



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: February 24, 2025

ITEM NUMBER: PH-2

SUBJECT: APPEAL OF THE DIRECTOR OF DEVELOPMENT SERVICES DETERMINATION THAT CONDITIONAL USE PERMIT PA-21-23 TO ESTABLISH A CANNABIS STOREFRONT LOCATED AT 1687 ORANGE AVENUE (KING'S CREW) HAS EXPIRED

FROM: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTATION BY: GABRIEL VILLALOBOS, ASSISTANT PLANNER

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RECOMMENDATION:

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the appeal is not subject to the California Environmental Quality Act per California Public Resources Code Section 15268; and
2. Uphold the Director of Development Services determination that Conditional Use Permit PA-21-23 has expired pursuant to Costa Mesa Municipal Code Sections 13-29(k)(2) and Conditional Use Permit Condition of Approval No. 2.

APPLICANT OR AUTHORIZED AGENT:

The applicant/authorized agent is Laurie Holcolmb on behalf of Gold Flora Partners Costa Mesa LLC and the property owner, Orange Ave Investors, LLC.

BACKGROUND:

Pursuant to Costa Mesa Municipal Code (CMMC) Sections 9-494 and 13-200.93(c)(1), a conditional use permit (CUP) is required for the establishment of cannabis retail storefronts in Costa Mesa. On September 12, 2022, by a vote of 5-2, the Planning Commission approved CUP PA-21-23 and Resolution No. PC-2022-22, to allow the establishment of a retail cannabis storefront at 1687 Orange Avenue, subject to conditions of approval and local and State regulations.

A detailed description of the proposed use is provided in the September 12, 2022, Planning Commission Agenda Report linked below. The meeting minutes and video are also linked below.

- [September 12, 2022 Planning Commission Agenda Report](#)
- [September 12, 2022 Planning Commission Minutes](#)
- [September 12, 2022 Planning Commission Video](#)

As described further below, Section 13-29(k)(2)(a) of the CMMC and project Resolution Condition of Approval No. 2 establishes an expiration date of two years from the effective date of the CUP approval if specific actions by the applicant have not occurred. If the actions have not occurred and/or not expected to occur timely, the CMMC also permits an extension of time process based on the filing by the applicant a written request for an extension of time. The applicant did not file for an extension of time and on September 19, 2024, the application expired pursuant to the CMMC and a project condition of approval.

Public Hearing Continuation

On February 10, 2025, a Planning Commission public hearing was held which included this item on the agenda. Prior to the hearing date, the applicant requested a continuance of the item to allow for additional time to research records and correspondences to staff regarding the permit expiration. The Planning Commission approved the request for continuation to the February 24, 2025, Planning Commission hearing by a vote of 7-0. As of the date this report was written, staff has not received any additional applicant submittal/information.

ANALYSIS

Application for Appeal

Pursuant to CMMC Section 2-300 (Appeal and Review Procedure), "the purpose of this chapter is to provide an orderly and fair method of appeal and review of decisions of the staff, committees, commissions and council of the City". The City's appeal

procedures also requires that a decision on planning matters pursuant to Title 13 shall be made by the Planning Commission.

On December 9, 2024, Laurie Holcomb, an owner of Gold Flora Partners Costa Mesa LLC, filed an appeal of the City's planning mater decision that the CUP had expired; provided as Attachment 2 to this report. The "reasons for requesting appeal" was stated as:

"Additional time is needed to address Southern California Edison's comments regarding the power distribution to the building. SCE originally indicated that they would be replacing the pole transformer to accommodate the project. After further discussion, SCE changed their position and will be keeping the existing transformer with modifications. As a result, our current plans cannot be used and we will need to revise most of the existing circuits, lighting schedule, single line diagram and the pane schedule".

Time Limits and Extensions

Project Resolution Condition of Approval No. 2, which follows the language of CMMC Section 13-29(k), states:

Approval of the planning/zoning application is valid for two years from the effective date of this approval and will expire at the end of that period unless the applicant establishes the use by one of the following actions:

- 1) A building permit has been issued and construction has commenced, and has continued to maintain a valid building permit by making satisfactory progress as determined by the Building Official; or*
- 2) A certificate of occupancy has been issued; or*
- 3) The use is established and a business license has been issued.*

A time extension can be requested no less than thirty (30) days or more than sixty (60) days before the expiration date of the permit and submitted with the appropriate fee for review to the Planning Division. The Director of Development Services may extend the time for an approved permit or approval to be exercised up to 180 days subject to specific findings listed in Title 13, Section 13-29 (k)(6). Only one request for an extension of 180 days may be approved by the Director. Any subsequent extension requests shall be considered by the original approval authority.

An application for building permits for the subject project was originally submitted on May 1, 2023, under application BC23-00238. There were four rounds of Building Department review between May 2023 and April 2024 to address the City's corrections.

On May 17, 2024, the Building Technician requested a “clean” set of plans for final stamping (approval). On July 31, 2024, the Building Technician again requested a clean set of plans for final approval. The applicant did not provide the final set of plans for stamping and the building permit fees have not been paid in full.

As indicated above, the CMMC and project Condition of Approval No. 2 allows the applicant to, before the two-year expiration of the permit, request a time extension of up to 180 days subject to the Director of Development Services approval and specific findings in CMMC 13-29(k)(6), and also allows a subsequent time extension to be approved by the Planning Commission if needed for time beyond the aforementioned 180 days and initial two-year period. The applicant nor anyone acting on their behalf filed a written CUP extension of time, nor met any of the three requirements to establish the use pursuant to CMMC 13-29(k)(2)(b) and Condition of Approval No. 2. Therefore, on September 19, 2024, Conditional Use Permit Application PA-21-23 expired, and on December 2, 2024, the City issued a notice of expiration to the applicant.

GENERAL PLAN CONFORMANCE

As described in the September 12, 2022, Agenda Report, the proposed use is consistent with the City of Costa Mesa 2015-2035 General Plan.

ENVIRONMENTAL DETERMINATION

As described in the September 12, 2022, Agenda Report and Resolution No. 2022-22, the proposed cannabis storefront use is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301 (Class 1), Existing Facilities.

The determination that a CUP has expired is a “ministerial” decision and is not subject to the California Environmental Quality Act pursuant to California Public Resources Code Section 21068.

LEGAL REVIEW

The draft Resolution has been approved as to form by the City Attorney’s Office.

PUBLIC NOTICE

Pursuant to CMMC Section CMMC 2-308 (*Notice of Appeal or Review*), notice of the hearing for the appeal or review shall be given in the same manner as any required notice for the hearing at which the decision subject to the appeal or review was made. As provided with the original Planning Commission review, pursuant to CMMC Section 13-29(d), three types of public notification have been completed no less than 10 days prior to the date of the public hearing:

1. Mailed notice. A public notice was mailed to all property owners and occupants within a 500-foot radius of the project site. The required notice radius is measured from the external boundaries of the property.
2. On-site posting. A public notice was posted on each street frontage of the project site.
3. Newspaper publication. A public notice was published once in the Daily Pilot newspaper.

As of this report, no written public comments have been received. Any public comments received prior to the February 10, 2025, Planning Commission meeting will be provided separately.

CONCLUSION

Land use and building permit expirations serve to ensure that construction projects are completed within a reasonable timeframe, preventing prolonged disruptions to the community by prompting project owners to actively progress and finish their work, rather than letting projects linger indefinitely. Permit expirations also assist in maintaining safety standards by requiring re-evaluation of the project if significant time passes without substantial progress.

Both the CMMC and the project conditions of approval include specific regulations related to expiration of the subject permit. Included in these regulations, time extensions are permitted; however, the applicant nor anyone acting on their behalf requested a CUP extension and therefore the land use permit expired pursuant to the CMMC.

The applicant asserts that the "reason for requesting appeal" is due to project development issue related to project associated "power distribution to the building"; however, this "reason" is not relevant to the matter of permit expiration. Since the applicant did not file an extension of time, the CMMC requires that the permit be expired. Importantly, the CMMC does not provide any mechanism to re-activate a land use permit after expiration; except, the re-submittal of a new application. Pursuant to CMMC Section 13-29(k)(7), "after the expiration of the permit or approval, no further work shall be done on the site and no further use of the site shall occur until a new permit or approval, or other city permits or approvals are first obtained".

The Planning Commission review of this matter is generally limited to if the Director of Development Services determination is consistent with the applicable CMMC sections and project conditions of approval. Essentially, "did the applicant submit a request for a time extension". If the Planning Commission cannot determine that an extension of time was filed, than the Planning Commission should uphold the Director of Development Services determination that the CUP application pursuant to the CMMC is expired.

ATTACHMENTS

1. Draft Resolution
2. Appeal Application
3. Notice of Expiration of CUP
4. Request for Continuation