



CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

November 18, 2021
Agenda Item No. 3

SUBJECT: Wild Taco Restaurant (PA2021-106)
▪ Minor Use Permit No. UP2021-019

SITE LOCATION: 407 31st Street

APPLICANT: Bear Flag Restaurant Group

OWNER: Kerrageous I LLC

PLANNER: Joselyn Perez, Assistant Planner
949-644-3312, jperez@newportbeachca.gov

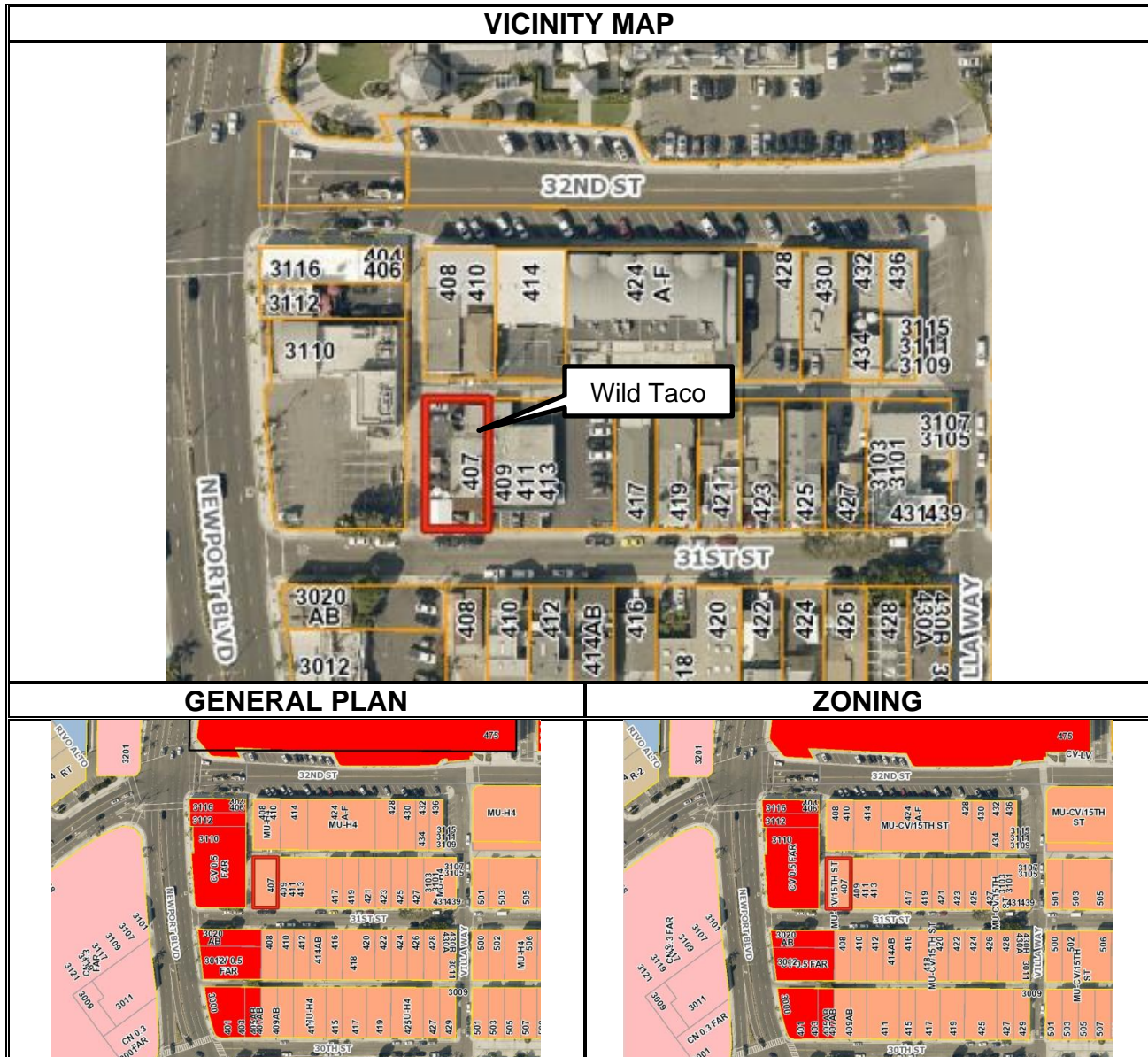
PROJECT SUMMARY

A request to amend and supersede an existing use permit that allows a restaurant with a Type 41 (On-Sale Beer and Wine – Eating Place) Alcoholic Beverage Control (ABC) license. Approval of the new use permit would allow the restaurant to upgrade its ABC license to a Type 47 (On-Sale General – Eating Place) and expand its hours of operation from 11 a.m. to 9 p.m., daily, to 10 a.m. to 10 p.m., daily. There are no late hours (after 11 p.m.) proposed and no physical alterations proposed as part of this project. If approved, this Minor Use Permit would supersede Use Permit No. UP2008-056 and its subsequent amendments.

RECOMMENDATION

- 1) Conduct a public hearing;
- 2) This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment; and
- 3) Adopt Resolution No. PC2021-031 (Attachment No. PC 1) approving Minor Use Permit No. UP2021-019, which upon approval and implementation would supersede Use Permit No. UP2008-056 and subsequent amendments.

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LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	MU-H4 (Mixed Use-Horizontal 4)	MU-CV/15 th Street (Mixed-Use Cannery Village/15th Street)	Restaurant
NORTH	MU-H4	MU-CV/15 th Street	Commercial (office, nail salon)
SOUTH	MU-H4	MU-CV/15 th Street	Mixed-use (commercial and residential)
EAST	MU-H4	MU-CV/15 th Street	Mixed-use (commercial and residential)
WEST	CV (Visitor Serving Commercial)	CV (Commercial Visitor Serving)	Restaurant (currently vacant)

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INTRODUCTION

Project Setting

The existing restaurant is located within a single-story commercial building originally constructed in the 1960s on the highly visited Balboa Peninsula. The Balboa Peninsula is developed with a series of different neighborhoods and districts, linked by the Newport Boulevard/Balboa Boulevard commercial and residential corridor. The restaurant is one block east of Newport Boulevard and close to the beach and the Harbor. The surrounding neighborhood is known as the Cannery Village and features a mix of both residential and commercial uses. Figure 1 below shows the typical development of non-waterfront properties within the neighborhood. While nonresidential uses are the most common, residential uses exist near the project site. The nearest residential use is less than 50 feet away, immediately across 31st Street.



Figure 1, Mixed use properties along 31st Street

The existing restaurant provides seven (7) private onsite parking spaces. Additional public parking is available as metered on-street parking and in nearby municipal lots. Figure 2 below shows the location of three (3) nearby municipal parking lots.



Figure 2, Nearby municipal parking lots, designated with stars

Restaurants to serve both residents and tourists alike are commonplace within the immediate vicinity. Ho Sum Bistro, The Original Mama D's Italian Kitchen, Chihuahua Cerveza, Arc Butcher & Baker, Malarky's Irish Pub, Helmsman Ale House, and the Mayor's Table at the Lido House Hotel are all within 500 feet of the subject property. The surrounding restaurants feature a mix of operational characteristics. Both Malarky's Irish Pub and the Helmsman Ale House operate with late hours (i.e., open beyond 11 p.m.), the Mayor's Table and Malarky's have Type 47 ABC licenses, and The Helmsman Ale House has a Type 75 (On-Sale General Brew Pub) ABC license.

Restaurant Background

The existing restaurant originated as a catering use with incidental fish market sales. In 2009, the facility then known as Bear Flag Fish Company was granted Planning Director's Use Permit No. UP2008-056 and Accessory Outdoor Dining Permit No. OD2008-005. This approval allowed the catering business to transition into a restaurant with limited indoor and outdoor seating. In 2011, the restaurant added beer and wine to their menu with a Type 41 (On-Sale Beer and Wine – Eating Place) ABC license and through the approval of Amendment No. 1 to UP2008-056 (PA2011-027). The restaurant began operating as Wild Taco in 2015, and currently focuses on providing a family friendly taqueria experience with fresh fish caught through Bear Flag Fish Company.



Figure 3, Indoor dining area

Wild Taco is entitled to operate with a 625-square-foot, 15-seat, indoor dining area and a 156-square-foot, 6-seat, outdoor patio. The indoor dining area is pictured above in Figure 3. The restaurant is improved with a kitchen, restroom facilities, back of house storage, and an outdoor storage area. Current hours of operation are from 11 a.m. to 9 p.m., daily.

Project Description

The Applicant requests a minor use permit to 1) allow the upgrade of the existing Type 41 ABC license to a Type 47 ABC license and 2) expand the hours of operation for the restaurant from 11 a.m. to 9 p.m., daily, to a maximum of 10 a.m. to 10 p.m. There are no changes to the floor plan proposed and no physical alterations to the building proposed. There are no late hours proposed (beyond 11 p.m.). The Applicant's project description is available as Attachment No. PC 2.

While the review authority for a minor use permit is the Zoning Administrator per Table 5-1 in Section 20.50.030 (Authority for Land Use and Zoning Decisions) of the Newport Beach Municipal Code (NBMC), the Community Development Director referred the Project to the Planning Commission pursuant to footnote (3) of Table 5-1.

DISCUSSION

General Plan/ Local Coastal Plan

The project site is an interior parcel of Cannery Village and categorized in the Land Use Element of the General Plan as Mixed-Use Horizontal 4 (MU-H4). The MU-H4 Category

is intended to establish the character of a distinct and cohesively developed district or neighborhood containing multi-family residential with clusters of mixed-use and/or commercial buildings. Permitted uses include residential, general or neighborhood commercial uses including retail, office and restaurants. The ground floor of mixed-use structures is restricted to nonresidential uses on the street frontage and the rear and upper floors used for residential uses or overnight accommodations comparable to the MU-V land use category. Mixed-use or commercial buildings are allowed on parcels at street intersections, but not required, on other parcels. The project site is not located at a street intersection and therefore is not required to be a mixed-use building. The standalone restaurant use is consistent with the allowed uses intended for the MU-H4 category.

Land Use Element Goal LU 6.8 envisions a series of commercial, visitor-serving, marine-related, civic, and residential neighborhoods that are vibrant throughout the year, differentiated by their historic and functional characteristics and architectural style, yet integrated by streetscape amenities for the Balboa Peninsula. The Project will encourage the success of a business that provides an important amenity to both residents and visitors to the Peninsula. Additionally, Land Use Element Policy LU 5.3.5 (Pedestrian-Oriented Architecture and Streetscapes) mentions the inclusion of outdoor seating or other amenities that extend interior uses to the sidewalk, where feasible. The restaurant provides an outdoor patio in the front of the property that is inviting to pedestrians which is consistent with this goal. The General Plan acknowledges that while residential components of mixed-use projects within Cannery Village have performed well, there has been less success in attracting the commercial uses envisioned for the area. Expanding the privileges of the current restaurant would provide additional menu options for customers and would enhance the economic viability of the business.

The property is located within the coastal zone and has the Coastal Land Use Plan designation of MU-H (Mixed-Use Horizontal). The project is exempt from coastal development permitting requirements because, if approved, the proposal would only allow for additional menu offerings and a later closing hour. There are no physical changes proposed, no increase in floor area, building height, or parking demand; therefore, there is no development nor is there any anticipated change in the intensity of the land use.

Zoning Code

The project site is zoned MU-CV/15th Street (Mixed-Use Cannery Village/15th Street). The MU-CV/15th Street Zoning District allows restaurants, subject to approval of a minor use permit. Wild Taco currently operates under Amendment No. 1 to Use Permit No. UP2008-056 (PA2011-027). Because the project includes a request to expand the existing alcohol privileges from a Type 41 ABC license to a Type 47 ABC license, an amendment to UP2008-056 is required. The project must be evaluated and found consistent with Section 20.48.030 (Alcohol Sales) and Section 20.52.020 (Conditional Use Permits and Minor Use Permits) of the NBMC.

Alcohol Sales Finding

In accordance with Section 20.48.030 (Alcohol Sales) of the NBMC, the Planning Commission must find that:

1. *The use is consistent with the purpose and intent of Subsection 20.48.030 (Alcohol Sales) of the Municipal Code.*

The purpose and intent of Subsection 20.48.030 (Alcohol Sales) of the NBMC is to maintain a healthy environment for residents and businesses by establishing a set of consistent standards for the safe operation of alcohol establishments. The project will not compromise the existing restaurant's consistency with the surrounding neighborhood. Cannery Village is intended to support a mix of uses that make the neighborhood an enjoyable place to live and visit. The need to balance the potential for nuisances while providing supporting services is considered and the project is conditioned accordingly. Notably the draft resolution includes a prohibition on a separate bar counter, no live entertainment, no games or contests requiring or involving the consumption of alcoholic beverages, and a closing hour of 10 p.m.

The property is in an area which the Newport Beach Police Department (NBPD) has designated as Reporting District 15 (RD 15). RD 15 experiences higher than average crimes as compared to other reporting districts in the City. The higher crime rate is largely due to the number of visitors to the Peninsula, the high concentration of restaurants, and the high ratio of non-residential to residential uses. There were five (5) dispatch events to the property in 2020, and three (3) in 2021. Police dispatch notes suggest that none of the dispatch events were related to the business and, therefore, did not likely result from the over-service of alcohol or from a neglect in responsibility by the Applicant.

The NBPD has prepared a memorandum including alcohol-related statistics for consideration (Attachment No. PC 4) and has expressed no objections to the proposed project. The memorandum also includes suggested operational conditions of approval which have been incorporated into the draft Resolution.

Minor Use Permit Findings

In accordance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits) of the NBMC, the Planning Commission must also make the following findings for approval of a minor use permit:

1. *The use is consistent with the General Plan and any applicable Specific Plan;*
2. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of the Zoning Code and Municipal Code;*

3. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;*
4. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and*
5. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or 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.*

The operation is defined as a food service, eating and drinking establishment land use. The existing restaurant was found to be an allowable use and consistent with the NBMC through the approval of Use Permit no. UP2008-056. The existing use has operated as a restaurant since 2009 and has not proven detrimental to the surrounding uses. The project was reviewed by the Code Enforcement and Water Quality Division and no ongoing issues were identified as part of their review. Furthermore, all operative conditions of approval from the current use permit are included in the draft Resolution. This will help continue to promote compatibility with the surrounding uses and should minimize any potential nuisances. No physical improvements are proposed as part of this project.

Parking

The existing restaurant is served by seven (7) onsite parking spaces. While this number is lower than the number of spaces currently required by NBMC Chapter 20.40.040 (Off-Street Parking Spaces Required), it is in conformance with Use Permit No. UP2008-056. The original approval for the restaurant showed a bike rack adjacent to the outdoor patio, entirely on private property. At some point in the operating history of the restaurant, the rack was removed. This draft Resolution requires that the applicant re-install the bike rack.

The proposed project does not increase the net public area of the restaurant and therefore does not increase parking demand. If in the future the applicant chooses to increase either the net public area of the indoor dining area or expand the outdoor patio, they will need to amend their use permit. At that time, parking will need to be studied further.

Trash Enclosure

The restaurant abuts an alley and currently has a substandard trash enclosure with outdoor storage. The enclosure consists of chain link material which is not permitted and lacks a roof or covering. The previous use permit required that trash be stored within dumpsters, in a trash enclosure, and defined a trash enclosure as three walls and a self-latching gate. The past definition does not meet the current standards stated in NBMC

section 20.30.120 (Solid Waste and Recyclable Materials Storage). The Project has been conditioned with improving the area per 20.30.120 (Solid Waste and Recyclable Materials Storage). Condition of Approval number 24 sets a time frame for the upgrade of the trash enclosure to no later than one year from the date of issuance of the Type 47 ABC License. This improvement will enhance the aesthetic quality of the alley, help protect water quality, and bring the restaurant into compliance with the NBMC.

Conclusion

Staff believes facts exist in support of each finding, which are detailed in the attached draft Resolution for approval (Attachment No. PC 1).

Alternatives

1. The Planning Commission may suggest specific changes that are necessary to alleviate any concerns. If the requested changes are substantial, the item could be continued to a future meeting. Should the Planning Commission choose to do so, staff will return with a revised resolution incorporating new findings and/or conditions.
2. If the Planning Commission believes that there are insufficient facts to support the findings for approval and a denial action is more appropriate, staff would recommend a continuance to prepare a resolution reflecting this course of action.

Environmental Review

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

Class 1 exempts projects involving negligible or no expansion of use including but not limited to repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features. The Project does not include any interior or exterior alterations to the existing eating and drinking establishment. No increase of gross floor area or net public area would occur with the approval of the request.

Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days before the scheduled meeting, consistent with the provisions of the NBMC. Additionally,

the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

Prepared by:



Joselyn Perez
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Submitted by:



Jim Campbell
Deputy Community Development Director

BMZ/jp

ATTACHMENTS

- PC 1 Draft Resolution with Findings and Conditions
- PC 2 Applicant's Project Description
- PC 3 Police Department Memorandum
- PC 4 Project Plans

01/12/18

Attachment No. PC 1

Draft Resolution with Findings and
Conditions

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RESOLUTION NO. PC2021-031

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2021-019 SUPERSEDING USE PERMIT NO. UP2008-056 AND ALLOWING A TYPE 47 (ON-SALE GENERAL – EATING PLACE) ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE AND EXPANDED HOURS AT AN EXISTING FOOD SERVICE, EATING AND DRINKING ESTABLISHMENT LOCATED AT 407 31st STREET (PA2021-106)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Bear Flag Restaurant Group (“Applicant”), with respect to property located at 407 31st Street, and legally described as Lot 9, Block 431, Lancaster’s Addition Tract 421 in the City of Newport Beach, County of Orange (“Property”) requesting approval of a minor use permit.
2. The Applicant seeks Minor Use Permit UP2021-019 (“Minor Use Permit”) to: 1) upgrade an existing Type 41 (On-Sale Beer and Wine – Eating Place) Alcoholic Beverage Control (“ABC”) license to a Type 47 (On-Sale General – Eating Place) ABC license at an existing food service, eating and drinking establishment, i.e., restaurant; and 2) expand the hours of operation for the restaurant from 11 a.m. to 9 p.m., daily, to 10 a.m. to 10 p.m., daily (“Project”). The existing restaurant, Wild Taco, has a 625-square-foot indoor dining area and a 156-square-foot outdoor dining area. There are no changes proposed to the current floor plan, no physical alterations proposed to the building, and no late hours proposed. If approved, this Minor Use Permit would supersede Use Permit No. UP2008-056 (PA2011-027) and its subsequent amendments.
3. The Property is categorized MU-H4 (Mixed Use-Horizontal 4) by the General Plan Land Use Element and is located within the MU-CV/15th Street (Mixed-Use Cannery Village/15th Street) Zoning District.
4. The Property is located within the coastal zone. The Coastal Land Use Plan category is MU-H (Mixed-Use Horizontal) and it is located within the MU-CV/15th Street (Mixed-Use Cannery Village/15th Street) Coastal Zoning District. The Project is exempt from coastal development permitting requirements because, if approved, the proposal would only allow for additional menu offerings and modified hours of operation. There is no increase in floor area, building height, or parking demand; therefore, there is no development nor is there any anticipated change in the intensity of the land use.
5. Pursuant to Table 5-1 in Section 20.50.020 (Authority for Land Use and Zoning Decisions) of the Newport Beach Municipal Code (“NBMC”), the review authority for a minor use permit is the Zoning Administrator. In this case, the Community Development Director

referred the Project to the Planning Commission. and is authorized to do so pursuant to footnote (3) of Table 5-1.

6. A public hearing was held on November 18, 2021, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the public 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 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) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The Project does not include any interior or exterior alterations to the existing eating and drinking establishment, and no increase of gross floor area or net public area.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.48.030(C)(3) (Alcohol Sales) and Section 20.52.020(F) (Conditional Use Permits and Minor Use Permits) 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 NBMC Section 20.48.030 (Alcohol Sales).*

Facts in Support of Finding

1. 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.*
 - a. The Property is in an area the Newport Beach Police Department ("NBPD") has designated as Reporting District 15 (RD 15). RD 15 stretches from 20th Street to 37th Street along the Balboa Peninsula. 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 ABC. Part One Crimes are the eight (8)

most serious crimes defined by the FBI Uniform Crime Report: criminal homicide, rape, robbery, aggravated assault, burglary, larceny-theft, auto theft, and arson. RD 15 is considered a higher crime area, as compared to other reporting districts in the City. The RD 15 crime count is 540, which is 363 percent over the citywide crime count average of 140. The higher crime rate is largely due to the number of visitors to the Peninsula, the high concentration of restaurants, and the high ratio of nonresidential to residential uses. In comparison, RD 13 (8th Street to 20th Street) is 30 percent over the citywide average, RD 16 (37th Street to 54th Street) is 25 percent over the citywide average, and RD 12 (B Street to 8th Street) is 46 percent below the citywide average. RD 13 and RD 16 are similar to RD 15 with regards to the high ratio of nonresidential to residential uses, whereas RD 12 contains a higher ratio of residential to nonresidential uses.

- b. The Property is located on an interior parcel of Cannery Village. It is adjacent to Newport Boulevard and the CV (Commercial Visitor-Serving) Zoning District. Cannery Village contains a mix of residential uses, small shops, art galleries, professional offices, service establishments, and other nonresidential uses. Expanding the privileges of the restaurant would provide additional menu options for customers and would enhance the economic viability of the business. There are no late hours proposed.
 - c. The NBPd has reviewed the Project and has no objection to the addition of the Type 47 ABC license or the expanded hours, subject to appropriate conditions of approval. These conditions of approval have been incorporated into Exhibit "A" of this Resolution and include a prohibition on a separate bar counter, no live entertainment, and no games or contests requiring or involving the consumption of alcoholic beverages.
- ii. *The number of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
- a. RD 15 had a higher percentage of alcohol-related crimes in 2020, compared to all adjacent reporting districts; however, this is to be expected given that this figure includes driving under the influence, public intoxication, and liquor law violations, and the area is highly concentrated with commercial establishments. There were five (5) dispatch events to the property in 2020, and three (3) in 2021. Police dispatch notes suggest that none of the dispatch events were related to the business and, therefore, did not likely result from the over-service of alcohol or from a neglect in responsibility by the Applicant.
- iii. *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 Balboa Peninsula is generally characterized by a high number of visitors and both commercial and residential zoning districts located near one another.

- b. The Property is in a mixed-use district where residential development is permitted. The adjoining property to the east is a commercial building with residential uses beyond, there are residential uses in mixed-use properties across 31st Street and the remaining uses to the north and to the west are nonresidential.
 - c. The nearest public park, Lido Park, is located approximately 890 feet to the northeast. The nearest church, St. James Episcopal Church, is located approximately 563 feet to the northeast and substantially separated by commercial properties and the 32nd Street right-of-way. The nearest school, Newport Elementary School, is located approximately one (1) mile to the southeast along Balboa Boulevard. The Property is not located near any known daycare center. The Project is generally surrounded by other commercial uses and is not anticipated to attract unaccompanied minors.
 - d. Eating and drinking establishments with incidental alcohol service are present in the general area and the proposed ABC license is not anticipated to alter the operational characteristics of the current restaurant such that it becomes detrimental to the area. Exhibit "A" of this Resolution includes conditions of approval, such as the prohibition of late-night happy hour and a closing hour of 10 p.m., to help minimize the potential for negative impacts and nuisances to surrounding land uses and to 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.*
- a. The Project is within Cannery Village and adjacent to Newport Boulevard. Restaurants are common in this area of the Balboa Peninsula. Some of the neighboring restaurants include The Mayor's Table, Mama D's Italian Kitchen, Malarky's Irish Pub, and the Helmsman Ale House on Newport Boulevard and Arc Butcher and Baker on 30th Street. Both Malarky's Irish Pub and the Helmsman Ale House operate with late hours (i.e., open beyond 11 p.m.), the Mayor's Table and Malarky's have Type 47 ABC licenses, and The Helmsman Ale House has a Type 75 (On-Sale General Brew Pub) ABC license.
 - b. The RD 15 statistics indicate an overconcentration of ABC licenses within this statistical area. The per capita ratio of one (1) license for every 69 residents is higher than all adjacent districts and the average citywide ratio. This is due to the higher concentration of commercial and visitor serving uses land uses with a lower number of residential properties. RD 15 includes Lido Marina Village, Cannery Village, and McFadden Square, which are all locations that feature a high number of restaurants. Furthermore, there are additional ABC licenses attributed to adjacent marina operations, including harbor tours and Duffy boat rentals. While the Project is in proximity to other establishments selling alcoholic beverages, staff, including the NBPD, believes the expanded privileges requested, subject to the included conditions of approval, should not prove detrimental to the area.

- v. *Whether or not the proposed amendment will resolve any current objectionable conditions.*
- a. No objectionable conditions are presently occurring at the Property.
 - b. Approving the Project will allow the existing restaurant to diversify its offerings as a convenience to its patrons. The NBPD acknowledges the addition of liquor to the existing restaurant is a new privilege; however, the Project has been reviewed and conditioned to help ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the NBMC is maintained and that a healthy environment for residents and businesses is preserved.

Finding

B. The use is consistent with the General Plan and any applicable specific plan.

1. The MU-H4 (Mixed-Use Horizontal 4) category is intended to establish the character of a distinct and cohesively developed district or neighborhood containing multi-family residential with clusters of mixed-use and/or commercial buildings. Permitted uses include: (a) multi-family residential, (b) general or neighborhood commercial, and/or (c) mixed-use structures where the ground floor shall be restricted to nonresidential uses along the street frontage such as retail sales and restaurants and the rear and upper floors used for residential including senior units and overnight accommodations (comparable to MU-V). Mixed-use or commercial buildings shall be required on parcels at street intersections and are permissible, but not required, on other parcels. The project site is not located at a street intersection and therefore is not required to be a mixed-use building and the standalone restaurant use is consistent with the allowed uses intended for the MU-H4 category.
2. Land Use Element Policy LU 5.2.2 (Buffering Residential Areas) suggests that commercial uses adjoining residential neighborhoods should be designed to be compatible and minimize impacts to these uses. There is no dancing nor live entertainment proposed and the only music will be pre-recorded ambient or background music.
3. Land Use Element Policy LU 5.2.3 (Alley Design) encourages the improvement and enhancement of the aesthetic quality of alleys without impacting service access. The Property abuts an alley and currently has a trash enclosure with outdoor storage in the rear. The enclosure consists of chain link material which is not permitted. The Project has been conditioned with bringing the area into compliance with NBMC Section 20.30.120 (Solid Waste and Recyclable Materials Storage), which will improve the aesthetic quality of the alley.
4. Land Use Element Policy LU 5.3.5 (Pedestrian-Oriented Architecture and Streetscapes) mentions the inclusion of outdoor seating or other amenities that extend interior uses to the sidewalk, where feasible. The restaurant provides an outdoor patio in the front of

the property. While the patio does not extend all the way to the sidewalk along 31st Street, the patio is inviting to pedestrians which is consistent with this goal.

5. Land Use Element Goal LU 6.8 envisions “a series of commercial, visitor-serving, marine-related, civic, and residential neighborhoods that are vibrant throughout the year, differentiated by their historic and functional characteristics and architectural style, yet integrated by streetscape amenities” for the Balboa Peninsula. The Project choices will encourage the success of a business that provides a service to residents and visitors to the Peninsula alike.
6. Land Use Element Goal LU 6.10 envisions Cannery Village as a “pedestrian-oriented residential neighborhood that provides opportunities for live/work facilities and supporting retail uses.” The Project will help to improve an existing amenity for the surrounding residents to walk to and enjoy.
7. The Property is not part of a specific plan area.

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 MU-CV/15th Street Zoning District allows eating and drinking establishments subject to approval of a Minor Use Permit.
2. Wild Taco is an existing restaurant. It was found to be an allowable use and consistent with the NBMC through the approval of Use Permit No. UP2008-056 (PA2008-173) in 2008 and the subsequent amendment (Amendment No. 1 to Use Permit No. UP2008-056 [PA2011-027]) in 2011.
3. NBMC Section 20.48.090(G)(3)(b) (Eating and Drinking Establishments, Outdoor Dining) requires that the review authority consider the relationship of outdoor dining to sensitive noise receptors. The outdoor dining area’s closing hour of 10 p.m., daily, will help minimize noise impacts to residents located across 31st Street and to the east.
4. The Property currently provides seven (7) on-site parking spaces. This is less than what is required by Section 20.40.040 (Off-Street Parking Spaces Required) of the NBMC. The Project does not increase the net public area of the restaurant and, therefore, does not increase the parking demand. No additional parking is required.
5. While the current trash storage area for the restaurant does not conform to the standards of NBMC Section 20.30.120 (Solid Waste and Recyclable Materials Storage), Condition of Approval Number 24 requires the Applicant bring the area into compliance with the requirements of the section.

6. No physical improvements are proposed as part of this project.

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 improved with a kitchen, an indoor dining area, an outdoor dining area, restrooms, and back of house storage. The existing infrastructure is adequate to accommodate the existing restaurant. The location is compatible with other commercial uses in the area and serves as an important visitor-serving use that benefits the area.
2. The Property is in a relatively dense commercial village area where there are multiple uses within a short distance of each other. Cannery Village is conducive to a significant number of walk-in patrons from the surrounding neighborhood and other bustling areas, such as the Lido House Hotel approximately 200 feet to the north.
3. The operational conditions of approval will continue to promote compatibility with the surrounding uses. The floor plan provides tables and counter areas to accommodate 15 interior seats and six (6) outdoor dining patio seats. The hours of operation are limited to stagger and minimize the demand for police services in the area. The Applicant is required to maintain substantial conformance with the approved floor plan in conjunction with a Type 47 (On Sale General – Eating Place) ABC license so that the restaurant's primary use is an eating and drinking establishment and not a bar, lounge, or night club.
4. The restaurant will not be granted late hours as part of this Project and is conditioned to close by 10 p.m. This operational characteristic, including no live entertainment and no dancing, will help prevent noise from becoming a nuisance to the surrounding residential properties.
5. The use will not necessitate high levels of lighting or illumination and all outdoor lighting must conform to Section 20.30.070 (Outdoor Lighting) of the NBMC.

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 site is an existing restaurant. The current floor plan was reviewed and approved by all City Departments through the approval of the restaurant's initial use permit and the subsequent issuance of building permits. No physical improvements are proposed as part of this Project.

2. The site can be accessed by both 31st Street and the alley in the rear. Adequate public and emergency vehicle access, public services, and utilities are provided for on-site.

Finding

- F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or 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 current restaurant has been in operation since 2008. Its operation has not proven detrimental to the surrounding uses. Adding additional alcoholic beverage options to the menu is not expected to change this, given the attached conditions of approval.
2. The Project was reviewed by the Code Enforcement and Water Quality Division. There were no on-going issues identified as part of their review. The Code Enforcement and Water Quality Division suggested conditions of approval that would prohibit live entertainment and dancing. These conditions have been incorporated into Exhibit "A" of this Resolution.
3. The restaurant with expanded privileges should have a positive impact on the area. The restaurant serves both the surrounding community and visitors to Newport Beach. It promotes economic activity within the Cannery Village and may promote further revitalization of the surrounding commercial properties.
4. The Project 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 within the facility, adjacent properties, or surrounding public areas, sidewalks, or parking lots of the restaurant, during business hours, if directly related to the patrons of the establishment.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby finds the 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 Planning Commission of the City of Newport Beach hereby approves Minor Use Permit No. UP2021-019, 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 is filed with the City Clerk in accordance with the provisions of Title 20 (Planning and Zoning), of the NBMC.
4. This resolution supersedes Use Permit No. UP2008-056 (PA2011-027) and its prior amendments, which upon vesting of the rights authorized by this Minor Use Permit, shall become null and void.

PASSED, APPROVED, AND ADOPTED THIS 18TH DAY OF NOVEMBER 2021.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Lee Lowrey, Chairman

BY: _____
Curtis Ellmore, Secretary

EXHIBIT “A”**CONDITIONS OF APPROVAL**

(project-specific conditions are shown in italics)

Planning Division

1. Minor Use Permit No. UP2021-019 shall expire unless exercised with 24 months from the date of the approval as specified in Section 20.54.060 (Time Limits and Extensions) of the NBMC, unless an extension is otherwise granted.
2. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. This Use Permit may be modified or revoked by the City Council or 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.
5. Any substantial 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 Use Permit or the processing of a new Use Permit.
6. Future alterations to the restaurant will be evaluated for compliance with City standards and respective codes, and if a building permit is required, will be during the plan check process.
7. *The hours of operation for the restaurant (interior and exterior) shall be limited between 10 a.m. to 10 p.m., daily.*
8. *The net public area shall not exceed 652 square feet for the interior of the subject restaurant facility.*
9. *The accessory outdoor dining shall be used only in conjunction with the related adjacent establishment. The outdoor dining patio shall be limited to 156 square feet in area (25 percent of the authorized indoor net public area).*

10. *The seating and dining in the outdoor area shall be limited to dining table height (approximately 30 inches) and table surface area of 24 inches by 30 inches. The use of elevated counters, tables, and barstools are prohibited in the outdoor dining area.*
11. *The material and color of any awnings or umbrella located on the outdoor dining/patio areas shall be subject to review and approval by the Planning Division. No form of advertisement shall be placed on an awning, umbrella, or elsewhere in the outdoor patio dining areas. The outdoor patio dining areas, including any awning or umbrella, shall be maintained in a clear orderly condition at all times.*
12. *Should problems arise with regards to umbrellas, tables, chairs or stools encroaching into the public right-of-way, the Planning Division reserves the right to require the relocation of the railing/fencing and/or removal of all or a portion of the outdoor dining area seating and/or the use of unitized table and chair construction.*
13. *A minimum of seven (7) on-site parking spaces shall be made available for the restaurant at all times.*
14. *Employees shall park on-site or in a municipal parking lot at all times and not on residential streets in the neighborhood.*
15. *The seating adjacent to the food use facility shall be limited to the area as delineated on the approved site plan only. The approved outdoor dining area shall be located on a solid surface in accordance with the approved floor plan or seating plan. The rail/fence or screen planting shall be a minimum of 42 inches tall unless otherwise required.*
16. *The installation of roof coverings in addition to the fabric awnings shall not have the effect of creating a permanent enclosure. Fences, walls, or similar barriers shall serve only to define the outdoor area and not constitute a permanent all-weather enclosure.*
17. *Building permits shall be obtained for the structure on the roof or the structure shall be removed.*
18. *Bicycle parking shall be provided adjacent to the outdoor dining patio, as shown in the approved plans for Use Permit No. UP2008-056.*
19. *The use of the rear door shall be limited to deliveries and employees use only and shall cease at 9 p.m.; ingress and egress by patrons is prohibited unless there is an emergency.*
20. *The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.*

21. 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. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

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

22. 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.
23. No outside paging system shall be utilized in conjunction with this establishment.
24. *All trash shall be stored within the building or in dumpsters that are stored within the existing trash enclosure in the rear of the property. The existing trash enclosure shall be improved to be compliant with NBMC Section 20.30.120 (Solid Waste and Recyclable Materials Storage) no later than one (1) year from the date of issuance of the Type 47 ABC License.*
25. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
26. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
27. The Applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14 (Water and Sewers) of the NBMC, including all future amendments (including Water Quality related requirements).
28. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10 p.m. and 7 a.m. on weekdays and Saturdays and between the hours of 10 p.m. and 9 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
29. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.

30. 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.
31. There shall be no on-site radio, television, video, film, or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved Special Event Permit issued by the City of Newport Beach.
32. 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 Wild Taco Alcohol License Upgrade including, but not limited to, Minor Use Permit No. UP2021-019 (PA2021-106). 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

33. The approval is for an eating and drinking establishment with on-sale alcoholic beverage service. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control (ABC) shall be a Type 47 (On-Sale General – Eating Place) license, in conjunction with the restaurant as the principal use of the facility.
34. The Applicant shall abide by all requirements and conditions of the Alcoholic Beverage 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 use permit.
35. 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.

36. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the NBMC.
37. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall always 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 Police Department on demand.
38. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
39. There shall be no live entertainment or dancing allowed on the premises.
40. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.
41. There shall be no reduced-price alcoholic beverage promotions after 9 p.m.
42. Food service from the regular menu shall be made available to patrons at all times that the establishment is open for business.
43. Applicant 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.
44. Any event or activity staged by an outside promoter or entity, where the Applicant, operator, owner or his 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.
45. "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).
46. Strict adherence to maximum occupancy limits is required.
47. The Applicant shall maintain a security recording system with a 30-day retention and make those recordings available to police upon request.
48. 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.

49. No off-sales of alcohol shall be permitted.

Fire Department

50. A hood fire suppression system shall be installed at or above all commercial cooking appliances and domestic cooking appliances used for commercial purposes that produce grease vapors. California Fire Code Section 609.2.

Building Division

51. Bathrooms shall be available to the general public (patrons) during regular business hours of the operation, unless otherwise approved by the Building Division.

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Attachment No. PC 2

Applicant's Project Description

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Wild Taco – 407 31st Street

Project Description

March 10, 2021

Proposed Use: Permit to sell beer, wine and spirits for on-site consumption (ABC Type 47) at an existing restaurant that currently sells beer and wine.

Store Hours of Operation:

Monday: 11 am to 9:00 pm

Tuesday – Friday: 11:00 a.m. to 10:00 p.m.

Saturday: 10:00 a.m. to 10:00 p.m.

Sundays: 10:00 a.m. to 9:00 p.m.

Security Measures/Training: Wild Tacos has 9 indoor and 2 outdoor surveillance cameras. Employees will go through Responsible Beverage Sales Training program through an ABC approved provider.

Average number of employees per shift: 10 - 15

**Wild Tacos
407 31st Street
Statement of Justification
3/10/21**

The use is consistent with the purpose and intent of Section 20.8.030 (Alcohol Sales) of the Zoning Code.

1. Wild Tacos has been operating with beer and wine in the same location for over a decade. The addition of distilled spirits does not significantly change the character of the development.
2. Wild Taco fronts on 31st Street near the intersection of Newport Blvd. and is not located near parks, schools or religious facilities. There are residences located approximately 125' to the east.

The use is consistent with the General Plan and any applicable specific plan.

1. The property is designated as MU-H4 by the Land Use Element of the General Plan. The restaurant use is consistent with that designation as it is a supporting use that is integrated as part of the multi-tenant commercial corridor, an allowed use under MU-CV designation with a CUP.

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

1. The subject property is located within MU-CV/15th ST Mixed-Use Cannery Village and 15th Street zoning district, which allows for a wide variety of retail uses and eating and drinking establishments with a CUP.
2. The intent of MU-CV/15th ST Mixed-Use Cannery Village and 15th Street Zoning District is to allow for uses that support existing retail, dining and other commercial uses. The area is intended to be a vibrant neighborhood retail and dining center and that serve visitors, residents and employees of the area. The proposed addition of distilled spirits to an existing restaurant that currently serves beer and wine is compatible with other uses within MU-CV/15th ST Mixed-Use Cannery Village and 15th Street Zoning District.
3. The proposed project is consistent with the on-sale alcohol sales provisions within Chapter 20.48 of the Zoning Code (Standards for Specific Land Uses).

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

1. Wild Tacos and its predecessor, Bear Flag have operated at this location for nearly a decade with beer and wine sales. The addition of distilled spirits to a restaurant already serving beer and wine will not change the operating characteristics and therefore continue to be compatible.
2. The store closes no later than 11pm each day
3. There are no sensitive uses such as parks, schools or churches, within the immediate vicinity.

4. Operational conditions will be placed to ensure compatibility with the surrounding uses and minimize alcohol related impacts.

The site is physically suitable in terms of design, location, shape, size, operating characteristics and the provision of public and emergency vehicle access and public services and utilities.

1. The restaurant has operated without issue for nearly a decade. The addition of distilled spirits is not anticipated to change the operating characteristics of the business and there for it will remain suitable.
2. Adequate public and emergency vehicle access, public services and utilities are provided within the existing infrastructure. Wild Taco is a located in small multi-tenant building with an alley behind and 31st Street to the front.

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.

1. Wild Taco has operated with beer and wine for nearly a decade and has not previously caused public health, safety and welfare issues and the addition of distilled spirits is not anticipated to change the character of the business.
2. The project will be reviewed and appropriate conditions of approval will be placed to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible.

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Attachment No. PC 3

Police Department Memorandum

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**NEWPORT BEACH POLICE DEPARTMENT
DETECTIVE DIVISION**

MEMORANDUM

TO: Joselyn Perez, Assistant Planner
FROM: Wendy Joe, Police Civilian Investigator
DATE: June 21, 2021
SUBJECT: Wild Taco
407 31st Street
PA2021-106

At your request, the Police Department has reviewed the project application for Wild Taco located at 407 31st Street, Newport Beach. The applicant has requested a new minor use permit to upgrade the current Type 41 ABC License (Beer and Wine – Eating Place) to a Type 47 ABC License (On-Sale General – Eating Place). There are no late hours at this establishment.

Statistical Data and Public Convenience or Necessity

Attached is a summary report compiled by Newport Beach Police Department (NBPD) Crime Analyst, Kristi Kondo, which provides detailed statistical information related to alcohol establishments in and around the applicant's place of business 407 31st Street.

Business and Professions Code §23958.4 finds "undue concentration" for an applicant premises in two ways: 20% higher crime (with an alcohol nexus) in a Reporting District as compared to the City-wide average, or an over saturation of alcohol licenses in a census tract compared to the county.

Crime Statistics

The Police Department divides the City into areas referred to as Reporting Districts. This allows the Police Department to compile statistical data, as well as better communicate officer locations while policing. The proposed applicant location is within Reporting District (RD) 15 which stretches from 20th Street to 37th Street along the Newport Beach Peninsula.

Per Business and Professions Code §23958.4, the Police Department is required to report offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, theft, and motor vehicle theft (all Part I crimes), combined with all arrests for other crimes, both felonies and misdemeanors (except traffic citations) to the Department of Alcoholic Beverage Control (ABC). These figures make up the "Crime Count" which is indicated on the attached statistical data form.

This reporting district is reported to ABC as a high crime area as compared to other Reporting Districts in the City. The RD's Crime Count is 540, 363% over the City-wide crime count average

of 140. Since this area has a 20% greater 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 13 (8th Street to 20th Street) is 30% above the City-wide average, RD 12 (B Street to 8th Street) is 46% below the City-wide average and RD 16 (37th Street to 54th Street) is 25% over the average. Of 38 reporting districts in Newport Beach, we reported 12 to ABC as high crime areas.

The highest volume crime in this area is simple assault, which may be indicative of an overconsumption of alcohol. The highest volume arrest in the area is Public Intoxication.

DUI, Public Intoxication, and liquor law violations make up 31% of arrests in this reporting district. In comparison, the figure for neighboring RD 13 is 26%, RD 12 is 38% and RD 16 is 16%.

This location meets the legal criteria for undue concentration pertaining to crime (B&P §23958.4).

Alcohol License Statistics

The standard which ABC utilizes to identify an area over-saturated with alcohol licenses is outlined in Business and Professions Code §23958.4. A reporting district is classified as having “undue concentration” when there is a higher retail license to resident ratio than that of the county.

The applicant premise is located within census tract 0635.00. This census tract has an approximate population of 5,726 residents with 83 active on-sale alcohol licenses. That is a per capita ratio of 1 on-sale license for every 69 residents. Per the Business and Professions code, we compare this per capita ratio to Orange County’s off-sale per capita ratio of 1 license for every 622 residents.

This location meets the legal criteria for undue concentration pertaining to alcohol licenses (B&P §23958.4).

Police Dispatch Events

There were three dispatch events at this location in 2021 and five in 2020. Per dispatch notes, all appear to be unrelated to the business.

Discussion and Recommendations

Undue Concentration exists in this location in regards to both crime and alcohol license saturation, therefore, ABC will need to make a determination that this restaurant is a public convenience or necessity (PCN) during their licensing process. PCN is demonstrated when the business operation provides some kind of benefit to the surrounding community. Approval of a use permit will indicate that the City of Newport Beach agrees this establishment will provide public convenience or necessity.

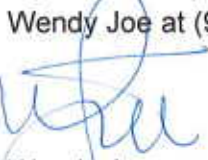
The Police Department is routinely concerned when alcohol licenses are added within the City’s over concentrated areas. Alcohol is not new to this establishment, but the addition of liquor is. Given the business has no calls for service related to alcohol and has no late hours, the Police Department has no objections to this project.

The Police Department has determined the following or similar conditions would be appropriate for the business:

1. 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 or conditions in connection with the use is a violation and may be cause for revocation of the use permit.
2. 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 within 60 days of hire. This training must be updated every 3 years regardless of certificate expiration date. The certified program must meet the standards of the certifying/licensing body designated by the State of California. The establishment shall comply with the requirements of this section within 60 days of approval. 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.
3. The eating and drinking establishment shall close no later than 10:00 p.m.
4. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code.
5. 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 Police Department on demand.
6. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
7. There shall be no live entertainment or dancing allowed on the premises.
8. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.
9. There shall be no reduced price alcoholic beverage promotions after 9:00 p.m.
10. Food service from the regular menu shall be made available to patrons until closing.
11. 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.
12. Any event or activity staged by an outside promoter or entity, where the applicant, operator, owner or his 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.

13. "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).
14. Strict adherence to maximum occupancy limits is required.
15. The applicant shall maintain a security recording system with a 30-day retention and make those recording available to police upon request.
16. 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, and debris 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.
17. 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.
18. Strict adherence to maximum occupancy limit is required.
19. The operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.

If you have any questions as to the content of this memorandum, please contact Investigator Wendy Joe at (949) 644-3705 or wjoe@nbpd.org.



Wendy Joe
Police Civilian Investigator, Special Investigations Unit



Randy Parker
Detective Sergeant, Special Investigations Unit



NEWPORT BEACH POLICE DEPARTMENT

2020 CRIME AND ALCOHOL-RELATED STATISTICS

CHIEF JON T. LEWIS

SUMMARY FOR WILD TACO RESTAURANT AT 407 31ST ST (RD15)

Subject:	Part I Crime	Diff From Avg	% Diff From Avg	Part I Arrests	Diff From Avg	% Diff From Avg	Part II Crime	Diff From Avg	% Diff From Avg	Part II Arrests	Diff From Avg	% Diff From Avg	Crime Count	Diff From Avg	% Diff From Avg
407 31ST ST	1	N/A	N/A	0	N/A	N/A	0	N/A	N/A	2	N/A	N/A	3	N/A	N/A
Subject RD: RD15	136	+87	+175%	27	+21	+364%	550	+459	+505%	478	+394	+471%	540	+430	+363%
Adjacent RD: RD13	38	-11	-23%	4	-2	-31%	177	+86	+95%	132	+48	+58%	172	+62	+30%
Adjacent RD: RD16	57	+8	+15%	4	-2	-31%	139	+48	+53%	203	+119	+143%	166	+56	+25%
Adjacent RD: RD12	58	+9	+17%	6	+0	+3%	80	-11	-12%	93	+9	+11%	88	-22	-46%
Newport Beach	1,877	RD Average = 49		221	RD Average = 6		3,454	RD Average = 91		3,181	RD Average = 84		4,193	RD Average = 140	

Part I Crimes are the 8 most serious crimes as defined by the FBI Uniform Crime Report - Homicide, Rape, Robbery, Aggravated Assault, Burglary, Larceny, Auto Theft, and Arson. This report reflects City of Newport Beach data for 2020.

Per BP 23958.4, crime count is the sum of Part I Crime plus Part II Arrests.

Subject:	ABC Info			
	Population	Active Licenses ON-SALE	ON-SALE License Per Capita	TOTAL RETAIL
407 31ST ST	N/A	N/A	N/A	N/A
Subject Census Tract: 635	5,726	83	69	89
Adjacent Census Tract: 628	4,220	33	128	38
Adjacent Census Tract: 636.03	6,221	5	1,244	9
Adjacent Census Tract: 634	4,795	39	123	43
Newport Beach	85,186	371	230	437
Orange County	3,010,232	4,833	622	6,715

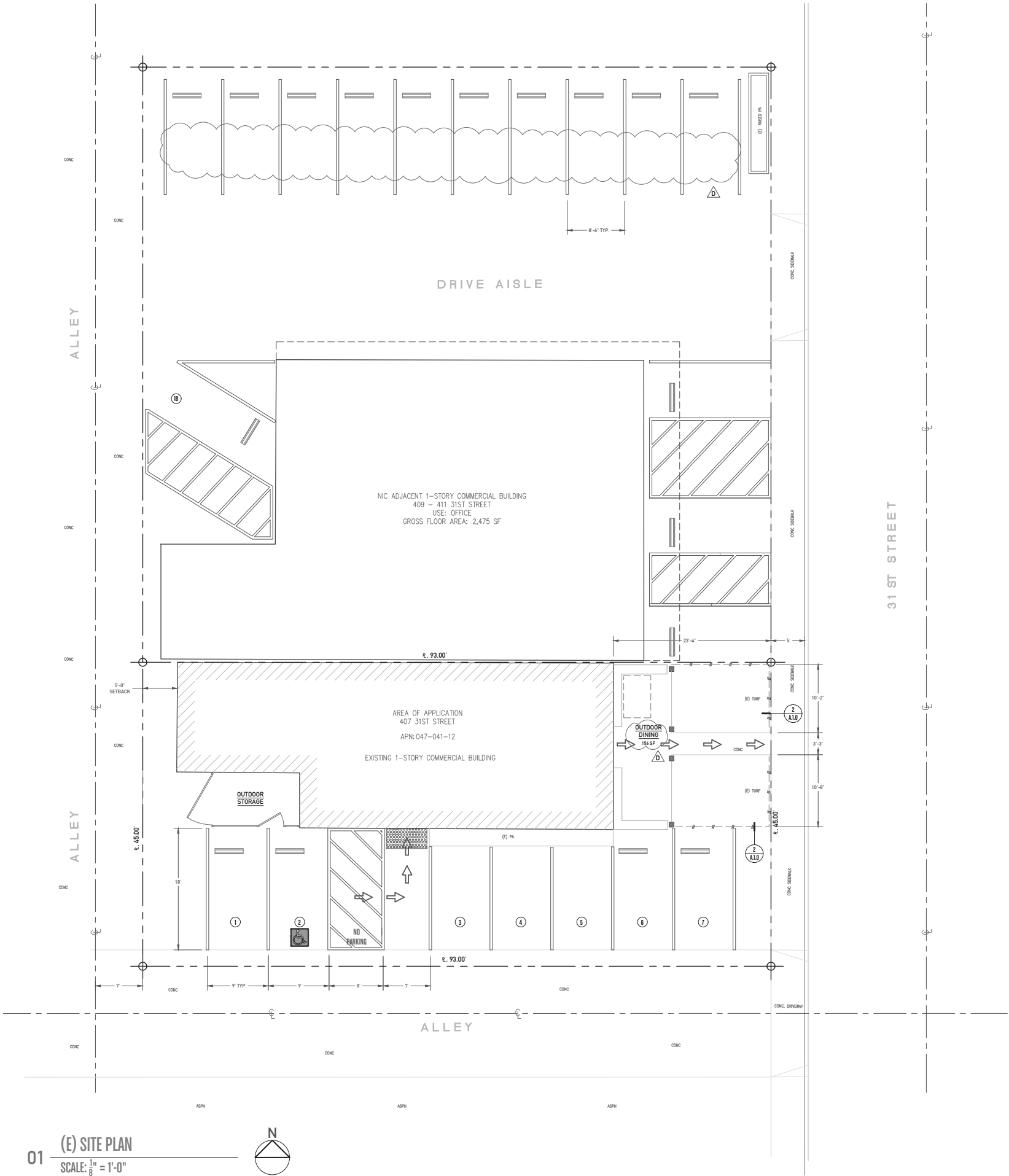
All Population figures taken from the 2010 US Census.
Number of Active ABC Licenses is the total of all types of retail licenses known to the NBPD as of March 2021

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Attachment No. PC 4

Project Plans

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01 (E) SITE PLAN
SCALE: 1/8" = 1'-0"



SITE PLAN NOTES

- ALL DIMENSIONS TO BE VERIFIED ON SITE.
- NO ABRUPT CHANGES IN ELEVATION ALONG THE ACCESSIBLE PATH OF TRAVEL SHOWN. THE SLOPE AND CROSS-SLOPE ALONG THE PATH OF TRAVEL SHALL NOT EXCEED 5% AND 2% RESPECTIVELY.
- MAXIMUM DRIVEWAY SLOPE SHALL NOT EXCEED 20%. MAXIMUM DRIVEWAY CROSS SLOPE IS 10%.
- ALL WALKS SHALL BE PROVIDED WITH A LEVEL AREA NOT LESS THAN 60"x80" AT DOOR OR GATE THAT SWINGS TOWARD THE WALK, AND NOT LESS THAN 48" WIDE BY 44" DEEP AT A DOOR OR GATE THAT SWINGS AWAY FROM WALK.
- THE FLOOR LANDING SHALL NOT BE MORE THAN 1/2" LOWER THAN THE THRESHOLD OF THE DOORWAY.
- CHANGES IN LEVEL GREATER THAN 1/2" HIGH SHALL BE RAMPED, AND SHALL COMPLY WITH 2019 CBC 11B.
- FLOOR OR GROUND SURFACE OF A CLEAR FLOOR OR GROUND SPACE SHALL COMPLY WITH SECTION 2019 CBC 11B.

SITE PLAN LEGEND

----- (E) PROPERTY LINE

---+---+--- (E) ABC BARRIER

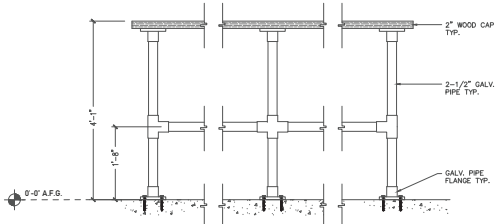
⇒⇒ (E) ACCESSIBLE PATH OF TRAVEL

PARKING CALCULATIONS

USE	SQ. FT.	RATIO	SPACES REQUIRED
RESTAURANT	781 (NPA)	1 PER 40	20
TOTAL:			20

SPACES PROVIDED: 7

NOTE
SITE PLAN IS FOR REFERENCE ONLY. NO SITE WORK.



2 SCALE NTS (E) ABC BARRIER

OWNER:
XXXXXX

PREPARED BY:

PROJECT:

RAND KRUSE
ARCHITECTURE AND INTERIORS

3404 VIA OPORTO SUITE 201
NEWPORT BEACH, CA 92663
949.500.9416

WILD TACO

407 31ST STREET
NEWPORT BEACH, CA 92663

CONSULTANT:

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STAMP:

JOB NUMBER:
XXXXXX

DATE:
00.00.00

10-31-23

RENEWAL DATE

STATE OF CALIFORNIA

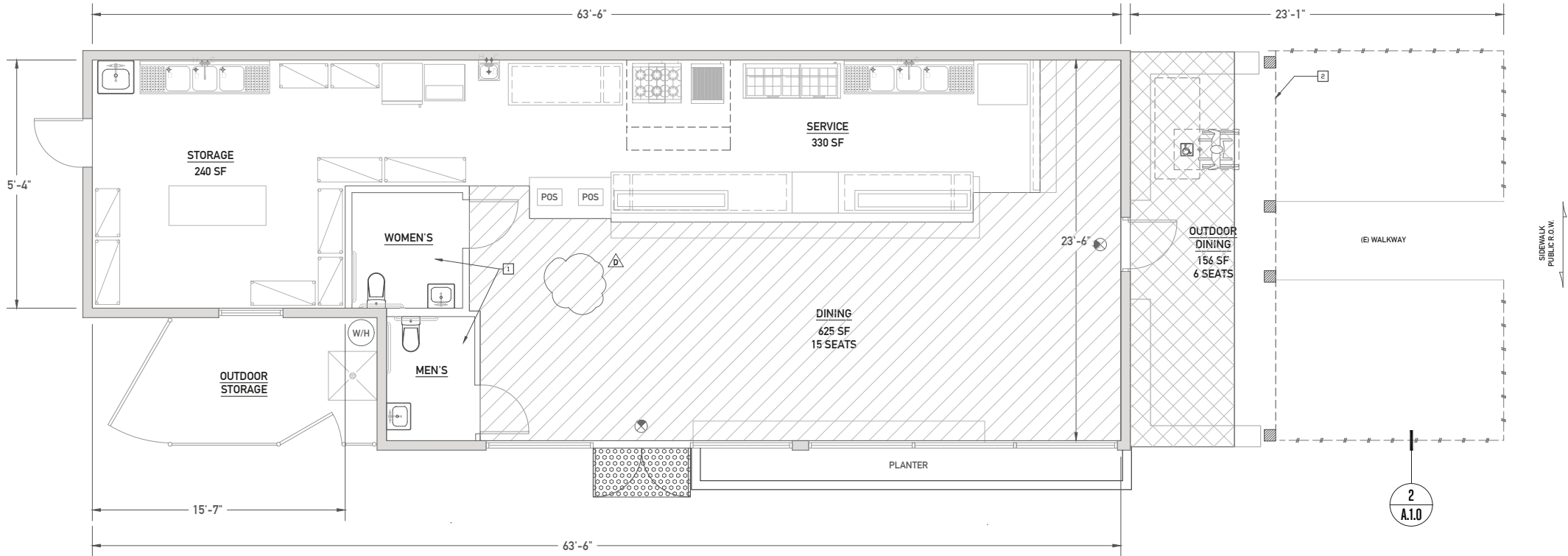
REVISIONS	
A	CUP
B	CUP
C	CUP
D	CUP

SHEET NAME:

SITE PLAN

SHEET NUMBER:

A.1.0



01 FLOOR PLAN
SCALE: $\frac{1}{4}" = 1'-0"$



NOTE
FLOOR PLAN IS FOR REFERENCE ONLY. NO NEW WORK.

FLOOR PLAN LEGEND

	(E) BUILDING SHELL TO REMAIN.
	(E) PARTITION WALL TO REMAIN.
	(E) EXIT SIGN
	(E) ABC BARRIER
	PROPOSED INTERIOR NET PUBLIC AREA
	PROPOSED EXTERIOR NET PUBLIC AREA

FLOOR PLAN KEYNOTES

1	(E) ACCESSIBLE RESTROOMS
2	(E) ROOF LINE.

FLOOR AREA TABULATIONS

407 31ST STREET (AREA OF APPLICATION)

GROSS FLOOR AREA	
INDOOR =	1,343 SQ.FT.
OUTDOOR =	215 SQ.FT.
TOTAL =	1,558 SQ.FT.
NET PUBLIC AREA	
INDOOR =	625 SQ.FT.
OUTDOOR =	156 SQ.FT.
TOTAL =	781 SQ.FT.
RESTAURANT SEATING (SEE FLOOR PLAN)	
INDOOR =	15
OUTDOOR =	6
TOTAL =	21

PARKING CALCULATIONS

USE	SQ. FT.	RATIO	SPACES REQUIRED
RESTAURANT	781 (NPA)	1 PER 40	20
TOTAL:			20

SPACES PROVIDED (SEE SITE PLAN): 7

FLOOR PLAN NOTES

OWNER: XXXXXX

PREPARED BY:

PROJECT: TENANT IMPROVEMENT FOR

CONSULTANT:

RAND KRUSE
ARCHITECTURE AND INTERIORS

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NEWPORT BEACH, CA 92663
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407 31ST STREET
NEWPORT BEACH, CA 92663

STAMP:

JOB NUMBER: XXXXX
DATE: 00.00.00

REVISIONS

A	CUP
B	CUP
C	CUP
D	CUP

SHEET NAME:

FLOOR PLAN

SHEET NUMBER:

A.1.1
48