



Agenda Report

Item #: 24-031

Meeting Date: 2/20/2024

TITLE: REVIEW OF THE PLANNING COMMISSION'S DECISION TO DENY PLANNING APPLICATION 22-22 FOR A CONDITIONAL USE PERMIT TO OPERATE A RETAIL CANNABIS STOREFRONT BUSINESS WITH DELIVERY LOCATED AT 1858 NEWPORT BOULEVARD ("EVOLV HERBAL")

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 that the City Council review the Planning Commission's decision to deny Planning Application 22-22.

APPLICANT OR AUTHORIZED AGENT:

The applicant/authorized agent is Mark Adams, on behalf of "Evolv Herbal" and the property owner, 1858 Newport Boulevard Trust.

BACKGROUND:

The subject site is an 8,800-square-foot property located at 1858 Newport Boulevard, generally bounded by Flower Street to the north, Broadway to the south, and a public alley to the east. Existing development on the subject property consists of a one-story, 2,280-square-foot single-tenant commercial building oriented toward Newport Boulevard. An existing surface parking lot located behind the building, with direct access from an alley, provides on-site parking. The site is zoned C2 (General Business District) and is surrounded by other commercially-zoned properties to the north and south, and across Newport Boulevard to the west. The properties to the east are zoned Multiple-Family Residential District, High Density (R2-HD) and Off-Street Parking District (P), and are developed with residential and surface parking uses, respectively.

The proposed use is a retail cannabis storefront with delivery establishment ("Evolv Herbal") that would occupy the entire building. The application includes exterior improvements to bring the existing structure into compliance with current building and safety codes, parking, and landscaping requirements. As proposed, the cannabis retail establishment would operate Monday through Sunday, between the hours of 7 AM and 10 PM, subject to conditions of approval as well as State and local laws pertaining to cannabis retail uses.

ANALYSIS:

Pursuant to CMMC Sections 13-28(B) and 13-200.93(c)(1), subject to the approval of the Planning Commission, a Conditional Use Permit (CUP) is required for the establishment of cannabis retail storefronts and non-storefronts (delivery) in a commercial zone. To obtain a CUP, an applicant must demonstrate that the proposed use is substantially compatible with surrounding developments, is consistent with the applicable General Plan provisions/policies, and will not be detrimental to the health, safety, and welfare of the public or otherwise injurious to property in the immediate area.

A detailed description of the proposed use, operations, and improvements to the property are described in the December 11, 2023 Planning Commission staff report and attachments, linked below:

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=6448846&GUID=BDB8224D-526E-4D60-AA3F-6769350F8CA3>

The Planning Commission meeting minutes are provided as an attachment to this report and the meeting video is linked below:

https://costamesa.granicus.com/player/clip/4071?view_id=14&redirect=true&h=3afc5737bffd6e2094027c9beb28f56c

Public Comment

Forty-four public comment letters were submitted to the Planning Commission regarding the proposed cannabis business, including four letters in support of the application and 37 opposing the application. At the December 11, 2023 Planning Commission meeting, both support and opposition for the project was expressed by public speakers. Members of the public, in written and spoken testimony, referred to negative impacts to the health, safety, and welfare of the public and properties in the vicinity of the proposed use, as well as over-concentration of cannabis storefronts on Newport Boulevard. The Planning Commission public comment letters are provided in Attachment 7.

Planning Commission Review

The application was heard by the Planning Commission on December 11, 2023. After receiving staff's presentation and recommendation for approval, the Planning Commission asked questions of staff and then opened the public hearing. The applicant provided a presentation and responded to questions asked by members of the Planning Commission. The Planning Commission then heard and considered public comments before closing the public hearing. Several members of the community testified that the proposed concentration of cannabis businesses would be detrimental to the immediate neighborhood. Several Planning Commissioners noted a proximity concern in that the proposed cannabis retail storefront would be located adjacent to an operating cannabis storefront and a property where there is an approved CUP for a cannabis storefront that is not yet operating, as well as its proximity to another proposed cannabis storefront. In consideration of the proposed application's proximity to a currently operating cannabis storefront and a property with an approved Conditional Use Permit for a cannabis storefront, the majority of Planning Commissioners identified that the proposed project would be inconsistent with General Plan Land Use Policy LU-1.1, to "provide for the development of a mix and balance of housing opportunities, commercial goods and services, and employment opportunities in consideration of the needs of the business and residential segments of the community", and Policy LU-6.1, to "encourage a mix of land uses that maintain and improve the City's long-term fiscal health."

Alternatively, three Planning Commissioners discussed that the proposed cannabis retail storefront application was consistent with the City's cannabis retail storefront provisions, that the proposed use is compatible with the adjacent commercial businesses and is consistent with the intent of the C2 Zoning District.

Ultimately, the Planning Commission voted 4-3 to deny the CUP application determining that the required findings for approval could not be made. The Planning Commission Resolution for denial is provided as Attachment 6.

Call for Review

On December 15, 2023, Mayor Stephens submitted an application to call up for review the Planning Commission decision, which is provided as Attachment 3 to this report. The purpose of the call for review was to allow the applicant "a fair de novo hearing based upon the relevant issues under the Costa Mesa Municipal Code."

City Council "De Novo" Hearing

Pursuant to CMMC Chapter 9, 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 call for review hearing is not limited to the grounds stated for the review or the evidence that was previously presented to the Planning Commission. The City Council's decision on the matter is the final decision.

Staff has provided as attachments a draft Resolution for denial based on the Planning Commission's December 11, 2023 decision. A draft Resolution for approval including potential conditions of approval is also attached; however, required findings for approval have not been included. If the Council chooses to approve the application, the Council should articulate its basis for approving the project consistent with each required Conditional Use Permit finding. Pursuant to the Costa Mesa Municipal Code (CMMC), to approve a CUP, the final review authority shall find that the evidence presented in the administrative record substantially supports the following findings:

- *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;*
- *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; and*
- *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.*

ENVIRONMENTAL DETERMINATION:

If considered for City Council approval, the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, for the

permitting and/or minor alteration of Existing Facilities, involving negligible or no expansion of the existing or prior use. This project site contains an existing commercial building that has been used continuously for commercial activities. The application does not propose an increase in commercial floor area or otherwise expand the prior commercial use. Furthermore, none of the exceptions that bar the application of a categorical exemption pursuant to CEQA Guidelines Section 15300.2 applies. Specifically, the project would not result in a cumulative impact; would not have a significant effect on the environment due to unusual circumstances; would not result in damage to scenic resources; is not located on a hazardous site or location; and would not impact any historic resources.

If the project is denied by the City Council, the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15270(a) for projects that a public agency rejects or disapproves.

ALTERNATIVES:

The City Council has the following alternatives:

1. Uphold the Planning Commission's decision and adopt a Resolution to deny the application;
2. Overturn the Planning Commission's decision and approve the application subject to conditions of approval, and direct staff to prepare a Resolution for approval reflecting the City Council's findings;
or
3. Remand the request back to the Planning Commission.

FISCAL REVIEW:

There are no fiscal impacts with this agenda item.

LEGAL REVIEW:

The City Attorney has reviewed and approved this report as to form.

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.

Public comments received prior to the February 6, 2024 City Council meeting, may be viewed at this link: [CITY OF COSTA MESA - Calendar \(legistar.com\)](https://legistar.com/CITY_OF_COSTA_MESA).

CITY COUNCIL GOALS AND PRIORITIES:

This item is administrative in nature.

CONCLUSION:

The subject review is intended to provide the City Council with an opportunity to review the Planning Commission's decision to deny a conditional use permit application for the Evolv Herbal cannabis retail storefront.