



Legislation Text

File #: 21-551, Version: 1

TITLE:

PLANNING APPLICATION 21-19 FOR A CANNABIS NON-STOREFRONT RETAIL USE (WINTER GREENS) AT 3590 CADILLAC AVENUE, UNIT A

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTED BY: MICHELLE HALLIGAN, PLANNING CONSULTANT

**CONTACT INFORMATION: MICHELLE HALLIGAN; 714-754-5608;
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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 21-19, subject to conditions of approval.

APPLICANT OR AUTHORIZED AGENT:

The applicant/authorized agent is Gary Todd Winter, Esq. of WGCM, LLC, for the property owner, Morton Cadillac, LLC.

BACKGROUND:

The subject 1.2-acre property is located on the east side of Cadillac Avenue, north of Scenic Avenue, and within a portion of the City's industrial area known as the "Green Zone." The property and adjacent general area is zoned MP (Industrial Park). A variety of cannabis uses can be permitted in the Green Zone, including manufacturing, distribution, and non-storefront retail (delivery to consumers).

Existing development on the site consists of a 20,732-square-foot multi-tenant industrial building with landscaping, trash enclosure, and a 54-stall surface parking lot. The proposed project location, Unit A, is a currently vacant, two-story 9,757-square-foot suite fronting Cadillac Avenue. A cannabis manufacturing, distribution, and delivery operator occupies the adjacent tenant space (Oil Haus, PA-17-38 A5/ZA-21-34 staff report:

<https://www.costamesaca.gov/home/showdocument?id=50000&t=637746639395829592>).

There are no open Code Enforcement cases on this property.

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 (SOCO) property located at 3303 Hyland Avenue. Measure X is locally regulated by Titles 9 and 13 of the Costa Mesa Municipal Code (CMMC) in addition to State cannabis requirements.

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 cannabis uses in the same manner and within the same geographic area as medical cannabis uses 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 (delivery) cannabis retailer sells packaged cannabis goods to customers through direct delivery only.

Cannabis Business Permit Process

Cannabis non-storefront (delivery) retail is a conditionally allowed use in certain commercial zones and in the Industrial Park zone. Prior to operations, a non-storefront retail applicant is subject to an extensive submittal and application review process and must obtain all of the following City approvals before obtaining State approval and conducting business in the City:

- Cannabis Business Permit Notice to Proceed
- Conditional Use Permit (or Minor Conditional Use Permit in specific circumstances)
- Building Permits (and final inspections by multiple departments and the City’s cannabis consultant)
- Cannabis Business Permit
- Business License

The initial phase of the Cannabis Business Permit review includes a background check of the business owner/operator and an evaluation of the proposed business plan (including a capitalization analysis) and review of the proposed security plan by the City’s cannabis consultant, HdL Companies. The applicant successfully passed these evaluations and staff issued a Notice to Proceed, which allows the applicant to continue to the next step in the review process and submit a Conditional Use Permit (CUP) application. A CUP application for the proposed project was subsequently filed and the application materials were reviewed by staff from Planning, Building, Public Services, Transportation, Fire, and Police.

If the CUP is approved, the applicant would begin the remaining steps of the CBP process. The

applicant must obtain building permits, complete building improvements, demonstrate through various City reviews 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 Companies inspection, the CBP would be issued. CBP approval is valid for a two-year period and must be renewed prior to expiration. During the two-year permit period, the Community Improvement Division (CID), along with other City staff, will conduct inspections to verify that the operation complies with all CUP and CBP requirements. Violations identified during site visits may be grounds for the revocation of issued permits or for non-renewal of a CBP.

After obtaining the CBP, the applicant would apply for and obtain a City Business License. In addition to the CUP, CBP, and Business License, the applicant must obtain the appropriate license from the State Department of Cannabis Control prior to operating.

DESCRIPTION:

Planning Application 21-19 is a request for a CUP to operate “Winter Greens,” a non-storefront retail cannabis (delivery only) business within an existing 9,757-square-foot tenant space at 3590 Cadillac Avenue, Unit A. Delivery vehicles would be parked inside the existing 5,060-square-foot warehouse.

The required State license is a Type 9 “non-storefront retailer.” A CUP, CBP, City Business License, and State license for non-storefront retail use would allow the business to deliver pre-packaged cannabis and other packaged cannabis products directly to off-site customers, subject to local and State conditions of approval and requirements.

Cannabis storefront retail, testing, manufacturing, and wholesale distribution are not proposed within this application. Cannabis cultivation is not proposed and is prohibited in Costa Mesa.

ANALYSIS:

Non-Storefront Retail Use

As described in the applicant’s letter (Attachment 2), the proposed project is a 9,757-square-foot non-storefront (delivery) retail facility including indoor delivery vehicle storage, loading, and unloading. The first floor of the facility would include a 5,060-square-foot warehouse, offices, dispatch, restrooms, a kitchen, a break room, and storage. The second floor would include offices, storage, and a conference room.

Under the Type 9 State license, only packaged products can be delivered directly to customers. Packaged products would arrive to the facility by vehicles operated by State-licensed distributors. Winter Greens will obtain a range of product types from multiple licensed distributors. The products would be unloaded by Winter Green’s authorized personnel in the warehouse and then transferred to limited access storage rooms, e.g. rooms only accessible to authorized personnel. No unsecured cannabis products would be stored in the warehouse.

Once ordered by customers, the packaged materials would be separated into specific orders and placed into a secured container. The secured containers are loaded into delivery vehicles inside the warehouse. No loading and unloading of cannabis products into delivery vehicles is proposed to take place outdoors. As proposed and conditioned, video surveillance cameras will be installed on the interior and exterior of the building with direct views of the exterior roll-up doors. Additional details are

provided in the Business Plan and Security Plan sections below.

Several salient State and local operating requirements applicable to non-storefront retail (delivery) operations are summarized below:

- All employees who deliver cannabis shall have valid identification and a copy of the Cannabis Business Permit (CBP) and State license at all times while making deliveries.
- All employees must be at least 21 years of age.
- Delivery to consumers is limited to the hours between 7 AM and 10 PM.
- All commercial cannabis retail businesses shall maintain proof of vehicle insurance for any and all vehicles being used to transport cannabis goods as required by State law.
- During delivery, the delivery 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. The delivery request documentation shall comply with State law.
- A licensed delivery employee shall not leave the State of California while possessing cannabis products and performing his or her duties for the cannabis retailer.
- A commercial cannabis retail 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.
- A manifest with all information required pursuant to local and State provisions shall accompany any delivery person at all times during the delivery process and delivery hours.
- Any delivery method shall be made in compliance with State law, as amended, including use of a vehicle that has a dedicated GPS device for identifying the location of the vehicle (cell phones and tablets are not sufficient).
- Each delivery request shall be entered into a point-of-sale tracking system and have a receipt prepared by the commercial cannabis retail business with the following information:
 - Name and address of the commercial cannabis retail business.
 - The name of the employee who delivered the order.
 - The date and time the delivery request was made.
 - The customer's first name, retail-assigned identification number, and delivery addresses.
 - A detailed description of the cannabis goods requested for delivery including the weight or volume, or any accurate measure of the amount of cannabis goods requested.
 - The total amount paid for the delivery including any fees or taxes.
 - The date and time delivery was made, and the signature of the person who received the delivery.
 - At the time of the delivery, the person receiving the delivery provides identification and must be at least 21 years old.
- No cannabis delivery vehicle shall display signs, decals or any other form of advertisement.
- Inspections by an authorized City representative may be conducted anytime during regular business hours.
- Delivery must be made to a physical address that is not on publicly owned land, a school, a day care, or a youth center.
- The 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.

- Delivery must be made in person by a direct employee of the licensed retailer. An independent contractor, third-party courier service, or an individual employed through a staffing agency would not be considered directly employed by the licensed retailer.
- The delivery employee shall confirm the age of the buyer through entering government-issued identification information into an electronic age verification system.

Business Plan

The applicant provided a detailed business plan that was evaluated by the City's cannabis consultant, HdL Companies. The business plan described the owner's background, proof of capitalization, start-up budget, a three-year pro forma, target customers, and day-to-day operations. The business plan contains proprietary details and is therefore not included as an attachment to this staff report.

"Order fulfillment procedures" are an example of the day-to-day operations explained in the business plan. According to the applicant's business plan, orders would be placed via telephone or a secured online portal. In both methods, customers must register with the company prior to placing an order. The registration process includes age verification and uploading an acceptable government-issued identification card. After a registered customer places an order, the dispatcher will group the pre-packaged products in an unmarked package within a secured storage area. The items would be stored until the agreed-upon delivery window of time. At the appropriate time, a batch of orders would be moved to the delivery vehicle's storage receptacle. Deliveries in similar geographic areas would be batched together to increase efficiency and decrease vehicle miles traveled. The following are some of the other operation topics described in the Business Plan:

- State tracking and tracing compliance
- Inventory quality control procedures
- Employee training
- Supply chain
- Inventory storage
- Expired product procedures
- Record keeping
- Vehicles (unmarked, company-owned/leased, and company-insured)

Security Plan

The applicant provided a professionally prepared security plan for the proposed facility and operation. The City's cannabis consultant, HdL Companies, reviewed the proposed 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 measures that require limited exposure to remain effective, the plan is not included as an attachment. However, the following is generally a list of measures that are provided in the security plan:

- Live scan background check for every employee, including drivers;
- City-issued identification badge for every employee;
- Professionally installed and monitored exterior and interior surveillance cameras;

- Professionally installed, maintained, and monitored alarm system including panic buttons and window and door alarms;
- Surveillance footage must be maintained for a minimum of 90 days;
- Secured storage of cash, cannabis, and cannabis products;
- Sensors that detect entry and exit from all secured areas;
- Interior and exterior security lighting;
- Emergency power supply;
- Emergency equipment and training;
- Driver and vehicle safety protocol;
- Vendor protocol (cash and product transportation); and
- Limited access areas and visitor check in and security (consent to local and State inspections included).

As proposed and conditioned, all facility entry and exit points, locations where cash or cannabis products are handled or stored shall be under camera surveillance. As conditioned, 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. Additionally, the City is conditioning the project so all Type 9 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. The business operator shall ensure that all 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.

Circulation and Parking

The existing surface parking lot includes 54 stalls to serve the 20,732-square-foot building. The existing parking ratio is 2.6 stalls per 1,000 square feet instead of the City's standard 3 parking stalls per 1,000 square feet for industrial properties. The legal non-conforming parking is allowed to continue so long as the development will not be made more nonconforming per CMMC Title 13, Chapter X, Table 13-204. The proposed use is an anticipated use in the MP zone and the project would not include adding any building square footage. Therefore, the proposed project would not make the development more nonconforming. Additionally, Unit A includes a 5,060-square-foot warehouse with two roll-up doors for vehicle access and additional parking for delivery vehicles. The roll-up doors are directly accessible from the parking lot. The drive aisle in the parking lot is 25'-4" wide. Transportation reviewed the project plans and did not require any corrections or conditions of approval beyond the City's standard conditions.

The other tenant at the subject property is a cannabis manufacturing and distribution business. In August 2021, the business obtained a Minor Conditional Use Permit to add delivery. Planning staff visited the site several times and observed very few vehicles on the property (July, August, and December 2021 and January, March, and April 2022).

As stated in the applicant letter, the business would begin with one-to-three delivery vehicles, all owned or leased and all insured by WGCM. Over three years, the business plan anticipates the fleet would grow to five vehicles. Given that the delivery vehicles will be stored underroof and customer

traffic to the site is prohibited, parking shortages are not anticipated.

If parking shortages or other parking-related problems are discovered in the future, operational condition of approval No. 6 requires the business operator to institute appropriate measures necessary to minimize or eliminate the problem including, but not limited to, reducing operating hours of the business, reducing the number of delivery vehicles, and/or limiting the number of persons within the suite, at any given time.

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 serve both 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 specific 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: As approved by a community adopted ballot measure, the proposed use would provide a new entrepreneurial business in Costa Mesa located within an industrial area as allowed under Measure Q, and provides new goods and services and new employment opportunities in the community.

2. **Policy LU-6.3:** *Continue to prioritize commercial and industrial park use of properties north of I-405 and within the Airport Industrial District.*

Consistency: The proposed use would continue the industrial and commercial nature of an existing industrially-zoned property located north of I-405.

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, cannabis delivery, is part of the specialized and growing cannabis industry. The proposed non-storefront use would be based in the Green Zone, an area of the community specifically zoned for a variety of industrial uses including non-storefront cannabis delivery businesses. Approval of this CUP would facilitate a new businesses 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 within the Green Zone, an industrial area of the community where several types of cannabis uses are conditionally permitted, such as non-storefront retail, distribution, and manufacturing. The proposed use is a non-storefront retail cannabis delivery operation. The other tenant at the subject property is a cannabis manufacturing and distribution facility that recently received approval to add delivery operations. Similar to other industrial uses, the proposed delivery business would not generate customer traffic to the site. As proposed and conditioned, the cannabis use would be compatible with adjacent industrial and commercial uses, including several other cannabis uses. Compliance with conditions of approval, other local regulations, and State requirements would allow this delivery business to operate without being materially detrimental to other properties within the area.
- 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 non-storefront retail 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 Companies. Measures designed to maintain safety at the facility include—but are not limited to—window and door alarms, panic buttons, motion-detectors, limited access areas, a video surveillance system that monitors all exterior entrances, exits, and all interior limited access spaces. As proposed and conditioned, video recordings shall be maintained for a minimum of three months. As required by the CMMC and affirmed in the security plan, the business shall designate a security representative to be available to meet with the City Manager, Chief of Police, or their designees, regarding any security or operational concerns. The business employees, including delivery drivers and part-time staff, shall pass a live scan background check and obtain identification badges from the City. The recommended conditions of approval and local and State laws are intended 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 use would be based in an existing industrial building in the Industrial Park land use designation. 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 industrial designations "accommodate a variety of industrial and compatible office uses, as well as limited and supportive commercial uses." The use is consistent with General Plan policies related to providing a mixture of commercial goods, services, and employment opportunities; prioritizing commercial and industrial uses at properties north of I-405; and promoting the incubation of unique and specialized commercial and industrial businesses.

ENVIRONMENTAL DETERMINATION:

The project is categorically exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15301 for the permitting and/or minor alteration of Existing Facilities. The proposed delivery use would occupy an existing tenant suite that was previously used for non-cannabis light manufacturing and distribution, and does not propose an increase in floor area. The project is consistent with the applicable General Plan designation and applicable General Plan 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 may not submit substantially the same type of application for six months.

LEGAL REVIEW:

The draft Resolution has 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 subject 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 drafted, one written public comments has been received and is attached to the report. Any public comments received prior to the Planning Commission meeting will be forwarded to the Planning Commission.

CONCLUSION:

The use, as conditioned, is consistent with the City's Zoning regulations and the City's General Plan. In addition, and as indicated above, the required Conditional Use Permit findings can be made and therefore, staff recommends approval of Planning Application 21-19, subject to the conditions of

approval.