



# **PLANNING COMMISSION AGENDA REPORT**

MEETING DATE: MARCH 27, 2023

ITEM NUMBER: PH-2

**SUBJECT: PLANNING APPLICATION 21-37 FOR A RETAIL CANNABIS  
STOREFRONT BUSINESS WITH DELIVERY LOCATED AT 2146  
NEWPORT BOULEVARD, UNIT C AND D (OTC VENTURA LLC)**

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

**PRESENTATION BY: CHRIS YEAGER, ASSOCIATE 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; and
2. Approve Planning Application 21-37, subject to conditions of approval.

## **APPLICANT OR AUTHORIZED AGENT**

The applicant/authorized agent is Sean Maddocks, on behalf of the property owner, 2146 Newport Blvd LLC.

## **PLANNING APPLICATION SUMMARY**

Location:	2146 Newport Boulevard, Unit C and D	Application Number:	PA-21-37
Request:	Planning Application 21-37 is for a Conditional Use Permit to operate a retail cannabis storefront and delivery business.		

### **SUBJECT PROPERTY:**

### **SURROUNDING PROPERTY:**

Zone:	C1 (Local Business District)	North:	C1 (Local Business District)
General Plan:	Commercial Residential	South:	C1 (Local Business District)
Lot Dimensions:	170' x 149' (Irregularly shaped)	East:	C1 (Local Business District)
Lot Area:	23,958 sq. ft.	West:	State Route 55
Existing Development:	The property is developed with an existing 6,014 sq. ft. one-story multi-tenant commercial building.		

## **DEVELOPMENT STANDARDS COMPARISON**

Development Standard	Required/Allowed C1 Zone	Provided/Proposed
Minimum Lot Size	12,000 SF	23,958 SF
Minimum Lot Width	60 ft.	170 ft.
Building Height	2 Stories / 30 ft.	1 story / 13 ft.
Setbacks:		
Front	20 FT	18FT 9 IN <sup>3</sup>
Side	15 FT/0 FT	52 FT/0FT
Rear	0 FT	49 FT-3 IN
Parking	27 spaces	27 spaces <sup>1</sup>
Floor area ratio (FAR)	0.20	0.25 <sup>2</sup>
<sup>1</sup> The proposed parking includes 26 parking spaces and one bicycle rack, which is credited as one standard parking space, for a total of 27 spaces.		
<sup>2</sup> The existing FAR is legal non-conforming.		
<sup>3</sup> The existing front setback/landscaped front setback is legal non-conforming and is not proposed to change.		
CEQA Status	Exempt per CEQA Guidelines Section 15301 (Existing Facilities)	
Final Action	Planning Commission	

## **BACKGROUND**

The subject site is an approximately 24,000-square-foot property that is located at 2146 Newport Boulevard. The site is located to the east of the State Route 55 (SR-55) Freeway, between 21<sup>st</sup> Street and 22<sup>nd</sup> Street. The site is zoned Local Business District (C1) and is surrounded by other C1 zoned properties to the north, south, and east and roadways to the west (Newport Boulevard and SR-55). The site has a General Plan Land Use Designation of Commercial-Residential. Residential properties zoned Single Family Residential (R1) are located approximately 32 feet to the northeast of the subject site.

The property directly to the east of the subject site (2150 Newport Boulevard) is zoned C1 and is developed with an existing non-conforming single-family residential structure. The aforementioned structure is known as the “Stationmaster House” and is the oldest home in Costa Mesa, built between 1898 and 1908. The Stationmaster House was moved from its original location at the Santa Ana Train station. The house is eligible for listing on the National Register of Historic Places; however, it is not currently listed on any historic registry.

Existing development on the subject property consists of a one-story, 6,014-square-foot commercial building with four tenant spaces. The site was originally approved through Development Review (DR) No. 78-59. The DR established a 30-foot easement on the north side of the property to allow shared access with the two properties behind the subject site (2148 Newport Boulevard and 2150 Newport Boulevard). The previous occupants of the subject Units (Units C and D) were a construction company office and a martial arts studio, which have been vacant since early 2020. A massage use and an auto detailing retail use occupy the two other existing units (Units A and B) on the property. The proposed cannabis retail establishment would occupy units C and D (2,833 square feet). The adjacent uses in units A and B are not a part of the project and are not proposed to change. There are no open Code Enforcement cases on the subject property.

The subject property is located along one of the City’s primary commercial corridors which includes a variety of commercial uses such as a massage business, mini-storage, auto servicing, multi-tenant residential complex, grocery store, and motels.

The applicant has partnered with an existing cannabis manufacturing and non-storefront retail facility, Ash Capital Inc., in Costa Mesa – which was approved in 2021 under Measure X. Ash Capital Inc. has been operating since 2021. There are no open Code Enforcement cases on this property.

### ***Nonconforming Development***

The existing commercial development is legal nonconforming in terms of the front 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 any new site modifications do not result in greater site nonconformities, and such improvements bring the site into greater conformance with Code requirements.

Improvements would be made to bring this structure into compliance with current building and safety codes; however, and as specifically allowed by the CMMC, the existing site nonconformities can remain pursuant to the City's legal nonconforming provisions. The applicant is proposing to bring the property into closer conformance by providing additional site landscaping throughout the property and by improving parking conditions as discussed below.

### ***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 property located at 3303 Hyland Avenue). Measure X is codified in Titles 9 and 13 of the 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.

### ***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 obtain 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 (by multiple departments and the City's cannabis security consultant);
- 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 visits 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 CUP is approved, the applicant would begin the remaining steps of the CBP process. The applicant must obtain building permits, complete building improvements, demonstrate that all conditions of approval have been satisfied, and that all other requirements of the CMMC have been satisfied. After passing the final City inspection, the CBP would be issued. CBP approval is valid for a two-year period and must be renewed prior to expiration. During the two-year CBP permit periods, the Community Improvement Division (CID), along with other City staff, will conduct site visits to verify the operation complies with all CUP and CBP requirements. Violations identified during these two-year site visits may be grounds for the revocation of the CBP or for non-renewal of a CBP.

After obtaining the CBP, the applicant may apply for and obtain a City Business License. In addition to the CUP, CBP, and City Business License, the applicant must obtain the appropriate licenses 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 21-37 is a request for a CUP to allow a retail/medical cannabis storefront and delivery use within a 2,833-square-foot portion of the existing commercial building at 2146 Newport Boulevard (Units C and D). The affiliated required State license is a Type 10 "storefront retailer" license, which also allows for retail cannabis delivery. The proposed use intends to operate from 9AM to 10PM daily with up to eight employees.

Upon approval of a CUP, CBP, City Business License, and State license(s), the business would be allowed to sell pre-packaged cannabis and pre-packaged cannabis products directly to customers onsite and via delivery directly to offsite customers, subject to conditions of approval and other City and State requirements. Additional application details including, but not limited to, parking, CUP requirements, exterior and interior improvements and operation details are discussed in detail below.

## **ANALYSIS**

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

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. To obtain a CUP, an applicant must show that the proposed use is compatible with the City's applicable zoning and General Plan provisions/policies/findings, and will not be detrimental to public health, safety, and welfare.

The subject site is located within a commercial zone (C1 Local Business District) where commercial development is allowed to include cannabis retail storefronts subject to a conditional use permit. As defined in the CMMC, "this district is intended to meet the local business needs of the community by providing a wide range of goods and services in a variety of locations throughout the City." Pursuant to the CMMC, cannabis retail storefronts are subject to extensive regulation (as extensively 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 specific findings related to neighborhood compatibility, health and safety and land use compatibility. A detailed project analysis regarding CUP findings is provided below in this report.

## **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, with the exception of playgrounds, are measured in a straight line (“as the crow flies”) from the “premises” where the cannabis retail use is to be located to the closest property line of the sensitive use(s). (For playgrounds, the property line is a 30-foot radius from the exterior physical boundaries of the playground equipment area.) Premises is as defined in the State’s Business and Professions Code Section 26001, 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 includes 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.

In June 2022, the State Department of Social Services issued a license for a child daycare facility at 2115 Newport Boulevard (The Crossing Church), which is located northwest of the subject site and across the SR-55 freeway. The Church/daycare property is located approximately 350 feet from the proposed licensed premise and is therefore within the minimum 1,000-foot distance, as specified above. However, the child daycare was not in operation at the time of submission of the proposed project’s completed cannabis business permit application which was accepted as complete in 2021. Therefore, the subject site complies with the required separation from sensitive uses.

## **Exterior Tenant Improvements**

The applicant is proposing minor site and building improvements including the following:

- New building paint;
- Repaving and restriping the existing surface parking lot to comply with the City’s Parking Design Standards;
- Installing a bicycle rack to support multi-modal transportation;
- Installing a new pedestrian path from the parking lot to the public entry door; and
- installing new and updating existing landscaping.

Proposed landscaping improvements include planting 13 new trees in addition to keeping the two existing mature Bradford Pear trees in the front of the property. In addition, a variety of drought tolerant shrubs and groundcover are proposed which would bring the landscaping material into conformance with the CMMC landscape requirements. The applicant has provided a conceptual landscaping plan as part of their CUP plan submittal. A detailed landscaping plan would be reviewed during the Building permit plan check process, as conditioned, should the CUP be approved.

The applicant also proposes to update the site with security lighting, surveillance cameras, and new business signage (signs would be reviewed and permitted separately per the City's sign code requirements). A preliminary lighting plan and photometric study has also been provided. A detailed lighting plan and photometric study will be reviewed during the plan check process, as conditioned.

### ***Interior Tenant Improvements***

The proposed floor plan combines two existing tenant spaces into a single storefront business. The proposed interior improvements include creating an entry lobby, an open retail sales area, constructing demising walls to create a limited access "back-of-house" areas, and the addition of new doors, counters, product cases, lighting, and new finishes. The proposed areas where customers would be allowed include the entry lobby and retail sales area. The proposed "back-of-house" areas include a breakroom, office, security, storage, and dispatch room for the delivery operations. Below is a floor area summary of the proposed 2,833-square-foot tenant space.

**Table 1 – Floor Plan Summary**

<b>Operational Area</b>	<b>Square Feet</b>
Lobby w/ Check-in Area	332
Retail Sales Area	1,493
Storage Room	287
Office	194
Employee Break Room	164
Bathroom	93
Hallways	169
Dispatch	101
Total	2,833 SF

### ***Customer and Employee Access***

Customers would enter and exit the establishment through the lobby located in the front of the building. An employee would verify each customer's age and identification before allowing them to enter the retail sales area. After a customer's transaction is completed, they must leave the premise through the same door. As further conditioned, a security guard would monitor the area at all times to ensure that customers are following regulations. All other areas of the premises would be accessible only to employees with the proper security credentials. Employees would enter and exit the facility through an access-controlled door located at the rear of the building that leads directly into the back-of-house areas.

### ***Vendor Delivery Operations and Access***

All vendor (licensed distributors) and retail delivery activities are proposed and conditioned in compliance with State and City requirements. All vendors will have pre-committed arrival times set by the storefront's operational managers. All vendor and retail delivery vehicles will load and unload at the three designated parking spaces located immediately behind the building (approximately five feet from the vendor/delivery entry/exit door). Vendor employees delivering products for sale would only be allowed to



enter the premise while accompanied by an employee with the proper security credentials. All access-controlled doors, path of travel, and vehicle loading/unloading area would be under camera surveillance at all times. All orders received for delivery will be "tracked and traced" in accordance with State requirements. Additional retail delivery and vendor requirements are specified below.

### ***Storefront/Delivery Operations***

The proposed business is required to comply with the City's adopted retail storefront and non-storefront (delivery) operational requirements as follows:

- Display State license, CBP, and City business license in a conspicuous building location;
- Hours of operations are limited to 9:00 AM to 10:00 PM daily;
- Shipments of cannabis goods may only be accepted during regular business hours;
- Cannabis inventory shall be secured using a lockable storage system during non-business hours;
- At least one licensed security guard shall be on premises 24-hours a day;
- The premises and the vicinity must be monitored by security and/or other staff to ensure that patrons immediately leave and do not consume cannabis onsite or within close proximity. The CMMC prohibits the consumption of cannabis or cannabis products in public areas; cannabis consumption is limited to non-public areas, such as within a private residence. State law further prohibits cannabis consumption and open container possession within 1,000 feet of sensitive uses and while riding in or driving a vehicle;
- There must be continuous video monitoring and recording of the interior and exterior of the premises;
- Adequate security lighting shall be provided and shall be designed to prevent offsite light spill;
- Onsite sales of alcohol or tobacco products and on-site consumption of alcohol, cannabis, and tobacco products is prohibited;
- No one under the age of 21 is allowed to enter the premises. If the business holds a retail medical cannabis license (M-license) issued by the State, persons over the age of 18 may be allowed with the proper medical approvals i.e. physician's recommendation or medical card pursuant to CMMC Section 9-495(h)(6);
- Prior to employment, all prospective employees must successfully pass a background check conducted by the City, and the employee must obtain a City issued identification badge;
- Customers are only granted access to the retail area after their age and identity has been confirmed by an employee;
- Each transaction involving the exchange of cannabis goods between the business and consumer shall include the following information:
  - Date and time of transaction;
  - Name and employee number/identification of the employee who processed the sale;

- List of all cannabis goods purchased including quantity; and
  - Total transaction amount paid.
- There must be video surveillance of the point-of-sale area and where cannabis goods are displayed and/or stored;
- Cannabis products shall not be visible from the exterior of the building;
- Free samples of cannabis goods are prohibited;
- When receiving new inventory from licensed distributors, employees will verify the distributor's identity and license prior to allowing them to enter the facility through an access-controlled door. After distributor's credentials have been confirmed, an employee will escort the distributor to the appropriate interior location and remain with them throughout the process;
- Cannabis goods to be sold at this establishment (either storefront or delivery) must be obtained by a licensed cannabis distributor and have passed laboratory testing;
- Cannabis product packaging must be labeled with required test results and batch number;
- Packaging containing cannabis goods shall be tamper and child-resistant; if packaging contains multiple servings, the package must also be re-sealable;
- When processing orders for cannabis delivery, employees will collect the pre-packaged materials, load products into a secured container and transport the containers to delivery vehicles outside the building. Video surveillance cameras will be installed with direct views of the path of travel and loading and unloading area. All loading and unloading of delivery vehicles will be monitored by the required security guard;
- Cannabis deliveries must be made in-person by an employee of the licensed retailer. An independent contractor, third-party courier service, or an individual employed through a staffing agency would not be considered employed by the licensed retailer;
- The applicant shall maintain proof of vehicle insurance for any and all vehicles being used to deliver cannabis goods;
- During delivery, the employee shall maintain a physical or electronic copy of the delivery request and shall make it available upon request by the licensing authority and law enforcement officers;
- A delivery employee shall not leave the State of California while possessing cannabis products and while performing their duties for the cannabis retailer;
- The 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;
- Any delivery method shall be made in compliance with State law, as amended, including use of a vehicle that has a dedicated global positioning system (GPS) device for identifying the location of the vehicle (cell phones and tablets are insufficient);
- Signs, decals or any other form of advertisement on the delivery vehicles are prohibited;
- Deliveries must be made to a physical address that is not on publicly owned land and cannot be a school, a day care, homeless shelter, or a youth center; and

- A cannabis 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.

### ***Business Plan***

The applicant has submitted a detailed business plan that was evaluated by the City's cannabis consultant (HdL). The business plan describes 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 the proposed retail/delivery operations.

### ***Security Plan***

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

- At least one security guard will be on-site 24-hours a day;
- All employees must pass a "Live Scan" background check;
- City-issued identification badges are required for employees;
- An inventory control system shall be maintained;
- Exterior and interior surveillance cameras shall be monitored and professionally installed;
- An alarm system shall be professionally installed, maintained, and monitored;
- Surveillance footage must be maintained for a minimum of 90 days;
- Cash, cannabis, and cannabis products shall be kept in secured storage areas;
- Sensors shall be installed that detect entry and exit from all secured areas;
- Security lighting (interior and shielded exterior) shall be installed;
- Emergency power supply shall be installed;
- Employees shall be trained for use with any/all emergency equipment;
- Delivery drivers shall be trained on delivery safety protocols;
- Employees and vendors will be trained regarding cash and product transportation protocol;
- Visitor/customer specific security measures shall be required;
- All facility entry and exit points and locations where cash or cannabis products are handled or stored shall be under camera surveillance;
- The applicant shall submit a list of all vehicles to be used for retail delivery purposes to the Costa Mesa Police Department. 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; and

- 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.

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

The subject property was developed with 26 onsite parking spaces provided in a surface parking lot that is shared between all commercial tenants. The parking lot has been modified since the original approval to include unpermitted tandem parking, and parking within an access easement. The project proposes to remove the unpermitted parking lot modifications, and to bring the parking lot more into conformance with City parking standards. The majority of the parking spaces are located at the rear of the existing building, and behind an electronic rolling gate. As proposed, the existing vehicle gate would be open during normal business hours, and signs would be displayed indicating that "customer parking is allowed".

Retail cannabis establishments are subject to the same parking ratio as other retail uses in the City (four spaces per 1,000 square feet of gross floor area). The proposed retail cannabis storefront would be replacing two previous businesses that were located in Suites C and D (martial arts studio and construction company office). The construction office requires the same parking/floor area ratio as the proposed cannabis retail storefront; however, the previous martial arts studio requires 10 parking spaces per 1,000 square feet of gross floor area, and therefore the proposed use would result in less parking demand than under existing approved use conditions. The other existing uses located in Suites A and B include a massage establishment (parking is required at six parking spaces per 1,000 square feet of gross floor area) and a car detail retail facility (the retail parking ratio applies).

Pursuant to the Costa Mesa Municipal Code (CMMC) Section 13-6, when there are mixed-uses within a single development that share the same parking facilities, the total requirement for parking is to be determined by the Costa Mesa shared/mixed-use parking analysis procedures, which is adopted by City Council Resolution. The City's shared/mixed-use parking analysis procedure includes inputting specific uses with their respective floor areas into an engineered parking demand spreadsheet, which then calculates the total site parking demand by hours of operation. The analysis considers use demand by land use category, by time period, and most importantly, the analysis provides for peak-period parking demand (by the hour) for the total combined uses. In mixed-use developments, the peak parking demand is then used as the required parking for the development.

The proposed retail center includes multiple land uses and is therefore considered a "mixed-use development." Pursuant to the CMMC, staff has prepared a project site shared/mixed-use parking analysis (see the below Table 2 which summarizes the parking demand conclusions of the analysis).

**Table 2 – Parking Requirements**

<b>Previous/existing -</b> Peak Site Shared Parking Demand	29 spaces
<b>Proposed -</b> Peak Site Shared Parking Demand	27 spaces
Proposed Parking Supply	27 spaces (including one bicycle rack)

As summarized in Table 2 above, the mix of land uses with the proposed retail cannabis storefront would result in two less parking spaces at peak center parking demand, than under previous/existing conditions (this includes credit for one parking space based on the proposed bicycle rack). More importantly, the center's peak parking demand with the proposed cannabis retail storefront (27 spaces) is equivalent to the parking spaces proposed to be provided.

Pursuant to Municipal Code Section 13-99 (Vehicle Standing, Loading and Unloading), vehicle loading and unloading cannot interfere with normal use of on-site parking; therefore and since there is no surplus parking spaces provided, the applicant has proposed to store delivery vehicles off-site and located at the associated Measure X manufacturing facility (Ash Capital Inc.). Further, staff has included proposed Resolution Operational Condition No. 5, which requires "delivery vehicles to be stored off site and may only be present onsite when picking up orders for delivery or when ending the delivery route". Therefore, the delivery vehicles will not interfere with normal use of the on-site parking.

As with many new uses and based on many factors that are difficult to quantify, it is difficult to anticipate exact demand for a new use; however, if parking shortages or other parking-related problems occur, 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 (see "Operational Conditions" of Approval No. 8 in the attached Resolution). Examples of parking demand management techniques include, but are not limited to, offsite parking for employees, reducing operating hours of the business, hiring an employee to monitor parking lot use and assist with customer parking lot circulation, offering customer discounts for delivery services to reduce in person store visits, and incentivizing employee carpooling/cycling/walking.

The property has one point of ingress/egress via the existing commercial driveway located off of Newport Boulevard. As indicated above, the driveway also serves the properties at 2148 Newport Boulevard and 2150 Newport Boulevard. All vehicles must enter and exit the property via the Newport Boulevard driveway. There is an existing public sidewalk at the front of the property along Newport Boulevard which provides access to the site for pedestrians and bicyclists.

## ***Traffic***

The CMMC Section 13-275(e) indicates that any increase in traffic generation by a change of use that is required to obtain a discretionary permit, shall be subject to review by the appropriate reviewing authority, which may impose fees to address increased trip generation. If required, the fee collected is used to fund the City's comprehensive transportation system improvement program. The purpose of the program is to ensure that the City's transportation system has the capacity to accommodate additional trips. The Citywide Traffic Impact Fee related to new or expanding developments is determined using estimated Average Daily Trips (ADT), which is the total number of vehicular trips both in and out of a development generated throughout an average weekday. The Transportation Services Division determined that the appropriate ADT for a cannabis retail establishment is approximately 108 trips per 1,000 square feet based on the Institute of Transportation Engineers (ITE) 11<sup>th</sup> Edition Trip Generation Manual for a pharmacy/drug store with a drive-through. The City's traffic engineering review focuses on net trip increase for both the ADT and peak hour trips. Therefore, the trip generation is estimated for the previous use(s) and is credited (subtracted) from the proposed use to estimate potential changes in trip generation for ADT and peak hour trips. The proposed use would be subject to a traffic impact fee based on net ADT and is estimated to be approximately \$33,934. The fee calculation would be finalized during the building permit plan check process and must be paid prior to building permit issuance.

CMMC Section 13-275(a), specifies that "a traffic impact study shall be required for all development projects estimated by the Public Services Department to generate one hundred (100) or more vehicle trip ends during a peak hour." The highest peak hour trips in either the AM or PM peak is used to estimate the number of vehicular trips generated both in and out of a new or expanded development known as vehicle trip ends during a peak hour. Staff reviewed and determined that the proposed use does not meet the threshold of 100 peak hour trips requiring a traffic study based on the net peak hour trips.

## ***Odor Attenuation***

Cannabis products would arrive in State compliant packaging that is sealed and odor-resistant, and remain unopened while on the premises. However, a minimal amount of cannabis product would be removed from packaging for display purposes and would be placed in display containers. The storefront proposes to use carbon filters throughout the facility. If approved, the use would be conditioned so the operator must replace the air filters at regular intervals, as directed in the manufacturer specifications. Further, if cannabis odor is detected outside of the tenant space and/or off-site, the business owner/operator will be required to institute further operational measures necessary to eliminate off-site odors in a manner deemed appropriate by the Director of Economic and Development Services. Lastly, cannabis products would not be allowed to be disposed of in the exterior trash enclosure.

### ***Proximity to Residential***

As mentioned above, the project site is located approximately 30 feet from a R1-zoned residential neighborhood on Rural Lane. In addition, a legal non-conforming residence is located on the parcel immediately to the rear of the project site (see the below Exhibit 1).

#### **Exhibit 1 – Abutting Legal Non-conforming Historic Residence Located on 2150 Newport Boulevard (C1 Zone)**



The distance between the proposed licensed premise and the abutting 2150 Newport Boulevard residential building is approximately 90 feet; however, the site parking lot is located within several feet of the residential structure. The property is separated from the residential structure by an existing six-foot block wall. The subject site's existing trash enclosure is located immediately abutting the block wall separating the two properties. In addition, the distance between the proposed licensed premise and the closest residence on Rural Lane (2157 Rural Lane) is approximately 240 feet. With the proposed retail cannabis storefront use, the subject property's parking lot is anticipated to be activated by retail customers during later hours than customers of the existing massage and office/retail uses, which could impact the adjacent residences along Rural Lane. To ensure neighborhood compatibility, the proposed project conditions and requirements include the following:

- Business hours are limited from 9AM to 10PM;

- Security lighting is shielded and directed down/away from residential uses and residential zoned properties to prevent light spillover. As conditioned, a photometric study would be required to be submitted during plan check to demonstrate that light levels at the residential property are minimal;
- Post signs within the parking lot to remind customers and vendors to keep noise levels to a minimum (the security guard shall also be responsible for noise enforcement);
- Limit the hours that the business can dispose of waste at the trash enclosure to avoid noise impacts during sensitive hours i.e. dispose of trash between 8AM and 8PM; and
- A staff person or the required 24-hour security guard will monitor the site's parking areas to ensure that customers are quiet, turn off vehicle engines promptly, do not play loud music, and generally do not create excessive neighbor disturbances. The parking lot monitoring will be especially diligent to prevent noise and other neighbor disturbance during morning and evening business hours.

## **GENERAL PLAN CONFORMANCE**

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 both serve 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 project site is located within the General Plan land use designation Commercial-Residential. The designation is intended to be applied to a limited area on the eastside of Newport Boulevard between East 19th Street and Mesa Drive. It is the intent of this land use designation to allow a complementary mix of commercial and residential zoning along Newport Boulevard. The General Plan identifies that the C1 zoning designation is consistent with the Commercial-Residential land use designation. Therefore, the use and development is appropriate for the land use designation.

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

**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 (local voter approved ballot measure), and provides new goods and services and new employment opportunities in the community.

**Objective LU-6B:** *Encourage and facilitate activities that expand the City's revenue base.*

**Consistency:** Retail cannabis uses are expected to generate increased tax revenues in that cannabis sales are subject to a seven-percent local tax on gross receipts. Approval of the proposed cannabis retail storefront would allow business operations that would expand the City's revenue base. This revenue can then be used for community services and infrastructure improvements that serve the community.

**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 the specialized and growing cannabis industry that is limited in the surrounding region. Approval of this CUP would facilitate a new local business opportunity in a specialized and expanding industry.

## **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 storefronts. In addition, the property is located on one of the City's primary commercial corridors which is predominantly intended for commercial uses. Existing uses in this immediate area include a massage establishment, mini-storage, auto servicing, a multi-tenant residential development, a grocery store, and motels. Pursuant to the CMMC, cannabis retail storefronts are conditionally permitted uses in the City's commercial zones and are subject to extensive regulation (as specifically described in this report). The proposed cannabis retail storefront use is not located within 1,000 feet of a K-12 school, playground, or homeless shelter, or within 600 feet of a youth center. Although the subject property is located within 1,000 feet of a licensed child daycare (which was licensed in 2022), the cannabis business permit application was deemed complete by the City in 2021 prior to the operation of the child daycare facility. Furthermore, the premise is located approximately 350 feet away from the

daycare property and is separated by SR-55 with no direct pedestrian connections. The walking distance from the daycare facility to the proposed use is approximately 1,500 feet. Therefore, there is no conflict for the public health, safety, or welfare for the existing daycare due to the separation created by SR-55. No outdoor storage or sales are proposed nor would be allowed. The storefront business would operate indoors (underroof) and operations would be conditioned to be compliant with applicable local and State laws as well as to minimize potential impacts. Staff does not anticipate that the proposed retail cannabis use would be materially detrimental to the adjacent commercial uses.

The proposed use would also not be materially detrimental to the surrounding residences because the project would include features to ensure neighborhood compatibility such as: shielding security lighting down and away from the residential zoned properties to prevent potential lighting impacts, posting signs within the parking lot to remind customers and vendors to keep noise levels to a minimum, and having an employee monitor the parking lot to ensure that customers do not create neighbor disturbances. The storefront business would also include odor control measures as described in this report to minimize any odor impacts to the residences. As proposed and conditioned, the retail cannabis use would be compatible with other properties within the area, and in compliance with local and State requirements.

- *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 retail storefront with delivery 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, at least one security guard would be onsite at all times and security devices shall be installed before operation. Examples of security devices include window and door alarms, motion-detectors, limited access areas, and a monitored video surveillance system covering all exterior entrances, exits, exterior loading and unloading, and all interior limited access spaces. In addition, the business employees, including delivery drivers, dispatchers, and part-time staff, must pass a live scan background check and obtain an identification badge from the City. The City and State requirements are designed to ensure that the proposed 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 property has a General Plan land use designation of Commercial-Residential. It is the intent of this land use designation to allow a complementary mix of commercial and residential zoning along Newport Boulevard and to ensure adequate buffering between the residential and non-residential properties. The proposed project includes conditions to ensure neighborhood compatibility with the adjacent residential zoned properties. Furthermore, no additional square footage is proposed, therefore, the proposed use would not increase building intensity. As stated in the General Plan Land Use Element, the City's commercial land use designations "accommodate a 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 the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, for the permitting and/or minor alteration of Existing Facilities, involving negligible or no expansion of the existing or prior use. This project site contains an existing commercial building that has been used continuously for commercial activities including retail. The application does not propose an increase in commercial floor area or otherwise expand the prior commercial use. The project is consistent with the applicable General Plan land use designation and policies as well as with the applicable zoning designation and regulations. Furthermore, none of the exceptions that bar the application of a categorical exemption pursuant to CEQA Guidelines Section 15300.2 applies. Specifically, 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.

Although the project site is located in close proximity to the "Stationmaster House", which is eligible for listing on the National Register, the historic house is located off-site with an existing concrete block wall that divides the historic house from the existing proposed use paved parking lot, and therefore no impacts to the historic building or its historical context from the operation of the proposed retail cannabis use and the minor site improvements are anticipated.

## **ALTERNATIVES**

The Planning Commission has the following alternatives:

1. Approve the project. The Planning Commission may approve the project as proposed, subject to the standard 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 hearing should be continued to a future meeting to allow a redesign 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 into a Resolution for denial. If the project is denied, the applicant could not submit substantially the same type of application for 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 circulated, no public comments have been received. Any public comments received prior to the March 27, 2023 Planning Commission meeting will be provided separately.

## **CONCLUSION**

The proposed project is a retail cannabis storefront business with delivery at a developed commercial property that is located on one of the City's primary commercial corridors. The location 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.

If the Planning Commission approves the project, the applicant would next obtain building permits, complete tenant improvements, and pass City inspections prior to

obtaining a CBP and City Business License. The CBP is valid for two years and must be continuously renewed, including inspections, prior to expiration. During each two-year CBP period, the Community Improvement Division, along with other City staff, will conduct site inspections to verify that the operation complies with CUP and CBP requirements. Violations identified during site inspections may be grounds for revocation of issued permits or non-renewal of a CBP.

As proposed and conditioned, the use would be consistent with other similar commercial uses in the C1 zone, 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 21-37 subject to conditions of approval.