



City of Costa Mesa

Agenda Report

77 Fair Drive
Costa Mesa, CA
92626

Item #: 24-113

Meeting Date: 04/2/2024

TITLE: CITY COUNCIL FIRST READING OF ORDINANCES TO AMEND TITLE 13 (PLANNING, ZONING AND DEVELOPMENT) AND TITLE 9 (LICENSES AND BUSINESS REGULATIONS) OF THE COSTA MESA MUNICIPAL CODE TO MODIFY THE CITY'S RETAIL CANNABIS PROVISIONS AND FIND THIS PROJECT TO BE CATEGORICALLY EXEMPT FROM CEQA

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTED BY: MICHELLE HALLIGAN, SENIOR PLANNER

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

RECOMMENDATION:

Staff recommends the City Council:

1. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA), Section 15061(b)(3) ("General Rule").
2. Introduce for first reading, by title only, Ordinance No. 2024-03 amending Title 13 (Planning, Zoning and Development) and Ordinance No. 2024-04 amending Title 9 (Licenses and Business Regulations) of the Costa Mesa Municipal Code to modify the City's retail cannabis provisions.

BACKGROUND:

At the March 19, 2024, City Council meeting, the City Council considered the Planning Commission's recommendations, as well as other issues raised by members of the cannabis industry and the public. The City Council passed nine motions for staff to modify and return with a revised Ordinance for "first reading". The March 19, 2024, City Council report and video are linked below:

March 19, 2024 City Council Report:

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=6576096&GUID=EF1D8EE8-A9A0-4153-82A6-19FFB634CE53>

Video: https://costamesa.granicus.com/player/clip/4107?view_id=14&redirect=true

ANALYSIS:

On March 19, 2024, City Council directed amendments to Title 13 and Title 9 of the CMMC which are reflected in draft City Council Ordinances contained in Attachments 3 and 4, respectively. The proposed amendments are distinctly shown in “track changes” versions, where added text is identified by an underline and text removal is shown in ~~strikethrough~~ format in Attachments 5 (Title 13) and 6 (Title 9).

A summary of the City Council motions is provided below:

Limit on Cannabis Storefronts

After considering the Planning Commission’s recommendation and hearing public testimony, the City Council voted 6 to 1 to direct staff to prepare revisions to allow processing of only pending applications which have moved past the pre-application phase, up to a cap of 35 cannabis storefronts, and, thereafter, suspend processing applications for new storefronts until such time when the number of operating licensed cannabis storefronts falls below 10. The motion included allowing the City to refund the \$1,500 pre-application fee to all applicants in the pre-application phase.

A “track changes” version of the City Council’s proposed modification to Section 9-494.5 is provided in Attachment 6.

Separation between Cannabis Storefronts and Youth Centers

The currently adopted minimum separation between youth centers, as defined in the CMMC, and cannabis storefronts is 600 feet in accordance with the State’s minimum requirement (California Business and Professions Code Section 26054(b)). After considering the Planning Commission’s recommendation and hearing public testimony, the City Council voted to support the Planning Commission’s recommendation to increase the minimum separation between cannabis storefronts and youth centers, as defined in the CMMC, from 600 feet to 1,000 feet. No currently proposed cannabis storefront applications are located within 1,000 feet from a youth center, as defined in the CMMC.

The proposed text change regarding separation from youth centers is provided in Section 13-200.93(e) in Attachment 5.

Separation Between Cannabis Storefronts and Residential Zones

The currently adopted CMMC conditionally allows cannabis storefronts in commercial zones without a separation from residential zones. After considering the Planning Commission’s recommendation and hearing public testimony, the City Council approved a motion to increase the Planning Commission’s 100-foot recommended storefront separation requirement from a residentially zoned property to 250 feet. Pursuant to City Council direction, any completed applications would be exempted from the new residential zone separation requirement.

The proposed residential separation amendment to Section 13-200.93(e) is provided in “track changes” format in Attachment 5.

Allowing the word “Cannabis” on Storefront Signage

As adopted, CMMC Section 9-495(g)(6) contains provisions for signage and notices at cannabis storefronts to limit cannabis signage to what is necessary for identification only.

Additionally, retail cannabis storefronts have also been subject to a condition of approval limiting cannabis business signage and symbols to ensure cannabis dispensaries maintain a high-quality aesthetic and limit cannabis advertising in the City to persons under 21 years of age. Rather than allowing the word cannabis on business signage, the Planning Commission recommended allowing the word cannabis to be used up to two times with a maximum letter height of one inch on the entrance notice. The City Council voted to increase the maximum recommended letter height from one inch to two inches to improve visibility.

A “track changes” version of the City Council’s modification to Section 9-495(g)(6b) is provided in Attachment 6.

Advertising and Marketing Restrictions Related to Youths

The proposed Planning Commission recommendation specified that advertising and marketing would not depict or suggest the consumption of cannabis or cannabis products. After considering the Planning Commission’s recommendation and hearing public testimony, the City Council voted 6 to 1 to instead incorporate specifically the State regulations for cannabis advertising and marketing into the CMMC (California Code of Regulations Title 4 Section 15040).

The proposed modification to Section 9-495(6) is provided in Attachment 6.

Tenant Notification

At the March 19, 2024, City Council meeting, the City Council voted to direct staff to prepare an amendment to the City’s cannabis provisions that require a property owner to notify existing tenants when a cannabis storefront is proposed to occupy an existing occupied tenant space.

The City Council’s proposed modification to Title 9-487 is provided in Attachment 6.

Onsite Security Guard

Pursuant to CMMC Title 9-495(h)(1), all cannabis storefronts must currently have at least one licensed private security guard at the premises 24 hours per day. At the March 19, 2024, City Council meeting, the City Council voted to direct staff to draft amendments to modify the overnight security guard requirement. The amendment encourages all cannabis storefronts to have a licensed security guard onsite 24 hours per day and requires, at a minimum, all cannabis storefront operations to have a licensed security guard onsite during hours of operation, including when any cash, cannabis or cannabis products are shipped from or received at the facility. As described in the motion, the amendment also requires select storefront operations, as determined by the Chief of Police or designee, to have a licensed security guard onsite for 24 hours per day, if in his/her professional opinion this is needed to ensure public safety.

The proposed modification to Title 9-495(h)(1) is provided in Attachment 6.

Cannabis Business Administrative Regulations

Costa Mesa’s Cannabis Business Administrative Regulations are policies that set forth and clarify internal procedures necessary for implementing the City’s cannabis ordinances such as processing applications. The authority of the City Manager to establish administrative regulations is contained in CMMC Section 9-497, “Promulgation of Administrative Regulations”.

At the March 19, 2024, City Council meeting, the Council voted unanimously to publish the cannabis business adopted Administrative Regulations on the City's website. The Administrative Regulations governing cannabis businesses are posted online and are accessible via the following link:

<https://www.costamesaca.gov/trending/cannabis/cannabis-business-permits>

State Law Updates

In addition to the items outlined above, staff has retained proposed language in the ordinances which require disclosures relating to "financial interest holders" in cannabis businesses to reflect new changes in state law on this issue. These changes are still included in the proposed amendments.

Employee Background Check/Badge Fee

At the March 19, 2024, City Council meeting, a motion was approved that directed staff to reduce the employee badge fees, and for staff to investigate methods to improve efficiency in badge processing (including State-compliant design and the use of temporary badges), determine average time required for Department of Justice and Federal Bureau of Investigation background checks, consider outsourcing background checks and badging to the City's cannabis consultant (HDL), and streamlining badging for employees of multiple Costa Mesa cannabis operations. Staff is addressing the Council's recommendations and will bring the revised employee badge fees and additional information to the City Council at the next regularly scheduled meeting.

ENVIRONMENTAL DETERMINATION:

The proposed Ordinances are exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) ("General Rule") in that the updates to the City's Municipal Code provisions for retail cannabis storefronts will not have a significant impact on the environment.

ALTERNATIVES:

The City Council has the following alternatives:

1. Give first reading. The City Council may give first reading to the draft Ordinances.
2. Give first reading with modifications. The City Council may modify the draft Ordinances and give first reading.
3. Not adopt the changes to the City's retail cannabis provisions. The City Council may choose to not adopt the proposed Code amendments.
4. Continue the Ordinances review to a date certain. The City Council may continue the item to a date certain with direction for staff to return with additional information, changes and/or clarifications.

FISCAL REVIEW:

The adoption of the proposed Ordinances is not anticipated to have any fiscal impact on the City's budget.

LEGAL REVIEW:

The draft Ordinances and staff report have been prepared in conjunction with and reviewed by the City Attorney's Office.

CITY COUNCIL GOALS AND PRIORITIES:

This item supports the following City Council Goal:

- Strengthen the public's safety and improve the quality of life.

CONCLUSION:

The proposed retail cannabis ordinance amendments are intended to address issues of potential over concentration, land use compatibility, as well as improving economic and business conditions. The City Council's proposed revisions to the retail cannabis provisions are reflected in the attached exhibits.