



# **PLANNING COMMISSION AGENDA REPORT**

MEETING DATE: MARCH 25, 2024

ITEM NUMBER: PH-1

**SUBJECT: PLANNING APPLICATION 22-08 FOR A RETAIL CANNABIS STOREFRONT BUSINESS WITH DELIVERY LOCATED AT 2490 NEWPORT BOULEVARD (NEWPORT WELLNESS)**

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

**PRESENTATION BY: MICHELLE HALLIGAN, SENIOR PLANNER**

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## **RECOMMENDATION**

Staff recommends 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 22-08 subject to the conditions of approval as contained in the Resolution.

## **APPLICANT OR AUTHORIZED AGENT**

The applicant/authorized agent is Sean Maddocks on behalf of Newport Wellness, LLC and the property owner, Anne Trostle Johnson.

## PLANNING APPLICATION SUMMARY

Location:	2490 Newport Boulevard	Application Number:	PA-22-08
Request:	Planning Application 22-08 is for a Conditional Use Permit for the establishment of a cannabis retail storefront with delivery.		

### **SUBJECT PROPERTY:**

### **SURROUNDING PROPERTY:**

Zone:	C1 (Local Business District)	North:	R3 (Multiple-Family Residential District, High Density)
General Plan:	Commercial Residential	South:	C1 (Local Business District)
Lot Dimensions:	108' x 156'	East:	C1 (Local Business District)
Lot Area:	15,912	West:	State Route 55
Existing Development:	The property is developed with a 2,076-square-foot single-story multi-tenant commercial building, approximately 1,300-square-feet of other commercial structures, and two detached residential dwelling units.		

## DEVELOPMENT STANDARDS COMPARISON

Development Standard	Required/Allowed C1 Zone	Provided/Proposed
Building Height	2 stories/30'	1 story/15'
Setbacks:		
Front	20'	20'
Side	15'/0'	16'/12'-6"
Rear	0'	78'
Landscape Setback – front	20'	20' <sup>1</sup>
Parking	8	12 <sup>2</sup>
Floor area ratio (FAR)	0.20	0.13
<p>1 The existing front setback is currently developed as parking that encroaches into the public right-of-way and does not conform to the City's parking design standards.</p> <p>2 Proposed parking includes a bike rack credit of one space. Parking for the residential use is legal non-conforming.</p>		
CEQA Status	Exempt per CEQA Guidelines Section 15301 (Class 1, Existing Facilities)	
Final Action	Planning Commission	

## **BACKGROUND**

The subject property is an approximate 16,000-square-foot site and is located at 2490 Newport Boulevard at the southwest corner of Newport Boulevard and Monte Vista Avenue. The site is zoned C1 (Local Business District) and is surrounded by C1 properties to the south and east, the State Route 55 to the west, and residential properties, zoned R3 (Multiple-Family Residential District, High Density) are located to the east. The site has a General Plan Land Use Designation of "Commercial Residential". Vehicular ingress/egress is obtained from a driveway located on Monte Vista Avenue. The subject property is located on one of the City's primary corridors paralleling State Route 55. Existing uses in the area include, but are not limited to, specialty stores, salons, restaurants, mini warehousing, automobile services, a hotel, and multi-family and single-family homes.

Existing development on the subject property consists of a 2,076-square-foot, one-story multi-tenant commercial building, as well as approximately 1,300-square-feet of unpermitted commercial structures, and two detached residential units. As proposed, the unpermitted structures would be demolished. The proposed cannabis retail establishment with delivery, Newport Wellness, would occupy the commercial building. Although currently vacant, the two previous commercial tenants included an import vehicle parts store and a vehicle window tinting business, which have since relocated. The two businesses generally operated from 9:00 AM to 5:00 PM Monday through Saturday.

### ***Non-Conforming Development***

The existing development is legal nonconforming in terms of parking design, residential guest parking, landscaping, and residential use, and therefore is subject to the nonconforming provisions of the Costa Mesa Municipal Code Section 13-204. Pursuant to this code section, a conforming use may be located on a nonconforming property so long as the new site modifications do not result in greater site nonconformities, and such improvements bring the site into greater conformance with Code requirements.

The proposed project would include demolishing unpermitted commercial structures and removing nonconforming parking stalls from required setbacks and public rights-of-way. Improvements would be made to bring the commercial building into conformance with current building and safety codes; however, and as specifically allowed by the CMMC, the existing nonconformities can remain pursuant to the City's legal nonconforming provisions. The applicant is proposing to bring the property into closer conformance by adding landscaping in the front and side setbacks, at least five trees, a bicycle rack, removing parking from required setbacks and replacing it with landscaping, adding sidewalk, curb, and gutter, and constructing a parking lot designed to meet Code requirements.

### ***City of Costa Mesa Medical Marijuana Measure (Measure X) and Costa Mesa Retail Cannabis Tax and Regulation Measure (Measure Q)***

In November 2016, Costa Mesa voters approved Measure X, allowing medical cannabis manufacturing, packaging, distribution, research and development laboratories, and testing laboratories in "Industrial Park" (MP) and "Planned Development Industrial" (PDI) zoned properties north of South Coast Drive and west of Harbor Boulevard ("The Green Zone," excluding the South Coast Collection property located at 3303 Hyland Avenue). Measure X provisions are included in Titles 9 and 13 of the CMMC.

In 2018, non-medical adult use cannabis became legal in California under the State's Medicinal and Adult-Use Cannabis Regulation and Safety Act (Proposition 64). On April 3, 2018, the City Council adopted Ordinance No. 18-04 to allow non-medical cannabis facilities in the same manner and within the same geographic area as were previously allowed pursuant to Measure X.

On November 3, 2020, Costa Mesa voters approved Measure Q, the Costa Mesa Retail Cannabis Tax and Regulation Measure. This measure allowed the City to adopt regulations permitting retail storefronts and non-storefront retail (delivery) within the City subject to extensive conditions of approval. On June 15, 2021, the City Council adopted Ordinances No. 21-08 and No. 21-09 to amend Titles 9 and 13 of the CMMC to establish regulations for legal cannabis storefront and non-storefront uses (a “non-storefront” retailer sells packaged cannabis goods to customers through direct delivery).

### ***Cannabis Business Permit (CBP) Application Process***

The process to establish a retail cannabis business is subject to an extensive submittal and application review procedure. Pursuant to the CMMC, retail cannabis applicants must obtain the following City approvals and obtain State approval before conducting business in Costa Mesa:

- Pre-Application Determination;
- CBP Notice to Proceed;
- Conditional Use Permit (CUP);
- Building Permit(s);
- Final City Inspections;
- CBP Issuance; and
- City Business License.

The “Pre-Application Determination” includes staff review of a detailed applicant letter that describes the proposed business, an existing site plan, statement attesting that there is/has been no unpermitted cannabis activity at the site within one year, and a detailed map demonstrating the proposed storefront’s distance from sensitive uses. Staff also conducts a site at this time. Planning staff has completed the aforementioned pre-application review, visited the site, and issued a letter indicating that the application complies with the City’s required separation distances from sensitive uses and may proceed to submittal of a CBP.

Following completion of the pre-application review, the applicant submitted a CBP application for the initial phase of the CBP review. Staff’s initial CBP review includes:

- A background check of the business owner(s)/operator(s);
- An evaluation of the proposed business plan (including a capitalization analysis); and
- An evaluation of the proposed security plan by the City’s cannabis security consultant, HdL Companies (HdL).

The applicant successfully passed these evaluations and staff issued a “CBP Notice to Proceed,” which allows the applicant to submit a CUP application.

The CUP application and required supportive materials were submitted by the applicant and reviewed for conformance with City standards and regulations by the Planning Division, Building Division, Public Works Department (including Transportation and Engineering Divisions), Fire Department, and Police Department. If the Planning

Commission approves the CUP, the applicant may then begin the remaining steps of the CBP process, which include:

- Obtaining building permits;
- Completing tenant improvements; and
- Demonstrating through various City reviews/inspections that all conditions of approval have been satisfied, and that all other requirements of the CMMC have been met.

After passing the final City and HdL inspections, the CBP would be issued. CBP approval is valid for a two-year period and must be renewed (every two years) prior to expiration. During the two-year CBP period, the Community Improvement Division (CID), along with other City staff, will conduct site inspections to verify that the business is operating in compliance with CUP and CBP requirements. Violations identified during site inspections may be grounds for revocation of issued permits or non-renewal of a CBP.

After obtaining the CBP, the applicant would apply for and obtain a City Business License through the City's Finance Department. Lastly, the applicant must obtain the appropriate license from the State Department of Cannabis Control (DCC) prior to operating.

Cannabis retail businesses are subject to a City established seven-percent gross receipts tax, which must be paid to the City of Costa Mesa's Finance Department. Records and revenues are audited regularly by the Finance Department and HdL Companies.

## **DESCRIPTION**

Planning Application 22-08 is a request for a CUP to allow a 2,076-square-foot retail cannabis storefront with delivery in an existing multi-tenant commercial building at 2490 Newport Boulevard. The affiliated State license is a Type 10 "storefront retailer" license. If the CUP is approved and the operator also obtains a CBP, City Business License, and State license, the business would be allowed to sell pre-packaged cannabis and pre-packaged cannabis products to customers onsite and by delivery, subject to conditions of approval and other City and State requirements.

## **ANALYSIS**

### ***Conditional Use Permit Required***

Pursuant to CMMC Sections 13-28(B) and 13-200.93(c)(1), subject to the approval of the Planning Commission, a CUP is required for the establishment of cannabis retail storefronts in a commercial zone. To obtain a CUP, an applicant must show that the proposed use is compatible with the City's applicable zoning and General Plan provisions/policies, and will not be detrimental to public health, safety, and welfare.

The subject site is located within a commercial zone (C1 – Local Business District) where commercial development is allowed to include retail uses. As defined in the CMMC, "This district is intended to meet the local business needs of the community by providing a wide

range of goods and services in a variety of locations throughout the City.” Pursuant to the CMMC, cannabis retail storefronts are subject to extensive regulation (as specifically described in this report). These regulations are adopted to prevent land use inconsistencies with adjacent properties. Pursuant to the CMMC, the approval of a CUP requires that the Planning Commission make findings related to neighborhood compatibility, health and safety, and land use compatibility. Proposed uses subject to CUPs will generally have site-specific conditions of approval to ensure the required findings can be met. A detailed project analysis regarding CUP findings is provided below in this report.

### ***Separation Requirements***

CMMC Section 13-200.93(e) stipulates that no cannabis retail storefront use shall be located within 1,000 feet from a K-12 school, playground, licensed child daycare, or homeless shelter, or within 600 feet from a youth center as defined in CMMC Title 9-485, that is in operation at the time of submission of a completed cannabis business permit application. All separation distances are measured in a straight line (“as the crow flies”) from the “premises” (with the exception of playgrounds), where the cannabis retail use is to be located, to the closest property line of the sensitive use(s). (For playgrounds, the property line is a 30-foot radius from the exterior physical boundaries of the playground equipment area.) Premises is as defined in the State’s Business and Professions Code Section 26001 as *the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.* Therefore, the premises only include the retail cannabis activity areas (including sales, storage, back-of-house and/or other ancillary areas) and excludes the parking lot and other areas that are not part of the area licensed by the State for commercial cannabis activity. The subject site complies with required separations from sensitive uses per the CMMC.

### ***Exterior Improvements***

The applicant proposes to bring the commercial building up to Code and significantly improve the building façade with new finishes, marquee awnings, windows, and doors. Other proposed or conditioned exterior improvements include:

- Removing nonconforming parking spaces from the front setback, side setback, and public rights-of-way;
- Constructing sidewalk, curb, and gutter along Newport Boulevard and Monte Vista Avenue;
- Creating a parking lot that is compliant with the City’s Parking Design Standards (refer to the parking discussion below);
- Adding bicycle racks to encourage multi-modal transportation;
- Adding a trash enclosure;
- Adding irrigated landscaping planters to bring the property into closer conformance with the CMMC landscape requirements. Landscaping would include at least five

new 24-inch box trees and live, drought-tolerant groundcover. A detailed landscaping plan would be reviewed during the building plan check process;

- Installation of security lighting and surveillance cameras. Should the CUP be approved, a detailed lighting and photometric plan will be further reviewed during the building plan check process; and
- All chain link fencing/gates would be removed, block walls would be installed along the west and southern property lines, the gate facing Newport Boulevard would be replaced with wrought iron or a similar high-quality material, and new fencing would be constructed around the residential area.

Proposed business signs would be reviewed and permitted separately per the City’s sign code requirements. Pursuant to Condition of Approval No. 6 (Prior to Issuance of Building Permits), business signage shall not include references to cannabis, whether in words or symbols.

***Interior Tenant Improvements***

The proposed interior remodel includes combining the two tenant spaces to accommodate the cannabis storefront, and improvements such as, but not limited to, installation of new flooring, installation of a new restroom, adding commercial showroom finishes, and installation of an odor control system,. A proposed floor area summary is provided in Table 1.

**Table 1 – Floor Plan Summary**

<b>Operational Area</b>	<b>Square Feet</b>
Lobby/Reception	233
Retail Area	1,352
Receiving	253
Office	180
Restroom	58
<b>Total</b>	<b>2,076</b>

***Customer and Employee Access***

Customer access would be limited to the lobby and retail area. Customer circulation into the proposed establishment includes entering the licensed premise through the door fronting Newport Boulevard where a greeter employee would verify the customer’s identity and age before allowing the customer to enter the retail sales area. After a customer’s identity and age is verified and their transaction is completed, they must leave the premise through the exit door facing Monta Vista Avenue. As further conditioned, staff and a security guard would monitor the area to ensure that customers are following regulations.

All other areas of the premises would be accessible only to employees with the proper security credentials. Employees would enter through the customer entrance or an

employee only access-controlled entrance that leads directly into the back-of-house areas. Employees would be able to exit through the customer exit or the access-controlled door.

### ***Vendor Delivery Operations and Access***

All vendors (licensed distributors) will have pre-committed arrival times set by the storefront's operational managers for product delivery. All vendor vehicles will load and unload at the designated parking space located approximately ten feet from the limited access door. Vendors would only be allowed to enter the premise while accompanied by an employee with the proper security credentials. The access-controlled door, product path of travel, and vehicle loading/unloading area would be under camera surveillance at all times.

### ***Storefront Operations***

The proposed business is required to comply with the City's adopted retail storefront operational requirements as follows:

- Display State license, CBP, and City business license in a conspicuous building location;
- The hours of operations are limited to 7:00 AM to 10:00 PM Monday through Sunday;
- Shipments of cannabis goods may only be accepted during regular business hours;
- Cannabis inventory shall be secured using a lockable storage system during non-business hours;
- At least one licensed security guard shall be on premises 24-hours a day;
- The premises and the vicinity must be monitored by security and/or other staff to ensure that patrons immediately leave and do not consume cannabis onsite or within close proximity. The CMMC prohibits the consumption of cannabis or cannabis products in public areas; cannabis consumption is limited to non-public areas, such as within a private residence. State law further prohibits cannabis consumption and open container possession within 1,000 feet of sensitive uses and while riding in or driving a vehicle;
- There must be continuous video monitoring and recording of the interior and exterior of the premises;
- Adequate security lighting shall be provided and shall be designed to prevent offsite light spill;
- Onsite sales of alcohol or tobacco products and on-site consumption of alcohol, cannabis, and tobacco products is prohibited;
- No one under the age of 21 is allowed to enter the premises. If the business holds a retail medical cannabis license (M-license) issued by the State, persons over the age of 18 may be allowed with the proper medical approvals i.e. physician's recommendation or medical card pursuant to CMMC Section 9-495(h)(6);
- Prior to employment, all prospective employees must successfully pass a background check conducted by the City, and the employee must obtain a City issued identification badge;



- Customers are only granted access to the retail area after their age and identity has been confirmed by an employee;
- Each transaction involving the exchange of cannabis goods between the business and consumer shall include the following information:
  - Date and time of transaction;
  - Name and employee number/identification of the employee who processed the sale;
  - List of all cannabis goods purchased including quantity; and
  - Total transaction amount paid.
- There must be video surveillance of the point-of-sale area and where cannabis goods are displayed and/or stored;
- Cannabis products shall not be visible from the exterior of the building;
- Free samples of cannabis goods are prohibited;
- When receiving new inventory from licensed distributors, employees will verify the distributor's identity and license prior to allowing them to enter the facility through an access-controlled door. After distributor's credentials have been confirmed, an employee will escort the distributor to the shipping and receiving area and remain with them throughout the process;
- Cannabis goods to be sold at this establishment (either storefront or delivery) must be obtained by a licensed cannabis distributor and have passed laboratory testing;
- Cannabis product packaging must be labeled with required test results and batch number;
- Packaging containing cannabis goods shall be tamper-resistant; if packaging contains multiple servings, the package must also be re-sealable;
- When processing orders for cannabis delivery, employees will collect the pre-packaged materials, load products into a secured container and transport the containers to delivery vehicles outside the building. Video surveillance cameras will be installed with direct views of the path of travel and loading and unloading area. All loading and unloading of delivery vehicles will be monitored by the required security guard;
- Cannabis deliveries must be made in-person by an employee of the licensed retailer. An independent contractor, third-party courier service, or an individual employed through a staffing agency would not be considered employed by the licensed retailer;
- The applicant shall maintain proof of vehicle insurance for any and all vehicles being used to deliver cannabis goods;
- During delivery, the employee shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers;
- A delivery employee shall not leave the State of California while possessing cannabis products and while performing their duties for the cannabis retailer;
- The business shall maintain a list of all deliveries, including the address delivered to, the amount and type of product delivered, and any other information required by the State;
- Any delivery method shall be made in compliance with State law, as amended, including use of a vehicle that has a dedicated global positioning system (GPS)

device for identifying the location of the vehicle (cell phones and tablets are insufficient);

- Signs, decals or any other form of advertisement on the delivery vehicles are prohibited;
- Deliveries must be made to a physical address that is not on publicly owned land and cannot be a school, a day care, homeless shelter, or a youth center; and
- A cannabis delivery employee shall not carry cannabis goods valued in excess of \$5,000 at any time, with no more than \$3,000 of cannabis goods that are not already part of a customer order that was processed prior to leaving the premises.

### ***Business Plan***

The applicant has submitted a detailed business plan that was evaluated by the City's cannabis consultant (HdL). The business plan describes the owner's experience, proof of capitalization, start-up budget, a three-year pro forma, target customers, key software, and daily operations. The business plan contains proprietary details and is therefore not included as an attachment to this staff report. The City's cannabis consultant determined that the applicant's business plan was appropriate for the proposed retail storefront use.

### ***Security Plan***

The applicant has submitted a professionally prepared security plan for the proposed retail cannabis establishment. The City's cannabis consultant reviewed the security plan and determined that appropriate security measures were included to address the City's security requirements pursuant to CMMC Title 9, Chapter VI, and State law. Since the security plan contains sensitive operational details that require limited public exposure to remain effective, the plan is not included as an attachment. However, the following is a list of general security measures that are included in the operations for the proposed cannabis retail establishment:

- One security guard will be on-site 24-hours a day;
- All employees must pass a "Live Scan" background check;
- City-issued identification badges are required for employees;
- An inventory control system shall be maintained;
- Exterior and interior surveillance cameras shall be monitored and professionally installed;
- An alarm system shall be professionally installed, maintained, and monitored;
- Surveillance footage must be maintained for a minimum of 90 days;
- Cash, cannabis, and cannabis products shall be kept in secured storage areas;
- Sensors shall be installed that detect entry and exit from all secured areas;
- Security lighting (interior and shielded exterior) shall be installed;
- Emergency power supply shall be installed;
- Employees shall be trained for use with any/all emergency equipment;
- Employees and vendors will be trained regarding cash and product transportation protocol;

- Visitor/customer specific security measures shall be required; and
- All facility entry and exit points and locations where cash or cannabis products are handled or stored shall be under camera surveillance.

**Parking and Circulation**

Retail cannabis establishments are subject to the same parking ratio as other retail storefronts in the City; four spaces per 1,000 square feet of gross floor area. The parking required pursuant to the CMMC for the 2,076-square-foot retail building is approximately eight parking spaces, and the applicant is proposing an eleven-car parking lot with an additional credit of one-space with the installation of a bicycle rack. However, the site also includes two detached apartments and the CMMC requires on-site parking for these residential uses. For each of these existing one-bedroom units, the City’s parking standards require a total of 2.5 parking spaces for each unit. The below Table 2 provides a summary of the required site parking, based on use:

**Table 2 – Parking Summary**

<b>Use</b>	<b>CMMC required</b>
Commercial	8.3 spaces (4 spaces per 1,000 square feet.)
Residential	5 spaces (2.5 spaces for each one-bedroom unit)
Total Required:	13.3 spaces
Total Provided:	12 spaces

Since the uses on the site require a combined total of 13.3 parking spaces and only 12 parking spaces (including credit for one-space for the proposed bicycle rack) are proposed, the CMMC considers the site as nonconforming in regard to parking. However, pursuant to CMMC Section 13.204 (Nonconforming Provisions), a commercial use can replace an existing and/or previous existing commercial use, without providing additional parking, as long as the new use does not require additional parking. Pursuant to the CMMC, no additional parking is required with the proposed project and therefore the Code allows the “continuance of a use permitted”. In addition, the CMMC also stipulates that “other uses on the same site (two existing residential units) may continue with the existing nonconforming parking”.

Staff has included Operational Condition of Approval No. 7 which requires that if parking shortages or other parking-related problems occur, the business owner or operator will be required to monitor the parking lot and institute appropriate operational measures necessary to minimize or eliminate the problem in a manner deemed appropriate by the Director of Economic and Development Services (see “Operational Conditions” of Approval No. 7 in the attached Resolution). Examples of parking demand management techniques include, but are not limited to, offsite parking for employees, reducing operating hours of the business, hiring an employee to monitor parking lot use and assist with customer parking lot circulation, and incentivizing employee carpooling/cycling/walking. As conditioned, cannabis operators would also provide a

parking plan to the Director of Economic and Development Services or their designee in advance of any special event such as a grand opening.

The applicant proposes to upgrade the parking area in the rear of the property to provide a parking lot that meets CMMC parking stall design standards. The parking lot would be accessed via a two-way driveway off Monte Vista Avenue.

### ***Traffic***

CMMC Section 13-275(e) indicates that any increase in traffic generation by a change of use that is required to obtain a discretionary permit, shall be subject to review by the appropriate reviewing authority, which may impose fees to address increased trip generation. If required, the fee collected is used to fund the City's comprehensive transportation system improvement program. The purpose of the program is to ensure that the City's transportation system has the capacity to accommodate additional trips. The Citywide Traffic Impact Fee related to new and expanding developments is determined using estimated Average Daily Trips (ADT), which is the combined total number of vehicular trips both in and out of a development generated throughout an average weekday. The Transportation Services Division determined that the appropriate ADT for a cannabis retail establishment is approximately 108 trips per 1,000 square feet based on the Institute of Transportation Engineers (ITE) 11<sup>th</sup> Edition Trip Generation Manual for the most similar use "pharmacy/drug store with drive-through". The City's traffic engineering review focuses on net trip increase for both the ADT and peak hour trips. Therefore, the trip generation is estimated for the previous/existing use(s) and is credited (subtracted) from the proposed use to estimate potential changes in trip generation for ADT and peak hour trips. The proposed use would be subject to a traffic impact fee based on net ADT. The estimated traffic impact fee is \$36,836.25. The fee calculation would be finalized during the building permit plan check process and must be paid prior to building permit issuance.

CMMC Section 13-275(a), specifies that "a traffic impact study shall be required for all development projects estimated by the Public Works Department to generate one hundred (100) or more vehicle trip ends during a peak hour." The highest peak hour trips in either the AM or PM is used to estimate the number of vehicular trips generated both in and out of a new or expanded development known as vehicle trip-ends during a peak hour. Staff reviewed and determined that the proposed use does not meet the threshold of 100 peak hour trips requiring a traffic study based on the net peak hour trips.

### ***Odor Attenuation***

If approved, cannabis products would arrive in State compliant packaging that is odor-resistant sealed, and remain unopened while on the premises. Pursuant to the CMMC, "odor control devices and techniques shall be incorporated in all cannabis businesses to ensure that odors from cannabis are not detectable off site". Further, as conditioned, if cannabis odor is detected outside of the building or off-site, the business owner/operator

will be required to institute further operational measures necessary to eliminate off-site odors in a manner deemed appropriate by the Director of Economic and Development Services or their designee. Lastly, cannabis products are not allowed to be disposed of in the exterior trash enclosure.

### ***Proximity to Residential***

Similar to many commercial areas in the City, this portion of Newport Boulevard is characterized by a mixture of commercial and residential uses. There are two detached residential buildings on the subject commercial property. Based on City records, the property has contained both residential and commercial uses since the 1950s. The shortest distance between the proposed storefront and the onsite residential building is 10.5 feet.

In addition, there are residentially zoned properties across Monte Vista Avenue and farther west down Monte Vista Avenue. The shortest distance between the proposed licensed premise and the nearest offsite residential building is approximately 90 feet. Block walls, landscaping, and the public right-of-way provide adequate buffers between the proposed storefront and nearby properties zoned for residential use. To ensure neighborhood compatibility, proposed project conditions and requirements include the following:

- A new fence to be constructed between the commercial use and residential uses on the property;
- The business hours are limited from 7 AM to 10 PM;
- Signs shall be posted within the parking lot to remind customers and vendors to keep noise levels to a minimum;
- Security lighting would be shielded and directed down/away from the residential properties to prevent light spill. As conditioned, a photometric study would be updated during plan check to demonstrate that light levels at the residential property are appropriate;
- Disposal of waste at the trash enclosure shall be limited between 8 AM and 8 PM to avoid noise impacts to nearby residential uses during sensitive hours;
- A security guard shall be onsite 24 hours a day to patrol the property including parking areas; and
- A staff person will help monitor the site's parking areas to ensure that customers are quiet, turn off vehicle engines promptly, do not play loud music, and generally do not create excessive neighbor disturbances. The parking lot monitoring will be especially diligent to prevent noise and other neighbor disturbance during early morning and evening business hours.

### **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 project would provide commercial goods, employment opportunities, and housing on the subject property. Approval of the proposed use would result in the revitalization and reuse of a commercial space and allow nonconforming residential uses to remain. Although there are other cannabis storefronts in Costa Mesa, none of the approved cannabis storefront CUPs (including open storefronts), CUP applications in progress, or applications in the CBP phase are located within close proximity of the subject property.

2. **Objective LU-6B:** *Encourage and facilitate activities that expand the City’s revenue base.*

**Consistency:** Retail cannabis uses are subject to a unique local tax that does not apply to other retail businesses in Costa Mesa. Retail cannabis uses are expected to generate increased tax revenues due to this seven-percent local tax on gross receipts. This revenue will 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 cannabis industry that is very limited in Orange County. Out of 34 cities in the county, only three have cannabis storefronts--Costa Mesa, Santa Ana, and Stanton. Approval of this CUP would facilitate a business opportunity in a specialized and expanding industry along the City’s commercial corridors.

4. **Policy LU-3.1:** *Protect existing stabilized residential neighborhoods, including mobile home parks (and manufactured housing parks), from the encroachment of incompatible or potentially disruptive land uses and/or activities.*

**Consistency:** The cannabis retail facility is proposed in an existing commercial building on a property that also contains two detached residential structures. Historic records indicate that the property was developed with commercial and residential structures prior to 1958. The proposed storefront would not result in the removal of the residential units. As conditioned, a new fence would be constructed to create a distinct separation between the residential units and storefront. Similar to other commercial properties located along Newport Boulevard, the subject property is located within relatively close proximity to other residential uses. As conditioned, the proposed use would be required to control odor, noise, limit trash enclosure access, and provide adequate security and parking lot monitoring to ensure compatibility between uses. The aforementioned cannabis operation controls exceed typical requirements for other retail uses.

5. **Policy N-2.9:** *Limit hours and/or attenuation of commercial/entertainment operations adjacent to resident and other noise sensitive uses in order to minimize excessive noise to these receptors.*

**Consistency:** The proposed cannabis storefront would be located on a site that has included both retail and residential uses since the 1950s, possibly earlier. With the proposed storefront use, parking lot activity and associated noise could be greater than past operations; however, conditions of approval requiring security features, parking lot monitoring, signage regarding noise, and limiting the hours the exterior trash enclosure are intended to ensure compatibility between the proposed use and residences.

## **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 (C1, Local Business District) where commercial development is specifically allowed to include retail uses. In addition, the property is located on one of the City's primary commercial corridors that is predominantly intended for commercial uses. Pursuant to the CMMC, cannabis retail storefronts are permitted uses in the C1 zone and are subject to extensive regulation (as described in this report). Additionally, the proposed cannabis retail storefront use is not located within 1,000 feet of a K-12 school, playground, licensed child daycare, homeless shelter, or youth center as defined in the CMMC.

As proposed and conditioned, the storefront would operate in a manner that is compatible with developments in the area. Proposed and conditioned storefront operations include limiting the hours of operation to the hours between 7 AM and 10 PM, posting signs in the parking lot directing customers to use consideration, having a security guard onsite, having a staff member periodically monitor the parking lot, limiting the hours the trash enclosure can be used, and shielding security lighting down and away from residences.

City records indicate that the subject site has been used for both commercial and residential uses since the 1950s or earlier. The most recent previous commercial uses include auto parts retail and automobile window tinting. Staff observed deferred property and building maintenance as well as several nonconforming conditions such as parking in required setbacks. If approved, the applicant would invest in significant site improvements, including bringing a commercial structure up to current building codes, adding landscaped planters and trees, constructing a parking lot to meet Code design standards, adding a bike rack, and replacing chain-link fencing with high quality fencing and walls. Staff does not anticipate that the proposed use, as proposed and conditioned, would be materially detrimental to properties in 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.*

The proposed cannabis retail storefront has the potential to improve safety through a significant remodel that includes bringing a commercial building up to current building codes, improving accessibility, replacing aging fencing and walls, adding security lighting, removing dilapidated structures, and removing parking from required setbacks and from encroaching into public rights-of-ways.

In addition, the proposed business 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, security devices including window and door alarms, motion-detectors, limited access areas, and a monitored video surveillance system covering all exterior entrances, exits, exterior loading and unloading, and all interior limited access spaces. In addition, all employees must pass a live scan background check and obtain an identification badge from the City. The City and State requirements are designed to ensure that the proposed 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 property has a General Plan land use designation of “Commercial Residential”. The intent of this land use designation is to allow a mix of commercial and residential zones along Newport Boulevard. 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 specialized businesses. The City’s General Plan sets forth long-term policies that guide future development, whereas the Zoning Ordinance implements general plan policies through detailed development regulations, such as specific use types and building standards. Therefore, in determining General Plan compliance for the proposed cannabis retail storefront use, a comparison of the proposed use with the use, density and intensity allowed by the applicable zoning district is required. In this case, the applicable zoning district is “Local Business District” (C1). A variety of commercial uses are allowed in the C1 zone, including a retail cannabis storefront, subject to a CUP. No additional square footage is proposed; therefore, the proposed use would not increase the floor area ratio (building intensity) or increase the number of residential units onsite (density).

## **ENVIRONMENTAL DETERMINATION**

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. The project is consistent with the applicable General Plan land use designation and policies as well as with the applicable zoning designation and regulations. 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.

## **ALTERNATIVES**

The Planning Commission can consider the following decision 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 have 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 this report was circulated, no public comments have been received. Any public comments received prior to the March 25, 2024 Planning Commission meeting will be provided separately.

## **CONCLUSION**

The proposed project is a retail cannabis storefront business at an existing 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 Pre-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 significant site and building improvements, and pass City inspections prior to obtaining a CBP and City Business License. The CBP would be 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, conducts site inspections to verify that the operation complies with CUP and CBP requirements.

As proposed and conditioned, the use would be consistent with other commercial uses in the C1 zone, the Zoning Code, and the City's General Plan. The required findings for the CUP can be made, as described above, and therefore, staff recommends approval of Planning Application 22-08 subject to conditions of approval.