



Agenda Report

Item #: 25-228

Meeting Date: 4/15/2025

TITLE: APPEAL OF THE PLANNING COMMISSION'S DECISION TO APPROVE A CONDITIONAL USE PERMIT (CUP) PCUP-24-0011 TO OPERATE A RETAIL CANNABIS STOREFRONT BUSINESS WITH DELIVERY LOCATED AT 1912 HARBOR BOULEVARD ("GREEN MART"), IN THE LOCAL BUSINESS DISTRICT (C1)

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTED BY: SCOTT DRAPKIN, ASSISTANT DIRECTOR OF DEVELOPMENT SERVICES

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

RECOMMENDATION:

Staff recommends the City Council:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1) Existing Facilities.
2. Uphold the Planning Commission's decision to approve Conditional Use Permit PCUP-24-0011 based on findings of fact and subject to the conditions of approval as contained in the Resolution.

APPLICANT/APELLANT:

The applicant is Keith Sheinberg on behalf of RDK Group Holdings, LLC and the property owner, Dave Ruffell.

The appeal was filed by Carney Mehr, ALC.

BACKGROUND:

On February 24, 2025, the Planning Commission approved a CUP for a new cannabis storefront at 1912 Harbor Boulevard (PCUP-24-0011). Prior to being scheduled for Planning Commission review, the project was reviewed for consistency with the City's applicable separation requirements for cannabis storefront operations, a background check of the applicant team was completed, and the applicant's proposed business and security plan was reviewed by the City's cannabis consultant. The applicant successfully passed these evaluations and staff issued a "CBP Notice to Proceed," which allowed the applicant to proceed for CUP review.

The CUP was approved by the Planning Commission subject to findings and conditions of approval. A comprehensive staff report was provided to the Planning Commission, which is provided as Attachment 5 to this report.

The subject property is an approximate 6,500-square-foot site that has street frontage on Harbor Boulevard. The site was previously occupied by a BBQ retail establishment. A 20-foot-wide alley with access from Harbor Boulevard and West 19th Street also provides access to the rear of the subject property (including access to several parking spaces in a shared parking lot). The subject property shares parking facilities and access with several other adjacent properties located to the north and south.

Image 1 – Existing Shopping Center Street Photo



The site is zoned C1 (Local Business District) and is surrounded by C1 properties to the north and south. There is a property zoned PDC (Planned Development Commercial) and a property zoned C2 (General Commercial) located to the east, and properties located to the west across Harbor Boulevard are zoned C2 (General Commercial). The site has a General Plan Land Use Designation of Commercial Residential. The subject property is located along one of the City's primary commercial corridors, which includes a variety of uses, including, but not limited to, retail stores, restaurants, offices, medical offices, car dealerships, residences, and a cannabis storefront.

ANALYSIS:

The application includes a request for approval to allow a 2,400-square-foot retail cannabis storefront with delivery in an existing commercial building. The project has been determined by staff to be consistent with the City's applicable separation requirements for cannabis storefront operations, a background check of the applicant team was completed, and the applicant's proposed business and security plan was reviewed and determined adequate by the City's cannabis consultant.

Conditional Use Permit and Cannabis Operations

Pursuant to the Costa Mesa Municipal Code (CMMC), a CUP is required for the establishment of cannabis retail storefronts in a commercial zone. To approve a CUP, the final review body must find that the evidence presented in the administrative record substantially meets the CUP 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;
- 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.

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 regulations which are adopted to prevent land use inconsistencies with adjacent properties. In addition, proposed uses subject to CUPs generally include site-specific conditions of approval to ensure the required findings can be met. Similar to all of the City’s previously approved cannabis operations, this proposal is subject to conditions of approval specifically including, but not limited to, the following:

- The hours of operations are limited to 7:00 AM to 10:00 PM Monday through Sunday;
- Cannabis inventory shall be secured using a lockable storage system during non-business hours;
- At least one licensed security guard shall be on premises during business hours;
- The prohibition of 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;
- No one under the age of 21 is allowed to enter the premises. If the business holds a retail medical cannabis license issued by the State, persons over the age of 18 may be allowed with the proper medical approval;
- 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;
- Cannabis products shall not be visible from the exterior of the building;
- 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;
- Cannabis deliveries must be made in-person by an employee of the licensed retailer. An independent contractor or third-party courier service is not allowed;
- The applicant shall maintain proof of vehicle insurance for any and all vehicles being used to deliver cannabis goods;
- 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;
- Delivery vehicles shall be installed with a dedicated global positioning system (GPS) device for identifying the location of the vehicle; and
- Signs, decals or any other form of advertisement on the delivery vehicles are prohibited.

Interior and Exterior Improvements

In conjunction with the proposed new use, the applicant proposes tenant upgrades to both the building’s interior and exterior. The interior improvements include demolishing existing demising walls, construction of new walls, constructing a second restroom, adding commercial showroom finishes, and installation of an odor control system.

The site plan illustrates the proposed building layout on a rectangular lot. The building footprint is shown with internal room divisions and various setbacks from the lot lines. Key features include:

- Streets:** The lot is bounded by "Alley" to the west and "Harbor Blvd." to the south.
- Setbacks:** Numerous setback dimensions are provided, such as 10.0' from the west line, 10.0' from the south line, and 10.0' from the east line.
- Annotations:** Several callouts provide specific instructions:
 - "REPLACE EXISTING 20' x 10' SIGNAGE WITH NEW SIGNAGE" (top left).
 - "REPLACE EXISTING 20' x 10' SIGNAGE WITH NEW SIGNAGE" (top center).
 - "REPLACE EXISTING 20' x 10' SIGNAGE WITH NEW SIGNAGE" (top right).
 - "REPLACE EXISTING 20' x 10' SIGNAGE WITH NEW SIGNAGE" (bottom center).
 - "REPLACE EXISTING 20' x 10' SIGNAGE WITH NEW SIGNAGE" (bottom right).
- Dimensions:** The lot dimensions are 100.0' wide and 100.0' deep.
- Other Features:** The plan shows a parking area, a loading dock, and various landscaping elements like trees and shrubs.

Image 3 – Existing and Proposed Project

Proposed***Parking***

Pursuant to the CMMC Section 13-6, when there is a mixture of uses within a single development that share the same parking facilities, the total requirement for parking is determined by the Costa Mesa shared parking analysis procedures which is adopted by City Council Resolution. In 2016, the shared parking for the site and adjacent properties was considered by the Planning Commission and determined to meet the parking requirements pursuant to the City's parking provisions. Further, CMMC Section 13-204 permits that when a use is changed that requires the same amount of parking as the previous use, no additional parking is required. The previous and proposed use at 1912 Harbor Boulevard are both retail uses and subject to the same parking ratio requirement (four spaces per 1,000 square feet of gross floor area), and therefore the project complies with the City's parking standards.

In addition, Assembly Bill 2097 (AB 2097) was signed into law by Governor Newsom and became effective on January 1, 2023. The primary objective of this legislation is to limit local governments from imposing minimum parking regulations on commercial and residential projects that are located within 0.5 miles of a major transit stop. Staff reviewed the nearby public transit facilities and determined that the subject property is located within 0.5 miles of a major transit stop (near the intersection of Harbor Boulevard and W. 19th Street). Therefore, pursuant to AB 2097 the City of Costa Mesa cannot impose a minimum parking requirement on this land use entitlement.

Lastly, the applicant is proposing to install a bike rack to encourage multimodal transportation. As conditioned, vendor and delivery vehicles would schedule or coordinate arrivals (phone, text, etc.) to ensure adequate parking is available on the subject property, and if parking shortages or other parking-related problems occur that are related to the proposed cannabis storefront, 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.

Odor Attenuation

All 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.

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 Harbor Boulevard into the lobby. An employee would verify the customer’s identity and age before allowing the customer to shop in the retail sales area. After a customer’s identity and age is verified and their transaction is completed, they must exit the retail sales area through an exit directly from the lobby. 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 two access-controlled entrances that lead directly into the back-of-house area. Employees would be able to exit through the access-controlled doors or through the main entrance/exit.

Planning Commission Review and Public Comment

The application was heard by the Planning Commission on February 24, 2025. After receiving staff’s presentation and recommendation for approval, the Planning Commission asked staff questions and then opened the public hearing. The applicant provided a presentation and the Planning Commission subsequently asked questions of the applicant. The Planning Commission then heard and considered public comments before closing the public hearing. The Planning Commission approved the application on a 3-2 vote, with Commissioners Andrade and Rojas voting no. (For specific details of the Planning Commission discussion and motion for approval, please see the attached draft minutes, provided as attachment 7.) The final Resolution reflecting the February 24, 2025, Planning Commission action is provided as Attachment 4 to this report. The written public comments are provided as Attachment 6. The Planning Commission staff report, attachments, and meeting video are also provided at the below links:

- Planning Commission Staff Report and Attachments:
<https://costamesa.legistar.com/LegislationDetail.aspx?ID=7144851&GUID=43828B4D-C883-4612-8918-F6E315B00E8B>
- Planning Commission Meeting Video:
https://costamesa.granicus.com/player/clip/4216?view_id=14&redirect=true

Seven public comment letters opposing the proposed use were submitted to the City prior to noon on the day of the Planning Commission meeting. During the public hearing, two members of the public spoke in support, and three members of the public spoke in opposition to the application.

Appeal of the Planning Commission's Approval

On March 3, 2025, an appeal of the Planning Commission's approval of the permit was timely filed by VMA Harbor Place Holding Company, represented by Carney Mehr, ALC. VMA Harbor Place Holding Company is the owner of Harbor Place, a multi-tenant commercial center located immediately south of the subject site. In summary, the application for appeal noted the following general reasons for the appeal:

- The plans provided insufficient detail;
- Architectural incompatibility with adjacent buildings;
- Potential parking impacts to the adjacent property;
- Parking lot circulation conflicts;
- Operational issues related to vehicle loading/unloading, odor control, safety, and loitering;
- Burden of business enforcement on adjacent properties; and
- Character of applicant and absentee landlord.

The appeal application is included as Attachment 2 to this report.

The applicant has provided supplemental information for the City Council consideration, which is included as Attachment 3.

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 which is to be considered at the first regular meeting following receipt of the appeal that also provides sufficient time for required public noticing. In the case of this appeal, the first regular meeting would have been the April 1, 2025, City Council meeting. However, the appellant indicated their first available date was for the April 15, 2025 meeting, and the applicant agreed on this meeting date.

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 or the evidence that was previously presented to the Planning Commission. The City Council's decision on the matter is the final decision.

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 historically for commercial/retail operations. The application does not propose an increase in commercial floor area or otherwise expand the prior use of the site as commercial. 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 City Council can consider the following decision alternatives:

1. Deny the appeal and uphold the Planning Commission's decision. The City Council may adopt the attached Resolution upholding the Planning Commission's decision approving the CUP; or
2. Deny the appeal and uphold the Planning Commission's decision to approve a CUP, but require modifications to the conditions of approval. The City Council may uphold the Planning Commission's decision and approve the request with specific changes 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. Grant the appeal and reverse the decision of the Planning Commission. If the City Council believes that there are insufficient facts to support the findings for approval, the City Council may deny approval of a CUP and direct staff to prepare a Resolution for denial reflecting the City Council's findings for denial.

FISCAL REVIEW:

Approval of this item will allow the business to operate as a retail cannabis storefront in the City of Costa Mesa. The business is subject to Cannabis tax of seven percent (7%) based on gross tax receipts, as defined in the Costa Mesa Municipal Code, Title 9, Section 9-29.5(e). Revenue generated from Measure Q retail is part of General Fund Revenue and provides financing for two restricted Special Revenue Funds: The Arts and Culture Master Plan Fund (Fund 130) and the First Time Homebuyers Fund (Fund 140).

LEGAL REVIEW:

The City Attorney's Office has reviewed this report and approves it as to form.

PUBLIC NOTICE:

Pursuant to 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 on Wednesday, April 2, 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 Friday, April 4, 2025.
3. **Newspaper publication.** A public notice was published once in the Daily Pilot newspaper on Friday, April 4, 2025.

Two public comments regarding this application were received in advance of publishing the agenda, provided as Attachment 8. Any public comments received after the publishing of the agenda for the April 15, 2025 City Council meeting may be viewed at this link: [CITY OF COSTA MESA - Calendar \(legistar.com\)](https://www.cityofcostamesa.org/legistar.com)

CITY COUNCIL GOALS AND PRIORITIES:

One of the goals approved by the City Council is to “achieve long-term fiscal stability”. Retail cannabis uses are subject to a unique local tax that does not apply to other retail businesses in Costa Mesa. Retail cannabis uses generate increased tax revenues due to a seven-percent local tax on gross receipts. Therefore, the operation of the proposed retail cannabis storefront with delivery would assist in achieving this City Council goal.

CONCLUSION:

The proposed use is a retail cannabis storefront with delivery at an existing commercial property that is located on one of the City’s primary commercial corridors. 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. After careful review, staff determined that the application was consistent with the required CUP findings and the applicable provisions of the Costa Mesa Municipal Code and recommended that the Planning Commission conditionally approve the application. On February 24, 2025, the Planning Commission reviewed the application, heard public testimony and approved the application subject to numerous conditions of approval and made the required CUP findings. Staff recommends that the City Council deny the requested appeal, uphold the Planning Commission’s decision and adopt a Resolution to approve PCUP-24-0011. Staff has attached a draft City Council Resolution for approval based on the Planning Commission’s approval on February 24, 2025.