PLANNING COMMISSION AGENDA REPORT

MEETING DATE: August 14, 2023 **ITEM NUMBER: PH-2**

SUBJECT: PLANNING APPLICATION 23-04 FOR A CONDITIONAL USE PERMIT TO ALLOW A TATTOO AND BODY PIERCING (BODY ART) ESTABLISHMENT AT 1834 NEWPORT BLVD, UNITS C & D

FROM: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/ PLANNING DIVISION

PRESENTATION BY: GABRIEL VILLALOBOS, ASSISTANT PLANNER

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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 (Existing Facilities); and
2. Approve Planning Application 23-04, subject to conditions of approval.

APPLICANT OR AUTHORIZED AGENT

The authorized agent is Emil Allahverdiyev, on behalf of the property owner Mario Tambellini.

PLANNING APPLICATION SUMMARY

Location:	1834 Newport Blvd, Units C & D	Application Numbers:	PA-23-04
Request:	Planning Application 23-04 is a request for a Conditional Use Permit for the establishment of a new tattoo and body piercing (body art) establishment (Cleopatra Ink) at 1834 Newport Blvd, Units C & D. The proposed use will occupy an approximately 1,300-square-foot space located within a multi-tenant commercial building. Proposed hours of operation are 10 a.m. to 10 p.m., seven days a week.		

SUBJECT PROPERTY:		**SURROUNDING PROPERTY:**	
Zone:	C2 (General Business District)	North:	C2 (General Business District)
General Plan:	General Commercial	South:	C2 (General Business District)
Lot Dimensions:	25 FT x 173 FT	East:	P (Off-Street Parking District); R2-HD (Multiple-Family Residential, High Density)
Lot Area:	4,337 SF	West:	PDC (Planned Development Commercial)
Existing Development:	Existing 3,400-square-foot, multi-tenant commercial building with no on-site parking stalls.		

DEVELOPMENT STANDARDS COMPARISON

Development Standard	Required/Allowed C2 Dev. Standard	Proposed/Provided
Building Height	2 stories/30 feet (maximum)	23’ 4” provided
Setbacks:		
Front	20 ft. (minimum)	0 ft. provided
Side (left/ right)	15 ft. / 0 ft. (minimum)	0 ft. / 0 ft. provided
Rear	0 ft. (minimum)	24 ft. 11 in. provided
Landscape Setback – front	20 ft. (minimum)	0 ft. provided
Parking	14 spaces	0 provided
CEQA Status	Exempt per CEQA Guidelines Section 15301 (Existing Facilities)	
Final Action	Planning Commission	

BACKGROUND

The proposed project site is located at 1834 Newport Boulevard (Units C and D), between Broadway and East 18th Street. The applicant ("Cleopatra Ink") own and operate over 90 body art establishments worldwide, with five more existing and/or proposed studios located in the United States.

The project site is zoned C2 (General Business District) and is surrounded by other properties zoned C2 to the north and south, PDC (Planned Development Commercial) to the west, and "P - Parking" (Off-Street Parking District) and R2-HD (Multi-Family Residential, High Density) to the east. The site has a General Plan land use designation of "General Commercial" and is surrounded by "General Commercial" designated parcels to the north and south, "Commercial Center" to the west, and "High Density Residential" to the east. Surrounding land uses include various retail to the north and west (including the "Triangle Square"), a bar ("Goat Hill Tavern") and retail shops to the south, and a public alley, public parking lot and multi-family housing development generally located to the east.

The project site is developed with an existing, two-story, multi-tenant commercial building that is approximately 3,400 square feet. The leasable area on the first-floor is approximately 2,600 square feet and contains four tenant spaces, including the proposed body art establishment (Units C and D), and two spaces currently occupied by an aesthetician (Unit E) and salon (Unit F). The second-floor area is approximately 800 square feet and is comprised of two tenant spaces, both occupied by one barbershop (Units A and B). The existing building is developed to the property boundaries at the front and side property lines. The building is setback from the rear property line by approximately 25 feet, with an outdoor patio area currently occupying this space. City permit records for the project site indicate that the building was permitted as a commercial building in 1961, under Building Permit No. 13774.

Nonconforming Development

The existing development is legal nonconforming in terms of landscaping, setback, parking, and floor area ratio, and is therefore 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. The City's Nonconforming Provisions (CMMC Section 13-204) also indicate that "If the development has less parking than required for the existing conforming use, the existing use may not be replaced with a use requiring more parking unless the additional parking required for the new use is provided. Other uses on the same site may continue with the existing nonconforming parking." Body art establishments are considered a "retail" service and therefore pursuant to CMMC Section 13-89, require four parking spaces per 1,000 square feet of floor area. Since the previous use in Units C and D (a vape shop) was also a retail use, the tattoo establishment is not considered

an intensification of use and therefore does not require additional parking to be provided (site parking conditions are further described below). No exterior site improvements or expansions are proposed, and, with the exception of future signage, the project is generally limited to an interior tenant improvement (TI).

DESCRIPTION

Planning Application 23-04 is a request for a Conditional Use Permit (CUP) to allow a tattoo and body piercing (body art) establishment ("Cleopatra Ink") to locate in an approximately 1,300-square-foot tenant space (Units C & D combined). The proposed land use would consist of tattooing and piercing (body art) with an ancillary retail component for branded merchandise. The layout of the establishment would consist of a reception area, five tattooing/piercing stations, one restroom, a waiting lounge area, and a pre-tattoo artist design/drawing area. The business proposes to operate from 10 a.m. to 10 p.m., seven days a week, and will employ a maximum of three employees on-site at any one time, including one designer and two tattoo artists. According to the applicant, body piercing is a very small component of the proposed body art operations, and when a body piercing service is requested, a specialized employee would be contracted for this service.

The tattooing sessions and piercings are provided by appointment-only, with customers scheduling appointments through the Cleopatra Ink website or by phone. The attached project description letter states that the applicant anticipates a daily average of five customer appointments, and anticipates no more than two stations in operation at any one time (including tattooing and body piercing). The appointments will be staggered throughout the day to avoid overlaps. The average duration of a tattoo appointment is two hours, depending on the size and complexity of the tattoo. Piercings typically take a significantly shorter amount of time than tattooing.

ANALYSIS

Conditional Use Permit (CUP)

As indicated in Costa Mesa Municipal Code (CMMC) Land Use Table 13-30, tattoo (body art) establishments are conditionally permitted in the C2, General Commercial Business District, subject to the Planning Commission approval of a Conditional Use Permit. Pursuant to the CMMC, the intent of the C2 Zoning District is to "provide for those uses which offer a wide range of goods and services which are generally less compatible with more sensitive land uses of a residential or institutional nature". The proposed project is located within the C2 Zone, and as such, is subject to the approval of the CUP. Pursuant to the CMMC Section 13-29, CUPs are subject to specific findings (described further below under "Findings") and approval by the Planning Commission.

Health and Sanitation

Pursuant to Title 8 “Health and Sanitation”, Chapter VI “Tattooing Establishment and Operation Regulations” of the CMMC, the proposed business shall be required to maintain a high level of cleanliness and implement sanitary practices for health and safety issues related to tattooing and body art. Specific local regulations include, but are not limited to, the proper maintenance of the premises (Section 8-137), proper maintenance and sterilization of pigments, dyes and equipment (Section 8-139), and County Health Officer inspection protocols (Section 8-154). The proposed project is also conditioned to maintain compliance with County of Orange Environmental Health Department regulations and the applicable provisions of the California Health and Safety Code, Division 104, Part 15, Chapter 7 pertaining to “Body Art”.

Lastly, a condition of approval has also been included in the attached resolution, regarding the tattooing and piercing of “specific anatomical areas” as defined in Title 13, Chapter IX, Article 1 (Sexually Oriented Businesses) of the CMMC. This condition requires that all tattooing and piercing of “specific anatomical areas” as defined by the CMMC, shall be performed in a manner not visible to the public or other customers within the vicinity.

Interior Improvements

Proposed interior improvements for the subject property include the renovation of an approximately 1,300-square-foot tenant space. The existing tenant space is an open floor plan with an existing 55-square-foot restroom. The space was previously occupied by a vape shop and other various commercial/retail establishments. The space will be renovated by the applicants to include a new desk area for reception, five body art working stations divided by partitions, a new sink and countertop for the waiting lounge area and furniture for customer seating. As conditioned, the applicants will be required to apply for building permits for any electrical or plumbing work performed within the tenant space. Any proposed signage will be permitted through a separate sign permit and must be reviewed by the planning division for compliance with the City’s sign ordinance for approval.

Parking

The site is developed with an approximate 3,400-square-foot, multi-tenant commercial retail building currently occupied by an aesthetician, nail salon, and barbershop. Pursuant to the CMMC, the existing uses and the proposed body art establishment are required to provide off-street parking at a ratio of four spaces for every 1,000 square feet of gross floor area. Based on this parking ratio, the CMMC requires the site to be developed with 14 on-site parking spaces. As previously mentioned in the “nonconforming” section of this report, the project site is not developed with any on-site parking, and therefore the property is considered to be legal-nonconforming in regard to required parking. Pursuant to the nonconforming provisions of Section 13-204 of the CMMC, a new use can replace an existing use without compliance with parking requirements at a nonconforming site, as

long as the parking demand from the proposed use does not exceed the parking demand of the previous use. The proposed parking demand of the body art establishment is comparable with the previous retail tenant's parking demand, and therefore the use is allowed pursuant to the CMMC nonconforming provisions.

Additionally, although there are no parking spaces provided on-site, this commercial development and the surrounding retail establishments are served by adjacent City-owned off-street public parking. This City public parking area has served the adjacent retail corridor for many years and continues to provide for customer and/or employee parking demand.

GENERAL PLAN CONFORMANCE

The property has a General Plan Land Use designation of "General Commercial". Pursuant to this General Plan designation, commercial/retail uses are allowed. As a result, the proposed body art establishment conforms to the City's General Plan. The following analysis evaluates the proposed project's consistency with the most relevant goals, objectives, and policies of the 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 needs of the business and residential segments of the community.*

Consistency: The site is located on a commercial corridor within a diverse commercial area that is located in close proximity to other retail, food and drinking establishments. The proposed project would provide a distinctive service and new employment opportunities for the community.

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

Consistency: The site is located approximately 170 feet from the nearest residential use, separated by a public alley and a city-owned public parking area. Conditions of approval require that all uses shall be conducted within the building (underroof) and ensure the proposed use would operate with minimal impacts to adjacent properties. The use entrance is oriented towards Newport Boulevard.

FINDINGS

Pursuant to Section 13-29 (g)(2), 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 meet 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.*

  As conditioned, the proposed body art establishment would be compatible with surrounding commercial uses and would not negatively impact nearby residential uses. The proposed body art establishment is located is in a diverse commercial area including a variety of commercial, retail and dining/drinking establishments. The use is proposed approximately 170 feet from residential uses and therefore to prevent nuisances, conditions of approval have been included that limit hours of operation to be no later than 10 PM, and prohibiting signs/limiting lighting at the rear of the property facing the residences. Lastly, the proposed use will not substantially increase traffic or parking demand at the commercial site beyond existing/previous levels.

- *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 body art operations will comply with Assembly Bill 300 (California Health and Safety Code, Division 104, Part 15, Chapter 17) which establishes State required health and safety standards for body art establishments. In addition, the proposed establishment is required to comply with City's health and safety standards established in Title 8 "Health and Sanitation", Chapter VI "Tattooing Establishment and Operation Regulations" of the CMMC.

- *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 use is consistent with the "General Commercial" General Plan land use designation, and there are no Specific Plans applicable to the property. The proposed body art establishment does not include an expansion in floor area, and would not change existing site development density or intensity.

ENVIRONMENTAL DETERMINATION

The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Class 1) Existing Facilities. The exemption applies to the minor alteration of existing public or private structures involving negligible or no expansion of use. The proposed project requires interior improvements to Unit C and D to repurpose the space for a body art establishment, and the use is consistent with the applicable General Plan land use designation and applicable 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 significant 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 August 14, 2023 Planning Commission meeting will be provided separately to the Planning Commission.

CONCLUSION

The proposed project is a request for a new body art establishment within a commercial zone that is located on one of the City's commercial corridor. The use is consistent with the City's Zoning Code and General Plan, and staff recommends that the Planning Commission approve the project, subject to the conditions of approval.