



Agenda Report

Item #: 25-311

Meeting Date: 6/3/2025

TITLE: APPEAL OF THE PLANNING COMMISSION'S DECISION TO UPHOLD THE DIRECTOR OF DEVELOPMENT SERVICES' DETERMINATION THAT CONDITIONAL USE PERMIT (CUP) PA-21-23 TO ESTABLISH A CANNABIS STOREFRONT LOCATED AT 1687 ORANGE AVENUE (KING'S CREW) HAS EXPIRED

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/ PLANNING DIVISION

PRESENTED BY: GABRIEL VILLALOBOS, ASSISTANT PLANNER

CONTACT INFORMATION: GABRIEL VILLALOBOS, ASSISTANT PLANNER, (714) 754-5610

RECOMMENDATION:

Staff recommends the City Council:

1. Find that the appeal is not subject to the California Environmental Quality Act (CEQA) per California Public Resources Code Section 15268; and
2. Uphold the Director of Development Services' determination that Conditional Use Permit (CUP) PA-21-23 has expired pursuant to Costa Mesa Municipal Code Sections 13-29(k)(2) and CUP Condition of Approval No. 2.

APPLICANT OR AUTHORIZED AGENT:

The applicant/authorized agent is Dan Thompson on behalf of Gold Flora Partners Costa Mesa LLC and the property owner, Orange Ave Investors, LLC.

BACKGROUND:

CUP PA-21-23

Pursuant to Costa Mesa Municipal Code (CMMC) Sections 9-494 and 13-200.93(c)(1), a conditional use permit (CUP) is required for the establishment of cannabis retail storefronts in Costa Mesa. On September 12, 2022, the Planning Commission approved CUP PA-21-23 and Resolution No. PC-2022-22, to allow the establishment of a retail cannabis storefront at 1687 Orange Avenue, subject to conditions of approval and local and State regulations. The commercial building was previously occupied by La Cresta Cleaners (dry cleaner). Although no additional floor area was proposed to the existing commercial building, the project included both interior and exterior upgrades. Project components also included site landscaping, providing eight offsite parking spaces at the adjacent shopping center, a bike rack and an employee shuttle service from a parking lot located at the business's nearby headquarters.

Image 1 – Offsite Parking Location

The subject property is located on the south side of East 17th Street near the intersection of East 17th Street and Orange Avenue. The site is zoned C1 (Local Business District) and is surrounded by other commercially zoned properties (C1, C2 - General Business District, C1-S - Shopping Center District, and PDC - Planned Development Commercial). The site has a General Plan Land Use Designation of General Commercial. Existing development on the subject property consists of a 2,778-square-foot single-story commercial building with five surface parking spaces. Access to the site is provided by an existing 18-foot-wide driveway from Orange Avenue. Existing businesses in the surrounding commercial centers consist of a variety of restaurants/bars, grocery stores, pharmacies, massage and beauty parlors, general retail, medical and general offices, fitness gym, automotive repair, and gas stations. The nearest residentially zoned properties (R2-HD; Multi-Family Residential High Density and R3; Multi-Family Residential District) are located to the south approximately 300 feet away from the subject property.

Image 2 – Street View Site Picture

On May 1, 2023, an application for building permits for the subject project was submitted (BC23-00238). There were four rounds of Building Department reviews between May 2023 and April 2024 to address needed corrections. On May 17, 2024, the Building Division informed the applicant that the building permit was ready to be issued and a “clean” set of plans for final stamping and payment of fees was needed for final permit issuance. On July 31, 2024, the Building Division again contacted the applicant and requested a clean set of plans for approval stamps and building permit issuance. The applicant did not provide the final set of plans for stamping and the building permit was never issued.

CUP Time Limits and Extensions

CUP Resolution Condition of Approval No. 2, which follows the language of CMMC Section 13-29(k), states:

“Approval of the planning/zoning application is valid for two years from the effective date of this approval and will expire at the end of that period unless the applicant establishes the use by one of the following actions:

- 1) A building permit has been issued and construction has commenced, and has continued to maintain a valid building permit by making satisfactory progress as determined by the Building Official; or*
- 2) A certificate of occupancy has been issued; or*
- 3) The use is established and a business license has been issued.*

A time extension can be requested no less than thirty (30) days or more than sixty (60) days before the expiration date of the permit and submitted with the appropriate fee for review to the Planning Division. The Director of Development Services may extend the time for an approved permit or approval to be exercised up to 180 days subject to specific findings listed in Title 13, Section 13-29 (k)(6). Only one request for an extension of 180 days may be approved by the Director. Any subsequent extension requests shall be considered by the original approval authority”.

The CMMC and CUP Condition of Approval No. 2 allows the applicant to, before the two-year expiration of the permit, request a time extension of up to 180 days, subject to the Director of Development Services approval and specific findings in CMMC 13-29(k)(6), and also allows a subsequent time extension to be approved by the Planning Commission if needed for time beyond the aforementioned 180 days and initial two-year period. Neither the applicant nor anyone acting on their behalf filed a written CUP extension of time, nor met any of the three aforementioned requirements to establish the use pursuant to CMMC 13-29(k)(2)(b).

In addition, CUP Condition of Approval No. 2 states that approval of the planning/zoning application is valid for two years from the effective date of the approval and will expire at the end of that period unless the applicant establishes the use pursuant to CMMC 13-29(k)(2)(b). Therefore, on September 19, 2024, Conditional Use Permit Application PA-21-23 expired. On December 2, 2024, the City issued a notice of expiration to the applicant. In reviewing the notice of expiration, the City Attorney’s office included information on appealing the City’s determination of expiration and giving the applicant an opportunity to share additional information on the factors leading to the expiration. The notice indicated that any appeal must be filed by 5:00 p.m. on December 9, 2024.

Appeal of Staff Decision to Planning Commission

On December 9, 2024, Laurie Holcomb (an owner of Gold Flora Partners Costa Mesa LLC), filed an appeal of the City's "planning matter" decision that the CUP had expired. The "reasons for requesting appeal" was stated as:

"Additional time is needed to address Southern California Edison's comments regarding the power distribution to the building. SCE originally indicated that they would be replacing the pole transformer to accommodate the project. After further discussion, SCE changed their position and will be keeping the existing transformer with modifications. As a result, our current plans cannot be used and we will need to revise most of the existing circuits, lighting schedule, single line diagram and the pane schedule."

Pursuant to CMMC Section 2-300, Appeal and Review Procedure, "the purpose of this chapter is to provide an orderly and fair method of appeal and review of decisions of the staff, committees, commissions and council of the City". The City's appeal procedures also require that a decision on "planning matters" pursuant to Title 13 be made by the Planning Commission (CMMC Section 2-309(2)). The City Attorney determined that the CUP expiration is a "planning matter" and subject to appeal.

Planning Commission Decision

After a continuation was granted by the Planning Commission from a previous hearing date scheduled on February 10, 2025, the appeal was heard by the Planning Commission on February 24, 2025, to consider the applicant's appeal of the staff determination that the subject application had expired. After receiving staff's presentation and recommendation, the Planning Commission asked questions of staff and then opened the public hearing. The applicant spoke on the appeal request and the Planning Commission subsequently asked questions of the applicant/appellant. After Commission deliberations, Commissioner Zich made a motion to find that the appeal is not subject to CEQA per California Public Resources Code Section 15268, and to uphold the staff determination that the Conditional Use Permit PA-21-23 had expired. The motion was seconded by Commissioner Martinez. Commissioner Zich further stated that the Condition of Approval No. 2 was clear in establishing the expiration date and no information was presented by the applicants to support overturning the expiration determination made by staff. Commissioner Martinez expressed that while unfortunate, the Planning Commission was not a policy setting body and must adhere to the City's Municipal Code. The Planning Commission upheld the staff determination that the CUP PA-21-23 had expired on a 6-0-1 vote, with Commissioner Dickson absent.

The final Resolution reflecting the February 24, 2025, Planning Commission action is provided as Attachment 3 to this report. The Planning Commission staff report and meeting minutes are provided as Attachments 4 and 5 respectively. The Planning Commission staff report, attachments and meeting video are provided at the links below:

- Planning Commission Staff Report and Attachments:
<https://costamesa.legistar.com/LegislationDetail.aspx?ID=7144850&GUID=760F888B-B2F1-4CEA-B6AD-9C2E0C1E93C9>

- Planning Commission Meeting Video:
https://costamesa.granicus.com/player/clip/4216?view_id=14&redirect=true

On February 27, 2025, the applicant submitted an appeal of the Planning Commission decision to be reviewed by the City Council.

City Council Public Hearing Continuation

On May 6, 2025, a City Council public hearing was held which included this item on the agenda. Prior to the hearing date, the applicant submitted a request in writing on May 2, 2025 for a continuance of the item to allow additional time for Gold Flora to better prepare for the public hearing.

One public comment letter opposing the requested appeal was submitted to the City prior to the original City Council meeting on May 6, 2025. During the City Council public hearing on May 6, 2025, there was one speaker in opposition of the appeal stating concerns with traffic and safety issues.

The City Council approved the request for continuation to a date certain of June 3, 2025, by a vote of 5-0. As of the date this report was written, the applicant has not submitted any additional applicant submittal/information.

ANALYSIS:

Appeal of the Planning Commission's Determination

The applicant's February 27, 2025 appeal application noted the following reason for the appeal:

"We are requesting time to update, process and value engineer the construction drawings per the direction of Southern California Edison and the City of Costa Mesa Water District".

Similar to the original staff determination appeal, the applicant's above assertion (reason for appeal) is not relevant to the matter of permit expiration. Since the applicant did not file an extension of time, the CMMC deems the permit expired. Importantly, the CMMC does not provide any mechanism to re-activate a land use permit after expiration; except, the submittal of a new CUP application. Pursuant to CMMC Section 13-29(k)(7), "after the expiration of the permit or approval, no further work shall be done on the site and no further use of the site shall occur until a new permit or approval, or other city permits or approvals are first obtained."

The City Council's review of this matter is generally limited to whether the staff determination is consistent with the applicable CMMC sections and project conditions of approval. Essentially, "did the applicant submit a timely request for a time extension." If the City Council cannot determine that an extension of time was filed, then the City Council should uphold the staff determination and the Planning Commission confirmation that the CUP application, pursuant to the CMMC, has expired.

City Council "De Novo" Hearing

Pursuant to CMMC Chapter 9, Appeal and Review Procedures, the City Council shall conduct a new or "de novo" review of the matter. The City Council may exercise its independent judgment and discretion in making a decision, and the appeal hearing is not limited to the grounds stated for the

review or the evidence that was previously presented to the Planning Commission. The City Council's decision on the matter is the final decision.

ENVIRONMENTAL DETERMINATION:

As described in the September 12, 2022, Agenda Report and Resolution No. 2022-22, the proposed cannabis storefront use is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Class 1), Existing Facilities. The determination that a CUP has expired is a "ministerial" decision and is not subject to CEQA pursuant to California Public Resources Code Section 21068.

ALTERNATIVES:

The City Council can consider the following decision alternatives:

1. Uphold the Planning Commission decision – The City Council may adopt the attached Resolution that upholds the Planning Commission's decision that the entitlement for the cannabis storefront has expired; or
2. Uphold the Planning Commission decision subject to conditions and/or modifications – As a "de novo" review, the City Council may uphold the Planning Commission's decision with specific project changes/modifications that are necessary to address City Council concerns; or
3. Continue the item – The City Council may continue the item to a future meeting to allow for modifications or additional analysis; or
4. Overturn the Planning Commission's project expiration determination – If the City Council believes that the project has not expired, the City Council may direct staff to prepare a Resolution reflecting the City Council's findings.

FISCAL REVIEW:

There are no fiscal impacts to the Fiscal Year 2024-25 City Budget.

LEGAL REVIEW:

The City Attorney's Office has reviewed this report and approves it as to form.

PUBLIC NOTICE:

Pursuant to CMMC Section CMMC 2-308 (*Notice of Appeal or Review*), notice of the hearing for the appeal or review shall be given in the same manner as any required notice for the hearing at which the decision subject to the appeal or review was made. As provided with the original Planning Commission review, pursuant to CMMC Section 13-29(d), 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 on Wednesday, April 23, 2025. 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 on Thursday, April 24, 2025.
3. Newspaper publication. A public notice was published once in the Daily Pilot newspaper on Friday, April 25, 2025.

Due to the continuation of the item from the May 6, 2025 meeting to the date-certain June 3, 2025 meeting, re-notification was not required. Any public comments received prior to the June 3, 2025, City Council meeting, may be viewed at this link: [CITY OF COSTA MESA - Calendar \(legistar.com\)](https://legistar.com/calendar/city-of-costa-mesa/)

CITY COUNCIL GOALS AND PRIORITIES:

This item is administrative and therefore is not applicable to City Council goals and priorities.

CONCLUSION:

Land use and building permit expirations serve to ensure that construction projects are completed within a reasonable timeframe, preventing prolonged commercial vacancies and disruptions to the community by prompting project owners to actively progress and finish their work, rather than letting projects linger indefinitely. Permit expirations also assist in maintaining safety standards by requiring re-evaluation of the project if significant time passes without substantial progress. Both the CMMC and the project conditions of approval include specific regulations related to expiration of the subject permit. Included in these regulations, time extensions are permitted; however, neither the applicant nor anyone acting on their behalf requested a CUP extension and therefore both the City staff and the Planning Commission determined the land use permit expired pursuant to the CMMC.