RESOLUTION NO. ZA2021-065

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING LIMITED TERM PERMIT NO. XP2021-009 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-038 TO ALLOW AN EXPANDED OUTDOOR DINING AREA LOCATED AT 3107 NEWPORT BOULEVARD (PA2021-187)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Chihuahua Brewing Company, LLC, with respect to property located at 3107 Newport Boulevard, and legally described as Parcel 1 of Parcel Map No. 2009-135, requesting approval of a limited term permit and a coastal development permit.

2. The applicant proposes an 867-square-foot maximum expanded outdoor dining area for up to a one (1)-year term that was previously authorized through Emergency Temporary Use Permit No. UP2020-084 and Emergency Coastal Development Permit No. CD2020-088 (PA2020-169) for Chihuahua Brewing Company, LLC.

3. The subject property is designated Neighborhood Commercial (CN) by the General Plan Land Use Element and is located within the Commercial Neighborhood (CN) Zoning District.

4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Neighborhood Commercial (CN) – (0.0 to 0.30 FAR) and it is located within the Commercial Neighborhood (CN) Coastal Zone District.

5. A public hearing was held on November 10, 2021, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not
involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The proposed scope of work is a maximum 867-square-foot expanded outdoor dining patio at an existing restaurant for a one (1)-year limited term and qualifies under the parameters of the Class 1 and Class 3 exemptions.

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

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The limited term permit will allow an extended and expanded outdoor dining patio for up to a one (1)-year term while the City reconsiders its parking requirements related to food service uses. The existing food service use is authorized through Use Permit No. UP2019-035, Coastal Development Permit No. CD2020-001, and Operator License No. OL2020-001 (PA2019-160) and includes 1,446 square feet of net public area and a 626-square-foot permanent outdoor dining patio.

2. The expanded outdoor dining area has not posed a hazard to the general welfare of persons residing in the area since it was placed during the COVID-19 pandemic in 2020 through an Emergency Temporary Use Permit No. UP2020-014 (PA2020-083). The operation of the expanded outdoor dining area is limited to up to a one (1)-year, and has been reviewed and conditioned to preclude any detriment to the general welfare of the area.

3. Outdoor dining areas are common within The Landing shopping plaza and the Balboa Peninsula area, and have been used at the subject property during similar hours in the past, and the use has not proven detrimental. The existing hours of operation for the interior of the restaurant are limited from 6:30 a.m. through 10:00 p.m., Sunday through Thursday, and from 6:30 a.m. to 11:00 p.m., Friday and Saturday. The hours of operation for the
existing outdoor dining patio are limited from 6:30 a.m. through 10:00 p.m., daily, with alcohol service beginning at 9:00 a.m. at the earliest. The expanded outdoor dining area would close by 9:00 p.m., Sunday through Thursday and close by 10:00 p.m. on Friday and Saturday.

4. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).

5. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.

6. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.

7. The overall plan includes appropriate delineation of outdoor use spaces with temporary physical barriers or markers.

Finding:

B. The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot;

Facts in Support of Finding:

1. The restaurant is located in The Landing shopping center. The shopping center is 3.75 acres in size, includes a mix of commercial uses, and has a 236-space on-site surface parking lot that serves all of the uses within the center. The reduction of eight (8) on-site parking spaces is for a temporary basis, and the patio has been reviewed by Public Works to ensure that it will not negatively impact on-site circulation.

2. The shopping center is bounded by Newport Boulevard and West Balboa Boulevard, between 30th Street and 32nd Street. Surrounding uses include residential neighborhoods, which are located directly adjacent to the shopping center to the north, south, and west. Lido House Hotel is located approximately 400 feet northwest of the shopping center. The temporary patio does not negatively affect surrounding uses as it serves an existing restaurant in an existing shopping center.

Finding:

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

1. The subject lot has a direct driveway approach taken from Newport Boulevard, 32nd Street, Balboa Boulevard, and 30th Street. The temporary outdoor patio is located adjacent to the restaurant and will not impede access to the existing parking lot. There are no traffic issues anticipated.

Finding:

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

Fact in Support of Finding:

1. The subject property has been occupied by a food service use with outdoor dining since 2010. The existing parking lot has historically accommodated the mix of uses located within The Landing. The existing parking lot is expected to accommodate the temporary use.

Finding:

E. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.

Facts in Support of Finding:

1. The General Plan land use designation for this site is CN (Neighborhood Commercial). The CN designation is intended to provide for a limited range of retail and service uses developed in one (1) or more distinct centers oriented to primarily serve the needs of and maintain compatibility with residential uses in the immediate area. Permitted uses include those permitted in the CN Zoning designation, which includes eating and drinking establishments through obtaining of a use permit. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CN designation.

2. The site is located in the Commercial Neighborhood (CN) Zoning District. The CN designation applies to areas appropriate for a limited range of retail and service uses developed in one (1) or more distinct centers oriented to serve primarily the needs of and maintain compatibility with residential uses in the immediate area. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CN designation. The CN zoning district allows temporary uses as specified within the Zoning Code and the proposed limited duration use is consistent with this designation.

3. The Limited Term Permit for expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the CN Zoning District in that it provides amenities that support visitors to the area and provides a social gathering place.
for those who live and work in the neighborhood, consistent with General Plan Land Use Element Goal LU2, below. Additional benefits from the proposed amendment include providing opportunities for the continuation of local businesses that generate sales tax and provide opportunities for employment, which is consistent with General Plan Land Use Element Policy LU 2.4 (Economic Development), also copied below:

**Goal LU 2** A living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique. It contains a diversity of uses that support the needs of residents, sustain and enhance the economy, provide job opportunities, serve visitors that enjoy the City’s diverse recreational amenities, and protect its important environmental setting, resources, and quality of life.

**Policy LU 2.4 Economic Development** Accommodate uses that maintain or enhance Newport Beach’s fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents. (Imp 1.1, 24.1)

4. Council Policy D-9 recognizes the need to balance economic development objectives with protection of the environment and the health and safety of the community. The policy recognizes the need to provide effective and efficient structures for implementing economic programs, utilizing staffing to provide healthy, thriving businesses, and maintain a healthy economy while preserving the unique commercial villages in Newport Beach. The proposed limited term permit would support a local business and economic prosperity while maintaining the unique character of the Balboa Peninsula.

5. The site is not located within a specific plan area.

Coastal Development Permit

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

**Finding:**

F. **Conforms to all applicable sections of the certified Local Coastal Program.**

**Facts in Support of Finding:**

1. The project site is not located adjacent to a coastal view road or public access way. The site is located approximately 150 feet south from a public beach access location identified by the Coastal Land Use Plan. However, the temporary patio is located within an existing shopping center and is to expand into an existing commercial suite. The expanded outdoor dining area complies with all applicable Local Coastal Program (LCP) development standards and maintains an area consistent with the existing pattern of development in Lido Marina Village. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.
2. The Property is located in the coastal zone and the proposed improvements require a coastal development permit in accordance with Newport Beach Municipal Code (NBMC) Section 21.52.035(C)(2) (Projects Exempt from Coastal Development Permit Requirements). The improvements constitute an increase of ten (10) percent or more of the internal floor area of an existing structure or a lesser improvement that has previously been undertaken pursuant to California Public Resources Code Section 30610(a). The expanded outdoor dining area and barrier within the public walkway are minor detached structures. The location of these improvements does not pose a conflict to coastal resources, coastal access, or other adverse environmental effects.

3. Improvements are complementary to the area; the subject restaurant and other restaurants on the Balboa Peninsula have similar outdoor dining improvements.

4. The dining area barrier is installed within the existing walkway. The barrier delineates the area dedicated for outdoor dining use and alcohol service from the public walkway. There are no existing City utilities within the expanded outdoor dining area.

5. Development authorized by this permit is not located in any environmentally sensitive habitat area and public access to the coast will not be blocked. Coastal access is increased by allowing commercial establishments to re-open allowing public to visit coastal areas and provides an added amenity for visitors. The proposed operation does not contain ESHA, wetlands, or sandy beach area;

6. Development authorized is not located in an area in which the California Coastal Commission retains direct permit review authority.

Finding:

G. Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.

Fact in Support of Finding:

1. The subject property is not located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone. The property is located approximately 475 feet from a public beach or harbor (approximately 1,000 feet) and is not located near a public viewpoint designated by the Coastal Land Use Plan.
SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. The Zoning Administrator of the City of Newport Beach hereby approves Limited Term Permit No. XP2021-009 and Coastal Development Permit No. CD2021-038 subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.

3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

4. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City’s certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 10TH DAY OF NOVEMBER, 2021.

Jaime Murillo
Zoning Administrator
EXHIBIT “A”

CONDITIONS OF APPROVAL

(Project-specific conditions are in italics)

Planning Division

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).

2. The approval of this Limited Term Permit and Coastal Development Permit shall be effective from January 1, 2022, to December 31, 2022, unless an extension is granted by the Zoning Administrator in compliance with Municipal Code Sections 20.52.040.J (Extension of Limited Term Permit) and 21.54.060 (Time Limits and Extensions). The applicant shall be required to cease all permitted operations and remove any temporary improvements made to the outdoor spaces as part of this approval at the end of the effective period.

3. The expanded dining area shall not exceed 867 square feet.

4. The existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the expanded area as part of this approval shall not extend beyond 9 p.m. on Sunday through Thursday, and 10:00 p.m. on Friday and Saturday.

5. There shall be no use of amplified sound and/or live entertainment in the expanded dining area.

6. The applicant shall install and maintain a physical barrier between any area used and adjacent common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.

7. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.

8. The sale of alcohol “to go” to patrons that dine within the expanded outdoor patios shall be prohibited.

9. The establishment shall abide by all applicable Orange County Health Care Agency requirements.

10. The permittee shall provide adequate trash receptacles within the permitted patio shall and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
11. The Community Development Director or designee may inspect the modified area at any time during normal business hours.

12. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.

13. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.

14. This Limited Term Permit and Coastal Development Permit be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

15. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit and Coastal Development Permit.

16. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City’s approval of this Limited Term Permit No. XP2021-009 and Coastal Development Permit No. CD2021-038 (PA2021-187) for Chihuahua Brewing Company, LLC. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys’ fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City’s costs, attorneys’ fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

**Building Division**

17. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
   a. A minimum 4-foot-wide accessible path to all functional area shall be provided.
   b. Access to restrooms shall be provided at all times.
   c. Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
   d. At least one (1) accessible seating area shall be provided.
e. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two (2).

18. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.

Public Works Department

19. Substantial barriers (automobiles, K-rail, water-filled barrier, or other material acceptable to Public Works) shall be provided between the seating area and drive aisle and adjacent parking spaces. Substantial barriers shall not encroach into the required dimensions of the drive aisle and parking spaces.

20. There shall be a minimum of 5 feet of space around all overhead facilities, such as poles and 15 feet of space around all underground facilities, such as poles and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.

21. Seating or structures below overhead conductors and/or under the ‘drip line’ shall be prohibited.

22. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.

23. Expanded outdoor dining areas shall adhere to the SCE Clearance Decal examples provided in Attachment No. ZA 4.

Fire Department

24. Fire lane(s) shall be identified on the plan.

25. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.

26. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.

27. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a three (3)-foot clearance in all directions.

28. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.

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