

# **Attachment No. PC 1**

Draft Resolution

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## RESOLUTION NO. PC2026-002

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, SUPERSEDING ALL PREVIOUS APPROVALS AND APPROVING A CONDITIONAL USE PERMIT TO EXPAND AN OUTDOOR DINING PATIO AND WAIVE A PORTION OF THE REQUIRED OFF-STREET PARKING FOR AN EXISTING EATING AND DRINKING ESTABLISHMENT OPERATING WITH A TYPE 47 (ON-SALE GENERAL – EATING PLACE) ALCOHOLIC BEVERAGE CONTROL LICENSE, LOCATED AT 3520 EAST COAST HIGHWAY, AND AUTHORIZING THE USE OF OFF-SITE PARKING LOCATED AT 410 NARCISSUS AVENUE, 409 ORCHID AVENUE, AND 3536 EAST COAST HIGHWAY (PA2025-0042)**

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

### SECTION 1. STATEMENT OF FACTS.

1. The property at 3520 East Coast Highway, legally described as Parcel 1 of Book 158, Page 41 (“Project Site”), is currently developed as an eating and drinking establishment with outdoor dining, on-sale alcohol service, and off-site parking. The eating and drinking establishment in the City of Newport Beach (“City”), currently known as El Cholo (“Restaurant”), was originally authorized in 1979 by the Planning Commission pursuant to Use Permit No. UP1908.
2. Subsequent amendments to Use Permit No. UP1908 occurred in 1980, 1982, 1983, 1984, and 1990 to adjust the allowed hours of operation, to add live entertainment, and to add dancing at the Restaurant. The Restaurant continues to operate pursuant to the fifth amendment of Use Permit No. UP1908 and Staff Approval No. SA2014-018 (PA2014-137).
3. The Restaurant does not have an on-site parking area, and leases parking spaces from three off-site lots located at 409 Orchid Avenue, 410 Narcissus Avenue, and 3536 East Coast Highway. Through these leases, the Restaurant has access to 49 spaces before 5 p.m. and 62 spaces after 5 p.m.
4. An application was recently filed by Andrew Heermann of Laidlaw Schultz Architects (“Applicant”) proposing to expand the outdoor dining patio by 975 square feet, for a total of 1,709 square feet of outdoor dining area. The size of the Restaurant will remain unchanged at approximately 5,347 square feet. The hours of operation for the outdoor dining patio are proposed from 10 a.m. to 11 p.m. on a daily basis, consistent with the operating hours of the interior of the Restaurant. No live entertainment, dancing, or late hours are proposed, and there are no changes to the existing Type 47 (On-Sale General – Eating Place) California Department of Alcoholic Beverage Control (“ABC”) license. To expand the outdoor patio, the Applicant requests a conditional use permit (“CUP”) to waive 17 of the 66 required parking spaces for the Restaurant, and authorization to provide the remaining

spaces through a combination of off-site lots ("Project"). Approval of the Project would supersede all previous approvals.

5. As part of the Project, the Restaurant will abandon its existing approval for late hours and live entertainment. While food service uses with no late hours are allowed subject to the approval of a minor use permit by the Zoning Administrator, a reduction in the required amount of parking spaces and the use of off-site parking requires approval of a CUP by the Planning Commission pursuant to Section 20.40.110 (Adjustments to Off-Street Parking Requirements) of the Newport Beach Municipal Code ("NBMC"). Further, Section 20.50.30 (Multiple Permit Applications) of the NBMC requires that multiple applications for the same project be processed concurrently, and be reviewed and approved, modified, or denied by the highest review authority, which in this case, is the Planning Commission.
6. The Project Site is categorized by the Land Use Element of the General Plan as Corridor Commercial (CC) and has a zoning designation of Commercial Corridor (CC).
7. The property at 410 Narcissus Avenue is developed with a 22-space surface parking lot, is categorized as Two Unit Residential (RT) by the Land Use Element of the General Plan, and has a zoning designation of Two-Unit Residential (R-2).
8. The property at 409 Orchid Avenue is developed with a 29-space surface parking lot, is categorized as Two Unit Residential (RT) by the Land Use Element of the General Plan, and has a zoning designation of Two-Unit Residential (R-2).
9. The property at 3536 Coast Highway East is developed with a multi-tenant commercial building and a surface parking lot which provides 14 parking spaces. The property is categorized as Corridor Commercial (CC) by the Land Use Element of the General Plan, and has a zoning designation of Commercial Corridor (CC). The parking spaces are only available to the Restaurant after 5 p.m.
10. None of the subject properties are located within the coastal zone; therefore, a coastal development permit is not required.
11. A public hearing was held on January 22, 2026, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place, and purpose of the hearing was given in accordance with the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to and considered by, the Planning Commission at this hearing.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 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 Class 1 (Existing Facilities) exemption authorizes minor alteration of existing structures with negligible or no expansion of use. The Project does not involve new construction, rather, outdoor furniture will be placed within the walkway adjacent to the Restaurant. While the Project increases the area used for outdoor dining, the additional capacity is a negligible expansion of use considering the existing Restaurant and its surrounding development. The additional outdoor seating provides the option for more patrons to dine outdoors rather than inside. Furthermore, operational characteristics such as live entertainment and dancing, which encourage large gatherings of patrons, are being removed.

### SECTION 3. REQUIRED FINDINGS.

#### ***Alcohol Sales***

In accordance with Section 20.48.030 (Alcohol Sales) 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(C)(3) (Alcohol Sales).*

#### Facts in Support of Finding:

1. *The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
  - a. The Project Site is located in an area designated by the Newport Beach Police Department ("NBPD") as Reporting District 44 ("RD 44"). RD 44 encompasses the entirety of the neighborhood known as Corona del Mar and is abutted to the west by RD 22, to the south by RD 45, to the east by RD 47 and RD 48, and to the north by RD 43 and RD 39.
  - b. The NBPD is required to report offenses of Part One Crimes combined with all arrests for other crimes, both felonies and misdemeanors (except traffic citations), to the ABC. Part One Crimes are the eight most serious crimes defined by the FBI Uniform Crime Report including criminal homicide, rape, robbery, aggravated assault, burglary, larceny-theft, auto theft, and arson. The RD 44 crime count for 2024 is 299, which is 167% over the citywide average of 112 crimes per RD. The crime count for RD 44 is also higher than RD 43, RD 45 and RD 47. The high crime count of RD 44 compared to the adjacent reporting districts is to be expected, as the district includes all of the properties within Corona del Mar's commercial corridor and the Corona del Mar State Beach; whereas, the adjacent reporting districts are predominantly residential. RD 44 is classified as an area of undue concentration, as its crime rate is 20% higher than the citywide average across all reporting districts.

- c. The NBPd has reviewed the Project. Based on the location and operational characteristics, the NBPd has no objection to the Project, subject to the appropriate conditions of approval, which are included in Exhibit "A" attached hereto and incorporated into this resolution.
  - d. Operational conditions of approval recommended by the NBPd include, but are not limited to, Condition of Approval Nos. 29, 30, 31, 33, 34, 36, 38, 39, 41, and 44 which ensure safe alcohol service, accounting to demonstrate that the use is not primarily driven by alcohol sales, and having management maintain a log of daily activities related to alcohol sales or any security actions.
2. *The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
- a. RD 44 was reported to ABC as a high crime area compared to other reporting districts in the City. The highest volume crimes in this area are larceny and theft. The highest volume arrests in the area are drug-related offenses. DUI, public intoxication, and liquor law violations account for 32% of overall arrests in RD 44. However, the area is a vibrant commercial corridor in proximity to Corona del Mar State Beach which attracts many visitors and tourists. These commercial and public recreation areas result in a higher volume of alcohol and drug related calls for service, crimes, and arrests.
  - b. There were 11 calls for service to NBPd in 2024, and six calls in 2023. None of the calls were related to poor business practices, noise complaints, or ill management of the Restaurant patio. Thus, there are no anticipated concerns with allowing the establishment to continue to operate with alcohol service and removing its late-hour component.
3. *The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*
- a. The Project Site is located within a commercial zoning district and is adjacent to a residential zoning district with two-unit residential properties located to the north and east of the Project Site. The restaurant is separated from the residential zoning district by an approximately 13-foot-wide alley. Notably, the two nearest residentially-zoned properties are currently developed with parking lots.
  - b. There are no day care centers, hospitals, parks and recreation facilities, places of worship, or similar uses in the immediate vicinity. The nearest recreation facility is Oasis Senior Center, which is over 1,500 feet away from the Project Site. Community Church Congregational and Harbor View Elementary School are both about 2,000 feet away from the Project Site.
  - c. The Restaurant began serving alcohol in 1980. Despite the Restaurant's proximity to two sensitive land uses, alcohol sales have not proven to be detrimental.

- d. There are no land uses in the immediate vicinity such as commercial recreational facilities, parks, day care centers, movie theaters, or retail centers with products or services that cater towards or attract minors.

4. *The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*

- a. The Project Site is located within Census Tract 627.02 which has 15 active on-sale ABC Licenses and a population of approximately 4,515 residents. This represents a per capita ratio of one license for every 301 residents. Orange County has a per capita ratio of one license for every 822 residents. Because the Census Tract exceeds the ratio of on-sale licenses to population for the County, the area is deemed to have an undue concentration of alcohol licenses.
- b. There are five businesses within 1000 feet of the Restaurant that sell alcohol as illustrated in Table 1 below:

<b>Table 1: Active ABC Licenses within 1000 feet of the Restaurant</b>		
<b>Business Name</b>	<b>Address</b>	<b>ABC License Type</b>
Newport Wine and Spirits	3537 Coast Highway East	Type 41 (On-Sale Beer & Wine – Eating Place)
Bandera Restaurant	3201 Coast Highway East	Type 47 (On-Sale General – Eating Place)
Mama D’s Kitchen	3732 Coast Highway East	Type 47 (On-Sale General – Eating Place)
Papa’s Liquor	3244 Coast Highway East	Type 21 (Off-Sale General)
Quiet Woman	3224 Coast Highway East	Type 41 (On-Sale Beer & Wine – Eating Place)
Five Crowns	3801 Coast Highway East	Type 41 (On-Sale Beer & Wine – Eating Place)

While there is an oversaturation of alcohol licenses in this reporting district, the Restaurant is not proposing a change in its ABC license type, and is removing operational characteristics such as live entertainment, dancing, and late hours. The NBPD has reviewed the CUP application and has no concerns.

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

- a. There are currently no objectionable conditions caused by the sale of alcohol. While there were 11 calls for service in 2024 and six calls in 2023, none of the calls were the result of crimes due to the business practice of the Applicant or over service of alcohol. There is no evidence suggesting that this use has been detrimental to the neighborhood.
- b. The Project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the NBMC is maintained and a healthy environment for residents and businesses is preserved. The service of alcohol is

intended for the convenience of customers dining at the Restaurant. The operational conditions of approval recommended by the NBPD relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts.

### **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 Project Site is categorized as Corridor Commercial (CC) by the Land Use Element of the General Plan. The CC designation is intended to provide areas appropriate for a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. A restaurant is consistent with this designation, and the expanded outdoor dining area does not alter or change the primary use.
2. The Project is consistent with the following General Plan Policy Land Use Elements including, but not limited to, the following:
  - a. **Land Use Element Policy LU 2.1 (Resident-Serving Land Uses).** *Accommodate uses that support the needs of Newport Beach's residents including housing, retail, services, employment, recreation, education, culture, entertainment, civic engagement, and social and spiritual activity that are in balance with community natural resources and open spaces.*

The Project is in support of General Plan Policy LU 2.1 (Resident-Serving Land Uses), which encourages the City to accommodate uses that support the needs of Newport Beach's residents including housing, retail, services, employment, recreation, education, culture, entertainment, civic engagement, and social and spiritual activity that are in balance with the community's natural resources and open spaces. The Project provides for the recreation, culture, and social needs of the City's residents by creating an outdoor dining patio which wraps around the side of the Restaurant into a safe, comfortable, and welcoming open-air space buffered from Coast Highway. The patio is a unique outdoor dining environment for the area which will foster recreation and social opportunities in furtherance of General Plan Policy LU 2.1 (Resident-Serving Land Uses).

- b. **Land Use Element 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.*

The Project is in support of General Plan Policy LU 2.4 (Economic Development) by serving visitors of Newport Beach, and ensuring the area remains vibrant and successful.

- c. **Land Use Element Policy LU 5.3.5 (Pedestrian-Oriented Architecture and Streetscapes).** *Require that buildings located in pedestrian-oriented commercial and mixed-use districts (other than the Newport Center and Airport Area, which are guided by Goals 6.14 and 6.15, respectively, specific to those areas) be designed to define the public realm, activate sidewalks and pedestrian paths, and provide “eyes on the street” in accordance with the following principles:*

*Location of buildings along the street frontage sidewalk, to visually form a continuous or semi-continuous wall with buildings on adjacent parcels.*

*Inclusion of retail uses characterized by a high level of customer activity on the ground floor; to ensure successful retail-type operations, provide for transparency, elevation of the first floor at or transitioning to the sidewalk, floor to-floor height, depth, deliveries, and trash storage and collection.*

*Articulation and modulation of street-facing elevations to promote interest and character.*

*Inclusion of outdoor seating or other amenities that extend interior uses to the sidewalk, where feasible.*

*Minimization of driveways that interrupt the continuity of street facing building elevations, prioritizing their location to side streets and alleys where feasible.*

The Project is in support of General Plan Land Use Policy LU 5.3.5 (Pedestrian-Oriented Architecture and Streetscapes), which encourages the creation of active, pedestrian-friendly frontages by incorporating features such as outdoor seating, engaging building edges, and eliminating gaps or inactive spaces along the street. In this case, the outdoor dining component directly advances General Plan Land Use Policy LU 5.3.5 by transforming what is currently an underutilized or empty frontage area into an active and inviting space that enhances the pedestrian experience. Allowing patrons to occupy and engage with the outdoor environment adds visual interest, promotes foot traffic, and contributes to a more cohesive and continuous streetscape. By filling in a gap in the street-facing elevation and animating the public realm, the project meaningfully supports the General Plan’s goal of creating vibrant and walkable commercial corridors.

3. The Project Site is not located within a specific plan area.

Finding:

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

Facts in Support of Finding:

1. The Project Site is located within the Commercial Corridor (CC) Zoning District. Like the Land Use categorization “Corridor Commercial”, the CC Zoning District is intended to provide areas appropriate for a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. Eating and drinking establishments with alcohol service are permitted in this zone, subject to the approval of a Minor Use Permit.
2. The Restaurant will expand its outdoor dining area within private property. UP1908, as amended, allows the Restaurant to operate with a Type 47 (On-sale General – Eating Place) ABC license, provide live entertainment and dancing, and operate with late hours from 10 a.m. to 12:30 a.m. Sunday through Thursday, and 10 a.m. to 1:30 a.m. on Friday and Saturday. The operator license OL2012-002 was obtained by the previous establishment operator, Landmark Steakhouse. However, since no live entertainment, dancing, or late hours are proposed as part of the Project, a new operator license is not required or conditioned.
3. The Restaurant is a casual, sit-down restaurant with food and drink options. There are 154 seats in the interior dining areas, 13 additional bar seats, and 93 seats will be provided in the outdoor patio area. The entrance to the front of the Restaurant is from East Coast Highway. To enter the Restaurant, patrons cross through the existing outdoor patio on the first-floor entrance into an entry space and a bar area. The first floor is divided into two distinct spaces: one side of the Restaurant features a lounge area with a fireplace and 10 small tables for guests; and the other side has three additional dining rooms which stretch towards the rear of the building. The remaining space on the first floor is composed of bathrooms, a back of house service area, and a staircase leading to an office and storage areas on the second floor. The combined proposed interior and exterior public occupancy is 283 guests.
4. The outdoor patio is being expanded into a pedestrian walkway. It was previously used as a driveway for valet parking but has been closed off from vehicle access with a combination of bollards and potted plants.
5. The expanded outdoor dining patio was originally approved on June 10, 2020 by the Community Development Director through Emergency Temporary Use Permit No. UP2020-030. This permit was approved in response to the COVID-19 pandemic. The Community Development Director has since approved two one-year extensions of the temporary outdoor dining area, which has had no reported impacts to the surrounding land uses. The Project will make this expansion permanent.
6. The Project complies with Section 20.48.090(G)(3)(b) (Eating and Drinking Establishments) of the NBMC given that the proposed outdoor dining area has been

operating under a temporary approval related to the COVID-19 pandemic, and the approval was extended for several years. During that timeframe, there have been no documented noise complaints or reports of disturbance from nearby residents, indicating that the proposed permanent arrangement will not generate objectionable noise levels. Condition of Approval No. 19 ensures that any impacts related to noise are managed by the Applicant, and Condition of Approval No. 10 allows the CUP to be modified or revoked if the property is operated or maintained in a way which constitutes a public nuisance.

7. The Restaurant is designed with 4,277 square feet on the first floor, 1,070 square feet on the second floor, and 1,710 square feet of outdoor dining area. Pursuant to Table 3-10 of Section 20.40.040 (Off-Street Parking Spaces Required) of the NBMC, restaurants require parking spaces at a rate of one space per 100 square feet of gross floor area, and one space per 150 square feet for outdoor dining areas. The resulting parking requirement is based on 5,347 square feet of gross indoor floor area, and 1,710 square feet of outdoor dining area, thus requiring 66 spaces ( $1,070 \text{ sq. ft.} / 150 = 11.39$  rounded up to 12, plus  $5,347 \text{ sq. ft.} / 100 = 53.47$ , rounded up to 54, totaling 66).
8. The Project Site is served by three nearby off-site parking lots. 409 Orchid Avenue provides 27 parking spaces, 410 Narcissus Avenue provides 22 parking spaces, and 3536 East Coast Highway provides 13 spaces after 5 p.m. Since the offsite lots only provide 49 parking spaces before 5 p.m. and 62 spaces after, occupancy surveys of nearby available parking were prepared by the Applicant ("Parking Survey"). The surveys are attached hereto as Exhibit "B" and incorporated herein by reference. The Applicant included guest counts as part of the Parking Survey, which shows that the peak occupancy of the Restaurant occurs during the lunch hour. Based on the provided information, Staff has concluded that 49 parking spaces are adequate to serve the Restaurant's needs inclusive of the expansion. The request for a 17-space parking waiver is evaluated and substantiated in Finding H below.

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 Restaurant is located within an existing two-story commercial building fronting East Coast Highway. Adjacent to the Restaurant are a one-story multi-tenant commercial building and a one-story single-tenant commercial building. The tenants of the multi-tenant commercial building are Del Mar Nails and Spa, Domino's, and Rose Bakery Café. The tenant of the single-tenant commercial building is Vans Cleaners. The Restaurant is the only restaurant use with food and alcohol service within the 3500 block of East Coast Highway and has been operating without conflicting with the other uses in the area since it became the operator of the Project Site. The nearest restaurant use with alcohol service is Five Crowns which is 675 feet southeast of the Project Site. The

Restaurant is both easily visible from Coast Highway and accessible from the shared parking lots.

2. An existing 35-square-foot trash enclosure is provided onsite. In addition to the existing trash enclosure, which will remain, a new 75-square-foot trash enclosure is proposed across the alley within the 409 Narcissus Avenue parking lot. The proposed enclosure shall be on a concrete pad surrounded by three walls, a self-latching gate, and a decorative solid roof in compliance with Section 20.30.120 (Solid Waste and Recyclable Materials Storage) of the NBMC. Condition of Approval No. 22 requires the Applicant to control trash and litter around the Project Site.

The operational conditions of approval recommended by the NBPD relative to the sale of alcoholic beverages, in addition to an operator license, will help to ensure compatibility with the surrounding uses and minimize alcohol related impacts. Condition of Approval No. 31 protects the welfare of the surrounding community by preventing the Restaurant from operating as bar or tavern. The Restaurant is required to comply with the requirements of the ABC Department to ensure the safety and welfare of customers and employees of the Restaurant.

3. Although the Project Site is within 100 feet of residential properties, the outdoor patio is separated from the residential use by the rest of the building, an alley, and a parking lot. The Restaurant previously operated with dancing and live entertainment without conflict to the surrounding land uses. The Project is abandoning dancing and live entertainment as feature in the establishment, which further supports its compatibility. Condition of Approval No. 19 allows pre-recorded music to be played in the tenant space, provided that exterior noise levels do not exceed the decibel levels identified in Section 10.26 (Community Noise Control) of the NBMC.
4. Due to the dense character of Corona del Mar, the Restaurant's primary customer base is expected to consist of local residents and existing visitors. Therefore, the Project is not anticipated to generate additional pedestrian or vehicular traffic beyond the levels already experienced within the commercial corridor.

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 Restaurant is located within an existing commercial building fronting East Coast Highway. It has functioned as a restaurant at this location since El Cholo became the operator in 2006, thus demonstrating the long-term suitability for the existing use. The proposed expansion of the outdoor patio will occur entirely within private property and will not increase the overall intensity of the land use. Instead, it will provide patrons with

additional seating options. All existing access, circulation patterns, public services, and emergency vehicle accommodations are adequate and will remain unchanged.

2. Vehicular access to the Project Site will continue to be provided from Narcissus Avenue and Orchid Avenue via the 13-foot-wide alley to the rear of the Project Site. Pedestrian access is available via the sidewalk along East Coast Highway.
3. The Building Division and the Fire Department have reviewed the Project and have no concerns, subject to the appropriate conditions of approval. Adequate public vehicle and emergency vehicle access, public services, and utilities are provided to the Project Site.

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. A restaurant is a common occurring establishment within Corona del Mar's commercial corridor. Due to this commonality, the Project is not anticipated to endanger, jeopardize, or otherwise constitute a hazard to the public.
2. Condition of Approval No. 32 protects the neighborhood from the spillover of alcohol consumption into adjacent properties as it states that no alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
3. Condition of Approval No. 26 ensures that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps during business hours to discourage and correct objectionable conditions that constitute a nuisance in sidewalks, areas surrounding the Project Site, and adjacent properties if the nuisance directly affects the patrons of the establishment.
4. The Restaurant will provide a service to the neighborhood by providing dining as a public convenience to the nearby residential uses as well as the visitors to the area, which is an intent of the Commercial General Zoning Designation. The service of alcohol and the patio expansion will complement the principal use of the Restaurant, and provide an economic opportunity for the property owner and business owner to maintain a successful business in a way that best serves the community.

**Off-Street Parking Reduction**

In accordance with Section 20.40.110 (B) (Adjustments to Off-Street Parking Requirements) of the NBMC, off-street parking requirements may be reduced with the approval of a CUP in

compliance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits). The following findings, and facts in support of such findings, are set forth:

Finding:

- H. *The applicant has provided sufficient data, including a parking study if required by the Director, to indicate that parking demand will be less than the required number of spaces or that other parking is available (e.g., City parking lot located nearby, on-street parking available, greater than normal walk-in trade, mixed-use development).*

Facts in Support of Finding:

1. Pursuant to Section 20.40.040 (Off-Street Parking Spaces Required) of the NBMC, food service uses require one parking space for every 100 square feet of gross floor area, and one parking space for every 150 square feet of outdoor dining area. At 4,277 square feet of gross floor area on the first floor, 1,070 square feet of gross floor area on the second floor, and 1,710 square feet of outdoor dining area, the Project requires 66 parking spaces. Since the Project will only provide 49 parking spaces, a 17 space (or 25.75% parking waiver) is required.
2. The Applicant's Parking Survey included data on customer visit volumes and timing, along with observational counts of available parking spaces for the three parking lots serving the Restaurant. The Parking Survey also documented all available on-street parking along Orchid Avenue and East Coast Highway. Parking counts were conducted on Saturday, November 8, 2025, and Wednesday, November 12, 2025. Observations were recorded every 30 minutes between 12 p.m. and 2 p.m., which represents the Restaurant's busiest meal service and an average peak occupancy of 122 guests. The Parking Survey identified peak parking demand at the three parking lots between 12 p.m. and 12:30 p.m. on Wednesday. During this peak period, none of the parking lots were fully occupied. At 12 p.m., six parking spaces were available in the Narcissus Lot, and 11 parking spaces were available in the Orchid Lot. At 12:30 p.m., eight parking spaces were available in the Narcissus Lot, and four parking spaces were available in the Orchid Lot. The survey's overall results show a total of 12 surplus parking spaces during the peak parking period. Since the Restaurant is already operating with the expanded outdoor dining area, approval of the Project is unlikely to generate additional parking demand beyond what was observed. The Parking Survey demonstrates that sufficient parking will be available to serve the Project even during peak demand periods.
3. Although Section 20.40.040 (Off-Street Parking Spaces Required) of the NBMC requires one parking space per 100 square feet of gross indoor floor area and one space per 150 square feet of outdoor dining area, application of this standard overstates the actual parking demand currently generated by the Restaurant. The second floor includes approximately 1,070 square feet of storage and office space that is not accessible to patrons, is not used for customer-serving activities, and does not contribute to peak parking demand. As such, applying the full gross-floor-area parking ratio to this non-customer space results in a higher parking requirement than the use warrants.

Additionally, converting the second floor to a dining area would require an amendment to this CUP.

4. Further, while on-street parking cannot be counted toward satisfying the parking requirements under NBMC Section 20.40.100(B) for off-site parking, additional on-street parking spaces were observed on Narcissus Avenue, East Coast Highway, and Orchid Avenue.
5. The City of Newport Beach Circulation Element of the General Plan acknowledges that Corona del Mar was subdivided before the widespread use of automobiles. This led to smaller parking lot sizes and limited opportunities for parking on private property, which contribute to the area's highly walkable and bikeable residential and commercial character. The Restaurant currently benefits from a high number of walk-in customers and rideshare users. The Parking Survey supports this General Plan assumption, by showing customer counts that significantly exceed the number of occupied off-site parking lot spaces serving the Restaurant.
6. The City Traffic Engineer has reviewed and accepted the observational counts as a valid indicator of the current and future parking demand and supply.

Finding:

- I. *A parking management plan shall be prepared in compliance with Section 20.40.110 (C) (Adjustments to Off-Street Parking Requirements) (Parking Management Plan).*

Fact in Support of Finding:

A parking management plan was not originally considered necessary for the Project. Nonetheless, the Applicant has secured off-site parking in compliance with Section 20.40.100 (Off-Site Parking) of the NBMC. Additionally, the Applicant's Parking Survey has demonstrated that the Restaurant has sufficient surplus parking during peak occupancy times to support the Project.

***Off-Site Parking***

In accordance with Section 20.40.100(B) (Off-Site Parking) of the NBMC, approval of a CUP shall be required for a parking facility or any portion of required parking that is not located on the same site it is intended to serve, subject to the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

1. The off-site parking lot at 410 Narcissus Avenue abuts the Restaurant to the rear and is approximately 13 feet away, across the alley.
2. The off-site parking lot at 409 Orchid Avenue abuts the Restaurant to the rear and is approximately 13 feet away, across the alley.
3. The off-site parking lot at 3536 East Coast Highway is immediately east of the Project Site.

Finding:

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

Fact in Support of Finding:

The Applicant is only counting the off-street parking spaces within the three off-site parking lots to satisfy the parking requirements for the Restaurant. In the Parking Survey, the on-street public parking spaces on Orchid Avenue and Narcissus Avenue were shown to have spaces available during the Restaurant's peak occupancy hours. However, these public on-street parking spaces are not being counted toward the parking requirements and cannot be used to demonstrate a surplus.

Finding:

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

Facts in Support of Finding:

1. All the off-site parking lots are accessed exclusively from an alley rather than a public street. Access to the alley from Narcissus Avenue and Orchid Avenue separates vehicle entries and exits away from East Coast Highway, minimizing the likelihood of congestion on the adjacent streets.
2. All of the off-site parking lots provide adequate internal circulation. Each off-site parking lot contains sufficient maneuvering and turnaround space, and allows vehicles to enter, park, and exit in a forward direction. As a result, no backing movements into public streets are required, eliminating a common source of traffic conflicts.
3. No changes to the surrounding roadway network are required, and the Project does not introduce any new driveways or curb cuts. The Project does not introduce new conflict points or interrupts pedestrian and bicycle routes.

Finding:

- M. *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 lots at 410 Narcissus Avenue and 409 Orchid Avenue shall be marked, maintained, and made permanently available for the Restaurant. The off-site parking lot at 3536 East Coast Highway shall be marked, maintained, and made available to the Restaurant after 5 p.m. on a daily basis.
2. Currently, there is abundant signage already posted throughout the Project Site and off-site parking lots, including free-standing signs and markings painted directly onto individual parking stalls indicating the designated dates and times of permitted use. Conditions of Approval Nos. 5 and 6 require restriping and refacing of signage, as necessary, to update all stall markings and signs to ensure they accurately reflect the specific lots and time periods available to the Restaurant, thereby correcting any existing discrepancies and maintaining clear and permanent identification of authorized parking areas.
3. Condition of Approval No. 7 addresses this finding through: (1) requiring an updated parking agreement or covenant to be recorded against the properties providing off-site parking to the Restaurant, and guaranteeing the availability of off-site parking at 410 Narcissus Avenue, 409 Orchid Avenue, and 3536 East Coast Highway; (2) requiring immediate notification to the Director if the off-site parking becomes unavailable; and (3) providing contingency steps to be taken in the event that any of the off-site parking becomes unavailable.

## 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) 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 filed as PA2025-0042, 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 of adoption of this resolution, unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code.
4. This resolution supersedes Use Permit No. UP1908 (as amended) and Staff Approval No. SA2014-018 (PA2014-137), which upon vesting of the rights authorized by PA2025-0042, shall become null and void.

**PASSED, APPROVED, AND ADOPTED THIS 22<sup>nd</sup> DAY OF JANUARY, 2026.**

AYES:

NOES:

ABSTAIN:

ABSENT:

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

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

**EXHIBIT “A”****CONDITIONS OF APPROVAL****Planning Division**

1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The Conditional Use Permit filed as PA2025-0042 shall expire unless exercised within 24 months from the date of approval as specified in NBMC Section 20.54.060 (Time Limits and Extensions), unless an extension is otherwise granted.
3. *The Restaurant shall close at 11 p.m., daily. All customers shall vacate the establishment no later than 30 minutes following this closing time.*
4. *Live entertainment and dancing are prohibited.*
5. As necessary, Applicant shall restripe parking stalls of off-site parking lots so that markings accurately reflect which businesses the specific spaces serve and the time periods when they are available to the Restaurant.
6. As necessary, Applicant shall reface parking related signage to accurately reflect which parking lots serve the Restaurant and the time periods when they are available.
7. *An updated parking agreement or covenant, in a form approved by the City Attorney and the Community Development Director (“Director”), that guarantees the availability of the required off-site parking at the approved off-site locations shall be recorded with the County Recorder’s Office against all three properties (410 Narcissus Avenue, 409 Orchid Avenue, and 3536 East Coast Highway). The agreement or covenant shall also guarantee the availability of 29 off-street parking spaces for Restaurant patrons and staff at 409 Orchid Avenue, 22 off-street parking spaces for patrons and staff at 410 Narcissus Avenue, and 14 nighttime spaces (after 5 p.m.) for patrons and staff at 3536 East Coast Highway. 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 property owners. Upon notification that any 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 Conditional Use Permit filed as PA2025-0042, the Director shall establish a reasonable period of time in which one of the following shall occur: 1) Substitute parking is provided that is acceptable to the Director; or 2) the size or intensity of use authorized by PA2025-0042 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 Section 20.40.110 of the NBMC rendering the required off-site parking unnecessary.*

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, and all conditions of the Alcoholic Beverage License. Material violation of any of those laws in connection with the use may be cause for revocation of this Conditional Use Permit.
10. The Conditional Use 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 not to constitute a public nuisance.
11. Any change in operational characteristics, expansion in area, or other modification to the approved plans shall require subsequent review by the Planning Division and may require an amendment to this Conditional Use Permit or the processing of a new Conditional Use Permit.
12. Should the Project Site 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.
13. 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.
14. Prior to the issuance of a building permit, a copy of this approval shall be incorporated into the Building Division and field sets of plans.
15. Prior to issuance of a building permit, the Applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Conditional Use Permit file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Conditional Use Permit and shall highlight the approved elements such that they are easily discernible from other elements of the plans.
16. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
17. All proposed signs shall be in conformance with applicable provisions of Chapter 20.42 (Signs) of the NBMC.
18. All lighting shall conform with the standards of Section 20.30.070 (Outdoor Lighting) of the NBMC. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated. If new outdoor

lighting is proposed, the Applicant shall submit a photometric survey as part of the plan check to verify illumination complies with the Zoning Code standards.

19. The operator of the facility shall be responsible for the control of noise generated by the Restaurant including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control) and other applicable noise control requirements of the NBMC. Pre-recorded music may be played in the tenant space, provided exterior noise levels outlined below are not exceeded. The noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control) of the NBMC.
20. No loudspeakers or paging system shall be permitted in conjunction with the facility.
21. Construction activities shall comply with Section 10.28.040 (Construction Activity—Noise Regulations) of the NBMC, which restricts hours of noise-generating construction activities to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or holidays.
22. 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).
23. 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. Graffiti shall be removed within 48 hours of written notice from the City.
24. Deliveries, loading, unloading, opening/closing or other handling of boxes, crates, containers, building materials, trash receptacles, or similar objects within a nonresidential zoning district shall not be allowed 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.
25. Storage outside of the building in the front or at the rear of the Project Site shall be prohibited, with the exception of the trash container on pick-up days.
26. The operator shall take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, and areas surrounding the alcoholic beverage outlet and adjacent properties during business hours.
27. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site

media broadcast, or any other activities as specified in the NBMC to require such permits.

28. 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 **El Cholo Outdoor Dining Patio Expansion, but not limited to, Conditional Use Permit No. PA2025-0042**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

### **Police Department**

29. The 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 the Use Permit.
30. All owners, managers, and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager'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.
31. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the NBMC.
32. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
33. The Applicant shall obtain and maintain authorization from ABC for all areas where the sale, service or consumption of alcohol is under the control of the applicant. Alcohol service and alcohol consumption must occur in the ABC licensed areas only.
34. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.

35. 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 drink orders or the sale of drinks.
36. There shall be no reduced-price alcoholic beverage promotions after 9 p.m.
37. Food service from the regular menu must be made available to patrons until 30 minutes prior to closing.
38. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the NBPD on demand.
39. There shall be no exterior advertising or signs of any kind of type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
40. Strict adherence to maximum occupancy limit is required.
41. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order of the sale of drinks is prohibited (excluding charges for prix fixe meals).
42. The outdoor dining patio shall be separated with a solid decorative barrier (subject to American Disability Act compliance) in accordance with the requirements of ABC.
43. The Applicant shall post and maintain professional quality signs measuring 12 inches by 12 inches with lettering no smaller than 2 inches in height that read, "No alcoholic Beverages Beyond This Point" at all premises exits.
44. Management shall maintain an operational log of daily activities related to the sale and service of alcoholic beverages, as well as any additional security actions. Management shall make this log available to the Police Department upon request.

#### **Building Division**

45. Plumbing fixtures shall comply with CPC Table 422.1 and shall be shown on permitted plans associated with the CUP.
46. Clear width for circulation path shall comply with 11B-403.5.1 and shall be shown on building permit plans associated with the CUP.

- 47. At a minimum, 5% of each type of outdoor seating shall be accessible. If 5% is less than one, a minimum of one seat shall be accessible for each type of seating.
- 48. Detectable warnings are not permitted at door landing and maneuvering clearance.
- 49. Accessible path of travel from parking and public right-of-way shall be shown on permitted plans associated with the CUP.

**Public Works**

- 50. Outdoor dining shall not be located within the public right-of way.

**Fire Department**

- 51. Egress paths of travel from patio to public right-of-way shall be shown on building permit plans associated with the CUP.
- 52. Any fabric shades or canopies over areas to be occupied by patrons shall meet the requirements of the flame spread index of ASTM E84 Class A material.