



## 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 February 11, 2022.

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### ZONING ADMINISTRATOR ACTIONS FEBRUARY 10, 2022

- Item 1: Avila's El Ranchito Temporary Patio Limited Term Permit No. XP2021-036 and Coastal Development Permit No. CD2021-071 (PA2021-273)  
Site Address: 2800 Newport Boulevard
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| Action: Approved by Resolution No. ZA2021-009 | Council District | 1 |
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- Item 2: Starbucks Bristol Street Minor Use Permit No. UP2021-031 (PA2021-182)  
Site Address: 2122 Bristol Street
- |   |                  |   |
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| Action: Approved by Resolution No. ZA2021-010 | Council District | 3 |
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**APPEAL PERIOD:** An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

## RESOLUTION NO. ZA2022-009

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING LIMITED TERM PERMIT NO. XP2021-036 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-071 TO ALLOW AN EXPANDED TEMPORARY OUTDOOR DINING AREA LOCATED AT 2800 NEWPORT BOULEVARD (PA2021-273)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Avila's El Ranchito, with respect to property located at 2800 Newport Boulevard, legally described as Parcel 1 of Block 225, requesting approval of a limited term permit and a coastal development permit.
2. The applicant proposes a 1,000-square-foot maximum expanded outdoor dining area for up to a one (1)-year term that was previously authorized for a 4,200-square-foot patio through Emergency Temporary Use Permit No. UP2020-008 and Emergency Coastal Development Permit No. CD2020-025 (PA2020-077) for Avila's El Ranchito.
3. The subject property is designated Visitor Serving Commercial (CV) by the General Plan Land Use Element and is located within the Commercial Visitor-Serving (CV) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Visitor Serving Commercial (CV-A) – (0.0 to 0.75 FAR) and it is located within the Commercial Visitor Serving (CV) Coastal Zoning District.
5. A public hearing was held on February 10, 2022, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not

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

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

### SECTION 3. REQUIRED FINDINGS.

#### **Limited Term Permit**

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

#### Finding:

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

#### Facts in Support of Finding:

1. The limited term permit will allow an extended and expanded outdoor dining patio for up to a one (1)-year term while the City reconsiders its parking requirements related to food service uses. The existing food service use is authorized through Use Permit No. 1757 and includes 1,418 square feet of net public area.
2. The expanded outdoor dining area has not posed a hazard to the general welfare of persons residing in the area since it was placed during the COVID-19 pandemic in 2020 through an Emergency Temporary Use Permit No. UP2020-008 (PA2020-077), which authorized two (2) patios totaling 4,200 square feet. The operation of the expanded outdoor dining area is limited to up to a one (1)-year, and has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
3. Outdoor dining areas are common within the Balboa Peninsula area, and have been used at the subject property during similar hours in the past, and the use has not proven detrimental. An 867-square-foot outdoor dining patio was recently approved for Chihuahua Brewing Company (PA2021-187), which is located in the nearby shopping center, The Landing. Additionally, an 875-square-foot patio was approved for Malarky's Irish Pub

(PA2021-205). The proposed hours of operation do not extend beyond those currently permitted by the existing use permit. The proposed temporary outdoor dining area would close by 9:00 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 proposed patio is located on a site that is comprised of two (2) separate lots under common ownership. The combined two (2) lots are a total of 0.24 acres in size and include the subject restaurant as well as an on-site surface parking lot. The reduction of five (5) on-site parking spaces is for a temporary basis, and the patio has been reviewed by Public Works and Building departments to ensure that it will not negatively impact on-site circulation. A total of 10 parking spaces will remain on site for customer parking. Additionally, 16 parking spaces are voluntarily provided off-site at 2812 and 2814 Balboa Boulevard, which are under common ownership as the subject property.
2. The project site is located on the northeast corner of Newport Boulevard and 28<sup>th</sup> Street. Surrounding uses include mixed-use properties in all directions. Lido House Hotel is located approximately 1,000 feet north of the project site. Additionally, The Landing shopping center is approximately 650 feet northwest of the project site. The temporary patio does not negatively affect surrounding uses as it serves an existing restaurant adjacent to a large shopping center.

Finding:

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

Fact in Support of Finding:

1. The subject lot has access taken from the alley opposite of Newport Boulevard. The temporary outdoor patio is located adjacent to the restaurant and will not impede access to the existing parking lot. There are no traffic issues anticipated.

Finding:

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

Fact in Support of Finding:

1. The subject property has been occupied by a food service use with outdoor dining since prior to 1975. The existing parking lot has historically accommodated the restaurant. The existing parking lot is expected to accommodate the temporary use. There have been no parking-related complaints or issues raised related to the outdoor dining area installed under the previous emergency permit.

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 CV (Visitor Serving Commercial). The CV designation is intended to provide for accommodations, goods, and services intended to primarily serve visitors to the City of Newport Beach. Permitted uses include those permitted in the CV Zoning designation, which includes eating and drinking establishments through obtaining of a use permit. The expanded outdoor dining use is accessory to the existing food service use, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CV designation.
2. The site is located in the Commercial Visitor-Serving (CV) Zoning District. The CV designation is intended to provide for areas appropriate for accommodations, goods, and services intended to serve primarily visitors to the City. 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 CV designation. The CV zoning district allows temporary uses as specified within the Zoning Code and the proposed limited duration use is consistent with this designation.
3. The Limited Term Permit for expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the CV Zoning District in that it provides amenities that support visitors to the area and provides a social gathering place for those who live and work in the neighborhood, consistent with General Plan Land Use

Element Goal 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 or public access way. The temporary patio is located on a site with an existing restaurant, complies with all applicable Local Coastal Program (LCP) development standards, and maintains an area consistent with the existing pattern of development on 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. Improvements are complementary to the area; the subject restaurant and other restaurants on the Balboa Peninsula have similar outdoor dining improvements.
4. The dining area barrier is not installed within any existing walkway. The barrier delineates the area dedicated for outdoor dining use and alcohol service from the public walkway. There are no existing City utilities within the expanded outdoor dining area.
5. Development authorized by this permit is not located in any environmentally sensitive habitat area (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.*

Fact in Support of Finding:

1. The subject property is not located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone. The property is located approximately 1,000 feet from a public beach and approximately 200 feet from the harbor and is not located near a public viewpoint designated by the Coastal Land Use Plan.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Limited Term Permit No. XP2021-036 and Coastal Development Permit No. CD2021-071 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) 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 10<sup>TH</sup> DAY OF FEBRUARY, 2022.**



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Jaime Murillo  
Zoning Administrator



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

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The approval of this Limited Term Permit and Coastal Development Permit shall be effective for one (1) year starting from the effective date, unless an extension is granted by the Zoning Administrator in compliance with Municipal Code Sections 20.52.040.J (Extension of Limited Term Permit) and 21.54.060 (Time Limits and Extensions). The applicant shall be required to cease all permitted operations and remove any temporary improvements made to the outdoor spaces as part of this approval at the end of the effective period.
3. *The expanded dining area shall not exceed 1,000 square feet.*
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 and/or live entertainment in the expanded dining area.*
6. *The applicant shall install and maintain a physical barrier between any area used and adjacent to common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.*
7. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
8. The sale of alcohol "to go" to patrons that dine within the expanded outdoor patios shall be prohibited.
9. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
10. The permittee shall provide adequate trash receptacles within the permitted patio shall and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.

11. The Community Development Director or designee may inspect the modified area at any time during normal business hours.
12. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
13. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this 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. XP2021-036 and Coastal Development Permit No. CD2021-071 (PA2021-273) for Avila's El Ranchito**. 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. Canopies shall have a combined total area of 400 square feet or less.

### **Public Works Department**

- 20. Substantial barriers (automobiles, K-rail, water-filled barrier, or other material acceptable to Public Works) shall be provided between the seating area and drive aisle and adjacent parking spaces. Substantial barriers shall not encroach into the required dimensions of the drive aisle and parking spaces.
- 21. 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 poles and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
- 22. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
- 23. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
- 24. Expanded outdoor dining areas shall adhere to the SCE Clearance Decal examples.

### **Fire Department**

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

30. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.

## RESOLUTION NO. ZA2022-010

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2021-031 TO OPERATE A DRIVE-THRU RESTAURANT WITH LATE HOURS LOCATED AT 2122 BRISTOL STREET (PA2021-182)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Starbucks Coffee Company (Applicant) with respect to property located at 2122 Bristol Street, and legally described as Lot 141 of Tract 706, Harbor View Addition to Santa Ana Heights, in the City of Newport Beach, County of Orange, State of California, as per Map Recorded in Book 21, Page 25 of Miscellaneous Maps, in the Office of the County Recorder of Orange County, California, requesting approval of a minor use permit.
2. The Applicant proposes to operate a Starbucks in the former Burger King tenant space. The Minor Use Permit is required to change the allowed hours to between 4 a.m. and 12 a.m., daily. The project includes remodeling the 2,565-square-foot restaurant space, updating the site to improve circulation, and refinishing the exterior façade. Required accessibility upgrades will remove four (4) on-site parking spaces. Once effective and implemented, this Minor Use Permit supersedes County Planning Application No. PA95-0109.
3. The subject property is categorized CG (General Commercial) by the General Plan Land Use Element and is located within the SP-7 – GC (Santa Ana Height Specific Plan – General Commercial) 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 February 10, 2022, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. Class 1 consists of 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 existing or former use. The project is in an urbanized area, and the subject zoning district conditionally allows fast-food establishments. The use does not involve significant amounts of hazardous substances, all necessary public services and facilities are available, and the surrounding area is not environmentally sensitive. The project is a remodel of an existing fast-food restaurant and a request of late hours for a new operator. Project implementation is limited to non-structural improvements, interior and exterior remodel, and site circulation upgrades.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Subsection 20.52.020(F) (Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

#### Finding:

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

#### Facts in Support of Finding:

1. The General Plan land use category for this site is CG (General Commercial). The CG category is intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs. The proposed restaurant is consistent with this designation because it will provide a service to meet citywide and regional needs to maintain a vibrant commercial corridor. An existing fast-food establishment (Burger King) already occupies the site and has shown to be compatible with uses in the vicinity.
2. The property is in the Santa Ana Heights Specific Plan (SP-7), which intends to provide for the orderly and balanced development of the community consistent with the specific plan's adopted land use plan and with the stated goals and policies of the Land Use Element of the General Plan. In accordance with Section 20.90.110 (General Commercial District: SP-7 [GC]) of the NBMC, restaurants are allowed with the approval of a minor use permit.
3. The existing operational hours are from 6 a.m. to 11 p.m., Monday through Friday, and from 6 a.m. to 1 a.m. on Saturday and Sunday. A minor use permit is necessary to modify the hours of operation for the new tenant, which are proposed to be from 4 a.m. to 12 midnight, daily.
4. The Applicant proposes to install and maintain approximately 1,998 square feet of upgraded landscaping to refresh the appearance of the site. Two (2) existing trees will be retained, and three (3) additional trees will be planted within the parking area. The remainder of the site will be planted with shrubs, and ground covering will be used where appropriate. Proposed plants and installation will conform all applicable provisions of Section 20.90.030 (Design Guidelines) of the NBMC.

Finding:

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

Facts in Support of Finding:

1. Facts in Support of Finding A.1, A.2, A.3 and A.4 are hereby incorporated by reference.
2. The proposed use complies with NBMC Section 20.48.090 (Eating and Drinking Establishments) relating to required operating standards, and conditions of approval are included to maintain those requirements. Conditions of approval are applied to eliminate potential impacts related to glare, light, loitering, and noise. These include, but are not limited to:
  - a. The project will not generate noise from music, dancing, and voices associated with allowed indoor or outdoor uses and activities will comply with NBMC Chapter 10.26 and other applicable noise control requirements of the NBMC. (Condition of Approval No. 20);
  - b. The site will not be excessively illuminated (Condition of Approval No. 17);
  - c. A prohibition of visible outdoor storage and solid waste storage (Conditions of Approval Nos. 24 through 29);
  - d. Outdoor dining operational standards (Conditions of Approval Nos. 5 and 12).
3. The project site was formerly under the permit jurisdiction of the County of Orange. In 1995, the County approved Planning Activity No. PA95-0109 to establish the existing fast-food drive-thru (Burger King). The existing restaurant includes 80 indoor seats, 14 outdoor seats, 24 parking spaces and drive-thru stacking for nine cars. The existing fast-food establishment (Burger King) is considered nonconforming due to parking as it does not provide the required number of spaces.
4. NBMC Section 20.40.060 (Parking Requirements for Food Service Uses) establishes criteria to determine the parking requirements for fast food establishments from one (1) parking space for every 50 square feet of gross floor area and one (1) space for every 100 square feet of outdoor dining area. The proposed project has a gross floor area of 2,565 square feet with accessory outdoor dining of 300 square feet providing seating for a maximum of 42 customers. Based on the square footages of the existing establishment, 55 parking spaces are required per the following breakdown:
  - a. Indoor dining:  $2,565 \text{ sq. ft.} / 50 \text{ sq. ft.} = 51.3$ , or 52 spaces
  - b. Outdoor dining:  $300 \text{ sq. ft.} / 100 \text{ sq. ft.} = 3$  spaces
  - c. Total parking for indoor and outdoor dining:  $52 + 3 = 55$  spaces required by the Zoning Code
5. NBMC Section 20.38.060 (Nonconforming Parking) allows nonresidential structures that are nonconforming due to number of parking spaces to be repaired, maintained, and

altered. The proposed Starbucks will operate in the existing building on-site and no structural changes or addition of square footage are proposed. The basic components of the restaurant such as customer area, workroom, and breakroom will remain the same. Indoor and outdoor dining capacity will be reduced by a total of 46 interior seats and 6 outdoor seats with implementation of the project. Proposed improvements consist of necessary interior and site upgrades, refinishing the exterior façade, and improving on-site vehicle circulation. As a result, the project does not constitute an intensification of use requiring additional parking.

6. NBMC Section 20.40.110 (Adjustments to Off-Street Parking Requirements) allows the Director to administratively reduce parking requirements due to a loss of parking spaces because of the Americans with Disabilities Act (ADA) requirements associated with tenant improvements. Reconfiguration of on-site circulation will result in a total reduction of four (4) existing parking spaces due to required accessibility upgrades. As a result, the spaces reduced due to the required ADA upgrades need not be replaced or authorized through a parking waiver.
7. At the direction of the City Traffic Engineer, a Drive-Thru Queuing, Site Access, and Parking Evaluation was prepared by Linscott Law & Greenspan, Engineers, dated January 27, 2022. The findings of this professional evaluation support the adequacy of the proposed design and configuration of the drive-thru facility and site access points in serving drive-thru queues as well as inbound and outbound traffic generated by the project. The City Traffic Engineer has analyzed the report and agrees with the findings therein.
8. The Linscott Law & Greenspan evaluation determined that the parking demand for the project would be 15 spaces during peak times and that the proposed on-site supply of 20 spaces will be adequate in meeting the project's total parking needs. The number of parking spaces is adequate since the project is projected to have 25 percent fewer transactions than comparable locations in Orange County due to the high number of Starbucks in the vicinity. The project is in an area that is not characterized by residential, mixed use or university neighborhood where customers would dine-in or use on-site amenities for long periods of time. Customers at the project location are anticipated to be commuters or nearby office workers. Utilization of the drive-thru and Starbucks mobile ordering option will help facilitate faster transitions.
9. Under Condition of Approval No. 7, two (2) parking spaces near the entrance of the building will be dedicated to mobile order pickups where parking will turnover relatively quickly. This will enhance the project's ability to fully meet peak parking demand, in addition to addressing drive-thru, site access, and on-site circulation needs during periods of peak activity.
10. Condition of Approval No. 6 limits the total number of employees on site to no more than eight (8) at any given time. Additionally, Condition of Approval No. 8 requires employees must park in the southern portion of the parking lot nearest the drive thru lane. This would ensure that more conveniently located spaces are preserved for customer use and would help minimize vehicular and pedestrian conflicts near the drive-thru entrance.



Finding:

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

Facts in Support of Finding:

1. Facts in Support of Finding A.1, A.2, A.3, and A.4 are hereby incorporated by reference.
2. Facts in Support of Finding B.2, B.5, B.6, B.8, B.9 and B.10 are hereby incorporated by reference.
3. Commercial uses such as fast-food restaurants are common in the vicinity along Bristol Street and serve both visitors and residents. As conditioned, the establishment will be compatible with the land uses permitted within the surrounding neighborhood.
4. The project will utilize and upgrade the existing drive-thru lane, which has been determined adequate to serve the use by the Public Works Department. The drive-thru lane measures an approximately 250-foot long, 10-foot wide, single lane that wraps around the south and west property lines of the site. There is approximately 115 feet of vehicle capacity between the pick-up window and the order board and 100 feet of capacity between the order board and the entry of the drive-thru lane from the adjacent drive aisle.
5. The Linscott Law & Greenspan evaluation concludes the drive-thru design, operations, and service characteristics of the proposed project, as conditioned, can accommodate potential drive-thru queues with implementation of on-site traffic control or management measures. The evaluation studied vehicle queuing to establish the peak demand and determine the vehicle holding capacity of the drive-thru lane. The evaluation notes that the design and operation of the project will help ensure safe stacking capacity and avoid conflicts with vehicles in the adjacent drive aisles or roadways.
6. Under Condition of Approval No. 11, during peak times and when the drive-thru lane is at stacking capacity, an employee must be available to take orders outside to expedite service from the drive-thru and help vehicle queues.
7. The project includes conditions of approval to ensure that potential conflicts are minimized to the greatest extent possible. Although the restaurant is adjacent to a nonconforming residential use to the south, the nearest residential building is approximately 75 feet away from the order point. The residential building is also over 200 feet away from the outdoor dining area and will be buffered by the existing one (1)-story restaurant.

Finding:

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

Facts in Support of Finding:

1. The subject tenant space is an existing nonresidential building. The improved tenant space will be designed and operated as a restaurant, which is the existing use on-site. The design, size, location, and operating characteristics of the use are compatible with the surrounding neighborhood. The existing tenant space on the subject property has most recently been occupied by a Burger King with a drive thru.
2. Facts in Support of Finding B.6, B.7, B.8, B.9, and B.10 are hereby incorporated by reference. Although the site does not provide the minimum number of off-street parking spaces on-site, the site is suitable for the project as detailed in the Linscott Law & Greenspan evaluation.
3. Facts in Support of Finding C.4, C.5, C.6, and C.7 are hereby incorporated by reference.
4. Adequate public and emergency vehicle access, public services, and utilities are provided to the subject property. Any additional utilities upgrades required for the change in occupancy will be required at plan check for the building permit.
5. The tenant improvements to the project site will comply with all Building, Public Works, and Fire Codes. All City ordinances and all conditions of approval will be complied with.

Finding:

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

Facts in Support of Finding:

1. Facts in Support of Finding A.1, A.2, A.3, and A.4 are hereby incorporated by reference.
2. Facts in Support of Finding B.6, B.7, B.8, B.9, and B.10 are hereby incorporated by reference.
3. Facts in Support of Finding C.4, C.5, C.6, and C.7 are hereby incorporated by reference.
4. While the proposed hours are outside those existing, conditions of approval will help to ensure the use remains compatible with the adjacent nonconforming residential use and

the surrounding neighborhood. This includes the use of automatic volume control speakers and menu boards.

5. The project has been reviewed and includes conditions of approval to help ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
6. The restaurant will provide dining services as a public convenience to the surrounding business park as well as to visitors. The project provides an economic opportunity for the property owner and restaurant operator to have a successful business in a way that best serves the community.

#### SECTION 4. DECISION.

#### **NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2021-031, 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.
4. This resolution supersedes County of Orange Planning Activity No. PA95-0109, which upon vesting of the rights authorized by this Minor Use Permit No. UP2021-031, shall become null and void.

**PASSED, APPROVED, AND ADOPTED THIS 10<sup>th</sup> DAY OF FEBRUARY, 2022.**



Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL**

*(Project-specific conditions are in italics)*

**Planning Division**

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. *All proposed signs shall be in conformance with provisions of Chapter 20.42 (Signs) of the NBMC.*
5. *The project's gross floor area shall be limited to 2,565 square feet with a maximum of 34 seats. The outdoor dining area shall be limited to 100 square feet with a maximum of eight (8) seats.*
6. *A maximum of eight (8) employees shall be on site at any given time.*
7. *Prior to issuance of a building permit, project plans shall designate two (2) parking spaces near the entrance of the building dedicated to mobile order pickups to the satisfaction of the City Traffic Engineer.*
8. *Prior to issuance of a building permit, project plans shall designate employee parking stalls in the southern portion of the parking lot nearest the drive thru lane to the satisfaction of the Planning Division. All employees shall park in these designated employee parking stalls.*
9. *Prior to the issuance of a building permit, the Applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division.*
10. *Hours of operation for drive-thru service and dining areas shall be limited to 4 a.m. to 12 a.m. (midnight), daily. All customers shall vacate the specified premises after these designated closing times.*

11. *An employee must be available to take orders outside during peak times and when the drive-thru lane is at stacking capacity to expedite service from the drive-thru and help vehicle queues. Peak times shall be consistent with the Linscott Law & Greenspan evaluation of this approval to mean 7 a.m. to 9 a.m., 11 a.m. to 1 p.m., and 4 p.m. to 7 p.m., daily. The employee must be positioned on private property.*
12. Appropriate barriers shall be placed around the outdoor dining area. Said barriers shall serve only to define the areas and shall not constitute a permanent all-weather enclosure. All physical elements (e.g., awnings, covers, furniture, umbrellas, etc.) related to the outdoor dining area that are visible from the Birch and/or right-of-way shall be compatible with one another and with the overall character and design of the principal structure.
13. This Minor Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
14. *Any change in tenant, operational characteristics, expansion in area, or other modification to the approved plans, including queuing and parking demand, shall require subsequent review by the Planning Division and may require an amendment to this Minor Use Permit or the processing of a new Minor Use Permit.*
15. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
16. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
17. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
18. Prior to the issuance of a building permit, the Applicant shall prepare photometric study in conjunction with a final lighting plan for approval by the Planning Division. The survey shall show that lighting values are "1" or less at all property lines.

19. Prior to the issuance of a building permit, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
20. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the NBMC. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

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

21. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
22. Construction activities shall comply with Section 10.28.040 of the NBMC, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday, and 8 a.m. and 6 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
23. No outside paging system shall be utilized in conjunction with this establishment.
24. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three [3] walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
25. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
26. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
27. The Applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance

with the provisions of Title 14, including all future amendments (including Water Quality related requirements).

28. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10 p.m. and 7 a.m. on weekdays and Saturdays and between the hours of 10 p.m. and 9 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
29. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
30. *The drive-thru order speaker shall be equipped with automatic volume control (AVC) and the drive-thru menu board shall be equipped with automatic brightness control to automatically adjust to the brightness level in connection with the brightness of the sun as described in the February 8, 2022, letter from CAA Planning. The menu board shall turn off during closing hours.*
31. *Within six (6) months from the start of operations, a traffic engineer shall conduct site observations at peak periods to confirm drive-thru queuing operations are consistent with the Revised Drive-Thru Queuing, Site Access, and Parking Evaluation for Starbucks at Bristol and Birch ("the report"), dated January 27, 2022. The applicant shall submit a letter from the traffic engineer confirming the findings of the site observations and consistency with the report. The letter shall be submitted to the Planning Division and City Traffic Engineer for review and approval. Any recommended improvements or measures shall be implemented to the satisfaction of the City Traffic Engineer.*
32. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
33. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
34. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Starbucks Bristol Street including, but not limited to, Minor Use Permit No. UP2021-031 (PA2021-182). 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.

### **Fire Department**

35. *Prior to issuance of a building permit, the construction plans shall illustrate exiting compliant with Chapter 10 of the California Fire and Building Codes.*

### **Building Division**

36. The Applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
37. Detectable warning installation and clearances shall comply with CBC 11B-705.1.2.

### **Public Works Department**

38. Overhead utilities serving the site shall be undergrounded to the nearest appropriate pole in accordance with Section 19.24.140 of the NBMC.
39. County Sanitation District fees shall be paid prior to the issuance of any building permits.
40. All improvements shall be constructed as required by Ordinance and the Public Works Department.
41. An encroachment permit is required for all work activities within the public right-of-way.
42. The project plans shall demonstrate that the parking layout complies with City Parking Lot standard STD 805. Dead-end drive aisle in public areas shall provide a dedicated turnaround space and minimum 5-foot drive aisle extension.
43. Provide a 4-foot-wide easement adjacent to the driveway approach along the Bristol Street and Birch Street frontages for sidewalk purposes.
44. Driveways shall be consistent with City Standard STD 160. The driveway approach along the Bristol Street frontage shall be reconstructed. The Birch Street driveway approach shall be reconstructed if substandard.
45. All improvements shall comply with the City's sight distance requirement per City Standard STD 105 including project driveway approaches. Planting within the limited



use area shall be limited to 24-inches in height maximum. Structures within the limited use area shall be limited to 30-inches in height maximum.

46. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
47. Approval shall be obtained from Costa Mesa Sanitary District and Irvine Ranch Water District and submitted to the City prior to building permit issuance.