



# **PLANNING COMMISSION AGENDA REPORT**

MEETING DATE: MARCH 27, 2023

ITEM NUMBER: PH-1

**SUBJECT: PLANNING APPLICATION 21-39 FOR A CONDITIONAL USE PERMIT  
TO OPERATE A RETAIL CANNABIS STOREFRONT BUSINESS  
LOCATED AT 770 W. 19TH STREET (NEBRINA)**

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

**PRESENTATION BY: NANCY HUYNH, SENIOR PLANNER**

**FOR FURTHER INFORMATION CONTACT: NANCY HUYNH  
714.754.5609  
Nancy.Huynh@costamesaca.gov**

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## **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 21-39, subject to conditions of approval.

## **APPLICANT OR AUTHORIZED AGENT**

The applicant/authorized agent is Brandon Banks, on behalf of the property owner, Glynis Ablon.

## **PLANNING APPLICATION SUMMARY**

|           |                                                                                                              |                        |          |
|-----------|--------------------------------------------------------------------------------------------------------------|------------------------|----------|
| Location: | 770 W. 19 <sup>th</sup> Street                                                                               | Application Number(s): | PA-21-39 |
| Request:  | Planning Application 21-39 is for a Conditional Use Permit to operate a retail cannabis storefront business. |                        |          |

### **SUBJECT PROPERTY:**

### **SURROUNDING PROPERTY:**

|                       |                                                                                                |                                           |                                              |
|-----------------------|------------------------------------------------------------------------------------------------|-------------------------------------------|----------------------------------------------|
| Zone:                 | C1 (Local Business District)                                                                   | North:                                    | R2-HD; Multi-Family Residential High Density |
| General Plan:         | General Commercial                                                                             | South:<br>(Across W 19 <sup>th</sup> St.) | C1; Local Business District                  |
| Lot Dimensions:       | 117 FT x 90 FT                                                                                 | East:                                     | C1; Local Business District                  |
| Lot Area:             | 10,500 SF                                                                                      | West:                                     | C1; Local Business District                  |
| Existing Development: | The property is developed with an existing 1,933-square-foot single-story commercial building. |                                           |                                              |

## **DEVELOPMENT STANDARDS COMPARISON**

| Development Standard                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Required/Allowed<br>C1 Dev. Standard                           | Proposed/Provided                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|------------------------------------------|
| Minimum Lot Size                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 12,000 SF                                                      | 10,500 SF <sup>1</sup>                   |
| Minimum Lot Width                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 60 ft.                                                         | 117 ft.                                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                |                                          |
| Building Height                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 2 Stories / 30 ft.                                             | 1 story / 13 ft.                         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                |                                          |
| Setbacks:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                |                                          |
| Front                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 20 ft.                                                         | 14 ft. 6 in. <sup>1</sup>                |
| Side (interior)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 15 ft. / 0 ft.                                                 | 36 ft. 9 in. (west) / 4 ft. 5 in. (east) |
| Rear (interior)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 26 ft. <sup>2</sup>                                            | 49 ft.                                   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                |                                          |
| Parking                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 8 spaces                                                       | 12 spaces                                |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                |                                          |
| Floor area ratio (FAR)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 0.20                                                           | 0.18 <sup>3</sup>                        |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                |                                          |
| <p>1 Existing lot size and front setback/landscaped front setback are legal non-conforming; refer to the Non-conforming Development section of this agenda report.</p> <p>2 Pursuant to CMMC Section 13-44, required rear setback for a commercial zone property abutting a residential zone is two times the building height at all locations.</p> <p>3 Existing nonconforming FAR is 0.29, however, an unpermitted rear structure is proposed to be demolished to bring the FAR into conformance with the maximum allowed for a C1 zone; refer to the Nonconforming Development section below.</p> |                                                                |                                          |
| CEQA Status                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Exempt per CEQA Guidelines Section 15301 (Existing Facilities) |                                          |
| Final Action                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Planning Commission                                            |                                          |

## **BACKGROUND**

The subject property is located at 770 W. 19<sup>th</sup> Street. The property is located west of State Route 55 Freeway and is bounded by W. 19<sup>th</sup> Street to the south, Palace Avenue to the west, and Wallace Avenue to the east. The site is zoned C1 (Local Business District) and is surrounded by other commercially-zoned properties (C1) as well as residentially-zoned properties (R2-HD – Multi-Family Residential High Density and R3 – Multi-Family Residential). The site has a General Plan Land Use Designation of General Commercial.

Existing development on the subject property consists of an approximate 2,000-square-foot single-story commercial building with an 1,100-square-foot unpermitted detached structure at the rear of the property, that is proposed to be demolished. The property was originally developed in the mid-1960s and subsequent building additions were approved in the mid-1970s. City permit records indicate that the rear detached structure was permitted in the mid-1970s; however, the approval was for an 800-square-foot building and therefore was increased in size subsequently without City approval. The property also includes an existing 18-foot tall, two-sided, billboard sign located towards the front of property.

Parking spaces are provided in the existing surface parking lot which serves the commercial building and is not shared with any other properties. Access to the site is provided by two approximately 17-foot wide one-way driveways located along W. 19<sup>th</sup> Street (entrance only) and Palace Avenue (exit only). There are existing access gates along the two driveways but remain open during normal business hours. Pacific Sprinkler Supply, a retail landscaping supply store, currently occupies the existing building. The proposed retail cannabis storefront use, “Nebrina”, would occupy the entire building.

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 surrounding commercial centers consist of a variety of general retail (nail/hair salons, florist, gas stations, and convenience stores), medical and general offices, grocery stores, and restaurants/bars. The nearest residentially-zoned property (R2-HD) is developed with a multi-family residential use (Wallace Apartments), which directly abut the subject property. The multi-family residential structure is located approximately 76 feet from the licensed premise area, which is separated by existing landscaping, a six-foot block wall, and the multi-family and subject property’s parking lots.

The applicant has partnered with an existing cannabis manufacturing and non-storefront retail facility, Expando Products, in Costa Mesa – which was approved in 2018 under Measure X. Expando Products has been operating since 2019. There are no open Code Enforcement cases on this property.

### ***Nonconforming Development***

The existing development is legal nonconforming in terms of the lot size, FAR, front building setback, and landscaping, 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 any new site modifications do not result in greater site nonconformities, and such improvements bring the site into greater conformance with Code requirements.

Improvements would be made to bring this structure into compliance with current building and safety codes; however, and as specifically allowed by the CMMC, the existing site nonconformities can remain pursuant to the City's legal nonconforming provisions. The applicant proposes to demolish the existing 1,100-square-foot detached unpermitted structure which would bring the FAR into conformance with the maximum allowed for a C1 zone property. The applicant also proposes to provide additional landscaping to bring it into closer conformance with the minimum landscaping requirements. The property complies with all other applicable commercial zone development standards including the side and rear setback, parking, building height, and lot width.

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

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

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

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

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

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

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

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

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

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

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

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

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

- Obtaining building permits;
- Completing tenant improvements; and

- Demonstrating through various City reviews/inspections that all conditions of approval have been satisfied, and that all other requirements of the CMMC have been met.

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

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

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

## **DESCRIPTION**

Planning Application 21-39 is a request for a CUP to allow a retail cannabis storefront in an existing 1,933-square-foot single-story commercial building located at 770 W. 19<sup>th</sup> Street. The affiliated State license is a Type 10 "storefront retailer" license which also allows for retail cannabis delivery. However, the applicant is not proposing retail delivery services. Should the storefront wish to offer delivery services in the future, an amendment to the CUP would be required.

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

## **ANALYSIS**

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

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

The subject site is located within a commercial zone (C1 – Local Business District) where commercial development is specifically allowed to include cannabis retail storefronts

subject to a conditional use permit. The property is located on one of the City's primary commercial corridors and generally surrounded by other commercial uses. As defined in the CMMC, "this district is intended to meet the local business needs of the community by providing a wide range of goods and services in a variety of locations throughout the City." Pursuant to the CMMC, cannabis retail storefronts and non-storefronts are subject to extensive regulation (as specifically described in this report) which are adopted to prevent land use inconsistencies with adjacent properties. Pursuant to the CMMC, the approval of a CUP requires that the Planning Commission make specific findings related to neighborhood compatibility, health and safety, and land use compatibility. The analysis regarding CUP findings is provided below in this report.

### ***Separation Requirements***

CMMC Section 13-200.93(e) stipulates that no cannabis retail storefront use shall be located within 1,000 feet from a K-12 school, playground, licensed child daycare, or homeless shelter, or within 600 feet from a youth center as defined in CMMC Title 9, Chapter VI, Section 9-485, that is in operation at the time of submission of a completed cannabis business permit application. All separation distances are measured in a straight line ("as the crow flies") from the "premises" (with the exception of playgrounds), where the cannabis retail use is to be located to the closest property line of the sensitive use(s). (For playgrounds, the property line is a 30-foot radius from the exterior physical boundaries of the playground equipment area.) Premises is as defined in the State's Business and Professions Code Section 26001 as *the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.* Therefore, the premises only include the retail cannabis activity areas (including sales, storage, back-of-house and/or other ancillary areas) and excludes the parking lot and other areas that are not part of the area licensed by the State for commercial cannabis activity. The subject site complies with the required separation from sensitive uses.

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

The applicant proposes to update the building façade with new paint and new diagonal wood slat siding to modernize the exterior. Other proposed exterior improvements include:

- Demolishing the rear unpermitted structure to provide more parking spaces and improve onsite circulation;
- Repaving and restriping the surface parking lot to comply with the City's Parking Design Standards;
- Adding a bicycle rack to encourage multi-modal transportation;
- Replacing the existing chain link gate along Palace Avenue to wrought iron to be consistent with the existing wrought iron gate along the property's frontage;
- Constructing a new trash enclosure;
- New rooftop screening to screen the existing mechanical equipment;

- Improve the site landscaping to bring the property into closer conformance with the CMMC landscape requirements. New landscaping would be installed along the frontage and rear towards the parking lot including two new 24-inch box trees, a variety of five and 15-gallon drought tolerant shrubs, and live groundcover. The applicant has provided a conceptual landscaping plan as part of their CUP plan submittal. A detailed landscaping plan would be reviewed during the building plan check process for consistency with the conceptual plan as conditioned, should the CUP be approved; and
- Installation of security lighting and surveillance cameras. A preliminary lighting/photometric plan has been provided and will be further reviewed during the building plan check process, as conditioned.
- New business signs. Proposed business signs would be reviewed and permitted separately per the City's sign code requirements. Pursuant to Condition of Approval No. 6 (Prior to Issuance of Building Permits), business signage shall not include references to cannabis, whether in words or symbols. As previously indicated, the property includes an existing 18-foot tall, two-sided, billboard sign. The City Council approved the billboard sign in 1962. Pursuant to Municipal Code Section 13-111 (Definitions), a "billboard" can only advertise off-site businesses and services. Therefore, the billboard sign cannot be used to advertise the proposed onsite storefront business, or otherwise include cannabis references in words or symbols pursuant to Condition of Approval No. 6.

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

The proposed floor plan would involve construction of new demising walls to create new rooms including a retail sales area, a reception, and "back-of-house" areas. The "back-of-house" areas include a storage room, office, employee break room, receiving room (for distribution orders) and a restroom. Below is a floor area summary of the 1,933-square-foot tenant space.

**Table 1 – Floor Plan Summary**

| <b>Operational Area</b> | <b>Square Feet</b> |
|-------------------------|--------------------|
| Retail Sales Area       | 954 SF             |
| Reception               | 224 SF             |
| Storage Room            | 71 SF              |
| Office                  | 87 SF              |
| Receiving Room          | 131 SF             |
| Employee Break Room     | 162 SF             |
| Bathroom                | 80 SF              |
| Hallways                | 224 SF             |
| Total                   | 1,933 SF           |

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

Customer access is limited to the reception and retail sales area. Customer circulation into the proposed establishment includes entering the licensed premise through the main entrance doors that connect directly into the reception area. A greeter employee would verify the customer's identity and age before allowing the customer to enter the retail sales area. After a customer's identity and age is verified and their transaction is

completed, they must leave the premise. As further conditioned, a security guard would monitor the area at all times to ensure that customers are following regulations.

All other areas of the premises would be accessible only to employees with the proper security credentials. Employees would enter through the employee only access-controlled entrance that leads directly into the back-of-house areas.

### ***Vendor Access***

During business hours, vendor vehicles (licensed distributors) would use pre-designated loading/unloading space located towards the front of the property, which is approximately 40 feet from the employee only access-controlled entrance. There would be security cameras installed on the building's exterior to ensure camera coverage of the entire parking lot.

Vendor deliveries would have pre-committed arrival times set by the storefront's operational managers. Licensed vendors would only be allowed to enter the premise while accompanied by an employee with the proper security credentials. In addition, a security guard would monitor the vendor vehicle until the loading/unloading activity is 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.

### ***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;
- 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 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:
  - o Date and time of transaction;
  - o Name and employee number/identification of the employee who processed the sale;
  - o List of all cannabis goods purchased including quantity; and
  - o Total transaction amount paid.
- There must be specific 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 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 the proposed retail operations.

## ***Security Plan***

The applicant has submitted a professionally prepared security plan for the proposed retail cannabis establishment. The City's cannabis consultant reviewed the security plan and determined that appropriate security measures were included to address the City's security requirements pursuant to CMMC Title 9, Chapter VI, and State law. Since the security plan contains sensitive operational details that require limited public exposure to remain effective, the plan is not included as an attachment. However, the following is a list of general security measures that are required for 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 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 uses are subject to the same parking ratio requirement as other retail establishments in the City (four spaces per 1,000 square feet of gross floor area). Based on this ratio, the 1,933-square-foot facility would be required to provide eight onsite parking spaces.

The subject property is developed with ten parking spaces provided in a surface lot that serves the existing commercial building. However, the applicant proposes to demolish the existing unpermitted rear detached building to improve onsite circulation and provide additional parking. After demolishing the unpermitted structure and reconfiguring the parking lot, the property would provide 12 parking spaces (including credit for one bicycle rack) which would increase the existing parking supply by two spaces as well as exceed the minimum required parking by four spaces. In addition, the proposed retail cannabis storefront would be replacing another retail use (landscaping

supply store) that had the same retail parking requirements and all available parking spaces onsite would serve the cannabis business (i.e. parking spaces are not shared with other tenants/businesses). Therefore, there would be adequate parking available to serve the proposed storefront. The property has one point of ingress (entrance) along W. 19<sup>th</sup> Street and one point of egress (exit) along Palace Avenue. Both access points are provided by two existing one-way only driveways. There is an existing public sidewalk at the front of the property along W. 19<sup>th</sup> Street, which provides access to the site for pedestrians and bicyclists.

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; however, if parking shortages or other parking-related problems occur, the business owner or operator will be required to monitor the parking lot and institute appropriate operational measures necessary to minimize or eliminate the problem in a manner deemed appropriate by the Director of Economic and Development Services (see “Operational Conditions” of Approval No. 6 in the attached Resolution). Examples of parking demand management techniques include, but are not limited to, offsite parking for employees, reducing operating hours of the business, hiring an employee to monitor parking lot use and assist with customer parking lot circulation, offering delivery services to reduce in person store visits, 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 Citywide Traffic Impact Fee related to new and expanding developments is determined using estimated Average Daily Trips (ADT), which is the combined total number of vehicular trips both in and out of a development generated throughout an average weekday. The Transportation Services Division determined that the appropriate ADT for a cannabis retail establishment is approximately 108 trips per 1,000 square feet based on the Institute of Transportation Engineers (ITE) 11<sup>th</sup> 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/existing use(s) and is credited (subtracted) from the proposed use to estimate potential changes in trip generation for ADT and peak hour trips. The proposed use would be subject to a traffic impact fee based on net ADT. The estimated traffic impact fee is approximately \$23,000. The fee calculation would be finalized during the building permit plan check process and must be paid prior to building permit issuance.

CMMC Section 13-275(a), specifies that “a traffic impact study shall be required for all development projects estimated by the Public Works Department to generate one

hundred (100) or more vehicle trip ends during a peak hour.” The highest peak hour trips in either the AM or PM 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.

### ***Odor Attenuation***

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

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

The subject property abuts an existing residentially-zoned property. The applicant has conducted outreach to the surrounding properties including the residential community. To ensure neighborhood compatibility, proposed project conditions and requirements include the following:

- Business hours are limited from 7AM to 10PM;
- Security lighting is shielded and directed down/away from the residentially-zoned properties to prevent light spill. As conditioned, a photometric study would be required to be submitted during plan check to demonstrate that light levels at the residential property are minimal;
- Post signs within the parking lot to remind customers and vendors to keep noise levels to a minimum (the security guard shall also be responsible for noise enforcement);
- Limit the hours that the business can dispose of waste at the trash enclosure to avoid noise impacts during sensitive hours i.e. dispose of trash between 8AM and 8PM; and
- A staff person or the required 24-hour security guard will monitor the site’s parking areas to ensure that customers are quiet, turn off vehicle engines promptly, do not play loud music, and generally do not create excessive neighbor disturbances. The parking lot monitoring will be especially diligent to prevent noise and other neighbor disturbance during morning and evening business hours.

## **GENERAL PLAN CONFORMANCE**

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

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

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

**Consistency:** The proposed use would provide 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.

**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.

**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 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. In addition, the property is located on one of the City's primary commercial corridors which is predominantly intended for commercial uses. Pursuant to the CMMC, cannabis retail storefronts are conditionally permitted uses in the City's commercial zones and are subject to extensive regulation (as specifically described in this report). These regulations are adopted to prevent land use inconsistencies with adjacent properties. Additionally, the proposed cannabis retail storefront use is not located within 1,000 feet of a K-12 school, playground, licensed child daycare, or homeless shelter, or within 600 feet of a youth center. All retail sales would take place underroof, no outdoor storage or sales are proposed nor would be allowed, and operations would be conditioned to be compliant with applicable local and State laws as well as to minimize potential impacts. Staff does not anticipate that the proposed retail cannabis use would be materially detrimental to the adjacent uses that include residential uses, a variety of office and commercial uses, and multi-tenant commercial centers. To ensure neighborhood compatibility especially with residential uses, proposed project conditions and requirements have been included such as posting parking lot signs to remind customers to keep noise levels to a minimum, shielding security lighting down/away from residential properties, and limiting business hours from 7AM to 10PM. Existing businesses in the surrounding commercial area consists of a variety of general retail (nail/hair salons, florist, gas stations, and convenience stores), medical and general offices, grocery stores, and restaurants/bars. Therefore, the retail cannabis use would be compatible with other properties within the area, and in compliance with local and State requirements.

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

The proposed cannabis retail storefront use would follow safety measures detailed in a professionally-prepared security plan. The security plan was evaluated for compliance by the City's cannabis consultant, HdL. Measures designed to maintain safety at the site include, but are not limited to, at least one security guard would be onsite at all times and security devices shall be installed before operation. Examples of security devices include window and door alarms, motion-detectors, limited access areas, and a monitored video surveillance system

covering all exterior entrances, exits, and all interior limited access spaces. In addition, the business employees, and part-time staff, must pass a live scan background check and obtain an identification badge from the City. The conditions of approval include, but are not limited to, the aforementioned security measures to ensure that the use would not be materially detrimental to the health, safety and general welfare of the public or be otherwise injurious to property or improvements within the immediate neighborhood.

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

The proposed retail use is located within an existing commercial building on a property that has a General Plan land use classification of “General Commercial.” 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 a full range of commercial activity present and desired in Costa Mesa.” The use is consistent with General Plan policies related to providing a mixture of commercial goods, services, and employment opportunities; expanding the City’s tax base; and promoting the incubation of unique and specialized businesses.

## **ENVIRONMENTAL DETERMINATION**

The project is categorically exempt from the provisions of 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 retail 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. Furthermore, none of the exceptions that bar the application of a categorical exemption pursuant to CEQA Guidelines Section 15300.2 applies. Specifically, the project would not result in a cumulative impact; would not have a significant effect on the environment due to unusual circumstances; would not result in damage to scenic resources; is not located on a hazardous site or location; and would not impact any historic resources.

## **ALTERNATIVES**

The Planning Commission can consider the following decision alternatives:

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

meeting to allow a redesign or additional analysis. In the event of significant modifications to the proposal, staff will return with a revised Resolution incorporating new findings and/or conditions.

3. **Deny the project.** If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission must deny the application, provide facts in support of denial, and direct staff to incorporate the findings into a Resolution for denial. If the project is denied, the applicant could not submit substantially the same type of application for six months.

## **LEGAL REVIEW**

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

## **PUBLIC NOTICE**

Pursuant to Title 13, Section 13-29(d) of the Costa Mesa Municipal Code, three types of public notification have been completed no less than 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 March 27, 2023 Planning Commission meeting will be provided separately.

## **CONCLUSION**

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

If the Planning Commission approves the project, the applicant would next obtain building permits, complete tenant improvements, and pass City inspections prior to obtaining a CBP and City Business License. The CBP is valid for two years and must be continuously renewed, including inspections, prior to expiration. During each two-year CBP period, the Community Improvement Division, along with other City staff, will

conduct site inspections to verify that the operation complies with CUP and CBP requirements.

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. The required findings for the CUP can be made, as described above, and therefore, staff recommends approval of Planning Application 21-39 subject to conditions of approval.