

The applicant has submitted a professionally prepared security plan for the proposed retail cannabis establishment. The City's cannabis consultant reviewed the security plan and determined that appropriate security measures were included to address the City's security requirements pursuant to CMMC Title 9, Chapter VI, and State law.

Since the security plan contains sensitive operational details that require limited public exposure to remain effective, the plan is not included as an attachment. However, the

following is a list of general security measures that are required for the proposed cannabis retail establishment:

- At least one security guard will be on-site 24-hours a day;
- All employees 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 shielded exterior) shall be installed;
- Emergency power supply shall be installed;
- Employees shall be trained for use with any/all emergency equipment;
- Employees and vendors will be trained regarding cash and product transportation protocol;
- Visitor/customer specific security measures shall be required; and
- All facility entry and exit points and locations where cash or cannabis products are handled or stored shall be under camera surveillance.

Parking and Circulation

Retail cannabis establishments are subject to the same parking ratio as other retail businesses in the City (four spaces per 1,000 square feet of gross floor area). Based on this ratio, the 3,720-square-foot establishment would be required to provide 15 onsite parking spaces. If the entire 21,086-square-foot building were occupied by retail uses, the building would need to be served by 84 onsite parking spaces. However, a parking variance was granted that reduces the required parking on the subject property. Planning Application 86-130 included a variance to reduce the required parking by 18 spaces due to the unique characteristics of an approximate 6,700-square-foot warehouse space within the building. Therefore, the required parking on the subject property is 66 stalls. The applicant also proposes to add a bicycle rack, which would be credited as one standard parking space. With the proposed bicycle rack, there would be 67 parking stalls proposed onsite. Furthermore, the existing warehouse use would continue to be used for warehousing only and not be part of the proposed storefront business. The storefront would be replacing a previously approved fitness studio use which has a higher parking requirement than retail. As such, the parking requirement for the proposed storefront is less than the previous use, which would reduce the required parking demand compared to previous conditions.

Although Planning staff observed ample parking availability at the site and the proposed parking configuration exceeds the required parking by one stall, the applicant included a draft Parking Mitigation Plan with the application. If a parking shortage occurs in the future, the applicant proposes to provide an employee-only shuttle service from a

cannabis distribution facility located two miles away in Costa Mesa's "Green Zone." As conditioned, if parking shortages or other parking problems occur, the owner/operator would 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. Examples of parking demand management techniques include, but are not limited to, offsite parking for employees, reducing operating hours of the business, offering discounts for online and phone orders to expedite order pick-up, and incentivizing employee carpooling/cycling/walking.

Vehicular access to the site is provided by two existing, two-way driveways. One is located off Harbor Boulevard and the other is off Charle Street. As conditioned, the vehicle gate adjacent to Charle Street would be closed and locked between the hours of 6 PM and 8 AM. During that timeframe, access to the site would only be available via Harbor Boulevard. Pedestrian access to the site is provided by the sidewalk along Harbor Boulevard and the sidewalk along Charle Street. The proposed bike racks would be located in between the storefront entrance and Harbor Boulevard to encourage cycling to to the establishment.

Traffic

The CMMC Section 13-275(e) indicates that any increase in traffic generation by a change of use that is required to obtain a discretionary permit, shall be subject to review by the appropriate reviewing authority, which may impose fees to address increased trip generation. If required, the fee collected is used to fund the City's comprehensive transportation system improvement program. The purpose of the program is to ensure that the City's transportation system has the capacity to accommodate additional trips. The Citywide Traffic Impact Fees on new and expanding developments is determined using estimated Average Daily Trips (ADT), which is the 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 a pharmacy/drug store with drive-through. The City's traffic engineering review focuses on net trip increase for both the ADT and peak hour trips. Therefore, the trip generation is estimated for the previous use and is credited (subtracted) from the proposed use to estimate potential changes in trip generation for ADT and peak hour trips. CMMC Section 13-275(a), specifies that "a traffic impact study shall be required for all development projects estimated by the Public Services Department to generate one hundred (100) or more vehicle trip ends during a peak hour." The highest peak hour trips in either the AM or PM peak is used to estimate the number of vehicular trips generated both in and out of a new or expanded development known as vehicle trip ends during a peak hour. Staff reviewed and determined that the proposed use does not meet the threshold of 100 peak hour trips requiring a traffic study based on the net peak hour trips. However, a traffic impact fee would be assessed. The fee calculation would be finalized during the building permit plan check process and must be paid prior to building permit issuance.

Odor Attenuation

Cannabis products would arrive in State compliant packaging that is sealed and odor-resistant, and remain unopened while on the premises. The storefront proposes to use carbon filters throughout the facility. If approved, the use would be conditioned so the operator must replace the air filters at regular intervals, as directed in the manufacturer specifications. Further, if cannabis odor is detected outside of the tenant space and/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. Lastly, cannabis products would not be allowed to be disposed of in the exterior trash enclosure.

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. The subject property is located along a major arterial and has a General Plan Land Use designation of General Commercial. Pursuant to the City's General Plan, the "General Commercial" land use designation is intended to permit a wide range of commercial uses that serve both local and regional needs. These areas should have exposure and access to major transportation routes since significant traffic can be generated."

2. **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 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.

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 the C2 Zoning District (General Business District). The CMMC defines the C2 zone as "intended to provide for those uses which offer a wide range of goods and services which are generally less compatible with more sensitive land uses of a residential or institutional nature." The subject property is located on Harbor Boulevard, one of the City's major arterials. The General Plan states that, "The Harbor Boulevard commercial corridor accounts for almost one-third of the City's commercial land. Businesses along the boulevard account for 40 percent of the City's total retail sales..." Adjacent uses along the corridor include several multi-tenant commercial centers with a variety of commercial businesses (automotive, pharmacies, medical office, and other retail).

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.

The proposed storefront would be located in the first floor suites closest to Harbor Boulevard, with hours of operation limited to 7 AM and 10 PM. The existing counseling use on the second floor is approved to serve clients between 9 AM and 9 PM, with staff onsite between 8 AM and 10 PM. The electronic and warehousing uses are located in the middle and rear of the subject property, closest to Charle Street. Based on the existing uses, no history of complaints regarding the existing operations on the site, and observations of ample parking, staff does not anticipate that the use would be materially detrimental to adjacent nonresidential uses, nearby residents, nor the existing businesses onsite. However, the parking lot access to Charle Street is currently developed with a vehicle gate that can restrict ingress and egress to the site from the adjacent residential street. In order to ensure that the proposed storefront does not increase traffic conditions on Charle Street, a condition of approval has been included in the attached Resolution that requires that gate to be closed and locked between 6:00 PM and 8:00 AM.

The use would be conditioned to be compliant with applicable local and State laws and to minimize potential impacts to surrounding properties. Staff does not anticipate that the proposed retail cannabis use would be materially detrimental to the adjacent uses. 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, exterior loading and unloading, and all interior limited access spaces. In addition, the business employees, including part-time staff, must pass a live scan background check and obtain an identification badge from the City. 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 designation of “General Commercial.” No additional square footage is proposed and the proposed retail cannabis establishment would occupy vacant spaces within an existing multitenant commercial building that includes office, retail, and warehousing uses. The previous occupants of the subject suites were leased for other retail and office uses and, therefore, approving the CUP would not increase site intensity. As stated in the General Plan Land Use Element, 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. The application does not propose an increase in commercial floor area. The project is consistent with the applicable General Plan land use designation and policies as well as with the applicable zoning designation and regulations.

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.

As of the date this report was circulated, no written public comments have been received. Any public comments received prior to the November 28, 2022 Planning Commission meeting will be provided separately.

CONCLUSION

The proposed project is a retail cannabis storefront business at an existing commercial property that is located on one of the City's primary commercial corridors. The location 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 (General Business District) Zone 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 22-21 subject to conditions of approval.