



## Legislation Text

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**File #:** 22-796, **Version:** 1

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### **TITLE:**

PLANNING APPLICATION 21-20 FOR A RETAIL CANNABIS STOREFRONT BUSINESS WITH DELIVERY LOCATED AT 124 EAST 17<sup>TH</sup> STREET

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

**PRESENTED BY:** NANCY HUYNH, SENIOR PLANNER

**CONTACT INFORMATION:** NANCY HUYNH, 714-754-5609; Nancy.Huynh@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 21-20, subject to conditions of approval.

### **APPLICANT OR AUTHORIZED AGENT:**

The applicant/authorized agent is Peter Ishak of "The Distillate Co.", on behalf of the property owner, 124 17<sup>th</sup> St LLC.

### **BACKGROUND:**

At the Planning Commission meeting on June 27, 2022, Planning Application 21-20 was requested to be continued by the applicant due to a public comment received by the adjacent property owner at 1700, 1706, and 1710 Newport Boulevard concerning proposed parking lot circulation. Specifically, the adjacent property owner was concerned that the proposed reconfigured parking spaces and new trash enclosure would conflict with vehicle access on his property and indirect access to Newport Boulevard. The applicant requested to continue the matter so that they could work with staff and the neighbor to address the issue and redesign the parking lot. The Planning Commission voted 5-0 (Vice Chair Zich and Commissioner Rojas absent) to continue the public hearing to their regular meeting on July 11, 2022.

The details and analysis of the proposed project can be found in the June 27, 2022 Planning Commission staff report and attachments at the link below:

<https://costamesa.legistar.com/View.ashx?M=F&ID=11011927&GUID=46E82E4E-405C-4B49-8203-F3C0DD151A5E>

This staff report is limited to providing analysis of the redesigned parking lot, and a revised site plan has been included with this staff report (see Attachment 8).

### **DESCRIPTION:**

Planning Application 21-20 is a request for a CUP to allow retail cannabis uses within an existing 2,340-square-foot commercial building located at 124 East 17<sup>th</sup> Street. The affiliated State license is a 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:**

***June 27, 2022 Planning Commission Staff Report***

As indicated above, this report focuses on the previous continuance matter specifically relating to parking lot circulation. For a comprehensive review of the proposed Conditional Use Permit request, please refer to the June 27, 2022 staff report for details such as conditional use permit requirements, separation requirements, proposed exterior and interior changes, customer and employee access, proposed business operations, required security measures, required parking, and a staff assessment of potential traffic and odor.

***124 East 17<sup>th</sup> Street and Adjacent Neighboring Parking Lot Circulation***

The subject property is developed with an existing driveway access from East 17<sup>th</sup> Street. The driveway is approximately 80 feet long and directly serves the site's rear parking lot. Additional parking is also provided beyond the subject property's boundaries and belongs to the abutting property at 1714 Newport Boulevard (an existing multi-tenant commercial zoned property). Pursuant to the applicant's submitted title report, the subject property provides an easement for ingress/egress purposes to the 1714 Newport Boulevard property. The property at 1714 Newport Boulevard has existing lot frontage on Newport Boulevard and, in addition to the previously mentioned access easement, has driveway access from Newport Boulevard. The subject property and the property at 1714 Newport Boulevard do not have any existing recorded agreements to share parking.

As indicated above, the property owner at 1700, 1706, and 1710 Newport Boulevard submitted a letter the day of the previous public hearing stating that he was concerned with the proposed change in parking lot circulation (see the attached June 27, 2022 neighbor letter). Subsequently, staff had a phone conversation with the adjacent property owner to better understand his circulation concern. The adjacent property (1700, 1706, and 1710 Newport Boulevard) has an existing marked one-way only driveway entrance along East 17<sup>th</sup> Street that is located adjacent to the subject property's existing driveway access. The two adjacent sites' parking lot driveways are situated parallel to each other and run perpendicular from East 17<sup>th</sup> Street. This neighbor's driveway leads into an existing small parking lot with angled parking spaces that are adjacent to the subject property's west property line. An existing low wall physically divides these parking spaces and the subject property at 124 East 17<sup>th</sup> Street. However, the low wall terminates approximately 20 feet from the subject property's northwesterly corner, and this existing opening provides indirect access through the subject property and the property located at 1714 Newport Boulevard to ultimately provide vehicle egress onto Newport Boulevard.

According to the applicant and his attorney, and after their review of the title report and adjacent chain of property titles, the property at 1700, 1706 and 1710 Newport Boulevard does not have legal ingress/egress rights over the subject property at 124 East 17<sup>th</sup> Street. Although the applicant and his attorney have determined that the property located at 1700, 1706 and 1710 Newport Boulevard does not have legal ingress/egress rights over the subject property, the applicant (though not required) has revised his original parking lot configuration to accommodate through access, similar to current circulation conditions. The redesigned parking lot would still provide the originally proposed 11 parking spaces (nine parking spaces required) on the June 25, 2022 CUP plans. The revised site plan includes:

- Relocating the new trash enclosure to the south side of the property;
- Shifting the parking spaces along the southern property line to accommodate the new trash

- enclosure location; and
- Reducing the width of the loading/unloading space to nine feet.

As proposed, an approximate 12-foot wide vehicular access way would be provided for the adjacent property vehicle circulation to exit the rear of the site, turn left and access the existing driveway along Newport Boulevard (similar to existing parking lot circulation conditions). The proposed 12-foot wide access way would be wide enough to allow for one-way traffic and consistent with the Transportation Division's minimum ten-foot wide standard for one-way driveways. Lastly, the applicant has recently met with the adjacent property owner to review the parking lot circulation conditions. Based on this meeting, the adjacent property owner's concerns have now been addressed.

### **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. In addition, the property is located on one of the City's commercial corridors and surrounded by 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 under roof 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 a variety of retail/commercial businesses such as furniture/mattress stores, a bar (The Harp Inn), hair and beauty salons, gym (The 12 Costa Mesa), optometry (Pearle Vision), medical urgent care center (Xpress Urgent Care), and automotive repair shop (Grand Prix Performance). The nearest residentially-zoned properties are located over 400 feet to the north from the subject property along Cabrillo Street. The existing residences and the subject property are separated by other commercially-zoned properties including a one-acre multi-tenant center to the east that has a large surface parking lot. 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, multiple security guards would be on site during business hours, 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 the California Environmental Quality Act 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 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 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.
- 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 of this report and the previous report were circulated, one written public comment has been received and is the subject matter of this report. Any further public comments received prior to the July 11, 2022 Planning Commission meeting will be provided separately.

### **CONCLUSION:**

The proposed project is a retail cannabis storefront business with delivery at an existing developed commercial property that is located on one of the City's commercial corridors and meets separation requirements established in CMMC 13-200.93(e). Staff and the City's cannabis consultant completed the 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 tenant 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. In addition, the required findings for the CUP can be made, as described above. Lastly, the applicant has revised the previously proposed parking configuration to address the adjacent neighbor's circulation concerns. Therefore, staff recommends approval of Planning Application 21-20 subject to conditions of approval.