



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: JANUARY 22, 2024 ITEM NUMBER: PH-2

SUBJECT: ORDINANCE TO AMEND TITLE 13 (PLANNING, ZONING AND DEVELOPMENT) OF THE COSTA MESA MUNICIPAL CODE AND ORDINANCE TO AMEND TITLE 9 (LICENSES AND BUSINESS REGULATIONS) FOR MODIFICATIONS TO THE CITY'S RETAIL CANNABIS PROVISIONS

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

**PRESENTATION BY: MICHELLE HALLIGAN, CONTRACT PLANNER
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RECOMMENDATION

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is categorically exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule) in that the updates to the City's retail cannabis provisions will not have a significant impact on the environment; and
2. Recommend that the City Council give first reading to ordinances approving Code Amendment No. 2024-XX, amending portions of the Costa Mesa Municipal Code Title 13 (Planning Zoning, and Development), and Code Amendment No. 2024-XX, amending portions of Title 9 (Licenses and Business Regulations), both pertaining to retail cannabis storefront regulations.

APPLICANT OR AUTHORIZED AGENT

The subject Ordinance modification is a City Council initiated effort.

BACKGROUND:

Since the adoption of Ordinance No. 2021-08 (Title 9, Business Licenses) and Ordinance No. 2021-09 (Title 13, Zoning) to establish regulations for legal cannabis storefront and non-storefront (delivery) uses, the City has approved 22 Conditional Use Permits for cannabis retail storefronts, three CUPs for standalone cannabis delivery businesses, and seven Minor Conditional Use Permits to add non-storefront retail delivery to existing cannabis manufacturing and/or distribution facilities located in the City's Measure X "green zone". Nine cannabis storefronts, one standalone delivery business, and seven delivery businesses that are part of existing manufacturing and/or distribution cannabis businesses in the "green zone" are currently operating. There are 31 other cannabis storefront applications that have not obtained Conditional Use Permits and are in various stages of application review.

At the July 18, 2023 City Council meeting, Councilmember Marr requested that an item be agendaized for the City Council to discuss the possibility of exploring amendments to the City's cannabis provisions to address community member concerns regarding potential business displacement and cannabis storefront overconcentration. The item was agendaized for the August 1, 2023 City Council meeting and was continued to the regular meeting of September 5, 2023 without discussion.

At the September 5, 2023 City Council meeting, the City Council discussed the status of the City's cannabis retail regulations and current retail operations. Specifically, the City Council discussed issues regarding unanticipated business displacement and overconcentration of retail cannabis businesses, and several other areas of concern related to the City's retail cannabis storefront program. Members of the public provided written and spoken testimonies describing concerns regarding overconcentration of cannabis storefronts, lack of a limit on the number of cannabis storefronts, the need for a minimum separation between cannabis storefronts and residential uses, decreased residential property values, traffic impacts, increased criminal activity, and impacts on youth. At the conclusion of the public hearing and after considering public testimony, the City Council voted on the following motions directing staff to further explore the following topics/issues with the Planning Commission, and for the Planning Commission to make a recommendation to the City Council regarding potential Code amendments:

- Increasing the minimum separation between cannabis storefronts and "youth centers", as defined in the Municipal Code from 600 feet to 1,000 feet to be consistent with other sensitive use separation requirements;
- Establishing a minimum separation between cannabis storefronts and properties zoned for residential use;
- Establishing a minimum separation between cannabis storefronts;
- Establishing a maximum number of retail cannabis storefronts;
- Allowing the word "cannabis" on cannabis storefront signage;
- Adding limitations to prohibit the advertising and marketing of cannabis and cannabis products to youth;

- Strengthening of labor peace agreement requirements for cannabis storefronts; and
- Establishing provisions for notification and relocation assistance for existing businesses that would be displaced by retail cannabis uses.

At the November 27, 2023 Planning Commission meeting, the Planning Commission discussed potential modifications regarding the first four topics listed on the previous page and continued the item to December 11, 2023.

November 27, 2023 Planning Commission Staff Report:

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=6430260&GUID=090DEB19-B248-42BE-83E0-41EB6003490B>

Minutes:

<https://costamesa.legistar.com/View.ashx?M=M&ID=1140539&GUID=8E7DDAD3-212C-4ADA-BD75-859EA1736B77>

Video:

https://costamesa.granicus.com/player/clip/4065?view_id=14&redirect=true&h=73613c84a6f01a923ffea75485cf99ab

At the December 11, 2023 Planning Commission meeting, the Planning Commission discussed the four remaining topics, and directed staff to prepare draft ordinance revisions based on their discussions at the November 27th and December 11th meetings, to be reviewed by the Planning Commission at a regularly scheduled meeting on January 22, 2024.

December 11, 2023 Planning Commission Staff Report:

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=6448844&GUID=30956049-B12A-48D4-824D-6A17822168CF>

Video:

https://costamesa.granicus.com/player/clip/4071?view_id=14&redirect=true&h=3afc5737bffd6e2094027c9beb28f56c

DESCRIPTION:

The City Council considered written and spoken testimony related to cannabis storefronts, and directed the Planning Commission to explore potential amendments related to eight retail cannabis program topics and ultimately make recommendations to the City Council for consideration. The proposed draft modifications reflect direction provided by the Planning Commission pertaining to cannabis storefront location criteria, conditional use permits (CUPs), cannabis business permits (CBPs), and storefront operations, and if adopted, would amend specific cannabis storefront provisions in both Title 13 (Planning, Zoning, and Development) and Title 9 (Licenses and Business

Regulations) of the CMMC. Several additional text changes are proposed to Title 13 and Title 9 to clarify existing and proposed law and intent pertaining to retail cannabis uses.

ANALYSIS:

The following analysis describes the Planning Commission's recommended modifications to the City's retail cannabis storefront program. The proposed amended cannabis sections of Title 13 and Title 9 of the CMMC are reflected in draft City Council ordinances contained in Attachments 4 and 5, respectively. The proposed amendments are distinctly shown in "redline" versions, where added text is identified by an underline and text removal is shown in ~~strike through~~ format in Attachments 6 (Title 13) and 7 (Title 9).

Separation between Cannabis Storefronts and Youth Centers

The CMMC requires that cannabis storefronts must be located a minimum of 1,000 feet from K-12 schools, child daycares, playgrounds, and homeless shelters. The adopted minimum separation between youth centers and cannabis storefronts is 600 feet in accordance with the State's minimum requirement (California Business and Professions Code Section 26054(b)).

The City Council's direction to the Planning Commission regarding youth centers was to "explore increasing the minimum separation between cannabis storefronts and youth centers from 600 feet to 1,000 feet". The Planning Commission reviewed separation requirements adopted by several other cannabis permitting jurisdictions, and considered the potential constraints to the City's retail cannabis operations in comparison to the potential community benefits. Ultimately, the Planning Commission recommended amending the CMMC to increase the minimum separation between cannabis storefronts and youth centers from 600 feet to 1,000 feet, consistent with the City's buffers between cannabis storefronts and schools and other specific sensitive uses, as adopted. The proposed text change regarding separation from youth centers is provided in section 13-200.93(f) in Attachment 6.

Separation Between Cannabis Storefronts and Residential Zones

The CMMC conditionally allows cannabis storefronts in commercial zones without a minimum separation from residential uses. The Planning Commission discussed potential minimum separations between cannabis storefronts and residential zones, including examples from other cannabis permitting jurisdictions. The Planning Commission also considered the potential citywide reduction in the overall number of potential cannabis retail storefronts that would occur from a required residential separation. Ultimately, the Planning Commission determined that a 100-foot separation between cannabis storefronts and a property zoned for residential use would be an appropriate minimum distance for land use compatibility and to protect the health, safety, and welfare of the public and properties in the immediate neighborhood. As described in section 13-200.93(f) in Attachment 6, the proposed 100-foot minimum separation between cannabis storefronts and properties zoned for residential use would be

measured in the same manner as the other cannabis sensitive use separations; a straight line from the cannabis premises to the closest property line of a property zoned for residential use. For the purpose of establishing separation from residential zones, Code modifications have been added to clarify that a “property zoned for residential use” does not include properties zoned for nonresidential uses where a residential unit or units have been developed (legal nonconforming), nor where an overlay, urban plan, or specific plan allows the development of residential units and no residential development is currently developed.

Separation Between Cannabis Storefronts

The adopted CMMC does not establish a minimum separation between cannabis storefronts. Per City Council direction, the Planning Commission explored establishing a minimum separation requirement between cannabis storefronts. To assist the Planning Commission in their considerations, staff provided examples of minimum separation requirements from several Southern California jurisdictions with cannabis ordinances ranging from no separation to a 1,000-foot minimum separation, and included further analysis regarding their population sizes.

At the November 27, 2023 Planning Commission meeting, four Commissioners expressed support for a separation of 1,000 feet between storefronts and five Commissioners expressed support for a separation of 500 feet. Ultimately, the Planning Commission requested that staff draft a methodology for measuring the proposed 500-foot minimum separation. A cannabis storefront is not a sensitive use; therefore, instead of measuring the shortest distance from a cannabis premises to a property line, staff proposes measuring the shortest distance between the two premises. In a single-tenant building where a cannabis would occupy the entire space, the entire building is the premises. In a multitenant building or shopping center, the premises would be the specific suite(s) where the cannabis use is proposed. The 500-foot minimum separation measurement for both single-tenant and multi-tenant configurations would be conducted in the same manner—the shortest distance in a straight line from a proposed cannabis storefront premise to a cannabis storefront premise where there is an approved CBP for a cannabis storefront.

The amendments to separation requirements would result in several of the existing operating and previously approved cannabis storefront locations to become nonconforming. Pursuant to the revised Code provisions, any approved retail cannabis storefront CUP location that does not conform to the separation requirements as amended, but which lawfully met separation requirements at the time of the submission of a CBP application for the subject property, would be considered a legal nonconforming use, and may continue to operate. The proposed minimum separation between storefronts as well as nonconforming provisions specific to cannabis storefront locations are provided in section 13-200.93(f) of Attachment 6.

Limit on Cannabis Storefronts

As adopted, the CMMC does not currently limit the number of cannabis storefront applications that will be processed nor the number of total retail Cannabis Business Permits (CBPs) that will be issued. Per the existing adopted Title 9, Section 9-489(d), the City Council may by resolution limit and/or restrict the number of cannabis retail permits available for issuance and/or renewal. During the discussion of potential future limitations on applications and CBPs, the Planning Commission reached a consensus that 15 cannabis storefronts would be an appropriate number in the community in consideration of Costa Mesa voters' approval of Measure Q. However, in recognition of already approving 22 CUPs for cannabis storefronts under the adopted code, and understanding that several more CUPs for cannabis storefronts are in progress, the Planning Commission affirmed that recommending approving 30 CUP applications for cannabis storefronts, while establishing a future cap of 15 would be an acceptable compromise.

As proposed, following the City approval of the 30th retail cannabis storefront CUP location, no further CUPs for cannabis storefronts may be processed or approved until such time as the total number of existing CUPs for cannabis storefronts located in the City falls below 15. Once the total number of existing CUPs for cannabis storefronts falls below 15, the City may then consider/approve additional cannabis storefront CUPs not to exceed a total of 15. The proposed redline version of the modification is provided in section 13-200.93(e) in Attachment 6. The proposed amendment would also involve the subsequent addition of section 9-494.5, pertaining to CBPs, provided in Attachment 7.

Reflective of the Planning Commission's desire to allow the total number of cannabis storefronts to eventually decrease from 30 to 15 over time, several points of clarification are proposed regarding obtaining a cannabis storefront CUP or CBP and situations in which a cannabis storefront CUP, CBP, or CBP renewal may be voided, forfeited, denied, etc. Modifications to Title 13 and Title 9 are shown in "redlines" in Attachment 6 and Attachment 7, respectively.

- Modifications to 13-200.93(7) include provisions for terminating CUPs at locations where the cannabis retail storefront use is nonconforming and discontinued and/or replaced.
- Modifications to Title 9-488(a) and (b) would clarify that a cannabis business permit holder, use, and application for CBP renewal must be compliant with the adopted administrative regulations and that failure to comply and submit timely renewal fees shall be grounds for denying a renewal.
- As proposed, Title 9-493 would be amended to specify that failure to hold a valid business license shall render the CBP invalid.

Allowing the word "Cannabis" on Storefront Signage

As directed by the City Council, the Planning Commission considered allowing the word "cannabis" to be included on cannabis storefront signage. As adopted, CMMC Section 9-

495(g)(6) contains provisions for signage and notices at cannabis storefronts to limit cannabis signage to what is necessary for identification only and operators shall post a notice at entrances prohibiting onsite smoking, ingestion, and so on. Additionally, retail cannabis storefronts have also been subject to the following standard condition of approval:

“No signage shall be installed until the owner/operator or its designated contractor has obtained permits required from the City. Business identification signage shall be limited to that needed for identification only. Business identification signage shall not include any references to cannabis, whether in words or symbols. All signs shall comply with the CMMC.”

The intention of this condition is to ensure cannabis dispensaries maintain a high-quality aesthetic and limit cannabis advertising in the City to persons under 21 years of age. The Planning Commission determined that instead of allowing the word cannabis on business identification signage, it would be more appropriate to allow the word “cannabis” on the notice to be posted only at entrances of cannabis businesses in a manner that is generally not visible from public rights-of-way. A notice regarding not consuming cannabis is already required at cannabis business entrances. Staff drafted the amendment to specifically allow the word cannabis to be included up to two times, with a maximum letter height of one inch, on notices posted at cannabis business entrances to help people identify that the facility is a cannabis storefront prior to entering. All notice lettering shall be the same font and color. A redline version of the proposed modification to 9-495(g)(6b) is provided in Attachment 7.

Advertising and Marketing Restrictions Related to Youths

Pursuant to City Council direction, the Planning Commission also considered potential code amendments to restrict cannabis marketing to youth beyond State regulations. The Planning Commission directed staff to draft language prohibiting cannabis advertising and marketing materials from being attractive to youth and prohibit depictions of individuals under 21 years of age consuming cannabis or cannabis products. Staff identified potential difficulties in enforcing the age-based restriction, and therefore has recommended amending the code to specify that advertising and marketing materials shall not encourage persons under 21 years of age to consume cannabis or cannabis products and shall not depict or suggest the consumption of cannabis or cannabis products. This proposed modification to Title 9-495(g)(6e) is provided in Attachment 7.

Strengthening Labor Peace Agreement Regulations

CMMC 9-495(h)(18) requires a retail CBP applicant to provide a notarized statement that the applicant will enter into, or demonstrate that it has already entered into, and abide by the terms of a labor peace agreement (LPA). The City Council directed the Planning Commission to explore whether or not the City should modify the CMMC to strengthen policies pertaining to LPAs.

Labor organizations as well as current or former employees can submit complaints regarding a licensee to the California Department of Cannabis Control (DCC). When an organization has been determined to not be a bona fide labor organization, the DCC will contact cities and counties throughout the State. The DCC is actively in contact with Costa Mesa staff regarding the status of labor organizations, and staff has received at least one notification from the DCC regarding a non-bona fide labor organization. The Planning Commission did not recommend proposing modifications to the CMMC pertaining to cannabis LPAs, citing that the appropriate agency for collecting complaints and investigating cannabis LPA issues would be the DCC.

Establishing Business Displacement Regulations

The Planning Commission and City Council has previously heard testimony that existing tenants to be replaced by cannabis storefronts have been assisted financially, provided an option to remain for a certain time under reduced monthly rents, and also offered another suite if located in a multi-tenant building. However, there have also been several commercial tenants on month-to-month leases where leases were terminated or otherwise ended with minimal notice and without offering of assistance.

Although the Planning Commission expressed concern for the businesses that have been or would be displaced by cannabis retailers, they acknowledged that changes in tenancy would occur based on existing commercial lease agreements over which the City does not and should not have control. The Planning Commission is not recommending modifications regarding displacement notification and relocation assistance provisions given that non-residential tenants and property owners have entered into private lease agreements and would conduct business, including terminating occupancy, according to those agreements.

Other Text Modifications for Clarity

In addition to the amendments proposed in response to direction by the Planning Commission, staff is proposing text modifications to clarify existing and proposed law and intent as summarized in Table 1, below. The redline version of these proposed text edits are attached to this report in the attachments listed in Table 1, below.

Table 1. Summary of Other Text Modifications for Clarity

Code Section	Summary of Change	Redline
13-200.93(d)(4) Cannabis retail storefront and non-storefront uses	Clarifies that the use must comply with all conditional use permit conditions of approval.	Attachment 6, page 2
9-490(a) Revocation.	Clarifies that a CBP may be revoked and/or suspended and “deemed abandoned or forfeited pursuant to the procedures of section 9-495.”	Attachment 7, page 6
9-490(d) Ineligibility.	Add “business” the present tense “engages in” and “during the application process.”	Attachment 7, page 6
4-494 Conditional use	Add that approval of a CUP shall not waive any other state or	Attachment 7,

permit required.	local requirements.	page 7
4-495(h)(16) Additional operating requirements for retail (storefront) businesses.	Clarify that “operate” shall include, but not be limited to, remitting monthly taxes to the city. Provides more detail regarding when a cannabis retail business would be considered abandoned, therefore forfeiting the cannabis business permit.	Attachment 7, page 12

GENERAL PLAN CONFORMANCE:

This item is administrative in nature.

ENVIRONMENTAL DETERMINATION:

The Code Amendment and Ordinance were reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City’s environmental procedures. The Planning Commission’s recommendation regarding the Ordinance are exempt pursuant to CEQA Guidelines Section 15061(b)(3) (General Rule) because the potential amendments to the ordinance will not have a significant effect on the environment.

LEGAL REVIEW:

The City Attorney’s Office has reviewed and approved this report as to form.

PUBLIC NOTICE:

Pursuant to CMMC Section 13-29(d) public notification has been completed no less than 10 days prior to the date of the public hearing:

1. On-site posting. A public notice was posted at City Hall.
2. Newspaper publication. A public notice was published once in the Daily Pilot newspaper.

Any public comments received prior to the January 22, 2024, Planning Commission meeting may be viewed at this link: <https://costamesa.legistar.com/Calendar.aspx>

CONCLUSION:

The Costa Mesa City Council directed the Planning Commission to explore potential amendments to the City’s adopted retail cannabis program. As directed, the Planning Commission is making several recommendations to modify portions of Title 13 (Planning, Zoning, and Development) of the CMMC and Title 9 (Business Licenses) that are specifically applicable to retail cannabis storefronts. As directed by the Planning Commission, staff prepared modifications to implement the following key amendments to the City’s retail cannabis program:

- Increase the minimum separation between cannabis storefronts and youth centers from 600 feet to 1,000 feet;

- Establish a 100-foot minimum separation between cannabis storefronts and properties zoned for residential use;
- Establish a 500-foot minimum separation between cannabis storefronts;
- Limit the number of retail cannabis storefront conditional use permits and cannabis business permits to 30. After 30 are approved/issued, additional conditional use permits or business permits for retail cannabis storefronts would not be processed or approved until there are fewer than 15 cannabis storefronts in the city;
- Allow the word “cannabis” up to two times on a small notice at cannabis business entrances; and
- Prohibit cannabis advertising and marketing materials that encourage persons under 21 years of age to consume cannabis or cannabis products and prohibit advertising and marketing materials that depict or suggest the consumption of cannabis or cannabis products.

Staff recommends the Planning Commission receive the staff presentation, take public comment, and make a recommendation for the City Council to review the draft ordinance amendments.