



## Legislation Details (With Text)

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Date	Ver.	Action By	Action	Result
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### TITLE:

PLANNING APPLICATION 21-16 FOR A RETAIL CANNABIS STOREFRONT USE WITH DELIVERY LOCATED AT 1854 NEWPORT BOULEVARD

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

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

**CONTACT INFORMATION:** MICHELLE HALLIGAN, 714-754-5608; [Michelle.Halligan@costamesaca.gov](mailto:Michelle.Halligan@costamesaca.gov)

### RECOMMENDATION:

Staff recommends that the Planning Commission adopt a Resolution to:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Class 1), Existing Facilities; and
2. Approve Planning Application 21-16, subject to conditions of approval.

### APPLICANT OR AUTHORIZED AGENT:

The authorized agent is Chris Glew representing Mr. Nice Guy, on behalf of the property owner, Michael Ng.

### BACKGROUND:

The subject 11,545-square-foot property is located at 1854 Newport Boulevard (State Route 55). The property is on the northeast corner of Newport Boulevard and Broadway. The site is zoned C2 (General Business District) and is adjacent to other C2 zoned properties. The site has a General Plan Land Use Designation of General Commercial.

Existing development on the site consists of a one-story 1,300-square-foot commercial building with one drive thru window. Access into the site is provided by two driveways located on Newport Boulevard and Broadway. The existing surface parking lot includes 10 stalls. The proposed retail cannabis storefront use with delivery, "Dippity by Mr. Nice Guy," would occupy the entire 1,300-square-foot building. The previous occupant was a retail donut establishment with a drive

thru (the drive thru window will be removed with the proposed use). The site is currently vacant.

Adjacent uses include a vacant commercial building to the north and a multi-tenant commercial building to the east, occupied by a fitness studio and beauty salons. Retail stores and salons are located to the south, across Broadway. The Triangle Square shopping center is located to the west, across Newport Boulevard. Several residential properties are located southwesterly of the site on the 100 block of Broadway, which includes a mix of commercial and residential uses.

There are no open Code Enforcement cases on this property.

The applicant is partnering with Biosgrove Technology, a cannabis distribution facility in Costa Mesa that was approved in 2018 under Measure X. Biosgrove Technology obtained a Cannabis Business Permit in March 2020. There are no active Code Enforcement cases at the Measure X facility.

### ***Non-Conforming Development***

The existing development is considered legal-nonconforming in terms of City required landscaping 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, and such improvements bring the site into greater conformance with Code requirements. As specifically allowed by the CMMC, the associated nonconforming landscaping can remain, and is considered legal-nonconforming. However, the applicant is proposing to bring the property into closer conformance by providing additional site landscaping.

The CMMC and General Plan establish maximum floor area ratios (FARs) for each non-residential land use designation based on trip generation characteristics. Pursuant to the General Plan, the maximum FAR for the proposed use is 0.20 and the existing FAR is 0.12 so the FAR is conforming. In addition, the parking and setbacks are also conforming to the CMMC.

### ***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 Costa Mesa Municipal Code (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 only.

### ***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 before obtaining State approval and 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 completes a site visit 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 Services Department (including Transportation and Engineering Divisions), Fire Department, and Police Department.

If the Planning Commission approves the CUP, the applicant may then begin the remaining steps of the CBP process, which include:

- Obtaining building permits;
- Completing tenant improvements; and
- Demonstrating through various City reviews/inspections that all conditions of approval have been satisfied, and that all other requirements of the CMMC have been met.

After passing the final City and HdL inspections, the CBP would be issued. CBP approval is valid for a two-year period and must be renewed (every two-years) prior to expiration. During the two-year CBP period, the Community Improvement Division (CID), along with other City staff, will conduct site inspections to verify that the business is operating in compliance with CUP and CBP requirements. Violations identified during site inspections may be grounds for revocation of issued permits or non-renewal of a CBP.

After obtaining the CBP, the applicant would apply for and obtain a City Business License through the Finance Department. Lastly, the applicant must obtain the appropriate license from the State Department of Cannabis Control (DCC) prior to operating.

Cannabis retail businesses are subject to a City established seven-percent gross receipts tax, which must be paid to the City of Costa Mesa’s Finance Department. Records and revenues are audited annually by the Finance Department and HdL Companies.

#### **DESCRIPTION:**

Planning Application 21-16 is a request for a CUP to allow retail cannabis uses within an existing 1,300-square-foot building with delivery located at 1854 Newport Boulevard. The affiliated State license is Type 10 “storefront retailer” which also allows retail delivery. Upon approval of a CUP, CBP, City Business License, and State licenses, the business would sell pre-packaged cannabis and pre-packaged cannabis products directly to customers onsite, and via delivery to private

addresses, subject to conditions of approval and other City and State requirements.

## **ANALYSIS:**

### ***Conditional Use Permit (CUP) Required***

Pursuant to Costa Mesa Municipal Code (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 and non-storefronts (delivery) in a commercial zone. The subject site is located within a commercial zone (C2-General Business District) where commercial development is specifically allowed to include retail storefronts. The property is located on one of the City's primary commercial corridors and surrounded by commercial uses. Pursuant to the CMMC, cannabis retail storefronts are conditionally permitted uses in the City's commercial zones and are subject to extensive regulation (as specifically described in this report). These regulations are adopted to prevent land use inconsistencies with adjacent properties. The Planning Commission must make specific finding to approve a CUP related to neighborhood compatibility, health and safety, and land use compatibility with the City's General Plan and Municipal Code. The required findings are provided below in the report. In addition, staff has drafted numerous specific conditions of approval, included in the Resolution, to ensure site-specific land use compatibility.

### ***Separation Requirements***

The property is located on one of the City's commercial corridors and surrounded by commercial uses. Although not located adjacent to the site, there are several multi-family residential properties located to the southeast along the 100 block of Broadway. The CMMC does not establish a minimum separation between cannabis retail establishments and residential development or residential zones. 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. 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 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 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 proposes to upgrade the building façade and site. Proposed exterior improvements include:

- Removing the drive thru window;
- Removing a detached structure (shed);
- Replacing doors and windows;
- Replacing exterior finishes;
- Installing security lighting and cameras;
- Adding bicycle racks;
- Restriping the parking lot to add a parking space; and
- Replacing the landscaping.

The proposed façade enhancements would provide a contemporary look as demonstrated in the attached plans. The existing landscaping would be removed and replaced with 11 new trees and a variety of ground covers. The enhanced landscaping would increase the tree canopy and soften the appearance of the parking lot and building. The proposed security lighting would be shielded and directed towards the ground. The applicant has provided a draft photometric plan as part of their CUP submittal. As conditioned, a final photometric plan demonstrating that lighting would be adequate for security purposes while preventing inappropriate light spill would be required prior to issuing building permits. The applicant also proposes to update the site with exterior surveillance cameras and new business signage (signs would be reviewed and permitted separately per the City's sign code requirements).

### ***Interior Tenant Improvements***

Significant interior improvements are necessary to transform the former donut shop into a retail cannabis establishment. The interior of the building would be completely restored (flooring, walls, and a commercial kitchen would be removed) with several new demising walls and doors added. Access controlled doors would be installed and surveillance cameras would be placed throughout the interior in accordance with the approved Safety Plan. The public areas of the storefront would include the retail sales area and one restroom. Back-of-house areas include an access-controlled break area, inventory room, and storage rooms. The interior spaces are summarized in Table 1, below.

**Table 1. Floor Area Summary**

Operational Area	Square Feet
Retail Sales Area	808
Restroom	48
Break Area	50
Storage/Inventory/Security	394
Total:	1,300

### ***Customer and Employee Access***

Customers would be limited to enter the licensed premise through a dedicated public front entrance door facing Newport Boulevard. A check-in station would be located by the public entrance. An employee would verify the customer's identity and age before allowing the customer to continue into the retail sales area. After a customer's identity and age is verified and their transaction is completed, they must leave the premise through the dedicated exit side-door that faces Broadway. As further conditioned, a security guard would monitor the area at all times to ensure that customers are following regulations.

Employees would enter through an access-controlled door located nearest the rear of the property (adjacent to the customer exit side-door). The proper security credentials would be required to enter any limited access space such as retail sales counter, employee break area, and inventory storage rooms. When loading and unloading delivery and vendor vehicles, employees would enter and exit through the access-controlled door. The access-controlled door leads to the "back of the house" areas. All vendors must be escorted by an employee. No delivery or vendor operations will occur on the sales floor. One vendor and delivery-only parking space would be located approximately six feet from the employee access door. The door, path of travel, and vehicle loading area would be under camera surveillance, and all vehicle loading/unloading will be monitored by the security guard.

### ***Storefront/Delivery Operations***

The proposed business is 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;
- Hours of operations are limited to 7:00 AM to 10:00 PM daily;
- Shipments of cannabis goods may only be accepted during regular business hours;
- 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, do not consume cannabis onsite or within close proximity, and/or do not disturb the neighbors. Security guards will monitor the parking lot diligently during morning and evening business hours. 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 also 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 located toward the rear of the building. After distributor's credentials have been confirmed, an employee will escort the distributor to the shipping and receiving area and remain with them throughout the process.
- Cannabis goods to be sold at this establishment (either storefront or delivery) 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;
- Packaging containing cannabis goods shall be tamper-evident and child-resistant; if packaging contains multiple servings, the package must also be re-sealable;
- When processing orders for cannabis delivery, employees will collect the pre-packaged materials, load products into a secured container and transport the containers to delivery vehicles outside the building. Video surveillance cameras will be installed with direct views of the path of travel and loading and unloading area and all vehicle loading will be monitored by the security guard;

- Cannabis deliveries must be made in-person by an employee of the licensed retailer. An independent contractor, third-party courier service, or an individual employed through a staffing agency would not be considered employed by the licensed retailer;
- The applicant shall maintain proof of vehicle insurance for any and all vehicles being used to deliver cannabis goods;
- During delivery, the employee shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers;
- A delivery employee shall not leave the State of California while possessing cannabis products and while performing their duties for the cannabis retailer;
- The business shall maintain a list of all deliveries, including the address delivered to, the amount and type of product delivered, and any other information required by the State;
- Any delivery method shall be made in compliance with State law, as amended, including use of a vehicle that has a dedicated global positioning system (GPS) device for identifying the location of the vehicle (cell phones and tablets are insufficient);
- Signs, decals or any other form of advertisement on the delivery vehicles are prohibited;
- Deliveries must be made to a physical address that is not on publicly owned land and cannot be a school, a day care, homeless shelter, or a youth center; and
- A cannabis delivery employee shall not carry cannabis goods valued in excess of \$5,000 at any time, with no more than \$3,000 of cannabis goods that are not already part of a customer order that was processed prior to leaving the premises.

### ***Business Plan***

The applicant submitted a detailed business plan that was evaluated by the City's cannabis consultant (HdL). The business plan described the owner's experience, proof of capitalization, 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 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, including drivers, 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 professionally installed and monitored;
- An alarm system shall be professionally installed 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 exterior) shall be installed;
- Emergency power supply shall be installed;
- Employees shall be trained for use with any/all emergency equipment;
- Delivery drivers shall be trained on delivery safety protocols;
- Employees and vendors will be trained regarding cash and product transportation protocol;
- Visitor/customer specific security measures shall be required;
- All facility entry and exit points and locations where cash or cannabis products are handled or stored shall be under camera surveillance;
- The applicant shall submit a list of all vehicles to be used for retail delivery purposes to the Costa Mesa Police Department. The list shall identify the make, model, color, license plate number, and registered owner of each vehicle. The applicant shall submit an updated vehicle list each quarter with the required quarterly update to the employee roster pursuant to the CBP.
- Delivery vehicle drivers shall be at least age 21, have a current driver's license, successfully complete a live scan, and have a City-issued badge; and
- The business operator shall ensure that all delivery vehicles are properly maintained, all delivery drivers have a good driving record, and each driver conducts a visual inspection of the vehicle at the beginning of a shift.

### ***Parking and Circulation***

Retail cannabis uses are subject to the same parking ratio requirement as other retail establishments in the City (four spaces per 1,000 square feet of gross floor area). Based on this ratio, the total parking required for the building is five stalls. The existing site includes 10 parking stalls. The applicant proposes to reconfigure the parking lot to accommodate 11 parking stalls and two bike racks. The bike racks are credited as one parking stall, which increases the total number of parking stalls to 12. The proposed 1,300-square-foot establishment requires five parking spaces; therefore the site exceeds the CMMC parking requirement by approximately seven parking spaces. As indicated above, one parking stall located by the access-controlled door will be the designated location for delivery vehicle/vendor parking. Vendor deliveries will not occur during retail delivery operations to insure adequate parking.

Pedestrian access to the establishment is provided by an existing public sidewalk located along Newport Boulevard and Broadway. Bike racks will be installed on the site to encourage biking. Vehicles may enter the site via two driveways. Vehicular ingress/egress to the site is not proposed to change from existing conditions. Two one-way driveways are provided on Newport Boulevard, with the driveway to the north being dedicated for exiting vehicles and the driveway to the south for vehicular entrance. An existing two-way driveway is provided on Broadway and will be signed to limit exiting customers to right-hand turns only, towards Newport Boulevard.

As with many new uses and based on many factors that are difficult to quantify, it is difficult to anticipate exact demand for a new use; however, if parking shortages or other parking-related problems occur, the business owner or operator will be required to monitor the parking lot and institute appropriate operational measures necessary to minimize or eliminate the problem in a manner deemed appropriate by the Director of Economic and Development Services (see "Operational Conditions" of Approval No. 7 in the attached Resolution). Examples of parking demand



management techniques include, but are not limited to, reducing operating hours of the business, hiring an employee to monitor parking lot use and assist with customer parking lot circulation, encouraging customers to take advantage of delivery service instead of store visits, offering an employee shuttle service, and incentivizing employee carpooling/cycling/walking.

### ***Traffic***

The 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. The Transportation Services Division determined that the appropriate average daily trips (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-thru.” The City’s traffic review focuses on net trip increase and therefore the ADT for the previous/existing use(s) is credited (subtracted) from the proposed use ADT to estimate potential changes in trip generation. Staff analyzed the ADT of the previous donut shop with a drive thru use and compared that with the proposed retail cannabis use ADT. 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.” Staff determined that the proposed use does not meet the threshold for requiring a traffic study nor a traffic impact fee.

### ***Odor Attenuation***

Cannabis products would arrive in State compliant packaging that is sealed, tamper-evident, and odor-resistant, and remain unopened until consumption. However, a minimal amount of cannabis product would be removed from packaging for display purposes and would be placed in display containers. The facility would feature carbon filters to address potential odors. As conditioned, the operator must replace the air filters at regular intervals, as directed by manufacturer specifications. Further, if cannabis odor is detected outside of the building, as conditioned, 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 are not allowed to be disposed of in the exterior trash enclosure.

### **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 located within a commercial area as allowed under Measure Q, and provides new goods and services and new employment opportunities in the community.

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 with delivery 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.

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 that is limited in the surrounding region. Approval of this CUP would facilitate a new local business opportunity in a specialized and expanding industry.

## **REQUIRED 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 specified findings as follows:

- *The proposed development or use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area.*

The subject site is located within a commercial zone (C2, General Business District) where commercial development is specifically allowed to include retail storefronts and non-storefronts. In addition, the property is located on one of the City's primary commercial corridors which is predominantly intended for commercial uses. Pursuant to the CMMC, cannabis retail storefronts and non-storefronts (delivery) are permitted uses in the City's commercial zones and are subject to extensive regulation (as specifically described in this report). These regulations are adopted to prevent land use inconsistencies with adjacent properties. Additionally, the proposed cannabis retail storefront use is not located within 1,000 feet of a K-12 school, playground, licensed child daycare, or homeless shelter, or within 600 feet of a youth center. All retail sales would take place underroof and no outdoor storage or sales are proposed nor would be allowed. Staff does not anticipate that the proposed retail cannabis use would be materially detrimental to the adjacent uses that include other retail establishments.

The proposed use would also not be materially detrimental to the abutting commercial uses because the project would include features to ensure compatibility such as: shielding security lighting away from adjacent properties, odor control measures, and 24-hour onsite security.

The proposed use would also be open for fewer hours than the previous donut shop with a drive thru. The business operation and the hours in which the facility can accept deliveries are between 7 AM and 10 PM. As proposed and conditioned, the retail cannabis use would be compatible with other properties within the area, and in compliance with local and State requirements.

- 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 with delivery 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 all interior limited access spaces. In addition, the business employees, including delivery drivers and part-time staff, must pass a live scan background check and obtain an identification badge from the City. The conditions of approval include, but are not limited to, the aforementioned security measures to ensure that the use would not be materially detrimental to the health, safety and general welfare of the public or be otherwise injurious to property or improvements within the immediate neighborhood.

- 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 is located within an existing commercial building on a property that has a General Plan land use classification of "General Commercial." No additional square footage is proposed; therefore, approving the CUP would not increase site intensity. As stated in the General Plan Land Use Element, the City's commercial designations "accommodate the full range of commercial activity present and desired in Costa Mesa." The use is consistent with General Plan policies related to providing a mixture of commercial goods, services, and employment opportunities; expanding the City's tax base; and promoting the incubation of unique and specialized businesses.

## **ENVIRONMENTAL DETERMINATION:**

The project is categorically exempt from the provisions of California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 for the permitting and/or minor alteration of Existing Facilities, involving negligible or no expansion of the existing use. This project site contains an existing commercial building that has been used for commercial activities and the application does not propose an increase in commercial floor area or otherwise expand the prior commercial use. The project is consistent with the applicable General Plan land use designation and policies as well as with the applicable zoning designation and regulations.

## **ALTERNATIVES:**

The Planning Commission has the following alternatives:

1. **Approve the project.** The Planning Commission may approve the project as proposed, subject to the conditions outlined in the attached Resolution.
2. **Approve the project with modifications.** The Planning Commission may suggest specific changes that are necessary to alleviate concerns. If any of the additional requested changes are substantial, the hearing should be continued to a future meeting to allow a redesign or additional analysis. In the event of significant modifications to the proposal, staff will return with a revised Resolution incorporating new findings and/or conditions.
3. **Deny the project.** If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission must deny the application, provide facts in support of denial, and direct staff to incorporate the findings into a Resolution for denial. If the project is denied, the applicant could not submit substantially the same type of application for six months.

#### **LEGAL REVIEW:**

The draft Resolution and this report have been approved as to form by the City Attorney's Office.

#### **PUBLIC NOTICE:**

Pursuant to Title 13, Section 13-29(d) of the Costa Mesa Municipal Code, three types of public notification have been completed no less than 10 days prior to the date of the public hearing:

1. **Mailed notice.** A public notice was mailed to all property owners and occupants within a 500-foot radius of the project site. The required notice radius is measured from the external boundaries of the property.
2. **On-site posting.** A public notice was posted on each street frontage of the project site.
3. **Newspaper publication.** A public notice was published once in the Daily Pilot newspaper.

As of the date this report was circulated, one written public comment has been received and is attached. Any public comments received prior to the August 8, 2022 Planning Commission meeting will be provided separately.

#### **CONCLUSION:**

The proposed project is a retail cannabis storefront business with delivery at an existing developed retail property that is located on one of the City's major commercial corridors. The property meets separation requirements established in CMMC 13-200.93(e). Staff and the City's cannabis consultant completed the Pre-Application Determination, Business Plan and Security Plan evaluations, owner background checks, and thoroughly reviewed the CUP materials. If approved, the operation would be required to comply with all conditions of approval and extensive City and State regulations.

If the Planning Commission approves the project, the applicant would next obtain building permits, complete those improvements, and pass City inspections prior to obtaining a CBP and City Business License. The CBP is valid for two years and must be continuously renewed, including inspections, prior to expiration. During each two-year CBP period, the Community Improvement Division, along with other City staff, conduct site inspections to verify that the operation complies with CUP and CBP requirements. Violations identified during site inspections may be grounds for revocation of issued permits or non-renewal of a CBP.

As proposed and conditioned, the use would be consistent with other commercial uses in the C2 zone, the Zoning Code, and the City's General Plan. Further, the project has been conditioned to minimize potential impacts to neighboring properties. The required findings for the CUP can be made, as described above, and therefore, staff recommends approval of Planning Application 21-16 subject to conditions of approval.