

December 22, 2023

On Behalf of Mr. Mark Adams
CEO
Evolv Herbal, LLC
1858 Newport Blvd.
Costa Mesa, CA 92626
markjrs13@yahoo.com
562-209-0111

City Council
c/o City Clerk
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
714-754-5225

Dear Honorable Mayor and City Council Members,

I represent Mr. Mark Adams and Evolv Herbal and am submitting this Letter of Appeal of the decision of the Costa Mesa City Planning Commission (Planning Commission) to deny the Conditional Use Permit (CUP) and thereby, Conditional Business Permit (CBP), filed by Evolv Herbal, located at 1858 Newport Blvd., Costa Mesa, CA 92626, on December 11, 2023 to the City Council of Costa Mesa per (CMMC). Evolv Herbal has diligently followed all legal requirements, ordinances, and regulations outlined by the CMMC and State of California for operating a storefront retail cannabis dispensary. We appreciate the Planning Commission's review and consideration of our CBP and CUP applications but seek a fair de novo hearing on our applications based upon the relevant issues and CMMC. Our commitment to compliance is unwavering, and we want to ensure that we address any specific issues that might have arisen during the evaluation.

In summary, Evolv Herbal's CUP Application was in full compliance with the CMMC and the Costa Mesa City Planning Department Staff Report recommended approval of their CUP Application. (See City of Costa Mesa Planning Commission Agenda Report, Meeting Date: December 11, 2023, Item Number PH-4 and Resolution No. PC-2023- A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING PLANNING APPLICATION 22-22 FOR A STOREFRONT RETAIL CANNABIS BUSINESS (EVOLV HERBAL) WITH DELIVERY IN THE C2 ONE AT 1858 NEWPORT BOULEVARD). The FINDINGS and CONDITIONS OF APPROVALS (Exhibits A and B of the Staff Report) provide detailed information regarding the Evolv Herbal Application,

all of which were and are consistent with the CMMC and California state law. Additionally, the City of Costa Mesa approved both of the neighboring storefront retail cannabis stores, whose applications were nearly identical but with less stringent security measures. Further, based on the location of sensitive uses in the local area, a “Goldie Lox Effect” resulted in the concentration of storefront retail cannabis operations which prevented the broad diaspora of such operations across the City, which further supports the tenets of the CMMC and General Plan of Costa Mesa. Finally, Evolv Herbal has acted in good faith, engaged in diligent community outreach in conjunction with its CUP Application, and has the most seasoned staff and professionals of any storefront retail cannabis operation in the City, having not only operated and owned medical and retail cannabis operations for almost 2 decades but has also been extremely active in nonprofit and educational programs regarding the safe use of cannabis, emphasizing the use of cannabis with lower psychoactive concentrations and higher concentrations of non-psychoactive medical grade cannabis with significant health benefits. As such, the City Council is compelled and urged to overturn the decision of the Planning Commission and approve Evolv Herbal’s CUP Application.

Pursuant to Sections 5 and 7 of Article XI of the California Constitution and the provisions of Division 10 of the Business and Professions Code, the City of Costa Mesa (“City”) is authorized to adopt ordinances that establish standards, requirements and regulations for local licenses and permits for cannabis and cannabis-related activity. In conjunction therewith, the City passed Ordinances No. 2021-08 and No. 2021-09 on November 3, 2020, known as Measure Q. These ordinances provide for the licensing, permitting, and establishment of retail cannabis storefront and non-storefront uses to implement the City’s retail cannabis tax and regulation measure, voted for by a majority of the City’s voters. The Ordinances were exempt from the California Environmental Quality Act (“CEQA”). *Lucas v. City of Pomona* (2023) 92 Cal.App.5th 508. The CMMC also did not place a restriction on the number of retail cannabis storefronts within the City.

The City Website specifically confirms that the City Ordinances in the CMMC do not limit the number of storefront permits that may be granted, and that the number of applications under review is based solely on City staff’s capacity to review and process applications in a timely manner. While the Ordinances state that the City Council has the authority to establish a cap on the number of storefronts allowed in the City, the City Council has not specifically done so at the time of the denial of our applications, nor since.

The Ordinances go on to state that storefronts are allowed in commercial zones, which the planned location for Evolv Herbal at 1858 Newport Blvd., Costa Mesa, CA 92626 is as it would be located in a C-2 General Business Zone. Further, storefronts are required to be 1,000 feet away from K-12 schools, playgrounds, child daycare facilities, and homeless shelters, and 600 feet away from youth centers, which the planned location for Evolv Herbal is. The Ordinances establish that all such distances are measured in a straight line (“as the crow flies”) from the licensed premises of the proposed storefront locations to the closest property line of the sensitive use(s), and that all such distances are measured without regard to the boundaries of the City and/or intervening structures or other barriers.

While not required of the relevant Ordinances, Evolv Herbal engaged in focused community outreach in conjunction with their application process. They mailed and delivered 257 letters to the surrounding community in which they provided the personal contact information for the CEO, Mr. Mark Adams, in case a community member had questions or concerns. They also walked the neighborhood adjacent to the proposed location of the dispensary and met neighbors personally to discuss the project. Evolv Herbal's core mission is to create and provide a safe and responsible environment that caters to a mature customer base and focuses on overall health and well-being in Costa Mesa by providing safe access to high grade, safe cannabis.

Mr. Adams, their CEO, got involved in cannabis in 2006 when his grandfather was diagnosed with cancer and his doctor prescribed cannabis to alleviate his pain. Through this experience, Mark felt an obligation to help people, especially the elderly, to have access to safe and legal cannabis and so he started a nonprofit cannabis collective in 2006. He has since spent the last 17 years successfully operating every facet of the cannabis industry, including over 10 retail locations, indoor and outdoor cultivation, delivery, product manufacturing, and distribution to over 200 stores. He has also dedicated hundreds of hours to nonprofit public advocacy groups committed to the responsible, safe, and legal use of cannabis, including Americans for Safe Access, Project CBD, and the Medical Cannabis Association, serving as its Chapter Director, where he successfully worked with the cities of Long Beach, Los Angeles, Oakland, and Berkeley, and the states of California, Colorado, and Washington to mandate laboratory testing and labeling on all cannabis flower and products to ensure that no one unknowingly overmedicate using cannabis. He also has worked with international cannabis experts to create analytical laboratories to research safety and potency, including working on isolating the non-psychoactive components of the cannabis plant. His team made all these findings publicly accessible.

Of particular importance, the Ordinances do not establish a merit-based review process. Prospective applicants must meet all minimum requirements set forth in CMMC Ordinance Nos. 2021-08 and 2021-09 and be granted a CUP through a discretionary review process of the City Planning Commission in order to be issued a CBP. CUP findings that the Planning Commission must consider under the CMMC at Title III, Section 13-28(b) include:

- a.** 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.
- b.** Granting the conditional use permit or minor 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.
- c.** Granting the conditional use permit or minor 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 California Code of Civil Procedure Section 1094.5 requires that administrative commission decisions must be supported by substantial evidence, and whether a public commission or agency abused its discretion in exercising such if it did so to an end or purpose not justified by

substantial evidence, and clearly against reason, once considering all the facts and circumstances. CA CIV CODE Section 1094.5 (2012). There are a host of cases supporting that the Costa Mesa City Planning Commission abused its discretion in denying the CUP of Evolv Herbal based upon this clear California Civil Code section that we are prepared to site if necessary in a legal forum in opposition to this denial. We do not site the lengthy and dispositive stare decisis of California case law supporting the abuse of discretion by the Planning Commission as we prefer to urge the Costa Mesa City Council to grant us a fair de novo review of the CMMC's tenets with respect to Evolv Herbal's CUP application in order to avoid the unnecessary cost, resources, and delay caused by litigation.

The proposed development of the Evolv Herbal dispensary is substantially compatible with developments in the same general area and will not be materially detrimental to other properties within the area. Rather, by granting Evolv Herbal the CUP, it will improve the area given is aesthetically pleasing exterior façade and interior design. Their building plans will provide an extremely secure and safe facility with a beautifully landscaped parking lot and will offer safe, easy, and discreet off-street access.

Granting Evolv Herbal a CUP 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, rather it will make high quality, medical grade products available to adults within the community and will increase the value of properties within the immediate neighborhood given its design and estimated value. Evolv Herbal's dispensary will have an open, airy, safe facility that has a clean and welcoming design built with sustainable materials with quality workmanship. They will provide ADA accessible counters, in addition to being fully ADA compliant. Their security plan includes former law enforcement officers maintaining onsite presence throughout all operating hours, a sophisticated alarm system with motion and glass break sensors, controlled access through commercial-grade locks, and FOB-activated systems, and a network of 28 high definition cameras that exceed minimum requirements continuously monitoring critical areas. Finally, Evolv Herbal works individually with each of its customers to maximize their health and safety with their products, with a special emphasis on elderly patients, offering a wide range of low psychoactive products focusing on the health benefits of their products.

Granting the CUP to Evolv Herbal 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 as it is the dispensary is a use, density, and intensity that is accord with the general plan and specific plan for the property. Locating a few of the dispensaries in the same confined area per Reference No. PA 22-22, keeps the business interests diverse and balanced. The Evolv Herbal project is also exempt from CEQA as cited in the CMMC and in the case reference above.

Given the above, the Planning Commission misused and abused its discretion in denying Evolv Herbal its CUP in the December 11 2023 hearing.

We believe transparency and fairness are crucial in the decision-making process, thus this Letter of Appeal supports our compliance with the CMMC, as well as testimonials from community

members expressing support for Evolv Herbal. Our establishment will not only adhere to the highest standards in the cannabis industry, but also contribute positively to the local community.

Again, our review of the CMMC, the City of Costa Mesa General Plan, California state law, and the Costa Mesa City Planning Department staff report supporting approval of Evolv Herbal's CUP Application for the storefront retail cannabis operation compel the City Council to approve their application. We kindly request a fair de novo hearing on our applications based upon the relevant issues and Costa Mesa Municipal Code of our CBP and CUP applications and the opportunity to discuss any concerns in person. Thank you for your time and consideration. We remain optimistic that Evolv Herbal will become a valuable, law-abiding, and contributing corporate citizen to the community of Costa Mesa.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Finney', written over a faint circular stamp.

Tal C. Finney, Esq., of
FINNEY ARNOLD LLP