



# **PLANNING COMMISSION AGENDA REPORT**

MEETING DATE: APRIL 10, 2023

ITEM NUMBER: PH-1

**SUBJECT: PLANNING APPLICATION 22-42 FOR A CANNABIS  
NON-STOREFRONT RETAIL BUSINESS ("A & D COURIERS")  
LOCATED AT 2706 HARBOR BOULEVARD, SUITE 208**

**FROM: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/  
PLANNING DIVISION**

**PRESENTATION BY: CHRISTOPHER ALDANA, ASSISTANT PLANNER**

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## **RECOMMENDATION**

Staff recommends the Planning Commission adopt 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 Planning Application 22-42, subject to conditions of approval contained in the resolution.

## **APPLICANT OR AUTHORIZED AGENT**

The applicant/authorized agent is Annie Santillan, for the property owner, Mesa Verde, Center LLC.

## PLANNING APPLICATION SUMMARY

Location:	2706 Harbor Boulevard, Suite 208	Application Numbers:	PA-22-42
Request:	Planning Application 22-42 for a cannabis non-storefront retail business ("A & D Couriers") located at 2706 Harbor Boulevard, Suite 208.		

### **SUBJECT PROPERTY:**

### **SURROUNDING PROPERTY:**

Zone:	C1 (Local Business District)	North:	C1 (Local Business District)
General Plan:	General Commercial	South:	C1 (Local Business District)
Lot Dimensions:	165 FT x 250 FT	East:	R3 (Multi-Family Residential District)
Lot Area:	41,500 SF	West:	C1 (Local Business District) C2 (General Business District)
Existing Development:	Existing two-story 20,294-square-foot commercial building with shared surface parking.		

## DEVELOPMENT STANDARDS COMPARISON

Development Standard	Required	Existing
Building Height	Two-stories/ 30 feet Max*	Two-Stories (no change)
Setbacks:		
Front	20	115'
Side (left/ right)	15 feet on one side and 0 feet on the other side. **	Zero Setback
Rear	0 ft. ***	72 ft.
Landscape Setback – front	N/A	N/A
Parking	71	71
Floor area ratio (FAR)	0.20	0.48
*Except a 5% increase is allowed if necessary to screen existing roof-mounted equipment		
**Exception: If the side property line is adjacent to a residential zone, all buildings shall maintain a side setback from the residential property line of 2 times the building height at all locations.		
***Exception: If the rear property line is adjacent to a residential zone, all buildings shall maintain a rear setback from the residential property line of 2 times the building height at all locations.		
CEQA Status	Exempt per CEQA Guidelines Section 15301 (Existing Facilities)	
Final Action	Planning Commission	

## **BACKGROUND**

The subject property is located at 2706 Harbor Boulevard, which is generally situated at northeast corner of Harbor Boulevard and Mesa Verde Drive East intersection, between Harbor Boulevard and Peterson Place. The site is zoned C1 (Local Business District) and is surrounded by other commercially zoned properties (C1, C2 – General Business District, C1-S – Shopping Center District) and an existing R3 zoned (Multi-Family Residential District) apartment development ("Harbor at Mesa Verde), which contains over 300 residential units to the east of the site. The property is located on one of the City's primary commercial corridors (Harbor Boulevard) and the surrounding uses

predominantly include multi-tenant commercial centers. Existing businesses in these commercial centers consist of a variety of restaurants/bars, grocery stores, pharmacy, massage and beauty parlors, medical and general offices, and automotive dealerships. The site has a General Plan Land Use Designation of General Commercial. Existing development on the approximate 41,500-square-foot property consists of a two-story 20,294-square-foot commercial building with a shared surface parking lot located at the front (with access from Harbor Boulevard) and rear of the building (with access from Peterson Place).

The parking and existing driveways are shared among the commercially zoned properties at 2706 (subject site), 2710, 2730, 2750, and 2790 Harbor Boulevard. There are multiple driveways that provide access to these properties including two driveways along Harbor Boulevard, one along Adams Avenue, and three along Peterson Place (to the rear of the properties). Each of these properties are individually owned. The proposed cannabis retail non-storefront (direct delivery) project will be located within a 744-square-foot tenant space, Suite 208, which is on the second floor of the multi-tenant commercial building. Business license history shows that the previous use for this suite was a hair lice removal establishment and it has been vacant since 2019. There are no open Code Enforcement cases on this property.

### ***Non-Conforming Development***

The existing development is legal-nonconforming in terms of the parking, setback, landscaping, and floor area ratio (FAR), and therefore is subject to the nonconforming provisions of the Costa Mesa Municipal Code (CMMC) Section 13-204. Pursuant to this Code Section, a conforming use may be located on a nonconforming property so long as the new site modifications do not result in greater site nonconformities, and such improvements bring the site into greater conformance with Code requirements.

The CMMC and General Plan establish maximum floor area ratios (FARs) for each non-residential land use designation based on trip generation characteristics. Pursuant to the General Plan, the maximum FAR for the proposed use is 0.20 and the existing FAR is 0.48.

### ***City of Costa Mesa Medical Marijuana Measure (Measure X) and Costa Mesa Retail Cannabis Tax and Regulation Measure (Measure Q)***

In November 2016, Costa Mesa voters approved Measure X, allowing medical cannabis manufacturing, packaging, distribution, research and development laboratories, and testing laboratories in Industrial Park (MP) and Planned Development Industrial (PDI) zoned properties north of South Coast Drive and west of Harbor Boulevard “The Green Zone,” excluding the South Coast Collection (SOCO) property located at 3303 Hyland Avenue. Measure X is codified in Titles 9 and 13 of the Costa Mesa Municipal Code (CMMC). Cannabis uses are also subject to State cannabis requirements.

In 2018, non-medical adult use cannabis became legal in California under the State's Medicinal and Adult-Use Cannabis Regulation and Safety Act (Proposition 64). On April 3, 2018, the City Council adopted Ordinance No. 18-04 to allow non-medical use cannabis facilities in the same manner and within the same geographic area as were previously allowed pursuant to Measure X.

On November 3, 2020, Costa Mesa voters approved Measure Q, the Costa Mesa Retail Cannabis Tax and Regulation Measure. This measure allowed the City to adopt regulations permitting storefront retail (dispensaries) and non-storefront retail (delivery) within the City subject to certain requirements. On June 15, 2021, the City Council adopted Ordinances No. 21-08 and No. 21-09 to amend Titles 9 and 13 of the CMMC to establish regulations for legal cannabis storefront and non-storefront uses. A non-storefront retailer sells packaged cannabis goods to customers through direct delivery only.

### ***Cannabis Business Permit (CBP) Application Process***

The process to establish a retail cannabis business is subject to an extensive submittal and application review procedure. Retail cannabis applicants must obtain the following City approvals and State approval before conducting business in Costa Mesa:

- Pre-Application Determination;
- CBP Notice to Proceed;
- Conditional Use Permit (CUP);
- Building Permit(s);
- Final City Inspections;
- CBP Issuance; and
- City Business License.

The "Pre-Application Determination" includes staff review of a detailed applicant letter that describes the proposed business, an existing site plan, statement attesting that there is/has been no unpermitted cannabis activity at the site within one year, and a detailed map demonstrating the proposed storefront's distance from sensitive uses. Staff also visit the site at this time. Planning staff has completed the aforementioned pre-application review, visited the site, and issued a letter indicating that the application complies with the City's required separation distances from sensitive uses and may proceed to submittal of a CBP.

Following completion of the pre-application review, the applicant submitted a CBP application for the initial phase of the CBP review. Staff's initial CBP review includes:

- A background check of the business owner(s)/operator(s);
- An evaluation of the proposed business plan (including a capitalization analysis); and
- An evaluation of the proposed security plan by the City's cannabis security consultant, HdL Companies (HdL).

The applicant successfully passed these evaluations and staff issued a “CBP Notice to Proceed,” which allows the applicant to submit a CUP application.

The CUP application and required supportive materials were submitted by the applicant and reviewed for conformance with City standards and regulations by the Planning Division, Building Division, Public Works Department (including Transportation and Engineering Divisions), Fire Department, and Police Department.

If the Planning Commission approves the CUP, the applicant may then begin the remaining steps of the CBP process, which include:

- Obtaining building permits;
- Completing tenant improvements; and
- Demonstrating through various City reviews/inspections that all conditions of approval have been satisfied, and that all other requirements of the CMMC have been met.

After passing the final City and HdL inspections, the CBP would be issued. CBP approval is valid for a two-year period and must be renewed (every two-years) prior to expiration. During the two-year CBP period, the Community Improvement Division (CID), along with other City staff, will conduct site inspections to verify that the business is operating in compliance with CUP and CBP requirements. Violations identified during site inspections may be grounds for revocation of issued permits or non-renewal of a CBP.

After obtaining the CBP, the applicant would apply for and obtain a City Business License through the Finance Department. Lastly, the applicant must obtain the appropriate license from the State Department of Cannabis Control (DCC) prior to operating.

Cannabis retail businesses are subject to a City established seven-percent gross receipts tax, which must be paid to the City of Costa Mesa’s Finance Department. Records and revenues are audited annually by the Finance Department and HdL Companies.

## **DESCRIPTION**

Planning Application 22-42 is a request for a Conditional Use Permit (CUP) to allow a cannabis non-storefront (delivery) retail business within an existing 744-square-foot suite within a commercial building, located at 2706 Harbor Boulevard, suite 208. The suite is located directly above Total Relax Massage (Suite B) and shares a common ground floor entrance with direct access from the adjacent westerly parking area. Additionally, the suite has one entry door located on the second floor and is accessible from the ground level via an exterior stair entrance. The exterior stairway is also shared by businesses operating on the second floor. The project consists of a limited tenant improvement with no proposed modifications to the exterior, with the exception of installation of security cameras to monitor the designated loading and unloading delivery area and general parking area. Delivery vehicles would be parked in the designated loading/unloading area

in the western parking lot area (near Harbor Boulevard) during business hours and special conditions of approval will ensure that there is no overnight parking of vehicles.

The affiliated State license is Type 9 “Retail Non-storefront” which allows a retailer to sell and deliver cannabis goods directly to customers without a storefront. Upon approval of a CUP, CBP, City Business License, and State licenses, the business would sell pre-packaged cannabis and pre-packaged cannabis products directly to customers off-site via delivery to private addresses, subject to conditions of approval and other City and State requirements.

## **ANALYSIS**

### ***Conditional Use Permit***

Pursuant to CMMC Sections 13-28(B) and 13-200.93(c)(1), subject to the approval of the Planning Commission, a CUP is required for the establishment of cannabis retail storefronts and non-storefronts (delivery) in a commercial zone. The subject site is located within a commercial zone (C1 – Local Business District) where commercial development is specifically allowed to include retail storefronts. Pursuant to the CMMC, cannabis retail storefronts and non-storefronts are subject to extensive regulation (as specifically described in this report). These regulations are adopted to prevent land use inconsistencies with adjacent properties. Pursuant to the CMMC, the approval of a CUP requires that the Planning Commission make findings related to neighborhood compatibility, health and safety and land use compatibility. The analysis regarding CUP findings is provided further in this report. Lastly, staff has drafted specific conditions of approval, included in the Resolution, to ensure operational/site-specific land use compatibility.

### ***Separation Requirements***

CMMC Section 13-200.93(e) stipulates that no cannabis retail storefront use shall be located within 1,000-feet from a K-12 school, playground, licensed child daycare, or homeless shelter, or within 600 feet from a youth center as defined in CMMC Title 9, Chapter VI, Section 9-485, that is in operation at the time of submission of a completed cannabis business permit application. All separation distances are measured in a straight line from the “premises” where the cannabis retail use is to be located to the closest property line of the sensitive use(s). Premises is as defined in the State’s Business and Professions Code Section 26001(aq) as *the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.* Therefore, the premises only include the retail cannabis activity areas (including sales, storage, back-of-house and/or other ancillary areas) and excludes the parking lot and other areas that are not part of the area licensed by the State for commercial cannabis activity. The subject site complies with the required separation from sensitive uses.

### ***Non-Storefront Retail Use (Delivery) – Type 9 State License***

The proposed use would occupy a 744-square-foot commercial space that includes an office, secure storage room, delivery dispatch room, a closet, and a lobby. The office would be used for general administrative purposes. The secure storage area will be the location of the facility where cannabis retail products are stored, and items that are ready for delivery will be stored in the delivery dispatch room. The lobby will be used predominantly by licensed distributors to intake products for retail delivery.

Pursuant to the Type 9 State license, only packaged cannabis products can be delivered directly to customers. Packaged cannabis products would arrive to the facility via a third-party distribution service in State compliant packaging that is sealed and odor resistant, and remain unopened. Additionally, the Type 9 license restricts the permittee from tampering with cannabis products. Basically, the Type 9 license allows the permittee to receive cannabis product from licensed distributors, store cannabis products until delivery, insert the cannabis products in a transferable package (similar to a grocery store shopping bag), and deliver the cannabis product to a preordered customer destination. Delivery to customers is limited to the hours between 7:00 AM and 10:00 PM, pursuant to Resolution Condition of Approval No. 2 (“Operational Conditions”).

Although detectable odor outside of the premises is not anticipated, per Condition of Approval #5 (“Prior to Issuance of Building Permits”), odor control devices and techniques shall be incorporated to ensure that odors from cannabis are not detected outside the property, anywhere on adjacent property or public right-of-way, or within any other units located within the same building as the cannabis business. In addition, per Condition of Approval #13 (“Operational Conditions”), if cannabis odor is detected within an adjacent suite, outside of the building or off-site/outside of the premises, the operator shall install permanent and/or portable air filtration devices to eliminate the detection of odor.

As described above and conditioned, loading and unloading of cannabis product into delivery vehicles is proposed to take place within the existing western surface parking lot in the designated loading/unloading area which is approximately 70 lineal feet from the entrance of the building (see Exhibit 6 that shows the designated loading areas).

All areas of the non-storefront retail facility would be closed to the public and could only be accessed through secured or controlled access points in the facility with the proper security credentials. The applicable State and local operating requirements for non-storefront retail delivery operations are summarized below:

- All employees who deliver cannabis shall have valid identification and a copy of the CBP and State license at all times while making deliveries;
- All employees are at least 21 years of age;
- Delivery to consumers is limited to the hours between 7 a.m. – 10 p.m.;
- All commercial cannabis retail businesses shall maintain proof of vehicle insurance for all vehicles being used to transport cannabis goods as required by State law;

- During delivery, the delivery employee shall not leave the State of California while possessing cannabis products and/or performing his or her duties for the cannabis retailer;
- A commercial cannabis retail business shall maintain a list of all deliveries, including the address delivered to, the amount and type of product delivered, and any other information required by the State;
- A manifest with all information required pursuant to local and State provisions shall accompany delivery persons at all times during the delivery process and delivery hours;
- Any delivery methods shall be made in compliance with State law, as amended, including use of a vehicle that has a dedicated GPS device for identifying the location of the vehicle (cell phones and tablets are not sufficient);
- Each delivery request shall be entered into a point-of-sale tracking system and have a receipt prepared by the commercial cannabis retail business with the following information:
  1. Name and address of the commercial cannabis retail business;
  2. The name of the employee who delivered the order;
  3. The date and time the delivery request was made;
  4. The complete customer's first name, retailer-assigned identification number, and delivery addresses;
  5. A detailed description of the cannabis goods requested for delivery including the weight or volume, or any accurate measure of the amount of cannabis goods requested;
  6. The total amount paid for the delivery including any fees or taxes; and
  7. The date and time delivery was made, and the signature of the person who received the delivery.
- At the time of the delivery, the person receiving the delivery provides identification and must be 21 years old.
- No cannabis delivery vehicle shall display signs, decals or any other form of advertisement.
- Inspections by an authorized City representative may be conducted anytime during regular business hours.
- Delivery must be made to a physical address that is not on publicly owned land, a school, a day care, or a youth center.
- The delivery employee shall not carry cannabis goods valued in excess of \$5,000 at any time with no more than \$3,000 of cannabis goods that are not already part of a customer order that was processed prior to leaving the premises.
- A direct employee of the licensed retailer must make delivery in person. An independent contractor, third-party courier service, or an individual employed through a staffing agency would not be considered directly employed by the licensed retailer.
- The delivery employee shall confirm the age of the buyer through entering government issued identification information into an electronic age verification system.

***Business Plan***



The applicant has submitted a detailed business plan that was evaluated by the City's cannabis consultant (HdL). The business plan described the owners' experience, proof of capitalization, start-up budget, a three-year pro forma, target customers, key software, and daily operations. The business plan contains proprietary details and is therefore not included as an attachment to this staff report. The City's cannabis consultant determined that the applicant's business plan was appropriate for continued entitlement processing.

### ***Security Plan***

The applicant provided a professionally prepared security plan for the proposed cannabis facility. The City's cannabis consultant reviewed the proposed security plan and determined that appropriate security measures were included to address the City's security requirements pursuant to Chapter VI of CMMC Title 9, and State law. Since the security plan contains sensitive operational details that require limited exposure to remain effective, the plan is not included as an attachment. However, the following is a list of general security measures that are required for the proposed cannabis facility:

- Live scan background check for every employee including drivers;
- City-issued identification badge for each employee;
- Professionally installed and monitored exterior and interior surveillance cameras;
- Professionally installed, maintained, and monitored alarm system including panic buttons and window and door alarms;
- Surveillance footage must be maintained for a minimum of 90 days;
- Secured storage of cash, cannabis and cannabis products;
- Sensors that detect entry and exit from all secured areas;
- Emergency power supply;
- Emergency equipment and training;
- Driver and vehicle safety protocol;
- Vendor protocol (cash and product transportation); and
- Limited access areas and visitor check-in and security.

As proposed and conditioned, all facility entry and exit points, locations where cash or cannabis products are handled or stored shall be under camera surveillance. Additionally, the applicant shall submit to the City a list of all vehicles to be used for retail delivery purposes. The list shall identify the make, model, color, license plate number, and registered owner of each vehicle. The applicant shall submit an updated vehicle list each quarter with the required quarterly update to the employee roster pursuant to the CBP. Delivery vehicle drivers shall be at least age 21, have a current driver's license, successfully complete a live scan, and have a City-issued badge. The business operator shall ensure that all vehicles are properly maintained, all delivery drivers have a good driving record, and each driver conducts a visual inspection of the vehicle at the beginning of a shift.

### ***Circulation and Parking***

The non-storefront retail cannabis business would be subject to the same parking ratio requirement as other retail establishments in the City (four (4) spaces per 1,000 square feet of gross floor area with a minimum of six (6) spaces). Based on this ratio, the total parking required for the 744-square-foot building is six (6) parking spaces. The subject property identified below in Image 1, and bounded by a yellow dashed rectangle, has 71 parking spaces that are included with the existing 278 total parking spaces shared with the adjacent properties (properties included in the shared parking agreement are identified in Image 1 with a red dashed boundary). The aforementioned properties have maintained a recorded reciprocal agreement since 1968 to share parking and ingress/egress.

The parking for the subject use and the adjacent uses that are part of the reciprocal parking agreement is considered legal non-conforming because the shared site does not provide the 387 parking spaces required for the collective uses. However, and as mentioned above in the “*Nonconforming-Development*” Section of this report, the CMMC allows a new use to replace an existing use without compliance with parking requirements at a nonconforming site, as long as the parking demand from the proposed use does not exceed the parking demand of the previous use. Thus, the parking for the proposed cannabis non-storefront retail establishment is in conformance with the CMMC in that the same parking demand for a Professional Service – Hair Lice Removal establishment (previous use) is required for the proposed cannabis non-storefront retail establishment. Additionally, staff has visited this site recently on numerous occasions and at different peak hour parking periods of the day and witnessed abundant open parking spaces (including lunch-time and evenings).

In regards to employee parking, as indicated by the applicant, the business will be owned by three individuals. At this time, the owners will not be hiring any employees and the three owners will alone manage the proposed cannabis daily delivery operations. The applicant indicates that only the owners are anticipated to be on-site during business hours; however, as the business grows, employees may be added to the business. At this time, all business deliveries would occur via the owner’s personal vehicles.

**Image 1 – Aerial View of Shared Parking/Driveways**



Access to the site is provided by multiple existing shared driveways along Adams Avenue, Harbor Boulevard, and Peterson Place. There is an existing public sidewalk at the front of the property along Harbor Boulevard and at the rear of the building along Peterson

Place, which provides access to the site for pedestrians and bicyclists (specifically mentioned for employees who choose to walk or bike).

The proposed use would not be open to the public and access to the business would be limited to employees and vendors. Although not anticipated, specific conditions of approval will ensure that if parking shortages or other parking-related problems occur, that the business owner or operator will be required to monitor the parking lot and institute appropriate operational measures necessary to minimize or eliminate the problem in a manner deemed appropriate by the Director of Economic and Development Services.

### ***Employee and Vendor Access***

Customers are not allowed within the licensed premise at any time. All areas of the premises would be accessible only to employees and vendors with the proper security credentials. Access to the proposed establishment includes entering the licensed premise through the main entrance doors that lead directly into the check-in lobby. An employee would verify the vendor's identity and age before allowing them to enter the suite. After a vendor has concluded their business, they must leave the premise. As further conditioned, security cameras would monitor the area at all times to ensure that employees and vendors are following regulations. All other back-of-house areas would be accessible only to employees with the proper security credentials.

During business hours, delivery and vendor vehicles would use the loading/unloading area proposed at the front of the existing building. The applicant is proposing a maximum of two-delivery vehicles with no more than two vehicles in the loading/unloading area at a given time. When loading/unloading vehicles, delivery employees would enter/exit through the access-controlled door, and vendors would only be allowed to enter the premise while accompanied by an employee. All delivery loading and unloading will occur under camera surveillance. All orders received for home delivery will be "tracked and traced," including vehicles used for such deliveries. All delivery activities would be in compliance with State and City requirements per the required conditions of approval. As conditioned, the access-controlled doors, path of travel, and vehicle loading/unloading area would be under camera surveillance at all times. Customers would place orders via on-line or by phone. As conditioned, vehicles for delivery and distribution will be installed with secure storage areas within the vehicle for cannabis products. In addition and as also conditioned, all transfer of cannabis products from the licensed premises to the delivery/distribution vehicles will be within a secured container.

### ***Conformance with the City of Costa Mesa General Plan***

The Costa Mesa General Plan establishes the long-range planning and policy direction that guides change and preserves the qualities that define the community. The 2015-2035 General Plan sets forth the vision for Costa Mesa. This vision focuses on protecting and enhancing Costa Mesa's diverse residential neighborhoods, accommodating an array of businesses that serve both local needs and attract regional and international spending, and providing cultural, educational, social, and recreational amenities that contribute to the quality of life in the community. Over the long term, General Plan

implementation will ensure that development decisions and improvements to public and private infrastructure are consistent with the goals, objectives, and policies contained in this Plan.

The following analysis evaluates the proposed project's consistency with specific policies and objectives of the 2015-2035 General Plan:

1. **Policy LU-1.1:** *Provide for the development of a mix and balance of housing opportunities, commercial goods and services and employment opportunities in consideration of the need of the business and residential segments of the community.*

**Consistency:** The proposed use would provide a new entrepreneurial business in Costa Mesa located within a commercial area as allowed under Measure Q, and would result in new goods and services, and new employment and business ownership opportunities in the community. The use would also occupy an existing retail/office space that has been vacant for several years.

2. **Policy LU-6.15:** *Promote unique and specialized commercial and industrial districts within the City which allow for incubation of new or growing businesses and industries.*

**Consistency:** The proposed use is part of a growing industry and would be based in a location specifically identified for such uses by the City's electorate through Measure Q. Therefore, approval would encourage new businesses and entrepreneurial opportunities in an area of the City identified for such by local voters.

#### **REQUIRED FINDINGS:**

Pursuant to Title 13, Section 13-29(g), Findings, of the Costa Mesa Municipal Code, in order to approve the project, the Planning Commission must find that the evidence presented in the administrative record substantially meets specified findings as follows:

**The proposed development or use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area.** The subject site is located within a commercial zone (C1, Local Business District) where commercial development is specifically allowed to include retail uses. In addition, the property is located on one of the City's primary commercial corridors which is predominantly intended for commercial uses. Pursuant to the CMMC, cannabis retail storefronts and non-storefronts (delivery) are permitted uses in the City's commercial zones and are subject to extensive regulation (as specifically described in this report). These regulations are adopted to prevent land use inconsistencies with adjacent properties. Additionally, the proposed cannabis retail non-storefront use is not open to the public and all retail sales would be conducted via delivery only. No outdoor storage or sales are proposed nor would be allowed and delivery operations would be conditioned to be compliant with applicable local and State laws to minimize potential impacts to surrounding properties. Cannabis products would arrive in State compliant packaging that is sealed and odor resistant,

and remain unopened while on the premises. Further, as conditioned, If cannabis odor is detected within an adjacent suite, outside of the building or off-site/outside of the premises, permanent and/or portable air filtration devices shall be installed to eliminate the detection of odor. Based on the aforementioned, staff does not anticipate that the proposed non-storefront retail cannabis use would be materially detrimental to the adjacent uses that include several multi-tenant commercial centers with a variety of commercial businesses (offices, medical uses, restaurants, beauty parlors, grocery store, automotive dealerships, and other retail and service amenities).

**Granting the conditional use permit will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.** The proposed cannabis non-storefront retail (direct delivery) use would follow safety measures detailed in a professionally prepared security plan. The security plan was evaluated for compliance by the City's cannabis consultant, HdL. Measures designed to maintain safety at the site include, but are not limited to 24-hour video surveillance and security devices which would be installed before operation. In addition, the business employees, including delivery drivers and staff, must pass a live scan background check and obtain an identification badge from the City. The conditions of approval include security measures to ensure that the use would not be materially detrimental to the health, safety and general welfare of the public or be otherwise injurious to property or improvements within the immediate neighborhood.

**Granting the conditional use permit will not allow a use, density or intensity which is not in accordance with the General Plan designation and any applicable specific plan for the property.** The proposed retail use is located within an existing commercial building on a property that has a General Plan land use designation of General Commercial. No additional square footage is proposed and the proposed retail cannabis establishment would replace a previous retail establishment; therefore, approving the CUP would not increase site intensity. As stated in the General Plan Land Use Element, the City's commercial designations "accommodate the full range of commercial activity present and desired in Costa Mesa." The use is consistent with General Plan policies related to providing a mixture of commercial goods, services, and employment opportunities; expanding the City's tax base; and promoting the incubation of unique and specialized businesses.

## **ENVIRONMENTAL DETERMINATION**

The project is categorically exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15301 for the permitting and/or minor alteration of Existing Facilities. This project site contains an existing building and the application does not propose an increase in floor area. The project would result in limited interior and exterior site improvements to adequacy address operation and safety concerns as conditioned. The project is consistent with the applicable General Plan designation and all applicable General Plan policies as well as with applicable zoning designation and regulations. Furthermore, the proposed use would not intensify the site because it is replacing another commercial use. Furthermore, none of the exceptions that bar the application of a

categorical exemption pursuant to CEQA Guidelines Section 15300.2 applies. The Project would not result in a cumulative impact; would not have a significant effect on the environment due to unusual circumstances; would not result in damage to scenic resources; is not located on a hazardous site or location, and would not impact any historic resources.

## **ALTERNATIVES**

The Planning Commission has the following alternatives:

1. **Approve the project.** The Planning Commission may approve the project as proposed, subject to the conditions outlined in the attached Resolution.
2. **Approve the project with modifications.** The Planning Commission may suggest specific changes that are necessary to alleviate concerns. If any of the additional requested changes are substantial, the item should be continued to a future meeting to allow a redesign and/or additional analysis. In the event of significant modifications to the proposal, staff will return with a revised Resolution incorporating new findings and/or conditions.
3. **Deny the project.** If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission must deny the application, provide facts in support of denial, and direct staff to incorporate the findings for denial into a Resolution for subsequent Planning Commission review/approval. If the project is denied, the applicant could not submit substantially the same type of application for at least six months.

## **LEGAL REVIEW**

The draft Resolution and this report have been approved as to form by the City Attorney's Office.

## **PUBLIC NOTICE**

Pursuant to Title 13, Section 13-29(d), of the Costa Mesa Municipal Code, 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 the date this report was drafted, no written public comments have been received. Any public comments received prior to the Planning Commission meeting will be forwarded separately to the Planning Commission.

### **CONCLUSION**

The proposed project is a non-storefront retail cannabis (direct delivery) business at an existing developed commercial property that is located on one of the City's commercial corridors and meets separation requirements established in CMMC 13-200.93(e). Staff and the City's cannabis consultant completed the Pre-Application Determination, Business Plan and Security Plan evaluations, owner background checks, and thoroughly reviewed the CUP materials. If approved, the operation would be required to comply with all conditions of approval and extensive City and State regulations.

As proposed and conditioned, the use would be consistent with other commercial uses in the C1 zone (including the previous professional office use), the Zoning Code, and the City's General Plan. The required findings for the CUP can be made, as described above, and therefore, staff recommends approval of Planning Application 22-42 subject to the conditions of approval.