

## **Attachment No. PC 1**

Draft Resolution with Findings and  
Conditions

INTENTIONALLY BLANK PAGE

## RESOLUTION NO. PC2025-019

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA SUPERSEDING USE PERMIT NOS. UP621 AND UP651 AND ACCESSORY OUTDOOR DINING PERMIT NOS. OD49 AND OD49A AND APPROVING A CONDITIONAL USE PERMIT AND COASTAL DEVELOPMENT PERMIT TO PERMANENTLY RETAIN AN OUTDOOR DINING PATIO AT AN EXISTING RESTAURANT WITH A TYPE 47 (ON-SALE GENERAL – EATING PLACE) ALCOHOL BEVERAGE CONTROL (ABC) LICENSE AT 251 EAST COAST HIGHWAY AND OFF-SITE PARKING LOCATED AT 151 AND 201 EAST COAST HIGHWAY AND APNS 050-451-03 AND 050-451-57 (PA2023-0144)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Keisker & Wiggle Architects, Inc. (“Applicant”), on behalf of Russell E. Fluter (“Owner”), with respect to property located at 251 East Coast Highway and legally described as Parcel 5 of Parcel Map No. 93-206 (“Property”).
2. On May 19, 1960, the Planning Commission approved Use Permit No. 621 (“UP621”) to authorize the construction of a restaurant and parking on the waterfront of Balboa Marina.
3. On July 21, 1960, the Planning Commission approved Use Permit No. 651 (“UP651”) to allow an on-sale general alcoholic beverage license for the restaurant.
4. On June 4, 1998, the Planning Commission approved Accessory Outdoor Dining Permit No. 49 (“OD49”) to allow the addition of an attached accessory outdoor dining area in conjunction to the existing full-service restaurant with hours between 11 a.m. to 10 p.m., daily.
5. On November 18, 1999, the Planning Commission approved an amendment to OD49 (“OD49A”) to increase the hours of operation for the attached outdoor dining area. The amendment authorized the outdoor dining area to close at 12 a.m. (midnight), daily.
6. On July 8, 2020, as part of the City’s response to the COVID-19 Pandemic with Emergency Order No. 2020-005, the Community Development Director approved Emergency Temporary Use Permit No. UP2020-064 and Emergency Coastal Development Permit No. CD2020-072 (“PA2020-143”) to allow the temporary addition of a second outdoor dining area that was approximately 2,100 square feet in area with 84 seats.
7. Subsequently, on July 15, 2020, the Community Development Director approved Emergency Temporary Use Permit No. UP2020-082 and Emergency Coastal

Development Permit No. CD2020-087 (“PA2020-167”) to add additional tables and seats. This approval superseded the previous approval filed as PA2020-143.

8. On August 25, 2020, the Community Development Director approved Emergency Temporary Use Permit No. UP2020-138 and Emergency Coastal Development Permit No. CD2020-124 (“PA2020-239”) to allow a second temporary outdoor dining area that was approximately 500 square feet. This approval included a 6-foot-tall temporary fence along East Coast Highway for screening of the larger outdoor dining area. This approval superseded the previous approval filed as PA2020-167.
9. On May 20, 2021, in response to the ongoing COVID-19 Pandemic, the Community Development Director approved Emergency Temporary Use Permit No. UP2021-018, filed as PA2021-097, to remove the two temporary outdoor dining areas and replace them with one approximately 870 square-foot deck platform for outdoor dining within seven existing parking spaces adjacent to an existing eating and drinking establishment, SOL Mexican Cocina (“Restaurant”). Although an 870-square-foot outdoor dining area was approved, only a 641-square-foot dining area was built. The outdoor dining patio was required to be removed within 14 days after termination of the City’s Emergency Order No. 2020-005.
10. After termination of Emergency Order No. 2020-005 on June 22, 2021, on December 16, 2021, the Zoning Administrator approved Limited Term Permit No. XP2021-025 and Coastal Development Permit No. CD2021-049, filed as PA2021-196, to maintain the existing deck platform with outdoor dining for a duration of one year with an expiration date of December 30, 2022. Subsequently, on December 21, 2022, the Zoning Administrator approved a 12-month extension of time, and PA2021-196 expired on December 30, 2023. On August 16, 2023, the Applicant applied for a conditional use permit and coastal development permit to retain the outdoor dining area on a permanent basis.
11. The Applicant requests a conditional use permit (“CUP”) and coastal development permit (“CDP”) to permanently retain the 641-square-foot outdoor dining area (“Patio”) for the Restaurant. The project also requests to expand the existing Type 47 (On-Sale General – Eating Place) Alcohol Beverage Control (“ABC”) License to include the outdoor dining area and reauthorize of off-site parking located on the adjacent lots at Balboa Marina (151 and 201 East Coast Highway and APNs 050-451-03 and 050-451-57). The hours of operation for the Restaurant, existing outdoor dining patio, and proposed Patio will be between 10 a.m. and 11 p.m., daily. No live entertainment, dancing, or late hours (i.e., after 11 p.m.) are proposed (“Project”). If approved, this Conditional Use Permit and Coastal Development Permit would supersede Use Permit Nos. UP621 and UP651 and Accessory Outdoor Dining Permit Nos. OD49 and OD49A.
12. The Property is designated Recreational and Marine Commercial (CM) by the General Plan Land Use Element and is located within the Commercial Recreational and Marine (CM) Zoning District.

13. The Property is located within the coastal zone. The Coastal Land Use Plan ("CLUP") category is Recreational and Marine Commercial – (0.0 – 0.30 FAR) (CM-A) and it is located within the Commercial Recreational and Marine (CM) Coastal Zoning District.
14. A public hearing was held on September 18, 2025, in the Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of the time, place, and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapters 20.62 and 21.62 ("Public Hearings") of the Newport Beach Municipal Code ("NBMC"). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public 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 existing use. The Project involves making permanent an outdoor dining patio for an existing restaurant which is negligible expansion of the existing use and therefore, the Project qualifies for a categorical exemption under Class 1.
3. The Class 3 exemption authorizes the construction and location of a limited number of new, small facilities or structures and authorizes minor alterations to existing structures involving negligible or no expansion of use. This exception includes accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences. The Project proposes to retain an outdoor dining patio for an existing restaurant and therefore, the Project also qualifies for a categorical exemption under Class 3.
4. 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 20.48.030(C)(3) (*Alcohol Sales – Required Findings*) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

**A. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code***

**Facts in Support of Finding:**

In finding that the Project is consistent with Section 20.48.030 of the NBMC, the following criteria must be considered:

- i. The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
  1. The Property is in Reporting District 41 (“RD 41”). The Newport Beach Police Department (“NBPD”) is required to report offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors (except traffic citations) to ABC (Crime Count). RD 41 is reported as a high crime area as compared to adjacent reporting districts in the City, RD 26, RD 39, and RD 44. The RD’s Crime Count is 120, which is 7% above the City-wide crime count average of 112. The highest volume of crime in this area is theft/larceny and the highest volume of arrests in the area are narcotics related offenses.
  2. Since RD 41 has a 7% higher number of reported crimes than the average number of reported crimes as determined from all crime reporting districts within the City, the area is found to have undue concentration. In comparison, neighboring RD 26 is 40% above the City-wide average, RD 39 is 393% above average, and RD 44 is 167% over the average. Of the 38 RDs in Newport Beach, 10 are reported to ABC as high crime areas.
  3. The NBPD has reviewed the Project and does not have any objection to the request to make the Patio permanent where alcoholic beverages will be served subject to appropriate conditions of approval. This is primarily a retail and commercial area, and residential uses are not immediately adjacent. All NBPD recommended conditions of approval have been included in Exhibit “A” of this Resolution.
- ii. The number of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*

<b>Reporting District</b>	<b>Alcohol Related Arrests<sup>1</sup></b>	<b>Total Arrests</b>
RD 41 (subject RD)	18	78
RD 26	22	107
RD 39	67	370
RD 44	64	202
Newport Beach	740	2,976
<sup>1</sup> Alcohol Related Arrests includes DUI (alcohol), public intoxication, and liquor law related arrests.		

1. In RD 41, DUI, public intoxication, and liquor law violations make up roughly 24% of arrests. In comparison, the figure for neighboring RD 26 is roughly 21%, RD 39 is

roughly 18%, and RD 44 is roughly 32%. These statistics reflect the City of Newport Beach's data for 2024, which is the latest available data.

2. Although RD 41 has a higher percentage of alcohol related arrests than RD 26 and 39, the adjacent reporting districts have a significantly higher percentage of total arrests. Of the 18 alcohol related arrests in RD 41, one alcohol related arrest was attributed to the Property.
- iii. The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, place of worship, schools, other similar uses, and any uses that attract minors.*
1. The Property is developed with a Restaurant located in a single tenant building between the Newport Harbor and East Coast Highway. It is within the Commercial Recreational and Marine (CM) Zoning District intended for commercial development that will encourage coastal-dependent and coastal-related uses. The closest residential neighborhoods are located at Linda Isle approximately 260 feet across Newport Harbor and the Bayside Village Mobile Home Park approximately 260 feet across East Coast Highway. Additionally, the closest recreation facilities is the Newport Dunes located approximately 1,200 feet east of the Property. The Property is not located in the immediate proximity of daycare centers, hospitals, place of worship, schools, other similar uses, or any uses that attract minors.
  2. Restaurants with incidental alcohol service are not uncommon in the area, and the Type 47 ABC license with the Patio is not anticipated to alter the operational characteristics of the use such that it becomes detrimental to the area. The Project includes conditions of approval to further minimize negative impacts to surrounding land uses and ensure that the use remains compatible with the surrounding community.
- iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*
1. The Property is located within census tract 630.05. This census tract has an approximate population of 1,447 residents with seven active on-sale alcohol licenses which is a per capita ratio of one on-sale license for every 207 residents. The per capita ratio of on-sale alcohol licenses for Orange County is one license for every 822 residents. This location meets the legal criteria for undue concentration pertaining to alcohol establishments.
  2. The closest establishment selling alcoholic beverages for on-site consumption is Tavern House Kitchen + Bar, a full-service restaurant on the adjacent property located at 333 Bayside Drive. Additionally, the Bayshore Café, which is also a full-service restaurant with alcoholic beverages for on-site consumption, is located approximately 1,700 feet west of the Property at 100 West Coast Highway.
  3. Although the per capita ratio of on-sale alcohol licenses to residents is higher than the average in the County and the Property is proximate to establishments selling alcoholic

beverages for on-site consumption, the operational conditions of approval recommended by the NBPD will ensure compatibility with the surrounding uses and minimize alcohol related impacts. The Property has operated at a restaurant with service of alcoholic beverages since 1960, and accessory outdoor dining areas since 1998 without any recent disturbances related to alcohol service. The Project will retain the Patio with the current operational characteristics on a permanent basis.

- v. *Whether or not the proposed amendment will resolve any current objectionable conditions.*

1. No objectionable conditions are presently occurring at the Property.

### **Conditional Use Permit**

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

#### Finding:

- B. *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 the Property is Recreational and Marine Commercial (CM), which is intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses, maintain the marine theme and character, encourage mutually supportive businesses, encourage visitor-serving and recreational uses, and encourage physical and visual access to the bay on waterfront commercial and industrial building sites on or near the bay. The intent of the Project is to permanently retain the Patio for a restaurant that was constructed in response to the COVID-19 Pandemic. No changes are proposed to the Restaurant, other than to retain the Patio on a permanent basis. The Restaurant provides a commercial development for both residents and visitors to the City and the Patio provides an additional amenity for patrons that overlooks and provides visual access to the waterfront.
2. The Project is consistent with the following General Plan Land Use policies applicable to the Project:
  - a. ***Land Use Policy LU 5.2.2 (Buffering Residential Areas).*** *Require that commercial uses adjoining residential neighborhoods be designed to be compatible and minimize impacts through such techniques as:*  
  
*Incorporation of landscape, decorative walls, enclosed trash containers, downward focused lighting fixtures, and/or comparable buffering elements;*  
*Attractive architectural treatment of elevations facing the residential*



*neighborhood; Location of automobile and truck access to prevent impacts on neighborhood traffic and privacy.*

Although the Property is not directly adjacent to a residential zoning district, the residents of Linda Isle are located approximately 250 feet south of the Property across Newport Harbor. The Project will include the construction of an approximately 7-foot 6-inch-tall glass/acrylic guardrail on the waterfront side of the Patio to mitigate any potential noise generated from the Patio. Additionally, conditions of approval are included to ensure light sources and noise levels are properly controlled for both the Patio and the existing outdoor dining area attached to the Restaurant to alleviate any impacts to the residents.

- b. ***Land Use Policy LU 5.3.6 (Parking Adequacy and Location).*** *Require that adequate parking be provided and is conveniently located to serve tenants and customers. Set open parking lots back from public streets and pedestrian ways and screen with buildings, architectural walls, or dense landscaping.*

On August 26, 2025, the City Council adopted Ordinance No. 2025-13 to amend the food service parking requirements for Title 21 (Local Coastal Program Implementation Plan) to be consistent with Title 20 (Planning and Zoning) of the NBMC. Section 20.40.040 (Off-Street Parking Spaces Required) of the NBMC requires one parking space per 100 square feet of gross floor area and one parking space per 150 square feet for outdoor dining areas. The total gross floor area of the existing Restaurant is 5,838 square feet and no changes are proposed. The existing outdoor dining area attached to the Restaurant is 324 square feet and the outdoor dining area to be retained as part of the Project is 641 square feet for a total of 965 square feet for outdoor dining area.

The gross floor area of the Restaurant requires 58.38 parking spaces and the outdoor dining areas require 6.43 parking spaces for a total of 64.81 parking spaces, or 65 parking spaces. The 641-square-foot Patio was constructed within seven parking spaces, which leaves a total of 16 parking spaces available on-site. However, the adjacent property at 201 East Coast Highway provides 50 dedicated off-site parking spaces for the Restaurant for a total of 66 parking spaces, which meets the requirement of 65 parking spaces for the Project. The existing parking lots are landscaped with hedges and trees to provide screening from East Coast Highway.

- c. ***Noise Policy N 1.7 (Commercial/Entertainment Uses).*** *Limit hours and/ or require attenuation of commercial/ entertainment operations adjacent to residential and other noise sensitive uses in order to minimize excessive noise to these receptors.*

Pursuant to OD49A, the existing Restaurant is permitted to operate with late hours until midnight (i.e., after 11 p.m.) with a live entertainment permit. However, the Project does not propose late hours or live entertainment or dancing and the Restaurant no longer has an active live entertainment permit. Condition of

Approval No. 5 is included to ensure a 7-foot 6-inch guardrail is constructed along the front of the Patio to prevent noise impacts to the nearby residents. The condition also requires the existing guardrail along the outdoor dining area attached to the Restaurant is maintained. Further, Condition of Approval Nos. 7 and 16 is included to prohibit live entertainment or dance and to ensure the Project complies with the provisions of Chapter 10.26 (Community Noise Control) of the NBMC.

- d. ***Harbor and Bay Policy HB 2.1 (Design of New Development).*** *Site and design new development to avoid impacts to existing and potential water-dependent and water-related uses.*

The Property is adjacent to the Newport Beach Sailing School at 201 East Coast Highway and is accessed via a driveway along East Coast Highway. The Project proposes to retain a temporary outdoor dining area on a permanent basis and will not obstruct access to or impact to use of this sailing school. The required off-site parking spaces for the Project is shared on the same property as the sailing school, but will not impact or reduce the available parking space for the sailing school.

3. The Property is not part of a specific plan.

Finding:

- C. *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. The Property is within the Commercial Recreational and Marine (CM) Zoning District, which is intended to provide for areas appropriate for commercial development on or near the waterfront that will encourage the continuation of coastal-dependent and coastal-related uses, maintain the marine theme and character, encourage mutually supportive businesses, encourage visitor-serving and recreational uses, and encourage physical and visual access to the bay on sites located on or near the bay. A Food Service land use with alcohol service and no late hours is an allowed use with approval of a minor use permit. However, pursuant to Section 20.40.100 (Off-Site Parking) of the NBMC, approval of a conditional use permit is required to authorize parking that is not located on the same site it is intended to serve (i.e., off-site parking).
2. Fact 2b in Support of Finding B is hereby incorporated by reference.
3. The Balboa Marina includes a surface parking lot over four separate parcels (APNs 050-451-01, 050-451-03, 050-451-60, and 050-451-57) that are all under the ownership of The Irvine Company. This surface parking lot serves the Restaurant, the Newport Beach Sailing School, and the marine uses on the property. A Ground Lease and a Parking Agreement was recorded on December 14, 1993, between The Irvine Company and the Property's

tenant, the Restaurant, to allow for a portion of the Restaurant's parking to be located on the Balboa Marina parking lot, as well as allocating enough parking for the Newport Beach Sailing School and the marine uses. The aforementioned parcels within the surface parking lot are adjacent to the Property and are accessible via the same driveway from East Coast Highway or Bayside Drive.

4. Pursuant to Table 3-5 (Nonresidential Structures – Minimum Storage Areas Required) of Section 20.30.120 (Solid Waste and Recyclable Materials Storage) of the NBMC, structures with a gross floor area between 5,001 and 10,000 square feet require 48 square feet for trash and recyclable materials storage (i.e. trash enclosure). The approved plans for the existing building show that the trash enclosure constructed for the Property is a minimum of 48 square feet and complies with the minimum size requirement.

Finding:

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

Facts in Support of Finding:

1. The Property is located on the waterfront side of East Coast Highway on Balboa Marina, across from Back Bay Landing. The Property is adjacent to a full-service restaurant to the east and a sailing school to the west. The area is also developed with surface parking areas and a private marina for boat slips. The Restaurant on the Property has been operating since 1960, and with an attached 324 square foot outdoor dining area since 1998. The temporary 641-square-foot outdoor dining area as part of the Project has been operating since 2021 and the Project will allow the Patio to remain on a permanent basis.
2. Approval of OD49A included a condition of approval that required the attached outdoor dining area to provide a 7-foot 6-inch wall or partition to extend flush with the floor of the deck and the underside of the existing roof at the westerly end of the deck. This condition was included to ensure the outdoor dining area would not create any noise-related nuisances for the residents on Linda Isle. Condition of Approval No. 5 is included to ensure this sound attenuation wall remains in place and Condition of Approval No. 16 is included to ensure that all noise generated by the Project shall comply with Chapter 10.26 (Community Noise Control) of the NBMC.
3. The Restaurant is permitted to operate with late hours (until midnight) for both the indoor and outdoor dining areas of the Restaurant. Additionally, the Restaurant was authorized for live entertainment. However, with approval of the Project, live entertainment would be discontinued and the indoor area and Patio would close by 11 p.m. Condition of Approval No. 7 prohibits live entertainment and dancing without an amendment to the use permit.

Finding:

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

Facts in Support of Finding:

1. The Project involves an existing restaurant with an existing outdoor dining area that was previously permitted on a temporary basis as a result of the COVID-19 Pandemic. Although the Patio was constructed on seven existing parking spaces, the change in parking requirement as referenced in Fact 2b in Support of Finding B decreased the required parking spaces for the Restaurant from 79 parking spaces to 65 parking spaces. The Project provides 66 parking spaces for the Restaurant.
2. Adequate public and emergency vehicle access is provided from East Coast Highway and Bayside Drive, and public services and utilities are provided on-site. The Project has been reviewed by the Fire Department and Condition of Approval No. 28 is included to require any physical changes (e.g. membrane structures) to the Patio to be reviewed and approved by the Fire Department.
3. The operational conditions of approval recommended by the NBPD have all been incorporated into Exhibit "A" of this Resolution and will help ensure compatibility with the surrounding commercial uses while minimizing any alcohol-related impacts. The establishment must comply with the requirements of the California Building Code, Orange County Health Department, and the State Department of Alcoholic Beverage Control to ensure the safety and welfare of customers and employees within and surrounding the establishment.
4. Any physical alterations to the Restaurant, including the Patio, require a building permit prior to any construction. The Project will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Finding:

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

Facts in Support of Finding:

1. The Restaurant will continue to service the surrounding commercial area by providing dining services, alcohol service, and an option for outdoor dining areas as a public

convenience to the surrounding businesses, residents, and visitors to the area. This will provide an economic opportunity for the Restaurant owner to operate successfully while potentially improving the Property.

2. The Project has been reviewed by the NBPD and includes conditions of approval to 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 related to litter and graffiti on the exterior of the building and noise generated by the subject facility.
3. As conditioned, all owners, managers, and employees selling alcohol are required to undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. The certified program must meet the standards of the certifying/licensing body designated by the State of California and records of successful completion shall be maintained on the premises.

### ***Off-site Parking***

In accordance with Section 20.40.100(B) (Off-Site Parking – Findings) of the NBMC, in order to approve a conditional use permit for an off-site parking facility, the following findings and facts in support of such findings are set forth:

#### Finding:

- G. *The parking facility is located within a convenient distance to the use it is intended to serve;*

#### Facts in Support of Finding:

1. Fact 3 in Support of Finding C is hereby incorporated by reference.
2. Patrons to the Restaurant are able to access the Property via East Coast Highway or Bayside Drive and either self-park in one of the 16 parking spaces on-site or self-park in one of the 50 dedicated parking spaces off-site near the Restaurant.

#### Finding:

- H. *On-street parking is not being counted towards meeting parking requirements;*

#### Fact in Support of Finding:

1. The area of East Coast Highway within the vicinity of the Property does not have designated on-street parking spaces. All of the required parking for the Project is located within private property and no on-street parking spaces are counted towards meeting the parking requirement.

Finding:

- I. *Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area; and*

Fact in Support of Finding:

1. The off-site parking lot on Balboa Marina is primarily accessed via East Coast Highway and Bayside Drive. The parking agreement was recorded in 1993 and parking for the Project has been provided both on-site and off-site without traffic hazards or impacts on the surrounding area.
2. The Project, including access and configuration of available parking spaces, has been reviewed and approved by the Public Works Department

Finding:

- J. *The parking facility will be permanently available, marked, and maintained for the use it is intended to serve.*

Facts in Support of Finding:

1. The off-site parking spaces are striped parking spaces that are allocated between the Project, the Newport Beach Sailing School, and the marina. The parking spaces are accessible throughout the hours of operation for the Restaurant, daily.

***Coastal Development Permit***

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

Finding:

- K. *Conforms to all applicable sections of the certified Local Coastal Program;*

Facts in Support of Finding:

1. The CLUP designates the Property as Recreational and Marine Commercial (CM-A), which is intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses, maintain the marine theme and character, encourage mutually supportive businesses, encourage visitor-serving and recreational uses, and encourage physical and visual access to the bay on waterfront commercial and industrial building sites on or near the bay. The Project is consistent with the CM-A CLUP designation by providing an additional amenity of outdoor dining for an existing Restaurant that will provide physical

and visual access to the bay on a waterfront commercial property. The Project is consistent with the following CLUP policies applicable to the Project:

- a. ***Policy LU 2.3.1-1. Permit visitor-serving retail and eating and drinking establishments in all commercially designated areas.***

The Property is a commercially designated area along East Coast Highway and the Project provides an eating and drinking establishment consistent with this policy.

- b. ***Policy LU 2.3.1-2. Continue to provide waterfront-oriented commercial uses, including eating and drinking establishments and recreation and entertainment establishments, as a means of providing public access to the waterfront.***

The Property is located on the waterfront and is developed with an existing Restaurant. The Project will permanently retain an outdoor dining area along the waterfront side of the Property that provides public access to the waterfront for patrons of the Restaurant.

- c. ***Policy LU 2.9.3-5. Continue to require off-street parking in new development to have adequate dimensions, clearances, and access to insure their use.***

In order to retain the Patio, the Project reevaluated the required parking consistent with Fact 2b in Support of Finding B. The Project will provide the minimum required parking spaces through on-site and off-site parking. The off-site parking spaces are located adjacent to the Property and adequate clearance and access is provided for patrons of the Restaurant to park and dine at the Restaurant. The parking spaces have been reviewed and approved by the Public Works Department to ensure the spaces have adequate dimensions, clearances, and access for the Project.

2. The Project complies with applicable development standards for the CM Zoning District including, but not limited to, setbacks, floor area, height, and parking:

- a. The CM Zoning District requires 0-foot front, side, and rear setbacks. The existing Restaurant and proposed Patio are all constructed within the private property lines.

- b. The Property consists of approximately 21,348 square feet and has floor area ratio ("FAR") of 0.30, or 6,404 square feet maximum. The Property is developed with an existing Restaurant that has a gross floor area of 5,838 square feet. The FAR for the Property is 0.27, which is less than the allowed FAR of 0.30. Pursuant to Chapter 20.70 (Definitions) of the NBMC, outdoor dining areas associated with an eating and drinking establishment are excluded from the gross floor area of nonresidential structures and, therefore, the Patio does not increase the proposed FAR of the Property.

- c. The highest flat element of the existing Restaurant is approximately 21 feet from the existing grade, which complies with the maximum height requirement of 26 feet for flat elements. The Patio consists of a raised deck platform, guardrails and pole structures for lighting that are lower than the height of the existing Restaurant.
  - d. Fact 2b in Support of Finding B is hereby incorporated by reference.
- 3. Although the Patio is not considered enclosed living area, the finished surface underneath the Patio is approximately 11 feet based on the North American Vertical Datum of 1988 (NAVD88) which complies with the minimum 9-foot (“NAVD88”) elevation standard that would apply to indoor areas. The 9.0-foot NAVD88 floor elevation will help to ensure the Project is reasonably safe for the economic life of the structure.
  - 4. The Property is located approximately 440 feet west of a sidewalk area overlooking Promontory Bay along Bayside Drive, which is a designated public viewpoint in the CLUP. The Project, including the existing Restaurant and proposed Patio, is not visible from this public viewpoint due to existing landscaping and commercial buildings adjacent to this viewpoint. Therefore, the Project will not impact views from this public viewpoint.
  - 5. The Property is also located approximately 1,100 feet east of Lower Castaways Park, which is another designated public viewpoint in the CLUP and offers views of Back Bay and Newport Harbor. The Project is not visible from this public viewpoint as the view is obstructed by the East Coast Highway bridge constructed over the Back Bay. The Project will also not impact the views from this public viewpoint.
  - 6. The Property fronts East Coast Highway which is a designated coastal view road in the CLUP. The Project will be entirely within the Property and will not create obstructions of Newport Harbor or Back Bay as viewed from East Coast Highway. The Project does not propose any structures over the Patio, such as a canopy or sunshade, that would create obstructions to the harbor from East Coast Highway, although the Patio includes poles for string lights and umbrella covers. The string light poles are minimal, and the umbrella covers are retracted when not in use to reduce the amount of visual obstruction of the harbor. Additionally, the Patio offers views of Newport Harbor for patrons dining at the Restaurant.

Finding:

- L. *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 Property is located between the nearest public road and the sea or shoreline. Section 21.30A.040 (Determination of Public Access/Recreation Impacts) of the NBMC requires that the provision of public access bears a reasonable relationship between the



requirement and the Project's impact and be proportional to the impact. In this case, the Project proposes to retain a temporary outdoor dining area on a permanent basis for an existing restaurant. Therefore, the Project does not involve a change in land use, density, or intensity that will result in increased demand for public access and recreation opportunities. Furthermore, the Project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

2. The Property is not within the vicinity of any vertical access routes to the bay or beach as designated in the CLUP. The nearest lateral access is available along Bayside Drive approximately 1,000 feet east of the Property overlooking Promontory Bay. The Project does not include any features that would obstruct access along this route.

### ***Local Coastal Program Findings for Off-Site Parking***

In accordance with Section 21.40.100(B) (Off-Site Parking – Standards for Off-Site Parking Facilities) of the NBMC, the Planning Commission may approve a coastal development permit to allow off-site parking facilities only after making all of the following findings:

#### Finding:

- M. *The parking facility shall be located within a five hundred (500) foot distance unless alternative transportation provided to the use it is intended to serve;*

#### Fact in Support of Finding:

1. Facts in Support of Finding G are hereby incorporated by reference. All off-site parking spaces for the Restaurant are located within 500 feet of the Property and no alternative transportation is required to implement the Project.

#### Finding:

- N. *On-street parking shall not be counted towards meeting any parking requirements;*

#### Fact in Support of Finding:

1. Fact in Support of Finding H is hereby incorporated by reference.

#### Finding:

- O. *The off-site, off-street parking shall not impact public parking available for coastal access;*

#### Facts in Support of Finding:

1. The off-site surface parking lot for Balboa Marina has allocated parking spaces for the Project, the Newport Beach Sailing School, and the marina via a recorded Parking Agreement with The Irvine Company, who is the property owner for the Balboa Marina,

and the tenant for the Property. The Project will not displace any of the designated parking spaces for the marine.

2. The off-site parking spaces are located on private properties within the vicinity of the Restaurant. Public parking spaces, including any available on-street parking spaces, are not included to meet the required parking demand for the Project.

Finding:

- P. Use of the parking facility shall not create undue traffic hazards or impacts in the surrounding area;*

Fact in Support of Finding:

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

Finding:

- Q. The parking facility shall be permanently available, marked, and maintained for the use it is intended to serve; and*

Fact in Support of Finding:

1. Fact in Support of Finding J is hereby incorporated by reference.

Finding:

- R. Public parking facilities may only be used as an off-site parking facility as part of an overall Parking Management Plan.*

Fact in Support of Finding:

1. The off-site parking lot does not include the use of any public parking facilities. Therefore, an overall Parking Management Plan is not required.

SECTION 4. DECISION.

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

1. The Planning Commission 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 Planning Commission of the City of Newport Beach hereby approves the Conditional Use Permit and Coastal Development Permit filed as PA2023-0144, 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 Program Implementation Plan), of the NBMC. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeals to the Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.
4. This resolution supersedes Use Permit Nos. UP621 and UP651 and Accessory Outdoor Dining Permit Nos. OD49 and OD49A, which upon vesting of the rights authorized by this Conditional Use Permit and Coastal Development Permit, shall become null and void.

**PASSED, APPROVED, AND ADOPTED THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Tristan Harris, Chair

BY: \_\_\_\_\_  
Jon Langford, Secretary

**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 Applicant or Property Owner shall maintain a minimum of 65 parking spaces for the Project between the on-site and off-site parking spaces.*
3. *A parking agreement or covenant, in a form approved by the City Attorney and the Director that guarantees the availability of the required off-site parking at an approved off-site location shall be recorded with the County Recorder’s Office against the Property. The agreement or covenant shall require the owner or operator of the Project to immediately notify the Director of any change of ownership or use of the property where the required off-site parking is located, or changes in the use or availability of the required off-site parking, or of any termination or default of the agreement between the parties. Upon notification that the private lease agreement for the required off-site parking has terminated or the required off-site parking is otherwise unavailable for the use authorized by this Conditional Use Permit (PA2023-0144), the Director shall establish a reasonable period of time in which one of the following shall occur. 1) Substitute parking acceptable to the Director, or 2) the size or intensity of use authorized by this Conditional Use Permit is reduced in proportion to the parking spaces lost, or 3) the owner or operator of the Project must obtain a parking reduction pursuant to NBMC Section 20.40.110 and Section 21.40.110 (Adjustments to Off-Street Parking Requirements) rendering the required off-site parking unnecessary.*
4. *The hours of operation for the restaurant and outdoor dining areas shall be between 10 a.m. and 11 p.m., daily.*
5. *All outdoor dining areas shall be provided with a 7-foot 6-inch-tall wall or partition along the water, which shall extend flush with the floor of the deck.*
6. *Exterior light sources within the outdoor dining areas shall be designed and directed in such a manner as to eliminate light and glare spillage onto adjacent properties or uses, including residential properties on Linda Isle.*
7. *Live Entertainment as defined in Section 5.28.010 (Live Entertainment Establishments) and Dancing as defined in Section 5.32.010 (Café Dances) shall be prohibited. Any changes to propose Live Entertainment or Dancing shall require subsequent review and potential amendment of this Conditional Use Permit.*

8. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
9. 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 Conditional Use Permit and Coastal Development Permit.
10. *The Conditional Use Permit and Coastal Development Permit filed as PA2023-0144 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code (“NBMC”), unless an extension is otherwise granted.*
11. This Conditional Use Permit and Coastal Development Permit may be modified or revoked by the Planning Commission should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the Property is operated or maintained so as to constitute a public nuisance.
12. Any change in operational characteristics, expansion in area, or other modification to the approved plans, may require an amendment to this Conditional Use Permit and Coastal Development Permit or the processing of a new Conditional Use Permit and Coastal Development Permit.
13. 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.
14. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, 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.
15. Prior to the issuance of building permits, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
16. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control) of the NBMC and other applicable noise control requirements of the NBMC.
17. No outside paging system shall be utilized in conjunction with this establishment.
18. 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.

19. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, 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.
20. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
21. 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.
22. 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.
23. 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).
24. 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 Conditional Use Permit and Coastal Development Permit.
25. 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.
26. 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.
27. 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 ***SOL Mexican Cocina Restaurant including, but not limited to, the Conditional Use Permit and Coastal Development Permit (PA2023-0144)***. 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 the 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**

28. No permanent or temporary membrane structure, including but not limited to a canopy or sunshade structure, shall be installed above the deck unless reviewed and approved by the Newport Beach Fire Department.

### **Building Division**

29. The Applicant shall 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.

### **Public Works Department**

30. *The outdoor dining area shall be located entirely outside of the existing City water easement.*
31. *The existing single fire check shall be upgraded to an above ground Double Check Detector Backflow Prevention Assembly per City Standard.*
32. *Any planters located within the City water easement shall be relocated outside the easement area.*

### **Police Department**

33. The Alcoholic Beverage Control ("ABC") License shall be limited to a Type 47 (On-Sale General). Any substantial change in the ABC License type shall require subsequent review and potential amendment of this Conditional Use Permit.
34. The Applicant shall comply with all federal, state, and local laws, and all conditions of the ABC License. Material violation of any of those laws or conditions in connection with the use is a violation and may be cause for revocation of the Conditional Use Permit.

- 
35. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible beverage service within 60 days of hire. The certified program must meet the standards of the State of California. Records of each owner's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
  36. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
  37. The petitioner shall not share any profits or pay any percentage or commission to a promoter, or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum orders or the sale of drinks.
  38. Any event or activity staged by an outside promoter or entity, where the Applicant, operator, owner or their employees or representatives share in any profits or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge is prohibited.
  39. The Applicant shall install and maintain a physical barrier to the outdoor patio between any area used and adjacent common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.
  40. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control 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.
  41. The sale of alcohol "to go" to patrons that dine within the expanded outdoor dining areas shall be prohibited.