



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 26, 2021.

ZONING ADMINISTRATOR ACTIONS NOVEMBER 24, 2021

- Item 1: The Mayor's Table Pacific Pub + Kitchen Limited Term Permit No. XP2021-020 and Coastal Development Permit No. CD2021-046 (PA2021-202)
Site Address: 3300 Newport Boulevard
- | | | |
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| Action: Approved by Resolution No. ZA2021-070 | Council District | 1 |
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- Item 2: Billy's at the Beach Limited Term Permit No. XP2021-033 and Coastal Development Permit No. CD2021-063 (PA2021-248)
Site Address: 2751 West Coast Highway
- | | | |
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| Action: Approved by Resolution No. ZA2021-071 | Council District | 3 |
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- Item 3: Inter-Pro Property Corporation Residence Lot Merger No. LM2021-004, Coastal Development Permit No. CD2021-033 and Staff Approval No. SA2021-008 (PA2021-183)
Site Address: 518 and 520 Via Lido Nord
- | | | |
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| Action: Continued to December 16, 2021 Zoning Administrator Meeting | Council District | 1 |
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- Item 4: Inter-Pro Property Corporation Residence Coastal Development Permit No. CD2021-056 (PA2021-215)
Site Address: 522 Via Lido Nord
- | | | |
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| Action: Continued to December 16, 2021 Zoning Administrator Meeting | Council District | 1 |
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- Item 5: Bamboo Bistro Limited Term Permit No. XP2021-034 (PA2021-253)
Site Address: 2600 East Coast Highway, Suite 160
- | | | |
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| Action: Approved by Resolution No. ZA2021-072 | Council District | 6 |
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- Item 6: Sakae Sushi Temporary Outdoor Dining Tables Limited Term Permit No. XP2021-029 and Coastal Development Permit No. CD2021-058 (PA2021-225)
Site Address: 123 23rd Street
- | | | |
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| Action: Approved by Resolution No. ZA2021-073 | Council District | 1 |
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Item 7: Shorebird Restaurant Limited Term Permit No. XP2021-007 and Coastal Development Permit No. CD2021-037 (PA2021-185)
 Site Address: 2220 Newport Boulevard, Suite 101

Action: Approved by Resolution No. ZA2021-074	Council District	1
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Item 8: CDM Restaurant Limited Term Permit No. XP2021-030 and Coastal Development Permit No. CD2021-059 (PA2021-226)
 Site Address: 2325 East Coast Highway

Action: Approved by Resolution No. ZA2021-075	Council District	1
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Item 9: Cappy's Café Limited Term Permit No. XP2021-005 and Coastal Development Permit No. CD2021-036 (PA2021-180)
 Site Address: 5930 West Coast Highway

Action: Continued to December 16, 2021 Zoning Administrator Meeting	Council District	2
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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. ZA2021-070

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-020 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-046 TO ALLOW A TEMPORARILY EXPANDED OUTDOOR DINING AREA LOCATED AT 3300 NEWPORT BOULEVARD (PA2021-202)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by R.D. Olson Development (Applicant), with respect to property located at 3300 Newport Boulevard which is located at the northeast corner of the intersection of Newport Boulevard and 32nd Street on the Balboa Peninsula in the Lido Village area of the City, 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 (January 1, 2022 through December 31, 2022). The original expanded dining area (“patio”) layout was authorized by Emergency Temporary Use Permit No. UP2020-186 (PA2020-343) for The Mayor’s Table Pacific Pub + Kitchen.
3. The subject property is categorized CL-LV (Visitor Serving Commercial – Lido Village) by the General Plan Land Use Element and is located within the CV-LV (Commercial Visitor - Serving – Lido Village) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is CV-LV (Visitor Serving Commercial Lido Village - [103,470 GROSS SF]) and it is located within the CV-LV (Commercial Visitor - Serving – Lido Village) Coastal Zoning district.
5. A public hearing was held on November 24, 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 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 (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 (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 (i.e., restaurant) is authorized through Use Permit No. UP2016-015 (PA2016-061) which allows a restaurant within the larger Lido House Hotel development.
2. The patio 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. UP2020-186 (PA2020-343) authorized two (2) large outdoor tents (approximately 900 square feet of patio area) within an existing outdoor area of the Lido House Hotel. The current request will increase the size of the patio by 100 square feet and relocate it to the wood ipe deck approximately 50 feet to

the south. 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 Lido Marina Village and have been used at the subject property during similar hours in the past. The use has not proven detrimental. Furthermore, the patio was reviewed by the Code Enforcement and Water Quality Division and there were no on-going issues identified as part of their review.
4. The existing hours of operation for the restaurant are 6:30 a.m. through 10 p.m., daily. The patio would also close by 10 p.m., daily, as required by Condition of Approval No. 4.
5. A condition of approval related to heaters is incorporated as Condition of Approval No. 26. The proposed patio area will also be covered with a tent and must comply with the fire requirements outlined in Condition of Approval No. 27.
6. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).
7. 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.
8. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
9. The plan includes appropriate delineation of outdoor use spaces with physical barriers or markers.
10. The expanded dining area will not impede pedestrian coastal access since this is an inland property adjacent to Newport Boulevard. The subject property does not abut a beach or 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 5.4 acres in size, relatively flat, and adjacent to Newport Boulevard. The site is developed with the Lido House Hotel. The proposed patio for the restaurant is to be located on a wood ipe deck, adjacent to a large grassy area, on the west side of the property along Newport Boulevard. Based upon the site plan, there is adequate area to accommodate the patio without impacting pedestrian circulation..

2. The immediately surrounding uses are primarily nonresidential with the nearest residential zoning district over 250 feet away, across Newport Boulevard. The patio is not anticipated to impede the use and enjoyment of the properties in the area.

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 Newport Boulevard and Finley Avenue. A surface parking area with approximately 148 stalls is provided on-site. The proposed patio does not result in a loss of parking and negative impacts to vehicle circulation are not anticipated from the continued use of the patio.
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. The existing restaurant with permanent outdoor dining has operated at the subject property since 2018. 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.

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 CV-LV (Visitor Serving Commercial – Lido Village) General Plan category is intended to allow for a range of accommodations (e.g., hotels, motels, hostels), goods, and services intended to primarily serve visitors to the City of Newport Beach. The patio is accessory to the existing restaurant within the larger hotel site. The patio will be enjoyed by guests of

the hotel and visitors to the City, which is consistent with the General Plan. The patio will also be used by residents of the City.

2. The CV-LV (Commercial Visitor - Serving – Lido Village) Zoning District provides for a range of accommodations (e.g., hotels, motels, hostels), goods, and services intended to primarily serve visitors to the City of Newport Beach. The CV-LV zoning 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 CV-LV Zoning District of the 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 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)*

Additionally, the patio is consistent with Policy LU 6.9.1 of the Land Use Element of the General Plan which encourages uses that take advantage of Lido Village's pedestrian character. The outdoor patio is inviting to pedestrians and creates a lively environment along the streetscape.

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 designated coastal viewpoint is approximately 443 feet to the east, at Lido Park. The patio is on the ground level of the project site and separated from the park by the multi-story Lido House Hotel. The patio is not visible from the park nor is the patio tall enough to obstruct coastal views from any northerly Coastal Viewpoints. A portion of Newport Boulevard is designated as a coastal view road however the designation terminates approximately 400 feet north of the project site. 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 do not 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 project site 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 patio improvements are complementary to the area. The restaurant already features some outdoor dining, and the hotel features many outdoor spaces to enjoy food and beverages. The tent will provide protection from rain and wind during the colder months.
4. The patio is surrounded with a physical barrier. 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 (ESHA) 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.*

Facts 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.
2. The expanded dining area will not impede pedestrian access to the waterfront as the nearest beach is approximately a quarter of a mile to the west of the site, along 32nd avenue.

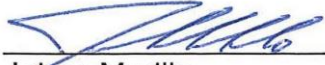
SECTION 4. DECISION.

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. XP2021-020 and Coastal Development Permit No. CD2021-046 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. A fee is not required to appeal any final action on a coastal development permit to the Planning Commission. 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 24TH 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 Sections 20.52.040(J) (Extension of Limited Term Permit) and 21.54.060 (Time Limits and Extensions) of the NBMC. 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., daily.*
5. *There shall be no use of amplified sound and/or live entertainment.*
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 (ABC).*
7. The Applicant shall obtain and maintain authorization from the 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 ABC.
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 approval.
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. XP2021-020 and Coastal Development Permit No. CD2021-046 (PA2021-202) for The Mayor's Table Pacific Pub + Kitchen**. 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.
19. *Large tents (over 400 square feet) shall provide plans from a licensed engineer to demonstrate a proposed design complies with anchorage requirements for wind loading. A building permit shall be obtained prior to installing the tent.*

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 by 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.

28. *The tent is limited to a one (1)-year term in its proposed location. Any request to extend the limited term permit will require subsequent review and approval from the Fire Department prior to approval from the Zoning Administrator.*

Public Works Department

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 the staff report (Attachment No. ZA 4).

RESOLUTION NO. ZA2021-071

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-033 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-063 TO ALLOW A TEMPORARILY EXPANDED OUTDOOR DINING AREA LOCATED AT 2751 WEST COAST HIGHWAY (PA2021-248)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Redwoodwest (Applicant), with respect to property located at 2751 West Coast Highway, and legally described as the southeasterly 100 feet of the northwesterly 250 feet of Lot H of Tract 919 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 174-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 (ETUP) No. UP2020-168 (PA2020-290) for Billy's at the Beach. The current request represents a 166 square foot reduction in temporary outdoor dining area from ETUP No. UP2020-168.
3. The subject property is categorized as MU-W1 (Mixed-Use Water 1) by the General Plan Land Use Element and is located within the MU-W1 (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-W1 (Mixed-Use Water) Coastal Zoning district.
5. A public hearing was held on November 24, 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 174-square-foot 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 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 (i.e., restaurants). The existing restaurant is authorized through Use Permit No. UP3674 and includes 1,691 square feet of indoor dining area with 425 square feet of permanent outdoor dining.
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 ETUP. ETUP No. UP2020-168 allowed an outdoor dining area of 340 square feet and the current request is a 166 square foot reduction in dining area. The operation of the patio 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 preclude any detriment to the general welfare of the area.

3. The adjacent properties, 2735 West Coast Highway and 2801 West Coast Highway respectively, are developed with commercial buildings that have restaurants and operate permanent outdoor patios. The existing restaurant has operated a permanent outdoor patio since 2000 and the use has not proven detrimental. Furthermore, the temporary patio was reviewed by the Code Enforcement and Water Quality Division and there were no on-going issues identified as part of their review.
4. Hours of operation for the temporary patio shall not extend beyond 9 p.m. The earlier closing hour should help to eliminate noise impacts to residents across the harbor.
5. A condition of approval related to heaters is incorporated as Condition of Approval No. 27. While there is no tent or covering proposed at this time, if the Applicant chooses to install a tent or covering, it would be subject to Condition of Approval No. 28.
6. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).
7. 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.
8. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
9. The overall plan includes appropriate delineation of outdoor use spaces with 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 property is approximately 0.55 acres in size and abuts the harbor. A restaurant use was originally approved in 1989. Permanent outdoor dining was added to the restaurant in 2000. Based upon the site plan, there is adequate area to accommodate the temporary dining area without impacting pedestrian circulation or coastal access.
2. The lot is bounded by West Coast Highway, commercial buildings with restaurants to the north and south, and the harbor to the west with residential uses beyond. The patio will not impede the use or the enjoyment of other the properties in the area and will instead add to the ambiance and quaint character of Mariner's Mile.

3. The patio is proposed for the rear of the building, on the waterfront side. The patio will about 60 linear feet of bi-folding doors that can be opened to create a seamless transition from the indoor dining area of Billy's at the Beach to the patio. The patio is proposed to run along the entire length of the building and will extend 2 feet from the building toward the water. The patio should not impact traffic or site circulation.

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 valet parking service is provided for guests of the existing restaurant and the other commercial uses at 2801 West Coast Highway. The valet service is a shared service between the various uses and utilizes both on-site and off-site parking, in conformance with Use Permit No. UP3674. Sufficient parking is available to support the patio and no traffic issues should arise with the continued use of the patio.
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. Fact 1 in Support of Finding C is hereby incorporated by reference.

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 MU-W1 (Mixed-Use Water 1). The MU-W1 category is applied to waterfront locations along the Mariner's Mile Corridor in which marine related, visitor-serving, commercial and residential uses are intermixed with buildings that provide residential uses above the ground floor. The temporary patio is

accessory to the existing restaurant, will be utilized for a limited duration, will not impede use of the site, and is consistent with the MU-W1 designation.

2. The project site is in the MU-W1 Zoning District. The MU-W1 Zoning District allows food service uses with the approval of a use permit and the expanded patio 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 MU-W1 Zoning District of Mariner's 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 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)*

Additionally, the patio is consistent with Policy LU 6.19 of the Land Use Element of the General Plan which encourages uses that take advantage of its location on the Newport Bay Waterfront. The outdoor patio provides a waterfront dining amenity that can be enjoyed by visitors to the City of Newport Beach and residents alike.

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 Mariner's Mile 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 or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest designated coastal viewpoint is at John Wayne Park, approximately 900 northeast of the project site. The project site is only marginally visible from this vantage point as a small portion of a larger panoramic perspective. Additionally, the patio is on the waterfront side of the restaurant. It would not be visible from John Wayne Park due to height of the existing building exceeding that of the ground level patio. The patio will be visible from the harbor; however, the low-lying patio is an extension of the existing restaurant and will not appear out of place in its surrounding. 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 Mariner's Mile. 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. The patio is surrounded with a physical barrier. 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.
4. Development authorized by this permit is not located in any environmentally sensitive habitat area (ESHA) 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.
5. 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. When the original use permit for the commercial building was approved in 1982, it required two (2) public access easements. The first is a 6-foot-wide vertical access walkway along the easterly property line and the second is a 6-foot by 12-foot horizontal or lateral walkway adjacent to the water. Condition of Approval Number 6 requires the Applicant keep both easements free and clear of any restaurant related encroachments that would hinder access. The patio is not anticipated to have an impact on coastal resources or access.

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. XP2021-033 and Coastal Development Permit No. CD2021-063 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. A fee is not required to appeal any final action on a coastal development permit to the Planning Commission. 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 24TH 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 174 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., daily.*
5. *There shall be no use of amplified sound or live entertainment within the temporary patio.*
6. *The two (2) 6-foot-wide public access easements for pedestrian coastal access shall be kept free and clear of any encroachments including but not limited to barriers, tables, umbrellas, etc.*
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. XP2021-033 and Coastal Development Permit No. CD2021-063 (PA2021-248) for Billy's at the Beach**. 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.
 20. All tops of dining and work surfaces shall be 28 inches to 34 inches above the finish floor.

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 3-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 by 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 (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

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.

RESOLUTION NO. ZA2021-072

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-034 TO ALLOW A TEMPORARILY EXPANDED OUTDOOR DINING AREA LOCATED AT 2600 EAST COAST HIGHWAY, SUITE 160 (PA2021-253)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Bamboo Bistro (Applicant) with respect to property located at 2600 East Coast Highway, Suite 160, and legally described as Parcel 1 of Redivision No. 792, requesting approval of a limited term permit.
2. The Applicant requests a limited term permit to authorize a 550 square-foot temporarily expanded dining area previously authorized through Emergency Temporary Use Permit No. UP2020-125 (PA2020-220) for Bamboo Bistro for up to a one (1)-year term (January 1, 2022 through December 31, 2022).
3. The subject property is categorized Corridor Commercial (CC) by the General Plan Land Use Element and is located within the Commercial Corridor (CC) 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 24, 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 outdoor dining patio at an existing restaurant for up to a one (1)-year limited term (January 1, 2022 through December 31, 2022).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 (i.e., restaurant) is authorized through Use Permit No. UP3620 and Planning Director's Use Permit No. 14 and includes 600 square feet of interior 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 a 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 flat and approximately 0.4 acres in size. The existing restaurant with outdoor dining has operated at the subject site since its original approval in 1998 (UP3620 and Planning Director's Use Permit No. 14). 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 in the commercial corridor of Corona del Mar at the intersection of Dahlia Avenue and East Coast Highway. Along East Coast Highway is a variety of commercial uses, including personal services, professional office, fitness, and other eateries. The continued use of 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. The restaurant will also continue to provide a convenience for nearby businesses and visitors to the area.
3. Facts 2, 3 and 4 in Support of Finding A are hereby incorporated by reference.

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 Dahlia Avenue and Fifth Avenue. A surface parking area is provided on-site. The expanded dining area occupies three (3) public parking spaces and part of an adjacent sidewalk. The temporary configuration has not posed any issue to date and no further traffic or parking 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. Fact 1 in Support of Finding B and Fact 1 in Support of Finding C are hereby incorporated by reference.

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 Commercial Corridor (CC). The CC 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 CC designation. Outdoor dining is a use that tends to foster additional pedestrian activity.
2. The site is in the Commercial Corridor (CC) Zoning District. The CC 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 CC District allows restaurants at the site and the expanded dining area is a temporary use, authorized with a limited term permit.
3. The 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 Corona del Mar.

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. XP2021-034, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the NBMC.

PASSED, APPROVED, AND ADOPTED THIS 24TH 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 Section 20.52.040(J) (Extension of Limited Term Permit) of the NBMC. 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 Applicant shall obtain and maintain liability insurance for not less than \$1,000,000 per occurrence and as specified by the City's Risk Manager. All liability insurance policies shall specifically include the City, the City Council, its employees, and agents as additional insureds and shall be issued by an agent or representative of an insurance company licensed to do business in the State of California, which has one of the three highest or best ratings from the Alfred M. Best company. All insurance policies shall contain an endorsement obligating the insurance company to furnish the Community Development Director with at least thirty (30) days written notice in advance of the cancellation of the policy.
5. The expanded outdoor dining patio shall not exceed 550 square feet and a maximum of three (3) public parking spaces shall be used for temporary outdoor dining, as depicted on the attached site plan diagram.
6. 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.
7. A maximum of three (3) public parking spaces shall be used for temporary outdoor dining.
8. The use of amplified sound or live entertainment within the temporary area shall be prohibited.

9. The Applicant shall install and maintain a physical barrier (fencing) between any area used and adjacent pedestrian walkways.
10. 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.
11. 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.
12. The sale of alcohol “to go” to patrons that dine within the restaurant or expanded outdoor patios shall be prohibited.
13. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
14. 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.
15. Any change in operational characters, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit.
16. 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.
17. 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
18. 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.
19. 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. XP2021-034 for Bamboo Bistro (PA2021-253)**. 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

20. 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).
21. 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.
22. The tops of dining surfaces and work surfaces shall be 28 inches to 34 inches above the finish floor.
23. 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.
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. Accessible routes, including under canopy(ies) and other overhead improvements must maintain a minimum clear height of 80 inches.
26. 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

27. 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.

28. The dining area and substantial barricades shall not encroach into the existing drive aisle or alley right of way.
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.

Fire Department

33. Fire lane(s) shall be identified on the plan.
34. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.
35. 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.
36. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a three-foot clearance in all directions.
37. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
38. 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.
39. 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.
40. 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.
 - l. 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. ZA2021-073

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING LIMITED TERM PERMIT NO. XP2021-029 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-058 TO ALLOW AN EXPANDED OUTDOOR DINING AREA LOCATED AT 123 23RD STREET (PA2021-225)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Sushi Sakee, Inc., with respect to property located at 123 23rd Street, and legally described as Lot 22 and portions of Lots 21 and 23 of Block 23, requesting approval of a limited term permit and a coastal development permit.
2. The applicant proposes an 80-square-foot maximum expanded dining area consisting of two (2) tables for a one (1)-year term (January 1, 2022 through December 31, 2022) that was previously authorized through Emergency Temporary Use Permit No. UP2020-133 (PA2020-234) for Sakae Sushi.
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 24, 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 Sections 15301 and 15303 under Class 1 (Existing Facilities) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.
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 an approximate 80-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.

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 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. UP3172 and includes approximately 950 square feet of gross floor 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 (1) year period, and it has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
3. Outdoor dining areas are common within the Balboa Peninsula 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 6:00 a.m. through 10:00 a.m., daily. The outdoor dining tables would close by 10:00 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 0.09 acres in size and is a flat property, approximately 400 feet from the beach. The existing food service use has operated at the subject property since its original approval in 1985. Based upon the site plan, there is adequate area to accommodate the temporary outdoor dining tables without impacting pedestrian circulation and coastal access.
2. The lot is located on 23rd Street and bounded by Balboa Boulevard and West Ocean Front. Properties to the north are residential uses, while properties to the west, east, and south consist of mixed-use development. An existing food service use 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 character of the Balboa Peninsula.
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;*

Fact in Support of Finding:

1. The subject lot is accessed from 23rd Street and the alley behind. Street parking is available on 23rd Street. The existing food service use, Sakae Sushi, 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 on-street parking has historically accommodated the mix of uses found on 23rd Street on the Balboa Peninsula and no traffic issues are anticipated with the continued use of the expanded dining tables outside of the establishment.

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 subject property has been occupied by a food service use since 1985. The existing street parking has historically accommodated the mix of land uses located on 23rd Street on the Balboa Peninsula and is expected to accommodate the continued use of outdoor dining tables.
2. The expanded dining area will not impede pedestrian access on the sidewalk of 23rd Street.

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 permitted in mixed-use zoning districts. The expanded outdoor dining tables are accessory to the existing food service use, 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 Related (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 tables are accessory to the existing food service use, 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 tables would complement and be consistent with the other commercial uses permitted within the MU-W2 Zoning District of the Balboa Peninsula 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 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, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is the Newport Pier, which is approximately 1,500 feet from the project site. The expanded outdoor dining tables comply with all applicable Local Coastal Program (LCP)

development standards and maintains an area consistent with the existing pattern of development in the Balboa Peninsula. 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. 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.
4. Development authorized by this permit is not located in any environmentally sensitive habitat area (ESHA) 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;
5. Development authorized is not located in an area in which the California Coastal Commission retains direct permit review authority.
6. The proposed development will not result in the erection of any permanent structures valued at more than \$25,000.

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, vertical access to the coast is provided via 23rd Street and lateral access is provided via West Ocean Front. 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 Sections 15301 and 15303 under Class 1 (Existing Facilities) and Class 3 (New Construction or Conversion of Small Structures), respectively, 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. XP2021-029 and Coastal Development Permit No. CD2021-058 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 24TH 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 two (2) tables for a total of 80 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 10:00 p.m.*
5. *There shall be no use of amplified sound and/or live entertainment.*
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. *Seating in front of 125 23rd Street shall only be permitted so long as the tenant and property owner authorize this use.*
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. *If the proposed operation is using any portion of the public right-of-way, the Applicant shall obtain and maintain liability insurance for not less than \$1,000,000 per occurrence and as specified by the City's Risk Manager. All liability insurance policies shall specifically include the City, the City Council, its employees, and agents as additional insureds and shall be issued by an agent or representative of an insurance company licensed to do business in the State of California, which has one of the three highest or best ratings from the Alfred M. Best company. All insurance policies shall contain an endorsement obligating the insurance company to furnish the Community Development Director with at least thirty (30) days written notice in advance of the cancellation of the policy.*
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 approval.
16. This Limited Term Permit and Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
17. 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.
18. 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. XP2021-029 and Coastal Development Permit No. CD2021-058 (PA2021-225) for Sakae Sushi. 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

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 (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.
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.

Public Works Department

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. 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. The sidewalk shall maintain a 4-foot wide walkway for pedestrian use.
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.

RESOLUTION NO. ZA2021-074

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-007 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-037 TO ALLOW AN EXPANDED OUTDOOR DINING AREA LOCATED AT 2220 NEWPORT BOULEVARD, SUITE 101 (PA2021-185)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Hamptons Newport Beach LLC DBA Shorebirds, with respect to property located at 2220 Newport Boulevard Suite 101, and legally described as Lot 1 of Tract 16594, requesting approval of a limited term permit and a coastal development permit.
2. A request for a limited term permit and coastal development permit to allow a 350-square-foot maximum expanded outdoor dining area for up to a one (1)-year term (January 1, 2022 through December 31, 2022). An expanded outdoor dining area was previously authorized through Emergency Temporary Use Permit No. UP2020-182 (PA2020-339) for Shorebirds.
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 24, 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), respectively, 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 350-square-foot expanded outdoor dining patio at an existing restaurant for up to a one (1)-year limited term (January 1, 2022 through December 31, 2022) 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 (January 1, 2022 through December 31, 2022) while the City reconsiders its parking requirements related to food service uses. The existing food service use is authorized through Use Permit No. UP2016-048 (PA2016-157) and includes 2,602 square feet of net public area with a maximum 651-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, 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 Balboa Peninsula 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 restaurant are 6:00 a.m. through 10:00 p.m.,

- Monday through Wednesday, and 6:00 a.m. to 11:00 p.m., Thursday through Sunday). As conditioned, the temporary outdoor dining area will close by 10:00 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 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 2.36 acres in size and is developed as a mixed-use building (Vue Newport). The existing food service use with outdoor dining has operated at this location 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 coastal access.
2. The lot is bounded by Newport Bay to the east, Newport Boulevard to the west, and commercial uses to the north and south. Existing food service uses with outdoor dining and commercial tenants are located at this site. The expanded outdoor dining use will not impede use and enjoyment of the Vue Newport development and will instead add to the ambiance and character of the Balboa Peninsula area.
3. The expanded dining area will occupy a portion of a common area walkway between 2220 and 2230 Newport Boulevard at the Vue Newport development. The dining area will maintain a 6-foot vertical pedestrian easement for coastal access.

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 Newport Boulevard. A subterranean parking structure is provided on-site, with additional metered street parking on Balboa Boulevard. The expanded outdoor dining area does not occupy any parking areas and is located on an interior common area walkway within the Vue Newport development. 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 2016. The existing parking structure has historically served as the primary parking supply for patrons. The parking is expected to adequately accommodate the temporary use for up to a one (1)-year term (January 1, 2022 through December 31, 2022).
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 applied to waterfront locations in which marine-related uses may be intermixed with buildings that provide residential 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.
2. The site is located in the MU-W2 (Mixed-Use Water) 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 MU-W2 zoning 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 Balboa Peninsula area 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 Balboa Peninsula 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 the Newport Pier, which is approximately 1,800 feet west from the project site. The expanded outdoor dining tables comply with all applicable Local Coastal Program (LCP) development standards and maintains an area consistent with the existing pattern of development in the Balboa Peninsula. 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. The dining area barrier is installed within the common walkway in the interior of the Vue Newport development. 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.
4. Development authorized by this permit is not located in any environmentally sensitive habitat (ESHA) 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.
5. 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, vertical access to the coast is provided via 21st and 26th Streets and lateral access


is provided via a 5-foot pedestrian easement abutting the Newport Bay. 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. XP2021-007 and Coastal Development Permit No. CD2021-037 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 24TH 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 350 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 10:00 p.m., daily.*
5. *There shall be no use of amplified sound and/or live entertainment.*
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 five-foot pedestrian easement in the common area shall remain free and clear from any obstructions.*
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 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. XP2021-007 and Coastal Development Permit No. CD2021-037 (PA2021-185) for Shorebird 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 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.

Fire Department

19. 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.
20. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a three-foot clearance in all directions.
21. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
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. 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

- 24. 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.
- 25. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
- 26. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
- 27. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples provided in Attachment No. ZA 4.

RESOLUTION NO. ZA2021-075

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-030 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-059 TO ALLOW AN EXPANDED OUTDOOR DINING AREA LOCATED AT 2325 EAST COAST HIGHWAY (PA2021-226)

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 Corona del Mar (CdM) Restaurant, with respect to property located at 2325 East Coast Highway, and legally described as Lot 2, Block A, Tract 470, being a Resubdivision of Blocks A, B, C, & K of Tract No. 323 as shown on a map thereof recorded in Miscellaneous Map, Book 14 Pages 40 and 41 records of Orange County, California, requesting approval of a limited term permit and a coastal development permit.
2. The applicant requests a limited term permit and coastal development permit to allow a 385-square-foot expanded dining area for up to a one (1)-year term (January 1, 2022 through December 31, 2022). A 575-square-foot, 30 seat expanded dining area was previously authorized through Emergency Temporary Use Permit No. UP2020-015 (PA2020-086) for Corona del Mar Restaurant. The proposed dining area will be reduced by 190 square feet from its current condition.
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 24, 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), respectively, 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 385-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 was established prior to the requirement for a use permit and Use Permit No. UP1179 allows on-sale alcoholic beverages and live entertainment (piano). The existing restaurant design includes 3,959 square feet of gross floor area and 1,243 square feet of interior net public area per Plan Check No. 1076-2018.
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 are not limited by their existing conditional use permit, UP1179. The expanded outdoor dining area would close by 9:00 p.m., daily.
4. A condition of approval related to heaters is incorporated as Condition of Approval No. 32. The proposed dining area will also be covered with a tent and must comply with the fire requirements outlined in Condition No. 33.
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. Substantial barriers (K-rail or water-filled barriers are required at either end of the drive aisle).
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 0.12 acres in size and is a gently sloping property adjacent to East Coast Highway. The existing food service use has operated at this location prior to 1966. Based upon the site plan, there is adequate area to accommodate the expanded dining area without impacting pedestrian circulation and coastal access. Vehicles will be directed to access the site through the rear alley and adjacent surface parking lot at 710 Acacia Avenue.
2. The lot is bounded by East Coast Highway to the northeast with residential properties inland to the southwest. To the southeast and northwest are additional retail properties within the Commercial Corridor zoning district. 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 is located in an existing drive aisle and will not occupy existing parking spaces. Ongoing traffic and site circulation issues are not anticipated and the applicant must obtain an approved valet plan.

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 rear alley off of Acacia Avenue. An adjacent off-site surface parking lot is provided to the rear at 710 Acacia Avenue. The expanded dining area will not occupy existing parking spaces. The existing food service use, Corona del Mar (CdM) Restaurant, 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 in the area are typically not operating. Sufficient parking is provided and ongoing traffic and parking issues are not anticipated with the continued use of the expanded dining area. A valet plan approved by the Public Works Department is required for the restaurant to utilize valet services. Valet operations are not permitted on public streets.
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 prior to 1966. The commonly owned surface parking lot to the rear at 710 Acacia Avenue 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, 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.
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 and coastal view roads are located along Ocean Boulevard and the site is not visible from this street. 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 Corona del Mar. 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 adjacent neighbors have similar outdoor dining improvements within the walkways of Corona del Mar.
4. The dining area planter barrier is installed within the existing driveway. Additional barriers will further delineate the area dedicated for outdoor dining use and alcohol service from the egress 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 (ESHA) 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 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. XP2021-030 and Coastal Development Permit No. CD2021-059 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 24TH 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 for up to a one (1)-year term 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 385 square feet in area.*
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., daily.*
5. *A valet plan approved by the Public Works Department is required for the restaurant to utilize valet services. Valet operations are prohibited on public streets.*
6. *There shall be no use of amplified sound and/or live entertainment.*
7. *The applicant shall install and maintain a physical barrier (stanchion and rope) 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 Use Permit.
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. XP2021-030 and Coastal Development Permit No. CD2021-059 (PA2021-226) for Corona del Mar 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.

Code Enforcement Division

18. The applicant shall cease valet operations unless an approved valet operations plan is approved by the Public Works Department.

Building Division

19. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
- A minimum 4-foot-wide accessible path to all functional area shall be provided.
 - Access to restrooms shall be provided at all times.
 - Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
 - At least one (1) accessible seating area shall be provided.
 - 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.
21. Accessible seating at tables or counters shall provide knee clearance of at least 27 inches high, 30 inches wide, and 19 inches deep.
22. The tops of dining surfaces shall be 28 inches to 34 inches above the finished floor.
23. Exit signs shall direct occupants to egress through the alley to the public street (Acacia Avenue) when the outdoor dining area prevents direct exit.
24. The applicant shall obtain a separate building permit for installation of the covered tent/membrane structure prior to the effective date of this limited term permit (January 1, 2022).
25. The application shall provide additional information regarding the size and location of the tent. The tent area must comply with the California Building Code Section 3102, 3103, and 3105 as applicable.

Fire Department

26. Fire lane(s) shall be identified on the plan.
27. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.
28. 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.

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29. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a three-foot clearance in all directions.
 30. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
 31. 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.
 32. 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.
 33. 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

34. The Applicant shall install and maintain a substantial physical barrier (water-filled traffic barrier or K-rail) at both ends of the closed drive aisle. Appropriate signage shall be placed at the driveway indicating that it is closed to vehicular traffic.
35. 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.
36. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
37. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
38. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples provided in Attachment No. ZA 3.
39. The restaurant shall not utilize valet services unless a valet operations plan has been approved by the Public Works Department. Valet operations in the public right-of-way shall be prohibited.