RESOLUTION NO. ZA2021-082

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-010 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-039 TO ALLOW A TEMPORARILY EXPANDED OUTDOOR DINING AREA LOCATED AT 417 30TH STREET (PA2021-188)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by DSH Industries, LLC dba ARC Butcher & Baker (Applicant), with respect to property located at 417 30th Street, and legally described as Parcel No. 1 of Lot Line Adjustment No. 94-8, requesting approval of a limited term permit and a coastal development permit.

2. A request to allow a maximum 550-square-feet expanded dining area for up to a one (1)-year term (January 1, 2022, through December 31, 2022). The expanded dining area was previously authorized through Emergency Temporary Use Permit Nos. UP2020-013 (PA2020-081) and UP2020-179 (PA2020-334).

3. The subject property is categorized MU-H4 (Mixed-Use Horizontal) by the General Plan Land Use Element and is located within the MU-CV/15TH ST (Mixed-Use Cannery Village and 15th Street) Zoning District.

4. The subject 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 ST (Mixed-Use Cannery Village and 15th Street) Coastal Zoning 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 scope of work is a maximum 550-square-foot expanded outdoor dining patio at an existing establishment for up to a one (1)-year limited term (January 1, 2022, through December 31, 2022) and qualifies under the parameters of the Class 1 and Class 3 exemptions.

3. The exceptions to the Class 3 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 (January 1, 2022, through December 31, 2022) while the City reconsiders its parking requirements related to food service uses. The existing food service use is authorized through Minor Use Permit No. UP2019-026 (PA2019-105) and includes 298 square feet of interior net public area with no authorization for 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 Emergency Temporary Use Permit. A resident has filed complaints regarding operating outside of authorized hours and excessive noise. If founded, those complaints have been addressed through enforcement measures outlined in the NBMC, as they are received by the Code Enforcement Division. The operation of the expanded dining area is limited to up to a one (1)-year beginning January 1, 2022 and has been reviewed and conditioned to
help preclude any detriment to the general welfare of the area. The Code Enforcement Division will continue to ensure all conditions of approval are abided by.

3. Restaurants and outdoor dining areas are common on the Balboa Peninsula. Specifically in this location, the Cannery Village/15th Street neighborhood is zoned for mixed-use development, which places nonresidential and residential uses in proximity to each other. Nonresidential activity is expected and encouraged by the General Plan, Coastal Land Use Plan and NBMC. The allowed hours of operation for the restaurant are 7 a.m. through 10 p.m., daily. To help ensure harmony with the nearby residential uses, the temporary outdoor dining area will have more limited hours closing by 9 p.m., Monday through Thursday, and by 10 p.m. Friday through Sunday.

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 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 lot is 4,186 square feet and is developed with a 1,980 square-foot, single-story, single-tenant commercial building, along with eight (8) off-street parking spaces. Prior to the existing food service use, the tenant space was occupied by a take-out service, limited use. The temporarily expanded parking area takes up three (3) parking spaces at the front on 30th Street, leaving a single ADA accessible parking space. Based upon the site plan, there is adequate area to accommodate the expanded dining area without impacting pedestrian circulation and coastal access.

2. The lot is bounded by 30th Street to the south, an alley to the north, a commercial use to the west and a mixed-use structure to the east. Existing food service uses with outdoor dining are located nearby and are intermixed with other nonresidential and residential uses. As conditioned, the temporarily expanded outdoor dining area will not impede use.
and enjoyment of other properties in the mixed-use neighborhood, and it is expected to continue to add to the ambiance and character of the Balboa Peninsula area.

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 30th Street and an alley. There are five (5) parking spaces available to serve the restaurant in addition to bicycle racks for those riding bicycles to the restaurant. Sufficient parking is provided on-site and no traffic issues are anticipated with the continued temporary use of the expanded dining area.

2. The City is also undergoing an analysis of parking rates, including rates related to food service and outdoor dining. Initial findings and recommendations of this study were presented at a City Council study session on November 30, 2021. Preliminarily, the study found that food service parking requirements should be lowered and that rideshare service drop-off/pick-up areas or alternative modes of transportation should be considered. This information will ultimately inform future revisions to the Zoning Code, which may support future use permit amendments for permanent 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

Facts in Support of Finding:

1. The existing food service use has operated at the subject property since 2019, and the temporarily expanded outdoor dining area has been in operation since 2020. There have been no complaints about lack of parking in the area, which is developed with a mixture of residential and nonresidential uses. This type of development and its adjacency to the harbor and other coastal resources tend to serve as a shared-trip parking supply wherein people are parking once and visiting multiple locations. The parking is expected to adequately accommodate the temporary use for up to a one (1)-year term (January 1, 2022 through December 31, 2022).

2. The temporarily expanded dining area will not impede pedestrian access along the sidewalk.

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-H4 (Mixed-Use Horizontal). The MU-H4 category is applied to properties where it is the intent 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 in such locations as the interior parcels of Cannery Village and 15th Street. The subject lot is in line with the block and is not on a corner. The expanded outdoor dining use is accessory to the existing food service use, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the MU-H4 category.

2. The site is in the MU-CV/15TH ST (Mixed-Use Cannery Village/15th Street) Zoning District. The MU-CV/15TH ST designation applies to areas where it is the intent to establish a cohesively developed district or neighborhood containing multi-unit residential dwelling units with clusters of mixed-use and/or commercial structures on interior lots of Cannery Village and 15th Street. Allowed uses may include multi-unit dwelling units; nonresidential uses; and/or mixed-use structures, where the ground floor is restricted to nonresidential uses along the street frontage. Residential uses and overnight accommodations are allowed above the ground floor and to the rear of uses along the street frontage. Mixed-use or nonresidential structures are required on lots at street intersections and are allowed, but not required, on other lots. The MU-CV/15TH ST District allows food service uses and the expanded dining area is a temporary use, authorized with a limited term permit.

3. The Limited Term Permit for temporarily expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the Balboa Peninsula area 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)

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 community.

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, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoints are on Lido Park Drive and at Lido Park, which are at least 775 feet east from the project site. The expanded outdoor dining tables comply with all applicable Local Coastal Program (LCP) development standards and maintains an area consistent with the existing pattern of development in the Balboa Peninsula. 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. Development authorized by this permit is not located in any environmentally sensitive habitat (ESHA) 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.

4. 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 not located between the nearest public road and the sea or shoreline.

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. XP2021-010 and Coastal Development Permit No. CD2021-039 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. The project site is not located within the appeal area of the coastal zone; therefore, final action by the City may not be appealed to the California Coastal Commission.

PASSED, APPROVED, AND ADOPTED THIS 16TH DAY OF DECEMBER, 2021.

[Signature]
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 Sections 20.52.040(J) (Extension of Limited Term Permit) and 21.54.060 (Time Limits and Extensions) of the NBMC. 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. On or before January 31, 2022, the Applicant shall either obtain necessary building permit approvals for the existing patio cover or it shall be removed.

4. The expanded dining area shall not exceed 550 square feet in area.

5. 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., Monday through Thursday and 10 p.m., Friday through Sunday.

6. There shall be no use of amplified sound and/or live entertainment.

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 sidewalk and all adjoining public rights-of-way shall remain free and clear from any obstructions.

9. 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.

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

11. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
12. 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.

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. XP2021-010 and Coastal Development Permit No. CD2021-039 (PA2021-188) for ARC Butcher & Baker Temporary Outdoor Expansion. 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.

**Fire Department**

20. 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.

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

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

23. 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.

24. 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.

Public Works Department

25. 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.

26. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.

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

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