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

July 24, 2023

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE TO THE FLAG

Commissioner Zich led the Pledge of Allegiance.

ROLL CALL

Present: Chair Adam Ereth, Vice Chair Russell Toler, Commissioner Angely Andrade, Commissioner Jonny Rojas, Commissioner Jimmy Vivar, Commissioner Jon Zich

Absent: None

Officials Present: Development Services Director Jennifer Le, Assistant Director of Development Services Scott Drapkin, Assistant City Attorney Tarquin Preziosi, Assistant Planner Gabriel Villalobos, 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, an attorney representing east side Costa Mesa residents and businesses, opposed the clustering of four cannabis retailers at Newport Boulevard and Broadway, arguing it would create a "cannabis row." He warned of increased crime, reduced property values, quality of life issues, and displacement of long-standing businesses. While not opposing cannabis businesses in Costa Mesa, he objected to their over-concentration in one area and urged the city to deny future applications. He promoted a Change.org petition and Facebook group advocating against this saturation and warned of potential legal action if the city proceeds.

Wendy Simao expressed frustration over excessive noise from Gym 12, which leaves its doors open, allowing loud music and workout sounds to disrupt the neighborhood. She urged the city to address the issue, citing ongoing disturbances and potential fire safety violations.

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Speaker three highlighted concerns about challenges facing Costa Mesa residents, including legal threats over cannabis shops and housing mandates imposed by the state. They criticized California's housing requirements, which demand 11,412 new units, including 4,000 low-income units, without considering resources like police, fire, or infrastructure. They supported a 2024 ballot initiative by "Our Neighborhood Voices," aiming to give cities more control over housing decisions and push back against state mandates. The speaker urged residents to learn more and get involved by visiting ourneighborhoodvoices.com.

COMMISSIONER COMMENTS AND SUGGESTIONS:

Commissioner Zich acknowledged residents' frustration when they feel their concerns are ignored, emphasizing that he takes such issues seriously and has worked with staff to address them. He encouraged residents to engage early in decision-making processes, such as before elections or ordinance finalizations, but noted it's never too late to voice concerns. Zich mentioned that a council member is interested in revisiting the ordinance and urged continued community involvement.

Chair Ereth thanked the public for their engagement and shared his enjoyment of recent community events like the concerts at Fairview Park. He highlighted the issue of noise complaints about Gym 12, requesting an update from city staff. The update revealed that code enforcement has conducted approximately 40 site visits but has not observed any violations of the Noise Ordinance.

CONSENT CALENDAR:

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

- 1. APRIL 26, 2021 UNOFFICIAL MEETING MINUTES**
- 2. MAY 10, 2021 UNOFFICIAL MEETING MINUTES**
- 3. JULY 12, 2021 UNOFFICIAL MEETING MINUTES**
- 4. JULY 26, 2021 UNOFFICIAL MEETING MINUTES**
- 5. AUGUST 9, 2021 UNOFFICIAL MEETING MINUTES**
- 6. NOVEMBER 8, 2021 UNOFFICIAL MEETING MINUTES**
- 7. NOVEMBER 22, 2021 UNOFFICIAL MEETING MINUTES**
- 8. AUGUST 23, 2021 UNOFFICIAL MEETING MINUTES**
- 9. SEPTEMBER 13, 2021 UNOFFICIAL MEETING MINUTES**
- 10. SEPTEMBER 27, 2021 UNOFFICIAL MEETING MINUTES**

MOVED/SECOND: Toler/Ereth

MOTION: Approve recommended action for Consent Calendar Items

The motion carried by the following roll call vote:

Ayes: Ereth, Toler, Andrade, Rojas, Zich

Nays: None

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Absent: Vivar
Abstained: None
Motion carried: 5-0

ACTION: The Planning Commission approved all Consent Calendar items.

PUBLIC HEARINGS:

1. PLANNING APPLICATION 23-06 AND ZONING APPLICATION 23-09 TO MODIFY AND EXPAND EXISTING MORTUARY OPERATIONS INTO 766 W 19TH ST FOR THE NEPTUNE SOCIETY LOCATED AT 758 W 19TH ST

Project Description: Planning Application 23-06 is a request for a Conditional Use Permit for an existing mortuary (Neptune Society) to expand into the adjacent property located at 766 West 19th Street. The applicant is also requesting a Minor Conditional Use Permit to amend the existing Conditional Use Permit for a mortuary to allow embalming at this location.

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.

No ex-parte communications reported.

Gabriel Villalobos, Assistant Planner, presented the staff report.

The Commission asked questions of staff including:

Commissioner Zich asked staff to clarify details about a conditional use permit (CUP) request for 766 West 19th Street. He sought confirmation on whether current activities at the site, such as embalming and storage, were unauthorized under the existing entitlement for the adjacent 758 West 19th Street property. Staff explained that embalming services are not currently permitted and the CUP seeks to extend the allowable uses to include these activities and connect both properties. Zich also inquired why the unapproved activities occurred at 766 West 19th, with staff suggesting the applicant may provide better insights.

Commissioner Rojas asked about odor control measures for a proposed activity involving embalming at a site that has been inactive for 20 years. Staff explained that while odors are unlikely due to cold storage and minimal on-site duration of up to two days, ventilation systems and mitigation measures have been included as standard precautions. Staff emphasized that the site has had no odor complaints historically and anticipates no issues, but conditions were added to address potential concerns proactively.

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The Chair opened the Public Hearing.

Scott Long, applicant, stated he had read and agreed to the conditions of approval.

The Commission asked questions of the applicant including:

Commissioner Zich asked the applicant why they were operating temporary cold storage at 766 West 19th Street without city approval. The applicant explained that the use was unapproved, as they had mistakenly assumed their contractor had updated the CUP when they acquired the property. They clarified that the site is currently used for minimal temporary storage of files, furniture, and decedents, and they are now seeking approval to legalize this use and add embalming services.

The Chair opened public comments.

No public comments.

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

Vice Chair Toler made a motion. Seconded by Commissioner Andrade.

MOVED/SECOND: Toler/Andrade

MOTION: Approve staff's recommendation.

The motion carried by the following roll call vote:

Ayes: Ereth, Toler, Andrade, Rojas, Zich

Nays: None

Absent: Vivar

Recused: None

Motion carried: 5-0

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 (Existing Facilities); and
2. Approve Planning Application 23-06 and Zoning Application 23-09, subject to conditions of approval.

RESOLUTION PC-2023-21 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING PLANNING APPLICATION 23-06 AND ZONING APPLICATION 23-09 TO MODIFY AND EXPAND EXISTING MORTUARY OPERATIONS INTO 766 W

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19TH STREET FOR THE NEPTUNE SOCIETY LOCATED AT 758 W 19TH STREET

The Chair explained the appeal process.

Commissioner Vivar joined the meeting at 6:37 p.m.

2. PLANNING APPLICATION 22-12 FOR A CONDITIONAL USE PERMIT TO OPERATE A RETAIL CANNABIS STOREFRONT BUSINESS WITH DELIVERY, AND A MINOR CONDITIONAL USE PERMIT FOR COMPACT PARKING LOCATED AT 141 E. 16TH STREET (THE MERCANTILE)

Project Description: Planning Application 22-12 is a request for a Conditional Use Permit to allow an approximately 1,191-square-foot retail cannabis storefront use with delivery within an existing single-story commercial building located at 141 E. 16th Street.

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 Vivar had email correspondence with the applicant.

Commissioner Zich met on site with the applicants representative and had a phone conversation with the applicant.

Commissioner Andrade received an email from the applicant and spoke with surrounding neighbors.

Vice Chair Toler, spoke on the phone with the owner of the adjacent property.

Chair Ereth, spoke with the owner of the adjacent property and a member of the public. He received an email from the applicant's representative and spoke with the applicant over the phone.

Michelle Halligan, Contract Planner, presented the staff report.

The Commission asked questions of staff including discussion of:

Commissioner Zich asked staff several questions about a cannabis application and its associated site. He inquired why the west half of a back building was chosen for the premises instead of the east half, which the applicant could address. Commissioner Zich confirmed that the applicant met the social equity program criteria, validated by city staff, a cannabis consultant, and a background check. He

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questioned why the item was only now being reviewed, over a year after a notice to proceed was issued, and staff explained the program's phased process and review procedures. Finally, Commissioner Zich asked about parking requirements, noting the inclusion of seven compact spaces, and staff clarified that compact spaces were necessary to avoid creating non-conformance while accommodating all businesses on-site.

Commissioner Andrade inquired about a site visit to the adjacent mobile home park and its alleged tot lot. Staff and the commissioner noted that during visits and reviews of historical aerial and street views, no tot lot or playground equipment was visible, only a dirt area and shed. Commissioner Andrade expressed concern over the lack of clarity in defining what qualifies as a playground, especially for low-income residents who might use simple, informal spaces for play. The discussion highlighted the difficulty in determining sensitive uses in such areas.

Commissioner Vivar asked staff about the timing and processing of a cannabis application, noting the delay between a notice to proceed in January 2022 and the current hearing. Staff explained that equity applicants couldn't bypass Measure X Phase One applications and detailed the timeline differences between location approval (CBP) and readiness for Planning Commission review (CUP). Commissioner Vivar also inquired about the applicant's ownership stake (at least 51% required) and how the city ensures ongoing compliance with equity requirements, which is monitored quarterly. Finally, he confirmed that the proposed trash enclosure would be located away from the mobile home park, adjacent to a vacant commercial property.

Chair Ereth asked staff multiple questions related to the cannabis application, addressing fee waivers for social equity applicants, environmental concerns, and compliance with city and state regulations. Staff explained that fee waivers incentivize participation by individuals previously penalized under cannabis laws, and no evidence suggests the site requires remediation, though further testing would occur before ground-breaking. On the topic of sensitive uses, staff confirmed that site visits and historical records revealed no evidence of a tot lot or playground at the adjacent mobile home park before the cannabis business permit (CBP) application was deemed complete. Chair Ereth also raised concerns about Safe Routes to School, sidewalk infrastructure, and potential traffic impacts, which staff acknowledged and noted would involve traffic impact fees and sidewalk installation. Finally, Chair Ereth sought clarity on the criteria for defining a playground, which staff stated includes permanent recreational equipment, with no historical evidence of such at the site.

Commissioner Andrade sought clarification on the public's concerns about the site's inclusion in Measure K's overlay and its implications for zoning and land use changes. Staff confirmed that the site falls within Measure K's boundaries, allowing for potential high-density residential or commercial reinvestment without requiring a public vote. However, the site is not identified as a Housing Element opportunity

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site in the city's General Plan for meeting Regional Housing Needs Assessment (RHNA) objectives. Staff suggested the exclusion might be due to the site's existing urban plan designation, which already permits mixed-use development, including live-work spaces.

Chair Ereth asked if staff had been instructed to study potential amendments to the cannabis code by the City Council. Staff clarified that at the last City Council meeting, a council member requested an agenda item to discuss whether the council majority wanted staff to explore possible changes to the cannabis regulations. However, no research or work is currently being conducted by staff, as the City Council has not yet decided whether to proceed with such a study.

Commissioner Vivar asked about health-related code violations at the former boatyard site and whether they involved environmental concerns or contaminants. Staff clarified that the violations were related to unpermitted living conditions for occupants, not environmental pollutants or contaminants, and these issues have since been resolved.

The Chair opened the Public Hearing.

Jim Fitzpartick, applicant's representative, stated he had read and agreed to the conditions of approval.

The Commission asked questions of the applicant including:

Commissioner Vivar questioned the applicant about the cannabis project and its ownership structure, operations, and community engagement. He expressed concern over the social equity applicant, Mr. Aaron, owning the minimum 51% stake and not having an active operational role. The applicant defended the arrangement, citing Mr. Aaron's efforts to assemble an experienced team and the financial demands of the project. Commissioner Vivar also asked about the business's strategy to differentiate itself in a competitive market, to which the applicant emphasized location, technology for efficiency, and a strong supply chain. Regarding delivery, the applicant clarified that the entitlement was included but not being launched immediately. Finally, Commissioner Vivar inquired about engagement with the Sea Breeze manager, and the applicant stated they had addressed concerns about odor and believed objections were unfounded.

Commissioner Zich asked the applicant about the decision to use the west half of the building for the cannabis business instead of the east half. The applicant explained there was no specific preference, as both halves of the building are nearly identical, and the choice was more circumstantial during the permit submission process. Commissioner Zich also asked about the intended use for the other half of the building, which the applicant said is planned for retail, potentially by one of the owners. Regarding hours of operation, Commissioner Zich inquired if reducing them to 9 p. m. was considered, and the applicant stated that their hours

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aligned with neighboring businesses' hours (7 a. m. to 10 p. m.), which had strong community support.

Commissioner Rojas asked about the operational experience of the 49% ownership team involved in the cannabis business. The applicant highlighted key members: Vivian Nguyen, an experienced cannabis distributor in Santa Ana with strong supply chain relationships; Maritza, with eight years of compliance and accounting experience; and Dave Dwight, an operational partner who runs a prominent cannabis store in Santa Ana known for being the first to unionize and a major tax contributor. The applicant emphasized their expertise in retail operations and compliance.

Commissioner Andrade asked the applicant how the cannabis business plans to support nearby recovery centers and organizations serving vulnerable populations, such as Barn Life, Tree House Recovery, and SOS. The applicant responded that these facilities had not raised objections, and they noted letters of support from two of them. Commissioner Andrade also inquired about the business's accessibility to local residents, especially considering the area's socioeconomic diversity. The applicant emphasized plans for neighborhood discounts and a "good neighbor policy" to ensure affordability while disputing the characterization of the area as low-income, citing outreach to working professionals and residents in higher-value properties. Commissioner Andrade sought clarification on potential long-term impacts of a high-end cannabis business in the area, which the applicant suggested were minimal based on community feedback and data from other cities.

Chair Ereth questioned the applicant about the decision to pursue retail cannabis over housing development, community outreach efforts, design details, and environmental considerations. The applicant explained that housing development would require assembling multiple parcels, a complex undertaking, and emphasized the site's opportunity zone designation, which supports business use. They highlighted extensive community outreach, including events and direct engagement, though dissent letters emerged late. On design, the applicant clarified that the existing six-foot wall would remain unchanged despite differing renderings, as higher walls could impede airflow and light. A Phase One environmental review found no issues, and the applicant expressed readiness for further discussions on design and community concerns.

The Chair called for a quick recess at 8:20 p. m.

The Chair called the meeting back to order at 8:30 p. m.

The Chair opened public comments.

Derek Smith spoke in support of the item.

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Ashley Anderson spoke in opposition of the item.

Steve Schweiger spoke in opposition of the item.

Lynette Cervantes spoke in opposition of the item.

Wendy Leece spoke in opposition of the item.

Matthew Carver spoke in opposition of the item.

The Chair closed public comments.

Commissioner Ereth questioned the applicant to clarify conflicting statements regarding support from Barn Life Recovery and its representative, Matthew Carver. The applicant provided a letter from Mr. Carver dated June 22, 2023, expressing support for Aaron Brower and the cannabis project. However, Mr. Carver later called in during public comment to state his opposition to the project. The applicant suggested that Mr. Carver's position might have changed due to external pressures, such as input from his landlord. Chair Ereth read the letter aloud, which highlighted Mr. Carver's past support for Mr. Brower and his work but sought to reconcile the apparent contradiction between the written letter and Mr. Carver's verbal opposition. The applicant acknowledged the challenges faced by recovery centers in publicly supporting cannabis-related businesses, attributing the shift to social and professional sensitivities.

Commissioner Rojas sought clarification from the applicant about the conflicting statements from Matthew Carver of Barn Life Recovery, who provided a letter supporting the project but later called in to oppose it. The applicant acknowledged the discrepancy, attributing it to a possible change of heart, which they believed was influenced by the general trepidation of the recovery community regarding retail cannabis locations. Commissioner Rojas emphasized the importance of clarity and transparency in public proceedings, noting the Planning Commission's responsibility to consider community concerns about addiction recovery centers, nearby housing, and the welfare of residents. The applicant reaffirmed that the letter was initially in support but conceded that opinions might have shifted, stressing that the change was not intentional or nefarious. Commissioner Rojas highlighted the need for the record to reflect these dynamics to ensure informed decision-making.

Commissioner Vivar questioned the applicant to clarify the circumstances surrounding the conflicting support and opposition from Matthew Carver of Barn Life Recovery. Commissioner Vivar asked who communicated with Mr. Carver, when the conversations took place, and whether the specific location of the proposed cannabis business was disclosed during those discussions. The applicant confirmed they had spoken with Mr. Carver on several occasions about a month prior to gathering support letters and stated that the location, directly

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across the street, was disclosed during those conversations. However, the applicant acknowledged that Mr. Carver's letter was more of a personal endorsement rather than explicitly tied to the business's address. Commissioner Vivar concluded the questioning by confirming these details for the record.

The applicant emphasized the project's potential to improve safety and parking issues on 16th Street while contributing to a traffic impact fund exceeding \$1 million. They clarified that Aaron Brower, the social equity applicant, fulfills program criteria and plays a strategic role in the business rather than being involved daily. The applicant highlighted that the City Council intentionally excluded residential and recovery center buffers in cannabis regulations, a decision approved by voters, and noted similar projects near residential zones have been approved with less local support. Mr. King added that the project could address existing challenges, such as homelessness near recovery centers, and serve as a step toward revitalizing the area. Both representatives requested an opportunity to discuss any additional conditions before the hearing closed.

Commissioner Andrade asked staff about the rationale behind requiring 24-hour security at cannabis retail sites. Staff explained that while there was significant discussion leading to the adoption of the ordinance, they were unaware of any specific documented rationale beyond general concerns for business and community safety due to cash transactions and onsite products. Commissioner Andrade also questioned how the city defines "new and growing businesses" as part of its approval rationale under LU 6, particularly given the number of cannabis businesses already approved. Staff responded that cannabis remains a new and unique industry for Costa Mesa, with the first storefront opening less than a year ago, and thus continues to fit the "new and growing" category.

Chair Ereth asked staff about the zoning designations where cannabis retail is allowed in other Orange County cities and how that relates to the rationale for 24-hour security requirements. Staff explained that Santa Ana places cannabis storefronts in industrial zones, some of which have high visibility, while Stanton allows up to five storefronts (with unspecified zoning), and La Habra only permits cannabis delivery, not storefronts. Chair Ereth noted that Costa Mesa appears to be unique in allowing retail cannabis in commercial zones (C1, C2), which often abut residential areas, potentially heightening security concerns compared to industrial zones. Chair Ereth also asked about the six-month review for the first cannabis storefront in Costa Mesa, noting that the timeframe may have passed. Staff confirmed they are tracking the review timeline, and Ereth encouraged further staff updates on the matter.

The Chair closed the Public Hearing.

Commissioner Vivar made a motion to Deny PA-22-12. Seconded by Commissioner Andrade.

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The Commission discussed the motion including:

Commissioner Andrade supported the motion. She emphasized upcoming discussions on housing and homelessness as a chance to reconsider rezoning. Commissioner Andrade also raised concerns about ambiguities in defining sensitive uses, such as playgrounds, and how COVID-era staff visits may have influenced site assessments. For these reasons, she endorsed the motion to pause and re-evaluate.

Commissioner Zich opposed the motion, emphasizing voter approval of cannabis businesses and noting previous opportunities to include residential and recovery home buffers in the ordinance, which were not adopted. He argued the proposed use is less disruptive than the site's historical uses and that the property owner's intent should guide land use. Commissioner Zich highlighted project benefits like sidewalk installation and dismissed concerns about sensitive uses, noting staff's thorough review. He concluded that the project complies with city ordinances and represents a substantial improvement.

Commissioner Rojas acknowledged the complexity of the issue and the valid arguments on both sides. He highlighted the tension between property owner rights and community desires and expressed frustration over the absence of sensitive-use provisions in the code. While uncertain about the playground concerns, Commissioner Rojas recognized the project's benefits, including site improvements, and ultimately determined there was no legal basis to support the motion.

Vice Chair Toler aligned with Commissioners Zich and Rojas, noting that the project is a major improvement for the area compared to its current condition. He dismissed concerns about the tot lot due to lack of evidence and emphasized that the property is zoned commercial, which permits this use. Commissioner Toler stressed the importance of respecting the property owner's rights and, based on the project's compliance with city code, found no reason to support the motion.

Chair Ereth made an alternate motion to continue the item to a future date. Seconded by Commissioner Andrade.

Chair Ereth spoke in favor of his motion to continue the item to a future date, citing upcoming discussions on the inclusionary housing ordinance and staff's review of the cannabis code. He highlighted the importance of pausing to align decisions with potential policy changes and City Council guidance. Chair Ereth acknowledged the thoughtful deliberations of his colleagues and emphasized that delaying the decision would ensure better-informed outcomes in line with evolving priorities.

Commissioner Andrade reiterated her support for pausing, citing the future implications of having 24 cannabis storefronts and concerns about over-saturation.

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She emphasized the need to address community challenges, particularly in underserved areas like the west side of Costa Mesa. Commissioner Andrade also stressed the importance of considering how planning decisions align with broader city goals, such as affordability, safe routes to school, and the city's long-term legacy.

Commissioner Vivar supported the motion, citing the need for further review considering upcoming housing discussions and potential Measure Q amendments. He stressed the importance of consistent decision-making and noted that public participation or lack thereof should not be assumed as approval or rejection, especially for underserved communities. Commissioner Vivar also highlighted public concerns about equitable treatment of residents and the evolving implementation of Measure Q.

Chair Ereth clarified that his motion was to continue the item to a future date. He inquired about the timeline for a final inclusionary housing ordinance, to which Director Le responded that the upcoming joint study session on Wednesday would determine next steps, but no specific timing could be provided yet.

Commissioner Zich opposed the motion to continue, asserting that if one does not support the application, the appropriate action would be to deny it outright rather than delay it. He argued that the upcoming inclusionary housing ordinance study session would not provide new information relevant to this application, as it focuses on low-income housing percentages rather than rezoning or land use changes. Commissioner Zich emphasized that zoning provides landowners with certainty and that delaying the decision due to unrelated future discussions is unfair. He dismissed assumptions about the lack of public participation being tied to work or language barriers, noting there is no evidence to support such claims. While expressing frustration with the approach, he indicated he would propose a substitute motion if the motion to continue failed.

MOVED/SECOND: Ereth/Andrade

MOTION: To continue the item to the next regularly scheduled Planning Commission meeting.

The motion carried by the following roll call vote:

Ayes: Ereth, Andrade, Rojas, Vivar

Nays: Toler, Zich

Absent: None

Recused: None

Motion carried: 4-2

ACTION: Continue the item to the next regularly scheduled Planning Commission Meeting.

OLD BUSINESS:

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None.

NEW BUSINESS:

None.

DEPARTMENTAL REPORTS

1. Public Works Report – Mr. Yang highlighted the final concert at Fairview Park, scheduled for Tuesday, July 25, and efforts to encourage walking and biking to the event. Public Works will install a temporary two-way cycle track on the west side of Placentia Avenue, from Fairview Park to Victoria Street, operational from noon until the concert's conclusion. Additionally, delineators will be placed in bicycle lane buffers along Placentia and Adams Avenue to enhance safety. Costa Mesa Police Department will assist with traffic management. This one-day pop-up demonstration aims to create safer spaces for biking and walking by separating them from vehicular traffic.
2. Development Services Report – None.

CITY ATTORNEY'S OFFICE REPORT

1. City Attorney – None.

ADJOURNMENT AT 9:43 PM

Submitted by:

SCOTT DRAPKIN, SECRETARY
COSTA MESA PLANNING COMMISSION