



City of Costa Mesa

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 22-619

Meeting Date: 3/14/2022

TITLE:

**CANNABIS RETAIL STOREFRONT AND NON-STOREFRONT REGULATIONS -
INFORMATIONAL PRESENTATION**

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

PRESENTED BY: SCOTT DRAPKIN, ASSISTANT DIRECTOR

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RECOMMENDATION:

Staff recommends that the Planning Commission receive an informational presentation from staff, take public comment, and continue the item to the March 28, 2022 Planning Commission meeting.

APPLICANT OR AUTHORIZED AGENT:

City of Costa Mesa.

BACKGROUND:

On February 28, 2022, staff provided the Planning Commission an informational presentation to assist and prepare the Commission for the upcoming retail cannabis related Conditional Use Permit reviews. The presentation focused on several topics that included:

- A background, timeline and summary of the City's cannabis regulations;
- A description of the types of cannabis related businesses that are permitted in the City with specific emphasis on retail cannabis uses;
- A summary of the applicable Costa Mesa Municipal Code regulations relating to cannabis permitting (including location requirements, development standards, and operational requirements);
- A discussion of the City's cannabis permitting process (including pre-application review, ownership requirements/background checks, business plan review, security plan review and building and safety review);
- A review of the City's applicable Conditional Use Permit (CUP) findings; and
- A summary of the cannabis retail applications under review.

At the public hearing, staff presented the aforementioned information and afterwards responded to

Commissioner questions. Several questions and comments were detailed and necessitated further research and consideration by staff. The Planning Commission continued the item to the March 14 meeting for additional information and discussion.

DESCRIPTION:

During the February 28, 2022 Planning Commission public hearing, the Commission requested additional information and staff clarifications on the following 12 specific topics pertaining to cannabis retail:

1. Cannabis retail establishment separation requirements;
2. Security requirements;
3. Parking requirements;
4. Advertising regulations;
5. Public noticing requirements;
6. Status of existing businesses/sites for proposed retail cannabis establishments;
7. Background checks and cannabis business permit (CBP) requirements (capitalization assessments);
8. Traffic impact analysis requirements and potential traffic related impacts;
9. Conditional use permit findings related to proposed cannabis retail establishments;
10. Cannabis business taxes;
11. Cannabis establishment compliance with the California Environmental Quality Act (CEQA);
and
12. Liquidation of cannabis inventories after establishment closures.

In consideration of the complexity of the above topics, staff have bifurcated the further Planning Commission consideration of retail cannabis into two public meetings. Topics one through six (1-6) will be discussed at the March 14, 2022 Planning Commission meeting and the remaining topics will be discussed at the March 28, 2022 Planning Commission meeting. Dividing the topics will allow the Planning Commission and the public sufficient time to discuss and consider the issues.

Minimum Cannabis Retail Establishment Separation Requirements

Pursuant to the Costa Mesa Municipal Code (CMMC) Section 13.200.93(e), cannabis retail establishments shall not be located within 1,000 feet from a "K-12 school, playground, child daycare, or homeless shelter, or within six hundred (600) feet from a youth center, that is in operation at the time of submission of a completed cannabis business permit application." The CMMC further states that distances shall be measured in a straight line ("as the crow flies") from the premises where the cannabis retail use is to be located to the closest property line of a K-12 school, playground, child daycare, homeless shelter or youth center. When cannabis establishments are proposed near the City's boundaries, the distances shall also include K-12 school, playground, child daycare, homeless shelter or youth centers in adjacent cities. Lastly, the property line of a playground shall be measured

from a thirty (30) foot radius from the exterior physical boundaries of the playground equipment area. There are no separation requirements between cannabis retail establishments. The Ordinance also does not establish a cap on number of establishments, though the Council may establish a cap by Resolution at its discretion.

At the previous presentation, one of the Planning Commissioner asked if the City's adopted cannabis regulations would prohibit "new" K-12 school, playground, child daycare, homeless shelter or youth centers to operate within the same prescribed distances from an established cannabis retail use. In response, staff has confirmed that these regulations are only applicable to cannabis establishments and new K-12 school, playground, child daycare, homeless shelter or youth centers would not be subject to cannabis related distance requirements.

Although not related specifically to distance requirements, CMMC 13.200.93(e) also specifies that if a property proposed for a cannabis establishment has been involved in any unpermitted and/or illegal cannabis activity involving sales, delivery and/or dispensing, no new cannabis permits can be obtained for one-year from the date since that unpermitted and/or illegal cannabis activity has vacated the property, and the owner of that property has compensated the City for any and all expenditure of public funds and resources relating to the abatement of the previous unpermitted/illegal use.

Security Requirements for Cannabis Retail Establishments

The security requirements for cannabis retail establishments are specified separately in the Municipal Code under Title 13.200.93(f) - *Cannabis Retail Storefront and Non-Storefront Uses* and Title 9-495 (b) - *Cannabis Business Permits*. Collectively, the aforementioned Code provisions require the following cannabis retail security measures:

- At least one (1) licensed private security guard shall be present twenty-four (24) hours per day;
- Security exterior lighting shall be provided as approved by the City;
- Continuous video monitoring and recording of the interior and exterior of the premises shall be provided and must include video of all entryways and exits. All video recordings shall be maintained for a minimum of ninety (90) days;
- Both the private security guard and the business personnel shall monitor the premises and the immediate vicinity of the premises to ensure that patrons immediately leave the premises and do not consume cannabis in the vicinity of the retail business or on the property or in the parking lot, and shall ensure that persons do not loiter, linger, or otherwise congregate;
- All cannabis products shall be secured after business hours in a locked container under twenty-four (24) hour video surveillance;
- The general public shall not be permitted to enter the premises of a non-storefront (delivery) retail use;
- A cannabis business shall implement sufficient security measures to deter and prevent the unauthorized entrance into areas containing cannabis or cannabis products, and to deter and prevent the theft of cannabis or cannabis products at the cannabis business. These security

measures shall include:

1. Establishing limited access areas accessible only to authorized cannabis business personnel;
 2. Sensors shall be installed to detect entry and exit from all secure areas;
 3. A professionally maintained and monitored alarm system shall be installed;
 4. Any bars to be installed on the windows or the doors of the cannabis business for security purposes, if permitted by the City, shall be installed only on the interior of the building;
 5. Security personnel must be licensed by the State of California Bureau of Security and Investigative Services Personnel; and
 6. Each cannabis business shall have the capability to remain secure and operational during a power outage and shall ensure that all access doors are not solely controlled by an electronic access panel to ensure that locks are not released during a power outage.
- Each cannabis business shall identify a designated security representative/liaison to the City, who shall be available to meet with the City Manager or designee regarding any security related measures and/or operational issues;
 - A cannabis business shall notify the City Manager or designee within twenty-four (24) hours after discovering any significant discrepancies identified during inventory or a diversion, theft, loss, or any criminal activity involving the cannabis business;
 - Hours of operation shall be limited to: 7:00 a.m. to 10:00 p.m. daily. No licensed retail business shall be open to the public between the hours of 10:01 p.m. and 6:59 a.m.; and
 - Any delivery employee shall not carry cannabis goods valued in excess of five thousand dollars (\$5,000.00);

When applicable, the aforementioned security requirements are included in the application and on the plans prior to Planning Commission review of the Conditional Use Permit (CUP). Development Services staff along with the City's expert cannabis consultant confirm the security improvements and operations are installed prior to release of the Cannabis Business Permit (CBP) and City business license.

Parking Requirements for Cannabis Establishments

The City's non-residential parking provisions specify that parking compliance shall be considered when a new building is constructed, an existing building is increased in floor area and when the use changes that requires additional parking. The City's non-residential parking provisions categorize numerous non-residential uses, including, but not limited to, retail, office, industrial, food and beverage establishments, banks, furniture stores, hotels and shopping centers. Similar to most jurisdictional parking standards, the City's parking provisions do not include a category for all potential non-residential establishments and instead specify under CMMC Section 13-90, the parking requirements for the uses not specified shall be determined by the Planning Division and shall be

based upon the requirements for the most comparable use specified in the parking provisions or other appropriate sources.

Retail sales of cannabis is not specifically identified by the CMMC and therefore the Planning Division has determined the most comparable use specified in the City's parking provisions to be the "retail" parking category. This category requires four (4) spaces for every 1,000 square feet of floor area. Additionally, prior to determining the appropriate parking demand for retail cannabis establishments, staff researched several other cities that permit cannabis dispensaries and their cannabis parking regulations. The below Table A lists several cities and their applicable cannabis related parking requirements. Six of the seven cities use their typical retail parking standards for cannabis dispensaries and five of those six cities use the same retail parking demand as Costa Mesa (four parking spaces per 1,000 square feet). The City of Palm Springs requires slightly less parking than Costa Mesa (one space per 300 square feet while the City of Santa Ana requires slightly more parking (one space per 200 square feet).

TABLE A		
City	Parking Category	Parking Requirement
Palm Springs	Retail	1 space per 300 s.f.
Vista	Warehouse	1 space per 1,000 s.f.
Santa Barbara	Retail	4 space per 1,000 s.f.
Santa Ana	Retail	1 space per 200 s.f.
Long Beach	Retail	4 space per 1,000 s.f.
Santa Rosa	Retail	4 space per 1,000 s.f.
Napa	Retail	4 space per 1,000 s.f.

Lastly, as with numerous development sites in the City (non-residential and residential), several sites were developed prior to the current parking regulations and therefore do not provide the minimum required parking. These sites are considered legal nonconforming and are regulated pursuant to CMMC Section 13-204 (*Nonconforming Provisions*). The City's nonconforming provisions specify that for a conforming use (a use that is permitted/allowed) proposed in a nonconforming development (an existing and legally established development which no longer conforms to the development standards required by this Zoning Code), if a change of use is proposed which has equivalent or less parking requirement than the current/previous use, the proposed use can change without complying with the current parking requirements. Pursuant to the CMMC, retail cannabis establishments are allowed in all of the City's commercial zones. Since the majority of the proposed cannabis retail locations are/were used by retail businesses that required four parking space per 1,000 square feet of floor area, many of the City's proposed retail cannabis establishments will not be required to provide additional parking in order to comply with minimum code requirements.

Advertising Regulations Related to Cannabis Retail Establishments

In addition to the City's general signage provisions adopted under Title 13, Chapter 8, the City's cannabis regulations provide specific signage requirements for cannabis retail establishments. For example, the CMMC specifies that cannabis business identification signage shall be limited to that needed for identification only and that graphics depicting cannabis or cannabis products shall not be visible from the exterior of any property, or on any of the vehicles owned or used as part of the

cannabis business. Additionally, outdoor storage of cannabis or cannabis products is not permitted. Further, directional signage such as A-frame signs, sandwich board signs, banners, or flags are prohibited, and cannabis establishments shall not advertise by having a person holding a sign and advertising the business to passersby. Lastly, the entrance to a cannabis business shall be visibly posted with a notice indicating that smoking, ingesting, or otherwise consuming cannabis on the premises or in the areas adjacent to the cannabis business is prohibited.

At the previous Planning Commission cannabis presentation, one of the Commissioners requested information in regard to the ability of a cannabis establishment to distribute flyers that advertise their business and products. Pursuant to the CMMC - Article 3 (*Handbill Circulation*), the City regulates printed and written advertising such as leaflets and pamphlets both on public and private property. Primarily, this provision prohibits the dissemination of this type of advertising, with the exception of dissemination to “any person willing to accept it.” The City’s “handbill” provisions also regulate the hours of distribution of this applicable advertising to generally only daytime hours. Lastly, the State Business and Professions Code restricts cannabis establishments from publishing and/or disseminating advertising or marketing that is attractive to children. The Commission may consider appropriate conditions of approval in order to avoid litter and inadvertent dissemination of flyers to minors.

Public Noticing Requirements

Pursuant to the CMMC, cannabis retail storefront and non-storefront (delivery) CUP and MCUP application reviews require public noticing. No less than ten (10) days prior to the hearing or determination on the cannabis CUP or MCUP application, the notices are mailed to all property owners and occupants within a five hundred (500) foot radius of the project site, and a notice is posted on the site’s street frontages. Retail cannabis establishment entitlements subject to CUPs require noticing in the newspaper as well.

Status of Existing Businesses/Sites for Proposed Retail Cannabis Establishments

At the previous Planning Commission retail cannabis presentation, Commissioners were interested in the status of the existing businesses/sites for proposed retail cannabis locations. The businesses in these locations include/included a variety of retail establishments such as take-out restaurants, chiropractic and marketing offices, boat storage, a hot tub showroom, a dry cleaners, a jewelry store/pawnshop, BBQ sales, a fitness studio, a flower shop, automobile repair and supplies, pet grooming and a donut shop. At this time, approximately 35 cannabis CUP applications are under review and for approximately half of these locations, the retail sites are currently occupied. For the proposed retail cannabis locations that are vacant, staff has spoken with many of the property owners and the previous tenants and gathered some of the following anecdotal information. Some property owners, who also operated their businesses at these sites have decided to move or close their existing businesses to allow the space to be leased to a cannabis business. Several of the commercial sites proposed for cannabis retail were vacant prior to the adoption of Measure Q and remain vacant. Several previous tenants were paid to move and are relocating their businesses in other commercial areas in the City. Lastly and worth mentioning, several of the cannabis retail establishments are replacing existing tenants and properties that have had histories of code enforcement actions relating to business operations and site maintenance.

Next Steps

After the staff presentation to the Planning Commission, the Planning Commission is encouraged to ask any questions of staff, and open the presentation for public comments. Following the Commissioners' questions and public comments, staff is recommending that the Planning Commission continue this item to the March 28, 2022 Planning Commission meeting. The March 28th agenda item and presentation will focus on providing information relating to the following topic areas:

1. Cannabis retail establishment background checks and cannabis business permit (CBP) requirements (capitalization assessments);
2. Traffic impact analysis requirements and potential traffic related impacts;
3. Conditional use permit (CUP) findings related to proposed cannabis retail establishments;
4. Cannabis business taxes;
5. Cannabis establishment compliance with the California Environmental Quality Act (CEQA);
and
6. Liquidation of cannabis inventories after establishment closures.

After the March 28, 2022 presentation, staff will begin to prepare for scheduling cannabis retail CUP applications for Planning Commission consideration.

ANALYSIS:

This agenda item is limited to providing an informational presentation to the Planning Commission. Additional detail will also be provided in the staff presentation.

GENERAL PLAN CONFORMANCE:

This agenda report is limited to providing an informational presentation to the Planning Commission and therefore General Plan conformance is not applicable.

FINDINGS:

This agenda report is limited to providing an informational presentation to the Planning Commission and no decisions will be made by the Planning Commission.

ENVIRONMENTAL DETERMINATION:

In accordance with the California Environmental Quality Act (CEQA) Guidelines, the staff presentation is an exempt activity pursuant to Sections 15060(c)(1),(2)&(3) and 15061(b)(3). The presentation is not a "project" under CEQA.

ALTERNATIVES:

This agenda report is limited to providing an informational presentation to the Planning Commission with no associated decisions; therefore alternative actions are not applicable.

LEGAL REVIEW:

The City Attorney has approved this report as to form.

PUBLIC NOTICE:

Pursuant to the Brown Act, this item was posted on the Agenda 72 hours prior to the meeting. Staff has provided a courtesy notification by email to the cannabis industry and members of the public who have requested information via a cannabis subject matter interest list.

CONCLUSION:

Staff will be providing the Planning Commission with an informational presentation regarding the City's adopted cannabis ordinances and upcoming review of Conditional Use Permits relating to retail cannabis applications. The Planning Commission will receive a presentation by staff, may ask staff any questions, and open the item for public comment. This agenda item is informational only and no decisions will be made.