



Agenda Report

Item #: 25-394

Meeting Date: 9/2/2025

TITLE: APPEAL OF THE DIRECTOR OF DEVELOPMENT SERVICES' DETERMINATION THAT CANNABIS BUSINESS PERMIT MQ-21-15 FOR A CANNABIS STOREFRONT LOCATED AT 2301 NEWPORT BOULEVARD (CULTURE CANNABIS CLUB) IS NON-OPERATIONAL AND ABANDONED

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/ PLANNING DIVISION

PRESENTED BY: MICHELLE HALLIGAN, SENIOR PLANNER

CONTACT INFORMATION: MICHELLE HALLIGAN, SENIOR PLANNER, (714) 754-5608

RECOMMENDATION:

Staff recommends the City Council:

1. Find that the appeal is not subject to the California Environmental Quality Act per California Public Resources Code Section 15268.
2. Uphold the Director of Development Services' determination that Cannabis Business Permit MQ-21-15 is nonoperational and abandoned pursuant to Costa Mesa Municipal Code Section 9-495(h)(16) and find that the permit is invalid and of no further force and effect.

APPLICANT OR AUTHORIZED AGENT:

The applicant/authorized agent is Julie Le on behalf of Culture Cannabis Club. The owner of the property is not a party to this appeal.

BACKGROUND:

MQ-21-15

Pursuant to Costa Mesa Municipal Code (CMMC) Sections 9-487, 9-494, and 13-200.93(c)(1), a conditional use permit (CUP) and a valid cannabis business permit (CBP) are required for the establishment and operation of cannabis businesses in Costa Mesa. On June 13, 2022, the Planning Commission approved CUP PA-21-22 and Resolution No. PC-2022-09, for a retail cannabis storefront at 2301 Newport Boulevard, subject to conditions of approval and local and State regulations. This was the first CUP granted for a cannabis storefront use in City history.

The City issued CBP No. MQ-21-15 on May 17, 2024. Per CMMC 9-495(h)(16), "a permitted commercial cannabis retail business shall have 180 days after permit issuance by the city to commence operations, after which the permit shall be void and of no further force and effect."

On September 26, 2024, Planning staff emailed the applicant team a reminder to open the business before the 180-day period ends, specifically stating:

“A permitted commercial cannabis retail business shall have 180 days after permit issuance by the city to commence operations, after which the permit shall be void and of no further force and effect. A permitted commercial cannabis retail business that ceases to operate for more than 90 calendar days after commencing operations shall be deemed "abandoned" and the permit shall be forfeited. A permitted commercial cannabis business may temporarily suspend operations for a period of time as may be reasonably required to affect upgrades, modifications, repairs, or other property issue mitigations as approved by the director or city manager. For the purposes of this subsection, "operate" shall mean by the end of the 180-day period.

The storefront opened on November 13, 2024, within the required 180-day timeframe. The business' operations history, confirmed via a State-mandated cannabis tracking system called Metrc, is as follows:

- November 13, 2024: storefront opened
- December 7, 2024 – February 11, 2025: closed – 67 days
- February 13, 2025 – March 6, 2025: closed – 22 days
- April 1, 2025 – April 6, 2025: closed – 6 days
- April 25, 2025 – June 15, 2025: closed – 52 days

In February 2025, the Finance Department reached out to the Planning Division requesting a Culture Cannabis Club contact because the operator had not remitted taxes to the City for the last quarter of 2024. Planning staff provided contact information and checked Metrc to see if the business had been making sales. Metrc is a web-based software platform that all legal cannabis businesses utilize to track cannabis and cannabis products per State requirements. Metrc provides the City with information that is critical to establishing if a business is operating in compliance with the CMMC. Staff noticed that there had not been any sales since the first week of December. On February 5, 2025, Planning Division staff emailed the operator a reminder to “be mindful of long closures” and cited CMMC 9-495(h)(16), which prohibits cannabis retail stores from being closed for more than 90 days within any 12-month period. On March 4, 2025, an owner emailed Planning stating that the business has “been opening up periodically to keep the license active while we figure out a better launch and marketing strategy to be open full time.”

After communicating with the Finance Department in February 2025, Culture Cannabis Club remitted taxes for sales in the last quarter of 2024. The operator made sales and remitted taxes in all three quarters that it was operational.

After the email exchange and phone calls, the business sporadically opened in March and April. On April 29, 2025, the Orange County Sheriff's Department issued an eviction notice to the business, thereby removing the operator's access to the licensed premises (Attachment 3). Furthermore, the business failed to maintain an on-going permitted business for more than 90 days in a 12-month period. On June 16, 2025, the City issued a notice of abandonment of the CBP to the operator, establishing that the CBP was considered null and void as of the eviction on April 29, 2025 (Attachment 3).

ANALYSIS:***Appeal of the Director's Determination***

CMMC Section 9-495(h)(16) states that a notice of a determination of abandonment shall be subject to appeal.

On June 23, 2025, Julie Le (an owner of Culture Cannabis Club), filed an appeal of the City's decision to consider CBP No. MQ-21-15 as nonoperational and abandoned. The stated reasons for requesting the appeal are summarized as follows:

- Culture Cannabis Club has an agreement with the landlord to resume the lease.
- The storefront was open Monday through Thursday between 10 AM and 3 PM from March 7, 2025 through April 29, 2025.
- Sales were made in each quarter between November 2024 and April 2025.
- The appellant feels that the assessment of closures should not take place until a year after opening.
- Other than site control due to an eviction, the operation has complied with conditions of approval.
- Significant financial hardship from being required to hold the property during the permitting process.

As of August 21, 2025, the operator has been unable to provide evidence of an agreement with the property owner to resume the lease. The property owner confirmed to staff that there was and is no such agreement.

Cannabis tracking data available to the City in order to conduct regulatory duties confirmed that the business was operational with limited hours between March 7, 2025 and April 24, 2025. The data could not confirm that the business was operational April 25 to 29, 2025.

Cannabis tracking data and taxes remitted to the City confirm that sales were made in each quarter from November 2024 through April 2025.

Relevant CBP Codes and Conditions

Pursuant to CMMC Section 9-495(h)(16):

A permitted commercial cannabis retail business shall have 180 days after permit issuance by the city to commence operations, after which the permit shall be void and of no further force and effect. A cannabis retail business shall be considered nonoperational and abandoned after failing to report income and/or reporting no income to the city in any one quarter, ceasing to operate, losing the right to occupy the permitted premises, or otherwise failing to maintain an on-going permitted business at the premises for a total of 90 days in any 12-month period. A notice of determination of abandonment shall be delivered to the premises of the retail business and is subject to appeal pursuant to Chapter IX of Title 2. The forgoing notwithstanding, a permitted commercial cannabis business may temporarily suspend operations for a period of time not to exceed 90 days as may be reasonably required to affect upgrades, modifications, repairs, and/or to

remedy other real property related problems, as approved in writing by the director or city manager. (Emphasis Added.)

Based on sales records and information provided by the cannabis business operator, Culture Cannabis Club ceased to operate for extended periods of time. The business opened sporadically. Ultimately, the operator failed to maintain an on-going business for more than 90 days in less than a 12-month period, a violation of CMMC 9-495(h)(16). The business first opened on November 13, 2024 and remained operational for three weeks. During a three-month period from December 7, 2024 through March 6, 2025, the business was open for only one day. Following discussions with City staff, the business opened with limited hours in March and mid-April. The last sale was reported on April 24, 2025.

The following list summarizes Culture Cannabis Club's closures from December 2024 through June 16, 2025 (issuance of the letter of abandonment).

- December 7, 2024 through February 11, 2025 – 67 days
- February 13, 2025 through March 6, 2025 – 22 days
- April 1, 2025 through April 6, 2025 – 6 days
- April 25, 2025 through June 15, 2025 – 52 days

The business has remained non-operational since the letter of abandonment was issued on June 16, 2025.

The business was evicted from the subject property by the Orange County Sheriff's Department on April 29, 2025 (Attachment 3). Through the eviction process, the operator lost the right to occupy the premises. By June 16, 2025, the date the letter of abandonment was issued, the business had been closed for 147 days in less than a 12-month period. The business remains closed through the date of this report.

By opening sporadically in each quarter, Culture Cannabis Club was able to report some income and remit taxes to the City, a requirement of CMMC 9-945(h)(16). However, the operator failed to maintain an on-going business as required, lost the right to occupy the premises, and ceased to operate. Furthermore, per communications with the property owner in August 2025, Culture Cannabis Club has not since regained the right to occupy the property.

Per CMMC Section 9-484:

It is the responsibility of the owners and operators of the cannabis business to ensure that it is, at all times, operating in a manner compliant with all applicable state and local laws, and any regulations promulgated thereunder.

By failing to maintain an ongoing business at this location and by being evicted from the property, the operator failed to ensure that the cannabis business was in compliance with the provisions of CMMC 9-495(h)(16).

Per CMMC Section 9-487:

No person may engage in any cannabis business or in any cannabis activity within the city including manufacturing, processing, laboratory testing, transporting, dispensing, distribution, or sale of cannabis or a cannabis product unless the person: (1) has a valid cannabis business permit from the city that authorizes the specific business and activity at specific location; (2) has a valid business license issued to the entity that is listed on the cannabis business permit; and (3) is currently in compliance with all other applicable state and local laws and regulations pertaining to the cannabis business and cannabis activity. All cannabis business permits shall include a copy of a written notice to any existing tenant of the proposed business premises from the owner of the property of the intent to file a cannabis business permit application for those premises.

Per Conditional Use Permit (CUP) PA-21-22 General Condition of Approval No. 3:

- 3. No person may engage in any cannabis business or in any cannabis activity within the City including delivery or sale of cannabis or a cannabis product unless the person:*
- a. Has a valid Cannabis Business Permit from the City;*
 - b. Has paid all Cannabis Business Permit and all application fees and deposits established by resolution of the City Council, including annual Community Improvement inspection deposits;*
 - c. Has obtained all applicable planning, zoning, building, and other applicable permits from the relevant governmental agency which may be applicable to the zoning district in which such cannabis business intends to operate;*
 - d. Has obtained a City business license pursuant to Chapter I of the Municipal Code;*
 - e. Is in compliance with all requirements of the Community Improvement Division regarding the property;*
 - f. Has obtained any and all licenses required by State law and/or regulations; and*
 - g. Has satisfied all CUP conditions of approval.*

The CMMC and CUP Condition of Approval No. 3 establish that a cannabis business can only operate with a valid CBP issued from the City. The operator failed to maintain an ongoing business, was nonoperational for more than 90 days within a 6-month period, lost the right to occupy the premises, and ceased to operate. Therefore, the Director has determined that the CBP is non-operational and abandoned within the meaning of CMMC 9-495(h)(16).

If the City Council cannot determine that the operation maintained an on-going permitted business and maintained the right to occupy the subject property, staff recommends that the City Council uphold the Director's determination that the CBP has been abandoned.

City Council "De Novo" Hearing

Pursuant to CMMC Title 2 Chapter IX, Appeal and Review Procedures, the City Council shall conduct a new or "de novo" review of the matter. The City Council may exercise its independent judgment and discretion in making a decision, and the appeal hearing is not limited to the grounds stated for the review. Provided, however, that the appellant has the burden of proof to support the granting of the requested issuance, approval, or action at the appeal. See CMMC 2-203. The City Council's decision on the matter is the final decision.

ENVIRONMENTAL DETERMINATION:

As described in the June 13, 2022, Agenda Report and Resolution No. 2022-09, the cannabis storefront use is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Class 1), Existing Facilities. The determination that a CBP has been abandoned is a “ministerial” decision and is not subject to CEQA pursuant to California Public Resources Code Section 21068.

ALTERNATIVES:

The City Council can consider the following decision alternatives:

1. Uphold the Director decision – The City Council may adopt the attached Resolution that upholds the Director’s decision that the Cannabis Business Permit was non-operational and abandoned; or
2. Uphold the Director decision subject to conditions and/or modifications – As a “de novo” review, the City Council may uphold the Director’s decision with specific project conditions or and/or modifications that are necessary to address City Council concerns; or
3. Continue the item – The City Council may continue the item to a future meeting to allow for modifications or additional analysis; or
4. Overturn the Director’s determination – If the City Council finds that the Cannabis Business Permit was not abandoned, the City Council may direct staff to prepare a Resolution reflecting the City Council’s findings.

FISCAL REVIEW:

There is minimal fiscal impact to the City’s Fiscal Year 2025-26 budget with these actions since the revenues collected from the permittee have been unreported for several periods and inconsistently for the periods that were reported. Furthermore, expenses incurred by the City exceeds revenues collected from this permittee.

LEGAL REVIEW:

The City Attorney’s Office has reviewed this report and has approved it as to form.

PUBLIC NOTICE:

Pursuant to CMMC Section 2-308 (*Notice of Appeal or Review*), notice of the hearing for the appeal or review shall be given in the same manner as any required notice for the hearing at which the decision subject to the appeal or review was made. As provided with the original Planning Commission review, pursuant to CMMC Section 13-29(d), 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 on August 21, 2025. 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 on August 22, 2025.
3. Newspaper publication. A public notice was published once in the Daily Pilot newspaper on August 22, 2025.

Any public comments received prior to the September 2, 2025, City Council meeting, may be viewed at this link: [CITY OF COSTA MESA - Calendar \(legistar.com\)](https://legistar.com/calendar/city-of-costa-mesa/)

CITY COUNCIL GOALS AND PRIORITIES:

This item is administrative and therefore is not applicable to City Council goals and priorities.

CONCLUSION:

The City of Costa Mesa established the CBP requirement and other cannabis regulations in Title 9 of the CMMC to ensure that cannabis businesses are operated in a manner which is responsible, safe, and consistent with State law. Both the CMMC and the project conditions of approval include specific regulations related to maintaining a valid CBP. Included in the CMMC, closures up to 90 days in a 12-month period are allowed (or longer with written approval by the Director or City Manager for real property issues); however, the applicant did not request a closure for real property issues. Additionally, the CMMC requires the operator to have the right to occupy the premises, and in this case, the operator lost that right as of April 29, 2025 due to an eviction. Further, the operator failed to maintain an on-going business by closing for weeks and months at a time (totaling over 90 days) in a 6-month period and failed to retain the right to occupy the premises. Accordingly, staff recommends that the City Council deny the appeal and uphold the Director's determination that the Cannabis Business Permit is non-operational and has been abandoned and find that the permit is therefore invalid and of no further force and effect.