



Legislation Text

File #: 22-661, Version: 2

TITLE:

PLANNING APPLICATION 22-01 FOR A CANNABIS DISTRIBUTION FACILITY ("OUTRAGEOUS VENTURES LLC") AT 3505 CADILLAC AVENUE, UNIT O-102

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT / PLANNING DIVISION

PRESENTED BY: GABRIEL VILLALOBOS, ASSISTANT PLANNER

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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 22-01, subject to conditions of approval.

APPLICANT OR AUTHORIZED AGENT:

The applicant/authorized agent is Nitaya Chapman, for the property owner, Ross Tesser.

BACKGROUND:

The subject property is located on the west side of Cadillac Avenue near the intersection of Sunflower Avenue and Cadillac Avenue, within a portion of the City's industrial area known as the "Green Zone." A variety of cannabis uses can be permitted in the "Green Zone," including manufacturing, distribution, and non-storefront retail (direct delivery to consumers). The 14-acre property is zoned PDI (Planned Development Industrial) and is surrounded by properties zoned Industrial Park (MP) to the north and east, the 405 freeway to the south, and the Santa Ana River to the west.

The proposed project location, Unit O-102, is a 2,290-square-foot tenant space that is located within Cambridge Park, a multi-tenant industrial business park center. The adjacent tenant suite, Unit O-101, is an existing cannabis manufacturing facility operated by Yummi Karma LLC, which is under the same ownership as the proposed cannabis distribution facility, Outrageous Ventures LLC. The current use of the subject tenant space are offices for Yummi Karma. Yummi Karma's manufacturing facility (PA-18-07) was approved by the Planning Commission on April 9, 2018.

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 property located at 3303 Hyland Avenue). Measure X is codified in Titles 9 and 13 of the Costa Mesa Municipal Code (CMMC). Cannabis uses are also subject 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 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) Process

Prior to establishing a cannabis business, an applicant is subject to an extensive submittal and application review process and must obtain all of the following City approvals before conducting business:

- 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 security consultant);
- Cannabis Business Permit; and
- City Business License.

The initial phase of a CBP review includes a background check of the proposed owner and an evaluation of the proposed business plan and security plan by the City's cannabis security consultant, HdL Companies. The applicant has successfully completed 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.

If the Planning Commission approves the CUP, the applicant would begin the remaining entitlement steps that include: (1) obtaining building permits, (2) completing building improvements, (3)

demonstrating that all conditions of approval have been satisfied, and finally, (4) complying with all other requirements of the CMMC. After passing the final City 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 site visits to verify the operation complies with all CUP and CBP requirements. Violations identified during site visits may be grounds for the revocation of the CBP or for non-renewal of a CBP. After CBP issuance, the applicant may apply for and obtain a City Business License. In addition to the CUP, CBP, and City Business License, the applicant must obtain the appropriate licenses from the State Department of Cannabis Control (DCC) prior to operating.

DESCRIPTION:

Planning Application 22-01 is a request for a CUP to operate a cannabis distribution facility within a 2,290-square-foot tenant space at 3505 Cadillac Avenue (Unit O-102). The applicant would convert its existing leased office space located in Unit O-102 to provide for distribution of its cannabis products, which are manufactured in the adjacent unit. As indicated by the applicant, their goal is to “obtain a distribution license so that we can take control of the testing, final packaging and other actionable items required prior to having the product ready for retail.”

The proposed distribution use would include packaging, labeling, storing and testing finished cannabis products. The applicant proposes to use a third-party distributor to distribute their cannabis products to licensed retailers, and therefore no transport vehicles will be required. Tenant improvements necessary to convert the office space to a distribution use include demolition and construction of non-bearing interior walls and new plumbing and electrical fixtures. No expansion is proposed to the existing tenant space, nor are any changes proposed to the exterior façade or parking lot. The proposed distribution unit shares the same entrance walkway to the applicant’s adjacent manufacturing facility.

The required State licenses for the proposed business establishment is a Type 11 “distributor” license. Retail non-storefront (delivery) is not proposed with this CUP request and cannabis cultivation would not be allowed, as it is a prohibited use in Costa Mesa.

ANALYSIS:

Distribution Use

Pursuant to the Costa Mesa Municipal Code (CMMC) Section 13-200.92, cannabis distribution is prohibited in all zoning districts within the City, except for those portions of the manufacturing park (MP) and planned development industrial (PDI) zones that are located both north of South Coast Drive and west of Harbor Boulevard, excluding any portion of the South Coast Collection (the “Green Zone”). The CMMC requires further that a conditional use permit shall be required subject to the following conditions:

1. The requirements of Title 13, Chapter III (Planning Applications) are found in compliance;
2. The findings for granting a conditional use permit (CUP) in accordance with CMMC Section 13-29(g) are met;
3. The cannabis business license (CBP) pursuant to Chapter VI of Title 9 of the CMMC is

obtained; and

4. The use is conducted in compliance with all applicable State and local laws.

The distribution component of this facility is divided into three primary areas, packaging/labeling, testing, and storage:

1. Packaging/Labeling (242 square feet);
2. Quarantine/Testing (263 square feet); and
3. Storage (430 square feet).

The remaining area would be comprised of a reception area, offices, a break room, and restroom.

Daily operations would include the intake of new cannabis products that would be transferred from the adjacent manufacturing facility (Unit O-101), and stored within the designated quarantine area at Unit O-102 to await product testing.

Products moved from the adjacent manufacturing facility to the proposed distribution facility would be conducted under camera surveillance and subject to the approved security plan. All product would be moved into and out of the adjacent manufacturing facility through a secured entrance/exit, accessed only through a key fob, located at the rear of the building. The distance between the entrance/exit door to each facility is less than 10 feet and all products would be placed within a secured container and moved using a dolly from the manufacturing facility into the secured storage area of the distribution facility. The only products the distribution facility would take in would be from Yummi Karma's manufacturing facility next door.

All new products would be inspected prior to intake. Products that passed inspection per the company's quality assurance control, would be entered into the required track and trace system ("Metrc") and placed into the quarantine/testing room to await testing. The cannabis products deemed acceptable for distribution would then be tested through a licensed third-party testing company, which would visit the facility to conduct tests and prepare the required paperwork.

After cannabis products have passed the required testing, they would then be moved into the labeling and storage area of the distribution facility. Product labels identifying the required testing results would then be generated and attached to the product, and finally inspected to ensure accuracy. These products would remain in the secured storage area until an order has been placed by licensed retailers.

All distribution orders would be scheduled for pick-up at least 24 hours in advance and the third-party vendor would sign in to pick up the items. The path of travel for loading product would be from the rear of the building to the designated loading area across a drive aisle approximately 40 feet from the secured exit of the distribution facility. The path of travel would be under camera surveillance until product is securely loaded into the distribution vehicle. The third-party vendor would manage the delivery of the product once loaded into the vehicle. To maintain compliance with State and local regulations, all products distributed to a licensed retailer would be tracked with "Metrc" throughout the distribution process and a manifest would be created prior to distribution.

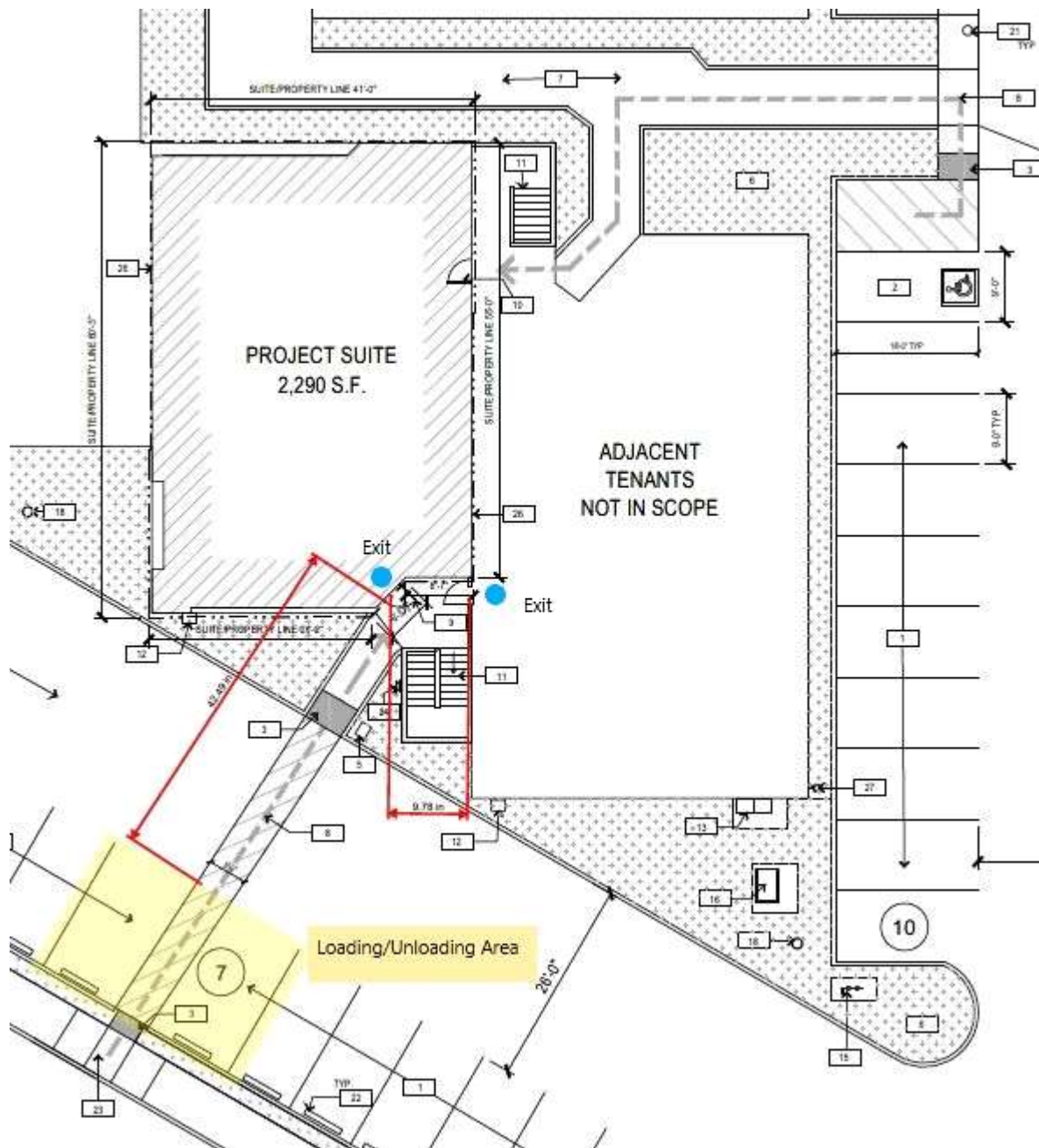


Exhibit showing distance from facility to designated loading area and between facilities

Parking

The existing surface parking lot includes 648 shared parking stalls to serve the 14-acre Cambridge Park property. The existing parking ratio is 4 stalls per 1,000 square feet for the office use currently occupying the tenant space. The proposed use of a cannabis distribution facility has a lower parking requirement applicable of 3 stalls per 1,000 square feet applicable to industrial uses, as established by Section 13-89 of the CMMC. Therefore, the proposed project will not require any additional

parking stalls to be in compliance with the current parking standards for the proposed change from a cannabis administrative office to a cannabis distribution use.

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.

Business Plan

The applicant provided a detailed business plan that was evaluated by the City's cannabis security 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 daily operations. Order fulfillment procedures are an example of the daily operations explained in the business plan. For example, after a purchase order has been placed, a manager would pull items ordered from the storage inventory and place them in boxes to prepare for distribution. The product pickup would then be scheduled at least 24 hours in advance. At the scheduled pickup time, the orders would be moved to the third-party distribution vehicles. The business plan contains proprietary details and is therefore not included as an attachment but is summarized in this report.

Security Plan

The applicant provided a professionally prepared security plan for the proposed project. The City's cannabis 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 as well as 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;
- 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; and
- Limited access areas and visitor check in and security.

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, 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 continue 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. 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 distribution use is conditionally permitted in the PDI (Planned Development Industrial) 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), CUP 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. Several other tenants onsite are also licensed cannabis facilities. Similar to other industrial uses, the proposed cannabis 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 licensed 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 cannabis distribution facility would follow safety measures detailed in a professionally-prepared security plan. The security plan was evaluated for compliance by the City's cannabis security 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, path of travel for exterior loading 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 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 earlier in this report. The proposed use would be located within an existing building 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 (currently occupied by Yummi Karma offices) and the application does not propose an increase in floor area or other substantial modifications. Therefore, the project is a

minor alteration of an existing facility and involves negligible to no expansion of the existing use. 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. 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, no written public comments have been received. Any public comments received prior to the Planning Commission meeting will be forwarded separately.

CONCLUSION:

The proposed project is a cannabis distribution 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 22-01, subject to conditions of approval.