



REPORT to the MAYOR and MEMBERS of the CITY COUNCIL
From the CITY MANAGER

DATE: August 9, 2022

SUBJECT: RECONSIDERATION OF AN APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF PROJECT 2017-31 (CUP 17-88) (HILLSIDE), A REQUEST FOR A PROPOSED COMMERCIAL BUILDING AND A CONDITIONAL USE PERMIT FOR A PROPOSED STOREFRONT RETAIL MEDICINAL CANNABIS USE AT 7901 HILLSIDE DRIVE

ISSUING DEPARTMENT: Community Development

SUMMARY:

Issues:

1. Should the City Council rescind the decision on February 22, 2022, to honor the appeal and deny the project?
2. Should the City Council uphold the Planning Commission's approval of a proposed commercial building and a conditional use permit for a proposed storefront retail medicinal cannabis use at 7901 Hillside Drive, APN 470-200-27-00 in the C-D-MU (General Commercial / Urban Design Overlay / Mixed Use Overlay) zone, thus denying the appeal?
3. Should the City Council ratify the Design Review Board's approval of the project?

Recommendation:

1. Rescind the City Council's decision on February 22, 2022, to honor the appeal and deny the project.
2. Uphold the Planning Commission's approval of Project 2017-31 (CUP 17-88) based on the findings and subject to conditions set forth in Planning Commission Resolution PC-2021-17 (**Attachment A**), thus denying the appeal (**Attachment C**).
3. Ratify the Design Review Board's approval of the project.

Fiscal Impact:

There would be no impact to the General Fund related to this project. City of La Mesa policy is to recover 100% of the cost of staff time through application processing fees.

City's Strategic Goals:

- Revitalize neighborhoods and corridors

Environmental Review:

This project is categorically exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Sections 15301, 15303, and 15332.

City Council Appeal Hearing

The City Council initially considered an appeal of the Planning Commission's approval of Project 2017-31 (CUP 17-88) on February 8, 2022. The City Council upheld the appeal, thus denying the proposed Conditional Use Permit (CUP). The project applicant filed a petition with the Superior Court of the State of California, San Diego County, seeking judgment and a writ of mandate requiring the City to issue the requested CUP. As per City Council direction, the matter has been brought back to the City Council for reconsideration.

Site and Surrounding Area:

The subject property is located at 7901 Hillside Drive, which is a through-lot that also fronts El Cajon Boulevard. The 5,617 square-foot property slopes downward from Hillside Drive to El Cajon Boulevard with elevations ranging from 560 feet (Hillside Drive) to 538 feet (El Cajon Boulevard) above mean sea level. The property is developed with a single-family residence and a "U" shaped retaining wall that is about 18' tall and tapers down to about two (2) feet tall along the west property line. This wall divides the middle of the property into upper and lower halves. The General Plan designates the property as Mixed Use Urban, and the property is zoned C-D-MU (General Commercial/ Urban Design Overlay/ Mixed Use Overlay).



Surrounding uses include a duplex to the south, a single-family residence to the east, the La Mesa Crossroads shopping center to the north (across El Cajon Boulevard), and an apartment building on the neighboring property to the west. There is an existing dispensary (Cookies CUP

17-95) nearby that will be discussed later in the report. Photos of the project site are provided as **Attachment D**.

Project Description:

The applicant is requesting approval of a CUP to operate a medical marijuana facility in a new, 2,122 square-foot, commercial building. The dispensary would occupy approximately 85% (1,811 square-feet) of the proposed building and would only be accessible via an elevator from Hillside Drive. A yet to be determined retail tenant (311 square-feet) would occupy a second suite that would front on and have direct access to the El Cajon Boulevard pedestrian realm. The existing residential structure would be demolished, and most of the existing retaining walls would be incorporated into the proposed commercial building.

A parking lot, with vehicular and pedestrian access from Hillside Drive, would provide eight required parking spaces that would be covered by a standing seam metal roof carport. A portion of this parking lot would be supported by and located on the proposed commercial building. Customer access from the parking lot to the commercial building would be via the aforementioned elevator. Parking lot lighting would be located on building walls, beneath the carport, and on architectural bollards to help shield lighting from neighboring properties. The parking lot would be surrounded by a four-foot wall, and the driveway would have rolling wrought iron gate. Project plans are provided as **Attachment G**.

The building would be contemporary styled and tailored to maximize use of the relatively small, two-level lot. The El Cajon Boulevard frontage would feature a ground level storefront (non-cannabis) that would occupy about 66 percent of the property street frontage. This suite would provide mostly floor-to-ceiling, matte black, aluminum framed, glass panels. A flat, aluminum canopy would overhang the entrance and project above the public right-of-way. The suite roof would be a medium bronze, standing seam metal roof that fades into the wall upper portion of the building. This stepped building height would help provide a human scale for pedestrians and avoid a boxy-like building appearance. There would be an approximately 39-foot tall tower element that is the elevator shaft that provides access from parking lot.

The Façade would primarily be white stucco siding (Merlex P-100 White), with an accent grey (P-1661 Light Grey) trim color, and an articulated concrete masonry block base. A Color and Materials Board is provided as **Attachment H**.

The project proposes 791 square-feet of landscaped area, including two street trees (Fern Pines) along El Cajon Boulevard and one Chinese Flame tree near Hillside drive. The landscaping would also provide a variety of shrubs and ground cover along street frontages as shown on the landscaping plan.

Separation Criteria:

LMMC 24.23.030 allows the operation of a medical marijuana dispensary in limited areas of the City and provides minimum separation requirements between a dispensary and specified uses to minimize potential adverse impacts on the community, and requires a 1,000-foot separation measured by path of travel between the specified uses and any proposed medical marijuana

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dispensaries. Staff verified that the subject location is within an eligible zone and is not within a 600-foot-radius from any school.

There is an existing medical marijuana dispensary located at 7935 El Cajon Boulevard, approximately 200 feet east of the subject property. However, the proposed floor plan for the project would not allow access to the proposed cannabis retail use from El Cajon Boulevard, but rather would have entry via elevator from the parking area on Hillside Drive above. Because of this, the path of travel between the proposed use and the existing dispensary proceeds through the parking area to Hillside Drive, then west to Guava Avenue, then north to El Cajon Boulevard, and east to the existing dispensary. The path of travel then proceeds across the parking lot and down the elevator to the entry. As shown on the floor plan, the proposed commercial use on El Cajon Boulevard would have access to the elevator through a secured door to provide required accessibility to the accessible parking space in the parking area above. Access to the cannabis use would not be allowed through this secured access. Based on this path of travel, there is no dispensary or any of the other uses specified by in LMMC 24.23.030(a)(1) within a 1,000-foot path of travel from the site as shown in **Attachment E**.

The proposed path of travel passes by the proposed lower floor retail space that includes the secured door to the elevator, through which there is also access to the proposed retail cannabis use. The Planning Commission and City Council on appeal have considered and approved past applications with secured access doors that did not serve as the entry point to the dispensary located less than 1,000 feet from specified sensitive uses. The conditions of approval prohibit any access to the dispensary, both directly through the emergency exit or indirectly through the front commercial suite, to El Cajon Boulevard. Doors controlling this access are required to be alarmed and a security guard must be stationed in the area to control and monitor the access at all times the business is open.

Operational and Security Requirements:

LMMC 24.23.030 also provides operational requirements for medical marijuana dispensaries, which have been incorporated as recommended conditions of the CUP (see **Attachment A**). These include provisions for security measures to be implemented, including, but not limited to:

- Operable cameras;
- A fire and burglar alarm system monitored by an alarm company licensed by the State of California;
- Evidence that a California State Licensed Security Guard has been contracted for the Business at all times that the facility is open;
- A 24-hour, fixed-camera video surveillance and digital storage system in the cloud or other off-site method of recording available for 90 days after recording;
- Prohibition of consultation by medical professionals on site;
- Restriction of hours of operation between 7:00 am and 9:00 pm;
- Activities associated with the business conducted indoors;
- Yards and other open spaces around buildings kept free of waste, litter, junk, or storage of any material; and
- Site lighting provided and maintained.

Landscape Standards:

City Landscaping Standards typically require that 10% of the parking area be landscaped, including interior landscape planters with canopy trees, and five-feet of perimeter landscaping, which would not be provided by this project. The reason is that the code specifies that interior landscaping shall not be required in covered parking areas or on the open top deck of a parking structure. In this case, all the parking spaces are covered and approximately half the parking lot is located on a parking structure; therefore, staff determined that the parking lot landscaping noted above was not required.

Zoning Ordinance Regulations:

The base C Zone is intended to provide areas in which many types of retail businesses, offices, and services can be conducted. Staff has reviewed the project and determined that it complies with zoning ordinance requirements this zone. This includes requirements specific to dispensaries found in LMMC 24.23.030 and development standards for the proposed commercial building regarding parking, landscaping, and building height. The zone building height limit is 46 feet; whereas, the elevator shaft is proposed at approximately 39-feet tall. The zone does not require a building setback. Business signage would be processed separately.

General Plan Consistency:

As specified, the General Plan designates the property as Mixed Use Urban. This designation is found along the City's main corridors in areas identified for potential compact development. The General Plan goal along El Cajon Boulevard is for less auto dependency with a more walkable commercial corridor through pedestrian oriented development. The proposed dispensary is consistent with the intent of the General Plan, as it would introduce uncommon retail goods with anticipated economic benefit for the area, revitalize the property, and improve the 12-foot pedestrian realm with new street trees. Further Goals and Policies of the GP are implemented through the City's Zoning Ordinance.

Required Findings for Conditional Use Permit (CUP) Approval:

Staff has reviewed the application for the CUP for a medical marijuana dispensary and has determined that the project is consistent with the recommended land use and development standards in effect for this site in accordance with the La Mesa Municipal Code and in compliance with Measure U. The project is not requesting, nor does it require, any deviation or variance from the applicable regulations and policy documents. The proposed specific regulatory conditions of approval assure the project's compliance with applicable local, regional, and State codes and rules, and ensure that the project will not be detrimental to the public health, safety and welfare.

Based on the findings for approval of a conditional use permit (LMMC Section 24.02.060) and the analysis in this report, staff has made the following findings in support of the recommendation of approval.

[LMMC 24.02.060(a)]: Incompatibility with other uses in the same vicinity will not result

The project is compatible with other uses in the same vicinity. In accordance with Measure U, retail medical marijuana dispensary use is permitted in the C-D-MU zone with a Conditional Use Permit (CUP). The project has been designed to reduce potential impacts on neighboring uses through implementation of development standards and required operating conditions. Further, the subject property is located in the C Zone which is intended for and permits general commercial, retail sales, and office uses. The retail dispensary business is consistent with the vision established for the commercial area by the applicable land use plan. The proposed project meets the separation requirements of Measure U.

[LMMC 24.02.060(b)]: Issuance of such a conditional use permit would not lead to the creation of a nuisance and would not endanger the public health, safety, or order by:

- (1) Unreasonably increasing pedestrian and/or vehicular traffic in the area in which the premises are located;

The issuance of a CUP would not unreasonably increase pedestrian and/or vehicular traffic in the area. The proposed dispensary is contained almost wholly within an existing commercial building. The proposed project is a retail use that is not expected to generate higher levels of vehicular or pedestrian traffic. A traffic letter prepared by Mizuta Traffic Consulting concluded that the project will not significantly impact traffic operations and did not recommend any mitigation measures.

- (2) Increasing the incidence of disruptive conduct in the area in which the premises are located;

The issuance of a CUP would not unreasonably increase the incidence of disruptive conduct in the area because the proposed project is compliant with Measure U. Proposed project conditions include provisions for security measures to be implemented, including, but not limited to, operable cameras; fire and burglar alarm systems monitored by an alarm company licensed by the State of California; evidence that a California State Licensed Security Guard contracted by the business is present at all times the facility is open; and a 24-hour, fixed-camera video surveillance system. The surveillance system is required to cover every interior area and room, and adjacent perimeter areas, within a minimum of 50 feet. Twenty-four-hour surveillance system access is required by the La Mesa Police Department or other City authorized department.

In addition, conditions of the permit would require that the applicant for the permit proactively address and cure any legitimate loitering complaints, noise complaints, odor complaints, non-compliance issue with the CUP, or non-compliance with other applicable state or local regulations. Failure to operate the business in conformance to the conditions of approval could result in possible suspension or revocation of the permit. It is not anticipated that within such a controlled and conditioned environment, disruptive conduct would occur.

(3) Unreasonably increasing the level of noise in the area in which the premises are located

The issuance of a CUP would not unreasonably increase the level of noise in the area. No increase in noise level is expected from this retail use compared to other commercial uses allowed in the C zone. The proposed medical marijuana dispensary use is an indoor retail use comparable to a pharmacy with the expectation that noise generated by consumer activity should not be significantly different from a use that is more familiar to the general public. The project complies with Measure U and a condition of the permit would require the applicant to proactively address and cure any legitimate noise complaint. Failure to do so could result in possible suspension or revocation of the permit.

[LMMC 24.02.060(c)]: The use is consistent with the General Plan

The General Plan land use designation of the subject property is “Mixed-Use Urban” for which the C-D-MU zone is consistent. While the proposed retail dispensary is mostly surrounded by residential uses, the mixture of residential and commercial uses would be consistent with the Mixed-Use Urban designation. Further by providing improvements within the public right-of-way, improving the area for pedestrian circulation, and creating jobs the project would help achieve goals and the objectives of the General Plan. The project would promote economic growth and employment consistent with Land Use Policy as described throughout the General Plan.

Public Comments

The Planning Department received 16 public comments (**Attachment F**) opposing the project prior to the Planning Commission hearing. The comments primarily expressed concerns regarding reduced quality of life in the surrounding residential neighborhood due to potential for increased crime and traffic in the neighborhood, suitability of the streets to handle commercial traffic, reduced availability of on-street vehicle parking, marijuana odor and usage, and the close proximity of an existing dispensary to the one proposed by this application.

Design Review Board Action:

The Urban Design Overlay (D) Zone requires that new construction and major exterior alterations be reviewed by the City’s Design Review Board (DRB) and City Council for consistency with the City’s Urban Design Program. The project was presented to the DRB on August 9th, 2021. Staff recommended that the DRB approve the project since it substantially conforms to the Urban Design Program, and the site design makes good use of the topographically challenging site. The proposed architectural design would provide a variety of surface planes, forms, textures, and colors. The project would also improve the streetscape by providing two (2) street trees and lighting from an otherwise vacant lot.

The DRB found that the project is consistent with the intent of the Urban Design Program policies and the Mixed Use Overlay Design Guidelines. The DRB recommended two Conditions be added to the project, including: 1) Breaking up mass of the elevator tower through use of signage, architectural definition, or materials; 2) The planting of 36-inch box trees instead of 24-

inch box trees shown on the landscape plans. These Conditions were approved by Planning Commission Resolution No. PC 2021-17 as Conditions numbered 9 and 10.

Planning Commission:

The Planning Commission reviewed the application for the CUP for a Medical Marijuana Dispensary and determined that the project is consistent with the recommended land use and development standards in effect for this site in accordance with the La Mesa Municipal Code. The Planning Commission specifically considered and discussed the proposed path of travel for compliance with the requirements of Measure U. The Planning Commission found the proposed path of travel to be consistent with Measure, and its approval to be consistent with past actions taken on other applications. The permit has been conditioned to ensure that the proposed dispensary would not be detrimental to the public health, safety and welfare. The findings of the Planning Commission and the conditions of approval can be found in attached Resolution PC-2021-17 (Attachment A).

Public Notice of Planning Commission Hearing:

Notice of the Planning Commission hearing to consider the conditional use permit was mailed to surrounding property owners within 300 feet of the subject property on September 2, 2021, and published in The Daily Transcript on September 3, 2021; in accordance with Municipal Code requirements.

APPEAL:

An appeal (**Attachment C**) of the Planning Commission's approval of the project was filed on October 20, 2021 by Dana J. Stevens, Executive Director of CASA (Community Action Service Advocacy), a nonprofit organization, on their behalf after conversations with community members.

The appeal asserts that the Planning Commission's approval of the subject application was erroneous, because:

- It violates the purpose of Chapter 24.23 of the Zoning Ordinance regarding the zoning of dispensaries in such a manner to limit impacts on the City in general and residential neighborhoods in particular. Concerns were expressed regarding the narrowness, poor condition, and abrupt dead end of Hillside Drive and its unsuitability for commercial traffic.
- The proposed location would violate the minimum 1,000-foot path of travel separation between dispensaries because there are three footpaths that would be well under the 1,000-foot path of travel separation required between the proposed and an existing dispensary.
- It violates the purpose and intent of Municipal Code Chapter 6.11.010 to regulate the cultivation, processing, manufacturing, testing, sale, delivery, distribution and transportation of adult-use cannabis and cannabis products in a responsible manner to protect the health, safety, and welfare of the residents of the City of La Mesa. The location poses a danger to residents, pedestrians, and drivers on Hillside Drive and its feeder streets, and the density of cannabis businesses are contrary to health, safety,

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and welfare of the nearby residents.

- It would set a precedent that residential neighborhoods, adjacent to commercial and industrial zones, could face the prospect that their front doors could open to the front doors of businesses that can be open from 7am until 9pm, seven days a week with bright exterior lighting for a business that is dangerous enough to require a licensed security guard on site while operating.

RESPONSE TO APPEAL:

The proposed project complies with all applicable provisions of Measure U and the Municipal Code, and is consistent with the General Plan as discussed in this report and as reflected in the findings of Planning Commission Resolution No. PC 2021-17 approving the project (**Attachment A**).

The project complies with the “Measure U” 1,000-foot separation requirement between dispensaries for reasons detailed in the Separation Criteria section of the report. The well-traveled paths described in the appeal were considered and determined to not meet the definition of “Path of Travel”.

La Mesa Municipal Code Chapter 6.11.010 is not applicable to this project because this application is for a medicinal use regulated by Chapter 24.23, not an adult-use that is regulated by Chapter 6.11. Nevertheless, a traffic study did not find the dispensary would significantly impact traffic operations and did not recommend any mitigation measures.

The approval would not set a land use precedent in the City for residential neighborhoods that abut the back of commercial or industrial zones as asserted in the appeal. Residential front doors facing commercial development is relatively common on streets where the zoning transitions from residential to commercial. Examples of this orientation can be found throughout the City wherever commercial and residential zones are adjacent. Further, the front doors of the residences located directly across Hillside Drive from the subject property do not face Hillside Drive or the proposed dispensary. Municipal Code regulations and project conditions of approval require that lighting be focused on the subject property and shielded from spillover onto adjacent properties.

Environmental Review:

The proposed dispensary and commercial building are categorically exempt from environmental review pursuant to California Environment Quality Act (CEQA) Guidelines: Sections 15301, 15303 and 15332.

- CEQA Guidelines Section 15301 exempts the demolition of small individual structures that includes removal of a single-family residence and accessory structures.
- CEQA Guidelines Section 15303 exempts new construction or conversion of small structures including commercial structures, accessory structures, and water, electrical, gas, and other utility extensions.

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- CEQA Guidelines Section 15332 exempts infill development projects that meet all of the conditions necessary to qualify for the exemption as follow:

- (a) The project is consistent with the applicable general plan designation and policies, as well as with applicable zoning designation and regulations.

The General Plan Land Use designation for the project site is Mixed Use Urban. This designation allows for a mixture of residential and commercial uses along established routes (p. LD-32). The zoning classification for the project site is C-D-MU Zone (General Commercial, Urban Design Overlay, Mixed Use Overlay). The City of La Mesa adopted Measure U, codified as Chapter 24.23 of the La Mesa Municipal Code, specifying Zone C as an appropriate zone for the proposed marijuana cultivation facility. The project is consistent with the general plan and zoning designations and regulations.

- (b) The project occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

The project is located at 7901 Hillside Drive in the City of La Mesa and within the La Mesa General Commercial Zone on a 5,617 square-foot site. The project site is mostly surrounded by existing, developed properties.

- (c) The project site has no value as habitat for endangered, rare or threatened species.

The project site is located between Hillside Drive and El Cajon Boulevard in the City of La Mesa and within a La Mesa identified transit corridor, El Cajon Boulevard. The site is currently developed with a residence. The project site has no value as habitat for endangered, rare or threatened species.

- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

A traffic assessment letter was prepared for the project which concludes that the proposed project will not have a significant impact on traffic. The proposed use of the site will be fully conducted indoors, reducing potential for noise impacts. The project has conditions of approval requiring odor control and air filtration to minimize any potential impacts on air quality. Water for the project will be discharged appropriately into the City of La Mesa sewer system. The project is not expected to result in any significant effects relating to traffic, noise, air quality, or water quality.

- (e) The site can be adequately served by all required utilities and public services.

The project site is an existing residence. All utilities are available. Provision of water service has been verified by the Helix Water District.

The project will change the building occupancy type on the property from a single-family residence to a commercial building that would include a medical marijuana dispensary, on a site

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zoned for such land use, involves new construction of private facilities, landscaping, and public improvements along the property frontage. The project is located where all public services and facilities are available, and the surrounding uses are not environmentally sensitive. There is no evidence that the proposed commercial building and medical marijuana dispensary will result in an environmental impact. None of the exceptions listed in Section 15300.2 apply. Therefore the project complies with the exemption standards established in the CEQA Guidelines.

PUBLIC NOTICE

Notification of the August 9, 2022, City Council public hearing to reconsider the appeal of the Planning Commission's approval of the project was mailed to all property owners within 300 feet of the subject property and interested parties on Friday, July 29, 2022, and published in the San Diego Daily Transcript on Friday, July 29, 2022.

RECOMMENDATION:

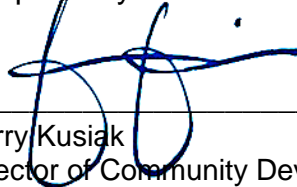
1. Rescind the City Council's decision on February 22, 2022, to honor the appeal and deny the project.
2. Uphold the Planning Commission's approval of Project No. 2017-31 (CUP 17-88) based on the findings and subject to conditions set forth in Planning Commission Resolution PC-2021-17 (**Attachment A**), thus denying the appeal (**Attachment C**).
3. Ratify the Design Review Board's approval of the project.

Reviewed by:



Greg Humora
City Manager

Respectfully submitted by:



Kerry Kusiak
Director of Community Development

Attachments:

- A. Planning Commission Resolution PC 2021-17
- B. Design Review Board Certification of Action
- C. Appeal and documentation filed by CASA
- D. Site photos
- E. Path of travel separation exhibit
- F. Public Comments for Planning Commission
- G. Project Plans
- H. Color and Materials Board