



Legislation Text

File #: 22-660, Version: 1

TITLE:

PLANNING APPLICATION 21-12 FOR A CANNABIS MANUFACTURING, DISTRIBUTION AND NON-STOREFRONT RETAIL FACILITY ("DYRECT #4") AT 3595 CADILLAC AVENUE, UNIT 102

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

PRESENTED BY: JUSTIN ARIOS, ASSOCIATE PLANNER

CONTACT INFORMATION: JUSTIN ARIOS, 714.754.5667; Justin.Arios@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 21-12, subject to conditions of approval.

APPLICANT OR AUTHORIZED AGENT:

The applicant/authorized agent is Sean Maddocks, for the property owner, Cadillac Avenue Property, LLC.

BACKGROUND:

The subject 1.05-acre property is located on the west 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 is zoned MP (Industrial Park) and is surrounded by other MP-zoned properties. A variety of cannabis uses can be permitted in the Green Zone, including manufacturing, distribution, and non-storefront retail (direct delivery to consumers).

Existing development on the site consists of an 18,431-square-foot multi-tenant industrial building with landscaping, trash enclosure, and a 38-stall surface parking lot, with the parking located both outside and within a gated area of the property. The existing number of parking stalls is legal non-conforming in that the existing parking ratio is 2.06 stalls per 1,000 square feet instead of the City's industrial standard of three (3) parking stalls per 1,000 square feet. The proposed project location, Unit 102, is a 5,940-square-foot tenant suite, located in the middle unit of the building. Cannabis operators also occupy the adjacent tenant spaces on the site (Unit 101 & 103), both of which are approved for manufacturing and distribution operations (PA-18-30 A1 & PA-18-35 A1).

There are no open Code Enforcement cases on this property.

April 11th Planning Commission Meeting

On April 11, 2022, the subject application was scheduled to be heard by the Planning Commission. Prior to the meeting, two public comments were submitted that raised concerns related to air quality and odors from the proposed use. As a result, the applicant requested the item be continued to the April 25, 2022 meeting. Subsequent to the item being continued, staff reached out to the public commenter to gather additional and specific information related to their concerns. Furthermore, staff also reached out to the Department of Cannabis Control (DCC) as well as the South Coast Air Quality Management District (South Coast AQMD) to gather additional information and applicable requirements regarding air quality and odor control.

The DCC directed staff to reach out to the local air district, which is South Coast AQMD; and the South Coast AQMD is currently in the process of establishing requirements for control of odors from cannabis processing (Rule 425). This item was included in the 2022 Master Calendar for South Coast AQMD, but was not given a tentative month for adoption.

The staff report and attachments for the April 11th meeting can be found here:

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=5550852&GUID=9E9CA805-7771-4649-BC05-A901A7A43AFD>

DESCRIPTION:

Planning Application 21-12 is a request for a Conditional Use Permit (CUP) to establish a cannabis manufacturing and distribution facility with a non-storefront retail cannabis (delivery only) component within a 5,940-square-foot tenant space at 3595 Cadillac Avenue, Unit 102. Delivery vehicles would be parked inside the existing warehouse and in the gated surface parking lot area.

The required State licenses for the proposed business establishment includes a Type 6 “manufacturer - non-volatile”, Type 9 “non-storefront retailer” and Type 11 “distributor.” A CUP and State license for the facility would allow the business to manufacture and transport cannabis products, as well as deliver pre-packaged cannabis and cannabis products directly to consumers, subject to conditions of approval and local and State requirements. Cannabis cultivation is not proposed and is prohibited in Costa Mesa.

As described in the applicant’s letter (provided as an Attachment to this report), the proposed cannabis facility includes three main areas:

1. Manufacturing (1,048 square feet);
2. Distribution (1,606 square feet); and
3. Delivery (744 square feet).

There is also a Common Area that serves all three operations, which includes a shared office, two restrooms, a reception area and check-in area.

ANALYSIS:

Manufacturing & Distribution Use

The manufacturing operations are limited to cartridge filling, pre-roll filling, edible gummy production, product packaging and other light manufacturing activities. The Distribution area includes two Transportation and Staging areas, a dispatch office and secure storage room. The secure storage room is used to store unfinished product and is also used for basic packaging and labeling functions. The Transportation and Staging rooms are used for incoming and outgoing product verification pursuant to State requirements. The dispatch office is used for general administrative and “track and trace” services. All areas are closed to the public and can only be accessed through secured or controlled access points in the facility.

Below is a summary of the activities and product movement that are involved with the manufacturing and distribution use:

- Receipt of bulk shipments including cannabis flower, extract oils and miscellaneous containers, such as vaporizer cartridges and tincture bottles into the distribution premises;
- Once received and validated per State requirements, bulk extract oils are stored in the designated secured storage area until it is ready to be transferred to the manufacturing premises;
- Once transferred from the distribution premises to the manufacturing premises, the non-volatile manufacturing would occur:
 - Cannabis flower would be fed through a pre-roll filling machine to create pre-rolls;
 - Oils would be fed into automated cartridge filling equipment that would fill the respective containers (i.e. vape cartridges and tinctures); or oils would be infused utilizing the induction cooktop to create the gummy solution;
- Finished vaporizer cartridges and tinctures (liquid cannabis-infused products) are transported back to the distribution product storage room while the batch undergoes laboratory testing by an authorized third-party testing facility; and
- Finished product scheduled for distribution to a licensed retail buyer or customer for delivery will be staged in the “Transportation/Staging” areas.

Non-Storefront Retail Use

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, and a small portion of product will come from in-house manufacturing, and proceed through compliance testing. No unsecured cannabis products would be stored in the warehouse.

Loading and unloading of cannabis products into delivery vehicles is proposed to take place inside of the building. As proposed and conditioned, video surveillance cameras will be installed on the interior and exterior of the building with direct views of the loading/unloading areas and the exterior roll-up doors.

The applicable State and local operating requirements for 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 are 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/or 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 complete 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 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; and
- The delivery employee shall confirm the age of the buyer through entering government-issued

identification information into an electronic age verification system.

Air Quality Control & Odor Control

Following the request for continuance, the applicant provided additional information on air quality and odor control for the proposed project.

The applicant indicated that the proposed “air quality control system” would use activated carbon filters in a negative pressure environment, which is an industry standard technique that exhausts air from any room with potential odor-producing activity to create negative pressurization so no air can escape except through carbon filter treated exhaust vents. The industry standard for odor control is a “Merv-6” quality filter whereas the proposed filters are a “Merv-8,” which provides higher level filtering of smaller particles. “Merv” is an abbreviation for “maximum efficiency reporting value” that is relative to air filter efficiency.

In addition to the carbon filters, the facility will utilize HEPA filtration ground units that also have carbon filters. These ground units provide redundancy to further reduce the potential release of odor causing “volatile organic compounds” (VOCs). As described in the applicant letter, Dyrect’s air quality equipment includes HEPA filtration and activated carbon as a two-pronged solution to achieve indoor air purity and the elimination of noxious odors escaping the site. Specifically, the use is proposing to utilize HealthMate Plus, a four-stage filtration system. The first filter is a large particle pre-filter, which removes dust and hair. The second filter is a medium particle pre-filter, which removes molds, spores and pollen. The third filter is a combination of activated carbon and zeolite, which removes VOCs, formaldehyde, benzenes, chemicals, gases and odors. The final filter is a medical grade HEPA filter that removes 99.97% of all particles larger than 0.3 microns and 95% of all particles larger than 0.1 microns. As an example, 0.1 to 0.3 microns is the size of dust mites and allergens, whereas 0.3 to 1 micron is the size of tobacco smoke, metallic fumes and bacteria.

With respect to manufacturing processes, the proposed use involves pre-rolls; cartridge fills and gummies. None of these manufacturing processes include extraction and are classified as infusion under the State regulations. According to the applicant, the only odors produced by these manufacturing processes are those of latent cannabis, similar to an open package of cannabis.

Pre-rolls and cartridge fills only produce odors during the time when the product is exposed to the open air during the manufacturing process and all odor produced are handled by the carbon filters as well as the MERV-8 and HEPA filters. Gummy manufacturing includes low range heating to create a homogenous mixture of gummy and cannabis oils. This process occurs within a controlled area that is ventilated, under which all exhausted air is treated by the Merv-8 filters with activated carbon.

Further mitigation techniques include odor absorption bags used in cargo bays of distribution vehicles as well as in delivery vehicles. In addition, and described in the applicant letter section discussing odor control, all cannabis and concentrate products will be enclosed into a smell proof container during transport, and carbon filters will be installed throughout the facility to alleviate odors from the premises. Carbon filters are made exclusively with top quality carbon granulated into pieces to reduce air pockets between the granules, which leads to a better filtration performance. Lastly, the applicant has agreed to a self-imposed condition, Condition of Approval #7, ensuring that the proposed use, including but not limited to odor and/or emissions, do not inhibit the operation of any nearby business. Staff finds that these design features and conditions adequately address the air quality and odor concern previously raised.

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. 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 day-to-day operations described in the Business Plan:

- Screening and Entrance procedures;
- Facility maintenance and sanitation;
- Storage and Transport equipment checks and record logging;
- Security checks;
- Records maintenance and other administrative duties;
- Ongoing safety and job specific training;
- Environmental monitoring;
- Packaging and labeling - compliance checks; and
- Product coordination.

Security Plan

The applicant provided a professionally prepared security plan for the proposed project. The City's security consultant, HdL Companies, reviewed the proposed security plan. HdL Companies determined that appropriate security measures were included to address the City's security requirements pursuant to Chapter VI of CMMC Title 9 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 plan and required by the CMMC:

- Live scan background check for every employee including drivers;
- City-issued identification badge for each 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;

- 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.

As also conditioned, all facility entry and exit points, locations where cash or cannabis products are handled or stored shall be under camera surveillance. The applicant shall also submit to the City a list of all vehicles to be used for retail delivery purposes that includes 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. Lastly, 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 38 stalls to serve the 18,431-square-foot building. The existing parking ratio is 2.06 stalls per 1,000 square feet instead of the City's standard three (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 or enlarging existing building square footage. Therefore, the proposed project would not make the development more nonconforming. Additionally, Unit 102 includes a 5,940-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. Transportation reviewed the project plans and did not require any corrections or conditions of approval beyond the City's standard conditions.

If parking shortages or other parking-related problems are discovered in the future, operational Condition of Approval No. 7 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.

GENERAL PLAN CONFORMANCE:

Conformance with the City of Costa Mesa General Plan

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: The proposed cannabis use would provide a new entrepreneurial business in Costa Mesa as allowed under Measure X and Measure Q (local voter approved ballot measures), new goods and services, and provide new employment opportunities in the community.

1. **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 augment the industrial and commercial nature of an existing industrially-zoned property located north of I-405.

2. **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 a growing industry and would be based in a location specifically identified for such uses by the City's electorate through Measure X and Measure Q. Therefore, approval would encourage new businesses and entrepreneurial opportunities in an area of the City identified for such by local voters.

Conformance with the Zoning Code

The proposed non-storefront retail use is conditionally permitted in the MP (Industrial Park) zone and is in compliance with the Costa Mesa applicable Zoning Code provisions, including, but not limited to, Articles 20 and 21.

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 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 establishment is a manufacturing, distribution and non-storefront (delivery) retail use proposed within the City's Green Zone. The other tenants on site are also cannabis establishments. 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 adjacent cannabis uses. Compliance with conditions of approval, other local regulations, and State requirements would allow this use to operate with minimal impact on surrounding properties and uses.

- 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 manufacturing, distribution and non-storefront retail 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 monitored video surveillance system covering 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 use is consistent with the General Plan goals and policies as discussed in this report. The proposed use will be within an existing building (previously occupied by TRC Company, an engineering consultant business) and there are no proposed additions to the building; therefore, there is no change to 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. In addition, the proposed use is a conditionally permitted use in the industrial zones.

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. This project site contains an existing building (previously occupied by an engineering consultant business) and the application does not propose an increase in floor area. The project is consistent with the applicable General Plan designation and all applicable General Plan policies as well as with 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 item should be continued to a future meeting to allow a redesign and/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 for denial into a Resolution for denial. If the project is denied, the applicant could not submit substantially the same type of application for at least 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 property. (See attached Notification Radius Map.)
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, two written public comments have been received, are attached to this report and have been responded to. Any public comments received prior to the Planning Commission meeting will be forwarded separately to the Planning Commission.

CONCLUSION:

The proposed project is a manufacturing, distribution and non-storefront retail (delivery only) cannabis facility in the City's Green Zone. As proposed and conditioned, the proposed use would be consistent with other industrial uses in the Green Zone. The use is consistent with the Zoning Code and the City's General Plan. In addition, the required findings for the Conditional Use Permit can be met as described above. Therefore, staff recommends approval of Planning Application 21-12, subject to conditions of approval.