RESOLUTION NO. ZA2022-016

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-041 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-076 TO ALLOW AN EXPANDED OUTDOOR DINING AREA LOCATED AT 3446 VIA OPORTO (PA2021-295)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Le Zinc Bar, LLC, with respect to property located at 3446 Via Oporto, and legally described as Lot 1121 and Lot 1122 and a Portion of Lot 1123 Tract 907, requesting approval of a limited term permit and a coastal development permit.

2. The applicant proposes a 471-square-foot expanded dining area previously authorized through Emergency Temporary Use Permit No. UP2020-019 (PA2020-091) for Le Zinque Bar, for up to a one (1)-year term.

3. The subject property is designated Mixed-Use Water 2 (MU-W2) by the General Plan Land Use Element and is located within the Mixed-Use Water (MU-W2) Zoning District.

4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed-Use Water Related (MU-W) and it is located within the Mixed-Use Water (MU-W2) Coastal Zone District.

5. A public hearing was held on March 10, 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 Sections 15301 and 15303 under Class 1 (Existing Facilities) and Class 3 (New Construction or Conversion of Small Structures), respectively, 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 471-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 Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

1. The limited term permit will allow an extended and expanded outdoor dining patio for one-year term while the City reconsiders its parking requirements related to food service uses. The existing food service use is authorized through Conditional Use Permit No. UP2015-042 and Operator License No. OL2015-008 (PA2015-178) and includes 2,546 square feet of net public area.

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. The operation of the expanded dining area is limited to one (1) year beginning March 10, 2022, through March 10, 2023, 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 Lido Marina Village shopping area, have been used at the subject property during similar hours in the past, and the use has not proven detrimental. The permitted hours of operation for the interior of the restaurant are limited from 6:30 a.m. to 12:00 midnight, Monday through Thursday, and 6:30 a.m. to 1:00 a.m. Friday through Sunday. The permitted hours of operation for the existing outdoor dining patio are limited from 6:30 a.m. through 12:00 midnight, daily. The expanded outdoor dining area is limited to one (1) year beginning March 10, 2022, through March 10, 2023, and has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
dining area would close by 10:00 p.m., Sunday through Thursday, and by 11:00 p.m., Friday and Saturday, consistent with the prior emergency temporary use permit.

4. The proposed dining area will not be covered and a condition of approval related to heaters is incorporated as Condition of Approval No. 26.

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 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.

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

8. The overall plan includes appropriate delineation of outdoor use spaces with a stanchion and rope barrier.

9. The expanded dining area will not impede pedestrian access to the waterfront. Conditions of approval require the expanded dining area to be located clear of the 6-foot lateral public access easement along the waterfront and the 6-foot wide vertical access between the buildings.

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 0.29 acres in size and is a flat property adjacent to the water. The existing food service use with outdoor dining has operated at 3446 Via Oporto since its original approval in 2015. Based upon the site plan, there is adequate area to accommodate the expanded dining area without impacting pedestrian circulation and lateral/vertical coastal access.

2. The lot is bounded by Via Oporto to the east and Newport Harbor to the west. To the north and south are adjacent mixed-use properties within the Lido Marina Village development. An existing food service use with outdoor dining is located at this site, with adjacent office use. The expanded outdoor dining use will not impede use and enjoyment of the properties in the area and will instead add to the ambiance and quaint character of the Lido Marina Village.
3. The expanded dining area will not impede any parking spaces. No parking or traffic circulation issues are anticipated.

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 Via Oporto. A public parking structure is located across Via Oporto at 3434 Via Lido, where common parking for uses within Lido Marina Village are provided. The existing food service use, Le Zinque Bar, is located in a mixed-use area and proposes to operate all day and into the evening hours when surrounding retail and office uses are typically not operating. The parking structure has historically accommodated the mix of uses found within Lido Marina Village and no parking or traffic issues are anticipated with the continued use of the expanded dining area.

2. The property owner, DJM Arc Lido LLC, has applied for a conditional use permit to modify and expand allowed food service uses on a permanent basis within Lido Marina Village. This limited term permit would allow for some of these food services to operate in the interim while parking data for the use permit is refined and scheduled for Planning Commission review

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 with outdoor dining has operated at the subject property since 2015. The existing parking structure has historically accommodated the mix of uses located within Lido Marina Village per Conditional Use Permit No. UP2017-019 (PA2017-135). The existing parking structure at 3434 Via Lido is expected to accommodate the parking demand related to the temporary use.

2. The expanded dining area will not impede pedestrian access to the waterfront.

Finding:

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

1. The General Plan land use designation for this site is MU-W2 (Mixed-Use Water 2). The MU-W2 designation is intended to provide for marine-related uses intermixed with buildings that provide residential on the upper floors. Permitted uses include those permitted in the CM (Recreational and Marine Commercial), CV (Visitor Serving Commercial), and MU-V (Mixed Use Vertical) designations. Free-standing residential shall not be permitted. Food service uses are consistent with nonresidential uses and are conditionally permitted in mixed-use zoning districts. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the MU-W2 designation.

2. The site is located in the Mixed-Use Water (MU-W2) Zoning District. The MU-W2 designation applies to waterfront properties in which marine-related uses may be intermixed with general commercial, visitor-serving commercial, and residential dwelling units on the upper floors. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the MU-W2 designation. The MU-W2 zoning district allows temporary uses as specified within the Zoning Code and the proposed limited duration use is consistent with this designation.

3. The Limited Term Permit for expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the MU-W2 Zoning District of Lido Marina Village 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 its economic prosperity while maintaining the unique character of the Lido Village 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 viewpoint is John Wayne Park and the site is only slightly visible as a small portion of a larger panoramic perspective from this vantage point. West Coast Highway is the nearest coastal view road and the project site is located across Newport Bay. However, the expanded outdoor dining area complies with all applicable Local Coastal Program (LCP) development standards and maintains an area consistent with the existing pattern of development in Lido Marina Village. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone. Instead, the expanded dining area adds to the visual interest and pedestrian-friendly atmosphere of the area.

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 are between the sea and the first public road and constitute an increase of ten (10) percent or more of the internal floor area of an existing structure or a lesser improvement that has previously been undertaken pursuant to California Public Resources Code Section 30610(a). The expanded outdoor dining area and barrier within the public walkway are minor detached structures. The location of these improvements does not pose a conflict to coastal resources, coastal access, or other adverse environmental effects.

3. Improvements are complementary to the area; the subject restaurant and adjacent neighbors have similar outdoor dining improvements within the walkways of Lido Marina Village.

4. The dining area stanchion and rope barrier is installed within the existing walkway. The barrier delineates the area dedicated for outdoor dining use and alcohol service from the public walkway. There are no existing City utilities within the expanded dining area.
5. Development authorized by this permit is not located in any environmentally sensitive habitat area and public access to the coast will not be blocked. Coastal access is increased by allowing commercial establishments to allow the public to visit coastal areas and provides an added amenity for visitors. The proposed operation does not contain environmentally sensitive habitat area (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 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. In this case, lateral and vertical coastal access is provided via an existing 6-foot wide pedestrian easement along the waterfront and between the buildings. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

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 approved Limited Term Permit No. XP2021-041 and Coastal Development Permit No. CD2021-076, 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 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the
City’s certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 10TH DAY OF MARCH, 2022.

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 March 10, 2022, to March 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 471 square feet in area.

4. The 6-foot-wide lateral and vertical pedestrian easements at the boardwalk area shall always remain free and clear of any obstructions.

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 10:00 p.m., Sunday through Thursday, and 11:00 p.m., Friday and Saturday.

6. There shall be no use of amplified sound.

7. The applicant shall install and maintain a physical (stanchion and rope) 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. XP2021-041 and Coastal Development Permit No. CD2021-076 (PA2021-295) for Le Zinque Bar. 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. Parking, displays, seating, or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.

21. 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.

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

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

24. 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.

25. No tent or canopy shall be utilized as part of this limited term permit and coastal development permit.

26. 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**

27. 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.
28. Seating or structures below overhead conductors and/or under the ‘drip line’ shall be prohibited.

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

30. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples provided in Attachment No. ZA 4.