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TITLE:

CANNABIS RETAIL STOREFRONT AND NON-STOREFRONT REGULATIONS - INFORMATIONAL PRESENTATION

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES
DEPARTMENT/PLANNING DIVISION

PRESENTED BY: SCOTT DRAPKIN, ASSISTANT DIRECTOR

CONTACT INFORMATION: SCOTT DRAPKIN, (714) 754-5278;
scott.drapkin@costamesaca.gov

RECOMMENDATION:

Staff recommends that the Planning Commission:

Receive an informational presentation from staff and take public comment.

APPLICANT OR AUTHORIZED AGENT:

City of Costa Mesa.

BACKGROUND:

On February 28, 2022 and March 14, 2022, staff provided the Planning Commission the first two of three informational presentations to assist and prepare the Commission for the upcoming retail cannabis related Conditional Use Permit (CUP) entitlement reviews.

The February 28, 2022 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 February 28, 2022 public hearing, the Commission requested staff responses and clarifications for a variety of topics related to cannabis retail establishments. Below is a summary of the 12 topics for which the Commission requested further information/clarification:

Cannabis retail establishment separation requirements;

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

In consideration of the complexity of the above topics, the Planning Commission's review was bifurcated into two presentations. At the March 14, 2022 Planning Commission meeting, the Commission received a presentation regarding topics 1 through 6, and the Planning Commission was informed that they would receive a presentation regarding the remaining six topics at the March 28, 2022 Planning Commission meeting.

DESCRIPTION:

This final presentation to the Planning Commission will focus on the following cannabis retail topics:

- Background checks and cannabis business permit (CBP) requirements (capitalization assessments);

- Traffic impact analysis requirements and potential traffic related impacts;
- Conditional use permit findings related to proposed cannabis retail establishments;
- Cannabis business taxes;
- Cannabis establishment compliance with the California Environmental Quality Act (CEQA); and
- Liquidation of cannabis inventories after establishment closures.

Background checks and cannabis business permit (CBP) requirements (capitalization assessments)

The City requires a multi-step application and review process for proposed cannabis retail establishments to ensure that the submitted applications are in compliance with the City's Municipal Code (CMMC) Section 9-495. The required background checks are generally completed by the City's expert cannabis consultant. Costa Mesa Municipal Code Section 9-495(g)(10) requires a "*background check*" and includes the submittal requirement of information deemed necessary by the City Manager (or designee). As part of the information required to be submitted to establish a cannabis retail facility, the City's expert cannabis consultant reviews financial information for proof of capitalization. The proof of capitalization review includes bank statements, promissory notes, commitment letters, and other financial documents used to prove that operators have sufficient funds to cover the proposed start-up costs. For example, an applicant will identify a start-up cost of \$500,000 for the establishment of a cannabis business and is expected to show proof that they have sufficient capital to cover the development cost of the new business. Among many other cannabis business related costs, the review would account for the ability of the operator to install critical security and safety measures.

Traffic impact analysis requirements and potential traffic related impacts

The CMMC Section 13-275(e) indicates that any increase in traffic generation by a change of use shall be subject to review by the appropriate reviewing authority who may impose fees or (if the review required a discretionary permit) conditions of approval on the development project to address increased traffic generation. The purpose of this evaluation is to assure that traffic capacity is available in the City's transportation system to accommodate the additional trips. Additionally, CMMC Section 13-275(a), specifies that "a traffic impact study shall be required for all development projects estimated by the Public Services Department to generate one hundred (100) or more vehicle trip ends during a peak hour." Pursuant to the CMMC, any intensification of use that generates an increase in traffic trip generation, the City may require design changes/improvements to the local public rights-of-way or the payment of a traffic impact fee. If required, the fee collected is used to fund the City's comprehensive transportation system improvement program.

As with all new uses and/or development in the City that has the potential to increase traffic, the Development Services Department forwards these applications to the City's Transportation Services Division to complete an analysis of potential traffic related impacts. The staff review begins with an analysis of the existing conditions (including an average daily trip analysis of existing/previous uses) and compares these average daily trips (ADTs) with the ADTs for the proposed use. The City's traffic review focuses on traffic increase (net trip increase) and therefore the previous/existing use ADT is

credited/subtracted from the proposed use ADT to estimate potential changes in traffic conditions.

The Transportation Services Division has determined that the appropriate ADT for a cannabis retail establishment is approximately 108 daily trips per 1,000 square feet. Although staff has not completed a traffic review of all submitted cannabis retail applications at this time, the applications that have been considered for traffic related impacts have not generated a requirement for a traffic study. However, and according to the Municipal Code, many of the cannabis retail establishments will be required to pay a traffic impact fee which is typically paid prior to building permit issuance. Staff has provided an example of a potential cannabis retail fee analysis in the below Table A.

Table A					
Land Use	ADT Trip Rate*	ADT	ADT for Existing Use Credit**	Net ADT	Transportation Fee***
Cannabis Retail Establishment (3,000 square foot)	108.4	325 (108 x per 1,000 square feet of floor area)	163 (54 x per 1,000 square feet of floor area)	162	\$36,190 (\$235 x 154)

*ADT is based on "Pharmacy/Drug Store with drive through window" per the Institute of Transportation Engineers 11th Edition Transportation Manual

**ADT is based on credit for an existing strip retail plaza per the Institute of Transportation Engineers 11th Edition Transportation Manual

***Costa Mesa Traffic Impact Fee = \$235 per ADT

****5% Active Transportation Credit

Conditional use permit findings related to proposed cannabis retail establishments

The California Governor's Office of Planning and Research (OPR) indicates that "findings of fact" are required in order to support the decision of the hearing body to approve or deny a conditional use permit (CUP). The OPR further indicates that findings are the legal footprints left by local decision-makers to show how the decision-making process progressed from the initial facts to the decision. If a decision is challenged in the future, a court will examine the evidence supporting the findings to determine whether the hearing body acted appropriately or abused its discretion when acting on a CUP. Such an abuse of discretion is to be found when: (1) the agency did not proceed in a manner prescribed by law; (2) the agency's decision is not supported by findings; and (3) the agency's findings are not supported by evidence in the administrative record.

Pursuant to CMMC Section 13-29 (Planning Application Review Process), when granting approval for a CUP, the final review authority shall make a determination based on the evidence presented in the administrative record that the following findings can be made:

1. 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;
2. 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; and

3. 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.

As with all Planning Commission reviews of CUPs, staff will provide a report that evaluates a cannabis retail establishment proposal with the applicable CUP findings. To further assist in making these findings, the CMMC also stipulates a planning application review criteria. These criteria include that a use must be neighborhood compatible in regard to the relationship between the proposed development/use and the surrounding development/uses (including the design of the buildings, parking area, landscaping, lighting and other site features), and the development/use will not create any unsafe neighborhood conditions.

Lastly, findings must be supported by an explanation and must indicate more than just “the project is in compliance.” For example, an unsupported finding might indicate:

“The site is physically suitable for the type and density/intensity of development being proposed.”

Whereas as a well-supported finding would indicate:

“The site is physically suitable for the type and density/intensity of development being proposed because the proposed development is similar in size and intensity to the residential development surrounding the site. The proposed development allows 10,000 sq. ft. lots with 1 dwelling unit per lot and the surrounding existing development consists of 10,000-12,000 sq. ft. lots with 1 dwelling unit. The topography of the site is relatively flat, does not contain sensitive resources or hazards, and is already served by existing utilities, access and other infrastructure necessary to accommodate residential development.”

Cannabis business taxes

The tax rate for retail and non-retail cannabis businesses are established in Section 9-29.5 of the CMMC. Retail cannabis businesses are subject to an annual business tax of seven-percent based on the gross receipts of that business. Non-retail cannabis operators that also engage in retail cannabis sales (delivery) would be subject to the retail sales tax for all operation gross receipts (regardless of retail/non-retail operations). Taxes are paid to the City on a monthly basis based on gross receipts.

A half percent of revenues generated from the retail cannabis taxes will be directed to fund implementation of the City’s cultural and arts master plan as well as implementation of a first time homebuyer program for current residents of the City, former residents who were raised in the City and/or who graduated from the Newport Mesa Unified School District.

Cannabis establishment compliance with the California Environmental Quality Act (CEQA)

Retail cannabis conditional use permits are subject to the California Environmental Quality Act. Prior to the public hearing on a proposed conditional use permit, the City staff must evaluate the proposal to determine whether or not it may have any significant adverse effects on the environment. CEQA compliance applies to discretionary governmental actions including approval of a CUP for the establishment of a business, and cannabis businesses are no exception. The City must determine that the proposal is exempt from CEQA or requires preparation of a detailed environmental study

evaluating the potential environmental impacts of a project. Exemption categories are established by the State and generally apply to categories of projects which have been found by the Legislature to have minimal impacts to the environment; therefore, a full environmental study is not necessary. Many, if not all, of the retail cannabis conditional use permits will qualify for a CEQA categorical exemption since the proposed scope of work will generally be limited to minor interior or exterior tenant improvements that do not involve new and/or major construction. Most new businesses are exempt from CEQA pursuant to a Class 1 Exemption (Existing Facilities). This exemption applies to minor alterations of existing facilities involving negligible or no expansion of the use. However, and as with all discretionary project reviews, City staff will consider each cannabis application individually and assess if there is likely to be environmental impacts that require further CEQA analysis.

Liquidation of cannabis inventories after closures.

The regulation of cannabis businesses includes the City's local provisions and also the State requirements regulated by the California Department of Cannabis Control (DCC). The DCC specifically regulates growing of cannabis plants, manufacturing of cannabis products, transportation and tracking of cannabis goods throughout the State, sale of cannabis goods, events where cannabis is sold or used, and the labeling of goods sold at retail. The State requires that a cannabis business comply with local regulations and also obtain a State Cannabis License.

As part of the City's retail cannabis application process, staff confirms that a State license is obtained prior to issuance of City business license. Pursuant to State Code Section 15024.1 - *Cannabis and Cannabis Products After Termination of License*, the State regulates the liquidation of cannabis business inventories after establishment closures. Specifically, the State regulations require that in the event a license is ceased while cannabis or cannabis products remain on the premises, the inventory may be destroyed or distributed to another licensed cannabis distributor. These provisions also include requirements for transporting the cannabis inventories, notification of the DCC and for testing for quality assurance prior to re-marketing. With future cannabis retail CUP applications, staff will include conditions that require compliance with State requirements including for proper liquidation of cannabis inventories after closures in the individual retail cannabis Conditional Use Permit standard conditions.

Next Steps

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 is 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 project level decisions will be made.