RESOLUTION NO. ZA2022-006

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING LIMITED TERM PERMIT NO. XP2021-026 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-050 TO ALLOW AN EXPANDED OUTDOOR DINING AREA LOCATED AT 2920 NEWPORT BOULEVARD (PA2021-204)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Helmsman Ale House (Applicant), with respect to property located at 2920 Newport Boulevard, described as Assessor Parcel Numbers 047-043-04 and 047-043-20, requesting approval of a limited term permit and a coastal development permit.

2. The Applicant proposes a reduced 1,000-square-foot maximum expanded outdoor dining area for up to a one (1)-year term. The previous larger 5,500-square-foot area was authorized through Emergency Temporary Use Permit No. UP2020-143 and Emergency Coastal Development Permit No. CD2020-128 (PA2020-246).

3. The subject property is categorized Visitor Serving Commercial (CV) by the General Plan Land Use Element and is located within the Commercial Visitor-Serving (CV) Zoning District.

4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Visitor Serving Commercial (CV-A) – (0.0 to 0.75 FAR) and it is located within the Commercial Visitor-Serving (CV) Coastal Zoning District.

5. A public hearing was held on January 27, 2022, 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 1,000-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.

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. The existing food service use is authorized through Use Permit No. 3485 and its subsequent amendments.

2. The previously larger 5,500-square-foot 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 one (1) year 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. The previously approved temporary operation was authorized through Emergency Temporary Use Permit No. UP2020-143 (PA2020-246). This approval allowed a temporary patio of approximately 5,500 square feet. The proposed operation significantly reduces the patio to no more than 1,000 square feet. Operation of the expanded outdoor dining area is limited to up to one (1)-year.

4. Outdoor dining areas are common within the Balboa Peninsula area, have been used at the subject property during similar hours in the past, and the use has not proven to be detrimental. The existing hours of operation for the interior of the restaurant are limited from 6 a.m. to 11 p.m., Sunday through Thursday and from 6 a.m. to 1 a.m., Friday and Saturday. The proposed temporary outdoor dining area would close by 9 p.m., Monday through Thursday, and by 10 p.m., Friday through Sunday.

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

6. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency (OCHCA) 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 OCHCA guidelines.

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

8. The 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 on a site that is comprised of two (2) separate parcels: one (1) with the restaurant building and one (1) with the parking lot to serve the building. The combined two (2) parcels are approximately 0.5-acre in size. If approved, the temporary outdoor patio would be reduced to 1,000 square feet from the previously approved 5,500 square feet and has been conditioned to have no permanent structures.

2. The project site is located on the northeast corner of Newport Boulevard and 30th Street. Surrounding uses include residential neighborhoods, which are located to the west beyond The Landing shopping center, and a mixed-use neighborhood to the north, east and south. The temporary patio does not negatively affect surrounding uses as it is limited by the Conditions of Approval, is a reduction of the current temporarily expanded area, and serves
an existing restaurant. Furthermore, the reduced temporary outdoor dining area will restore approximately ten (10) parking spaces.

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 site has direct driveway approaches taken from 30th Street and the alley. The temporary outdoor patio is located within the private parking lot abutting the restaurant and will not impede access. 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 1993. The existing parking lot has historically accommodated the restaurant. The existing parking lot is expected to accommodate the temporary use. There have been no parking-related complaints or issues raised related to the outdoor dining area installed under the previous emergency permit.

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 CV (Visitor Serving Commercial). The CV category is intended to allow for a range of accommodations (e.g., hotels, motels, hostels), goods, and services intended to primarily serve visitors. Permitted uses include those permitted in the CV Zoning designation, which includes restaurants by obtaining a use permit. The expanded outdoor dining use is accessory to the existing restaurant, will be utilized for a limited duration on-site and will be in furtherance of the intention for this land use category.

2. The site is in the Commercial Visitor Serving (CV) Zoning District. The CV designation applies to areas intended to provide for areas appropriate for accommodations, goods, and services intended to serve primarily visitors. The expanded outdoor dining use is
accessory to the existing restaurant, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CV designation. The CV District also 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 CV 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 LU 2, 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 temporary patio is located on a site with an existing restaurant. 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 on 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 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 has only 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 private parking lot. The barrier delineates the area dedicated for outdoor dining use and alcohol service. 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 (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.

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.
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. XP2021-026 and Coastal Development Permit No. CD2021-050 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 27TH DAY OF JANUARY, 2022.

[Signature]
Jaime Murillo
Zoning Administrator

09-30-21
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 11, 2022, to January 10, 2023, 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 1,000 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 Monday through Thursday, and 10 p.m. on Friday through Sunday.

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 to common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.

7. There shall be no permanent structures that require building permits.

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. XP2021-026 and Coastal Development Permit No. CD2021-050 (PA2021-204) for Helmsman Ale House. 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.

Public Works Department

20. Prior to implementation of this approval, the site plan and layout shall be reviewed and approved by the Public Works Department.

21. 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.

22. 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.

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

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

25. Expanded outdoor dining areas shall adhere to the SCE Clearance Decal examples.

Fire Department

26. 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.

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

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

29. 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.

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

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

32. 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.