



# City of Costa Mesa

## Agenda Report

77 Fair Drive  
Costa Mesa, CA 92626

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**File #:** 22-835

**Meeting Date:** 8/8/2022

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**TITLE:**

PLANNING APPLICATION 21-27 FOR A RETAIL CANNABIS STOREFRONT USE WITH DELIVERY LOCATED AT 1072 BRISTOL STREET, SUITE 100

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

**PRESENTED BY: MICHELLE HALLIGAN, CONTACT PLANNER**

**CONTACT INFORMATION: MICHELLE HALLIGAN, 714-754-5608; Michelle.Halligan@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 21-27, subject to conditions of approval.

**APPLICANT OR AUTHORIZED AGENT:**

The applicant/authorized agent is Andy Singh of CM Triangle Enterprise LLC dba CM Triangle, on behalf of the property owner, Tim Taber.

**BACKGROUND:**

The subject 26,556-square-foot property is located at 1072 Bristol Street and is generally situated south of the State Route (SR) 55 Freeway. The property is located at the southwest intersection of Bristol Street and Newport Boulevard. The site is zoned C1 (Local Business District) and has a General Plan Land Use Designation of General Commercial. Existing development on the site consists of a two-story 11,880-square-foot commercial building with six tenant suites and a 36-space parking lot.

The proposed retail cannabis storefront use with delivery "CM Triangle," would occupy one 3,286-square-foot tenant suite on the first floor. Suite 100 is currently occupied by the property owner's business that provides media consulting services. The other first floor tenant is an insurance business. Current second floor tenants include an insurance agency, a property management company, and professional law offices. The existing tenants at 1072 Bristol Street are generally open between 8 AM and 6 PM, Monday through Friday. All of the current tenants are closed on Saturday and Sunday. Surrounding uses include several adjacent office complexes located southeasterly of the property and Ganahl Lumber and an automobile dealership located across Bristol Street. To the rear of the property, abutting the subject property's parking lot, is several residential properties that front "The Masters Circle" (a dead-end single-family residential street). The parking lot and single-family homes are separated by landscaping and an approximate eight to ten-foot-tall block wall. Ingress and egress to the site is provided by existing 25-foot wide private driveways with access located from both Bristol Street and Newport Boulevard.

There are no open Code Enforcement cases on this property.

The applicant is partnering with Yummi Karma Inc., a cannabis manufacturing facility located in Costa Mesa - which was approved in 2018 under Measure X. Yummi Karma has been operating since 2018. There are no active Code Enforcement cases at the partnering Measure X facility.

***Non-Conforming Development***

The existing development is legal-nonconforming in terms of the front setback, parking, and floor area ratio (FAR), and therefore is subject to the nonconforming provisions of the Costa Mesa Municipal Code (CMMC) Section 13-204. Pursuant to this Code Section, a conforming use may be located on a nonconforming property so long as the proposed site modifications do not result in greater site nonconformities.

The CMMC and General Plan establish maximum floor area ratios (FARs) for each non-residential land use designation based on trip generation characteristics. Pursuant to the General Plan, the maximum FAR for the proposed use is 0.20 and the existing FAR is 0.45. As specifically allowed by the CMMC, the nonconforming FAR, front setback, and parking can remain and are considered legal-nonconforming.

***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 located north of South Coast Drive and west of Harbor Boulevard (“The Green Zone”). Measure X provisions are codified in Titles 9 and 13 of the Costa Mesa Municipal Code (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 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 only.

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

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

- 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. 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. Lastly, the applicant must obtain the appropriate license from the State Department of Cannabis Control (DCC) prior to operating.

### **July 25, 2022 Planning Commission Meeting**

This project was originally scheduled and noticed for the July 25, 2022 Planning Commission hearing. Prior to the public hearing, staff received approximately 25 letters expressing concerns, generally from residents who live on Masters Circle. During the July 25, 2022 public hearing, the Planning Commission Chair opened the hearing for public testimony. After receiving public input and closing the public hearing, the Planning Commission voted unanimously to continue the public hearing to the August 8, 2022 Planning Commission hearing in order to provide the applicant time hold a project neighborhood outreach meeting.

### **DESCRIPTION:**

Planning Application 21-27 is a request for a CUP to allow retail cannabis uses within an existing 3,286-square-foot, first floor tenant suite located at 1072 Bristol Street. As proposed, the retail store would operate 7 AM and 10 PM, seven days a week. The affiliated State license is a Type 10 "storefront retailer" which also allows retail delivery. Upon approval of a CUP, CBP, City Business License, and State licenses, the business would sell pre-packaged cannabis and pre-packaged cannabis products directly to customers onsite and via delivery to private addresses, subject to conditions of approval and other City and State requirements.

### **ANALYSIS:**

#### ***Conditional Use Permit Required***

Pursuant to Costa Mesa Municipal Code (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. The subject site is located within a commercial zone (C1 - Local Business District) where commercial development is specifically allowed to include retail storefronts.

Although the subject building is generally developed as a commercial office building and the existing tenants are primarily office related uses, the site is located in the City's C1 - Local Business District, which allows for retail operations. Pursuant to the CMMC Section 13-20(g), the C-1 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." Therefore, the proposed retail storefront is a contemplated use for this property, subject to the Planning Commission approval of a conditional use permit.

### ***Separation Requirements***

The property is located on one of the City's primary commercial corridors and generally surrounded by commercial uses, with the exception of a small residential neighborhood (49 single-family homes) that is located adjacent to the subject property's parking lot. The CMMC does not establish a minimum separation between cannabis retail uses and residential development or residential zones. 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 and uses.

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 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.* More specifically, the premises is essentially limited to 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 CMMC separation provisions from sensitive uses.

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

The existing building façade and exterior components are in good condition and do not require significant upgrades. Currently, the suite's main entrance is located toward the center of the building, facing the parking lot. There is a secondary entrance located at the rear of the building, near Newport Boulevard. The applicant proposes to use the secondary entrance as the entrance to a lobby. The current main entrance would become the exit.

Proposed exterior improvements include:

- Shielded security lighting on the building;
- Shielded security lighting along the property perimeter; and
- Adding a bicycle rack to encourage multi-modal transportation.

Security lighting would be shielded, pointed downward and located in such a manner to prevent potential lighting impacts to the abutting residential properties. The applicant has provided a preliminary lighting plan as part of their CUP submittal. As conditioned, a lighting and photometric plan would be required during the plan check process to demonstrate that lighting onsite would be adequate for security purposes without light spill onto the abutting residentially-zoned properties. The applicant also proposes to update the site with surveillance cameras and new business signage (signs would be reviewed and permitted separately per the City's sign code requirements).

### ***Interior Tenant Improvements***

The majority of the interior improvements would involve construction of non-structural demising walls to create new rooms. The public areas of the retail use would include a lobby, sales floor, and exit room. Back-of-house areas include

an access-controlled office, conference room, storage rooms, and kitchen. Below is a breakdown of the general spaces within the 3,286-square-foot suite.

**Table 1 - Floor Plan Summary**

<b>Operational Area</b>	<b>Square Feet</b>
Lobby	79
Sales Floor	1,980
Exit Room	137
Offices/Conference Room	390
Kitchen	254
Other Employee-Only Areas	446
Total	3,286

### ***Customer and Employee Access***

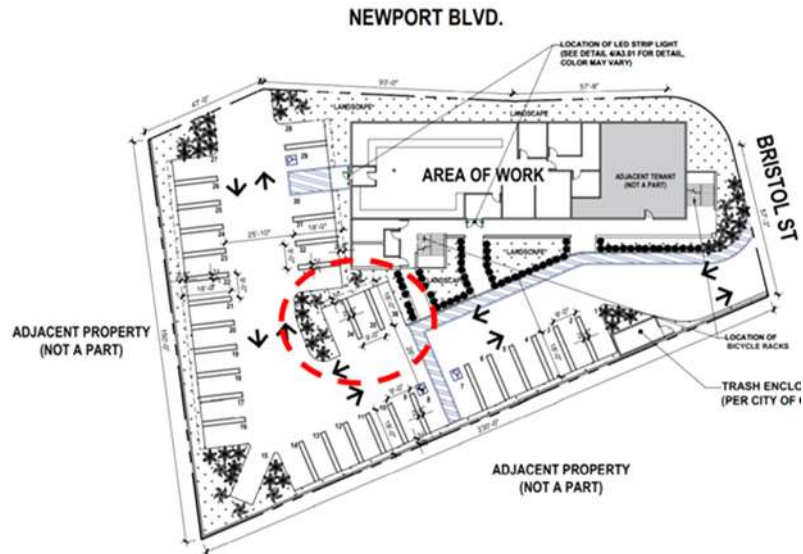
Customers would enter the premises through a lobby door located on the southwestern side of the building adjacent to the site's Bristol Street Parking lot driveway access. Customer circulation is limited to the lobby, retail sales floor, and exit room. After a customer's identify and age are verified and their transaction is completed, they must leave through the exit room. The exit room is located in the interior of the property, facing the parking area to the southeast. After exiting the suite, customers must leave the property. As conditioned, a security guard would monitor the area at all times.

The other areas of the premises would only be accessible to employees with proper security credentials. Employees would enter through the main entrance.

### ***Delivery Operations and Vendor Access***

During business hours, retail cannabis delivery and vendor vehicles would use one of the three parking stalls located closest to the access controlled door in the center of the property (see the parking area circled on the below Exhibit A).

## **Exhibit A - Delivery and Vendor Vehicle Parking**



The distance from the controlled access door to the employee/vendor vehicle parking stalls will be less than 50 feet. As proposed and conditioned, the exterior doors, path of travel and designated parking stalls would be under camera surveillance. As further conditioned, all delivery loading and unloading would be monitored by a security guard. Lastly, vendors would only be allowed to enter the premise while accompanied by an employee.

### ***Storefront/Delivery Operation Conditions***

The proposed business is required to comply with the following retail storefront/delivery operational conditions:

- Display State license, CBP, and City business license in a conspicuous building location;
- Hours of operations are limited to 7:00 AM to 10:00 PM daily;
- Shipments of cannabis goods may only be accepted during regular business hours;
- Cannabis inventory shall be secured using a lockable storage system during non-business hours;
- At least one licensed security guard shall be on premises 24-hours a day;
- The premises and the vicinity must be monitored by security and/or other staff to ensure that patrons immediately leave, do not consume cannabis onsite or within close proximity, and/or do not disturb the adjacent residential neighbors. Security guards will monitor the parking lot diligently during morning and evening business hours. 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 also be allowed with the proper medical approvals i.e. physician's recommendation or medical card pursuant to CMMC Section 9-495(h)(6);
- Prior to employment, all prospective employees must successfully pass a background check conducted by the City, and the employee must obtain a City issued identification badge;
- Customers are only granted access to the retail area after their age and identity has been confirmed by an employee;
- Each transaction involving the exchange of cannabis goods between the business and consumer shall include the following information:
  - Date and time of transaction;
  - Name and employee number/identification of the employee who processed the sale;
  - List of all cannabis goods purchased including quantity; and
  - Total transaction amount paid.
- There must be video surveillance of the point-of-sale area and where cannabis goods are displayed and/or stored;
- Cannabis products shall not be visible from the exterior of the building;
- Free samples of cannabis goods are prohibited;
- When receiving new inventory from licensed distributors, employees will verify the distributor's identity and license prior to allowing them to enter the facility through an access-controlled door. After distributor's credentials have been confirmed, an employee will escort the distributor to the shipping and receiving area and remain with them throughout the process.
- Cannabis goods to be sold at this establishment (either storefront or delivery) must be obtained by a licensed cannabis distributor and have passed laboratory testing;
- Cannabis product packaging must be labeled with required test results and batch number;
- Packaging containing cannabis goods shall be tamper and child-resistant; if packaging contains multiple servings, the package must also be re-sealable;
- When processing orders for cannabis delivery, employees will collect the pre-packaged materials, load products into a secured container and transport the containers to delivery vehicles outside the building. Video surveillance cameras will be installed with direct views of the path of travel and loading and unloading area;
- 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.
- 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.

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

Since the security plan contains sensitive operational details that require limited public exposure to remain effective, the plan is not included as an attachment. However, the following is a list of general security measures that are required for the proposed cannabis retail establishment:

- At least one security guard will be on-site 24-hours a day;
- All employees, including drivers, must pass a "Live Scan" background check;
- City-issued identification badges are required for employees;
- An inventory control system shall be maintained;
- Exterior and interior surveillance cameras shall be monitored and professionally installed;
- An alarm system shall be professionally installed, maintained, and monitored;
- Surveillance footage must be maintained for a minimum of 90 days;
- Cash, cannabis, and cannabis products shall be kept in secured storage areas;
- Sensors shall be installed that detect entry and exit from all secured areas;
- Security lighting (interior and exterior) shall be installed;
- Emergency power supply shall be installed;
- Employees shall be trained for use with any/all emergency equipment;
- Delivery drivers shall be trained on delivery safety protocols;
- Employees and vendors will be trained regarding cash and product transportation protocol;



- 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

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

As previously indicated, the site is developed with an 11,880-square-foot, two-story, commercial building that is currently occupied by a variety of commercial office uses. The City's parking ordinance requires four parking spaces for every 1,000 square feet of office floor area and, based on this ratio, the total required parking for the commercial building is 47 spaces. Since the site is developed with only 36 parking spaces, the parking for the property is considered legal non-conforming. As previously indicated, the CMMC specifies that properties with legal nonconforming parking conditions can continue so long as the development will not be made more nonconforming. Retail cannabis uses are subject to the same parking ratio requirement as offices (four spaces per 1,000 square feet of gross floor area); therefore, the proposed cannabis retail storefront use would not result in a greater or "more nonconforming" condition in regard to parking.

Although the CMMC allows the site's legal nonconforming conditions to continue, staff requested that the applicant survey parking lot utilization at two-hour intervals to determine actual parking demand conditions based on empirical observations. In response to staff's request, the applicant collected parking counts and took photos at 8 AM, 10 AM, noon, 2 PM, 4 PM, and 6 PM on a Wednesday, Thursday, and Friday (July 13, 2022 through July 15, 2022). Planning staff also visited the site, unannounced, on more than 20 occasions during the months of June and July. During these staff site visits, which occurred at various hours of the day, staff witnessed a minimum of 20 available parking spaces.

As shown in Table 2 and provided by the applicant, on average, 26 parking spaces or 72 percent of all spaces were available between 8 AM and 6 PM. The parking lot was typically most occupied (peak parking demand) midday, with an average of 64 percent of all parking spaces available during the noon and 2 PM counts. Based on empirical observation, 23 parking spaces would be available for the proposed use during the site's peak parking period (from noon and 2 PM on weekdays). In addition, the CMMC requires 14 stalls for the proposed cannabis retail operation and thus the observed 23 parking space availability at the site's peak demand exceeds the Code parking requirement by nine parking spaces. The least utilized parking demand times observed were 8 AM and 6 PM, with 78 percent and 83 percent of the parking spaces available, respectively. Parking counts were not conducted after 6 PM, nor on weekends as the existing businesses are closed; however, staff visited the site on several occasions during these hours and the parking lot was generally vacant of cars.

**Table 2 - Parking Availability Survey**

Time	Wednesday Available	Thursday Available	Friday Available	Average Available	
8 AM	28	29	27	28	78%
10 AM	26	26	26	26	72%
Noon	23	23	24	23	64%
2 PM	22	23	25	23	64%
4 PM	21	25	31	26	72%
6 PM	27	30	34	30	83%
<b>Daily Average</b>	<b>25</b>	<b>26</b>	<b>28</b>	<b>26</b>	<b>72%</b>

Pursuant to CMMC section 13-98, the Planning Division may require that a declaration of land use restriction be recorded to ensure that future property owners are informed of use restrictions resulting from the number of parking spaces provided. Based on this Code provision, the property owner has agreed to record a Land Use Restriction requiring any future proposed use with a code-required parking ratio above four stalls per 1,000 square feet to be subject to a professionally prepared and affirmative parking study. This study would be subject to approval by a Minor Conditional Use Permit.

Vehicle access to the site is provided from Bristol Street and Newport Boulevard by an approximate 25-foot-wide driveway. Vehicles exiting the property from the Newport Boulevard driveway must turn right, away from the nearest residential street. Vehicles exiting the property from the Bristol Street egress must also turn right (towards Newport Beach). Pedestrian access is provided by public sidewalk along Bristol Street and Newport Boulevard.

The applicant proposes to add bicycle racks to encourage customers and staff to cycle to the storefront. The bicycle racks are credited as one parking space, which increases the total site parking to 37 parking spaces.

As with many new uses and based on many factors that are difficult to quantify, it is difficult to anticipate exact demand for a new use. The proposed use is conditioned to have at least one parking monitor during business hours for the first 90 days. If parking shortages or other parking-related problems occur, the business owner or operator will be required to institute appropriate operational measures necessary to minimize or eliminate the problem in a manner deemed appropriate by the Director of Economic and Development Services. Examples of parking demand management techniques include, but are not limited to, reducing operating hours of the business, hiring a permanent employee to monitor parking lot use and assist with customer parking lot circulation, encouraging customers to take advantage of delivery service instead of store visits, offering an employee shuttle service from offsite parking, and incentivizing employee carpooling/cycling/walking.

**Traffic**

The CMMC Section 13-275(e) indicates that any increase in traffic generation by a change of use that is required to obtain a discretionary permit, shall be subject to review by the appropriate reviewing authority, which may impose fees to address increased trip generation. If required, the fee collected is used to fund the City’s comprehensive transportation system improvement program. The purpose of the program is to ensure that the City’s transportation system has the capacity to

accommodate additional trips.

The Transportation Services Division has determined that the appropriate average daily trips (ADT) for a cannabis retail establishment is approximately 108 trips per 1,000 square feet based on the Institute of Transportation Engineers (ITE) 11<sup>th</sup> Edition Trip Generation Manual for a “pharmacy/drug store with a drive-thru.” The City’s traffic review focuses on net trip increase and therefore the ADT for the previous/existing use(s) is credited (subtracted) from the proposed use ADT to estimate potential changes in trip generation. Staff analyzed the ADT of the previous media consultant office use and compared that with the proposed retail cannabis use ADT. 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.” Staff determined that the proposed use does not meet the threshold for requiring a traffic study. However, the proposed use would be subject to a traffic impact fee. The estimated traffic impact fee is approximately \$50,008. 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 sealed packaging that is tamper and odor-resistant, and would remain unopened until consumption. However, a minimal amount of cannabis product would be removed from packaging for display purposes and would be placed in transparent display containers. To prevent potential odors from the retail cannabis establishment, the suite would feature carbon filters with a minimum efficiency rating value (MERV-8) for capturing at least 80 percent of airborne particles between 3 and 10 micrometers in size. As conditioned, the operator must replace the air filters at regular intervals, as directed in the manufacturer specifications. The facility also features an enclosed lobby room and exit room (mantrap) that further separate the sales floor from the outside. This room provides an additional barrier that will assist in minimizing potential cannabis odor. Further, as conditioned, if cannabis odor is detected outside of the building or in an adjacent tenancy, 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. Such odor mitigation measures could include, but not be limited to, expanding or replacing the filtration system, sealing and/or adding odor resistant structural barriers or limiting certain product sales. Lastly, cannabis products are not allowed to be disposed of in the exterior trash enclosure.

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

The subject property abuts four existing residential properties developed with single-family homes. The commercial parking lot is separated from the residential rear yards by landscaping and an approximate eight-foot tall block wall. To ensure neighborhood compatibility, proposed project conditions and requirements include the following:

- Onsite, 24-hour security is required;
- Business hours are limited from 7AM to 10PM;
- Vendor deliveries are limited to business hours;

- The posting of signs in the parking lot to remind customers and vendors to keep noise levels to a minimum;
- Shield security lighting down and away from the homes to prevent light spillover. As conditioned, a photometric study would be required to be submitted during plan check to demonstrate that light levels at the residential properties are less than 0.5 foot candle;
- A security guard will monitor the parking area to ensure that customers are quiet, turn off vehicle engines promptly, do not play loud music, etc. As conditioned, should noise complaints arise, the business owner/operator shall institute operational measures deemed appropriate by the Director of Economic and Development Services; and

**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 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.

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.

**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 conditional use permit 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 (C1, Local 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 and non-storefronts (delivery) are 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 and no outdoor storage or sales are proposed nor would be allowed.

Staff does not anticipate that the proposed retail cannabis use would be materially detrimental to the adjacent commercial uses that include offices, hardware store/lumber yard and an automobile dealership. The proposed use would also not be materially detrimental to the abutting residences because the site features a block wall buffer, mature landscaping, limited operation hours and proposes to add security lighting shielded down and away from homes to prevent potential lighting impacts. The project also includes the posting of signs within the parking lot to remind customers and vendors to keep noise levels to a minimum and a security guard would be present onsite at all times to monitor the site, including interior and exterior conditions. Lastly, the storefront business would also include parking and odor control measures as described in this report to avoid impacts to nearby properties. As proposed and conditioned, 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 with delivery 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, having at least one security guard onsite at all times and the security guard will monitor all on-site delivery/vendor operations. Additionally, security devices shall be installed before operation, such as window and door alarms, motion-detectors, and a monitored video surveillance system covering all exterior entrances, exits, all interior limited access spaces, and designated employee/vendor parking spaces. In addition, all 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 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 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 are provided as an attachment to this report.

**CONCLUSION:**

The proposed project is a retail cannabis storefront business with delivery 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 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, 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 C1 zone, the Zoning Code, and the City's General Plan. Further, the project has been conditioned to minimize impacts to neighboring residential units. Staff believes the required findings for the CUP can be made, as described above, and therefore, staff recommends that the Planning Commission find that the project is categorically exempt from the provisions of CEQA Guidelines Section 15301 (Class 1), Existing Facilities; and approve Planning Application 21-27, subject to conditions of approval.