A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-033 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-063 TO ALLOW A TEMPORARILY EXPANDED OUTDOOR DINING AREA LOCATED AT 2751 WEST COAST HIGHWAY (PA2021-248)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Redwoodwest (Applicant), with respect to property located at 2751 West Coast Highway, and legally described as the southeasterly 100 feet of the northwesterly 250 feet of Lot H of Tract 919 in the City of Newport Beach, Orange County, California, requesting approval of a limited term permit and a coastal development permit.

2. A request for a limited term and coastal development permit to allow a 174-square-foot maximum expanded dining area for up to a one (1)-year term (January 1, 2022 through December 31, 2022). An expanded dining area was previously authorized through Emergency Temporary Use Permit (ETUP) No. UP2020-168 (PA2020-290) for Billy’s at the Beach. The current request represents a 166 square foot reduction in temporary outdoor dining area from ETUP No. UP2020-168.

3. The subject property is categorized as MU-W1 (Mixed-Use Water 1) by the General Plan Land Use Element and is located within the MU-W1 (Mixed-Use Water) Zoning District.

4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is MU-W (Mixed-Use Water Related) and it is located within the MU-W1 (Mixed-Use Water) Coastal Zoning district.

5. A public hearing was held on November 24, 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 174-square-foot patio at an existing restaurant for up to a one (1)-year limited term and qualifies under the parameters of the Class 1 and Class 3 exemptions.

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

SECTION 3. REQUIRED FINDINGS.

Limited Term Permit

In accordance with Section 20.52.040(G) (Limited Term Permits) of the NBMC, 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 (i.e., restaurants). The existing restaurant is authorized through Use Permit No. UP3674 and includes 1,691 square feet of indoor dining area with 425 square feet of permanent outdoor dining.

2. The expanded 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 ETUP. ETUP No. UP2020-168 allowed an outdoor dining area of 340 square feet and the current request is a 166 square foot reduction in dining area. The operation of the patio is limited to up to a one (1)-year term beginning January 1, 2022, through December 31, 2022, and has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
3. The adjacent properties, 2735 West Coast Highway and 2801 West Coast Highway respectively, are developed with commercial buildings that have restaurants and operate permanent outdoor patios. The existing restaurant has operated a permanent outdoor patio since 2000 and the use has not proven detrimental. Furthermore, the temporary patio was reviewed by the Code Enforcement and Water Quality Division and there were no on-going issues identified as part of their review.

4. Hours of operation for the temporary patio shall not extend beyond 9 p.m. The earlier closing hour should help to eliminate noise impacts to residents across the harbor.

5. A condition of approval related to heaters is incorporated as Condition of Approval No. 27. While there is no tent or covering proposed at this time, if the Applicant chooses to install a tent or covering, it would be subject to Condition of Approval No. 28.

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

7. 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.

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

9. The overall plan includes appropriate delineation of outdoor use spaces with 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 subject property is approximately 0.55 acres in size and abuts the harbor. A restaurant use was originally approved in 1989. Permanent outdoor dining was added to the restaurant in 2000. Based upon the site plan, there is adequate area to accommodate the temporary dining area without impacting pedestrian circulation or coastal access.

2. The lot is bounded by West Coast Highway, commercial buildings with restaurants to the north and south, and the harbor to the west with residential uses beyond. The patio will not impede the use or the enjoyment of other the properties in the area and will instead add to the ambiance and quaint character of Mariner's Mile.
3. The patio is proposed for the rear of the building, on the waterfront side. The patio will abut 60 linear feet of bi-folding doors that can be opened to create a seamless transition from the indoor dining area of Billy’s at the Beach to the patio. The patio is proposed to run along the entire length of the building and will extend 2 feet from the building toward the water. The patio should not impact traffic or site circulation.

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;

Facts in Support of Finding:

1. The subject lot is accessed from West Coast Highway. A valet parking service is provided for guests of the existing restaurant and the other commercial uses at 2801 West Coast Highway. The valet service is a shared service between the various uses and utilizes both on-site and off-site parking, in conformance with Use Permit No. UP3674. Sufficient parking is available to support the patio and no traffic issues should arise with the continued use of the patio.

2. The City is also undergoing an analysis of parking rates including rates related to food service and outdoor dining. Findings and recommendations of this study are anticipated by December 2021 and may inform a future conditional use permit amendment for outdoor dining areas.

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

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 category for this site is MU-W1 (Mixed-Use Water 1). The MU-W1 category is applied to waterfront locations along the Mariner’s Mile Corridor in which marine related, visitor-serving, commercial and residential uses are intermixed with buildings that provide residential uses above the ground floor. The temporary patio is
accessory to the existing restaurant, will be utilized for a limited duration, will not impede use of the site, and is consistent with the MU-W1 designation.

2. The project site is in the MU-W1 Zoning District. The MU-W1 Zoning District allows food service uses with the approval of a use permit and the expanded patio is a temporary use, authorized with a limited term permit.

3. The Limited Term Permit for expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the MU-W1 Zoning District of Mariner’s Mile in that it provides amenities that support visitors to the area and provides a social gathering place for those who live and work in the neighborhood, consistent with General Plan Land Use Element Goal LU 2, below. Additional benefits 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)

Additionally, the patio is consistent with Policy LU 6.19 of the Land Use Element of the General Plan which encourages uses that take advantage of its location on the Newport Bay Waterfront. The outdoor patio provides a waterfront dining amenity that can be enjoyed by visitors to the City of Newport Beach and residents alike.

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 Mariner’s Mile community.

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 Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest designated coastal viewpoint is at John Wayne Park, approximately 900 northeast of the project site. The project site is only marginally visible from this vantage point as a small portion of a larger panoramic perspective. Additionally, the patio is on the waterfront side of the restaurant. It would not be visible from John Wayne Park due to height of the existing building exceeding that of the ground level patio. The patio will be visible from the harbor; however, the low-lying patio is an extension of the existing restaurant and will not appear out of place in its surrounding. 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 Mariner’s Mile. 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. The patio is surrounded with a physical barrier. 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 dining area.

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

5. 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 project site is located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project’s impact and be proportional to the impact. When the original use permit for the commercial building was approved in 1982, it required two (2) public access easements. The first is a 6-foot-wide vertical access walkway along the easterly property line and the second is a 6-foot by 12-foot horizontal or lateral walkway adjacent to the water. Condition of Approval Number 6 requires the Applicant keep both easements free and clear of any restaurant related encroachments that would hinder access. The patio is not anticipated to have an impact on coastal resources or access.

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. The exceptions to the Class 3 Exemption under Section 15300.2 are not applicable.

2. The Zoning Administrator of the City of Newport Beach hereby approves Limited Term Permit No. XP2021-033 and Coastal Development Permit No. CD2021-063 subject to the conditions set forth in Exhibit “A,” which is attached hereto and incorporated by reference.

3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning and Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. A fee is not required to appeal any final action on a coastal development permit to the Planning Commission. 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 24TH 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 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 174 square feet in area.

4. The existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the expanded area as part of this approval shall not extend beyond 9 p.m., daily.

5. There shall be no use of amplified sound or live entertainment within the temporary patio.

6. The two (2) 6-foot-wide public access easements for pedestrian coastal access shall be kept free and clear of any encroachments including but not limited to barriers, tables, umbrellas, etc.

7. 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.

8. 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.

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

10. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
11. 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.

12. The Community Development Director or designee may inspect the modified area at any time during normal business hours.

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

14. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this approval.

15. 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.

16. 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.

17. 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. XP2021-033 and Coastal Development Permit No. CD2021-063 (PA2021-248) for Billy’s at the Beach. 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

18. 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).

19. 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.

20. All tops of dining and work surfaces shall be 28 inches to 34 inches above the finish floor.

Fire Department

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

22. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.

23. 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.

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

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

26. 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.

27. Heat lamps or other heating elements shall comply with the following requirements in accordance with code section 3107.12 of the California Fire Code:
   a. Propane and other fuel-based heating elements (including but not limited to flammable/combustible gas, liquid, or solid materials) shall not be used within tents or canopies.
   b. Electric heaters must be UL listed for use within tents and/or canopies.
   c. Propane and other fuel-based heating devices with blowers may be permitted, with the heating element located a minimum of 10 feet from the edge of the tent or canopy.
   d. All heating equipment installations shall be approved by the fire code official.

28. Covered outdoor dining areas (separate or consolidated) shall comply with the following standards for tents larger than 400 square feet (two [2] or more walls) and/or canopies larger than 700 square feet (no walls or one [1] wall):
   • Post maximum occupant load.
Do not exceed posted occupant load inside the tent or canopy.
Visible and Mounted Fire Extinguishers with current service tags.
No Smoking Signs shall be installed.
Illuminated Exit Signs shall be installed.
Emergency Lighting shall be provided.
Exit doors are not to be blocked and are to remain accessible as exits while the tent is occupied.
All interior decorative fabrics or materials shall be flame resistant. Provide Certificates of Flame Resistance.
If Propane is used, a permit is required: Cooking and heating equipment shall not be located within 10 feet of exits or combustible materials.
LPG containers shall be located outside and be adequately protected and secured, and a permit will be required. Open flame or other devices emitting flame, such as candles, are not permitted inside or within 20 feet of the tent, canopy, or temporary membrane structure.
Tents and canopies shall have the State Fire Marshal tag indicating fire resistance.
Tents and canopies shall be designed and installed to withstand the elements of the weather and prevent collapsing through weights and ground anchorage.

Public Works Department

29. 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 vault lids, manholes, vent pipes, pad-mounted transformers, etc.

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

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

32. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples.