RESOLUTION NO. ZA2021-079

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-025 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-049 TO ALLOW A TEMPORARY OUTDOOR DINING AREA LOCATED AT 251 EAST COAST HIGHWAY (PA2021-196)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by FM Restaurants Signature OPCO LLC, owner of Sol Mexican Cocina Restaurant, a property located at 251 East Coast Highway, and legally described as Parcel 5 of Resubdivision 1003, requesting approval of a limited term permit and coastal development permit.

2. The applicant requests to maintain an existing approximately 870-square-foot deck platform with outdoor dining within seven existing parking spaces adjacent to the restaurant. The outdoor dining deck was previously authorized through Emergency Temporary Use Permit No. UP2021-018 (PA2021-097) for Sol Mexican Cocina Restaurant.

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

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

5. A public hearing was held on December 16, 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 to maintain an 870-square-foot expanded outdoor dining patio at an existing restaurant for a one-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 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 the temporary outdoor dining deck 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. UP0651 (no conditions) and Outdoor Dining Permit No. OD0049A (12 a.m. for existing patio). The temporary outdoor dining will close by 9 p.m., Monday through Thursday and 10 p.m., Friday through Sunday.

2. The 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 2021 through an Emergency Temporary Use Permit No. UP2021-018 (PA2021-097). The operation of the expanded dining area is limited to up to a one (1)-year term 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 commercial neighborhoods along Coast Highway. Sol Mexican Cocina has an existing permanent outdoor dining area approved by
Outdoor Dining Permit No. OD0049A with late hours and the use has not proven detrimental. The temporary outdoor dining patio deck does not extend any outdoor dining hours of operation beyond those currently permitted by Use Permit No. UP0651 (no conditions) and Outdoor Dining Permit No. OD0049A (12 a.m. for existing patio). The temporary outdoor dining deck will maintain the hours of 9 p.m., Monday through Thursday and by 10 p.m., Friday through Sunday.

4. The 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 subject lot is approximately 0.49 acres in size and is relatively flat. The food service use has operated since its original approval in 1960. Based upon the site plan, there is adequate area to accommodate the temporary outdoor dining area without impacting pedestrian circulation, parking and circulation. The outdoor area uses seven (7) parking spaces with at least 26 parking spaces remaining for patrons.

2. The lot frontage is on East Coast Highway and the adjacent properties include Marina parking and 333 Restaurant. The food service use has existed at this site since 1960. The temporary outdoor dining use will not impede use and enjoyment of the properties in the area and will instead add to the ambiance and character of the area.

3. The temporary outdoor dining area will not impede any drive aisles. No traffic or site circulation issues have been documented since the temporary outdoor dining deck was established in May 2021. The location of the outdoor dining deck has proven to be located on the lot in an area with the least impact to the adjacent properties.
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 has a direct driveway approach taken from East Coast Highway and Bayside Drive. The existing outdoor dining deck is located closest to the restaurant entrance, adjacent to the Bay and will not impede access to the existing parking lot. There have been no traffic issues documented and the existing location has proven to not cause traffic issues.

2. The temporary outdoor dining will use seven (7) parking spaces. It will have barriers to protect the area from the drive aisles and parking areas and will not encroach into the drive aisles.

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 temporary outdoor dining will use seven (7) parking spaces with appropriate delineation and temporary substantial physical barricades. There are at least 26 parking spaces remaining on-site to serve the restaurant patrons in addition to shared parking on abutting lots.

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 and Zoning designation for this site is CM (Recreational and Marine Commercial and Commercial Recreational and Marine, respectively). The CM designation is intended to provide for areas appropriate for commercial development on or near the waterfront that will encourage the continuation of coastal-dependent and coastal-related uses, maintain the marine theme and character, encourage mutually supportive businesses, encourage visitor-serving and recreational uses, and encourage physical and visual access to the bay on sites located on or near the bay. The temporary 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 CM designation

2. The Limited Term Permit for the temporary outdoor dining would complement and be consistent with the other commercial uses permitted within the Recreational and Marine Commercial area in that it provides amenities that support the 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)

3. 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 Coast Highway.

4. 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 located adjacent to a coastal view road, East Coast Highway. The site is located approximately 760 feet east from a potential lateral access to the Bay as identified by the Coastal Land Use Plan. However, the temporary outdoor dining deck is located within an existing restaurant site, adjacent to the restaurant building and setback from the water on private property. The deck is low in height and does not include overhead tents or canopies. The temporary outdoor dining area complies with all applicable Local Coastal Program (LCP) development standards and maintains an area consistent with the existing pattern of development along East Coast Highway and within this block of commercial development and restaurants. 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 limited term permit to maintain the existing outdoor dining deck requires 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 do not 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 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 Coast Highway have similar outdoor dining improvements.

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 subject property is located between the nearest public road and the sea along the Bay adjacent the Coastal View Road, East Coast Highway. The existing property is developed with a restaurant and outdoor dining. The additional temporary outdoor dining is located on the private property adjacent the restaurant building and does not impede access to the boat slips, piers, adjacent Marina or Bay. The temporary outdoor dining area is approximately 155 feet east of the adjacent property at 201 East Coast Highway where there is a marina, parking and access to the Bay. The temporary outdoor dining area does not impede access to or impact parking or circulation at 201 East Coast Highway.

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. XP2021-025 and Coastal Development Permit No. CD2021-049 subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.

3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 (Planning and Zoning) and Title 21 Local Coastal Program (LCP) 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 (Appeal to the Coastal Commission) of the City’s certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 16TH DAY OF DECEMBER 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 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 Section 20.52.040.J (Extension of Limited Term Permit). 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 870 square feet.

4. The existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the temporary outdoor dining area as part of this approval shall not extend beyond 9 p.m., Monday through Thursday and by 10 p.m., Friday through Sunday.

5. There shall be no use of amplified sound.

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 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 approval.

14. This Limited Term Permit and Coastal Development Permit may 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. XP2021-025 and Coastal Development Permit No. CD2021-049 (PA2021-196) for Sol Mexican Cocina Restaurant. 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 48 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.

19. Provide not less than 5 percent accessible seating at tables and counters with knee clearance of at least 27 inches high, 30 inches wide, and 19 inches deep.

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

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

22. 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.

23. Accessible routes, including under canopy(ies) and other overhead improvements shall maintain a minimum clear height of 80 inches.

24. The accessible ramp must comply with Section 11B-405 of the California Building Code.

25. All electrical distribution lines shall be in good working order and shall be protected from pedestrian and vehicular traffic and shall accommodate accessibility.

Public Works Department

26. A significant barricade (k-rail, water-filled barrier or other barrier approved by the Public Works Department shall be provided between the proposed outdoor dining areas and the drive aisles and parking stalls.

27. The dining area and substantial barricades shall not encroach into the existing drive aisle.

28. 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.

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

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

31. Outdoor dining areas shall adhere to the SCE Clearance Decal examples provided.
Fire Department

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

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

34. 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.

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

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

37. 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 for the Fire Code official.

38. 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.