

RESOLUTION NO. PC-2023-31

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF COSTA MESA, CALIFORNIA DENYING PLANNING
APPLICATION 22-22 FOR A STOREFRONT RETAIL
CANNABIS BUSINESS (EVLV HERBAL) WITH DELIVERY IN
THE C2 ZONE AT 1858 NEWPORT BOULEVARD**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA FINDS AND DECLARES AS FOLLOWS:

WHEREAS, in November 2020, the Costa Mesa voters approved Measure Q; which allows for storefront and non-storefront retail cannabis uses on commercially zoned properties meeting specific location requirements, and non-storefront retail cannabis uses on Industrial Park (MP) and Planned Development Industrial (PDI) zoned properties;

WHEREAS, on June 15, 2021, the City Council adopted Ordinance No. 21-08 and No. 21-09 to amend Titles 9 and 13 of the Costa Mesa Municipal Code (CMMC) to establish regulations for cannabis storefront and non-storefront uses;

WHEREAS, Planning Application 22-22 was filed by Mark Adams representing Evlv Herbal and authorized agent for the property owner, 1858 Newport Boulevard Trust, requesting approval of the following:

A Conditional Use Permit to operate a storefront retail and cannabis delivery business within an existing 2,280-square-foot commercial building located at 1858 Newport Boulevard. The business would sell pre-packaged cannabis and pre-packaged cannabis products directly to customers onsite and through delivery, subject to conditions of approval and other City and State requirements;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on December 11, 2023 with all persons having the opportunity to speak for and against the proposal;

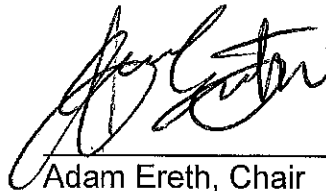
WHEREAS, pursuant to the California Environmental Quality Act (CEQA), the project is exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15301 (Class 1), for Existing Facilities, and Section 15270(a) for projects that a public agency rejects or disapproves; and

WHEREAS, the CEQA categorical exemption for this project reflects the independent judgement of the City of Costa Mesa.

NOW, THEREFORE, based on the evidence in the record and after considering public testimony, the Planning Commission hereby **DENIES** Planning Application 22-22 with respect to the property described above.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the document in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

PASSED AND ADOPTED this 11th day of December, 2023.

A handwritten signature in black ink, appearing to read "Adam Ereth", is written over a horizontal line.

Adam Ereth, Chair
Costa Mesa Planning Commission

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, Scott Drapkin, Secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution No. PC-2023-31 was passed and adopted at a regular meeting of the City of Costa Mesa Planning Commission held on December 11, 2023 by the following votes:

AYES: Ereth, Andrade, Rojas, Viviar

NOES: Toler, Klepack, Zich

ABSENT: None

ABSTAIN: None



Scott Drapkin, Secretary
Costa Mesa Planning Commission

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EXHIBIT A

FINDINGS

- A. Pursuant to CMMC Section 13-29(g), when granting an application for a conditional use permit, the reviewing authority shall find that the evidence presented in the administrative record substantially meets certain required findings. The Applicant failed to meet its' burden to demonstrate that the proposed project would comply with all of the requirements of Section 13-29(g)(2) and therefore the Planning Commission was unable to make the required findings to approve the proposed use for each and every reason set forth herein below:

Finding: *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.*

Facts in Support of Findings for Denial: The proposed use was found to be incompatible with the adjacent land uses and general area and be materially detrimental to other properties within the area in that the project proposes the operation of a cannabis retail storefront to be located adjacent to a cannabis storefront that is currently operating at 1854 Newport Boulevard, and adjacent to another cannabis storefront that was recently approved at 1860 Newport Boulevard. The Planning Commission believed that based on the concentration of the same type of commercial uses to be located within the same general area that the proposed use would conflict with the necessary mix and balance of commercial goods and services in consideration of the needs of the business community, as stipulated by the General Plan (Policy LU-1.1). Additionally, the Planning Commission believed that, based on the proposed concentration of similar uses, the proposed use would not "encourage a mix of land uses that maintain the City's long-term fiscal health (Policy LU-6.1), and would be fiscally materially detrimental to the adjacent commercial district.

Finding: *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.*

Facts in Support of Finding for Denial: The proposed cannabis retail storefront would be materially detrimental to the general welfare of the public and otherwise injurious to property or improvements within the immediate neighborhood in that based on the concentration of the same commercial uses to be located within the same general area that three adjacently located cannabis retail storefronts would result in an imbalanced and non-resilient commercial district.

Finding: *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.*

Facts in Support of Finding for Denial: The General Plan Policy LU-1.1 generally stipulates that development should provide for a mix and balance of commercial goods and services in consideration of the needs of the business community. The proposed cannabis retail storefront would result in a use, density and intensity that is not in conformance with General Plan Policy LU-1.1 in that the project proposes the operation of a cannabis retail storefront to be located adjacent to a cannabis storefront that is currently operating at 1854 Newport Boulevard, and adjacent to another cannabis storefront that was recently approved at 1860 Newport Boulevard.

The Planning Commission believed that based on the proposed concentration of the same type of commercial uses to be located within the same general area that approval of the proposed retail storefront would conflict with the necessary mix and balance of commercial goods and services in consideration of the needs of the business community, as stipulated by the General Plan (Policy LU-1.1). Additionally, the Planning Commission believed that, based on the proposed concentration of similar uses, the proposed use would not “encourage a mix of land uses that maintain the City's long-term fiscal health (Policy LU-6.1).