



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 November 12, 2021.

ZONING ADMINISTRATOR ACTIONS NOVEMBER 10, 2021

- Item 1: PAM Capital Management, Inc. Residential Condominiums Tentative Parcel Map No. NP2021-007 (PA2021-154)
Site Address: 616 and 616 ½ Poinsettia Avenue
Action: Approved by Resolution No. ZA2021-060 Council District 6
- Item 2: Fong Residence Coastal Development Permit No. CD2021-032 (PA2021-158)
Site Address: 434 Via Lido Nord
Action: Approved by Resolution No. ZA2021-061 Council District 1
- Item 3: The Quiet Woman Limited Term Permit No. XP2021-032 (PA2021-230)
Site Address: 3224 East Coast Highway
Action: Approved by Resolution No. ZA2021-062 Council District 6
- Item 4: IL Barone Ristorante Limited Term Permit No. XP2021-013 (PA2021-192)
Site Address: 900 Bristol Street North
Action: Approved by Resolution No. ZA2021-063 Council District 3
- Item 5: Bayside Restaurant Limited Term Permit No. XP2021-016 and Coastal Development Permit No. CD2021-044 (PA2021-198)
Site Address: 900 Bayside Drive
Action: Approved by Resolution No. ZA2021-064 Council District 5
- Item 6: Chihuahua Brewing Company, LLC Temporary Patio Limited Term Permit No. XP2021-009 and Coastal Development Permit No. CD2021-038 (PA2021-187)
Site Address: 3107 Newport Boulevard
Action: Approved by Resolution No. ZA2021-065 Council District 1
- Item 7: The Bungalow Restaurant LLC Limited Term Permit No. XP2021-012 and Coastal Development Permit No. CD2021-041 (PA2021-191)
Site Address: 2441 East Coast Highway
Action: Approved by Resolution No. ZA2021-066 Council District 6

Item 8: Lido Bottle Works LLC Limited Term Permit No. XP2021-024 and Coastal Development Permit No. CD2021-048 (PA2021-203)
 Site Address: 3408 Via Oporto, Suite 103

Action: Approved by Resolution No. ZA2021-067	Council District	1
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Item 9: Foretti's Limited Term Permit No. XP2021-028 and Coastal Development Permit No. CD2021-053 (PA2021-213)
 Site Address: 2929 East Coast Highway

Action: Approved by Resolution No. ZA2021-068	Council District	6
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Item 10: A Restaurant Limited Term Permit No. XP2021-031 and Coastal Development Permit No. CD2021-060 (PA2021-228)
 Site Address: 3334 West Coast Highway

Action: Approved by Resolution No. ZA2021-069	Council District	3
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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. ZA2021-060

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP NO. NP2021-007 FOR TWO (2)-UNIT CONDOMINIUM PURPOSES LOCATED AT 616 AND 616 ½ POINSETTIA AVENUE (PA2021-154)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by PAM Capital Management, Inc (Applicant), with respect to property located at 616 and 616 ½ Poinsettia Avenue, and legally described as Lot 18, Block 643 of the Corona del Mar Tract, requesting approval of a tentative parcel map.
2. The applicant requests a tentative parcel map for two (2)-unit condominium purposes. A single-family residence has been demolished and a new duplex is currently under construction. 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 November 10, 2021, online via Zoom. 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 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 subject property is rectangular in shape with a slope of 4.1 percent. The Tentative Parcel Map is for condominium purposes for two

(2) dwelling units, conforms to the General Plan land use and Zoning Code development standards, 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 Title 20 of the Newport Beach Municipal Code 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 residence has been demolished and a new duplex is currently under construction. 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.

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 (rectangular and 4.1 percent slope). A single-family residence has been demolished and a new duplex is currently under construction.
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 residence has been demolished and a new duplex is currently under construction.
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 Divisions).

Finding:

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

Facts 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.
2. 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. Public improvements, such as repairing and replacing broken and/or otherwise damaged sidewalk panels and curb/gutter along the Poinsettia Avenue property frontage and alley, new sod or low groundcovers of the type approved by the City shall be installed throughout the Poinsettia Avenue parkway fronting the development site, and removal of hardscape and gravel within the Poinsettia Avenue parkway frontage, will be required of the applicant per the NBMC and Subdivision Map Act.
3. 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 two (2)-unit development under construction adds one (1) additional dwelling unit where previously, a single-family residential dwelling was developed. The two (2)-unit dwelling that is proposed for construction 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 help the City in meeting its regional housing need by adding one (1) additional dwelling unit.

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 located 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. NP2021-007, 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 10th DAY OF NOVEMBER, 2021.



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. 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.
3. The building permit for the new construction shall not be final until after recordation of the parcel map.
4. 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.
5. Prior to recordation of the parcel map, park fees for one (1) additional unit shall be paid (currently \$30,217).
6. Prior to recordation of the parcel map, fair share fees for one (1) additional unit shall be paid (currently \$2,016).
7. 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.
8. Construction activities shall comply with Section 10.28.040 (Construction Activity – Noise Regulations) of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.
9. 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 PAM Capital Management, Inc. Residential Condominiums, including, but not limited to, Tentative Parcel Map No. NP2021-007 (PA2021-154). 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

10. 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, Subarticle 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.**
11. 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, Subarticle 18. Monuments (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.
12. Prior to recordation of the parcel map, all improvements shall be constructed as required by Ordinance and the Public Works Department.
13. Prior to recordation of the parcel map, all damaged curb, gutter and sidewalk along the Poinsettia Avenue frontage and all damaged alley panels along the alley frontage shall be reconstructed per City Standard.
14. Prior to recordation of the parcel map, the existing City street tree along the Poinsettia Avenue frontage shall be protected in place.
15. Prior to recordation of the parcel map, each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.
16. Prior to recordation of the parcel map, all existing overhead utilities shall be undergrounded.
17. No above ground improvements are permitted within the 5-foot rear alley setback area.
18. Prior to recordation of the parcel map, hardscape and gravel within the Poinsettia Avenue parkway frontage shall be removed.

19. Prior to recordation of the parcel map, new sod or low groundcovers of the type approved by the City shall be installed throughout the Poinsettia Avenue parkway fronting the development site.
20. An encroachment permit is required for all work activities within the public right-of-way.
21. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
22. All on-site drainage shall comply with the latest City Water Quality requirements.
23. 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.

Fire Department

24. A fire sprinkler system shall be installed for each individual dwelling unit.

RESOLUTION NO. ZA2021-061

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-032 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW TWO (2)-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED TWO (2)-CAR GARAGE LOCATED AT 434 VIA LIDO NORD (PA2021-158)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Ritner Group, with respect to property located at 434 Via Lido Nord, requesting approval of a coastal development permit.
2. The lot at 434 Via Lido Nord is legally described as Lot 488 southeasterly 20 feet and northwesterly 10 feet of Lot 489 of Tract No. 907 in the City of Newport Beach, Orange County, California.
3. The applicant proposes to demolish an existing single-family residence and construct a new single-family residence of 3,244 square feet including an attached 469-square-foot, two (2)-car garage. The structure would reach a height of approximately 24 feet and includes two (2) stories. The existing bulkhead is generally in good condition and will remain in place with minor alterations. The project also includes additional appurtenances such as site walls, fences, patios, landscaping, and drainage devices. The design complies with all development standards including height, setbacks, and floor area limit, and no deviations are requested.
4. The subject property is designated RM (Multiple Residential) by the General Plan Land Use Element and is located within the RM (Multiple Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RM-E (Multiple Unit Residential Detached – [30.0-39.9 DU/AC]) and it is located within the RM (Multiple Residential) Coastal Zoning District.
6. A public hearing was held on November 10, 2021, online via Zoom. 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. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Division 6, Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or

Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the demolition of up to three (3) single-family residences and construction of up to six (6) dwelling units in urbanized areas. The proposed project consists of the demolition of one (1) single-family residence and the construction of a new 3,244-square-foot, single-family residence and including an attached 473-square-foot, two (2)-car-garage.
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, Findings and Decision) 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 development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 3,612 square feet and the proposed floor area is 3,244 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 4 feet along the front property line abutting Via Lido Nord, 3 feet along each side property line and 0 feet along the front property line abutting the Bay.
 - c. The highest guardrail and ridge are less than 24 feet from established grade (12.78 feet NAVD88), which complies with the maximum height requirements.
 - d. The project includes garage parking for a total of two (2) vehicles, complying with the minimum two (2)-car garage parking requirements for single-family residences with less than 4,000 square feet of habitable floor area.

2. The neighborhood is predominantly developed with two (2)-story, single- and multi-family residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.
3. The development fronts the Newport Bay and is protected by a bulkhead. A bulkhead conditions report was prepared by PMA Consulting, Inc. on June 22, 2021. The report concluded that the bulkhead is in good condition without noticeable evidence of distress and no repair or replacement of the bulkhead is anticipated within the next 75 years. The existing bulkhead elevations is 15.24 feet North American Vertical Datum of 1988 (NAVD88) and the proposed project includes lowering the bulkhead to 14 feet (NAVD88).
4. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by PMA Consulting, Inc. dated June 22, 2021, for the project. The current maximum bay water elevation is 7.7 feet (NAVD88) and the existing bulkhead is 15.24 feet (NAVD88). The report analyzes future sea level rise scenarios assuming a 3.0-foot increase in the maximum water level over the next 75 years (i.e. the life of the structure). Therefore, the sea level is estimated to reach approximately 10.90 feet (NAVD88) - (the likely range for sea level rise over 75-year design life of the structure based on low risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update). The proposed altered seawall at 14.0 feet (NAVD88) with an adaptability elevation of 14.4 feet NAVD88 is above the minimum required 10.9 feet (NAVD88). Flooding, wave runup, and erosion will not significantly impact this property over the proposed 75-year economic life of the development. Flood shields (sandbags and other barriers) can be deployed across the openings to protect and prevent flooding to the structure. The report concludes that the proposed project will be reasonably safe from flooding hazards for the next 75 years.
5. The project includes a bulkhead at 14 feet (NAVD88), with a design for adaptability elevation of 14.4 feet (NAVD88), in compliance with the City of Newport Beach Waterfront Project Design Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities.
6. The finished floor elevation of the proposed single-family residence is 13.5 feet (NAVD88), which complies with the minimum 9.00-foot (NAVD88) elevation standard. The Coastal Hazard Report concludes that the bay water elevation (currently 7.7 feet NAVD88) will not exceed the proposed finished floor for the anticipated 75-year life of the structure.
7. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv) – (Natural Landform and Shoreline Protection - Development Standards), 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) – (General Site Planning and Development Standards - Waterfront Development). Both requirements are included as conditions of approval that will need to

be satisfied prior to final building inspection, and prior to the issuance of building permits, respectively.

8. 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 CBC prior to building permit issuance.
9. The property is located adjacent to coastal waters. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived by construction chemicals and materials.
10. Pursuant to Municipal Code Section 21.35.050 (Water Quality and Hydrology Plan), due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a Water Quality and Hydrology Plan (WQHP) is required. A preliminary WQHP has been prepared on June 11, 2021 for the project by Toal Engineering, Inc. The WQHP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of an LID approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs.
11. Proposed landscaping complies with Implementation Plan Section 21.30.075 (Landscaping). A condition of approval is included that requires drought-tolerant species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
12. The project site is not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is across the bay at Kings Road Park and the site is only slightly visible from the park. As currently developed, the existing property and other residences along the bay and Via Lido Nord are located within the view shed of the park and bay. However, the proposed single-family residence complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.
13. The front of the residence, which is visible from the bay, provides additional setbacks for the first floor and the living areas on the second floor, with the second-floor balcony at the setback line. The proposed residence includes two (2) stories and reaches a maximum height of 24 feet, where three (3) stories and a maximum height of 29 feet is allowed per the NBMC. Lastly, the design includes modulation of volume throughout the structure and low front site walls that prevent the appearance of the site being walled off from the bay. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to existing public views.

Finding:

- B. *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. The project site is located between the nearest public road and the sea or shoreline. 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 replaces an existing single-family residence located on standard residential lot with a new single-family residence. The lot is zoned for multi-family but the existing development is single family. Therefore, 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. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. Vertical and lateral access to the bay and beach is available 455 feet northwest of the property at Genoa Park, which is the terminus of Via Genoa. Lateral access is available along the beach in front of Genoa Park. Additional vertical access points to the water are located at the terminus of Via Orvieto. The project does not include any features that would obstruct access along these routes.

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 15303 under Class 3 (Conversion or Construction 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. CD2021-032, 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 (Appeal to the Coastal Commission.) 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 10TH DAY OF NOVEMBER, 2021



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. Prior to final building permit inspection, 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 including the repair and maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead or other shoreline protective device. The agreement shall be binding against the property owners and successors and assigns.
3. Prior to the issuance of a building permit, the property owner shall submit 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, 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 development. This letter shall be scanned into the plan set prior to building permit issuance.
4. 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.
5. 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.
6. 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.
7. 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 CPPP and WQHP/WQMP and any changes could require separate review and approval by the Building Division.
8. 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.

9. 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.
10. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way. The existing planter bayward of the property shall be removed and backfilled with native sand.
11. This Coastal Development Permit does not authorize any development seaward of the private property.
12. 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 (1) or two (2) short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
13. 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.
14. 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.
15. 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. Stockpiles 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.

16. 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.
17. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
18. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
19. 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.
20. 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.
21. 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.
22. Prior to the issuance of building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
23. 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.
24. This Coastal Development Permit No. CD2021-032 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.
25. 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 Fong Residence including, but not limited to, Coastal Development Permit No. CD2021-032 (PA2021-158). 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. ZA2021-062

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-032 TO ALLOW TEMPORARY OUTDOOR DINING AREA LOCATED AT 3224 EAST COAST HIGHWAY (PA2021-230)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Lynne Anthony Campbell, owner of The Quiet Woman Restaurant, a property located at 3224 East Coast Highway, and legally described as Lot 4 in Tract 01045, requesting approval of a limited term permit.
2. The applicant proposes approximately 478-square-foot (500-square-foot-maximum) outdoor dining area for up to a one (1)-year term that was previously authorized through Emergency Temporary Use Permit No. UP2020-113 (PA2020-204) for The Quiet Woman Restaurant. The outdoor dining area will be relocated and will only occupy one (1) parking space where previously it occupied seven (7) parking spaces and approximately 2,000 square feet.
3. The subject property is designated CC (Corridor Commercial) by the General Plan Land Use Element and is located within the CC (Commercial Corridor) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on November 10, 2021, online via Zoom. 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. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and 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 Class 1 exemption includes 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. The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for

such use. The proposed scope of work is a maximum 500-square-foot outdoor dining patio at an existing restaurant for up to a one (1)-year limited term and qualifies under the parameters of the Class 1 and Class 3 exemptions.

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 20.52.040.G (Limited Term Permits) of the Newport Beach Municipal Code, 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 an outdoor dining patio for up to a one (1)-year term while the City reconsiders its parking requirements related to food service uses. The existing food service use is authorized through Use Permit No. UP1097.
2. The outdoor dining area has not posed a hazard to the general welfare of persons residing in the area since it was placed during the COVID-19 pandemic in 2020 through an Emergency Temporary Use Permit No. UP2020-041 (PA2020-115). The revised outdoor dining area will be greatly reduced in size (approximately 2,120 square feet to approximately 478 square feet). The operation of the expanded dining area is limited to up to a one (1)-year term and has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
3. Outdoor dining areas are common along the commercial corridor in Corona del Mar (CdM), have been used at the subject property during similar hours in the past, and the use has not proven detrimental. The existing hours of operation for the interior of the restaurant are limited until 2 a.m., daily. As conditioned, the temporary outdoor dining area will close by 10:30 p.m., daily.
4. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).

5. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
6. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
7. The overall plan includes appropriate delineation of outdoor use spaces with temporary physical barriers or markers.

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 lot is approximately 0.08 acres in size and is relatively flat. The existing food service use has operated since its original approval in 1965. Based upon the site plan, there is adequate area to accommodate the temporary outdoor dining area without impacting pedestrian circulation and parking. The proposed outdoor area will only use one (1) parking space.
2. The lot frontage is on East Coast Highway and the use is within a shared building with other commercial uses. The existing food service use has existed at this site since 1965. The expanded outdoor dining use will not impede use and enjoyment of the properties in the area and will instead add to the ambiance and character of the Corona del Mar area.
3. The expanded dining area will not impede any parking spaces. No traffic or site circulation issues are anticipated.

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. The subject lot is accessed from the alley and parking is provided adjacent the alley.
2. The temporary outdoor dining will use one (1) parking space. It will have substantial barriers to protect the area from the drive aisles and parking areas and will not encroach into the drive-aisles.

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; and*

Fact in Support of Finding:

1. The temporary outdoor dining will use one (1) parking space with appropriate delineation and temporary substantial physical barricades. Sufficient parking remains available to serve all uses on the property.

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 and Zoning designation for this site is CC (Commercial Corridor). The CC designation is intended to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The temporary outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will contribute to the neighborhood serving use.
2. The Limited Term Permit for expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the Commercial Corridor in that it provides amenities that support the visitors to the area and provides a social gathering place for those who live and work in the neighborhood, consistent with General Plan Land Use Element Goal LU2, below. Additional benefits from the proposed amendment include providing opportunities for the continuation of local businesses that generate sales tax and provide opportunities for employment, which is consistent with General Plan Land Use Element Policy LU 2.4 (Economic Development), also copied below:

Goal LU 2 *A living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique. It contains a diversity of uses that support the needs of residents, sustain and enhance the economy, provide job opportunities, serve visitors that enjoy the City's diverse recreational amenities, and protect its important environmental setting, resources, and quality of life.*

Policy LU 2.4 Economic Development *Accommodate uses that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents. (Imp 1.1, 24.1)*

3. Council Policy D-9 recognizes the need to balance economic development objectives with protection of the environment and the health and safety of the community. The policy recognizes the need to provide effective and efficient structures for implementing economic programs, utilizing staffing to provide healthy, thriving businesses, and maintain a healthy economy while preserving the unique commercial villages in Newport Beach. The proposed limited term permit would support a local business and economic prosperity while maintaining the unique character of the Corona del Mar.
4. The site is not located within a specific plan area.

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) and 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 Limited Term Permit No. XP2021-032 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 10TH DAY OF NOVEMBER 2021.



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 stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The approval of this Limited Term Permit shall be effective from January 1, 2022, to December 31, 2022, unless an extension is granted by the Zoning Administrator in compliance with Municipal Code Section 20.52.040.J (Extension of Limited Term Permit). The applicant shall be required to cease all permitted operations and remove any temporary improvements made to the outdoor spaces as part of this approval at the end of the effective period.
3. *The expanded dining area shall not exceed 500 square feet.*
4. *The existing allowed hours of operation of the establishment shall not be extended. The hours of hours of operation of the temporary outdoor dining area as part of this approval shall not extend beyond 10:30 p.m., daily.*
5. *There shall be no use of amplified sound.*
6. *The applicant shall install and maintain a physical barrier between any area used and adjacent common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.*
7. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
8. The sale of alcohol "to go" to patrons that dine within the expanded outdoor patios shall be prohibited.
9. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
10. The permittee shall provide adequate trash receptacles within the permitted patio shall and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
11. The Community Development Director or designee may inspect the modified area at any time during normal business hours.

12. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
13. 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.
14. This Limited Term Permit and Coastal Development Permit 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.
15. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit and Coastal Development Permit.
16. 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 this **Limited Term Permit No. XP2021-032 (PA2021-230) for The Quiet Woman Restaurant**. 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

17. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
 - a. A minimum 4-foot-wide accessible path to all functional area shall be provided.
 - b. Access to restrooms shall be provided at all times.
 - c. Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
 - d. At least one (1) accessible seating area shall be provided.
 - e. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two (2).

18. All exiting paths shall be a minimum 48 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.
19. Provide not less than 5percent accessible seating at tables and counters with knee clearance of at least 27" high, 30" wide, and 19" deep.
20. The tops of dining surfaces and work surfaces shall be 28" to 34" above the finish floor.
21. All exiting paths shall be a minimum 48 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.
22. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.
23. Accessible routes, including under canopy(ies) and other overhead improvements shall maintain a minimum clear height of 80 inches.
24. All electrical distribution lines shall be in good working order and shall be protected from pedestrian and vehicular traffic and shall accommodate accessibility.

Public Works Department

25. *A substantial barricade (k-rail, water-filled barrier or other barrier, approved by the Public Works Department) shall be provided between the proposed outdoor dining area within the parking spaces and the alley. This barrier shall also be provided between the outdoor dining and any parking drive aisles and parking stalls.*
26. *The dining area and substantial barricades shall not encroach into the existing drive aisle or alley right of way.*
27. There shall be a minimum of 5 feet of space around all overhead facilities, such as poles, and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
28. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
29. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
30. Expanded outdoor dining areas shall adhere to the SCE Clearance Decal examples provided

Fire Department

31. Fire lane(s) shall be identified on the plan.
32. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.
33. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.
34. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a three (3)-foot clearance in all directions.
35. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
36. HEAT LAMPS or other heating elements SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS IN ACCORDANCE WITH CODE SECTION 3107.12 OF THE CALIFORNIA FIRE CODE:
 - a. PROPANE AND OTHER FUEL-BASED HEATING ELEMENTS (INCLUDING BUT NOT LIMITED TO FLAMMABLE/COMBUSTIBLE GAS, LIQUID, OR SOLID MATERIALS) SHALL NOT BE USED WITHIN TENTS OR CANOPIES.
 - b. ELECTRIC HEATERS MUST BE UL LISTED FOR USE WITHIN TENTS AND/OR CANOPIES.
 - c. PROPANE AND OTHER FUEL-BASED Heating devices with blowers may be permitted, with the heating element located a minimum of 10 feet from the edge of the tent or canopy.
 - d. All heating equipment installations shall be approved for the fire code official.
37. Covered outdoor dining areas (separate or consolidated) shall comply with the following standards for tents larger than 400 square feet (2 or more walls) and/or canopies larger than 700 square feet (no walls or one (1) wall):
 - Post maximum occupant load.
 - Do not exceed posted occupant load inside the tent or canopy.
 - Visible and Mounted Fire Extinguishers with current service tags.
 - No Smoking Signs shall be installed.
 - Illuminated Exit Signs shall be installed.
 - Emergency Lighting shall be provided.
 - Exit doors are not to be blocked and are to remain accessible as exits while the tent is occupied.
 - All interior decorative fabrics or materials shall be flame resistant. Provide Certificates of Flame Resistance.

- If Propane is used, a permit is required: Cooking and heating equipment shall not be located within 10 feet of exits or combustible materials.
- LPG containers shall be located outside and be adequately protected and secured, and a permit will be required. Open flame or other devices emitting flame, such as candles, are not permitted inside or within 20 feet of the tent, canopy, or temporary membrane structure.
- Tents and canopies shall have the State Fire Marshall tag indicating fire resistance.
- Tents and canopies shall be designed and installed to withstand the elements of the weather and prevent collapsing through weights and ground anchorage.

RESOLUTION NO. ZA2021-063

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-013 TO ALLOW A TEMPORARILY EXPANDED OUTDOOR DINING AREA LOCATED AT 900 BRISTOL STREET NORTH (PA2021-192)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by IL Barone Ristorante (Applicant) with respect to property located at 900 Bristol Street North, and legally described as Parcel 1 as shown on a parcel map filed in Book 81, Page 43 of Parcel Maps, in the office of the County Recorder of said county in the City of Newport Beach, County of Orange, State of California, requesting approval of a limited term permit.
2. The Applicant requests a limited term permit to authorize a 1,100 square-foot expanded dining area previously authorized through Emergency Temporary Use Permit No. UP2020-092 (PA2020-177) for IL Barone Ristorante for up to a one (1)-year term.
3. The subject property is categorized General Commercial (CG) by the General Plan Land Use Element and is located within the Newport Place (PC11) Zoning District.
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 November 10, 2021 online via Zoom. 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. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and 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 Class 1 exemption includes 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. The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The proposed scope of work is a maximum 1,100-square-foot outdoor dining

patio at an existing restaurant for up to a one (1)-year limited term and qualifies under the parameters of the Class 1 and Class 3 exemptions.

3. The exceptions to the Class 3 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 20.52.040(G) (Limited Term Permits) of the NBMC, 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 an extended and expanded outdoor dining patio for up to a one (1)-year term while the City reconsiders its parking requirements related to food service uses. The existing food service use is authorized through Minor Use Permit No. UP2017-009 (PA2017-082) and includes 2,169 square feet of net public area.
2. The temporarily expanded dining area has not posed a hazard to the general welfare of persons residing in the area since it was placed during the COVID-19 pandemic in 2020 through an emergency temporary use permit. The operation of the expanded dining area is limited to up to one (1)-year beginning January 1, 2022, through December 31, 2022, and has been reviewed and conditioned to help preclude any detriment to the general welfare of the area.
3. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).
4. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
5. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.

6. The overall plan includes appropriate delineation of outdoor use spaces with temporary physical barriers or markers.

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 lot is approximately one (1) acre in size and is a flat property. The existing food service use (i.e., restaurant) with outdoor dining has operated at the subject site since its original approval in 1976 (UP1789). Based upon the proposed site plan, there is adequate area to accommodate the expanded dining area without impacting pedestrian circulation.
2. The restaurant is located on Bristol Street in a commercial area. There are two (2) commercial centers on Bristol Street adjacent to the subject property, which provide a variety of commercial uses, including personal services, an urgent care, and other eateries. An existing restaurant with outdoor dining is located at this site. The expanded outdoor dining use will not impede use and enjoyment of the properties in the area and will instead add to the ambiance and character of the area.
3. The restaurant will remain complementary to the other uses in PC -11, which includes retail stores, medical offices, restaurants, services, and other commercial uses. The restaurant will continue to provide a convenience for nearby businesses and visitors to the area.
4. See Fact in Support of Finding A.2.

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. The subject lot is accessed from driveways on Bristol Street and Dove Street. A surface parking area is provided on-site. The expanded dining area occupies an existing landscape planter and does not encroach into any walkways or parking areas, such that parking supply will not change. Sufficient parking is provided on-site, and no traffic issues are anticipated with the continued use of the expanded dining area.
2. The City is also undergoing an analysis of parking rates including rates related to food service and outdoor dining. Findings and recommendations of this study are anticipated by December 2021 and may inform a future conditional use permit amendment for outdoor dining areas.

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; and*

Fact in Support of Finding:

1. See Fact in Support of Finding C.1.

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 category for this site is CG (General Commercial). The CG category is intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs. The expanded outdoor dining use is accessory to the existing restaurant with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CG designation. Outdoor dining is a use that tends to foster additional pedestrian activity.
2. The site is in the Newport Place Planned Community (PC11) Zoning District. The PC-11 District is intended to allow the location of commercial activities engaged in the sale of products or services relating to and supporting the Development Plan. The PC-11 District allows restaurants at the site and the expanded dining area is a temporary use, authorized with a limited term permit.
3. Limited Term Permit for temporarily expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the CC District in that it provides amenities that support visitors to the area and provides a social gathering place for those who live and work in the neighborhood, consistent with General Plan Land Use Element

Goal LU2, below. Additional benefits include providing opportunities for the continuation of local businesses that generate sales tax and provide opportunities for employment, which is consistent with General Plan Land Use Element Policy LU 2.4 (Economic Development), also copied below:

Goal LU 2 *A living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique. It contains a diversity of uses that support the needs of residents, sustain and enhance the economy, provide job opportunities, serve visitors that enjoy the City's diverse recreational amenities, and protect its important environmental setting, resources, and quality of life.*

Policy LU 2.4 Economic Development *Accommodate uses that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents. (Imp 1.1, 24.1)*

4. Council Policy D-9 recognizes the need to balance economic development objectives with protection of the environment and the health and safety of the community. The Policy recognizes the need to provide effective and efficient structures for implementing economic programs, utilizing staffing to provide healthy, thriving businesses, and maintain a healthy economy while preserving the unique commercial villages in Newport Beach. The proposed Limited Term Permit would support a local business and economic prosperity while maintaining the unique character of Newport Place.

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) and 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 Limited Term Permit No. XP2021-013, 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 NBMC.

PASSED, APPROVED, AND ADOPTED THIS 10TH DAY OF NOVEMBER, 2021.



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, stamped and dated with the date of this approval (except as modified by the applicable conditions of approval).
2. The approval of this Limited Term Permit shall be effective for up to a one (1)-year term January 1, 2022, to December 31, 2022, unless an extension is granted by the Zoning Administrator in compliance with Municipal Code Section 20.52.040.J (Extension of Limited Term Permit). The Applicant shall be required to cease all permitted operations at the end of the effective period. The concrete patio improvements shall be removed and the entire affected area restored to the previously existing landscape conditions within 14 days after the end of the effective period. The Applicant shall be responsible for all construction-related costs and fees associated with patio removal and landscape restoration activity.
3. The applicant shall be required to cease all permitted operations and remove any temporary improvements made to the outdoor spaces as part of this Limited Term Permit on or before December 31, 2022.
4. The expanded outdoor dining patio shall not exceed 1,100 square feet, as depicted on the attached site plan diagram.
5. The existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the area modified as part of this Limited Use Permit shall not extend beyond 9 p.m.
6. The use of amplified sound or live entertainment within the temporary area shall be prohibited.
7. The Applicant shall install and maintain a physical barrier (fencing) between any area used and adjacent pedestrian walkways.
8. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the Applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
9. All owners, managers, and employees selling and serving alcohol shall comply with all ABC guidelines and regulations and shall further take all measures necessary to prevent over-service of alcohol and/or disorderly conduct from patrons. Increased calls for Police

Department service to the establishment or complaints made to the City will cause a review of operations and may result in a revocation of this Permit.

10. The sale of alcohol “to go” to patrons that dine within the restaurant or expanded outdoor patios shall be prohibited.
11. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
12. This Limited Term 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 or welfare, or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a nuisance.
13. Any change in operational characters, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit.
14. The Community Development Director may immediately revoke this permit if the Director determines that there has been a violation of any condition of approval. Any revocation of a Limited Use Permit shall be deemed effective upon the posting of a notice of revocation at the site of the business granted the emergency temporary permit.
15. The Community Development Director may modify this Limited Term Permit. The Director shall notify the Applicant of any proposed modification and a decision to modify this permit shall be deemed effective upon the posting of a notice of modification at the site of the business granted the emergency temporary use permit
16. Upon termination or repeal of this Limited Term Permit, the Applicant shall immediately work to remove the temporary improvements in a timely manner and shall restore the expanded area back to its original use and improvements.
17. 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 this **Temporary Use Permit No. XP2021-013 for IL Barone Ristorante (PA2021-192)**. 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

18. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
 - a. An accessible path to all functional areas shall be provided.
 - b. Access to restrooms shall be provided at all times.
 - c. Accessible parking stalls shall not be used for seating areas when on-site parking is provided.
 - d. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two (2).
19. Provide not less than 5-percent accessible seating at tables and counters with knee clearance of at least 27 inches high, 30 inches wide, and 19 inches deep.
20. The tops of dining surfaces and work surfaces shall be 28 inches to 34 inches above the finish floor.
21. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.
22. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.
23. Accessible routes, including under canopy(ies) and other overhead improvements must maintain a minimum clear height of 80 inches.
24. All electrical distribution lines shall be in good working order and shall be protected from pedestrian and vehicular traffic and shall accommodate accessibility.
25. Separate building permit is required for construction concrete outdoor dining patio area.

Public Works Department

26. *A substantial barricade (k-rail, water-filled barrier or other barrier, approved by the Public Works Department) shall be provided between the proposed outdoor dining area within the parking spaces and the alley. This barrier shall also be provided between the outdoor dining and any parking drive aisles and parking stalls.*
27. *The dining area and substantial barricades shall not encroach into the existing drive aisle or alley right of way.*
28. There shall be a minimum of 5 feet of space around all overhead facilities, such as poles, and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.

29. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
30. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
31. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples provided in Attachment No. ZA 4.

Fire Department

32. Fire lane(s) shall be identified on the plan.
33. Parking, displays, seating, or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.
34. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.
35. All Fire department devices (fire hydrants, fire department connections, water valves, etc.) shall have a 3-foot clearance in all directions.
36. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
37. Covered outdoor dining areas (separate or consolidated) shall comply with the following standards for tents larger than 400 square feet (2 or more walls) and/or canopies larger than 700 square feet (no walls or one (1) wall):
 - a. Post maximum occupant load.
 - b. Do not exceed posted occupant load inside the tent or canopy.
 - c. Visible and Mounted Fire Extinguishers with current service tags.
 - d. No Smoking Signs shall be installed.
 - e. Illuminated Exit Signs shall be installed.
 - f. Emergency Lighting shall be provided.
 - g. Exit doors are not to be blocked and are to remain accessible as exits while the tent is occupied.
 - h. All interior decorative fabrics or materials shall be flame resistant. Provide Certificates of Flame Resistance.
 - i. If Propane is used, a permit is required: Cooking and heating equipment shall not be located within 10 feet of exits or combustible materials.
 - j. LPG containers shall be located outside and be adequately protected and secured, and a permit will be required. Open flame or other devices emitting flame, such as candles, are not permitted inside or within 20 feet of the tent, canopy, or temporary membrane structure.
 - k. Tents and canopies shall have the State Fire Marshall tag indicating fire resistance.

- I. Tents and canopies shall be designed and installed to withstand the elements of the weather and prevent collapsing through weights and ground anchorage.
38. Heat lamps or other heating elements shall comply with the following requirements in accordance with code section 3107.12 of the California Fire Code:
- a. Propane and other fuel-based heating elements (including but not limited to flammable/combustible gas, liquid, or solid materials) shall not be used within tents or canopies.
 - b. Electric heaters must be ul listed for use within tents and/or canopies.
 - c. Propane and other fuel-based heating devices with blowers may be permitted, with the heating element located a minimum of 10 feet from the edge of the tent or canopy.
 - d. All heating equipment installations shall be approved for the fire code official.

RESOLUTION NO. ZA2021-064

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-016 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-044 TO ALLOW A TEMPORARILY EXPANDED OUTDOOR DINING AREA LOCATED AT 900 BAYSIDE DRIVE (PA2021-198)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Bayside Restaurant (Applicant) with respect to property located at 900 Bayside Drive, and legally described as Parcel 2 of Resubdivision No. 337 requesting approval of a limited term permit and coastal development permit.
2. The Applicant proposes the continued use of a 1,000 square-foot expanded dining area previously authorized through Emergency Temporary Use Permit No. UP2020-048 (PA2020-127) for Bayside Restaurant for up to a one (1)-year limited term.
3. The subject property is categorized Neighborhood Commercial (CN) by the General Plan Land Use Element and is located within the Commercial Neighborhood (CN) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Neighborhood Commercial – (0.0 to 0.30 FAR) - (CN) and it is located within the Commercial Neighborhood Coastal Zone District.
5. A public hearing was held on November 10, 2021, online via Zoom. 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. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and 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 Class 1 exemption includes 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. The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving the use of significant amounts of hazardous substances, not exceeding 2,500

square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The proposed scope of work would reduce the existing temporary patio by 1,500 square feet. The project is a temporary 1,000-square-foot outdoor dining patio at an existing restaurant for up to a one (1)-year limited term and qualifies under the parameters of the Class 1 and Class 3 exemptions.

3. The exceptions to the Class 3 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.

Limited Term Permit

In accordance with Section 20.52.040.G (Limited Term Permits) of the Newport Beach Municipal Code, 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 the continued use of a temporarily extended outdoor dining patio for one (1)-year term while the City reconsiders its parking requirements related to food service uses (i.e., restaurants). The existing restaurant is authorized through Use Permit Nos. UP3619 and UP1709 and includes 2,822 square feet of net public area.
2. The expanded dining area has not posed a hazard to the general welfare of persons residing in the area since it was placed during the COVID-19 pandemic in 2020 through an Emergency Temporary Use Permit. The operation of the expanded dining area is limited to up to a one (1)-year beginning January 1, 2022, through December 31, 2022, and has been reviewed and conditioned to preclude any detriment to the general welfare of the area. The project would reduce the size of the existing temporary patio authorized by the Emergency Temporary Use Permit by 1,500 square feet.
4. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).

5. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
6. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
7. The overall plan includes appropriate delineation of outdoor use spaces with temporary physical barriers or markers.
8. The expanded dining area will not impede pedestrian coastal access since this is an inland property adjacent to Bayside Drive.

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 lot is flat and approximately 1.12 acres in size. It is improved with a 7,950-square-foot restaurant and a 74-space surface parking lot. The existing restaurant with outdoor dining has operated at the site since its original approval in 1974 (Use Permit No. 1709). Based upon the site plan, there is adequate area to accommodate the temporarily expanded dining area without impacting pedestrian circulation and coastal access.
2. The lot is bounded by multi-family residences to the north, Bayside Shopping center to the east, Bayside Drive to the south, and Promontory Drive East to the west. The temporarily expanded outdoor dining use will not impede use and enjoyment of the properties in the area and will instead add to the ambiance and quaint character of the neighborhood commercial area.
3. The temporarily expanded dining area has not posed a hazard to the general welfare of persons residing in the area since it was placed during the COVID-19 pandemic in 2020 through an emergency temporary use permit. The operation of the expanded dining area is limited to one (1) year beginning January 1, 2022 and has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
4. The temporarily expanded dining area occupies (5) standard parking spaces and the existing van accessible space has been restriped elsewhere. No traffic or site circulation issues are anticipated.

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. The subject lot is accessed from Bayside Drive. A surface parking area is provided on-site. The expanded dining area occupies no more than five (5) standard parking spaces. The existing restaurant is in a neighborhood commercial corridor area and proposes to operate all day and into the evening hours with peak hours when other retail and office uses on the property are typically not operating. Sufficient parking is provided on-site, and no traffic issues are anticipated with the continued use of the expanded dining area.
2. The City is also undergoing an analysis of parking rates including rates related to food service and outdoor dining. Findings and recommendations of this study are anticipated by December 2021 and may inform a future conditional use permit amendment for outdoor dining areas.

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; and*

Facts in Support of Finding:

1. The existing restaurant with outdoor dining has operated at the subject property since 1974. The remaining existing on-site parking at the site is expected to accommodate the temporary use.
2. The temporarily expanded dining area does not impede pedestrian access to the waterfront.

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 category for this site is Neighborhood Commercial (CN). The CN category is intended to provide for a limited range of retail and service uses developed in one (1) or more distinct centers oriented to primarily serve the needs of and maintain compatibility with residential uses in the immediate area. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CN category.

2. The site is located in the Commercial Neighborhood (CN) Zoning District. The CN designation is intended to provide for areas appropriate for a limited range of retail and service uses developed in one (1) or more distinct centers oriented to serve primarily the needs of and maintain compatibility with residential uses in the immediate area. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CN designation. The CN zoning district allows temporary uses as specified within the Zoning Code and the proposed limited duration use is consistent with this designation.
3. The Limited Term Permit for continued use of temporarily expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the CN Zoning District in that it provides amenities that support visitors to the area and provides a social gathering place for those who live and work in the neighborhood, consistent with General Plan Land Use Element Goal LU2, below. Additional benefits include providing opportunities for the continuation of local businesses that generate sales tax and provide opportunities for employment, which is consistent with General Plan Land Use Element Policy LU 2.4 (Economic Development), also copied below:

Goal LU 2 *A living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique. It contains a diversity of uses that support the needs of residents, sustain and enhance the economy, provide job opportunities, serve visitors that enjoy the City's diverse recreational amenities, and protect its important environmental setting, resources, and quality of life.*

Policy LU 2.4 Economic Development *Accommodate uses that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents. (Imp 1.1, 24.1)*

4. Council Policy D-9 recognizes the need to balance economic development objectives with protection of the environment and the health and safety of the community. The policy recognizes the need to provide effective and efficient structures for implementing economic programs, utilizing staffing to provide healthy, thriving businesses, and maintain a healthy economy while preserving the unique commercial villages in Newport Beach. The proposed limited term permit would support a local business and economic prosperity while maintaining the unique character of the Corona del Mar community.

Coastal Development Permit

In accordance with Section 21.52.015 (Coastal Development Permits, Findings and Decision) of the NBMC, 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 project site is located adjacent to Bayside Drive, which is a coastal view road and Promontory Point, which is a Coastal Viewpoint, both identified in the Coastal Land Use Plan. Promontory Point is directly across the street of the site to the west. However, the temporarily expanded outdoor dining area is not within the viewshed of this location. As currently developed, the existing commercial properties along Bayside Drive are located within the viewshed of the site across Newport Bay. The expanded outdoor dining area complies with all applicable Local Coastal Program (LCP) development standards and maintains an area consistent with the existing neighborhood pattern of development. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.
2. The property is located in the coastal zone and the proposed temporary improvements require a coastal development permit in accordance with Newport Beach Municipal Code (NBMC) Section 21.52.035(C)(2) (Projects Exempt from Coastal Development Permit Requirements). The improvements constitute an increase of ten (10) percent or more of the internal floor area of an existing structure or a lesser improvement that has previously been undertaken pursuant to California Public Resources Code Section 30610(a). The expanded outdoor dining area and barrier within the public walkway are minor detached structures. The location of these improvements does not pose a conflict to coastal resources, coastal access, or other adverse environmental effects.
3. The temporary improvements are complementary to the existing restaurant as well as the vicinity that contains neighborhood commercial uses.
4. The dining area barrier is installed within the existing walkway. The barrier delineates the area dedicated for outdoor dining use and alcohol service. There are no existing City utilities within the expanded dining area.
5. Development authorized by this permit is not located in any environmentally sensitive habitat area and public access to the coast will not be blocked. Coastal access is increased by allowing commercial establishments to re-open allowing public to once again visit the coastal areas. The proposed operation does not contain Environmentally Sensitive Habitat Area (ESHA), wetlands, or sandy beach area.
6. Development authorized is not located in an area in which the California Coastal Commission retains direct permit review authority.

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.*

Fact in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. 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 does not provide lateral and vertical coastal access. Therefore, 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. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

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) and 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 Limited Term Permit No. XP2021-016 and Coastal Development Permit No. CD2021-044, 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 10TH DAY OF NOVEMBER, 2021.



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, stamped and dated with the date of this approval (except as modified by the applicable conditions of approval).
2. The approval of this Limited Term Permit and Coastal Development Permit shall be effective from January 1, 2022, to December 31, 2022, unless an extension is granted by the Zoning Administrator in compliance with Municipal Code Sections 20.52.040.J (Extension of Limited Term Permit) and 21.54.060 (Time Limits and Extensions). The applicant shall be required to cease all permitted operations and remove any temporary improvements made to the outdoor spaces as part of this approval at the end of the effective period.
3. *The expanded dining area shall not exceed 1,000 square feet in area.*
4. *The existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the expanded area as part of this approval shall not extend beyond 10 p.m.*
5. *There shall be no use of amplified sound or live entertainment within the temporary outdoor dining area.*
6. *The Applicant shall maintain a physical barrier between any area used and adjacent common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.*
7. This Limited Term 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 or welfare, or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a nuisance.
8. Any change in operational characters, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit.
9. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the Applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.

10. The sale of alcohol “to go” to patrons that dine within the expanded outdoor patios shall be prohibited.
11. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
12. The permittee shall provide adequate trash receptacles within the permitted patio shall and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
13. The Community Development Director or designee may inspect the modified area at any time during normal business hours.
14. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
15. 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.
16. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit and Coastal Development Permit.
17. 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 this **Limited Term Permit No. XP2021-016 and Coastal Development Permit No. CD2021-044 (PA2021-198) for Bayside Restaurant**. 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

18. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
 - a. A minimum 4-foot-wide accessible path to all functional area shall be provided.

- b. Access to restrooms shall be provided at all times.
 - c. Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
 - d. At least one (1) accessible seating area shall be provided.
 - e. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two (2).
19. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.

Fire Department

20. Fire lane(s) shall be identified on the plan.
21. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.
22. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.
23. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a 3-foot clearance in all directions.
24. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
25. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.
26. Heat lamps or other heating elements shall comply with the following requirements in accordance with code section 3107.12 of the California Fire Code:
- a. Propane and other fuel-based heating elements (including but not limited to flammable/combustible gas, liquid, or solid materials) shall not be used within tents or canopies.
 - b. Electric heaters must be ul listed for use within tents and/or canopies.
 - c. Propane and other fuel-based heating devices with blowers may be permitted, with the heating element located a minimum of 10 feet from the edge of the tent or canopy.
 - d. All heating equipment installations shall be approved for the fire code official.
27. Covered outdoor dining areas (separate or consolidated) shall comply with the following standards for tents larger than 400 square feet (two [2] or more walls) and/or canopies larger than 700 square feet (no walls or one [1] wall):
- Post maximum occupant load.
 - Do not exceed posted occupant load inside the tent or canopy.

- Visible and Mounted Fire Extinguishers with current service tags.
- No Smoking Signs shall be installed.
- Illuminated Exit Signs shall be installed.
- Emergency Lighting shall be provided.
- Exit doors are not to be blocked and are to remain accessible as exits while the tent is occupied.
- All interior decorative fabrics or materials shall be flame resistant. Provide Certificates of Flame Resistance.
- If Propane is used, a permit is required: Cooking and heating equipment shall not be located within 10 feet of exits or combustible materials.
- LPG containers shall be located outside and be adequately protected and secured, and a permit will be required. Open flame or other devices emitting flame, such as candles, are not permitted inside or within 20 feet of the tent, canopy, or temporary membrane structure.
- Tents and canopies shall have the State Fire Marshall tag indicating fire resistance.
- Tents and canopies shall be designed and installed to withstand the elements of the weather and prevent collapsing through weights and ground anchorage.

Public Works Department

28. The Applicant shall install and maintain a substantial physical barrier (water-filled traffic barrier or K-rail between any area used and adjacent to any street, driveway, or parking area).
29. There shall be a minimum of 5 feet of space around all overhead facilities, such as poles, and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
30. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
31. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
32. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples provided in Attachment No. ZA 4.

RESOLUTION NO. ZA2021-065

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING LIMITED TERM PERMIT NO. XP2021-009 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-038 TO ALLOW AN EXPANDED OUTDOOR DINING AREA LOCATED AT 3107 NEWPORT BOULEVARD (PA2021-187)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Chihuahua Brewing Company, LLC, with respect to property located at 3107 Newport Boulevard, and legally described as Parcel 1 of Parcel Map No. 2009-135, requesting approval of a limited term permit and a coastal development permit.
2. The applicant proposes an 867-square-foot maximum expanded outdoor dining area for up to a one (1)-year term that was previously authorized through Emergency Temporary Use Permit No. UP2020-084 and Emergency Coastal Development Permit No. CD2020-088 (PA2020-169) for Chihuahua Brewing Company, LLC.
3. The subject property is designated Neighborhood Commercial (CN) by the General Plan Land Use Element and is located within the Commercial Neighborhood (CN) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Neighborhood Commercial (CN) – (0.0 to 0.30 FAR) and it is located within the Commercial Neighborhood (CN) Coastal Zone District.
5. A public hearing was held on November 10, 2021, online via Zoom. 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. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and 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 Class 1 exemption includes 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. The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not

involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The proposed scope of work is a maximum 867-square-foot expanded outdoor dining patio at an existing restaurant for a one (1)-year limited term and qualifies under the parameters of the Class 1 and Class 3 exemptions.

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 20.52.040.G (Limited Term Permits) of the Newport Beach Municipal Code, 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 an extended and expanded outdoor dining patio for up to a one (1)-year term while the City reconsiders its parking requirements related to food service uses. The existing food service use is authorized through Use Permit No. UP2019-035, Coastal Development Permit No. CD2020-001, and Operator License No. OL2020-001 (PA2019-160) and includes 1,446 square feet of net public area and a 626-square-foot permanent outdoor dining patio.
2. The expanded outdoor dining area has not posed a hazard to the general welfare of persons residing in the area since it was placed during the COVID-19 pandemic in 2020 through an Emergency Temporary Use Permit No. UP2020-014 (PA2020-083). The operation of the expanded outdoor dining area is limited to up to a one (1)-year, and has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
3. Outdoor dining areas are common within The Landing shopping plaza and the Balboa Peninsula area, and have been used at the subject property during similar hours in the past, and the use has not proven detrimental. The existing hours of operation for the interior of the restaurant are limited from 6:30 a.m. through 10:00 p.m., Sunday through Thursday, and from 6:30 a.m. to 11:00 p.m., Friday and Saturday. The hours of operation for the

existing outdoor dining patio are limited from 6:30 a.m. through 10:00 p.m., daily, with alcohol service beginning at 9:00 a.m. at the earliest. The expanded outdoor dining area would close by 9:00 p.m., Sunday through Thursday and close by 10:00 p.m. on Friday and Saturday.

4. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).
5. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
6. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
7. The overall plan includes appropriate delineation of outdoor use spaces with temporary physical barriers or markers.

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 restaurant is located in The Landing shopping center. The shopping center is 3.75 acres in size, includes a mix of commercial uses, and has a 236-space on-site surface parking lot that serves all of the uses within the center. The reduction of eight (8) on-site parking spaces is for a temporary basis, and the patio has been reviewed by Public Works to ensure that it will not negatively impact on-site circulation.
2. The shopping center is bounded by Newport Boulevard and West Balboa Boulevard, between 30th Street and 32nd Street. Surrounding uses include residential neighborhoods, which are located directly adjacent to the shopping center to the north, south, and west. Lido House Hotel is located approximately 400 feet northwest of the shopping center. The temporary patio does not negatively affect surrounding uses as it serves an existing restaurant in an existing shopping center.

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;*

Fact in Support of Finding:

1. The subject lot has a direct driveway approach taken from Newport Boulevard, 32nd Street, Balboa Boulevard, and 30th Street. The temporary outdoor patio is located adjacent to the restaurant and will not impede access to the existing parking lot. There are no traffic issues anticipated.

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; and*

Fact in Support of Finding:

1. The subject property has been occupied by a food service use with outdoor dining since 2010. The existing parking lot has historically accommodated the mix of uses located within The Landing. The existing parking lot is expected to accommodate the temporary use.

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 CN (Neighborhood Commercial). The CN designation is intended to provide for a limited range of retail and service uses developed in one (1) or more distinct centers oriented to primarily serve the needs of and maintain compatibility with residential uses in the immediate area. Permitted uses include those permitted in the CN Zoning designation, which includes eating and drinking establishments through obtaining of a use permit. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CN designation.
2. The site is located in the Commercial Neighborhood (CN) Zoning District. The CN designation applies to areas appropriate for a limited range of retail and service uses developed in one (1) or more distinct centers oriented to serve primarily the needs of and maintain compatibility with residential uses in the immediate area. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CN designation. The CN zoning district allows temporary uses as specified within the Zoning Code and the proposed limited duration use is consistent with this designation.
3. The Limited Term Permit for expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the CN Zoning District in that it provides amenities that support visitors to the area and provides a social gathering place

for those who live and work in the neighborhood, consistent with General Plan Land Use Element Goal LU2, below. Additional benefits from the proposed amendment include providing opportunities for the continuation of local businesses that generate sales tax and provide opportunities for employment, which is consistent with General Plan Land Use Element Policy LU 2.4 (Economic Development), also copied below:

Goal LU 2 *A living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique. It contains a diversity of uses that support the needs of residents, sustain and enhance the economy, provide job opportunities, serve visitors that enjoy the City's diverse recreational amenities, and protect its important environmental setting, resources, and quality of life.*

Policy LU 2.4 Economic Development *Accommodate uses that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents. (Imp 1.1, 24.1)*

4. Council Policy D-9 recognizes the need to balance economic development objectives with protection of the environment and the health and safety of the community. The policy recognizes the need to provide effective and efficient structures for implementing economic programs, utilizing staffing to provide healthy, thriving businesses, and maintain a healthy economy while preserving the unique commercial villages in Newport Beach. The proposed limited term permit would support a local business and economic prosperity while maintaining the unique character of the Balboa Peninsula.
5. The site is not located within a specific plan area.

Coastal Development Permit

In accordance with Section 21.52.015 (Coastal Development Permits, Findings and Decision) of the NBMC, 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 project site is not located adjacent to a coastal view road or public access way. The site is located approximately 150 feet south from a public beach access location identified by the Coastal Land Use Plan. However, the temporary patio is located within an existing shopping center and is to expand into an existing commercial suite. The expanded outdoor dining area complies with all applicable Local Coastal Program (LCP) development standards and maintains an area consistent with the existing pattern of development in Lido Marina Village. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.

2. The Property is located in the coastal zone and the proposed improvements require a coastal development permit in accordance with Newport Beach Municipal Code (NBMC) Section 21.52.035(C)(2) (Projects Exempt from Coastal Development Permit Requirements). The improvements constitute an increase of ten (10) percent or more of the internal floor area of an existing structure or a lesser improvement that has previously been undertaken pursuant to California Public Resources Code Section 30610(a). The expanded outdoor dining area and barrier within the public walkway are minor detached structures. The location of these improvements does not pose a conflict to coastal resources, coastal access, or other adverse environmental effects.
3. Improvements are complementary to the area; the subject restaurant and other restaurants on the Balboa Peninsula have similar outdoor dining improvements.
4. The dining area barrier is installed within the existing walkway. The barrier delineates the area dedicated for outdoor dining use and alcohol service from the public walkway. There are no existing City utilities within the expanded outdoor dining area.
5. Development authorized by this permit is not located in any environmentally sensitive habitat area and public access to the coast will not be blocked. Coastal access is increased by allowing commercial establishments to re-open allowing public to visit coastal areas and provides an added amenity for visitors. The proposed operation does not contain ESHA, wetlands, or sandy beach area;
6. Development authorized is not located in an area in which the California Coastal Commission retains direct permit review authority.

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.*

Fact in Support of Finding:

1. The subject property is not located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone. The property is located approximately 475 feet from a public beach or harbor (approximately 1,000 feet) and is not located near a public viewpoint designated by the Coastal Land Use Plan.

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) and 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 Limited Term Permit No. XP2021-009 and Coastal Development Permit No. CD2021-038 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.
4. 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 10TH DAY OF NOVEMBER, 2021.



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 approval of this Limited Term Permit and Coastal Development Permit shall be effective from January 1, 2022, to December 31, 2022, unless an extension is granted by the Zoning Administrator in compliance with Municipal Code Sections 20.52.040.J (Extension of Limited Term Permit) and 21.54.060 (Time Limits and Extensions). The applicant shall be required to cease all permitted operations and remove any temporary improvements made to the outdoor spaces as part of this approval at the end of the effective period.
3. *The expanded dining area shall not exceed 867 square feet.*
4. *The existing allowed hours of operation of the establishment shall not be extended. The hours of hours of operation of the expanded area as part of this approval shall not extend beyond 9 p.m. on Sunday through Thursday, and 10:00 p.m. on Friday and Saturday.*
5. *There shall be no use of amplified sound and/or live entertainment in the expanded dining area.*
6. *The applicant shall install and maintain a physical barrier between any area used and adjacent common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.*
7. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
8. The sale of alcohol “to go” to patrons that dine within the expanded outdoor patios shall be prohibited.
9. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
10. The permittee shall provide adequate trash receptacles within the permitted patio shall and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.

11. The Community Development Director or designee may inspect the modified area at any time during normal business hours.
12. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
13. 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.
14. This Limited Term Permit and Coastal Development Permit 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.
15. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit and Coastal Development Permit.
16. 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 this Limited Term Permit No. XP2021-009 and Coastal Development Permit No. CD2021-038 (PA2021-187) for Chihuahua Brewing Company, LLC**. 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

17. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
 - a. A minimum 4-foot-wide accessible path to all functional area shall be provided.
 - b. Access to restrooms shall be provided at all times.
 - c. Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
 - d. At least one (1) accessible seating area shall be provided.

- e. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two (2).
18. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.

Public Works Department

19. Substantial barriers (automobiles, K-rail, water-filled barrier, or other material acceptable to Public Works) shall be provided between the seating area and drive aisle and adjacent parking spaces. Substantial barriers shall not encroach into the required dimensions of the drive aisle and parking spaces.
20. There shall be a minimum of 5 feet of space around all overhead facilities, such as poles and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
21. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
22. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
23. Expanded outdoor dining areas shall adhere to the SCE Clearance Decal examples provided in Attachment No. ZA 4.

Fire Department

24. Fire lane(s) shall be identified on the plan.
25. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.
26. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.
27. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a three (3)-foot clearance in all directions.
28. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
29. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.

RESOLUTION NO. ZA2021-066

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-012 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-041 TO ALLOW A TEMPORARILY EXPANDED OUTDOOR DINING AREA LOCATED AT 2441 EAST COAST HIGHWAY (PA2021-191)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by The Bungalow Restaurant LLC (Applicant), with respect to property located at 2441 East Coast Highway, and legally described as Lot 5 and 6 of Block B, Tract No. 470 in the City of Newport Beach, Orange County, California, requesting approval of a limited term permit and a coastal development permit.
2. The Applicant requests a limited term and coastal development permit to allow a 550-square-foot maximum expanded dining area for up to a one (1)-year term (January 1, 2022 through December 31, 2022). The original expanded dining area layout was authorized through Emergency Temporary Use Permit No. UP2020-065 (PA2020-144) and measures 800 square feet. The current request represents a reduction in outdoor dining area.
3. The subject property is categorized CC (Corridor Commercial) by the General Plan Land Use Element and is located within the CC (Commercial Corridor) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is CC-B (Corridor Commercial – 0.0 - 0.75 FAR) and it is located within the CC (Commercial Corridor) Coastal Zoning district.
5. A public hearing was held on November 10, 2021, online via Zoom. 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. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and 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 Class 1 exemption includes 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. The

Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The proposed scope of work is a maximum 550-square-foot expanded outdoor dining patio at an existing restaurant for up to a one (1)-year limited term and qualifies under the parameters of the Class 1 and Class 3 exemptions.

3. The exceptions to the Class 3 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.

Limited Term Permit

In accordance with Section 20.52.040(G) (Limited Term Permits) of the NBMC, 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 an extended and expanded outdoor dining patio for up to a one (1)-year term while the City reconsiders its parking requirements related to food service (i.e., restaurant) uses. The existing restaurant is authorized through Use Permit No. UP1778 and its subsequent amendments and allows 1,596 square feet of indoor dining and 665 square-feet of outdoor dining.
2. The current expanded dining area has not posed a hazard to the general welfare of persons residing in the area since it was placed during the COVID-19 pandemic in 2020 through an Emergency Temporary Use Permit (ETUP). ETUP No. UP2020-065 allowed an outdoor dining area of 800 square feet and the current request is a 250 square foot reduction in approved dining area. Operation of the expanded dining area is limited to up to a one (1)-year term beginning January 1, 2022, through December 31, 2022, and has been reviewed and conditioned to help preclude any detriment to the general welfare of the area.

3. Outdoor dining areas are common in the Corona del Mar commercial corridor, have been used at the subject property during similar hours in the past and the use has not proven detrimental. The existing hours of operation for outdoor dining at the restaurant are from 11 a.m. to 10 p.m., Monday through Friday and 9 a.m. through 10 p.m. on weekends and holidays. The expanded outdoor dining area would close by 10 p.m., as required by Condition of Approval No. 4.
4. A condition of approval related to heaters is incorporated as Condition of Approval No. 25. The proposed dining area will also be covered with a tent and must comply with the fire requirements outlined in Condition of Approval No. 26.
5. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).
6. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
7. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
8. The overall plan includes appropriate delineation of outdoor use spaces with physical barriers or markers.
9. The expanded dining area will not impede pedestrian coastal access since this is an inland property adjacent to East Coast Highway.

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 lot is approximately 8,123 square feet in size gently slopes up towards East Coast Highway. Public records indicate that the restaurant has been in operation since 1976, with outdoor dining initially added in 1996 and expanded in 2016. Based upon the site plan, there is adequate area to accommodate the expanded dining area without impacting pedestrian circulation and coastal access.
2. The property is located on the northeasterly corner of East Coast Highway and Carnation Avenue. Across East Coast Highway is a Chevron service station and residential uses beyond. To the east, across Carnation Avenue, is Avila's El Ranchito restaurant and other retail and personal services. A private parking lot is located immediately south of the subject property, and the site is bounded to the west by other commercial uses. The

expanded outdoor dining area will not impede use and enjoyment of the properties in the area and will instead add to the ambiance and quaint character of Corona del Mar.

3. The temporarily expanded dining area occupies four (4) standard parking spaces. No traffic or site circulation issues have been experienced during the current operation and are, therefore, not anticipated.

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. Vehicular access for the subject lot is from Carnation Avenue.
2. The restaurant provides only eight (8) on-site parking spaces for patrons. Most of the parking for the restaurant is provided through use of off-site parking spaces as authorized by Use Permit No. UP1778. The temporary loss of four (4) on-site parking stalls is not anticipated to negatively impact circulation as there is adequate parking available near the restaurant.
3. The City is also undergoing an analysis of parking rates including rates related to food service and outdoor dining. Findings and recommendations of this study are anticipated by December 2021 and may be incorporated in a future use permit amendment for outdoor dining areas.

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; and*

Fact in Support of Finding:

1. The existing restaurant has operated at the subject property for decades. The existing on-site surface parking lot has historically provided only a fraction of parking to serve the restaurant with most of the parking being provided through an off-site parking agreement. The on-site surface lot is should accommodate the temporary use for up to a one (1)-year term without negatively impacting parking as patrons are able to park off-site.

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 category for this site is CC (Corridor Commercial). The CC Category is intended to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CC Category. Outdoor dining is a use that tends to foster additional pedestrian activity.
2. The site is located in the CC (Commercial Corridor) Zoning District. The CC District is intended to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The CC District allows food service uses and the expanded dining area is a temporary use, authorized with a limited term permit.
3. The Limited Term Permit for expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the CC District of Corona del Mar in that it provides amenities that support visitors to the area and provides a social gathering place for those who live and work in the neighborhood, consistent with General Plan Land Use Element Goal LU 2, below. Additional benefits include providing opportunities for the continuation of local businesses that generate sales tax and provide opportunities for employment, which is consistent with General Plan Land Use Element Policy LU 2.4 (Economic Development), also copied below:

Goal LU 2 *A living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique. It contains a diversity of uses that support the needs of residents, sustain and enhance the economy, provide job opportunities, serve visitors that enjoy the City's diverse recreational amenities, and protect its important environmental setting, resources, and quality of life.*

Policy LU 2.4 Economic Development *Accommodate uses that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents. (Imp 1.1, 24.1)*

4. Council Policy D-9 recognizes the need to balance economic development objectives with protection of the environment and the health and safety of the community. The policy recognizes the need to provide effective and efficient structures for implementing economic programs, utilizing staffing to provide healthy, thriving businesses, and maintain a healthy economy while preserving the unique commercial villages in Newport Beach. The proposed limited term permit would support a local business and economic prosperity while maintaining the unique character of the Corona del Mar community.

Coastal Development Permit

In accordance with Section 21.52.015 (Coastal Development Permits, Findings and Decision) of the NBMC, 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 project site is not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is approximately 1,300 feet southwest of the restaurant, at Begonia Park. There are no designated viewpoints immediately north of the restaurant or at a higher elevation than the restaurant. As currently developed, the restaurant is separated from Begonia Park by four (4) blocks of residential structures and Begonia Park is not visible from the restaurant. Additionally, the expanded outdoor dining area complies with all applicable Local Coastal Program (LCP) development standards and maintains an area consistent with the existing pattern of development in Corona del Mar. The project does not contain any unique features that could degrade the visual quality of the coastal zone.
2. The property is in the coastal zone and the proposed improvements require a coastal development permit in accordance with Newport Beach Municipal Code (NBMC) Section 21.52.035(C)(2) (Projects Exempt from Coastal Development Permit Requirements). The improvements constitute an increase of ten (10) percent or more of the internal floor area of an existing structure or a lesser improvement that has previously been undertaken pursuant to California Public Resources Code Section 30610(a). The expanded outdoor dining area and substantial barriers are minor, detached, structures. The location of these improvements does not pose a conflict to coastal resources, coastal access, or other adverse environmental effects.
3. Improvements are complementary to the area; the subject restaurant and adjacent neighbors have similar outdoor dining improvements within the walkways of Corona del Mar.
4. A substantial barrier is installed along the perimeter of the outdoor dining area. The barrier delineates the area dedicated for outdoor dining use and alcohol service from the surface parking lot. There are no existing City utilities within the expanded dining area.
5. Development authorized by this permit is not located in any environmentally sensitive habitat area and public access to the coast will not be blocked. Coastal access is increased by allowing commercial establishments to re-open allowing public to visit coastal areas and provides an added amenity for visitors. The proposed operation does not contain Environmentally Sensitive Habitat Areas (ESHA), wetlands, or sandy beach area.

6. Development authorized is not located in an area in which the California Coastal Commission retains direct permit review authority.

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.*

Fact in Support of Finding:

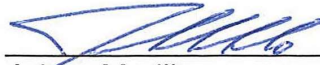
1. The project site is not located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project is not located by the sea where lateral and vertical coastal access would be needed.

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) and 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. The exceptions to the Class 3 Exemption under Section 15300.2 are not applicable.
2. The Zoning Administrator of the City of Newport Beach hereby approves Limited Term Permit No. XP2021-012 and Coastal Development Permit No. CD2021-041 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 and Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. The project site is not located within the appeal area of the coastal zone; therefore, final action by the City may not be appealed to the California Coastal Commission.

PASSED, APPROVED, AND ADOPTED THIS 10TH DAY OF NOVEMBER, 2021.



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 stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The approval of this Limited Term Permit and Coastal Development Permit shall be effective from January 1, 2022, to December 31, 2022, unless an extension is granted by the Zoning Administrator in compliance with Municipal Code Sections 20.52.040.J (Extension of Limited Term Permit) and 21.54.060 (Time Limits and Extensions). The applicant shall be required to cease all permitted operations and remove any temporary improvements made to the outdoor spaces as part of this approval at the end of the effective period.
3. *The expanded dining area shall not exceed 550 square feet in area.*
4. *The remaining four (4) parking spaces not occupied by the expanded outdoor dining area shall be kept clear and available for parking purposes.*
5. *The existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the expanded area as part of this approval shall not extend beyond 10 p.m.*
6. *There shall be no use of amplified sound or live entertainment.*
7. *The Applicant shall install and maintain a physical barrier between any area used and adjacent common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.*
8. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the Applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
9. The sale of alcohol "to go" to patrons that dine within the expanded outdoor patios shall be prohibited.
10. The establishment shall abide by all applicable Orange County Health Care Agency requirements.

11. The permittee shall provide adequate trash receptacles within the permitted patio shall and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
12. The Community Development Director or designee may inspect the modified area at any time during normal business hours.
13. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
14. 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 approval.
15. This Limited Term Permit and Coastal Development Permit 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.
16. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit and Coastal Development Permit.
17. 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 this Limited Term Permit No. XP2021-012 and Coastal Development Permit No. CD2021-041 (PA2021-191) for The Bungalow Restaurant. 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

18. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
 - a. A minimum 4-foot-wide accessible path to all functional area shall be provided.
 - b. Access to restrooms shall be provided at all times.

- c. Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
 - d. At least one (1) accessible seating area shall be provided.
 - e. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two (2).
19. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.

Fire Department

20. Fire lane(s) shall be identified on the plan.
21. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.
22. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.
23. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a 3-foot clearance in all directions.
24. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
25. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.
26. Heat lamps or other heating elements shall comply with the following requirements in accordance with code section 3107.12 of the California Fire Code:
- a. Propane and other fuel-based heating elements (including but not limited to flammable/combustible gas, liquid, or solid materials) shall not be used within tents or canopies.
 - b. Electric heaters must be ul listed for use within tents and/or canopies.
 - c. Propane and other fuel-based heating devices with blowers may be permitted, with the heating element located a minimum of 10 feet from the edge of the tent or canopy.
 - d. All heating equipment installations shall be approved for the fire code official.
27. Covered outdoor dining areas (separate or consolidated) shall comply with the following standards for tents larger than 400 square feet (two [2] or more walls) and/or canopies larger than 700 square feet (no walls or one [1] wall):
- Post maximum occupant load.
 - Do not exceed posted occupant load inside the tent or canopy.
 - Visible and Mounted Fire Extinguishers with current service tags.
 - No Smoking Signs shall be installed.

- Illuminated Exit Signs shall be installed.
- Emergency Lighting shall be provided.
- Exit doors are not to be blocked and are to remain accessible as exits while the tent is occupied.
- All interior decorative fabrics or materials shall be flame resistant. Provide Certificates of Flame Resistance.
- If Propane is used, a permit is required: Cooking and heating equipment shall not be located within 10 feet of exits or combustible materials.
- LPG containers shall be located outside and be adequately protected and secured, and a permit will be required. Open flame or other devices emitting flame, such as candles, are not permitted inside or within 20 feet of the tent, canopy, or temporary membrane structure.
- Tents and canopies shall have the State Fire Marshal tag indicating fire resistance.
- Tents and canopies shall be designed and installed to withstand the elements of the weather and prevent collapsing through weights and ground anchorage.

Public Works Department

28. The Applicant shall install and maintain a substantial physical barrier (water-filled traffic barrier or K-rail between any area used and adjacent to any street, driveway, or parking area).
29. There shall be a minimum of 5 feet of space around all overhead facilities, such as poles, and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
30. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
31. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
32. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples provided in Attachment No. ZA 4.

RESOLUTION NO. ZA2021-067

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-024 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-048 TO ALLOW AN EXPANDED OUTDOOR DINING AREA LOCATED AT 3408 VIA LIDO, SUITE 103 (PA2021-203)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Lido Bottle Works LLC, with respect to property located at 3408 Via Oporto, Suite 103, and legally described as Parcel 1 of Resubdivision No. 416, requesting approval of a limited term permit and a coastal development permit.
2. A request for a limited term and coastal development permit to allow a 270-square-foot expanded dining area for a one-year term (January 1, 2022 through December 31, 2022). The expanded dining area was previously authorized through Emergency Temporary Use Permit No. UP2020-012 (PA2020-085) for Lido Bottle Works.
3. The subject property is designated MU-W2 (Mixed-Use Water 2) by the General Plan Land Use Element and is located within the MU-W2 (Mixed-Use Water) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is MU-W (Mixed-Use Water Related) and it is located within the MU-W2 (Mixed-Use Water) Coastal Zoning District.
5. A public hearing was held on November 10, 2021, online via Zoom. 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 15301 under Class 1 (Existing Facilities) and 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 Class 1 exemption includes 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. The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving the use of significant amounts of hazardous substances, not exceeding 2,500

square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The proposed scope of work is a 270-square-foot expanded outdoor dining patio at an existing restaurant for a one-year limited term and qualifies under the parameters of the Class 1 and Class 3 exemptions.

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.

Limited Term Permit

In accordance with Section 20.52.040.G (Limited Term Permits, Findings and Decision) of the Newport Beach Municipal Code, 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 an extended and expanded outdoor dining patio for one-year term while the City reconsiders its parking requirements related to food service uses. The existing food service use is authorized through Conditional Use Permit No. UP2016-027 and Operator License No. OL2016-007 (PA2016-102) and includes 644 square feet of net public area.
2. The expanded dining area has not posed a hazard to the general welfare of persons residing in the area since it was placed during the COVID-19 pandemic in 2020 through an Emergency Temporary Use Permit. The operation of the expanded dining area is limited to one year beginning January 1, 2022, through December 31, 2022, and has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
3. Outdoor dining areas are common within the Lido Marina Village shopping area, have been used at the subject property during similar hours in the past, and the use has not proven detrimental. The existing hours of operation for the interior of the restaurant are limited from 10:00 a.m. through 12:30 a.m., daily. The hours of operation for the existing outdoor dining patio are limited from 10:00 a.m. through 12:00 midnight, Thursday through

Saturday, and between 10:00 a.m. and 11:00 p.m., Sunday through Wednesday. The expanded outdoor dining area would close by 9:00 p.m., Sunday through Thursday, and by 10:00 p.m., Friday and Saturday.

4. The proposed dining area will not be covered and a condition of approval related to heaters is incorporated as Condition of Approval No. 25.
5. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).
6. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
7. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
8. The overall plan includes appropriate delineation of outdoor use spaces with physical barriers or markers.
9. The expanded dining area will not impede pedestrian access to the waterfront. Conditions of approval require the expanded dining area to be located clear of the 6-foot lateral public access easement along the waterfront and the 6-foot wide vertical access between the buildings.

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 lot is approximately 0.59 acres in size and is a flat property adjacent to the water. The existing food service use with outdoor dining has operated at Suite 103 since its original approval in 2016. Based upon the site plan, there is adequate area to accommodate the expanded dining area without impacting pedestrian circulation and lateral/vertical coastal access.
2. The lot is bounded by Via Oporto to the east and Newport Harbor to the west. To the north are adjacent mixed-use properties within the Lido Marina Village development. To the south is a five-story, mixed-use building at 3388 Via Lido. An existing food service use with outdoor dining is located at this site. The expanded outdoor dining use will not impede use and enjoyment of the properties in the area and will instead add to the ambiance and quaint character of the Lido Marina Village.

3. The expanded dining area will not impede any parking spaces. No parking or traffic circulation issues are anticipated.

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. The subject lot is accessed from Via Oporto. A public parking structure is located across Via Oporto at 3434 Via Lido, where common parking for uses within Lido Marina Village are provided. The existing food service use, Lido Bottle Works, is located in a mixed-use area and proposes to operate all day and into the evening hours when surrounding retail and office uses are typically not operating. The parking structure has historically accommodated the mix of uses found within Lido Marina Village and no parking or traffic issues are anticipated with the continued use of the expanded dining area.
2. The property owner, DJM Arc Lido LLC, has applied for a conditional use permit to modify and expand allowed food service uses on a permanent basis within Lido Marina Village. This limited term permit would allow for some of these food services to operate in the interim while parking data for the use permit is refined and scheduled for Planning Commission review.

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; and*

Facts in Support of Finding:

1. The existing food service use with outdoor dining has operated at the subject property since 2016. The existing parking structure has historically accommodated the mix of uses located within Lido Marina Village per Conditional Use Permit No. UP2017-019 (PA2017-135). The existing parking structure at 3434 Via Lido is expected to accommodate the parking demand related to the temporary use.
2. The expanded dining area will not impede pedestrian access to the waterfront.

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 MU-W2 (Mixed-Use Water 2). The MU-W2 designation is intended to provide for marine-related uses intermixed with buildings that provide residential on the upper floors. Permitted uses include those permitted in the CM (Recreational and Marine Commercial), CV (Visitor Serving Commercial), and MU-V (Mixed Use Vertical) designations. Free-standing residential shall not be permitted. Food service uses are consistent with nonresidential uses and are conditionally permitted in mixed-use zoning districts. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the MU-W2 designation.
2. The site is located in the Mixed-Use Water (MU-W2) Zoning District. The MU-W2 designation applies to waterfront properties in which marine-related uses may be intermixed with general commercial, visitor-serving commercial, and residential dwelling units on the upper floors. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the MU-W2 designation. The MU-W2 zoning district allows temporary uses as specified within the Zoning Code and the proposed limited duration use is consistent with this designation.
3. The Limited Term Permit for expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the MU-W2 Zoning District of Lido Marina Village in that it provides amenities that support visitors to the area and provides a social gathering place for those who live and work in the neighborhood, consistent with General Plan Land Use Element Goal LU 2, below. Additional benefits include providing opportunities for the continuation of local businesses that generate sales tax and provide opportunities for employment, which is consistent with General Plan Land Use Element Policy LU 2.4 (Economic Development), also copied below:

Goal LU 2 *A living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique. It contains a diversity of uses that support the needs of residents, sustain and enhance the economy, provide job opportunities, serve visitors that enjoy the City's diverse recreational amenities, and protect its important environmental setting, resources, and quality of life.*

Policy LU 2.4 Economic Development *Accommodate uses that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents. (Imp 1.1, 24.1)*

4. Council Policy D-9 recognizes the need to balance economic development objectives with protection of the environment and the health and safety of the community. The policy recognizes the need to provide effective and efficient structures for implementing economic programs, utilizing staffing to provide healthy, thriving businesses, and maintain a healthy economy while preserving the unique commercial villages in Newport Beach. The

proposed limited term permit would support a local business and its economic prosperity while maintaining the unique character of the Lido Village community.

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

Coastal Development Permit

In accordance with Section 21.52.015.F (Coastal Development Permits, Findings and Decision) of the NBMC, 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 project site is not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is John Wayne Park and the site is only slightly visible as a small portion of a larger panoramic perspective from this vantage point. West Coast Highway is the nearest coastal view road and the project site is located across Newport Bay. However, the expanded outdoor dining area complies with all applicable Local Coastal Program (LCP) development standards and maintains an area consistent with the existing pattern of development in Lido Marina Village. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone. Instead, the expanded dining area adds to the visual interest and pedestrian-friendly atmosphere of the area.
2. The Property is located in the coastal zone and the proposed improvements require a coastal development permit in accordance with Newport Beach Municipal Code (NBMC) Section 21.52.035(C)(2) (Projects Exempt from Coastal Development Permit Requirements). The improvements are between the sea and the first public road and constitute an increase of ten (10) percent or more of the internal floor area of an existing structure or a lesser improvement that has previously been undertaken pursuant to California Public Resources Code Section 30610(a). The expanded outdoor dining area and barrier within the public walkway are minor detached structures. The location of these improvements does not pose a conflict to coastal resources, coastal access, or other adverse environmental effects.
3. Improvements are complementary to the area; the subject restaurant and adjacent neighbors have similar outdoor dining improvements within the walkways of Lido Marina Village.
4. The dining area barrier is installed within the existing walkway. The barrier delineates the area dedicated for outdoor dining use and alcohol service from the public walkway. There are no existing City utilities within the expanded dining area.

5. Development authorized by this permit is not located in any environmentally sensitive habitat area and public access to the coast will not be blocked. Coastal access is increased by allowing commercial establishments to allow the public to visit coastal areas and provides an added amenity for visitors. The proposed operation does not contain environmentally sensitive habitat area (ESHA), wetlands, or sandy beach area;
6. Development authorized is not located in an area in which the California Coastal Commission retains direct permit review authority.

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.*

Fact in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. 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, lateral and vertical coastal access is provided via an existing 6-foot wide pedestrian easement along the waterfront and between the buildings. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

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) and Section 15303 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 Limited Term Permit No. XP2021-024 and Coastal Development Permit No. CD2021-048 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 and 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 10TH DAY OF NOVEMBER, 2021.



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 stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The approval of this Limited Term Permit and Coastal Development Permit shall be effective from January 1, 2022, to December 31, 2022, unless an extension is granted by the Zoning Administrator in compliance with Municipal Code Sections 20.52.040.J (Extension of Limited Term Permit) and 21.54.060 (Time Limits and Extensions). The applicant shall be required to cease all permitted operations and remove any temporary improvements made to the outdoor spaces as part of this approval at the end of the effective period.
3. *The expanded dining area shall not exceed 270 square feet in area.*
4. *The 6-foot-wide lateral and vertical pedestrian easements at the boardwalk area shall always remain free and clear of any obstructions.*
5. *The existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the expanded area as part of this approval shall not extend beyond 9 p.m., Sunday through Thursday, and 10:00 p.m., Friday and Saturday.*
6. *There shall be no use of amplified sound.*
7. *The applicant shall install and maintain a physical barrier between any area used and adjacent common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.*
8. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
9. The sale of alcohol "to go" to patrons that dine within the expanded outdoor patios shall be prohibited.
10. The establishment shall abide by all applicable Orange County Health Care Agency requirements.

11. The permittee shall provide adequate trash receptacles within the permitted patio shall and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
12. The Community Development Director or designee may inspect the modified area at any time during normal business hours.
13. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
14. 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 approval.
15. This Limited Term Permit and Coastal Development Permit 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.
16. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit and Coastal Development Permit.
17. 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 this Limited Term Permit No. XP2021-024 and Coastal Development Permit No. CD2021-048 (PA2021-203) for Lido Bottle Works. 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

18. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
 - a. A minimum 4-foot-wide accessible path to all functional area shall be provided.
 - b. Access to restrooms shall be provided at all times.

- c. Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
 - d. At least one accessible seating area shall be provided.
 - e. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two.
19. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.

Fire Department

20. Parking, displays, seating, or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.
21. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.
22. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a three-foot clearance in all directions.
23. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
24. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.
25. Heat lamps or other heating elements shall comply with the following requirements in accordance with code section 3107.12 of the California Fire Code:
- a. Propane and other fuel-based heating elements (including but not limited to flammable/combustible gas, liquid, or solid materials) shall not be used within tents or canopies.
 - b. Electric heaters must be ul listed for use within tents and/or canopies.
 - c. Propane and other fuel-based heating devices with blowers may be permitted, with the heating element located a minimum of 10 feet from the edge of the tent or canopy.
 - d. All heating equipment installations shall be approved for the fire code official.

Public Works Department

26. There shall be a minimum of 5 feet of space around all overhead facilities, such as poles, and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
27. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.

28. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
29. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples provided in Attachment No. ZA 3.

RESOLUTION NO. ZA2021-068

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-028 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-053 TO ALLOW AN EXPANDED OUTDOOR DINING AREA LOCATED AT 2929 EAST COAST HIGHWAY (PA2021-213)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Edmond Bourke, representing Pirmeta DBA Pirozzi Corona del Mar (Foretti's), with respect to property located at 2929 East Coast Highway, and legally described as Parcel 1 of Resubdivision 179 being Lots 3, 4, and 5 and a portion of Lot 2, of Block G, Tract 323, M.M. 14-40, 41 in the City of Newport Beach, Orange County, California, requesting approval of a limited term permit and a coastal development permit.
2. A request for a limited term and coastal development permit to allow a 435-square-foot maximum expanded dining area for up to a one (1)-year term (January 1, 2022 through December 31, 2022). An expanded dining area was previously authorized through Emergency Temporary Use Permit No. UP2020-111 (PA2020-201) for Pirozzi Corona del Mar (Foretti's).
3. The subject property is designated CC (Corridor Commercial) by the General Plan Land Use Element and is located within the CC (Commercial Corridor) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is CC-B (Corridor Commercial – 0.0 - 0.75 FAR) and it is located within the CC (Commercial Corridor) Coastal Zoning district.
5. A public hearing was held on November 10, 2021, online via Zoom. 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. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and 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 Class 1 exemption includes 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. The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The proposed scope of work is a maximum 435-square-foot expanded outdoor dining patio at an existing restaurant for up to a one (1)-year limited term and qualifies under the parameters of the Class 1 and Class 3 exemptions.

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.

Limited Term Permit

In accordance with Section 20.52.040.G (Limited Term Permits) of the Newport Beach Municipal Code, 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 an extended and expanded outdoor dining patio for up to a one (1)-year term while the City reconsiders its parking requirements related to food service uses. The existing food service use is authorized through Use Permit No. UP2014-001 (PA2013-249) and includes 382 square feet of net public area with a 93-square-foot outdoor dining patio.
2. The expanded dining area has not posed a hazard to the general welfare of persons residing in the area since it was placed during the COVID-19 pandemic in 2020 through an Emergency Temporary Use Permit. The operation of the expanded dining area is limited to up to a one (1)-year beginning January 1, 2022, through December 31, 2022, and has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
3. Outdoor dining areas are common in the Corona del Mar commercial corridor, have been used at the subject property during similar hours in the past and the use has not proven

detrimental. The existing hours of operation for the restaurant are 11:00 a.m. through 11:00 p.m., daily. The expanded outdoor dining area would close by 9:00 p.m., Monday through Thursday, and by 10:00 p.m., Friday through Sunday, as required by Condition No. 5.

4. A condition of approval related to heaters is incorporated as Condition of Approval No. 19. The proposed dining area will also be covered with a tent and must comply with the fire requirements outlined in Condition No. 26.
5. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).
6. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
7. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
8. The overall plan includes appropriate delineation of outdoor use spaces with temporary physical barriers or markers.
9. The expanded dining area will not impede pedestrian coastal access since this is an inland property adjacent to East Coast Highway.

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 lot is approximately 0.54 acres in size and is a gently sloping property adjacent to East Coast Highway. The existing food service use with outdoor dining has operated at this location since its original approval in 2013. Based upon the site plan, there is adequate area to accommodate the expanded dining area without impacting pedestrian circulation and coastal access.
2. The lot is bounded by East Coast Highway to the east with residential properties inland to the west. To the north is an adjacent retail property and the Port Theater (a landmark theater) within the Commercial Corridor zoning district. To the south are additional retail properties south of Iris Avenue within the Commercial Corridor zoning district. Existing food service uses with outdoor dining and retail tenants are located at this site. The expanded outdoor dining use will not impede use and enjoyment of the properties in the area and will instead add to the ambiance and quaint character of Corona del Mar.

3. The expanded dining area will occupy a three (3) standard parking spaces and relocate/restripe the existing van accessible space. No traffic or site circulation issues are anticipated.

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. The subject lot is accessed from East Coast Highway. A surface parking area is provided on-site. The expanded dining area will occupy no more than three (3) standard parking spaces. The existing food service use, (Foretti's), is located in a commercial corridor area and proposes to operate all day and into the evening hours with peak hours when other retail and office uses on the property are typically not operating. Sufficient parking is provided on-site and no traffic issues are anticipated with the continued use of the expanded dining area.
2. The City is also undergoing an analysis of parking rates including rates related to food service and outdoor dining. Findings and recommendations of this study are anticipated by December of 2021, and may inform a future conditional use permit amendment for outdoor dining areas.

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; and*

Facts in Support of Finding:

1. The existing food service use with outdoor dining has operated at the subject property since 2013. The existing surface parking lot has historically served as the primary parking supply for patrons. The surface lot is expected to adequately accommodate the temporary use for up to a one (1)-year term.
2. The expanded dining area will not impede pedestrian access to the waterfront.

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 CC (Corridor Commercial). The CC designation is intended to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CC designation. Outdoor dining is a use that tends to foster additional pedestrian activity.
2. The site is located in the CC (Commercial Corridor) Zoning District. The CC designation is intended to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The CC zoning district allows food service uses and the expanded dining area is a temporary use, authorized with a limited term permit in the CC Zoning district.
3. The Limited Term Permit for expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the CC Zoning District of Corona del Mar in that it provides amenities that support visitors to the area and provides a social gathering place for those who live and work in the neighborhood, consistent with General Plan Land Use Element Goal LU2, below. Additional benefits include providing opportunities for the continuation of local businesses that generate sales tax and provide opportunities for employment, which is consistent with General Plan Land Use Element Policy LU 2.4 (Economic Development), also copied below:

Goal LU 2 *A living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique. It contains a diversity of uses that support the needs of residents, sustain and enhance the economy, provide job opportunities, serve visitors that enjoy the City's diverse recreational amenities, and protect its important environmental setting, resources, and quality of life.*

Policy LU 2.4 Economic Development *Accommodate uses that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents. (Imp 1.1, 24.1)*

4. Council Policy D-9 recognizes the need to balance economic development objectives with protection of the environment and the health and safety of the community. The policy recognizes the need to provide effective and efficient structures for implementing economic programs, utilizing staffing to provide healthy, thriving businesses, and maintain a healthy economy while preserving the unique commercial villages in Newport Beach. The proposed limited term permit would support a local business and economic prosperity while maintaining the unique character of the Corona del Mar community.
5. The site is not located within a specific plan area.

Coastal Development Permit

In accordance with Section 21.52.015 (Coastal Development Permits, Findings and Decision) of the NBMC, 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 project site is not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is John Wayne Park and the site is only slightly visible as a small portion of a larger panoramic perspective from this vantage point. As currently developed, the existing commercial properties and residential condominiums along West Coast Highway (the nearest coastal view road) are located within the view shed of the site across Newport Bay. However, the expanded outdoor dining area complies with all applicable Local Coastal Program (LCP) development standards and maintains an area consistent with the existing pattern of development in Lido Marina Village. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.
2. The Property is located in the coastal zone and the proposed improvements require a coastal development permit in accordance with Newport Beach Municipal Code (NBMC) Section 21.52.035(C)(2) (Projects Exempt from Coastal Development Permit Requirements). The improvements constitute an increase of ten (10) percent or more of the internal floor area of an existing structure or a lesser improvement that has previously been undertaken pursuant to California Public Resources Code Section 30610(a). The expanded outdoor dining area and barrier within the parking lot are minor detached structures. The location of these improvements does not pose a conflict to coastal resources, coastal access, or other adverse environmental effects.
3. Improvements are complementary to the area; the subject restaurant and adjacent neighbors have similar outdoor dining improvements within the walkways of Corona del Mar.
4. The dining area barrier is installed within the existing parking lot. The barrier delineates the area dedicated for outdoor dining use and alcohol service from the parking lot and drive aisle. There are no existing City utilities within the expanded dining area.
5. Development authorized by this permit is not located in any environmentally sensitive habitat area and public access to the coast will not be blocked. Coastal access is increased by allowing commercial establishments to re-open allowing public to visit coastal areas and provides an added amenity for visitors. The proposed operation does not contain ESHA, wetlands, or sandy beach area;

6. Development authorized is not located in an area in which the California Coastal Commission retains direct permit review authority.

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.*

Fact in Support of Finding:

1. The project site is not located between the nearest public road and the sea or shoreline. 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 is not located by the sea where lateral and vertical coastal access would be needed.

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) and 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 Limited Term Permit No. XP2021-028 and Coastal Development Permit No. CD2021-053 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 and Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 10TH DAY OF NOVEMBER, 2021.



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 as modified stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The approval of this Limited Term Permit and Coastal Development Permit shall be effective from January 1, 2022, to December 31, 2022, unless an extension is granted by the Zoning Administrator in compliance with Municipal Code Sections 20.52.040.J (Extension of Limited Term Permit) and 21.54.060 (Time Limits and Extensions). The applicant shall be required to cease all permitted operations and remove any temporary improvements made to the outdoor spaces as part of this approval at the end of the effective period
3. *The expanded dining area shall not exceed 435 square feet.*
4. *The existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the expanded area as part of this approval shall not extend beyond 9 p.m., Monday through Thursday, and will close by 10:00 p.m., Friday through Sunday.*
5. *There shall be no use of amplified sound.*
6. *The applicant shall install and maintain a physical barrier between any area used and adjacent common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.*
7. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
8. The sale of alcohol “to go” to patrons that dine within the expanded outdoor patios shall be prohibited.
9. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
10. The permittee shall provide adequate trash receptacles within the permitted patio shall and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.

11. The Community Development Director or designee may inspect the modified area at any time during normal business hours.
12. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
13. 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.
14. This Limited Term Permit and Coastal Development Permit 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.
15. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit and Coastal Development Permit.
16. 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 this **Limited Term Permit No. XP2021-028 and Coastal Development Permit No. CD2021-053 (PA2021-213) for Foretti's**. 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

17. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
 - a. A minimum 4-foot-wide accessible path to all functional area shall be provided.
 - b. Access to restrooms shall be provided at all times.
 - c. Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
 - d. At least one (1) accessible seating area shall be provided.

- e. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two (2).
18. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.

Fire Department

19. Fire lane(s) shall be identified on the plan.
20. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.
21. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.
22. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a three-foot clearance in all directions.
23. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
24. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.
25. Heat lamps or other heating elements shall comply with the following requirements in accordance with code section 3107.12 of the California Fire Code:
- Propane and other fuel-based heating elements (including but not limited to flammable/combustible gas, liquid, or solid materials) shall not be used within tents or canopies.
 - Electric heaters must be ul listed for use within tents and/or canopies.
 - Propane and other fuel-based heating devices with blowers may be permitted, with the heating element located a minimum of 10 feet from the edge of the tent or canopy.
 - All heating equipment installations shall be approved for the fire code official.
26. Covered outdoor dining areas (separate or consolidated) shall comply with the following standards for tents larger than 400 square feet (2 or more walls) and/or canopies larger than 700 square feet (no walls or one (1) wall):
- Post maximum occupant load.
 - Do not exceed posted occupant load inside the tent or canopy.
 - Visible and Mounted Fire Extinguishers with current service tags.
 - No Smoking Signs shall be installed.
 - Illuminated Exit Signs shall be installed.
 - Emergency Lighting shall be provided.

- Exit doors are not to be blocked and are to remain accessible as exits while the tent is occupied.
- All interior decorative fabrics or materials shall be flame resistant. Provide Certificates of Flame Resistance.
- If Propane is used, a permit is required: Cooking and heating equipment shall not be located within 10 feet of exits or combustible materials.
- LPG containers shall be located outside and be adequately protected and secured, and a permit will be required. Open flame or other devices emitting flame, such as candles, are not permitted inside or within 20 feet of the tent, canopy, or temporary membrane structure.
- Tents and canopies shall have the State Fire Marshall tag indicating fire resistance.
- Tents and canopies shall be designed and installed to withstand the elements of the weather and prevent collapsing through weights and ground anchorage.

Public Works Department

27. The Applicant shall install and maintain a substantial physical barrier (water-filled traffic barrier or K-rail between any area used and adjacent to any street, driveway, or parking area).
28. There shall be a minimum of 5 feet of space around all overhead facilities, such as poles, and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
29. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
30. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
31. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples provided in Attachment No. ZA 3.
32. Service deliveries shall be prohibited through the rear alley at 436 Heliotrope Avenue.
33. The remaining on-site parking spaces shall remain free of obstructions and available for vehicle parking.

RESOLUTION NO. ZA2021-069

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING LIMITED TERM PERMIT NO. XP2021-031 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-060 TO ALLOW AN EXPANDED OUTDOOR DINING AREA LOCATED AT 3334 WEST COAST HIGHWAY (PA2021-228)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Jordan Otterbein, representing A Restaurant, with respect to property located at 3334 West Coast Highway, and legally described as a portion of Block 1 of Irvine's Subdivision, requesting approval of a limited term permit and a coastal development permit.
2. A request for a limited term and coastal development permit to allow a 1,000-square-foot maximum expanded dining area for up to a one (1)-year term. An expanded outdoor dining area was previously requested via Emergency Temporary Use Permit No. UP2020-016 (PA2020-087) for A Restaurant and the size and location of the expanded dining patio has been modified under this request.
3. The subject property is designated CG (General Commercial) by the General Plan Land Use Element and is located within the CG (Commercial General) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is CG-B (General Commercial – 0.0 - 0.75 FAR) and it is located within the CG (Commercial General) Coastal Zoning District.
5. A public hearing was held on November 10, 2021, online via Zoom. 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. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and 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 Class 1 exemption includes 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. The

Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The proposed scope of work is a maximum 1,000-square-foot expanded outdoor dining patio at an existing restaurant for up to a one (1)-year limited term and qualifies under the parameters of the Class 1 and Class 3 exemptions.

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.

Limited Term Permit

In accordance with Section 20.52.040.G (Limited Term Permits, Findings and Decision) of the Newport Beach Municipal Code, 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 an extended and expanded outdoor dining patio for up to a one (1)-year term while the City reconsiders its parking requirements related to food service uses. The existing food service use, A Restaurant, was established prior to the requirement for a use permit in the City and the existing outdoor dining patio was authorized through OD2008-004 (PA2008-145) in 2008.
2. The expanded dining area has not posed a hazard to the general welfare of persons residing in the area since it was placed during the COVID-19 pandemic in 2020. The operation of the expanded dining area is limited to up to a one (1)-year beginning January 1, 2022, through December 31, 2022, and has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
3. Outdoor dining areas are common within the Mariners' Mile corridor, have been used at the subject property during similar hours in the past, and the use has not proven detrimental. The existing hours of operation for the interior of the restaurant are not limited

by a use permit. The hours of operation for the existing outdoor dining patio are limited from 11:00 a.m. through 10:00 p.m., daily. The expanded outdoor dining area will close by 9:00 p.m., daily.

4. The expanded outdoor dining area will include a covered tent area. The size of the tent area will require a building permit and Fire Marshall tag in order to confirm proper safety, anchoring, and fire safety to continue operation in this location in accordance with Condition of Approval Nos. 17 and 28.
5. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).
6. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
7. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
8. The overall plan includes appropriate delineation of outdoor use spaces with physical barriers or markers.
9. The expanded dining area will not impede pedestrian access to the waterfront.

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 lot is approximately 0.76 acres in size and is a generally flat property. The existing food service use with outdoor dining has operated at this location prior to the requirement for a use permit. Based upon the site plan, there is adequate area to accommodate the expanded dining area without impacting vehicles, pedestrian circulation, or coastal access.
2. The lot is bounded by West Coast Highway to the south, Old Newport Boulevard to the west, Santa Ana Avenue to the north, and a commercial property to the east. An existing food service use with outdoor dining is located at this site. The expanded outdoor dining use will not impede use and enjoyment of the properties in the area and to date, the City has not received any complaints regarding the operation of the expanded dining at this site.

4. The expanded dining area will not impede any parking spaces. No traffic or site circulation issues are anticipated.

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. The subject lot is accessed from West Coast Highway. A surface parking lot is located on-site, serving A Restaurant and A Market.
2. The number of parking spaces is currently nonconforming to the code required parking since A Restaurant was established prior to the requirement for a use permit. Traffic issues and parking demand issues are not anticipated with the continued use of a 1,000-square-foot expanded dining area. To date, no complaints have been received regarding the operation of this expanded dining area.

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; and*

Facts in Support of Finding:

1. The existing food service use has operated on-site prior to the requirement for a use permit and the existing outdoor dining patio has operated at the subject property since 2008. The existing surface parking lot on-site is expected to accommodate the temporary use.
2. The expanded dining area will not impede pedestrian access to the waterfront. The expanded dining area will occupy a maximum of standard parking stalls and will not impede any accessible parking spaces.

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 CG (General Commercial). The CG designation is intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs. Food service uses are consistent with

nonresidential uses conditionally permitted in commercial zoning districts. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CG designation.

2. The site is located in the CG (Commercial General) Zoning District. The CG designation is intended to provide for areas appropriate for a wide variety of commercial activities oriented primarily to serve Citywide or regional needs. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CG zoning designation. The CG zoning district allows temporary uses as specified within the Zoning Code and the proposed expanded dining area is permitted with a limited term permit in this Zoning district.
3. The Limited Term Permit for expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the CG Zoning District of Mariners' Mile in that it provides amenities that support visitors to the area and provides a social gathering place for those who live and work in the neighborhood, consistent with General Plan Land Use Element Goal LU2, below. Additional benefits include providing opportunities for the continuation of local businesses that generate sales tax and provide opportunities for employment, which is consistent with General Plan Land Use Element Policy LU 2.4 (Economic Development), also copied below:

Goal LU 2 *A living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique. It contains a diversity of uses that support the needs of residents, sustain and enhance the economy, provide job opportunities, serve visitors that enjoy the City's diverse recreational amenities, and protect its important environmental setting, resources, and quality of life.*

Policy LU 2.4 Economic Development *Accommodate uses that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents. (Imp 1.1, 24.1)*

4. Council Policy D-9 recognizes the need to balance economic development objectives with protection of the environment and the health and safety of the community. The policy recognizes the need to provide effective and efficient structures for implementing economic programs, utilizing staffing to provide healthy, thriving businesses, and maintain a healthy economy while preserving the unique commercial villages in Newport Beach. The proposed limited term permit would support a local business and its economic prosperity while maintaining the unique character of the Mariners' Mile corridor.
5. The site is not located within a specific plan area.

Coastal Development Permit

In accordance with Section 21.52.015 (Coastal Development Permits, Findings and Decision) of the NBMC, 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. West Coast Highway is considered a coastal view road. However, the expanded outdoor dining area is placed at the rear of the subject property where it is largely shielded from view from West Coast Highway. The nearest coastal viewpoint is John Wayne Park and the site is only marginally visible as a small portion of a larger panoramic perspective from this vantage point. The dining area complies with all applicable Local Coastal Program (LCP) development standards and maintains an area consistent with the existing pattern of development in Mariners' Mile. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.
2. The Property is located in the coastal zone and the proposed improvements require a coastal development permit in accordance with Newport Beach Municipal Code (NBMC) Section 21.52.035(C)(2) (Projects Exempt from Coastal Development Permit Requirements). The improvements are temporary in nature and do not constitute an increase of 10 percent or more of internal floor area or the construction, placement, or establishment of a significant nonattached structure. The expanded outdoor dining area and associated tent cover are minor detached structures that are not located between the sea and the nearest public road. The location of these improvements does not pose a conflict to coastal resources, coastal access, or other adverse environmental effects. While the property is bisected by the line delineating 300 feet from the mean high tide, the proposed improvements are located at the rear of the property and are not within the appeal area.
3. Improvements are complementary to the area; the expanded dining area provides aesthetically pleasing improvements that are complimentary to the existing restaurant design and compatible with the surrounding residential area across North Santa Ana Avenue.
4. The dining area provides appropriate substantial barriers adjacent to vehicle drive aisles and parking spaces. The barriers further serve to delineate the area dedicated for outdoor dining use and alcohol service from the public walkway. There are no existing City utilities within the expanded dining area.
5. Development authorized by this permit is not located in any environmentally sensitive habitat area and public access to the coast will not be blocked. Coastal access is increased by allowing the public to visit coastal areas and provides an added amenity

for visitors. The proposed operation does not contain environmentally sensitive habitat areas (ESHA), wetlands, or sandy beach area;

6. Development authorized is not located in an area in which the California Coastal Commission retains direct permit review authority.

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.*

Fact in Support of Finding:

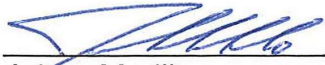
1. The project site is not located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, lateral and vertical coastal access is provided via an existing 10-foot wide lateral pedestrian easement along the waterfront across West Coast Highway (at 3333 West Coast Highway). Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

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) and 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 Limited Term Permit No. XP2021-031 and Coastal Development Permit No. CD2021-060 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 and Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 10TH DAY OF NOVEMBER, 2021.



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 stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The approval of this Limited Term Permit and Coastal Development Permit shall be effective from January 1, 2022, to December 31, 2022, unless an extension is granted by the Zoning Administrator in compliance with Municipal Code Sections 20.52.040.J (Extension of Limited Term Permit) and 21.54.060 (Time Limits and Extensions). The applicant shall be required to cease all permitted operations and remove any temporary improvements made to the outdoor spaces as part of this approval at the end of the effective period.
3. *The expanded dining area shall not exceed 1,000 square feet in area.*
4. *The existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the expanded area as part of this approval shall not extend beyond 9 p.m.*
5. *There shall be no use of amplified sound.*
6. *The applicant shall install and maintain a physical barrier between any area used and adjacent common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.*
7. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
8. The sale of alcohol "to go" to patrons that dine within the expanded outdoor patios shall be prohibited.
9. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
10. The permittee shall provide adequate trash receptacles within the permitted patio shall and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.

11. The Community Development Director or designee may inspect the modified area at any time during normal business hours.
12. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
13. 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.
14. This Limited Term Permit and Coastal Development Permit 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.
15. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit and Coastal Development Permit.
16. 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 this **Limited Term Permit No. XP2021-031 and Coastal Development Permit No. CD2021-060 (PA2021-228) for A Restaurant**. 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

17. Building permits are required for the use of any membrane or tent. Accessible routes, including under canopy(ies) must maintain a minimum clear height of 80 inches.
18. Physical barriers delineating the outdoor seating and adjoining vehicular ways shall not block egress or an accessible route and shall maintain a minimum of 48-inch clear.
19. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.

- a. A minimum 4-foot-wide accessible path to all functional area shall be provided.
 - b. Access to restrooms shall be provided at all times.
 - c. Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
 - d. At least one accessible seating area shall be provided.
 - e. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two (2).
20. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.

Fire Department

21. Fire lane(s) shall be identified on the plan.
22. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.
23. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.
24. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a three-foot clearance in all directions.
25. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
26. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.
27. Heat lamps or other heating elements shall comply with the following requirements in accordance with code section 3107.12 of the California fire code:
- a. Propane and other fuel-based heating elements (including but not limited to flammable/combustible gas, liquid, or solid materials) shall not be used within tents or canopies.
 - b. Electric heaters must be ul listed for use within tents and/or canopies.
 - c. Propane and other fuel-based heating devices with blowers may be permitted, with the heating element located a minimum of 10 feet from the edge of the tent or canopy.
 - d. All heating equipment installations shall be approved for the fire code official.
28. Covered outdoor dining areas (separate or consolidated) shall comply with the following standards for tents larger than 400 square feet (2 or more walls) and/or canopies larger than 700 square feet (no walls or one wall):
- Post maximum occupant load.
 - Do not exceed posted occupant load inside the tent or canopy.

- Visible and Mounted Fire Extinguishers with current service tags.
- No Smoking Signs shall be installed.
- Illuminated Exit Signs shall be installed.
- Emergency Lighting shall be provided.
- Exit doors are not to be blocked and are to remain accessible as exits while the tent is occupied.
- All interior decorative fabrics or materials shall be flame resistant. Provide Certificates of Flame Resistance.
- If Propane is used, a permit is required: Cooking and heating equipment shall not be located within 10 feet of exits or combustible materials.
- LPG containers shall be located outside and be adequately protected and secured, and a permit will be required. Open flame or other devices emitting flame, such as candles, are not permitted inside or within 20 feet of the tent, canopy, or temporary membrane structure.
- Tents and canopies shall have the State Fire Marshall tag indicating fire resistance.
- Tents and canopies shall be designed and installed to withstand the elements of the weather and prevent collapsing through weights and ground anchorage.

Public Works Department

29. The Applicant shall install and maintain a substantial physical barrier (water-filled traffic barrier or K-rail between the temporary expansion area and all driving areas, including drive aisles and parking spaces. The substantial barriers shall not encroach into the required dimensions of the drive aisle or adjacent parking spaces.
30. There shall be a minimum of 5 feet of space around all overhead facilities, such as poles, and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
31. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
32. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
33. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples provided in Attachment No. ZA 3.