



# **PLANNING COMMISSION AGENDA REPORT**

MEETING DATE: JANUARY 23, 2023

ITEM NUMBER: PH-2

**SUBJECT: PLANNING APPLICATION 21-36 FOR A RETAIL CANNABIS  
STOREFRONT BUSINESS LOCATED AT 167 CABRILLO STREET  
(CABRILLO COMMUNITY PROJECT LLC DBA NATIVE GARDEN)**

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

**PRESENTATION BY: MICHELLE HALLIGAN, CONTRACT PLANNER**

**FOR FURTHER INFORMATION MICHELLE HALLIGAN  
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## **RECOMMENDATION**

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15270 (Disapproved Projects) or, if approved, exempt from CEQA per CEQA Guidelines Section 15301 (Existing Facilities); and
2. Deny Planning Application 21-36.

## **APPLICANT OR AUTHORIZED AGENT**

The applicant/authorized agent is Christopher Glew on behalf of Cabrillo Community Project LLC dba Native Garden and the property owner, Palanjian Family Trust.

## **PLANNING APPLICATION SUMMARY**

|           |                                                                                                                                                             |                     |          |
|-----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|----------|
| Location: | 167 Cabrillo Street                                                                                                                                         | Application Number: | PA-21-36 |
| Request:  | Planning Application 21-36 for a Conditional Use Permit for the establishment of a cannabis retail storefront in the CL (Commercial Limited District) zone. |                     |          |

### **SUBJECT PROPERTY:**

### **SURROUNDING PROPERTY:**

|                       |                                                           |        |                                                   |
|-----------------------|-----------------------------------------------------------|--------|---------------------------------------------------|
| Zone:                 | CL (Commercial Limited District)                          | North: | R2-HD (Multiple-Family Residential, High Density) |
| General Plan:         | Neighborhood Commercial                                   | South: | CL (Commercial Limited District)                  |
| Lot Dimensions:       | North: 67.59; South: 82.57'<br>East: 87.54'; West: 72.53' | East:  | CL (Commercial Limited District)                  |
| Lot Area:             | 7,180 SF                                                  | West:  | CL (Commercial Limited District)                  |
| Existing Development: | One 1,050-square-foot single-story building.              |        |                                                   |

## **DEVELOPMENT STANDARDS COMPARISON**

| Development Standard                                                                                                       | Required/Allowed<br>CL Zone                                                                    | Proposed/Provided             |
|----------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|-------------------------------|
| Building Height                                                                                                            | 2 stories/30 ft. maximum                                                                       | 13'-8"                        |
| Setbacks:                                                                                                                  |                                                                                                |                               |
| Front                                                                                                                      | 20 ft. minimum                                                                                 | 24'-11"                       |
| Side                                                                                                                       | 15 ft. minimum (public street)<br>15 ft. minimum (interior)                                    | 34'-5"<br>9'-10" <sup>1</sup> |
| Rear                                                                                                                       | 0 ft.                                                                                          | 32'-10"                       |
| Landscape Setback – front                                                                                                  | 20 ft.                                                                                         | 27'-10"                       |
| Parking                                                                                                                    | 4 stalls                                                                                       | 6 stalls <sup>2</sup>         |
| Floor area ratio (FAR)                                                                                                     | 0.15 maximum                                                                                   | 0.15                          |
| <sup>1</sup> The interior side setback was approved by Zoning Exception 80-124.                                            |                                                                                                |                               |
| <sup>2</sup> The proposed site plan includes bike racks for a credit of one parking stall, included in the proposed total. |                                                                                                |                               |
| CEQA Status                                                                                                                | Exempt per CEQA Guidelines Section 15270 (Disapproved Projects) or 15301 (Existing Facilities) |                               |
| Final Action                                                                                                               | Planning Commission                                                                            |                               |

## **BACKGROUND**

The subject property is located at 167 Cabrillo Street, on the southeast corner of the intersection of Cabrillo Street and Fullerton Avenue. The site is zoned Commercial Limited District (CL) and has a General Plan Land Use Designation of Neighborhood Commercial. The properties to the north, across Cabrillo Street, are zoned Multiple-Family Residential District, High Density (R2-HD) and the property across Fullerton Avenue is zoned CL.

Existing development on the subject property consists of a 1,050-square-foot building, two driveways, and a paved area in the rear. The subject property was developed with a single-family detached home in the 1940s, prior to the incorporation of this area to the

City of Costa Mesa. In 1980, subsequent to incorporation of the area into the City, the building was converted to commercial use following the approval of Redevelopment Application 80-12 and Zoning Exception (variance) 80-124. The staff report for the approved variance stated that the proposed commercial use would be for violin repair and sales, and would be “low volume with low customer traffic.” The variance allowed the following deviations from the Costa Mesa Municipal Code:

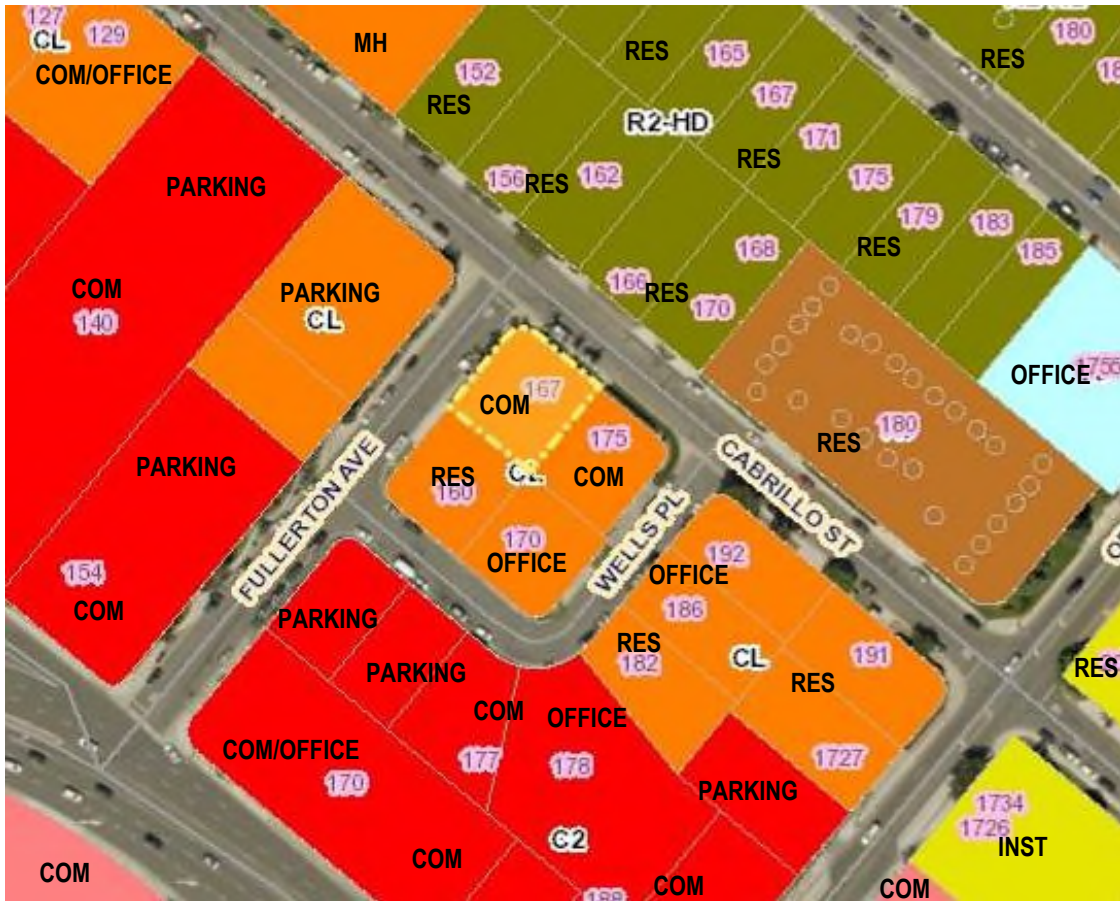
- Decrease the interior side setback from 15 feet to 10 feet;
- Allow vehicle maneuvering in a portion of the setback along Fullerton Avenue; and
- Decrease required onsite parking from six stalls to five stalls.

The building is currently occupied by OC Spas and Hot Tubs. The business has two locations in the City; the other is located approximately one-mile away at 1970 Newport Boulevard. The subject site (167 Cabrillo Street) is used primarily for storage and limited customer traffic, whereas the facility on Newport Boulevard is a retail storefront.

The subject site is located within the 100 block of Cabrillo Street between Newport Boulevard and Orange Avenue. The site is situated approximately 800 feet easterly from the intersection of Newport Boulevard and Cabrillo Street, approximately 400 feet westerly from the intersection of Orange Avenue and Cabrillo Street, and approximately 400 feet from East 17<sup>th</sup> Street to the south. The uses along Cabrillo Street include commercial and office uses concentrated in close proximity to Newport Boulevard and transitions predominantly to residential uses towards Orange Avenue. This 100 block of Cabrillo Street primarily includes residential uses on the north side and commercial uses on the south side. A map is provided in Figure 1 to demonstrate existing uses in the vicinity.

Similar to the subject property and consistent with the Commercial Limited District zoning classification (described further below in the “Analysis section” of this report), two of the three properties adjacent to the subject site, 175 Cabrillo Street and 160 Wells Place, were converted in the past from residential to commercial developments. The adjacent property at 160 Wells Place remains a single-family residence (see Image A). The properties across Cabrillo Street from the proposed storefront include a mixture of single- and multiple-family residences (see Image B).

**Figure 1 – Existing Uses**



*Note: Abbreviations include COM for commercial uses, INST for institutional, MH for mobile home park, and RES for residential uses.*

**Image A – 160 Wells Place**



*The existing neighboring residence at 160 Wells Place as viewed from Fullerton Street.*

### **Image B – Residential Properties Located Across Cabrillo Street**



*Existing single- and multi-family residences across Cabrillo Street from the proposed storefront.*

The property across Fullerton Avenue from the proposed storefront is a parking lot that serves commercial uses that are located adjacent to East 17<sup>th</sup> Street (see image C, below).

### **Image C – Commercial Parking Across Fullerton Avenue**



*Existing parking located across Fullerton Avenue from the proposed storefront and across Cabrillo Street from existing residential uses.*

### ***Nonconforming Development***

The width of the existing driveway on Cabrillo Street is substandard and therefore is subject to the nonconforming provisions of the Costa Mesa Municipal Code (CMMC) Section 13-204. Pursuant to this Code Section, a conforming use may be located on a nonconforming property so long as the new site modifications do not result in greater site nonconformities. Per CMMC Section 13-93(a)(2) The minimum width for a one-way driveway is 14 feet. The existing driveway on Cabrillo Street is 9'-10". The applicant is not proposing to widen the driveway due to the location of the existing structure. The driveway leads to a parking lot in the rear, which leads to a 20-foot-wide driveway on Fullerton Street. As specifically allowed by the CMMC, the existing site nonconformity can remain pursuant to the City's legal nonconforming provisions.

***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 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 review. Staff's initial CBP review includes:

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

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

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

## **DESCRIPTION**

Planning Application 21-36 is a request for a CUP to allow a retail cannabis storefront in an existing 1,050-square-foot building to sell pre-packaged cannabis and pre-packaged cannabis products directly to customers onsite located at 167 Cabrillo Street. The affiliated required State license is a Type 10 "storefront retailer" license. The business is proposed to operate daily from 8 AM to 9 PM. As proposed, the cannabis establishment would not offer delivery services. Should the storefront wish to offer delivery services in the future, an amendment to the CUP would be required.

## **ANALYSIS**

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

In order to obtain a CUP, an applicant must show that the contemplated use is substantially compatible with developments in the same general area, 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, and is consistent with the City's applicable zoning and General Plan provisions/policies.

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 in a commercial zone. The subject site is located within a commercial zone (CL – Commercial Limited District) where commercial development is allowed. Pursuant to the CMMC, the City's "Commercial Limited District" is intended for unique areas of land, which due to the proximity to residential development or the potential for traffic

circulation hazards, require special precautions to be taken to assure appropriate development (including the appropriate use of land).

Pursuant to the CMMC, cannabis retail storefronts are subject to extensive regulation (as specifically described in this report) which are adopted to prevent land use inconsistencies with adjacent properties. Lastly, pursuant to the CMMC, the approval of a CUP requires that the Planning Commission make specific findings related to substantial neighborhood compatibility, public health and safety, and General Plan land use compatibility (an analysis regarding project findings are provided below in the report under “Findings”).

### ***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. CMMC Section 9-485 defines “youth center” as *any public or private facility that is primarily used to host recreation or social activities for minors, specifically private youth membership organizations or clubs, social services teenage club facilities, video arcades where ten (10) or more games or game machines or devices are operated or similar amusement park facilities, but does not include dance studios, tutoring, martial arts studios or similar type of uses.*

All separation distances are measured in a straight line from the “premises” where the cannabis retail use is to be located to the closest property line of the sensitive use(s). Premises is as defined in the State’s Business and Professions Code Section 26001(aq) *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 includes the retail cannabis activity areas (including sales, storage, back-of-house and/or other similar 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 is proposing several exterior changes in conjunction with the proposed new storefront, including reorienting the main entrance from Cabrillo Street to face Fullerton Avenue, adding an accessible ramp, new front door and windows, repainting, infilling two windows and one door facing Fullerton Avenue, infilling one window facing the interior side property line, and infilling one rear door.

Proposed site improvements also include adding a pedestrian path from Fullerton Avenue to the public entrance, installing bicycle racks, replacing the groundcover and turf with



drought tolerant plants that comply with commercial landscape standards, constructing a trash enclosure in the rear of the property, resealing or resurfacing the parking lot, striping the parking lot, constructing a masonry wall along the interior property lines, and changing the location of the Fullerton Avenue driveway to align with the proposed drive aisle. The applicant also proposes to update the site with new surveillance cameras, shielded security lighting, and new business signage. If the CUP is approved, a photometric study, and detailed landscape plans would be required. Signs would be reviewed and permitted separately per CMMC requirements.

***Interior Tenant Improvements***

The proposed interior improvements include constructing new demising walls to create distinctive spaces within the existing structure. The proposed areas where customers would be allowed include the entrance/security area, retail sales floor, and restroom. The proposed “back-of-house” areas include an employee break room, restroom, and storage rooms. A summary of the spaces and applicable floor areas is provided in Table 1.

**Table 1 – Floor Plan Summary**

| <b>Room</b>       | <b>Square Feet</b> |
|-------------------|--------------------|
| Entrance/Security | 64                 |
| Sales Floor       | 303                |
| Restrooms         | 94                 |
| Storage           | 163                |
| Breakroom         | 133                |
| Hallways          | 293                |
| <b>Total</b>      | <b>1,050</b>       |

***Customer and Employee Access***

Customers would only be allowed in the entrance area, sales floor, and customer restroom. Customer access to the proposed establishment includes entering the licensed premise through the entrance door fronting Fullerton Avenue. An employee would verify the customer’s identity and age before allowing the customer to enter the retail sales floor. 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 access-controlled entrance located at the rear of the building that leads directly into the back-of-house areas.

***Vendor Access***

During business hours, vendor vehicles (such as licensed distributor vehicles that are used for delivering products for retail sales) would park on-site for deliveries. Vendors would only be allowed to enter the premise through a controlled access door while accompanied by an employee with the proper security credentials. All of the proposed

onsite parking stalls are within 50 feet of the controlled access door and would be under camera surveillance at all times.

### ***Storefront Operations***

As described in the attached Applicant Letter, the business is proposed to operate between the hours of 9 AM and 8 PM, seven days per week. This is less than the maximum permitted hours allowed for cannabis retail establishments by the CMMC (7 AM and 10 PM). If approved, the proposed business would be 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;
- Shipments of cannabis goods may only be accepted during regular business hours (9 AM and 8 PM);
- 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:
  - Date and time of transaction;
  - Name and employee number/identification of the employee who processed the sale;
  - List of all cannabis goods purchased including quantity; and

- Total transaction amount paid.
- There must be video surveillance of the point-of-sale area and where cannabis goods are displayed and/or stored;
- Cannabis products shall not be visible from the exterior of the building;
- Free samples of cannabis goods are prohibited;
- When receiving new inventory from licensed distributors, employees will verify the distributor's identity and license prior to allowing them to enter the facility through an access-controlled door. After distributor's credentials have been confirmed, an employee will escort the distributor to the controlled access door 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 continued entitlement processing.

### ***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 shielded 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 most other retail establishments in the City (four spaces per 1,000 square feet of gross floor area). Based on this ratio, the 1,050-square-foot facility would be required to provide four onsite parking spaces. The proposed site plan includes five vehicle parking stalls and one bicycle rack, which would be credited as one standard vehicle parking space pursuant to the CMMC. With the proposed bicycle rack, the site would have six parking stalls and therefore would be in compliance with the City’s parking standards.

Although the proposed site plan exceeds the City’s parking requirement by two stalls, the applicant removed the originally planned delivery use from the proposed operation to reduce parking demand. Additionally, the applicant proposes to lease an office at 170 Wells Place with three assigned parking stalls, as shown in Figure 2.

**Figure 2 – Offsite Employee Parking Location**



The office space at 170 Wells Place would need to remain vacant so the three parking spaces would be surplus and therefore available for storefront employees. With the offsite employee parking, the five parking spaces (six when including the bike rack credit) at 167 Cabrillo would be available to be utilized by customers. Native Garden employees that drive to work would park in the three designated stalls at 170 Wells Place and walk a short distance to 167 Cabrillo Street (approximately 400 feet). As shown in Figure 2, there are incomplete sections of sidewalk along Wells Place, Fullerton Avenue, and Cabrillo Street. Staff observed 170 Wells Place numerous times during September and October 2022. Onsite parking was readily available during every visit.

Pedestrian access to the storefront would be provided by existing public sidewalk located along Fullerton Avenue and Cabrillo Street. A pedestrian path from Fullerton Avenue to the business entrance would be constructed. Bicycle racks would be provided along this pathway to encourage cycling to the storefront.

There are two existing driveways to the site; a two-way driveway off Fullerton Avenue and a one-way driveway off Cabrillo Street. The driveway on Cabrillo Street would be designated for ingress only. As proposed, all customers and vendors exiting by vehicle would have to vacate via the driveway on Fullerton Avenue. As indicated above, the site driveway does not meet the City's current commercial access standards and is considered legal nonconforming.

### ***Traffic***

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 collected fee 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 Fees applicable to new and expanding developments is determined using estimated Average Daily Trips (ADT), which is the 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 a 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. 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. The proposed storefront is estimated to add 53 vehicle trips per day to a local street. The estimated Traffic Impact Fee for the proposed 1,050-square-foot retail establishment is \$12,500.

### ***Odor Attenuation***

Cannabis products would arrive in State compliant packaging that is sealed and odor-resistant, and remain unopened while on the premises. The storefront proposes to use carbon filters throughout the facility. If approved, the use would be conditioned so the operator must replace the air filters at regular intervals, as directed in the manufacturer specifications. Further, if cannabis odor is detected outside of the tenant space and/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 would not be allowed to be disposed of in the exterior trash enclosure.

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

The subject property abuts an existing home on Fullerton Avenue and is across several homes on Cabrillo Street. The proposed cannabis establishment parking lot abuts a residence. The proposed cannabis storefront would increase commercial traffic on Cabrillo Street and Fullerton Avenues, local streets that serve a residential neighborhood. With the proposed cannabis use, the parking lot is anticipated to be activated by more retail customers and during later hours than the current use. As with other commercial uses adjacent to residential development, noise would be a potential concern, especially given the proposed intensification of the use and increased hours open to the public.

The limited access door is located in the rear of the subject property, approximately 35 feet from that residence. If approved, per standard conditions of approval for retail cannabis storefronts, only employees and vendors escorted by an employee would be allowed to utilize limited access doors.

If the Planning Commission finds there are grounds to approve the project, the Commission may consider conditions of approval to ensure compatibility with nearby residential development. For example, the Planning Commission could further limit the hours of operation, limit the operation to delivery only, or limit evening operations to delivery only.

## **GENERAL PLAN CONFORMANCE**

The Costa Mesa General Plan establishes the long-range planning and policy direction that guides change and preserves the qualities that define the community. The 2015-2035 General Plan sets forth the vision for Costa Mesa for the next two decades. This

vision focuses on protecting and enhancing Costa Mesa's diverse residential neighborhoods, accommodating an array of businesses that both serve local needs and attract regional and international spending, and providing cultural, educational, social, and recreational amenities that contribute to the quality of life in the community. Over the long term, General Plan implementation will ensure that development decisions and improvements to public and private infrastructure are consistent with the goals, objectives, and policies contained in this Plan.

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

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

**Consistency:** The proposed use would provide a new entrepreneurial business in Costa Mesa as allowed under Measure Q, and provides new goods and services and new employment opportunities in the community; therefore, the proposed use would be consistent with General Plan Policy LU-1.1.

2. **Objective LU-6B:** *Encourage and facilitate activities that expand the City's revenue base.*

**Consistency:** Retail cannabis uses are expected to generate increased tax revenues in that cannabis sales are subject to a seven-percent local tax on gross receipts. Approval of the proposed cannabis retail storefront 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; therefore, the proposed use would be consistent with General Plan Policy LU-6B.

3. **Policy LU-6.15:** *Promote unique and specialized commercial and industrial districts within the City which allow for incubation of new or growing businesses and industries.*

**Consistency:** The proposed use is part of the specialized and growing cannabis industry. Approval of this CUP would facilitate a new local business opportunity in a specialized and expanding industry; therefore, the proposed use would be consistent with General Plan Policy LU-6.15.

4. **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 cannabis retail facility is proposed in an established residential neighborhood that includes a mobile home community, single-family residences and multiple-family residences. The subject site is zoned CL (Commercial Limited District) which "is intended for unique areas of land which, due to the proximity of residential development or the potential for

traffic circulation hazards, require special precautions to be taken to assure appropriate development.”

The proposed cannabis storefront would present a more intensive retail use in a neighborhood with limited commercial activities. Further, the other commercial uses currently operating in the CL zone in this neighborhood typically have limited hours of operation. For example, the existing business located on the subject site is open from 10 AM to 5 PM on Saturdays, and from 11 AM to 5 PM, Sunday through Friday. Other nearby businesses in the CL zone, such as landscaping and construction businesses, are uses with activities that occur offsite and generally involve equipment storage, office, and limited customer traffic. Therefore, those uses are generally not affecting the existing adjacent and numerous nearby residential uses. Some more service-oriented uses in the CL zone operating in this neighborhood function by appointment to control the flow of customers. For example, a beauty salon, chiropractor, financial consultant and massage uses in this neighborhood generally operate by appointment and are able to operate with evening hours, such as 10 AM to 8 PM, without negatively affecting residential neighbors by regulating customer traffic.

The proposed cannabis retail storefront would result in a neighborhood intensification of use, would be open between 9 AM and 8 PM, well beyond the existing site commercial activity hours of 10 AM to 5 PM, without a mechanism to control the flow of customers and traffic. The proposed customer entrance and exit would be located along Fullerton Avenue, which faces a commercial parking lot but is next door to a residential use. The retail cannabis establishment parking lot would also be located adjacent to a residential use. Per CMMC Title 13, Section 20(f), “special precautions” should be taken in the CL zone and staff does not believe that these precautions have been incorporated into the proposal by the applicant to prevent properties detrimental impacts to other properties in the area. Therefore, the proposed use would not be consistent with General Plan Policy LU-3.1.

5. **Policy C-1.11:** *Reduce or eliminate intrusion of traffic related to non-residential development on local streets in residential neighborhoods.*

**Consistency:** The proposed cannabis storefront would be located at the intersection of Cabrillo Street and Fullerton Avenue, two local streets. All previously permitted cannabis retail storefronts in Costa Mesa were located on or adjacent to arterial or collector roadways where more intense uses and traffic are anticipated. The proposed cannabis storefront would increase commercial traffic on Cabrillo Street, a local street that serves a residential neighborhood; therefore, the use would not be consistent with General Plan Policy C-1.11.



6. **Policy N-2.9:** *Limit hours and/or attenuation of commercial/entertainment operations adjacent to resident and other noise sensitive uses in order to minimize excessive noise to these receptors.*

**Consistency:** The proposed cannabis storefront would be located adjacent to a residential use and across the street from numerous residential developments. The existing use on the subject site is open from 11 AM to 5 PM, Sunday through Friday, and 10 AM to 5 PM on Saturday (totals ranging between 6 and 7 hours per day). Although the applicant is proposing to have shorter hours than the maximum allowed in the CMMC, the proposed storefront would be open for 11 hours per day including during evening hours that are not compatible with residential development considering the CL zoning of the subject site. Furthermore, the proposed retail storefront will generate more customer traffic than the existing use and other existing businesses in the CL zone located in this area, and more traffic and business activity noise would result; therefore, the use would not be consistent with General Plan Policy N-2.9.

## **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 all three required findings. As indicated below, the proposed project materials failed to provide adequate evidence for staff to make the finding that the proposed use would be substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area.

- *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 the CL zone (Commercial Limited District). As defined in the CMMC, the CL zone is an area in which special precautions shall be taken due to the proximity of residential development or the potential for traffic circulation hazards. A cannabis storefront is a use that is conditionally permitted in the CL zone subject to conformance with required findings. This discretionary decision-making process allows/requires the Planning Commission to carefully review the proposed cannabis storefront operation and location.

As intended by the CMMC, this area of the CL zone generally functions as a buffer between residential uses on Cabrillo Street and commercial activity on East 17<sup>th</sup> Street. The closest commercial corridor to the subject property is the north side of East 17<sup>th</sup> Street. The existing development pattern on the north side is for businesses to be oriented toward the street, with parking in the rear to buffer less intense uses from activities along East 17<sup>th</sup> Street. To-date, all of the approved cannabis storefront CUPs in Costa Mesa, with or without delivery, are appropriately located along or adjacent to arterial roadways in the C1 (Local

Business District) or C2 (General Business District). The proposed cannabis storefront at 167 Cabrillo Street is the first cannabis retail establishment to be located at the intersection of two local streets and the first to be located in the CL zone.

Additionally, the subject site is located adjacent to a residential use and across from residential developments on Cabrillo Street. Adjacent nonresidential uses predominantly include services, not retailers. Other businesses operating in this immediate area of the CL zone are low-to-moderate traffic uses and/or have business practices that limit their impact on residents, such as limited hours of operation, encouraging or requiring appointments, and conducting activities at clients' properties (offsite). Unlike those operations, the proposed cannabis storefront would operate 11 hours per day, between 9 AM and 8 PM and without a mechanism to regulate customer traffic. As with other commercial uses adjacent to residential development, noise would be a potential land use compatibility concern, especially given the proposed intensification of the use and increased hours open to the public.

The proposed cannabis storefront would not be substantially compatible with other developments in the neighborhood and the proposed use has the potential to be materially detrimental to other properties in the area (specifically the adjacent and nearby numerous residential uses). Conditions of approval may be able to reduce potential impacts, but without a significant change in the proposed operation, the use would not be substantially compatible with the neighborhood.

- *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 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. When operating in accordance with the professionally prepared security plan and in conformance with local and State laws, the proposed use would not be materially detrimental to public health and safety; however, the more intensive change in commercial use proposed would be detrimental to the general welfare of the public and/or injurious to property or improvements to the nearby residential uses.

- 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 would be located in an existing commercial building on a property that has a General Plan land use classification of “Neighborhood Commercial.” The City’s General Plan sets forth long-term policies that guide future development, whereas the Zoning Ordinance implements general plan policies through detailed development regulations, such as specific use types and building standards. Therefore, in determining General Plan compliance for the proposed cannabis retail storefront use, a comparison of the proposed use with the use, density and intensity allowed by the applicable zoning district is required. In this case, the applicable zoning district is “Commercial Limited District” (CL).

Pursuant to the CMMC, the CL District is intended for “unique areas of land which, due to the proximity of residential development or the potential for traffic circulation hazards, require special precautions to be taken to assure appropriate development.” Figure 3 shows the zoning of the project site and general surrounding area, demonstrating that the CL zone functions as a transitional land-use buffer between residential uses and more intensive commercial uses.

**Figure 3 – CL Zoning Pattern**



Similarly to the subject neighborhood land use pattern (see Figure 3, above) CL zones are typically located elsewhere in the City on the periphery of more intense commercial zones. The CL zone is used to appropriately buffer residential areas by allowing or conditionally allowing commercial uses that are of lesser intensity than those allowed in the City's other business districts. As shown above in Figure 3 (from a general left to right perspective), the red areas are the C2 (General Business District) zone, the orange areas are the CL Zone, and the brown and green areas are the City's multiple-family residential districts. As Figure 3 illustrates, the CL zone is specifically located to buffer the select residential areas (shown in brown and green) from the C2 Zone uses. Development on CL properties should be oriented to prevent commercial related conflicts such as extended hours of operation, noise, and traffic. A more appropriate location for a high traffic retail storefront use in the CL zone would be one that is surrounded by commercial development, is located on or in close proximity to a commercial corridor and is not situated in close proximity to numerous residential uses. A cannabis establishment in the proposed location does not function as an appropriate buffer between commercial uses along East 17<sup>th</sup> Street and residences along Cabrillo Street.

Additionally, because of the unique nature of the CL zone, the City's land use matrix restricts numerous commercial uses in this zoning district. Uses such as convenience stores, liquor stores, specialty stores, smoking/vaping lounges, and other similarly intensive commercial uses are prohibited in the CL zone. Most uses allowed in the CL zone are required to obtain a CUP or a Minor CUP. Some examples of uses that are allowed in the CL without discretionary approvals include:

- Artist studio (without gallery/training/events);
- Banks (without ATM) with a minimum of six parking spaces and a ratio of five spaces per 1,000 square feet;
- Barber/hair salon with a minimum of six parking spaces a ratio of six spaces per 1,000 square feet;
- Commercial art/graphic design;
- Offices; and
- Portrait studio/commercial photography.

These permitted uses generally have limited hours of operation, result in minimal traffic and limited customer demand.

Although staff believes that the proposed retail cannabis use could be conditioned to operate similar to the allowed uses in the CL zone; as proposed and specifically located at 167 Cabrillo Street (which is situated in close proximity to many residential uses), staff believes the business is not compatible with the resident-serving intention of the CL zone, is likely to serve a greater-than-local customer demand and therefore the proposed use and intensity is not in accordance with the General Plan. Additionally, the

proposed use is inconsistent with General Plan policies C-1.11 and N-2.9, as discussed above in the General Plan Conformance analysis.

## **ENVIRONMENTAL DETERMINATION**

If denied, the project is exempt from the provisions of California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15270. If approved, and the Planning Commission determines that the proposed use would result in a negligible or no expansion of the existing or prior use, the project could be found to be categorically exempt from CEQA pursuant to CEQA Guidelines Section 15301 for the permitting and/or minor alteration of Existing Facilities.

## **ALTERNATIVES**

The Planning Commission has the following alternatives:

1. Approve the project. The Planning Commission may approve the project as proposed. Staff would prepare a revised Resolution incorporating new findings and conditions of approval as articulated by the Commission.
2. Approve the project with modifications. The Planning Commission may suggest specific changes that are necessary to alleviate potential project impacts. Staff would prepare a revised Resolution incorporating new findings and conditions of approval. 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.
3. Deny the project. The Planning Commission may deny the project as proposed, per the facts in support of denial outlined in the attached resolution. 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.

A public notice for the proposed project was originally published before the Planning Commission meeting on December 12, 2022. The applicant requested to have the application continued to a later meeting date. Following the public notice for the December 2022 meeting, the City received dozens of letters in opposition to the proposed use and over one dozen letters in support of the proposed use. The public notice for the proposed project was again published before the Planning Commission meeting on January 23, 2023. As of the date this report was circulated, two written public comments have been received. Other public comments received prior to the January 23, 2023 Planning Commission meeting will be provided separately.

## **CONCLUSION**

The Commercial Limited Zone and Neighborhood Commercial General Plan land use designation are intended to promote commercial uses that are substantially compatible with residential uses. As such, the CMMC directs land use approvals to take special precautions to assure development is appropriate for this unique area. The General Plan provides guidance that uses in this transitional space should be carefully located, designed, and operated to avoid affecting nearby properties and residents. The proposed cannabis retail storefront location is located adjacent to and across the street from numerous residential uses. As proposed, the use would not function as an appropriate residential buffer.

Many existing businesses in the neighborhood have very limited hours and encourage or require appointments to avoid negatively affecting residential neighbors. However, the proposed retail use would be open for 11 hours per day from 9 AM to 8 PM. Unlike many existing service-oriented businesses in this part of the neighborhood, the proposed retail storefront would not control the flow of customers through appointments. As proposed, the use would not be substantially compatible with commercial and residential uses in the neighborhood and is not consistent with certain General Plan policies.

As proposed and based on the above analysis and conclusions, staff does not believe that all of the Conditional Use Permit findings can be satisfied and therefore recommends denial of Planning Application 21-36. However, if the applicant were to modify the application in such ways as limiting the hours of operation to be neighborhood-compatible, operate by delivery only, or operate by delivery only in the evening, the Planning Commission may have justification to re-consider whether the project meets the required CUP findings, and is consistent with the intent and purpose of the CL Zoning District and the City's General Plan.