



## Legislation Text

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### **TITLE:**

**AUTHORIZE THE CITY MANAGER TO ISSUE REFUNDS FOR RETAIL CANNABIS APPLICATION FEES**

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

**PRESENTED BY: JENNIFER LE, DIRECTOR OF ECONOMIC AND DEVELOPMENT SERVICES**

**CONTACT INFORMATION: JENNIFER LE, (714) 754-5270**

### **RECOMMENDATION:**

Staff recommends City Council give the City Manager, or her designee, the authority to issue refunds for retail cannabis application fees.

### **BACKGROUND:**

On November 3, 2020, the voters of Costa Mesa approved Measure Q ("The City of Costa Mesa Retail Cannabis Tax and Regulation Measure") authorizing City Council to adopt ordinances to establish retail cannabis regulations, taxation, and zoning requirements.

At their regular meeting on June 1, 2021, City Council adopted a fee resolution to establish application processing fees and service charges related to cannabis business permit (CBP) and conditional use permit (CUP) applications.

The agenda report and attachments for the fee resolution item can be found at this link:

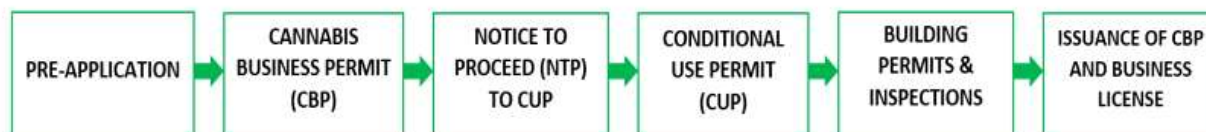
<http://ftp.costamesaca.gov/costamesaca/council/agenda/2021/2021-06-01/PH-3.pdf>

On August 12, 2021, the City began accepting applications for retail cannabis businesses including storefronts and non-storefronts (delivery). To date, the City has received a total of 62 retail cannabis storefront applications and are in different stages of the cannabis permit review and approval process.

Of the 62 cannabis retail storefront applications, a total of 17 Conditional Use Permit (CUP) applications have gone before the Planning Commission for review and approval, with 14 of the 17, or 82 percent, being approved to operate. Of the remaining three applications presented to the Planning Commission, two were denied and have requested appeals before the City Council (one of the two City Council appeal hearings is scheduled on Tuesday, February 21, 2023), and one application was continued to the Planning Commission meeting of Monday, February 27, 2023 for consideration.

As of this date, there are 45 remaining retail cannabis storefront permit applications that are in various stages of the review and approval process, as follows: a total of 20 applicants are in the Conditional Use Permit stage of the process; an additional 4 applicants are in the Cannabis Business Permit stage of the process; another 15 applicants are in the pre-application stage of the process; and 6 applications are on a pre-application waitlist. Please see the below Exhibit 1 for a cannabis permit process summary.

**Exhibit 1 – Cannabis Permit Process Summary**



Staff is requesting City Council authorize the City Manager to issue full refunds for any and all applicants who elect to withdraw their cannabis applications from the permit application and review process.

### **ANALYSIS:**

Due to the large volume of CUP applications that are awaiting processing, as well as the significant amount of time associated with processing each individual CUP, staff is recommending that refunds be offered to retail cannabis applicants interested in voluntarily withdrawing their applications. Despite numerous City employees in multiple departments involved in cannabis permit processing, the number of outstanding applications remains high.

Refer to Table 1 below for a summary of the remaining retail cannabis applications to be processed.

**Table 1 - Remaining Retail Cannabis Applications**

| RETAIL CANNABIS APPLICATION TYPE                                                                        | APPLICATION FEES | NUMBER OF APPLICATIONS | TOTAL FEES       |
|---------------------------------------------------------------------------------------------------------|------------------|------------------------|------------------|
| Pre-application Waitlist                                                                                | \$0              | 6                      | \$0              |
| Pre-applications                                                                                        | \$1,500          | 15                     | \$22,500         |
| CBPs for Storefronts                                                                                    | \$19,732         | 4                      | \$78,928         |
| CUPs for Storefronts <sup>1</sup>                                                                       | \$18,499         | 20                     | \$764,620        |
|                                                                                                         | \$19,732         |                        |                  |
| <b>Total Remaining Applications: 45</b>                                                                 |                  |                        | <b>\$866,048</b> |
| <sup>1</sup> Applicants in the CUP stage of the process have paid both the CBP and CUP application fees |                  |                        |                  |

Further, staff anticipates resources currently allocated to processing retail cannabis applications will need to be realigned to begin implementing recent State legislation that mandates changes to the City's General Plan and Municipal Code to ensure compliance with new State laws promulgated under the following:

| State Law Mandates                | Description                                   |
|-----------------------------------|-----------------------------------------------|
| Safety Element                    | New Element Required for General Plan         |
| SB 379                            | Climate Adaptation and Resiliency             |
| SB 1035                           | Flood and Fire Hazards                        |
| AB 747                            | Evacuation Routes                             |
| SB 99                             | Emergency Routes for Residential Developments |
| Environmental Justice             | New Element Required for General Plan         |
| SB 932                            | Bicycle, Pedestrian and Traffic Calming Plans |
| SB 1425                           | Local Open Space Plan                         |
| AB 2097, AB 916, AB 2244          | Updated Parking Standards                     |
| AB 2011, SB 6                     | Multi-family Housing Standards                |
| SB 1204, SB 1291, SB 1194         | Development Process Updates                   |
| AB 2345, AB 2334, AB 1551, AB 682 | Density Bonus Updates                         |

Further, other required City efforts include City visioning and rezoning work consistent with the legally required Housing Element update, State mandated planning for the reuse of the State-owned Fairview Developmental Center site as per the Omnibus State Budget Bill for Fiscal Year 2021-22, and other legally required housing policies and programs. Given the need to ensure compliance with recent changes in State law and other City Council objectives and priorities, retail cannabis applicants may decide that continuing in the permit process may be further protracted and elect to withdraw their applications.

The application fee for a retail CBP is \$19,732 and for a retail cannabis CUP is \$18,499. Since the pre-application fee is minimal at \$1,500, the Finance Director has the authority to issue those refunds.

### **ALTERNATIVES:**

Council may opt to not approve the recommended actions and direct staff accordingly.

### **FISCAL REVIEW:**

If all remaining cannabis retail storefront applications were voluntarily withdrawn and refunds were requested, approximately \$900,000 could be refunded. (Refunds could also be provided to delivery applicants, if requested.) This scenario is highly unlikely as some applicants will wish to remain in the process.

However, the funds have already been collected by the City and are available for reimbursement subject to a Cannabis Reimbursement Request and Release Form to be developed and approved by the City Attorney in concert with the Finance Department who would process the refunds as per City Manager approval.

**LEGAL REVIEW:**

This report has been approved as to form by the City Attorney's Office.

**CITY COUNCIL GOALS AND PRIORITIES:**

This item is administrative in nature.

**CONCLUSION:**

Staff recommends City Council give the City Manager, or her designee, the authority to issue refunds for retail cannabis application fees paid to the City by any and all cannabis applicants voluntarily choosing to withdraw from any stage of the City's cannabis retail permit application and review process.