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**MEETING MINUTES OF THE CITY OF COSTA MESA
PLANNING COMMISSION**

March 22, 2021

Special Closed Session – 5:00 p.m.

Regular Meeting – 6:00 p.m.

SPECIAL CLOSED SESSION

CALL TO ORDER:

Chair de Arakal called the Special Closed Session meeting to order at 5:00 p.m.

ROLL CALL:

Present: Chair Byron de Arakal, Vice-Chair Kedarious Colbert, Commissioner Dianne Russell, Commissioner John Stephens, Commissioner Russell Toler, Commissioner Jenna Tourje', Commissioner Zich

Officials Present: Director of Economic and Development Services Jennifer Le, Assistant City Attorney Tarquin Preziosi, City Engineer Seung Yang, Lieutenant Bryan Wadkins, City Clerk Brenda Green, and Recording Secretary Julie Colgan

ANNOUNCEMENTS AND PRESENTATION:

Chair de Arakal read a brief statement into the record regarding COVID-19, and how the public can participate in the meeting.

PUBLIC COMMENTS:

Chair de Arakal opened public comments.

No public comments.

Chair de Arakal closed public comments.

CLOSED SESSION ITEM(S):

- 1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION CASE**
– Pursuant to subdivision(d)(2) of Section 54956.9 California Government Code, Potential Litigation.

Chair de Arakal announced the Planning Commission Closed Session recess at 5:03 p.m.

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REGULAR MEETING**CALL TO ORDER:**

The Chair called the Zoom webinar meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE:

Chair de Arakal led the Pledge of Allegiance.

ROLL CALL:

Present: Chair Byron de Arakal, Vice-Chair Kedarious Colbert, Commissioner Dianne Russell, Commissioner John Stephens, Commissioner Russell Toler, Commissioner Jenna Tourje' (joined at 8:26 p.m.), Commissioner Zich

Officials Present: Director of Economic and Development Services Jennifer Le, Assistant City Planner Nancy Huynh, Assistant City Planner Chris Yeager, Assistant City Planner Johnwilly Aglupos, Lieutenant Bryan Wadkins, Assistant City Attorney Tarquin Preziosi, City Engineer Seung Yang, City Clerk Brenda Green, and Recording Secretary Julie Colgan

ANNOUNCEMENTS AND PRESENTATIONS:

Chair de Arakal read a brief statement into the record regarding COVID-19, and how the Public can participate in the meeting.

PUBLIC COMMENTS ON ITEMS NOT LISTED ON THE AGENDA:

The Chair opened public comments.

Caller 1, Dale Luther, resident, spoke in opposition to the Triangle Square proposed project.

Caller 2, Mary Pham, resident, spoke on Public Hearing Item No.1. Chair de Arakal asked her to wait until the Public Hearing item is heard.

COMMISSIONER COMMENTS AND SUGGESTIONS:

Chair de Arakal congratulated Commissioner Stephens on his appointment to Mayor.

Vice-Chair Colbert congratulated Commissioner Stephens on his appointment to Mayor.

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Commissioner Russell congratulated Commissioner Stephens on his appointment to Mayor. She commented on the recent shootings in Atlanta, Georgia, and reminded everyone to be kind.

Commissioner Toler congratulated Commissioner Stephens on his appointment to Mayor. He gave a brief slide presentation on “Toward an Active California – State Bicycle and Pedestrian Plan”. He invited everyone to the March 23rd City Council Study Session.

Commissioner Stephens thanked his fellow Commissioners and stated he enjoyed serving with them. He echoed Commissioner Russell’s comments about being kind.

CONSENT CALENDAR:

None.

PUBLIC HEARINGS:

1. **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA RECOMMENDING THAT THE CITY COUNCIL GIVE FIRST READING TO AN ORDINANCE TO ADOPT CODE AMENDMENT CO-2021-01 TO AMEND CHAPTER IX, ARTICLE 21 AND CHAPTER IV, TABLE 13-30 OF TITLE 13 TO ESTABLISH THE DEVELOPMENT STANDARDS FOR CANNABIS USES, INCLUDING RETAIL CANNABIS STOREFRONT AND NON-STOREFRONT USES AND AN ORDINANCE TO AMEND CHAPTER I, ARTICLE 5, CHAPTER II, ARTICLE 1 AND CHAPTER VI OF TITLE 9 OF THE COSTA MESA MUNICIPAL CODE REGARDING THE TAXATION, REGULATION, OPERATING REQUIREMENTS AND STANDARDS FOR CANNABIS USES INCLUDING RETAIL CANNABIS STOREFRONT AND NON-STOREFRONT USES, IN ORDER TO IMPLEMENT THE CITY OF COSTA MESA RETAIL CANNABIS TAX AND REGULATION MEASURE (MEASURE Q)**

Project Description: An Ordinance for Zoning Code Amendment CO-2021-01 to amend portions of Title 13 (Planning, Zoning, and Development) of the Costa Mesa Municipal Code and an Ordinance to amend portions of Title 9 (Licenses and Business Regulations) of the Costa Mesa Municipal Code to establish the taxation, regulations, operating requirements and standards for cannabis uses, including retail cannabis storefront and non-storefront uses in order to implement the City of Costa Mesa Retail Cannabis Tax and Regulation Measure (Measure Q). This item was continued from the February 22, 2021 meeting.

Environmental Determination: The ordinances are exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3) (General Rule), Section 15301 (Class 1), Existing Facilities, Section 15303 (Class 3), New Construction or Conversion, Section 15308 (Class 8) Actions by Regulatory Agencies, and Section 15332 (Class 32), Infill Development.

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Recommended Action: Staff recommends that the Planning Commission:

- Review Ordinance 2021-X2 which amends chapters of Title 9 of the Costa Mesa Municipal Code and make recommendations to the City Council regarding the definitions set forth in Chapter VI (Cannabis Business Permits); and
- Adopt a Resolution recommending that the City Council:
 - Find that the adoption of Zoning Code Amendment CO-2021-01 is exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3), General Rule, Section 15301 (Class 1), Existing Facilities, Section 15303 (Class 3), New Construction or Conversion of Small Structures, Section 15308 (Class 8), Actions by Regulatory Agencies, and Section 15332 (Class 32), In-fill Development Projects; and
 - Give first reading to Ordinance 2021-X1 to adopt Zoning Code Amendment CO-2021-01 to amend the following chapters of the Costa Mesa Municipal Code: Chapter IX (Special Land Use Regulations), Article 21 (Location of Marijuana Distributing, Manufacturing, Research and Development and Testing Laboratories) of Title 13 (Planning, Zoning and Development); and Chapter IV (Citywide Land Use Matrix), Table 13-30 (Land Use Matrix) of Title 13.

Two ex-parte communications:

Commissioner Stephens spoke with several members of the community and received emails.

Chair de Arakal spoke with members of the community.

Assistant Planner Nancy Huynh presented the staff report.

The Commission asked questions of staff including discussion of:

Consideration for sober living and/or rehabilitation facilities, a social equity policy, Measure X language, City Manager's Authority under Title 9, State law or City Ordinance, youth center definition, youth center examples within the City, playground definition, and school campuses property lines.

The Chair opened the Public Hearing.

The Chair re-opened the Public Comments from the February 22, 2021 Planning Commission meeting.

Caller 1, Wyatt Lynn, resident, no audible volume.

Caller 2, Spoke on unlicensed and illegal cannabis businesses in the City. She asked the City to cap the number of dispensaries in the City and to close down the illegal shops.

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Caller 3, Jason Piatza, spoke on youth center definitions and buffer zones between dispensaries.

Caller 4, spoke on separation buffers.

Caller 5, Kim Taffert, property owner, spoke on buffer zones and major traffic thoroughfares as natural barriers.

Caller 6, Dana Cisneros, spoke on the proposed caps on cannabis businesses

Caller 7, Mary Phan, resident, spoke on buffer zones and her child dentistry business being in close proximity to a cannabis business.

Caller 8, Seth Smith, spoke on the item.

Caller 9, Josh Clark, spoke on the item.

Caller 10, Nancy Pham, spoke on her concerns on the item.

Caller 11, John Vitiello, spoke on the item and sensitive use zones.

Caller 12, spoke on the item and setbacks.

The Chair closed public comments

Chair de Arakal asked questions on state law regarding youth centers and buffer separation requirements.

Ms. Huynh noted the State requires a 600-foot buffer zone for youth centers and the state requirement would take effect if the city was silent on this item.

Discussion ensued regarding caps for cannabis businesses and the City's ordinance.

Discussion ensued regarding the need for the ordinance in the City by the passage of Measure Q and the process to close an illegal cannabis business.

Commissioner Toler asked for clarification on some requirements for Title 13, which Mr. Preziosi answered.

Discussion ensued regarding caps on the number of cannabis businesses in the City, the procedure in which to raise the cap in the future and footnote number 11 on the proposed new land use matrix.

Commissioner Russell asked why the City did not treat Newport Boulevard the same as the 405 freeway, as noted by some of the callers during public comments.

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Ms. Huynh noted Newport Boulevard is not considered an “impenetrable barrier” as the 405 freeway, as it contains crosswalks and is categorized more as a local street.

Discussion ensued regarding merit-based systems, and the City’s due diligence for youth centers in evaluating an application, whether the State’s requirement of a 600-foot barrier is implemented.

The Chair closed the Public Hearing.

Chair de Arakal would like the ordinance modified to read that a Conditional Use Permit (CUP) shall be required for retail storefronts and non-retail storefronts, not a Minor Conditional Use Permit (MCUP), add under E-2 that no cannabis retail storefront shall be located within 500 feet of an existing retail cannabis storefront, on the State definition of sensitive uses, leave 9-485 as drafted, remain silent on Youth Centers and let State law control.

Commissioner Stephens made a motion with modifications and recommendations. Motion died for lack of a second.

Commissioner Toler agreed with the recommendations and spoke on modifications to the ordinance.

Commissioner Colbert commented on the previous recommendations and spoke on the employee felony conviction piece in the ordinance that he would like to see removed.

Commissioner Russell spoke against a cap, the 500-foot radius separation, felony conviction modification to one year and access lanes.

Commissioner Zich spoke on the voter approved Measure X, the previous recommendations, impenetrable barriers, playground measurements, sensitive use areas and felony conviction restrictions.

Chair de Arakal made a motion, seconded by Commissioner Zich.

Chair de Arakal asked Vice Chair Colbert to communicate his concerns regarding felony convictions and social equity directly to the City Council.

Jennifer Le, Economic and Development Services Director, clarified with Chair de Arakal whether he wanted to include that a MCUP would be required if a current Measure X operator wanted to amend their CUP to add a non-storefront business. Chair de Arakal affirmed he wanted this included in the motion.

Vice Chair Colbert noted he could not support the motion due to the felony restriction language not being removed from the ordinance.

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Chair de Arakal and Commissioner Toler both supported Vice Chair Colbert's position.

Commissioner Toler asked whether the motion maker would amend the motion to include the removal of Footnote No. 11 under the Land Use Matrix, which the Chair accepted and also the second.

MOVED/SECONDED: de Arakal/Zich

MOTION: Move staff's recommendation with recommended revisions to City Council.

The motion carried by the following roll call vote:

Ayes: de Arakal, Russell, Toler, Zich

Nays: Colbert, Stephens

Absent: None

Abstained: Tourje'

Motion carried: 4-2

ACTION: The Planning Commission adopted a resolution to:

1. Find that Zoning Code Amendment CO-2021-01 is exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3) (General Rule), Section 15301 (Class 1), Existing Facilities, Section 15303 (Class 3), New Construction or Conversion, Section 15308 (Class 8) Actions by Regulatory Agencies, and Section 15332 (Class 32), Infill Development.
2. The Planning Commission finds that the provisions of the Code Amendment and Ordinance No. 2021-X2 are consistent with the City of Costa Mesa's General Plan;
3. The Planning Commission recommends that the City Council give first reading to Ordinance No 2021-X2 amending the following provisions of the Costa Mesa Municipal Code:
 - Chapter I (Business Tax), Article 5 (Administration, Application and Procedures) of Title 9 (Licenses and Business Regulations);
 - Chapter II (Regulation of Certain Businesses), Article 1 (Generally) of Title 9;
 - Chapter VI (Marijuana Business Permits) of Title 9;
4. The Planning Commission recommends that the City Council give first reading to Ordinance No. 2021-X1 for Zoning Code Amendments No. 21-01 amending Chapter IX (Special Land Use Regulations), Article 21 (Location of Marijuana Distributing, Manufacturing, Research and Development and Testing Laboratories) of Title 13 (Planning, Zoning and Development) and Chapter IV (Citywide Land Use Matrix), Table 13-30 (Land Use Matrix) of Title 13 of the Costa Mesa Municipal Code **with the following recommended revisions:**
 - Defer to the State's definitions for sensitive uses listed in Measure Q;
 - Defer to the State's definition and separation requirement for youth centers;
 - Require a CUP for all cannabis retail uses (storefronts and non-storefronts) and an MCUP for existing Measure X operators to amend their approved CUP to add a non-storefront use to their business;
 - Require 500-foot separation between retail storefronts;
 - Reduce the period of illegal cannabis sales activity preceding the submittal of an application under Measure Q from five years to 180 days; and

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- Remove Footnote No. 11 under the Land Use Matrix, which prohibited sensitive uses from locating within required separation distances of a permitted cannabis storefront.

RESOLUTION PC-2021-05 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA RECOMMENDING THAT THE CITY COUNCIL GIVE FIRST READING TO AN ORDINANCE FOR CODE AMENDMENT CO-2021-01 AMENDING CHAPTER IX, ARTICLE 21 AND CHAPTER IV, TABLE 13-30 OF TITLE 13 TO ESTABLISH THE DEVELOPMENT STANDARDS FOR CANNABIS USES, INCLUDING RETAIL CANNABIS STOREFRONT AND NON-STOREFRONT USES AND ORDINANCE NO. 2021-X2 AMENDING CHAPTER I, ARTICLE 5, CHAPTER II, ARTICLE 1 AND CHAPTER VI OF TITLE 9 OF THE COSTA MESA MUNICIPAL CODE, TAXATION, REGULATION AND OPERATING REQUIREMENTS FOR RETAIL CANNABIS USES TO ESTABLISH THE TAX RATE, OPERATING REQUIREMENTS AND STANDARDS FOR CANNABIS USES, INCLUDING RETAIL CANNABIS STOREFRONT AND NON-STOREFRONT USES, IN ORDER TO IMPLEMENT THE CITY OF COSTA MESA RETAIL CANNABIS TAX AND REGULATION MEASURE (MEASURE Q)

The Commission took a break at 8:55 PM.

The Commission reconvened at 9:05 PM

2. PLANNING APPLICATION 20-17 FOR A CONDITIONAL USE PERMIT AND MINOR MODIFICATION TO ALLOW FOR THE CONSTRUCTION OF A FAST 5 XPRESS CAR WASH LOCATED AT 2950 HARBOR BOULEVARD

Project Description: Planning Application 20-17 is a request for a Conditional Use Permit (CUP) to allow for the construction of a new 4,962-square-foot self-serve car wash facility (Fast 5 Xpress Car Wash). The application includes a minor modification request to reduce the landscape setback on Harbor Boulevard (20 feet required; 16 feet proposed). The project proposes a steel structure with a 135-foot long carwash tunnel; 26 vacuum/parking spaces with tan canvas awnings covering each stall; and additional employee parking stalls. The project proposes all new site lighting, a new trash enclosure and new landscape for the site.

Environmental Determination: The project is exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15303 (Class 3), New Construction.

There were no written public comments received.

No Ex-parte communications to report.

Assistant Planner Chris Yeager presented the staff report.

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The Commission asked questions of staff including discussion of:

Commissioner Toler asked for clarification on the requirement of a CUP for a car wash.

Ms. Le noted the Zoning Code specifically lists a car wash for a CUP, likely due to potential queuing, potential traffic and potential noise issues that may occur.

Discussion ensued regarding the placement of the front of the property, sidewalk repair, and curb cuts.

Chair de Arakal commented on the egress out to Harbor Boulevard which is merged with the business next door.

The Chair opened the Public Hearing.

Tom Utman, owner, has read the staff report and agreed to the conditions of approval.

Mr. Utman gave a brief overview of the application.

Commissioner Toler commented on the dirty sidewalks around car washes and asked whether there is new technology to mitigate this from happening.

Mr. Utman noted this was probably a consequence of the old-style car wash, their car wash keeps and recycles all water used, so there is no spill over.

The Chair opened the public comments.

No public comments.

The Chair closed public comments.**The Chair closed the Public Hearing.**

Commissioner Stephens made a motion, seconded by Chair de Arakal.

The Commission discussed the motion including:

Commissioner Stephens thanked the applicant for investing in the City.

Commissioner Toler commented on the vision for Harbor Boulevard, affordable housing and Finding No. 2 in the staff report.

Commissioner Zich thanked Commissioner Toler for his comments.

Commissioner Tourje' agreed with the previous comments and encouraged the City to have a Harbor Boulevard visioning plan in the future.

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Chair de Arakal encouraged the Commissioners to read the City of El Cerrito's San Pablo Avenue Specific Plan, which he thought was the best out there.

MOVED/SECOND: Stephens/de Arakal

MOTION: Move staff's recommendation.

The motion carried by the following roll call vote:

Ayes: de Arakal, Colbert, Russell, Stephens, Toler, Tourje', Zich

Nays: None

Absent: None

Abstained: None

Motion carried: 7-0

ACTION: The Planning Commission adopted a resolution to:

1. Find that the project is exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15303 (Class 3) New Construction; and
2. Approve PA-20-17 (Conditional Use Permit and Minor Modification), subject to conditions of approval.

RESOLUTION PC-2021-06 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING PLANNING APPLICATION 20-17, A REQUEST FOR A CONDITIONAL USE PERMIT AND MINOR MODIFICATION TO ALLOW FOR THE CONSTRUCTION OF A FAST 5 XPRESS CAR WASH LOCATED AT 2950 HARBOR BOULEVARD

The Chair explained the appeal process.

3. **PLANNING APPLICATION 01-30A (PA-18-01) IS A REQUEST TO AMEND CONDITIONAL USE PERMIT PA-01-30 TO ALLOW THE SALE OF ALCOHOLIC BEVERAGES FOR OFF-SITE CONSUMPTION PURSUANT TO AN ABC LICENSE (TYPE 20, OFF-SALE BEER AND WINE) IN CONJUNCTION WITH THE OPERATION OF AN EXISTING FUEL AND SERVICE STATION INCLUDING A MINI-MARKET AT 195 E. 17TH STREET**

Project Description: Planning Application 01-30A (PA-18-01) is a request to amend conditional use permit PA-01-30 to allow the sale of alcoholic beverages for off-site consumption pursuant to an ABC License Type 20 (Off-Sale Beer and Wine) in conjunction with the operation of an existing fuel /service station and a mini-market at 195 E. 17th Street. The Type 20 (Off-Sale Beer and Wine) license is proposed to be transferred from Santa Monica Seafood Market and Café to ExtraMile Mini Market.

Environmental Determination: The project is exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 153013 (Class 1), Existing Facilities.

One ex-parte communication:

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Commissioner Stephens spoke to City Council member Harlan.

Assistant Planner Johnwilly Aglupos presented the staff report.

The Commission asked questions of staff including discussion of:

Chair de Arakal confirmed with Mr. Aglupos that this is a transfer of an existing offsite license from Santa Monica Seafood resulting in no new license in this census tract.

Commissioner Stephens directed attention to Attachment 3 to the staff report the Commission received after the meeting started, which is a memo from the Police Department noting they are not in opposition to this license transfer. This is contrary to the previous memo submitted on March 16th, which expressed their opposition to the transfer.

Lieutenant Wadkins discussed the police departments position on the license transfer.

Discussion ensued on public safety and the over concentration of licenses in this area.

Commissioner Toler asked whether the over concentration definition is a concern from a Planning perspective.

Ms. Le discussed the over concentration of licenses by State calculations, the transfer of a license and not the issuing of a new license for the area which is unique. Staff is asking for Planning Commission guidance on this policy matter.

Commissioner Tourje' asked whether there is a difference in the type of business that holds this type of license as to public safety.

Lieutenant Wadkins explained the different types of calls for service, public safety and noted they do not receive many calls for service at that location.

Vice Chair Colbert asked for confirmation that the restaurant has two separate licenses and that they are transferring their Type 20 license that allows for off sale beer and wine to this mini-market, which staff confirmed.

Commissioner Zich asked whether the City is allowed to approve a license even if there is an over concentration in the area.

Ms. Le noted that ABC will not prevent a City from approving a license in an overconcentrated area.

Discussion ensued regarding a policy for the City, the determination of the police department on public safety for an area and buffers for sensitive uses for the sale of alcohol.

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Chair de Arakal opened the Public Hearing.

Sherrie Olson, applicant, has read the staff report and agreed to the conditions of approval.

Ms. Olson thanked staff and provided a brief overview of the application.

The Chair opened the public comments.

No public comments.

The Chair closed public comments.**The Chair closed the Public Hearing.**

A motion was made by Commissioner Stephens, seconded by Vice Chair Colbert.

The Commission discussed the motion including:

Commissioner Stephens thanked the police for their updated memo and commented on the over concentration in this area.

Chair de Arakal also commented on ABC guidelines.

MOVED/SECOND: Stephens/Colbert

MOTION: Move that the Planning Commission 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 approve the request subject to staff's recommended conditions of approval.

The motion carried by the following roll call vote:

Ayes: de Arakal, Colbert, Russell, Stephens, Toler, Tourje', Zich

Nays: None

Absent: None

Abstained: None

Motion carried: 7-0

ACTION: The Planning Commission adopted 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 the request subject to staff recommended conditions of approval (Planning Application 18-01).

RESOLUTION PC-2021-07 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING PLANNING

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APPLICATION 01-30A (PA-18-01), A REQUEST TO AMEND CONDITIONAL USE PERMIT PA-01-30 AND ALLOW THE SALE OF ALCOHOLIC BEVERAGES FOR OFF-SITE CONSUMPTION PURSUANT TO AN ABC LICENSE (TYPE 20, OFF-SALE BEER AND WINE) IN CONJUNCTION WITH THE OPERATION OF AN EXISTING FUEL AND SERVICE STATION INCLUDING A MINI-MARKET AT 195 E. 17TH STREET

The Chair explained the appeal process.

DEPARTMENTAL REPORT(S):

1. Public Services Report – City Engineer Yang gave an update on the homeless Bridge Shelter project.
2. Development Services Report – Director Le reminded everyone of the March 23, 2021 Study Session on the Housing Element.

CITY ATTORNEY’S OFFICE REPORT(S):

1. City Attorney – None.

ADJOURNMENT AT 10:26 P.M.

Submitted by:

CARRIE TAI, SECRETARY
COSTA MESA PLANNING COMMISSION