



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: May 22, 2023

ITEM NUMBER:PH-2

SUBJECT: PLANNING APPLICATION 22-04 FOR A CONDITIONAL USE PERMIT TO OPERATE A RETAIL CANNABIS STOREFRONT BUSINESS WITH DELIVERY LOCATED AT 2790 HARBOR BLVD. SUITES 107, 109, AND 115 (FROM THE EARTH)

**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 22-04, subject to conditions of approval.

APPLICANT OR AUTHORIZED AGENT

The applicant/authorized agent is Dan Zaharoni, on behalf of the property owner, Tri-Harmony Properties, LLC.

PLANNING APPLICATION SUMMARY

Location:	2790 Harbor Blvd. Ste. 107, 109, and 115	Application Number(s):	PA-22-04
Request:	Planning Application 22-04 is for a Conditional Use Permit to operate a retail cannabis storefront business with delivery.		

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:	142 x 249 SF	East:	R3 (Multiple-Family Residential District)
Lot Area:	39,204 SF	West:	C2 (General Business District)
Existing Development:	The property is developed with an existing 24,603-square-foot, three-story multi-tenant commercial building.		

DEVELOPMENT STANDARDS COMPARISON

Development Standard	Required/Allowed C1 Zone Dev. Standard	Proposed/Provided
Minimum Lot Size	12,000 SF	39,204 SF
Minimum Lot Width	60 ft.	142 ft.
Building Height	2 Stories / 30 ft.	3 story / 52 ft. ²
Setbacks:		
Front	20 ft.	13 ft. ²
Side	0ft. /15 ft.	7.5 ft. / 18ft.
Rear (abutting a public street)	15 ft.	120 ft.
Parking	98 spaces	49 onsite spaces 247 spaces total ^{1, 2}
<p>1. The subject property includes 49 parking spaces plus one proposed bike rack for a total of 50 recognized parking spaces and has a shared parking agreement with four adjacent properties for a total of 247 existing spaces.</p> <p>2. Existing conditions are legal nonconforming and further described below in the "Nonconforming Development" section of the report.</p>		
CEQA Status	Exempt per CEQA Guidelines Section 15301 (Existing Facilities)	
Final Action	Planning Commission	

BACKGROUND

The applicant is requesting Planning Commission approval of a new cannabis retail store, with delivery, to be located at 2790 Harbor Boulevard. The proposed cannabis storefront, "From the Earth", would occupy three contiguous first floor suites totaling 2,157 square feet (Suites 107, 109, and 115). The combined suites have window frontage on both Harbor Boulevard and Adams Avenue. Two of the three suites are currently vacant (previously occupied by a men's clothing store) and suite 115 is currently occupied by a hair salon. The property is bounded by Harbor Boulevard to the west, Adams Avenue to the north, and Peterson Place to the east. The site is zoned C1 (Local Business District) and is surrounded by other commercially-zoned properties (C1 and C2, General Business District) as well as a residentially-zoned property across Peterson Place (R3- Multi-Family Residential High Density and R3 - Multiple Family Residential District). The site has a General Plan Land Use Designation of General Commercial.

The property was originally developed in the mid-1960s. Existing development on the subject property consists of a 24,603-square-foot, three-story multi-tenant commercial building. Surface parking lots are shared among the commercially zoned properties at 2706, 2710, 2730, 2750, and 2790 (subject site) Harbor Boulevard (explained further below). Vehicular access is provided to these properties by multiple driveways, including two along Harbor Boulevard, one along Adams Avenue, and three along Peterson Place. The property is located on two of the City's primary commercial corridors and the surrounding uses predominantly include multi-tenant commercial centers. Existing businesses in these commercial centers consist of a variety of restaurants, retail, commercial services, medical offices, and general offices. The property also abuts (across Peterson Place) an existing R3 (Multiple-Family Residential District) apartment development, Harbor at Mesa Verde, which has over 300 housing units.

There are no open Code Enforcement cases on this property; however, staff is aware of several unpermitted advertisements/banners at this location and is now working with the applicant and the property owner to resolve the unpermitted sign conditions.

Nonconforming Development

The existing development is legal nonconforming in terms of front setback, building height, landscaping, and parking, 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.

No additional square footage is proposed. Improvements would be made to bring the subject suites 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.

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.

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 cannabis 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;
- 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 process. 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 22-04 is a request for a CUP to allow a retail cannabis use with delivery within a 2,157-square-foot lease area within a multi-tenant commercial building located at 2790 Harbor Boulevard. The affiliated State license is a Type 10 “storefront retailer” which also allows retail delivery. 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 onsite, and via delivery to private addresses, subject to conditions of approval and other City and State requirements.

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, 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 specifically 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 and non-storefronts are subject to extensive regulation (as specifically described in this report) which 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. The 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 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) (with the exception of playgrounds),. (For playgrounds, the property line is defined as 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 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.

Exterior Tenant Improvements

The applicant proposes to update the building façade with new windows and doors. Other proposed exterior improvements include:

- Restriping the surface parking lot to comply with the City’s Parking Design Standards;
- Adding a bicycle rack to encourage multi-modal transportation;
- Updating the trash enclosure;
- Installation of new surveillance cameras and shielded security lighting. A lighting/photometric plan will be reviewed during the building plan check process, as conditioned.
- New business signs. Proposed business signs would be reviewed and permitted separately per the City’s sign code requirements. Pursuant to Condition of Approval No. 7 (Prior to Issuance of Building Permits), business signage shall not include references to cannabis, whether in words or symbols.

Interior Tenant Improvements

The proposed interior improvements involve demolishing walls that previously separated two of the suites and construction of new demising walls to create rooms specifically for “back-of-house” areas including a kitchenette (employee break room), storage, and office. The proposed retail sales area is an open floor plan including a check-in/lobby area located towards the entrance along Harbor Boulevard. The service area is where in-store sales take place. Below is a floor area summary of the 2,157-square-foot tenant space.

Table 1 – Floor Plan Summary

Operational Area	Square Feet
Reception and Retail Sales Area	1,170
Service Area	278
Kitchenette	154
Storage	302
Office	253
Total	2,157

Customer and Employee Access

Customer access is limited to the reception and retail sales area. Customer circulation into the proposed establishment includes entering the licensed premise through an entrance located on the Harbor Boulevard frontage. A greeter employee would verify the customer's identity and age before allowing the customer to enter the retail sales area. After a customer's identity and age is verified and their transaction is completed, they must leave the premise through a separate exit door on the Harbor Boulevard frontage. 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 through the employee-only access-controlled door that connects to the interior corridor.

Delivery Operations and Vendor Access

During business hours, delivery and vendor vehicles would use a designated employee/vendor parking space proposed toward the rear of the building. The distance from this parking space to the access-controlled door is approximately 80 feet. An existing pedestrian path connects the parking space to a common interior corridor that provides interior access to several of the ground floor suites and elevator/stair access to the upper floors of the building. When loading/unloading vehicles, delivery employees would enter the building through the corridor double doors closest to the parking space and then enter the licensed premise through the access-controlled door. Vendors can only use the limited access door and be present in the limited access areas while accompanied by an employee with the property security credential. As conditioned, the access-controlled doors, path of travel, and loading/unloading areas would be under camera surveillance at all times, and cannabis products must be transported in secured containers between the licensed premise and delivery/distribution vehicles.

Storefront/Delivery Operations

The proposed business is required to comply with retail storefront and operational conditions/requirements as follows:

- Display State license, CBP, and City business license in a conspicuous building location;
- Hours of onsite and delivery operations are limited to 9:00 AM to 9:00 PM daily (applicant proposed);
- Shipments of cannabis goods may only be accepted between the hours of 7:00 AM to 10:00 PM;
- 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 shipping and receiving area 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 load 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 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 the proposed retail 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 required for the proposed cannabis retail establishment:

- At least one security guard will be on-site 24-hours a day;
- All employees, including drivers, 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 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.
- 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; and
- The business operator shall ensure that all delivery 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.

Parking and Circulation

The subject property is developed with 49 parking spaces located in a surface parking lot. The operator proposes to add a bicycle rack along the Harbor Boulevard building frontage, for a credit of one parking stall, and to encourage multimodal transportation. With the bike rack credit, a total of 50 parking spaces would be provided on site. In addition, the subject property shares a common parking lot with several adjacent properties (2706, 2710, 2730 and 2750 Harbor Boulevard). With the parking provided on the subject property (including the credit for the proposed bike rack) and including the adjacent properties' parking spaces, a total of 248 vehicle parking spaces are available to the proposed use through a shared parking agreement (see the below Image 1). A recorded ingress/egress and parking agreement has been in place since 1968. As previously indicated in the "Background" section of this report, access to the site is provided by multiple existing shared driveways along Adams Avenue, Harbor Boulevard, and Peterson Place. Pedestrian and cyclist access to the site is provided by existing public sidewalk along Harbor Boulevard, Adams Avenue, and Peterson Place. The common parking area, as indicated below in Image 1, is available to all employees and customers for the properties identified in the red rectangle.

Image 1 – Aerial View of Shared Parking



Retail cannabis uses are subject to the same parking ratio requirement as other retail establishments in the City (four spaces per 1,000 square feet of gross floor area). However, 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 determined by the Costa Mesa shared parking analysis procedures which is adopted by City Council Resolution. The analysis considers parking demand by use type, floor area, and by time period (peak hourly demand). The proposed site and the adjacent sites that share a common parking facility include a variety of different land uses and is therefore considered a "mixed-use development."

Utilizing the City's shared parking method to analyze the parking demand based on all uses (including the uses located in the adjacent properties that share the common

parking facility), during all hours of the weekdays and weekends, the peak weekday parking demand is 300 parking spaces occurring between the hours of noon and 4 PM, which exceeds the available parking on site by 53 parking spaces. The parking demand for all other hours of the weekday (6 AM to 11AM and 5 PM to midnight) as well as the weekend do not exceed the existing 247 parking spaces onsite. However, the CMMC Title 13, Chapter X, Table 13-304, allows legal non-conforming parking to continue so long as the development will not be made more nonconforming. The proposed cannabis retail store will replace existing retail floor area (a men's clothing store and a beauty salon) without intensification or additional floor area; therefore, the proposed project satisfies the CMMC parking requirements.

To further investigate the combined properties parking demand, staff has visited the site on numerous occasions for the last several months and viewed the actual parking demand, including during the weekday period between the hours of noon and 4 PM. During the aforementioned staff visits, staff has continuously witnessed a surplus of available parking ranging from 25 to 45 percent of parking spaces available. Furthermore, staff visited the site after the recent grand opening of "Stiiizy" (a new cannabis retail store located at 2710 Harbor Boulevard that also shares the subject common parking facility) during the weekday hours of noon and 4 PM, and the parking spaces throughout the shared parking lot were more than 25 percent available.

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. 7 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, encouraging delivery services to reduce in person store visits, and incentivizing employee carpooling/cycling/walking.

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 and expanding developments is determined using estimated Average Daily Trips (ADT), which is the combined 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) 11th Edition Trip Generation Manual for a pharmacy/drug store with 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/existing 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. The estimated traffic impact fee is approximately \$26,343. 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 Works 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 proposed commercial HVAC system would utilize filtration systems to completely filter the air within the suites. As conditioned, the operator must replace the air filters at regular intervals, as directed in the manufacturer specifications. Further, as conditioned, if cannabis odor is detected outside of the suites, building 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 are not allowed to be disposed of in the exterior trash area.

Proximity to Residential

The subject property is located across Peterson Place from an existing residentially zoned property. The proposed licensed premise is approximately 270 feet from the nearest residential building. The applicant has conducted outreach to the surrounding properties including the residential community. To ensure neighborhood compatibility, proposed project conditions and requirements include the following:

- Business hours are proposed by the applicant from 9 AM to 9 PM;
- Security lighting would be shielded. As conditioned, a photometric study would be required to be submitted during plan check to demonstrate that light levels at the property lines 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 the time between 8 AM and 8 PM; 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 for the next two decades. 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 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, 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 with delivery 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.

Policy LU-3.1: *Protect existing stabilized residential neighborhoods, including mobile home parks (and manufactured housing parks), from the encroachment of incompatible or potentially disruptive land uses and/or activities.*

Consistency: Like other properties along this block of Harbor Boulevard, the subject property is located near existing residential development (across Peterson Place). As conditioned, the proposed use would be required to control odor, noise, limit trash enclosure access, have limited hours of operation, and have a security guard on site at all times to ensure compatibility between uses.

Policy N-2.9: *Limit hours and/or attenuation of commercial/entertainment operations adjacent to resident and other noise sensitive uses in order to minimize excessive noise to these receptors.*

Consistency: The nearest residential building is approximately 270 feet from the proposed storefront. Conditions of approval requiring 24-hour onsite security, parking lot monitoring, signage regarding noise, limiting the hours of operation from 9:00 AM to 9:00 PM, and limiting the hours the exterior trash enclosure can be used to 8:00 AM and 8:00 PM are intended to ensure compatibility between the proposed use and residential uses.

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. In addition, the property is located on two of the City's primary commercial corridors which are predominantly intended for commercial uses. 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). These regulations are adopted to prevent land use inconsistencies with adjacent properties. Additionally, the proposed cannabis retail storefront use is not located within 1,000 feet of a K-12 school, playground, licensed child daycare, or homeless shelter, or within 600 feet of a youth center. All retail sales would take place underroof, no outdoor storage or sales are proposed nor would be allowed, 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 uses that include a variety of businesses such as restaurants, pharmacy, massage and beauty salons, medical and general offices, yoga/dance studio, and automotive rental.

Residential development is located approximately 270 feet to the east of the proposed licensed premise, across Peterson Place. To ensure neighborhood compatibility, especially with residential uses, proposed project conditions and requirements have been included such as posting signs to remind customers to keep noise levels to a minimum, shielding security lighting, limiting exterior trash enclosure use to the hours between 8:00 AM and 8:00 PM, requiring staff to periodically monitor the parking lot in addition to the security guard, and limiting storefront and delivery operations to the hours between 9:00 AM and 9:00 PM. 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 use 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 storefront entrances, exits, interior limited access spaces, and interior and exterior product paths of travel. In addition, the business employees, including delivery drivers and part-time staff, must pass a live scan background check and obtain an identification badge from the City. The conditions of approval include, but are not limited to, the aforementioned 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 multi-tenant commercial building on a property that has a General Plan land use classification of "General Commercial." No additional square footage is proposed and the proposed retail project would replace existing retail floor area; therefore, approving the CUP would not increase site intensity. As stated in the General Plan Land Use Element, the City's commercial 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 California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 for the permitting and/or minor alteration of Existing Facilities (Class 1). This project site contains an existing commercial building that has been used for commercial activities and the application does not propose an increase in floor area. The project is consistent with the applicable General Plan land use designation and policies as well as with the applicable zoning designation and regulations. Thus, the proposed use does not intensify the area in terms of Floor Area Ratio (FAR) or generate increased traffic that was not already anticipated for this area pursuant to the General Plan. The project also complies with all applicable business operational standards of Title 9 and 13 of the CMMC. 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.

ALTERNATIVES

The Planning Commission can consider the following decision 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 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 written public comments have been received. Any public comments received prior to the May 22, 2023 Planning Commission meeting will be provided separately.

CONCLUSION

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

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.

As proposed and conditioned, the use would be consistent with other 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 22-04 subject to conditions of approval.