RESOLUTION NO. PC-2023-17

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA DENYING PLANNING APPLICATION 22-04 FOR A STOREFRONT RETAIL CANNABIS BUSINESS WITH DELIVERY (FROM THE EARTH) IN THE C1 ZONE AT 2790 HARBOR BOULEVARD, SUITES 107, 109, AND 115

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA FINDS AND DECLARES AS FOLLOWS:

WHEREAS, in November 2020, the Costa Mesa voters approved Measure Q; which allows for storefront and non-storefront retail cannabis uses in commercially zoned properties meeting specific location requirements, and non-storefront retail cannabis uses in Industrial Park (MP) and Planned Development Industrial (PDI) zoned properties;

WHEREAS, on June 15, 2021, the City Council adopted Ordinance Nos. 21-08 and No. 21-09 to amend Titles 9 and 13 of the Costa Mesa Municipal Code (CMMC) to establish regulations for cannabis storefront and non-storefront uses;

WHEREAS, Planning Application 22-04 was filed by Dan Zaharoni representing DBO Investments CM, LLC (d/b/a From The Earth), the authorized agent for the property owner, Tri-Harmony Properties, LLC, requesting approval of the following:

A Conditional Use Permit to operate a storefront retail and cannabis delivery business within an existing 2,157-square-foot first floor commercial space within a multiple-tenant commercial building located at 2790 Harbor Boulevard (Suites 107, 109 and 115). The business would sell pre-packaged cannabis and pre-packaged cannabis products directly to customers onsite and through delivery, subject to conditions of approval and other City and State requirements;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on May 22, 2023 with all persons having the opportunity to speak for and against the proposal;

WHERAS pursuant to the California Environmental Quality Act (CEQA), the project is exempt from the provisions of CEQA per CEQA Guidelines Section 15301 (Class 1), for Existing Facilities, as described specifically in the staff report;

WHEREAS, the CEQA categorical exemption for this project reflects the independent judgement of the City of Costa Mesa.

NOW, THEREFORE, based on the evidence in the record and after considering public testimony, the Planning Commission hereby **DENIES** Planning Application 22-04 with respect to the property described above.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the document in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

PASSED AND ADOPTED this 22nd day of May, 2023.

Adam Ereth, Chair
Costa Mesa Planning Commission

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss

CITY OF COSTA MESA)

I, Scott Drapkin, Secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution No. PC-2023-17 was passed and adopted at a regular meeting of the City of Costa Mesa Planning Commission held on May 22, 2023 by the following votes:

AYES: Andrade, Rojas, Taber, Vivar, Zich

NOES: Ereth, Toler

ABSENT: None

ABSTAIN: None

Scott Drapkin, Secretary
Costa Mesa Planning Commission

EXHIBIT A

FINDINGS

A. Pursuant to CMMC Section 13-29(g), when granting approval of an application for a conditional use permit, the Planning Commission shall find that based on the evidence presented in the record, the proposed project substantially meets the Costa Mesa Municipal Code Conditional Use Permit required findings. The Applicant failed to meet its' burden to demonstrate that the proposed project would operate in a manner that would comply with all of the requirements of Section 13-29(g)(2); therefore, the Planning Commission was unable to make the required findings to approve the proposed use.

During the May 22, 2023 public hearing, the Planning Commission stated specific concerns in regard to non-compliance with CMMC Section 13-29 (g)(2)(b) in that: (1) during the public hearing, the applicant presented (both verbally and in presentation form) that the cannabis use would engage via philanthropic activity with a local youth sporting team, and a Commissioner believed that there was direct conflict with the health, safety and general welfare of the public by associating a business that specializes in the sale of cannabis with the City's youth population; and (2) a Commissioner stated concern that the proposed new business operation would result in a currently operating business to cease operation. When the Planning Commission requested clarification about potentially relocating the existing business during the public hearing, the applicant was unclear of the existing business's future. Based on potentially not retaining an existing business, a Commissioner stated that granting the conditional use permit would be materially detrimental to the health, safety and general welfare to property or improvements within the immediate neighborhood. The same Commissioner further indicated that granting the conditional use permit would not be consistent with General Plan Land Use Element Policy LU-6.7, to "Encourage new and retain existing businesses that provide local shopping and services", in that an existing business would not be retained as a result of the proposed new business. After careful consideration, the Planning Commission denied the proposed project on a five to two vote.