

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

December 11, 2023

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE TO THE FLAG

Commissioner Rojas led the Pledge of Allegiance.

ROLL CALL

Present: Chair Adam Ereth, Vice Chair Russell Toller, Commissioner Angely Andrade, Commissioner Karen Klepack, Commissioner Jonny Rojas, Commissioner Vivar, Commissioner Jon Zich

Absent: None

Officials Present: Director of Economic and Development Services Jennifer Le, Assistant Director of Development Services Scott Drapkin, Assistant City Attorney Tarquin Preziosi, Principal Planner Nancy Huynh, Assistant Planner Christopher Aldana, Contract Planner Michelle Halligan, City Engineer Seung Yang and Recording Secretary Anna Partida

ANNOUNCEMENTS AND PRESENTATIONS:

None.

PUBLIC COMMENTS – MATTERS NOT LISTED ON THE AGENDA:

Alexander Haberbush, spoke on oversaturation of cannabis storefronts in the City and urged the Commission to consider the longer-term effects of approving so many store fronts.

COMMISSIONER COMMENTS AND SUGGESTIONS:

Commissioner Vivar thanked staff for their hard work. He thanked his fellow Commissioners on their work and dedication to the community.

Commissioner Rojas echoed Commissioner Vivar. He thanked staff and his fellow Commissioners.

Commissioner Zich echoed his fellow Commissioners and thanked the public for their attendance.

Commissioner Andrade echoed her fellow Commissioners thanking everyone in attendance, encouraged the public to provide feedback on what they would like for the future of Costa mesa and she shared her excitement for the Snoopy House event.

Vice Chair Toler echoed his fellow Commissioners and thanked everyone in attendance, spoke on the 405-Improvement Project, he informed the public on regular Wednesday night bike ride put on by Lillordag bike ride.

Chair Ereth echoed his fellow Commissioners by thanking the staff and fellow Commissioners. He also thanked the public for their attendance.

The Chair called for a five-minute break due to technical difficulties at 6:17p.m.

The Chair called the meeting back into order at 6:22p.m.

CONSENT CALENDAR:

No member of the public nor Commissioner requested to pull a Consent Calendar item.

1. APPROVAL OF MEETING MINUTES: NOVEMBER 27, 2023

MOVED/SECOND: Toler/Rojas

MOTION: Approve recommended action for Consent Calendar Item No. 1.

The motion carried by the following roll call vote:

Ayes: Ereth, Toler, Andrade, Klepack, Rojas, Vivar, Zich

Nays: None

Absent: None

Abstained: None

Motion carried: 7-0

ACTION: Planning Commission approved the minutes of the regular meeting of the November 27, 2023.

PUBLIC HEARINGS:

The Chair announced there would be a reordering of the Agenda.

3. MINOR CONDITIONAL USE PERMIT APPLICATION ZA-22-11 FOR A DRIVE THROUGH OPERATION AND A REDUCTION OF REQUIRED PARKING; DEVELOPMENT REVIEW (PDVR-23-0003) TO ALLOW THE DEMOLITION OF AN EXISTING 25,159-SQUARE-FOOT COMMERCIAL BUILDING AND TO CONSTRUCT A NEW 2,913-SQUARE-FOOT RAISING CANES RESTAURANT

WITH 1,303-SQUARE-FEET OF COVERED OUTDOOR PATIO AREA; MINOR MODIFICATION PMND-23-0003 TO ALLOW FOR A DECREASE OF 20% IN REQUIRED FRONT YARD/LANDSCAPE SETBACK; FOR A PROPERTY LOCATED AT 1595 OLD NEWPORT BOULEVARD

Project Description: Zoning Application 22-11, Development Review PDVR-23-0003, and Minor Modification PMND-23-0003 is a request to demolish an existing 25,159-square-foot furniture store and to construct a new 2,913-square-foot drive-through restaurant (Raising Cane's) and a 1,303-square-foot outdoor patio. The proposed hours of operation are 9 a.m. to 2 a.m. Sunday through Wednesday, 9 a.m. to 3:30 a.m., Thursday through Saturday. The proposed request also involves a reduction of the drive-through lane width from the standard 11-foot width to 10-foot, a deviation from the required parking by seven spaces, and a 20% reduction in the required front building setback.

Environmental Determination: The project is exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15303 (Class 3), for new construction and conversion of small structures, and section 15332 (Class 32) in-fill development projects.

Two ex-parte communications reported.

Commissioner Zich visited the site, spoke with a member of the public and visited a different location.

Chair Ereth had two phone calls with the applicant.

Commissioner Vivar made a motion. Seconded by Commissioner Ereth.

MOVED/SECOND: Vivar/Rojas

MOTION: To continue the item to January 8, 2024 Planning commission meeting.

The motion carried by the following roll call vote:

Ayes: Ereth, Toler, Andrade, Rojas, Klepack, Vivar Zich

Nays: None

Absent: None

Recused: None

Motion carried: 7-0

ACTION: The Planning Commission continued the item to the January 8, 2024 Regular Planning Commission Meeting.

4. PLANNING APPLICATION 22-22 FOR A CONDITIONAL USE PERMIT TO OPERATE A RETAIL CANNABIS STOREFRONT BUSINESS WITH DELIVERY LOCATED AT 1858 NEWPORT BOULEVARD ("EVOLV HERBAL") 23-1485 RECO

Project Description: Planning Application 22-22 is a request for a Conditional Use Permit to allow a 2,280-square-foot retail cannabis storefront with delivery within an existing single-story commercial building located at 1858 Newport Boulevard.

Environmental Determination: The project is exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Class 1), Existing Facilities.

Five ex-parte communications reported.

Commissioner Zich stated he held a phone call with applicant Mark Adams and spoke with one member of the public.

Commissioner Andrade received an email correspondence from the applicant, Mark Adams.

Commissioner Vivar held a phone call with the attorney representing the east side residents and received an email from Mark Adams.

Commissioner Klepack spoke with Mark Adams briefly after the last Planning Commission meeting.

Commissioner Ereth received an email from Mark Adams and an attorney for East Side Residents.

Michelle Halligan, Contract Planner, presented the staff report.

The Commission asked questions of staff including discussion of: neighboring parcel at 115 Flower Street, increased risk of crime, property value, already approved Conditional Use Permits (CUPS) located near the proposed location, and the previous tenant.

The Chair opened the Public Hearing.

Mark Adams, applicant, stated he had read and agreed to the conditions of approval.

The Commission asked questions of the applicant including discussion of: percentage of sale of medical vs. recreational products, what sets Evolve Herbal apart from other Cannabis storefronts, outreach to neighboring businesses, reasons the applicant caters to an older demographic, community outreach, nearby businesses, the applicants business plan, the applicants response to community concerns, cannabis banking institutions, age demographics, local employee recruitment, labor unions, and potential issues having the word 'herbal' in their business name.

The Chair opened public comments.

Francine Howard spoke in opposition of the item.

Alexander Haberbush spoke in opposition of the item.

Tracy Mitcham spoke in opposition of the item.

Speaker four spoke in opposition of the item.

Janis Brownsburg spoke in opposition of the item.

Speaker six, spoke on accessibility for the disabled and the discouragement of cannabis storefronts calling the police.

Kristine Trolley, spoke in opposition of the item.

Iggy Israel, spoke in opposition of the item.

Janet Locus spoke in opposition of the item.

The Chair closed public comments.

The Commission asked questions of the applicant and staff including discussion of: public outreach letters, public noticing, financial impacts for homeowners near cannabis storefronts, tax revenue from cannabis retailers, current codes and recommendation from the council.

The Chair closed the Public Hearing.

Commissioner Ereth made a motion. Seconded by Commissioner Vivar.

The Commission discussed the motion including: competing use, Land Use Policy 1.1 and 3.1, mix and balances of goods and services, Councils' goals regarding City fiscal health, Planning Commission's role in the City, current ordinance and project adverse impacts.

Commissioner Zich made a substitute motion to Approve. Seconded by Vice Chair Toler.

The Commission discussed the motion including: current ordinance provisions, voice of the residents, Land-use Policies: 1.1, 6.15 and 3.1, expectations of Planning Commissioners and over concentration of cannabis storefronts.

MOVED/SECOND: Zich/Toler

MOTION: Approve staff's recommendation.

The motion failed by the following roll call vote:

Ayes: Toler, Klepack, Zich

Nays: Ereth, Andrade, Rojas, Vivar
Absent: None
Recused: None
Motion failed: 3-4

Motion Failed.

Chair called the Question for the original motion.

MOVED/SECOND: Ereth/Vivar

MOTION: To Deny Planning Application 22-22.

The motion carried by the following roll call vote:

Ayes: Ereth, Andrade, Rojas, Vivar

Nays: Toler, Klepack, Zich

Absent: None

Recused: None

Motion carried: 4-3

ACTION: The Planning Commission adopted a resolution: to Deny Planning Application 22-22.

RESOLUTION PC-2023-31 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA DENYING PLANNING APPLICATION 22-22 FOR A STOREFRONT RETAIL CANNABIS BUSINESS (EVLV HERBAL) WITH DELIVERY IN THE C2 ZONE AT 1858 NEWPORT BOULEVARD

1. ORDINANCE AMENDING TITLE 13 (PLANNING, ZONING AND DEVELOPMENT) OF THE COSTA MESA MUNICIPAL CODE TO ESTABLISH AFFORDABLE HOUSING REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENT PROJECTS

The Planning Commission review and recommendation to the City Council regarding a proposed code amendment that modifies Title 13 (Planning, Zoning, and Development) of the CMMC to establish affordable housing requirements. The proposed CMMC modifications would require certain residential development projects to provide a minimum percentage of their proposed dwelling units as affordable housing units, or pay a City-established in lieu-fee when applicable.

Environmental Determination: The ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3) (General Rule).

No ex-parte communications reported.

Nancy Huynh, Principal Planner, presented the staff report.

The Commission asked questions of staff including discussion of: affordable housing requirements set aside percentages, the amount of time a property will be considered affordable, tax credits, zoning for potential affordable ownership opportunities, rezoning, corridor areas, incentives for developers, and Density Bonus Law.

The Chair opened the Public Hearing.

The Chair opened public comments.

Adam Wood, spoke on incentives for developers, the City creating threshold of ten units, exemption of ownership and housing fund availability.

Jen Tanaka, thanked the staff for their work on the ordinance. She also requested that staff provide a redline version of the ordinance, past practice and Council Policy, Measure Y impacts on zoning changes, encouraged the City to not look at past practice development.

Speaker three, suggested a 40 unit or more project threshold. He spoke on challenges of small lot development and encouraged a decrease in set-aside percentages for developers.

Tim O'Brian encouraged a 5% very low and 10% low for affordable housing.

Dianne Russell thanked the staff for their work and spoke on set-aside requirements.

George Sakioka encouraged the City to allow developers to provide specific affordable areas within an apartment building.

Kathy Esfahani spoke on set-aside requirements and high-density requirements.

Cynthia McDonald asked that the City raise the set-aside requirements to at least 15% low income and 10% very low income with no threshold on all new housing projects.

Richard Huffman stated he supports the Costa Mesa Affordable Housing Coalition letter and the statements made by Cynthia McDonald. He spoke on housing as a right and asked that the City take advantage of the areas that would allow high density development.

Speaker ten spoke on set-aside requirements, neighboring cities set-aside numbers and encouraged the city to raise the set-aside requirements to at least 15% low income and 10% very low income.

Cesare Covarrubias spoke on set aside requirements and encouraged the City to raise the set-aside requirements to at least 15% low income and 10% very low income.

The Chair closed public comments.

The Commission asked questions of staff which included the comparison of neighboring cities percentages.

The Chair closed the Public Hearing.

The Chair asked the Commission if they have any proposed language changes.

Vice Chair Toler spoke on his research using the inclusionaryhousing.org calculator. He stated based on his research he suggests 60 dwelling units per acre and a two-acre minimum threshold, and for set-aside percentage to go up as density increases.

Chair Ereth asked for staff opinion on a sliding scale for affordability. Staff responded stating it was a consideration. However, it did not match with how the Zoning Code is currently structured. Staff stated if the Planning Commission recommend a sliding scale, staff would present it to council. Chair Ereth asked staff if zoning code changes were considered to accommodate high density. Staff responded stating the focus of the Housing Element and future rezoning is to create those residential land use categories and to identify zones where staff can allow those higher density ranges in areas of the City where it is compatible.

Commissioner Zich provided his comments on the Ordinance. He stated he was against creating more rental opportunities and would rather the City focus on creating more ownership opportunities. He commented that he does not agree with having residents in the market rate units pay more in order to fund the development of affordable housing units. He stated the Ordinance as written will not get the City to its RHNA allocation numbers.

Commissioner Andrade stated she agreed with Vice Chair Toler's suggestion for a sliding scale. She referenced a letter the Planning Commission received from the Costa Mesa Affordable Housing Coalition letter and identifying areas for high density housing development. She asked staff to consider the areas identified.

Chair Ereth stated he strongly supports the creation of property ownership opportunities in the City of Costa Mesa. He expressed his thoughts on the benefits of property ownership within the community vs. providing more rental opportunities. He suggested 10% and 5% set-aside distribution. He stated that he does not agree to mandating higher percentages because from his determination it would take the City further away from its goal.

Commissioner Zich continued his comments by expressing his concerns with the approval of this ordinance. He stated that he understands there was an immense amount of work that went into the creation of this ordinance. However, he doesn't feel like it is ready for council review.

Chair Ereth continued his comments by expressing his understanding on the reasons behind the creation of this ordinance. He stated it was a necessary component for the City to get to where it needs to be pursuant to the Housing Element requirements. He asked staff to provide insight on the California Department of Housing and Community Development (HCD) housing requirements stipulated in the City's Housing Element. Staff responded with information on the process and objective of HCD.

Vice Chair Toler continued his comments, stating he agreed with most of Commissioner Zich's remarks. He provided these proposed ordinance modifications for consideration: a project threshold of 60 dwelling units per acre and a two-acre minimum site size, set-aside percentage to go up as density increases with a caveat for vacant land, Measure K sites only, exemption for ownership development, exemption on developments that provided benefits to the community, and set aside requirements of 10% and 5%. He finished his comments by expressing his concerns for housing in Costa Mesa.

Chair Ereth made a motion. Seconded by Commissioner Toler.

The Commission discussed the motion including: a 60 plus dwelling units per acre and a two-acre site size minimum threshold, set aside requirements of 10% and 5% and ownership projects exempted.

Commissioner Andrade made a substitute motion. Seconded by Commissioner Vivar.

The Commission discussed the substitute motion including: a 15% and 10% set aside requirement, with the option to make changes if needed in the future, and to keep everything else in previous motion.

MOVED/SECOND: Andrade/Vivar

MOTION: To send the Draft Ordinance to City Council with Planning Commissions recommended changes.

The motion failed by the following roll call vote:

Ayes: Andrade, Rojas, Vivar

Nays: Ereth, Toler, Kelpack, Zich

Absent: None

Recused: None

Motion failed: 3-4

The Planning Commission then considered the original motion.

MOVED/SECOND: Ereth/Toler

MOTION: To send the Draft Ordinance to City Council with Planning Commissions recommended changes.

The motion carried by the following roll call vote:

Ayes: Ereth, Toler, Rojas, Kelpack, Vivar

Nays: Andrade, Zich

Absent: None
Recused: None
Motion carried: 5-2

ACTION: The Planning Commission recommended that the City Council adopt the draft ordinance with the following recommended changes: a project threshold of 60 plus dwelling units per acre and a two-acre minimum site size, 10% low-income and 5% very-low income set-aside, and exemption of ownership projects.

RESOLUTION PC-2023-32 – A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL GIVE FIRST READING TO AN ORDINANCE AMENDING TITLE 13 (PLANNING, ZONING, AND DEVELOPMENT) OF THE COSTA MESA MUNICIPAL CODE TO ESTABLISH AFFORDABLE HOUSING REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENT PROJECTS

The Chair called for a break at 10:21p.m.

The Chair called the meeting back into order at 10:33p.m.

2. POTENTIAL ORDINANCE TO AMEND TITLE 13 (PLANNING, ZONING AND DEVELOPMENT) OF THE COSTA MESA MUNICIPAL CODE AND REQUISITE MODIFICATIONS REQUIRED IN TITLE 9 (BUSINESS LICENSES) FOR MODIFICATIONS TO THE CITY’S RETAIL CANNABIS PROVISIONS

The Planning Commission recommendation to the City Council regarding a proposed code amendment that would modify Title 13 (Planning, Zoning, and Development) of the CMMC regarding the City’s retail cannabis provisions. The Planning Commission will also consider any requisite code modifications required in Title 9 (Business Licenses) that are specifically applicable to the City’s retail cannabis program.

Environmental Determination: The ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15061(b)(3) (General Rule).

No ex-parte communications

Michelle Halligan, Contract Planner, presented the staff report.

The Chair reopened the Public Hearing.

The Chair opened Public Comment.

Keith Shineburg spoke on his experience application process and asked that the Commission make exceptions to those already in the queue.

Speaker two stated he opposed the cap and restriction on the Cannabis Ordinance. He stated he believes in protecting small businesses. He expressed that he did not think it was fair to cut off those already in the queue. He believes that the City would benefit from the tax revenue generated from these businesses.

Speaker three expressed her concerns with the ordinance. She continued to express her concerns for those already in the queue and the money they have spent.

The Chair closed public comment.

The chair closed the public hearing.

The Commission asked questions of staff including discussion of:

Allowing the word cannabis on signage:

Commissioner Vivar commented that he does not support allowing the word "cannabis" on signage. He argued that a member of the public can easily look up dispensaries. He was concerned the word "cannabis" would create an image for the City that residents do not want.

Commissioner Rojas stated he agreed with Commissioner Vivar.

Chair Erath suggested an 8.5 X 11-inch sign that business can put on their door.

Commissioner Klepack stated she agreed with the door signage. She expressed her concerns for not allowing the business to advertise their products.

Vice Chair asked staff for clarification on what was already allowed on the storefront signage. Staff responded stating that the business was only allowed to provide their name, and the word "cannabis" was not allowed on any signage.

Chair Erath asked staff what the standard text, symbol and sign size allowed on the storefront door. Staff responded by saying they were not given direction for symbols but sign size and text can be discussed by the Commission.

Commissioner Vivar asked staff if illuminated signs would be allowed. Staff responded by stating that it would only be storefront door signage.

Chair Erath commented that he only supports allowing the word "cannabis" on storefront doors.

Commissioner Zich stated he agreed with Commissioner Klepack's statements in regards to allowing businesses to advertise their products with the word "cannabis".

Vice Chair Toler stated he was against the word "cannabis" on primary signs. He however supports the word cannabis on storefront doors.

Commissioner Andrade agreed with not allowing the word on primary signage and instead only allowing the word "cannabis" on storefront doors.

Chair Ereth asked if there was a standard lettering size for store front doors. Staff suggested allowing the text size the business would like with in a specific signage size.

The Chair asked the Commission by a show of hands of those who agree with allowing the word "cannabis" on the door only. All seven commissioners agreed to allow that word "cannabis" on storefront doors.

Adding limitations to prohibit the marketing of cannabis and cannabis products to youth:

Commissioner Zich referenced 26151 California Business Code. He believes that covers and protects against advertising to minors. He asked staff to elaborate on that code and asked about specific examples.

Commissioner Vivar asked staff if there was a State law that prohibits minors on advertisements. Staff responded stating that it is something that could be added to the code and is generally restricted pursuant to State cannabis law.

Commissioner Andrade suggested not allowing advertisements that were attractive to children and not allowing emojis.

The Chair asked the Commission for a show of hands of those who agree that advertising cannot contain a depiction of a person under 20 years of age consuming cannabis or cannabis products and that advertising is not to be attractive to youth. All seven Commissioners agreed to those advertising rules.

Strengthening of labor peace agreement requirements for cannabis store fronts:

Commissioner Zich commented that he liked the approach set forth in the staff report and asked staff whether they felt they needed to add anything in to the ordinance.

All seven of the Commissioners agreed that the existing regulations were sufficient.

Establishing provisions for notification and relocation assistance for existing businesses that would be displaced by retail cannabis uses:

Commissioner Vivar spoke on Caltrans requirements for relocation. He stated it would promote a healthy mix and balance for the city and supports adding language for relocation assistance.

Vice Chair Toler commented that he agreed with the sentiment of Commissioner Vivar. However, he questions whether adding that condition would be fair, consistent and logical based on not having that same condition for other uses.

Commissioner Zich stated that the City should not be undertaking the responsibility of how property owners and business owners negotiate their agreements.

Commissioner Klepack agreed with Commissioner Zich's statements.

Commissioner Vivar stated he agrees with the ideas that were expressed. However, believes that businesses where the landlord is not allowing a business to renew a lease in preparation for a cannabis business should provide relocation assistance.

Chair Erath commented that although business displacement has happened, several retail cannabis storefront property owners have provided assistance or compensating to those displaced out of their own good will. He stated he recognizes that there are disadvantages for some existing businesses to possibly be displaced by future applications; however, he is not in favor of adding this type of assistance to the ordinance.

Commissioner Andrade suggested adding language conditioning property owners to provide a notice to the business being displaced.

Commissioner Vivar stated that there are different requirements for year leases vs. month to month leases.

Chair Erath commented that property owners are at their own discretion to enter in and out of contracts.

The Chair asked the commission to raise their hands if they agree that no recommendation for notification or relocation assistance for business to be displaced shall be included with the revised ordinance. The majority of the commission agreed.

Commissioner Zich provided a list of issues he feels the council needs to address. The list included: the definition of a youth center, separation from youth centric businesses, adding separation from parks not just playgrounds, changing the process of evaluating existing nonconforming uses applying for a conditional use permit and adding a separation from group and recovery homes.

Chair Erath made a motion to continue the item to January 22, 2024. Seconded by Vice Chair Toler.

MOVED/SECOND: Ereth/Toler

MOTION: To continue the item to the January 22, 2024 Regular Planning Commission meeting.

The motion carried by the following roll call vote:

Ayes: Ereth, Toler, Andrade, Rojas, Kelpack, Vivar, Zich

Nays: None

Absent: None

Recused: None

Motion carried: 7-0

The Chair explained the appeal process.

OLD BUSINESS:

None.

NEW BUSINESS:

None.

DEPARTMENTAL REPORTS

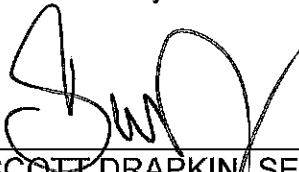
1. Public Works Report – None.
2. Development Services Report – None.

CITY ATTORNEY'S OFFICE REPORT

1. City Attorney – None.

ADJOURNMENT AT 11:45 PM

Submitted by:



SCOTT DRAPKIN, SECRETARY
COSTA MESA PLANNING COMMISSION