



**CITY OF NEWPORT BEACH
COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION ACTION REPORT**

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION
FROM: Seimone Jurjis, Community Development Director
SUBJECT: Report of actions taken by the Zoning Administrator and/or Planning Division staff for the week ending April 17, 2020.

**ZONING ADMINISTRATOR ACTIONS
APRIL 16, 2020**

- Item 1: 716 Heliotrope, LLC Condominiums Tentative Parcel Map No. NP2019-017 (PA2019-262)
Site Location: 716 Heliotrope Avenue
Action: Approved by Resolution No. ZA2020-029 Council District 6
- Item 2: AT&T Small Cell SLC0796 Minor Use Permit No. UP2019-030 (PA2019-111)
Site Location: Public right-of-way, City streetlight number SLC0796, at the northwestern corner of Balboa Boulevard and 30th Street
Action: Approved by Resolution No. ZA2020-030 Council District 1
- Item 3: AT&T Small Cell SLC4653 Minor Use Permit No. UP2019-034 (PA2019-115)
Site Location: Public right-of-way, City streetlight number SLC4653, on the north side of Bayside Drive, approximately 900 feet northwest of El Paseo Drive
Action: Approved by Resolution No. ZA2020-031 Council District 5
- Item 4: Buchannon Street Partners Medical/Dental Office Minor Use Permit No. UP2020-002 (PA2020-009)
Site Address: 20361 Irvine Avenue, Unit B1
Action: Approved by Resolution No. ZA2020-032 Council District 3
- Item 5: TNS Development, LLC Residence Coastal Development Permit No CD2020-009 (PA2020-010)
Site Location: 706 West Ocean Front
Action: Approved by Resolution No. ZA2020-033 Council District 1

Item 6: LIV Integrative Health Minor Use Permit No. UP2020-001 (PA2020-007)
Site Location: 20201 Birch Street

Action: Approved by Resolution No. ZA2020-034 Council District 3

Item 7: Orange County Charters Limited Term Permit No. XP2020-003 and Coastal Development Permit No. CD2020-011 (PA2020-022)
Site Location: 1221 West Coast Highway

Action: Approved by Resolution No. ZA2020-035 Council District 3

Item 8: Bragg Lot Merger No. LM2019-006 and Coastal Development Permit No. CD2019-068 (PA2019-250)
Site Location: 107 and 109 Via Yella

Action: Continued to 04/30/2020 Council District 1

APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

RESOLUTION NO. ZA2020-029

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP NO. NP2019-017 FOR TWO (2)-UNIT CONDOMINIUM PURPOSES LOCATED AT 716 HELIOTROPE AVENUE (PA2019-262)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by JFB Custom Homes (Applicant), with respect to property located at 716 Heliotrope Avenue, and legally described as Lot 18, Block 735 Corona del Mar Tract, requesting approval of a tentative parcel map for condominium purposes.
2. The Applicant requests a tentative parcel map for two (2)-unit condominium purposes. A single-family dwelling will be demolished and a new duplex has been permitted. No waivers of Newport Beach Municipal Code (NBMC) Title 19 (Subdivisions) are proposed. The tentative parcel map would allow each unit to be sold individually.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is not located within the coastal zone; therefore, a coastal development permit is not required.
5. A public hearing was held on April 16, 2020, in the Community Room at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division is in conformance with the General Plan and Zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

SECTION 3. REQUIRED FINDINGS.

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of NBMC Title 20 (Planning and Zoning) and is approved based on the following findings per NBMC Section 19.12.070 (Required Findings for Action on Tentative Maps):

Finding:

A. That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.

Facts in Support of Finding:

1. The Tentative Parcel Map is for two (2)-unit residential condominium purposes. A single-family dwelling will be demolished and a new two-unit dwelling has been permitted. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the RT General Plan Land Use Designation.
2. The subject property is not located within a specific plan area.
3. The project has been conditioned to require public improvements, including the reconstruction of sidewalks, curbs, and gutters along the Heliotrope Avenue frontage and any damaged concrete alley panels consistent with NBMC Title 19.

Finding:

B. That the site is physically suitable for the type and density of development.

Facts in Support of Finding:

1. The lot is physically suitable for two (2)-unit residential development because it is regular in shape. A single-family dwelling will be demolished and a new duplex has been permitted..
2. The subject property is accessible from the alley and is adequately served by all existing utilities.

Finding:

C. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make

infeasible the mitigation measures or project alternatives identified in the environmental impact report.

Facts in Support of Finding:

1. A single-family dwelling will be demolished and a new duplex has been permitted..
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3), of the CEQA Guidelines – Class 15 (Minor Land Alterations).

Finding:

D. That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.

Fact in Support of Finding:

1. The Tentative Parcel Map is for residential condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per NBMC Section 19.28.010 (General Improvement Requirements) and Section 66411 (Local Agencies to Regulate and Control Design of Subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

E. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the decision making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.

Fact in Support of Finding:

1. The design of the development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development, because there are no public easements located on the property.

Finding:

F. That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.

Facts in Support of Finding:

1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The property was previously developed with a residential use and is located in a Zoning District that permits residential uses.

Finding:

G. That, in the case of a “land project” as defined in Section 11000.5 of the California Business and Professions Code: (1) there is an adopted specific plan for the area to be included within the land project; and (2) the decision making body finds that the proposed land project is consistent with the specific plan for the area.

Facts in Support of Finding:

1. California Business and Professions Code Section 11000.5 has been repealed by the Legislature. However, this project site is not considered a “land project” as previously defined in Section 11000.5 of the California Business and Professions Code because the project site does not contain 50 or more parcels of land.
2. The project is not located within a specific plan area.

Finding:

H. That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.

Fact in Support of Finding:

1. The Tentative Parcel Map and any future improvements are subject to Title 24 of the California Code of Regulations (the California Building Code) that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

- I. That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.*

Fact in Support of Finding:

1. The proposed two (2)-unit dwelling is consistent with the intended uses of the R-2 Zoning District, which allows two (2) residential units on the property. Therefore, the Tentative Parcel Map for condominium purposes will not affect the City in meeting its regional housing need.

Finding:

- J. That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Fact in Support of Finding:

1. The new two (2)-unit dwelling will be designed so that wastewater discharge into the existing sewer system complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

- K. For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.*

Fact in Support of Finding:

1. The subject property is not within the Coastal Zone.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2019-017, subject to the conditions set forth in Exhibit "A," which is attached here to and incorporated by reference.
3. This action shall become final and effective 10 days after the adoption of this Resolution unless within such time an appeal or call for review is filed with the Director of Community Development in accordance with the provisions of NBMC Title 19 Subdivisions.

PASSED, APPROVED, AND ADOPTED THIS 16th DAY OF APRIL, 2020.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL****Planning Division**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. Prior to the recordation of the Parcel Map, the In-Lieu Park Dedication fee in effect at the time shall be assessed for one (1) unit.
3. Subsequent to the recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this permit is final.
4. The building permit for the new construction shall not be final until after recordation of the parcel map.
5. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 19 (Subdivisions) of the Newport Beach Municipal Code.
6. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the 716 Heliotrope, LLC Condominiums including, but not limited to, Tentative Parcel Map No. NP2019-017 (PA2019-262). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Public Works Department

7. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Sub-article 18. **The**

Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.

8. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Sub-article 18. Monuments (one [1]-inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
9. All improvements shall be constructed as required by Ordinance and the Public Works Department.
10. The Applicant shall reconstruct all damaged sidewalk panels, curb, gutter along the Heliotrope Avenue property frontage and any damaged concrete alley panels along the alley property frontage as determined by the Public Works Department.
11. All existing overhead utilities shall be undergrounded.
12. No above ground improvements are permitted within the five (5)-foot rear alley setback area. Smooth transitions between neighboring properties shall be provided.
13. All existing private improvements within the Heliotrope Avenue public right-of-way fronting the development site shall be removed, including the decorative walkway and brick steps and brick wall. New sod or low groundcovers of the type approved by the City shall be installed through the Heliotrope Avenue parkway fronting the development site.
14. Protect in place the existing City street tree.
15. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed per City standard with a traffic-grade box and cover.
16. An encroachment permit is required for all work activities within the public right-of-way.
17. Relocate the existing irrigation box and equipment to private property.
18. All improvements shall comply with the City's sight distance requirement. See City Standard STD 110-L.
19. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

Building Division

20. Independent utility services shall be provided for each unit.
21. Independent fire risers shall be required for each unit.
22. Construction shall comply with the California Code of Regulations.

RESOLUTION NO. ZA2020-030

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2019-030 FOR A SMALL CELL FACILITY LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY ON CITY STREETLIGHT NUMBER SLC0796, AT THE NORTHWESTERN CORNER OF BALBOA BOULEVARD AND 30TH STREET (PA2019-111)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by New Cingular Wireless, LLC d.b.a. AT&T Mobility (Applicant), with respect to City of Newport Beach Streetlight Number SLC0796, located within the public right-of-way, at the northwestern corner of Balboa Boulevard and 30th Street, requesting approval of a minor use permit.
2. The Applicant proposes the installation of a small cell wireless facility on a City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on Balboa Boulevard and includes the following: (1) Removal and replacement of an existing City streetlight; (2) Installation of a small cell wireless facility that consists of four remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter equipment shroud. This equipment would be fixed to the top of the replaced streetlight pole for a maximum height of 34 feet, 9 inches, and (3) Establishment of new below-grade support equipment adjacent to the streetlight.
3. The streetlight is located within the public right-of-way. The proposal is regulated by Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property), as well as Newport Beach Municipal Code (NBMC) Chapter 20.49 (Wireless Telecommunication Facilities).
4. The project site is located within the coastal zone. It is not located between the first public roadway paralleling the sea and the sea. The removal and installation of an existing streetlight pole is exempt from the requirements of a coastal development permit pursuant to Section 21.50.035(C)(4) (Repair and Maintenance) of the NBMC. In consultation with Coastal Commission staff, the modification of a streetlight for a small cell facility remains exempt, provided there is no visual resource impact. The project was reviewed for consistency with the Public View Protection regulations of Section 21.49.050(B) (Public View Protection) of the NBMC. It is not on a coastal bluff or canyon, not adjacent to or within the viewshed of a public view point, coastal view road, public park or beach, or public accessway, as identified on the Coastal Land Use Plan Map 4-3 (Coastal Views), and does not contain significant natural landforms or vegetation. The project scope involves the removal and replacement of an existing City streetlight in the same location with the same luminaire height. The project has been designed to blend in within the existing streetscape. The replacement streetlight is consistent with the size,

shape, style, and design of the existing pole. No above ground mounted equipment is proposed and the support equipment is proposed to be placed in underground handholes. All transmission equipment, including remote radio units and the raycap disconnect switch, are fully concealed within a screening shroud. The installation of a small cell wireless facility will not have a negative impact on coastal views or coastal resources; therefore, a coastal development permit is not required.

5. A public hearing was held on April 16, 2020, in the Community Room at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.
2. In this case, the proposal includes the removal and replacement of an existing City streetlight pole to install a small telecommunications wireless facility, including below-grade accessory equipment.
3. The exceptions to the Class 3 categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

Minor Use Permit

In accordance with NBMC Subsection 20.52.020(F) (Conditional Use Permits and Minor Use Permits), the following findings and facts in support of such findings are set forth:

Finding:

A. *The use is consistent with the General Plan and any applicable specific plan.*

Facts in Support of Finding:

1. The project site is designated as Public Right-of-Way (ROW), which is property held in trust by the City, and allows for the construction and maintenance of public roads, crosswalks, pedestrian walkways, electric transmission lines, oil or gas pipeline, water line, sanitary or storm sewer, or other similar uses. City Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property) governs procedures and locations for siting wireless telecommunications equipment in the ROW. Streetlights are eligible for telecom use, subject to entitlements (such as this minor use permit request), yearly rent, and a license agreement.
2. General Plan Natural Resources Goal NR 21 recommends the “minimized visual impacts of signs and utilities.” The proposed design is consistent with NR 21 by introducing no new vertical obstructions in the ROW, employing stealth elements like colorization (painting to match the streetlight pole), and installing the associated equipment below grade. Conditions of Approval No. 20 and 21 prohibit advertising signage or identifying logos on any telecom facility except for small identification, address, warning, and similar information plates. Signage required by State or Federal regulations shall be allowed in its smallest permissible size.
3. General Plan Land Use Policy LU 6.1.3 promotes “architecture and planning that complements adjoining uses.” The proposed design adjoins residential uses and aligns with LU 6.1.3 by copying the size, shape, style, and design of the existing streetlight pole to decrease potential disruption of the visual environment. Adverse impact to circulation, aesthetics, sounds, or odor are not anticipated from project implementation.
4. General Plan Land Use Policy LU 4 calls for the “management of growth and change to protect and enhance the livability of neighborhoods and achieve distinct and economically vital business and employment districts, which are correlated with supporting infrastructure and public services and sustain Newport Beach’s natural setting.” The proposed small cell facility upholds the intent of LU 4 by providing infrastructure to add system capacity for service gaps that may occur for residents and businesses of the area in regular and high demand periods. It also benefits the community by improving the existing coverage and capacity to increase the voice and data system already in use by its customers. The facility is designed to adapt and accept future technologies, such as 5G, and will help meet local demand and sustain the livability of the area.
5. The project site is not located within a specific plan area

Finding:

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding:

1. See Fact in Support of Finding A.1.
2. Wireless telecommunication facilities are regulated by NBMC Chapter 20.49 (Wireless Telecommunication Facilities). To site small cell equipment in the ROW assigns the project a Class 3 specification (Public Right-of-Way Installations) and requires the Applicant to obtain a minor use permit from the Zoning Administrator (NBMC Section 20.49.060 [Permit Review Procedures]).
3. NBMC Subsection 20.49.040(A) (Preferred Locations) prioritizes telecom facilities from most preferred (1) to least preferred (4) as follows: (1) collocation of a new facility at an existing facility; (2) Class 1 Stealth/Screened); (3) Class 2 (Visible Antennas), Class 3 (Public Right-of-Way); and (4) Class 4 (Freestanding Structure). Although lower on the listing of priority facilities, the proposed facility consists of one (1) small cell facility that is designed to not visually dominate the surrounding area and instead to blend into the existing block.
4. NBMC Section 20.49.050 (General Development and Design Standards) requires projects to be visually compatible with surrounding structures. In reviewing this application, the Zoning Administrator shall consider the proposed facility's use of color blending, equipment screening, and the limited size of the equipment designed consistently with the aforementioned criteria. All telecommunications equipment on top of the streetlight pole would be concealed within a painted-to-match 12-inch diameter shroud. The proposed small cell facility would rely on likeness with the streetlight pole through style, color, and material to help disguise its presence. Engineering of the replacement streetlight pole accommodates and withstands the weight of the small cell equipment and has ability to display a future City banner, if needed. Electrical and wiring components of the telecommunications equipment are designed to be fully contained within the new streetlight pole. The overall height of 34 feet, 9 inches from finished grade to the top of the proposed facility complies with the maximum allowed. Equipment not contained within the shroud on the streetlight pole would be out of sight, located below the ground in the adjacent ROW. Condition of Approval No. 32 requires approved design drawings from Southern California Edison (SCE) of the power supply to the small cell facility before construction of the facility is to commence.
5. Existing residential properties contiguous to the site are in the R-2 (Two-Unit Residential) Zoning District. R-2-zoned sites allow for structures up to 24 feet for flat roof elements and 29 feet to the ridge of a sloped roof. The height of the existing streetlight SLC0796 sits just above the maximum allowable height for residential structures. The streetlight is separated from the residences by a large 20-foot vegetated parkway that is landscaped with taller palm trees. Given this buffer between the streetlight and the

residences, the streetlight is softened and screened by the landscaping from the residential neighborhood beyond. Furthermore, keeping the luminaire the same height as the existing streetlight lessens visual obstruction from the proposed small cell facility with the line of the existing development.

6. Submitted materials from the Applicant demonstrate the proposal would conform with Federal Communications Commission (FCC) Rules and Regulations regarding safety and radio frequency emissions.
7. The proposed telecom facility will comply with applicable requirements of the NBMC with construction as shown on the plans and implementation of the conditions of approval.

Finding:

- C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. City of Newport Beach Streetlight No. SLC0796 is located within the public right-of-way on the northern side of Balboa Boulevard at the northwestern corner of the 30th Street intersection. It is immediately adjacent to an unusually large vegetated parkway that is approximately 20 feet wide. Beyond the parkway to the northeast is a block of two-unit residential development (Attachment No. ZA 2). All surrounding land uses are residential and vary in density from two-unit residential to single-unit residential. The only exception is a Commercial Visitor Serving (CV) zoned parcel across 30th Street from the site, which is presently developed with a laundromat (Beach Coin Laundry).
2. Under the new FCC Order, wireless providers are not required to demonstrate a significant coverage gap, a qualification previously required by local jurisdictions in order to support an application. Pursuant to the Order, the City cannot “materially [inhibit] the introduction of new services or the improvement of existing services.” Moreover, pursuant to Section 332(c)(7)(B)(i)(II) of U.S. Code Title 47 (Telecommunications), the City may “not regulate the placement, construction or modification of wireless service facilities in a manner that prohibits the provision of personal wireless services.” Although not required, the Applicant produced a coverage map for the project. This map indicates the proposed facility would boost the supply of capacity and coverage in the vicinity.
3. SLC0796 serves as a part of the City’s existing streetlight inventory. AT&T proposes to: (1) remove and replace SLC0796 with a new streetlight in the same location; (2) maintain the existing luminaire height of 29 feet, 9 inches; (3) install telecommunications equipment for a small cell wireless facility on top of the new streetlight pole resulting in an overall height of 34 feet, 9 inches; and (4) establish new below-grade support equipment adjacent to the streetlight, within the public right-of-way.

4. The replacement streetlight pole design is consistent with the size, shape, style, and design of that existing, including the attached light arm and luminaire. For safety and circulation of the area during construction, Condition of Approval No. 40 requires traffic control plans illustrating compliance with the 2016 watchbook to be reviewed and approved by the Public Works Department prior to the issuance of any building permit.
5. The proposed telecom facility is anticipated to enhance coverage and capacity for residents, visitors and businesses in the neighborhood by providing wireless access to voice and data transmission services. The proposed telecom facility is not expected to result in any material changes to the character of the local community.
6. See Facts in Support of Finding B.4, B.5, and B.6.
7. The proposed facility will be unmanned, will have no impact on the circulation system, and, as conditioned, will not generate noise, odor, smoke, or any other adverse impacts to adjacent land uses.

Finding:

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.

Facts in Support of Finding:

1. Adequate public and emergency vehicle access, public services, and utilities are provided to and around the subject site and the proposed use will not change this.
2. The proposed facility will be unmanned and will have no permanent impact on the circulation system and adjacent land uses due to its location in the parkway, outside of existing vehicle or pedestrian circulation areas.
3. The Public Works Department and Utilities Department have reviewed the project proposal and do not have any concerns regarding access, public services, or utilities provided to the existing neighborhood and surrounding area.

Finding:

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The proposed facility will only require periodic maintenance and will not generate any type of significant adverse impacts to the environment, such as noise, odor, smoke, etc.

2. The proposed facility must and will comply with the applicable Federal and State rules, regulations and standards thus, ensuring public health and safety.
3. See Facts in Support of Finding B.4, B.5, B.6, B.7, and B.8.
4. The proposed telecom facility will be effectively blended based upon the design and location with the incorporation of the conditions of approval to the greatest extent feasible. As a result, the proposed facility at this location is not expected to result in conditions that are materially detrimental to nearby property owners, residents, and businesses, nor to public health or safety.

Wireless Telecommunications Facility

In accordance with NBMC Subsection 20.49.060(H)(1) (General Findings for Telecom Facilities), the following additional findings and facts in support of such findings are set forth:

Finding:

F. The proposed telecom facility is visually compatible with the surrounding neighborhood.

Facts in Support of Finding:

1. See Facts in Support of Finding B.4, B.5, and B.6.
2. The closest residentially zoned property is located approximately 20 feet northeast of the project site and is buffered by a large 20-foot-wide parkway area with vegetation of varying heights. The proposed streetlight is located along the inland side of a well-traveled street and will blend in with the surrounding streetscape. There are no public parks near the proposed project. The proposed facility and below-grade accessory equipment meets the City's design parameters approved by the City's Master License Agreement, which emphasizes stealth techniques and best practices to not be materially detrimental to the surrounding area.

Finding:

G. The proposed telecom facility complies with height, location and design standards, as provided for in this chapter.

Facts in Support of Finding:

1. The 34-foot, 9-inch tall small cell facility would comply with the maximum height limit of 35 feet for telecom facilities installed on streetlights within the public right-of-way.
2. See Facts in Support of Finding B in its entirety.
3. The application includes documentation indicating the need to provide and improve coverage to the residential areas within the City of Newport Beach. Moreover, the

additional system capacity provided by the proposed facility will address service gaps that occur during high demand periods, as well as service gaps that exist at all demand periods to the surrounding area. The proposed small cell site will help AT&T to meet its coverage objectives and improve coverage to nearby areas that are currently marginal.

Finding:

H. An alternative site(s) located further from a residential district, public park or public facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.
2. Five nearby streetlights were identified and investigated by the Applicant as possible alternate locations for this small cell facility; however, all sites were found by the applicant to be not viable (see Attachment No. ZA 3).
3. Alternative Site #1 is a wooden utility pole located approximately 100 feet north of the proposed streetlight. This pole is located immediately in front of a two-unit residential structure that is oriented towards Balboa Boulevard within a narrower parkway area. Installation of small cell infrastructure at this location would require placement of a crossarm with exposed equipment on either side of the wooden pole and would not be as aesthetically compatible as the proposed location. Most importantly, the wooden utility pole is located within an approved underground assessment and utility district, which will aim to eventually eliminate such above-ground utilities in the area.
4. Alternative Site #2 at City Streetlight No. SLC0767 located approximately 160 feet northwest of the proposed streetlight on the opposite side of Balboa Boulevard. This alternative location is in very close proximity to overhead powerlines, which would make additional height above the existing streetlight pole infeasible. Furthermore, the existing streetlight is located such that accessibility is limited and a girthier pole could not be accommodated without further constraining the sidewalk.
5. Alternative Site #3 is a wooden utility pole located approximately 78 feet west of the proposed streetlight. This pole is located immediately adjacent to the front patio of an existing, single-story residence. Like Alternative Site #1, installation of small cell infrastructure at this location would require placement of a crossarm with exposed equipment on either side of the wooden pole and would not be as aesthetically compatible as the proposed location. Most importantly, the wooden utility pole is located within an approved underground assessment and utility district, which will aim to eventually eliminate such above-ground utilities in the area.
6. Alternative Site #4 at City Streetlight No. SLC0768 is located at the southwest corner of Balboa Boulevard and 30th Street approximately 100 feet from the proposed streetlight. Like Alternative Site #2, this alternative location is in very close proximity to overhead powerlines, which would make additional height above the existing streetlight pole

infeasible. Accessibility is also limited here and a girther pole cannot be accommodated without further constraining the sidewalk.

7. Alternative Site #5 at City Streetlight No. SLC0766 is located at the alleyway between 30th Street and 29th Street, approximately 175 feet southeast of the proposed streetlight. Like Alternative Site #2 and Alternative Site #4, accessibility is limited at this location and a girther pole cannot be accommodated without further constraining the sidewalk.

Finding:

- 1. An alternative plan that would result in a higher preference facility class category for the proposed facility is not available or reasonably feasible and desirable under the circumstances.*

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.
2. AT&T's analysis concluded that a more preferred location as defined by NBMC Subsection 20.49.040(A) (Preferred Locations), such as a collocation or a Class 1 or 2 facility, would not be technically feasible from an RF or construction perspective. The analysis explained that small cell facilities are low powered and must be located at the precise location selected to serve the network traffic demands of the specific limited area. Further, this type of service cannot be accomplished with a traditional macro collocation or building mounted site in the area.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to the Class 3 exemption do not apply.
2. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2019-030, subject to the conditions set forth in "Exhibit A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of NBMC Title 20 Planning and Zoning.

PASSED, APPROVED, AND ADOPTED THIS 16TH DAY OF APRIL, 2020.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

Planning Division

1. The development shall be in substantial conformance with the plans, including elevation exhibits and visual simulations, stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. The telecom facility approved by this permit shall comply with all applicable Federal and State rules, regulations, and standards.
5. The replacement pole shall be reconstructed in the exact location of the existing streetlight pole.
6. The reconstructed streetlight pole design shall be consistent with the size (including diameter), shape, style, and design of the existing streetlight pole to the greatest extent feasible, including the attached light arm and luminaire. All mounted equipment shall be painted to match the color and style of the replacement streetlight pole.
7. All accessory support equipment of this facility shall be installed underground.
8. All electrical and antenna wiring shall be fully encased within the reconstructed streetlight pole.
9. The telecom facility approved by the use permit shall comply with any easements, covenants, conditions, or restrictions on the underlying City-trust property upon which the facility is located.
10. Anything not specifically approved by this permit is not permitted and must be addressed in a separate and subsequent review.
11. Prior to building permit final, a Height Certification Inspection shall be required prior to final of building permits. The small cell facility and base streetlight pole approved by this permit shall not exceed a total of 34 feet, 9 inches in height from existing grade (maximum elevation height of 43.57 feet above mean sea level using the North American Vertical Datum of 1988 [NAVD88]).

12. Prior to building permit issuance, all contractors and subcontractors shall have a valid City of Newport Beach business license.
13. The Applicant shall continually maintain the wireless telecom facility so that it retains its original appearance at the time the building permit is finalized by the City of Newport Beach.
14. On an annual basis, the Applicant shall conduct maintenance inspections of the wireless telecom facility, including the small cell facility and below-grade equipment areas, and make all necessary repairs. The Community Development Director may require additional inspections and/or maintenance activities at his/her discretion.
15. The Applicant shall not prevent the City of Newport Beach from having adequate spectrum capacity on the City's 800 MHz radio frequencies at any time.
16. The facility shall transmit at the approved frequency ranges established by the FCC. The Applicant shall inform the City in writing of any proposed changes to the frequency range in order to prevent interference with the City's Public Safety radio equipment.
17. The telecommunications facility shall at no time interfere with the frequencies used by the City of Newport Beach for public safety. "Comprehensive advanced planning and frequency coordination" engineering measures shall prevent interference, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the "Best Practices Guide" published by the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), and as endorsed by the FCC.
18. Should interference with the City's Public Safety radio equipment occur, use of the telecom facility authorized by this permit may be suspended until the radio frequency interference is corrected and verification of the compliance is reported.
19. The Applicant shall provide a "single point of contact" for carriers in its Engineering and Maintenance Departments that is monitored 24 hours per day to ensure continuity on all interference issues, and to which interference problems may be reported. The name, telephone number, fax number, and email address of that person shall be provided to the Community Development Department and Newport Beach Police Department's Support Services Commander prior to activation of the facility. If the point of contact changes, the City shall be immediately alerted and updated.
20. No advertising signage or identifying logos shall be displayed on the telecom facility except for small identification, address, warning, and similar information plates. A detail of the information plates depicting the language on the plate shall be included in the plans submitted for issuance of building permits.
21. Appropriate information warning signs or plates shall be posted on the base streetlight pole of the transmitting antenna. In addition, contact information (e.g., a telephone number) shall be provided on the warning signs or plates. The location of the information warning signs or plates shall be depicted on the plans submitted for construction permits.

Signage required by State or federal regulations shall be allowed in its smallest permissible size.

22. Prior to the final of building permits, the Applicant shall schedule an evening inspection by the Code Enforcement Division to confirm compliance with lighting. The telecom facility shall be lighted to the extent deemed necessary by the Newport Beach Police and Utilities Departments for security lighting and consistency with other streetlights in the area.
23. The Applicant shall maintain the telecom facility in a manner consistent with this approval.
24. The Applicant shall ensure that its telecom facility complies with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The Applicant shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. This information shall be made available by the Applicant upon request of the Community Development Director.
25. The facility shall comply with all applicable provisions of U.S. Code Title 47 (Telecommunications) rules and regulations, including those related to FCC Radio Frequency safety.
26. Prior to final of building permits, the Applicant shall schedule an inspection by the Planning Division to ensure materials and colors match existing architecture as illustrated in the approved photographic simulations and in conformance with NBMC Section 20.49.050.
27. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Division by certified mail no less than thirty (30) days prior to such action. The operator shall have ninety (90) days from the date of abandonment or discontinuance to reactivate use of the facility, or remove the telecom facility and restore the site.
28. The City reserves the right and jurisdiction to review and modify any permit approved pursuant to NBMC Chapter 20.49, including the conditions of approval, based on changed circumstances. The operator shall notify the Planning Division of any proposal to change the height or size of the facility; increase the size, shape, or number of antennas; change the facility's color or materials or location on the site; or increase the signal output above the maximum permissible exposure ("MPE") limits imposed by the radio frequency emissions guidelines of the FCC. Any changed circumstance shall require the operator to apply for a review of the modification, and possible amendment to the use permit, prior to implementing any change.
29. Use Permit No. UP2019-030 shall expire unless exercised within 24 months from the date of approval as specified in NBMC Section 20.54.060 (Time Limits and Extensions), unless an extension is otherwise granted.

30. Construction activities shall comply with NBMC Section 10.28.040, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday and 8 a.m. and 6 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or holidays.
31. This Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
32. A copy of the Resolution, including conditions of approval Exhibit "A," and approved drawings from Southern California Edison (SCE) for the power supply and design, shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
33. The Applicant shall promptly notify the City if the landscaped parkway of the subject streetlight pole is negatively affected or otherwise damaged by project implementation.
34. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of AT&T Small Cell on SLC0796, including, but not limited to, Minor Use Permit No. UP2019-030 (PA2019-111). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Public Works Department

35. Prior to the issuance of a building permit, an encroachment permit shall be required.
36. Prior to the issuance of a building permit, traffic control plans illustrating compliance with the 2016 watchbook requirements shall be reviewed and approved by the Public Works Department before their implementation. Large construction vehicles shall not be permitted to travel narrow streets as determined by the Public Works Department. Disruption caused by construction work along roadways and by movement of

construction vehicles shall be minimized by proper use of traffic control equipment and flagman.

Additional Conditions of Approval

37. The Applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds pursuant to MBTA:
- A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
 - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.

RESOLUTION NO. ZA2020-031

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2019-034 FOR A SMALL CELL FACILITY LOCATED WITHIN THE PUBLIC RIGHT-OF-WAY ON CITY STREETLIGHT NUMBER SLC4653, ON THE NORTH SIDE OF BAYSIDE DRIVE, APPROXIMATELY 900 FEET NORTH OF EL PASEO DRIVE (PA2019-115).

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by New Cingular Wireless, LLC d.b.a. AT&T Mobility (“Applicant”), with respect to City of Newport Beach Streetlight Number 4653, located within the public right-of-way, on the north side of Bayside Drive approximately 900 feet northwest of El Paseo Drive, requesting approval of a minor use permit.
2. The Applicant proposes the installation of a small cell wireless facility on a City-owned streetlight pole. Project implementation will be fully contained within the public right-of-way on Bayside Drive and includes the following: 1) Removal and replacement of an existing City streetlight; (2) Installation of a small cell wireless facility that consists of four remote radio units, a raycap disconnect, and an omni-directional antenna within a 12-inch diameter equipment shroud. This equipment would be fixed to the top of the replaced streetlight pole for a maximum height of 27 feet, 5 inches; and (3) Establishment of new below-grade support equipment adjacent to the streetlight.
3. The streetlight is located within the public right-of-way. The proposal is regulated by Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property), as well as Newport Beach Municipal Code (NBMC) Chapter 20.49 (Wireless Telecommunication Facilities).
4. The project site is located within the coastal zone. It is not located between the first public roadway paralleling the sea and the sea. The removal and installation of an existing streetlight pole is exempt from the requirements of a coastal development permit pursuant to Section 21.50.035(C)(4) (Repair and Maintenance) of the NBMC. In consultation with Coastal Commission staff, the modification of a streetlight for a small cell facility remains exempt, provided there is no visual resource impact. The project was reviewed for consistency with the Public View Protection regulations of Section 21.49.050(B) (Public View Protection) of the NBMC. The subject location is not on a coastal bluff or canyon, not adjacent to or within the viewshed of a public viewpoint, coastal view road, public park or beach, or public accessway, as identified on the Coastal Land Use Plan Map 4-3 (Coastal Views), and does not contain significant natural landforms or vegetation. The project scope involves the removal and replacement of an existing City streetlight in the same location with the same luminaire height. The project has been designed to blend within the existing streetscape. The

replacement streetlight is consistent with the size, shape, style, and design of the existing pole. No above ground mounted equipment is proposed and the support equipment is proposed to be placed in underground handholes. All transmission equipment, including remote radio units and the raycap disconnect switch, are fully concealed within a screening shroud. The installation of a small cell wireless facility will not have an impact on coastal views or coastal resources; therefore, a coastal development permit is not required.

5. A public hearing was held on April 16, 2020, in the Community Room at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.
2. In this case, the proposal includes the removal and replacement of an existing City streetlight pole to install a small telecommunications wireless facility, including below-grade accessory equipment.
3. The exceptions to the Class 3 categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

Minor Use Permit

In accordance with NBMC Subsection 20.52.020(F) (Conditional Use Permits and Minor Use Permits), the following findings and facts in support of such findings are set forth:

Finding:

A. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

1. The project site is designated as Public Right-of-Way (ROW), which is property held in trust by the City, and allows for the construction and maintenance of public roads, crosswalks, pedestrian walkways, electric transmission lines, oil or gas pipeline, water line, sanitary or storm sewer, or other similar uses. City Council Policy L-23 (Siting of Wireless Telecommunications Equipment on City-Owned Property) governs procedures and locations for siting wireless telecommunications equipment in the ROW. Streetlights are eligible for telecom use, subject to entitlements (such as this minor use permit request), yearly rent, and a license agreement.
2. General Plan Natural Resources Goal NR 21 recommends the “minimized visual impacts of signs and utilities.” The proposed design is consistent with NR 21 by introducing no new vertical obstructions in the ROW, employing stealth elements like colorization (painting to match the streetlight pole), and installing the associated equipment below grade. Conditions of Approval No. 20 and 21 prohibit advertising signage or identifying logos on any telecom facility except for small identification, address, warning, and similar information plates. Signage required by State or Federal regulations shall be allowed in its smallest permissible size.
3. General Plan Land Use Policy LU 6.1.3 promotes “architecture and planning that complements adjoining uses.” The proposed design adjoins residential uses and aligns with LU 6.1.3 by copying the size, shape, style, and design of the existing streetlight pole to decrease potential disruption of the visual environment. Adverse impact to circulation, aesthetics, sounds, or odor are not anticipated from project implementation.
4. General Plan Land Use Policy LU 4 calls for the “management of growth and change to protect and enhance the livability of neighborhoods and achieve distinct and economically vital business and employment districts, which are correlated with supporting infrastructure and public services and sustain Newport Beach’s natural setting.” The proposed small cell facility upholds the intent of LU 4 by providing infrastructure to add system capacity for service gaps that may occur for residents and businesses of the area in regular and high demand periods. It also benefits the community by improving the existing coverage and capacity to increase the voice and data system already in use by its customers. The facility is designed to adapt and accept future technologies, such as 5G, and will help meet local demand and sustain the livability of the area.
5. The project site is not located within a specific plan area

Finding:

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding:

1. See Fact in Support of Finding A.1.
2. Wireless telecommunication facilities are regulated by NBMC Chapter 20.49 (Wireless Telecommunication Facilities). To site small cell equipment in the ROW assigns the project a Class 3 specification (Public Right-of-Way Installations) and requires the Applicant to obtain a minor use permit from the Zoning Administrator (NBMC Section 20.49.060 [Permit Review Procedures]).
3. NBMC Subsection 20.49.040(A) (Preferred Locations) prioritizes telecom facilities from most preferred (1) to least preferred (4) as follows: (1) collocation of a new facility at an existing facility; (2) Class 1 Stealth/Screened); (3) Class 2 (Visible Antennas), Class 3 (Public Right-of-Way); and (4) Class 4 (Freestanding Structure). Although lower on the listing of priority facilities, the proposed facility consists of one (1) small cell facility that is designed to not visually dominate the surrounding area and instead to blend into the existing block.
4. NBMC Section 20.49.050 (General Development and Design Standards) requires projects to be visually compatible with surrounding structures. In reviewing this application, the Zoning Administrator shall consider the proposed facility's use of color blending, equipment screening, and the limited size of the equipment designed consistently with the aforementioned criteria. All telecommunications equipment on top of the streetlight pole would be concealed within a painted-to-match 12-inch diameter shroud. The proposed small cell facility would rely on likeness with the streetlight pole through style, color, and material to help disguise its presence. Engineering of the replacement streetlight pole accommodates and withstands the weight of the small cell equipment and has ability to display a future City banner, if needed. Electrical and wiring components of the telecommunications equipment are designed to be fully contained within the new streetlight pole. The overall height of 27-feet, 5-inches from finished grade to the top of the proposed facility complies with the maximum allowed. Equipment not contained within the shroud on the streetlight pole would be out of sight, located below the ground in the adjacent ROW. Condition of Approval No. 32 requires approved design drawings from Southern California Edison (SCE) for the power supply to the small cell facility before construction of the facility is to commence.
5. Existing residential properties contiguous to the north of the site are in the R-1 (Single-Unit Residential) Zoning District. R-1-zoned sites allow for principal dwellings up to 29 feet in height and for sloped roof elements with a minimum 3:12 pitch. The existing residences across Bayside Drive to the southwest are zoned RM and are allowed a maximum height of up to 33 feet for sloped roof elements with a minimum 3:12 pitch. The height of the existing streetlight SLC4653 sits well below the grade of the adjacent R-1 residences. The streetlight is separated from the residences by a steep, landscaped, downslope. Given the grade differential, the lower setting of the streetlight lessens visual obtrusion from the proposed small cell facility with the line of the existing

development. Photographic visual simulations of the facility, depicting the existing and proposed conditions, have been prepared by the Applicant.

6. The streetlight being at the toe of a steep landscaped slope ensures that the proposed equipment will not be isolated or out of place. The backdrop of a steep, vegetated, hillside provides adequate visual masking of the small cell facility into the project surroundings.
7. Submitted materials from the Applicant demonstrate the proposal would conform with Federal Communications Commission (FCC) Rules and Regulations regarding safety and radio frequency emissions.
8. The proposed telecom facility will comply with applicable requirements of the NBMC with construction as shown on the plans and implementation of the conditions of approval.

Finding:

- C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. City of Newport Beach Streetlight No. SLC4653 is located within a vegetated area within the public right-of-way along Bayside Drive, approximately 900 feet north of the intersection of Bayside Drive and El Paseo Drive. Single- and multi-family residential developments populate the site's surrounding area more broadly.
2. Under the new FCC Order, wireless providers are not required to demonstrate a significant coverage gap, a qualification previously required by local jurisdictions in order to support an application. Pursuant to the Order, the City cannot "materially [inhibit] the introduction of new services or the improvement of existing services." Moreover, pursuant to Section 332(c)(7)(B)(i)(II) of U.S. Code Title 47 (Telecommunications), the City may "not regulate the placement, construction or modification of wireless service facilities in a manner that prohibits the provision of personal wireless services." Although not required, the Applicant produced a coverage map for the project. This map indicates the proposed facility would boost the supply of capacity and coverage in the vicinity.
3. SLC4653 serves as a part of the City's existing streetlight inventory. AT&T proposes to remove and replace SLC4653 with a new streetlight in the same location while maintaining the existing luminaire height of 21 feet, 1-inch. The telecommunications equipment will be installed on top of the new streetlight pole resulting in an overall height of 27 feet, 5 inches. All supporting equipment will be installed below-grade adjacent to the streetlight, within the public right-of-way.
4. The replacement streetlight pole design is consistent with the size, shape, style, and design of that existing, including the attached light arm and luminaire. For safety and

circulation of the area during construction, Condition of Approval No. 40 requires traffic control plans illustrating compliance with the 2016 watchbook to be reviewed and approved by the Public Works Department prior to the issuance of any building permit.

5. The proposed telecom facility is anticipated to enhance coverage and capacity for residents, visitors and businesses in the neighborhood by providing wireless access to voice and data transmission services. The proposed telecom facility is not expected to result in any material changes to the character of the local community.
6. See Facts in Support of Finding B.4, B.5, and B.6.
7. The proposed facility will be unmanned, will have no impact on the circulation system, and, as conditioned, will not generate noise, odor, smoke, or any other adverse impacts to adjacent land uses.

Finding:

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.

Facts in Support of Finding:

1. Adequate public and emergency vehicle access, public services, and utilities are provided to and around the subject site and the proposed use will not change this.
2. The proposed facility will be unmanned and will have no permanent impact on the circulation system and adjacent land uses due to its location in the parkway, outside of existing vehicle or pedestrian circulation areas.
3. The Public Works Department and Utilities Department have reviewed the project proposal and do not have any concerns regarding access, public services, or utilities provided to the existing neighborhood and surrounding area.

Finding:

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The proposed facility will only require periodic maintenance and will not generate any type of significant adverse impacts to the environment, such as noise, odor, smoke, etc.

2. The proposed facility must and will comply with the applicable Federal and State rules, regulations and standards thus, ensuring public health and safety.
3. See Facts in Support of Finding B.4, B.5, B.6, B.7, and B.8.
4. The proposed telecom facility will be effectively blended based upon the design and location with the incorporation of the conditions of approval to the greatest extent feasible. As a result, the proposed facility at this location is not expected to result in conditions that are materially detrimental to nearby property owners, residents, and businesses, nor to public health or safety.

Wireless Telecommunications Facility

In accordance with NBMC Subsection 20.49.060(H)(1) (General Findings for Telecom Facilities), the following additional findings and facts in support of such findings are set forth:

Finding:

F. The proposed telecom facility is visually compatible with the surrounding neighborhood.

Facts in Support of Finding:

1. See Facts in Support of Finding B.4, B.5, and B.6.
2. The project site is located immediately adjacent to a residentially zoned property to the northeast however the physical residence at that property is setback from the property line approximately 115 feet and is separated from the right of way by a steep slope. Across Bayside Drive, approximately 50 feet west, there are additional residences zoned RM with grades that are approximately five feet below the grade of the proposed facility. The proposed replacement streetlight is located along the inland side of a well-traveled street and will blend in with the surrounding streetscape, existing light poles, and vegetated steep hillside. There are no public parks near the proposed project. The proposed facility and below-grade accessory equipment meets the City's design parameters approved by the City's Master License Agreement, which emphasizes stealth techniques and best practices to not be materially detrimental to the surrounding area.

Finding:

G. The proposed telecom facility complies with height, location and design standards, as provided for in this chapter.

Facts in Support of Finding:

1. The 27-foot, 5-inch tall small cell facility would comply with the maximum height limit of 35 feet for telecom facilities installed on streetlights within the public right-of-way.

2. See Facts in Support of Finding B in its entirety.
3. The application includes documentation indicating the need to provide and improve coverage to the residential areas within the City of Newport Beach. Moreover, the additional system capacity provided by the proposed facility will address service gaps that occur during high demand periods, as well as service gaps that exist at all demand periods to the surrounding area. The proposed small cell site will help AT&T to meet its coverage objectives and improve coverage to nearby areas that are currently marginal.

Finding:

H. An alternative site(s) located further from a residential district, public park or public facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.
2. Four alternative streetlights neighboring the project were identified and investigated by the Applicant, but both sites were found not practicable.
3. Alternative Site #1 at City Streetlight No. SLC4652 is located approximately 200 feet southeast of the proposed streetlight. This location is also along the northside of Bayside Drive, in the vegetated parkway, and is bounded by a retaining wall on three sides. Alternative Site #1 would likely have greater construction impacts than the proposed location as the hillside would require more grading in order to accommodate an expansion of the retaining walls which allow for the replacement of the streetlight and installation of associated pull boxes.
4. Alternative Site #2 at City Streetlight No. SLC4651 is located approximately 400 feet southeast of the proposed streetlight. This location is also along the northside of Bayside Drive. Alternative Site #2 abuts a rocky hillside that is almost vertical in slope. The streetlight is bounded by a retaining wall on three sides. Alternative Site #2 would likely have greater construction impacts as the steeper hillside would require more grading and an expansion of the retaining walls in order to replace the streetlight and install associated pull boxes.
5. Alternative Site #3 at City Streetlight No. SLC4654 is located approximately 200 feet northwest of the proposed streetlight. This location is also along the northside of Bayside Drive. The site is located within the vegetated parkway and is bounded by a retaining wall on three sides. The hillside abutting this alternative site is steep and vegetated. Alternative Site #3 would likely have greater construction impacts than the proposed location as the hillside would require more grading in order to accommodate an expansion of the retaining walls which allow for the replacement of the streetlight and installation of associated pull boxes.

6. Alternative Site #4 at City Streetlight No. SLC4655 is located approximately 400 feet northwest of the proposed streetlight and similarly located at the base of a residential hillside. However, unique to this site is that the alternative streetlight location would be near a bend in the Bayside Drive roadway. An installation at this location would be in the direct line of sight to motorist and pedestrians traveling along Bayside Drive and would appear more visible due to the solar installation in the background view. As a result, this location is less desirable than the proposed location which is located on a straighter segment of the Bayside Drive roadway, minimizing a direct line of sight to travelers on the public roadway and would allow the facility to blend with the hillside landscaping.

Finding:

- 1. An alternative plan that would result in a higher preference facility class category for the proposed facility is not available or reasonably feasible and desirable under the circumstances.*

Facts in Support of Finding:

1. See Fact in Support of Finding C.2.
2. AT&T's analysis concluded that a more preferred location as defined by NBMC Subsection 20.49.040(A) (Preferred Locations), such as a collocation or a Class 1 or 2 facility, would not be technically feasible from an RF or construction perspective. The analysis explained that small cell facilities are low powered and must be located at the precise location selected to serve the network traffic demands of the specific limited area. Further, this type of service cannot be accomplished with a traditional macro collocation or building mounted site in the area.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 under Class 2 (Replacement or Reconstruction) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to the Class 3 exemption do not apply.
2. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2019-034, subject to the conditions set forth in "Exhibit A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the

Community Development Director in accordance with the provisions of NBMC Title 20
Planning and Zoning.

PASSED, APPROVED, AND ADOPTED THIS 16TH OF APRIL, 2020.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

Planning Division

1. The development shall be in substantial conformance with the plans, including elevation exhibits and visual simulations, stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. The telecom facility approved by this permit shall comply with all applicable Federal and State rules, regulations, and standards.
5. The replacement pole shall be reconstructed in the exact location of the existing streetlight pole.
6. The reconstructed street light pole design shall be consistent with the size (including diameter), shape, style, and design of the existing streetlight pole to the greatest extent feasible, including the attached light arm and luminaire. All mounted equipment shall be painted to match the color and style of the replacement streetlight pole.
7. All accessory support equipment of this facility shall be installed underground.
8. All electrical and antenna wiring shall be fully encased within the reconstructed streetlight pole.
9. The telecom facility approved by the use permit shall comply with any easements, covenants, conditions, or restrictions on the underlying City-trust property upon which the facility is located.
10. Anything not specifically approved by this permit is not permitted and must be addressed in a separate and subsequent review.
11. Prior to building permit final, a Height Certification Inspection shall be required prior to final of building permits. The small cell facility and base streetlight pole approved by this permit shall not exceed a total of 27 feet, 5-inches (27' 5") in height from existing grade (maximum elevation height of 42.06 feet above mean sea level using the North American Vertical Datum of 1988 [NAVD88]).

12. Prior to building permit issuance, all contractors and subcontractors shall have a valid City of Newport Beach business license.
13. The Applicant shall continually maintain the wireless telecom facility so that it retains its original appearance at the time the building permit is finalized by the City of Newport Beach.
14. On an annual basis, the Applicant shall conduct maintenance inspections of the wireless telecom facility, including the small cell facility and below-grade equipment areas, and make all necessary repairs. The Community Development Director may require additional inspections and/or maintenance activities at his/her discretion.
15. The Applicant shall not prevent the City of Newport Beach from having adequate spectrum capacity on the City's 800 MHz radio frequencies at any time.
16. The facility shall transmit at the approved frequency ranges established by the FCC. The Applicant shall inform the City in writing of any proposed changes to the frequency range in order to prevent interference with the City's Public Safety radio equipment.
17. The telecommunications facility shall at no time interfere with the frequencies used by the City of Newport Beach for public safety. "Comprehensive advanced planning and frequency coordination" engineering measures shall prevent interference, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the "Best Practices Guide" published by the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), and as endorsed by the FCC.
18. Should interference with the City's Public Safety radio equipment occur, use of the telecom facility authorized by this permit may be suspended until the radio frequency interference is corrected and verification of the compliance is reported.
19. The Applicant shall provide a "single point of contact" for the carrier in its Engineering and Maintenance Departments that is monitored 24 hours per day to ensure continuity on all interference issues, and to which interference problems may be reported. The name, telephone number, fax number, and email address of that person shall be provided to the Community Development Department and Newport Beach Police Department's Support Services Commander prior to activation of the facility. If the point of contact changes, the City shall be immediately alerted and updated.
20. No advertising signage or identifying logos shall be displayed on the telecom facility except for small identification, address, warning, and similar information plates. A detail of the information plates depicting the language on the plate shall be included in the plans submitted for issuance of building permits.
21. Appropriate information warning signs or plates shall be posted on the base streetlight pole of the transmitting antenna. In addition, contact information (e.g., a telephone number) shall be provided on the warning signs or plates. The location of the information warning signs or plates shall be depicted on the plans submitted for construction permits.

Signage required by State or federal regulations shall be allowed in its smallest permissible size.

22. Prior to the final of building permits, the Applicant shall schedule an evening inspection by the Code Enforcement Division to confirm compliance with lighting. The telecom facility shall be lighted to the extent deemed necessary by the Newport Beach Police and Utilities Departments for security lighting and consistency with other streetlights in the area.
23. The Applicant shall maintain the telecom facility in a manner consistent with this approval.
24. The Applicant shall ensure that its telecom facility complies with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The Applicant shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. This information shall be made available by the Applicant upon request of the Community Development Director.
25. The facility shall comply with all applicable provisions of U.S. Code Title 47 (Telecommunications) rules and regulations, including those related to FCC Radio Frequency safety.
26. Prior to final of building permits, the Applicant shall schedule an inspection by the Planning Division to ensure materials and colors match existing architecture as illustrated in the approved photographic simulations and in conformance with NBMC Section 20.49.050.
27. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Division by certified mail no less than thirty (30) days prior to such action. The operator shall have ninety (90) days from the date of abandonment or discontinuance to reactivate use of the facility, or remove the telecom facility and restore the site.
28. The City reserves the right and jurisdiction to review and modify any permit approved pursuant to NBMC Chapter 20.49, including the conditions of approval, based on changed circumstances. The operator shall notify the Planning Division of any proposal to change the height or size of the facility; increase the size, shape, or number of antennas; change the facility's color or materials or location on the site; or increase the signal output above the maximum permissible exposure ("MPE") limits imposed by the radio frequency emissions guidelines of the FCC. Any changed circumstance shall require the operator to apply for a review of the modification, and possible amendment to the use permit, prior to implementing any change.
29. Use Permit No. UP2019-034 shall expire unless exercised within 24 months from the date of approval as specified in NBMC Section 20.54.060 (Time Limits and Extensions), unless an extension is otherwise granted.

30. Construction activities shall comply with NBMC Section 10.28.040, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday and 8 a.m. and 6 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or holidays.
31. This Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
32. A copy of the Resolution, including conditions of approval Exhibit "A," and approved drawings from Southern California Edison (SCE) for the power supply and design, shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
33. The Applicant shall promptly notify the City if the landscaped parkway of the subject streetlight pole is negatively affected or otherwise damaged by project implementation.
34. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of AT&T Small Cell SLC4654, including, but not limited to, Minor Use Permit No. UP2019-034 (PA2019-115). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Public Works Department

35. Prior to the issuance of a building permit, an encroachment permit shall be required.
36. Prior to the issuance of a building permit, traffic control plans illustrating compliance with the 2016 watchbook requirements shall be reviewed and approved by the Public Works Department before their implementation. Large construction vehicles shall not be permitted to travel narrow streets as determined by the Public Works Department. Disruption caused by construction work along roadways and by movement of

construction vehicles shall be minimized by proper use of traffic control equipment and flagman.

Additional Conditions of Approval

37. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the (MBTA), grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:
- A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
 - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
38. The applicant shall replace any privately installed landscaping disturbed as a result of the telecom installation. Any removed landscaping shall be replaced with the same species and size, wherever feasible, and provided the replacement is in compliance with any applicable encroachment agreements.

RESOLUTION NO. ZA2020-032

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING MINOR USE PERMIT NO. UP2020-002 FOR A FOR A DENTAL OR MEDICAL OFFICE LOCATED AT 20361 IRVINE AVENUE, UNIT B1 (PA2020-009)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Buchanan Street Partners (on behalf of the property owner The Jetty Newport Beach LLC) (Applicant), with respect to property located at 20361 Irvine Avenue, Unit B1, and legally described as Parcel 1 of Parcel Map No 269-39 in the unincorporated territory of Orange County a portion of Lot 21, Tract No 456, Recorded in Book 17, Page 9, of Miscellaneous Maps in the office of the County Recorder of said county (Property), requesting approval of a minor use permit.
2. The Applicant proposes to operate an approximately 2,721 square-foot dentist office (i.e., a medical office land use) within The Jetty, an existing professional office park. The practice will provide standard, nonsurgical, dental procedures and is anticipated to see seven (7) to eight (8) patients a day for an average visit of 45 minutes. The facility will operate from approximately 9 a.m. to 5 p.m., Monday through Friday.
3. The Property is designated General Commercial Office (CO-G) by the City of Newport Beach General Plan Land Use Element and is located within the Santa Ana Heights Specific Plan (SP-7) Professional and Administrative Office Zoning District.
4. The Property is not located within the coastal zone; therefore, a coastal development permit is not required.
5. A public hearing was held on April 16, 2020 conducted in the Community Room at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The Project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3.
2. The Class 1 exemption authorizes the operation, repair, maintenance and minor alterations of existing buildings. The proposed use will be located within an existing development and only minor alterations will be required to accommodate the new use.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020(F) (Conditional Use Permits and Minor Use Permits – Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

A. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

1. The General Plan Land Use Element designates the site for commercial uses under CO-G (General Commercial Office). This designation is intended to provide for administrative, professional, and medical offices with limited accessory retail and service uses. A dental office is considered a medical office use and allowed under the existing General Plan designation. The proposed dental office use would be part of an existing office park (The Jetty) and would be consistent with the associated land use designation and General Plan.
2. The Property is located within the Santa Ana Heights Specific Plan (SP-7) and within the Professional and Administrative (PA) Office District. While a dental or medical office use is not specifically listed within SP-7/PA as an allowed use subject to approval of a minor use permit, a Director's Determination (DD2020-001) has been made that medical office uses, and similar uses, are consistent with the purpose and intent of the PA District and are therefore allowable subject to approval of a minor use permit.
3. The PA District is established to provide for the development and maintenance of an optimal environment for moderate intensity professional and administrative office uses and related uses on sites with large landscaped open spaces and off-street parking facilities. This district is intended to be located on heavily traveled streets or adjacent to commercial or industrial uses, and may be used to buffer residential uses. The Project would occupy an existing office space and would operate similarly to a traditional business or professional office use with hours from approximately 9 a.m. to 5 p.m., Monday through Friday (Hours of Operation). The dental office anticipates a maximum of eight (8) patients per day.

Finding:

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of the Zoning Code and the Municipal Code.

Facts in Support of Finding:

1. All Facts in Support of Finding A are hereby incorporated by reference.

2. Tenant improvements to the existing tenant space are interior and will require the issuance of applicable building permits. No changes to the existing building footprint are proposed.
3. Pursuant to NBMC Section 20.40.040 (Off-Street Parking Spaces Required), of the first 50,000 square feet of an office park requires one parking space per 250 square feet of net floor area, and the next 75,000 square feet of office requires one space per 300 square feet of net floor area. Medical offices, if not more than 20 percent of the total net floor area of the office park, share identical parking requirements. The existing office park has a gross floor area of 83,688 square feet and a net floor area of 80,289 square feet. The proposed dental office, combined with all previously approved medical uses, totals 13,231 square feet of net floor area, which is approximately 16 percent net floor area of the office park. Therefore, the proposed dental or medical office shares an identical parking requirement as an office use and no additional parking is required for the change in use.
4. The Jetty consists of six (6) buildings with an aggregate floor area of approximately 80,289 square feet. Approximately 77,354 square feet of The Jetty is office uses (including the existing and proposed medical office uses) and require 292 parking spaces. The remaining 2,935 square feet is occupied by a tutoring center, which was approved by a use permit (Conditional Use Permit No. UP2015-015). The tutoring center use requires 27 spaces based on the requirement of one space per peak staff, however 18 required spaces were waived as part of the approval. Parking is sufficient for the entire office park as 301 spaces are required and 301 spaces are provided.

Finding:

- C. *The design, location, size, operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. The Project is a dental or medical office land use within The Jetty, which already contains a mix of professional and administrative offices, support uses, as well as a tutoring center. Based on the Project description and operational attributes, it is expected to operate in a manner compatible with other tenants and land uses in the building and office park. Any change in the proposed operational characteristics, expansion in area, or other modification to the approved plans shall require subsequent review and approval by the Planning Division.
2. The Jetty abuts residential uses to the north and west. The subject building (Building B) is located near the center of the Property. The dental or medical office would utilize standard business hours, and conduct business on an appointment only basis. The dental or medical office is anticipated to operate similarly to a typical office space and would not impact residential uses to the north and west.

3. Adequate parking exists to support the Project, as discussed in Facts in Support of Finding B.3 and B.4.

Finding:

D. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

1. All proposed tenant improvements, with exception of signage, would be limited to the inside of the existing office building and would not affect pedestrian circulation, parking spaces, or access to existing tenants.
2. Three other medical office land uses have been previously reviewed and approved by the Planning Commission (in 2017, 2019, and 2020) prior to the Director's Determination that this use is allowable with a minor use permit. Based on the hours of operation, limited number of patients, small scale, and moderate intensity of the use, the Project is anticipated to operate similarly to adjacent uses and is therefore physically suitable for the office park.
3. Emergency access to the Property is currently provided by a single drive approach from Irvine Avenue. Access through the site is provided by a large surface parking area with drive aisles that are at least 24 feet in width. No changes to emergency access are proposed and onsite circulation would not change as part of the Project.
4. The Property, including the subject tenant space, is adequately served by public services and utilities.
5. The design of the improvements will comply with all Building, Public Works, and Fire Codes, and plans will be reviewed prior to the issuance of building permits.

Finding:

E. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

1. A dental or medical office within an existing office park would operate similarly to a standard professional office and would not constitute a hazard to the public.
2. The Project includes conditions of approval to ensure that potential conflicts with the surrounding land uses and City as a whole are minimized to the greatest extent possible.

The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance within the facility, adjacent properties, or surrounding public areas, sidewalks, or parking lots, during business hours, if directly related to the patrons of the business.

3. The hours of operation are compatible with the other offices in The Jetty.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2020-002, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 16TH DAY OF APRIL, 2020.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL****Planning Division**

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Minor Use Permit.
4. Any proposed signs shall be in conformance with the approved Comprehensive Sign Program for the Property and provisions of NBMC Chapter 20.42 (Sign Standards).
5. Minor Use Permit No. UP2020-002 shall expire unless exercised within 24 months from the date of approval as specified in NBMC Section 20.54.060 (Time Limits and Extensions), unless an extension is otherwise granted.
6. Prior to the issuance of a building permit, applicable Fair Share Traffic Fees shall be paid to convert the space from office to medical office in accordance with NBMC Chapter 15.38 (Fair Share Traffic Contribution Ordinance). The Applicant shall be credited for the existing office use and shall pay the net difference for the medical office use. The fees shall be consistent with those in effect at the time the building permit is issued.
7. This Minor Use Permit may be modified or revoked by the Zoning Administrator should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
8. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review and approval by the Planning Division and may require an amendment to this Minor Use Permit or the processing of a new Minor Use Permit.
9. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.

10. Prior to the issuance of a building permit, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
11. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
12. Construction activities shall comply with NBMC Section 10.28.040 (Construction Activity – Noise Regulations), which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday and 8 a.m. and 6 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
13. No outside paging system shall be utilized in conjunction with this establishment.
14. All trash shall be stored within the building or within dumpsters stored in the trash enclosure or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies.
15. Trash receptacles for patrons shall be conveniently located both inside or outside of the establishment, however, not located on or within any public property or right-of-way.
16. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
17. The Applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
18. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10 p.m. and 7 a.m. on weekdays and Saturdays and between the hours of 10 p.m. and 9 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Minor Use Permit.
19. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
20. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the NBMC to require such permits.

21. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of NBMC Title 20 Planning and Zoning.
22. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Buchanan Street Partners Medical/Dental Office including, but not limited to, Minor Use Permit No. UP2020-002 (PA2020-009). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Building Division

23. The Applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.

RESOLUTION NO. ZA2020-033

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-009 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE LOCATED AT 706 WEST OCEAN FRONT (PA2020-010)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Teale Architecture, with respect to property located at 706 West Ocean Front, and legally described as Lots 25 and 26 in Block 8 of Tract No. 219 requesting approval of a coastal development permit.
2. The existing single-family residence was constructed in 1984 on two legal lots. A Covenant Agreement was recorded on January 26, 1984, combining the two lots into a single, legal building site.
3. The applicant proposes to demolish an existing single-family residence and construct a new 4,280-square-foot, single-family residence with roof deck and 809 square-feet of garage parking for three cars.
4. The subject property is located within the R-1 (Single-Unit Residential) Zoning District and the General Plan Land Use Element category is RS-D (Single-Unit Residential Detached).
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-C (Single Unit Residential Detached) (10.0 - 19.9 DU/AC) and the Coastal Zoning District is R-1 (Single-Unit Residential).
6. A public hearing was held on April 16, 2020 in the Community Room at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. Class 3 includes the construction of a single-family residence in a residential zone. The proposed project includes the demolition of an existing single-family residence and construction of a new 4,280-square-foot, single-family residence with roof deck and garage parking for three cars.

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3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 21.52.015 (Coastal Development Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

A. Conforms to all applicable sections of the certified Local Coastal Program.

Facts in Support of Finding:

1. The proposed structure conforms to all applicable development standards including, but not limited to, floor area limitation, setbacks, height, and parking:
 - a. The maximum floor area limitation is 5,916 square feet and the proposed gross floor area is 5,089 square feet.
 - b. The proposed development will provide the required setbacks, which are 8 feet along the front property line abutting the beach, 4 feet along the side property lines, and 5 feet along the rear property line abutting the alley.
 - c. The highest guardrail or flat roof is no more than 24 feet, measured from established grade at every point as required by Zoning Code Section 20.30.050(B)(3) and the highest ridge is no more than 29 feet from established grade, which complies with the maximum height limitation.
 - d. The project includes enclosed garage parking for three vehicles, which complies with the minimum three-space parking requirement for single-family residences with more than 4,000 square feet of livable floor area.
2. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood's pattern of development and expected future development consistent with applicable development standards as the neighborhood is predominantly developed with two-story, single-family residences.
3. The property is an oceanfront lot that is separated from the ocean by sandy beach with an average width of approximately 470 feet. A Coastal Hazards Analysis Report was prepared for the project by William Simpson & Associates, Inc., dated January 20, 2020. The report concludes that coastal hazards, including wave runup, overtopping and erosion, will not

impact the property over the next 75 years and there is no anticipated need for a shore protection device over the life of the proposed development. Using “medium-high risk aversion” and “high emissions”, and the highest high tide of 7.7 feet North American Vertical Datum of 1988 (NAVD 88), sea level for bay water level at year 2095 will be at 13.7 feet NAVD 88, slightly lower than the finish floor level of the proposed residence. The Newport Beach City Council has approved the use of the high estimate of the “low risk aversion” scenario, which is 3.2 feet by the year 2100, or 2.9 feet by 2094. Therefore, the sea level is estimated to likely reach 10.6 feet NAVD 88 over the next 75 years (i.e. the life of the structure).

4. The finished floor elevation of the first floor of the proposed living area is 13.78 feet (NAVD 88), which exceeds the minimum 9.0-foot (NAVD 88) elevation standard for new structures and exceeds the minimum requirements for sea level rise (10.6 feet NAVD 88).
5. Pursuant to Newport Beach Municipal Code (NBMC) Section 21.30.030(C)(3)(i)(iv), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c). Both requirements are included as conditions of approval that will need to be satisfied prior to the issuance of building permits for construction.
6. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and the CBC prior to building permit issuance.
7. A post-construction drainage system will be installed that includes drainage and percolation features designed to retain dry weather and minor rain runoff on-site to ensure the project does not impact water quality. Any water not retained on-site is directed to the City’s storm drain system.
8. The project design addresses water quality with a construction erosion control plan that outlines temporary best management practices (BMPs) to be implemented during construction to minimize erosion and sedimentation, and to minimize pollution of runoff derived by construction chemicals and materials. No water quality impacts to coastal waters are anticipated based upon the location and elevation of the property.
9. New landscaping will be verified for compliance with NBMC Section 21.30.075 (Landscaping). A condition of approval is included that requires drought-tolerant and

prohibits invasive species. Prior to issuance of the building permits, the final landscape plans will be reviewed to verify invasive species are not planted.

10. The property is not located near coastal view roads and is not located near any identified public viewpoints; therefore, the project will not negatively impact public coastal views.

Finding:

B. Conforms to the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline; however, the project will not affect the public's ability to gain access to use and/or view the coast and nearby recreational facilities. The proposed residential development neither provides nor inhibits public coastal access. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project includes the replacement of an existing single-family residence with a new single-family residence. The project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.
2. The project is designed and sited so as not to block or impede existing public access opportunities and occurs within the confines of private property. Existing coastal access conditions will not be affected by the proposed development. Coastal access is currently provided and will continue to be provided by street ends throughout the neighborhood with access to the beach and water.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this Project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2020-009, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.

3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 16th DAY OF APRIL, 2020.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
3. Coastal Development Permit No. CD2020-009 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
4. Prior to the final inspection of the building permit, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.
5. Prior to the issuance of a building permit, the property owner shall sign a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgements, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development. The letter shall be scanned into the plan set prior to building permit issuance.
6. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.
7. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.

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8. This Coastal Development Permit does not authorize any development seaward of the private property.
 9. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds pursuant to MBTA:
 - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
 - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
 10. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
 11. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
 12. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stock piles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
 13. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
 14. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.

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15. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
 16. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
 17. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
 18. Prior to the issuance of building permits, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.
 19. Prior to the issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
 20. Prior to issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
 21. Prior to issuance of a building permit, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Coastal Development file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Coastal Development Permit.
 22. Prior to issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the approved WQHP/WQMP and any changes could require separate review and approval by the Building Division.
 23. Prior to the issuance of building permits, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.
 24. Landscaping of the site shall conform to the requirements of Section 21.30.075 (Landscaping) and Section 21.30.085 (Water Efficient Landscaping) of the Local Coastal Program Implementation Plan. Plant materials shall be selected for low water-demand and drought tolerance, and the planting of invasive species shall be prohibited.

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25. Landscaping of the site shall conform to Section 14.17 (Water Efficient Landscape Ordinance) of the Newport Beach Municipal Code.
 26. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
 27. Prior to the issuance of building permits, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
 28. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.
 29. This Coastal Development Permit No. CD2020-009 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
 30. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **TNS Development, LLC Residence including, but not limited to Coastal Development Permit No. CD2020-009 (PA2020-010)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

RESOLUTION NO. ZA2020-034

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2020-001 FOR A MEDICAL OFFICE LOCATED AT 20201 BIRCH STREET, SUITE 100 (PA2020-007)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by MLJ Resources, LLC (“Applicant”) with respect to property located at 20201 Birch Street, Suite 100, and legally described as Parcel 2 of Tract No. 706, as shown on a map recorded in Book 21, Page 25, of Miscellaneous Maps, in the Office of County Recorder, in the County of Orange (Parcel 2 of Parcel Map No. 88-326) requesting approval of a minor use permit.
2. The Applicant proposes to establish a multipurpose wellness center within a 3,152-square-foot tenant space of an existing commercial office building. Services would be appointment-based and administered one-on-one, including general medical and chiropractic care, acupuncture, massage therapy, nutritional coaching, and therapeutic fitness (yoga and Pilates).
3. The subject property is designated General Commercial Office (CO-G) by the General Plan Land Use Element and is located within the Santa Ana Heights Specific Plan – Business Park District (SP-7 [BP]).
4. The subject property is not located within the coastal zone; therefore, a coastal development permit is not required.
5. A public hearing was held on April 16, 2020, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 150301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. Class 1 exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

3. Project implementation would consist of a limited tenant improvement to bring the existing suite into compliance with Building Code accessibility requirements. This work would consist of repositioning nonstructural walls, restructuring the restroom space, and reconfiguring interior fixtures.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of such findings are set forth:

Finding:

A. The use is consistent with the General Plan and any applicable specific plan;

Facts in Support of Finding:

1. The property is designated General Commercial Office (CO-G) within the Land Use Element of the General Plan, which is intended to provide for administrative, professional, and medical offices with limited accessory retail and service uses. The proposed personal service use offers medical treatments, ancillary massages, and a number other health and wellness services to those who live, work, and visit the city, consistent with the CO-G designation.
2. The property is located within the Business Park District of the Santa Ana Heights Specific Plan (SP-7 [BP]) which is intended to provide for the development and maintenance of professional and administrative offices, commercial uses, specific uses related to product development, and limited light industrial uses.
3. The principal use of the tenant space will be a chiropractic and wellness center (i.e., medical use) offering services that include general medical and chiropractic care, acupuncture, massage therapy, nutritional coaching, and therapeutic fitness (yoga and Pilates). Pursuant to the NBMC Section 20.90.120.B (Business Park District: SP-7 [BP] - Principal Uses Permitted), medical uses in SP-7 (BP) may be permitted subject to the approval of a minor use permit.

Finding:

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding:

1. See Fact in Support of Finding A.3.
2. An existing general office currently occupies the subject suite, but conversion to a medical office in this case does not increase parking demand. Pursuant to Table 3-

10 of NBMC 20.40.040 (Off-Street Parking Requirements), offices under 50,000 square feet and not more than 20 percent medical office use may be parked at the general office rate of 1 space per 250 square feet of gross floor area. The subject building contains 22,045 square feet of gross floor area and LIV Integrative Health would be the only medical use at 14% of the building (3,152 sq. ft. suite / 22,045 sq. ft. total office building). As a result, the proposed medical use is parked at the existing 1 per 250 square foot rate for general office. View the Applicant's parking summary as Attachment No. ZA 3 for uses and suite sizes on-site.

3. As conditioned, the proposed use will comply with all other applicable provisions of the NBMC.

Finding:

C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.

Facts in Support of Finding:

1. The project site is developed with three, two-story office buildings and a surface parking lot. The surrounding area consists of a mixture of nonresidential uses - including general and medical offices - and a row of nonconforming residential uses. The proposed use will provide a service consistent with neighboring uses and will be located in an area of Santa Ana Heights which prohibits residential uses, thereby limiting any detriment to residents of the City.
2. Based on operational characteristics, the use is not considered an independent massage facility. Ancillary medical and massage treatments offered constitute a small portion of the overall floor area, thereby limiting any potential blight or deterioration to the surrounding area.
3. The proposed use will not require the provision of additional parking on-site, as discussed in Fact in Support of Finding B.2.
4. As conditioned, the allowed hours of operation are from 8 a.m. to 7 p.m., daily. This will help to limit any potential late night or early morning land use conflicts with allowed uses on nearby properties. LIV Integrative Health provides specialized, individual care by appointment, and this lower type of intensity is expected to maintain compatibility with nearby professional office uses during these recommended hours.

Finding:

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.

Facts in Support of Finding:

1. The existing subject two-story office building and surface parking is physically suitable to accommodate multiple uses. Access to the property is currently provided by a single driveway approach from Birch Street. Through the site, access is provided by a large surface parking area with drive aisles that are at least 24 feet in width. No changes to emergency access are proposed and onsite circulation would not change as part of the Project.
2. All proposed tenant improvements, with the exception of signage, would be limited to the inside of the existing office building and would not affect pedestrian circulation, parking spaces, or access to existing tenants.
3. Adequate public and emergency vehicle access, public services, and utilities are provided on the property and the proposed use will not change this.
4. The Property, including the subject tenant space, is adequately served by public services and utilities.
5. The design of the improvements will comply with all Building, Public Works, and Fire Codes, and plans will be reviewed prior to the issuance of building permits.

Finding:

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The proposed use is intended to serve residents and visitors to the City of Newport Beach.
2. A medical office within an existing office park would operate similarly to a standard professional office and would not constitute a hazard to the public.
3. The project includes conditions of approval to ensure that potential conflicts with the surrounding land uses and City as a whole are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance within the facility, adjacent properties, or surrounding public areas, sidewalks, or parking lots, during business hours, if directly related to the patrons of the business.
4. The proposal has been reviewed by the Building and Code Enforcement Divisions, Public Works, Fire, and Police Departments, and recommended conditions of

approval have been included to limit any detriment to the City or general welfare of persons visiting or working in the surrounding neighborhood.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2020-001, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 16TH DAY OF APRIL, 2020.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

(Project-specific conditions are in italics)

Planning Division

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. *The hours of operation shall be limited to between 8 a.m. and 7 p.m., daily.*
5. Prior to the issuance of a building permit, applicable Fair Share Traffic Fees shall be paid to convert the space from office to medical office in accordance with NBMC Chapter 15.38 (Fair Share Traffic Contribution Ordinance). The Applicant shall be credited for the existing office use and shall pay the net difference for the medical office use. The fees shall be consistent with those in effect at the time the building permit is issued.
6. The operation of an independent massage business is not permitted unless an amendment to this Minor Use Permit or a new Use Permit is first approved.
7. The Applicant is required to obtain all applicable permits from the City's Building Division and Fire Department.
8. *All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of NBMC Chapter 20.42 (Signs).*
9. *Use Permit No. UP2020-001 shall expire unless exercised within 24 months from the date of approval as specified in NBMC Section 20.54.060 (Time Limits and Exceptions), unless an extension is otherwise granted.*
10. This Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

11. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new Use Permit.
12. A copy of the Resolution, including conditions of approval Exhibit “A” shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
13. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
14. Prior to the issuance of a building permit, the Applicant shall pay a fair share fee for suite’s change of use from general to medical office. A credit shall be applied based on the existing use of the tenant space.
15. All noise generated by the proposed use shall comply with the provisions of NBMC Chapter 10.26 and other applicable noise control requirements. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

Location	Between the hours of 7 a.m. and 10 p.m.		Between the hours of 10 p.m. and 7 am.	
	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

16. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
17. Construction activities shall comply with NBMC Section 10.28.040, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday, and 8 a.m. and 6 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
18. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.

19. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
20. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
21. The Applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
22. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10 p.m. and 7 a.m. on weekdays and Saturdays and between the hours of 10 p.m. and 9 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
23. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
24. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
25. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
26. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of LIV Integrative Health including, but not limited to, Minor Use Permit No. UP2020-001 (PA2020-007). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this

condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Police Department

27. Strict adherence to NBMC Chapter 5.50 (Massage Establishments) must be upheld.
28. All employees of the Applicant's business who conduct massages must be certified by the California Massage Therapy Council (CAMTC) (physicians, physical therapists, and chiropractors exempt).

Building Division

29. A building permit with plans showing all improvements and compliance with disable access standards will be required for the change of use from office to medical office.

RESOLUTION NO. ZA2020-035

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING LIMITED TERM PERMIT NO. XP2020-003 AND COASTAL DEVELOPMENT PERMIT NO. CD2020-011 FOR A LIMITED-DURATION CHARTER BOAT OPERATION LOCATED AT 1221 WEST COAST HIGHWAY (PA2020-022)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Orange County Charters (“Applicant”), with respect to property located at 1221 West Coast Highway, and legally described as Portion of Lot 171, Block 54 of Irvine’s Subdivision as shown on a map thereof filed in Book 1, Page 88 of Miscellaneous Record Maps in the Office of the County Recorder of Orange County, California, requesting approval of a limited term permit (more than 90 days) and associated coastal development permit.
2. The Applicant requests a limited term permit (more than 90 days) and associated coastal development permit (CDP) to allow the temporary operation of a charter boat business with shared on-site parking for up to one (1) year. Operations will use an existing dock slip and shared passenger loading dock on property. Hours of operation are from 8 a.m. to 7 p.m. Parking is proposed to be shared on-site with the Balboa Bay Club.
3. The General Plan Land Use designation for this site is Visitor Serving Commercial (CV), which is intended to provide accommodations, goods, and services intended to primarily serve visitors to the City of Newport Beach.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Visitor Serving Commercial (CV-B) (0.0 – 1.50 FAR) and it is located within the Balboa Bay Club (PC45).
5. A public hearing was held on April 16, 2020, in the Community Room at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15301 (Existing Facilities) and 15304 (Minor Alterations to Land) under Class 1 and Class 4, respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

2. Class 1 exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Class 4 exempts minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes. In this case, the proposal is a limited term permit and associated coastal development permit for the operation of a charter boat operation at existing docks and results in no physical alterations.

SECTION 3. REQUIRED FINDINGS.

Limited Term Permit

In accordance with Newport Beach Municipal Code (NBMC) Section 20.52.040 (Limited Term Permits), the following findings and facts in support of such findings are set forth:

Finding:

- A. *The operation of the limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use.*

Facts in Support of Finding:

1. The Limited Term Permit will allow for the temporary operation of a charter boat operation for up to one (1) year. The operation would use an on-site dock slip and shared passenger loading dock. Parking would be shared with the existing Balboa Bay Club surface and subsurface lots.
2. The proposed charter boat operation will be used and operated independently, but complementary to, the existing uses on-site and others in the vicinity that foster coastal activity for residents and visitors. Food service or alcohol sales bayward of the property would be prohibited. Passengers would bring their own food and drink on-board, in compliance with Code Enforcement and the California Department of Alcoholic Beverage Control regulations.

Finding:

- B. *The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot.*

Facts in Support of Finding:

1. The subject site measures roughly 12.6 acres in area and is situated within Mariner's Mile, between Lower Newport Bay to the south and Coast Highway to the north. An existing boat slip and shared dock are proposed to be used for access to the boat by crew and passengers. Existing on-site development includes a private waterfront club and luxury resort, banquet rooms and event spaces, a residential unit apartment community, ancillary retail, a bay front marina, and 494 surface and subsurface parking spaces.
2. Orange County Charter proposes to temporarily operate a captained charter boat business with on-site shared parking at the Balboa Bay Club. Chartered excursions are expected to occur once a day and, last four to nine hours, with a maximum of 15 persons, counting crew and passengers.
3. The temporary use would utilize one (1) dock and one (1) boat with approximately 15 passengers and crew at any given time. Hours of operation are conditioned to between 8 a.m. and 7 p.m., daily.
4. The charter boat operation use is commensurate with others in the vicinity and will provide additional coastal recreational opportunities. Shared on-site parking is not anticipated to result in a new or negative impact to the surrounding properties.
5. Approval of this project will not result in any construction or physical alterations to the site.

Finding:

- C. The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate.*

Facts in Support of Finding:

1. Reference Fact in Support of Finding A.1.
2. Vehicular access to the subject site is currently provided by a single driveway approach from the south side of West Coast Highway. Through the site, access is provided by a surface parking area with drive aisles. Pedestrian access to the communal passenger loading dock is taken via an on-site gangway. No changes to access are proposed and onsite circulation would not change as part of the project. There are no anticipated traffic issues.

Finding:

D. Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator.

Facts in Support of Finding:

1. Table 3-10 of NBMC Section 20.40.040 (Off-Street Parking Spaces Required) requires one parking space per each three passengers and crew members for the proposed "Entertainment and Excursion Service" land use. Since about 15 persons would occupy the watercraft, projected temporary parking demand would be five parking spaces. Per Staff Approval No. SA2005-009, approved by the Planning Director on September 30, 2005, allowed a reduction of 1 parking space from 495 to 494. Current parking is nonconforming. The Applicant requests to temporarily share five on-site parking spaces with BBC for limited duration of this permit. Site parking counts were recorded by the Applicant over a 12-day period at two-hour intervals from 9 a.m. to 6 p.m. in late January and early February 2020. This survey revealed an average availability of over 200 spaces during operating times for the proposed use. BBC also provides valet service that helps manage on-site parking. The applicant anticipates that patrons will rely on carpooling or ride-share services for transportation to the site, which may further assist to minimize the potential for parking impacts. Since the proposed excursions would require only 5 spaces of the 494 provided on-site and take place once a day, and by appointment, negative parking impact is not expected.
2. Because adequate parking will be provided by way of the off-site lot, public parking availability for coastal access will not be affected by project implementation in accordance with NBMC Section 21.40.110(A) (Impact to Coastal Access Prohibited).

Finding:

E. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.

Facts in Support of Finding:

1. The General Plan Land Use designation for this site is Visitor Serving Commercial (CV), which is intended to provide accommodations, goods, and services intended to primarily serve visitors to the City of Newport Beach.
2. While the Balboa Bay Club Planned Community District Regulations (PC45) do not mention charter operations as an allowed accessory use by name, a limited term permit allows limited duration uses that might not meet the development or use standards of the applicable planned community, but may be acceptable because of their temporary or limited nature. Considering the small-scale and appointment-based character of the charter boat proposal, operation would not function as a typical general public service that may otherwise conflict with Balboa Bay Club uses. Additionally, introduction of the

temporary use will provide recreation options to guests of BBC, and residents and visitors of Newport Beach, encouraging enhanced access to and usage of the bay.

3. The site is not located within a specific plan area.

Coastal Development Permit

In accordance with NBMC Section 21.52.015 (Findings and Decision), the following findings and facts in support of such findings are set forth:

Finding:

F. Conforms to all applicable sections of the certified Local Coastal Program.

Facts in Support of Finding:

1. The MU-W Coastal Land Use is intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent, coastal-related and visitor-serving uses. The proposed boat rental use is a coastal-dependent use that requires access to the bay.
2. Reference Fact in Support of Finding E.2.
3. As demonstrated in Fact in Support of Finding D.1 of this resolution, required parking will be satisfied through the shared arrangement. That being the case, public parking availability for coastal access will not be affected by project implementation in accordance with NBMC Section 21.40.110(A) (Impact to Coastal Access Prohibited.).
4. Landscaping is not proposed as a part of this project, and project approval will not result in any construction or physical alterations to the site.

Finding:

G. Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.

Facts in Support of Finding:

1. While the proposed site is located between the nearest public road and the sea or shoreline, the project will not change or affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities.
2. PC45 requires on-site public coastal access, provided by the site's entrance off West Coast Highway that links to a bay front walkway. The closest coastal public access opportunity is located less than 245 feet northeast from the subject site at Kings Road Park. The proposed dock and communal passenger loading dock to be used for by the

business are existing and no construction or physical alterations are proposed. Consequently, the proposal bears no impact on coastal access, views, or recreational opportunities

3. The proposed charter boat operation will provide additional recreation options to residents and visitors and encourage enhanced access to and usage of the bay.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15301 (Existing Facilities) and 15304 (Minor Alterations to Land) under Class 1 and Class 4, respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Limited Term Permit No. XP2020-003 and Coastal Development Permit No. CD2020-011, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of NBMC Title 21 Local Coastal Implementation Plan. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 16th DAY OF APRIL, 2020.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**
*(Project-specific conditions are in italics)***PLANNING**

1. *Parking shall maintain substantial conformance with Staff Approval No. SA2005-187.*
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Limited Term Permit and/or Coastal Development Permit.
4. *The Balboa Bay Club and the boat charter operation are to remain independent uses. Food service or alcohol sales bayward of the property is prohibited.*
5. *Applicant shall encourage passengers to carpool or utilize ridesharing services to the greatest extent practicable.*
6. *The designated slip shall be exclusively for the boat charter operation.*
7. *Outside storage for the boat charter operation shall be prohibited.*
8. *The existing dock system shall not be improved or otherwise modified without review and approval from the City of Newport Beach and/or the California Coastal Commission, including, but not limited to, the acquisition of a coastal development permit.*
9. *A marine activities permit (MAP) shall be obtained prior to operations.*
10. Limited Term Permit No. XP2020-003 and Coastal Development Permit No. CD2020-011 shall expire unless exercised within 24 months from the date of approval as specified in NBMC Section 20.54.060, unless an extension is otherwise granted.
11. This Limited Term Permit and Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
12. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review by the Planning Division and may require an amendment to this Coastal Development Permit and Limited Term Permit or the processing of a new Coastal Development Permit and Limited Term Permit.

13. This Limited Term Permit shall expire twelve (12) months from the issued date of the MAP approval, unless an extension of up to one (1) additional period of twelve (12) months is granted by the Zoning Administrator in compliance with Section 20.54.060 (Time Limits and Extensions). A letter requesting the extension and an additional parking summary documenting availability during summer months shall be submitted to the Planning Division no later than thirty (30) days prior to the expiration date of this permit.
14. *The hours of operation for the charter operation shall be limited to 8 a.m. to 7:00 p.m., daily, except that the boat rental operation shall be permitted to operate to later hours with the prior approval of the Planning Division for up to ten (10) special occasions per calendar year. Examples of special occasions include New Year’s Day, Valentine’s Day, Mother’s Day, Christmas Boat Parade, etc.*
15. All noise generated by the proposed use shall comply with the provisions of NBMC Chapter 10.26 and other applicable noise control requirements of the NBMC. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

Location	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

16. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
17. No outside paging system shall be utilized in conjunction with this establishment.
18. Trash receptacles for patrons shall be conveniently located to serve the charter boat patrons, however, not located on or within any public property or right-of-way.
19. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
20. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
21. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in

compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.

22. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Orange County Charters including, but not limited to, Limited Term Permit No. XP2020-003 and Coastal Development Permit No. CD2020-011 (PA2020-022). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.