RESOLUTION NO. ZA2022-025

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING MINOR USE PERMIT NO. UP2021-052 FOR A FOOD SERVICE EATING AND DRINKING ESTABLISHMENT WITH A TYPE 47 ALCOHOLIC BEVERAGE CONTROL LICENSE (ONSALE GENERAL) LOCATED AT 343 NEWPORT CENTER DRIVE (PA2021-293)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Patti Keiser, Neighborhood Goods Inc. with respect to property located at 343 Newport Center Drive and legally described as Parcel 3 of Resubdivision 0836 requesting approval of a Minor Use Permit.

2. The applicant proposes to allow a Type 47 (On Sale General) Alcoholic Beverage Control (ABC) license with no late hours for the new food service eating and drinking establishment within Neighborhood Goods department store within Fashion Island regional shopping center (Fashion Island mall).

3. The subject property is designated Regional Commercial (CR) by the General Plan Land Use Element and is located within the PC-56 (Newport Center North – Fashion Island sub-area) Zoning District.

4. The subject property is not located within the coastal zone.

5. A public hearing was held on April 14, 2022, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. 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) 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 proposed project involves only minor tenant improvements with no expansion in floor area or change in parking requirements.
SECTION 3. REQUIRED FINDINGS.

In accordance with Newport Beach Municipal Code (NBMC) Section 20.48.030 (Alcohol Sales), the following findings and facts in support of such findings for a use permit are set forth:

Finding

A. The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.

Facts in Support of Finding

In finding that the proposed use is consistent with NBMC Section 20.48.030, the following criteria must be considered:

i. The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.

1. The proposed establishment is located within Reporting District (RD) No. 39, wherein the number of crimes is higher than adjacent Reporting Districts and the City overall; however, this may be attributable to a higher concentration of commercial land uses within a regional commercial shopping center, which has a minimal amount of residential uses. RD 44 is smaller in land area when compared to RD 39 yet it maintains a comparable number of crimes as it contains the entire commercial corridor along East Coast Highway within Corona del Mar. RD 43 and 47 have a significantly lower number of crime as they are primarily residential with few commercial uses.

2. The highest volume crime in RD 39 is burglary or theft from automobiles and the highest volume arrests are drug-related offenses.

3. The Newport Beach Police Department (NBPD) has reviewed the application and has provided operational conditions of approval to help minimize any potential detrimental impacts.

ii. The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.

1. The alcohol-related calls for service and number of arrests are lesser percentage of the total arrests than in the adjacent RDs. The NBPD has reviewed the application and has provided operational conditions of approval to help minimize any potential impacts, which are incorporated in Exhibit "A."

iii. The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.
1. Fashion Island does not abut sensitive land uses and is separated from other uses by parking lots, roadways and other commercial uses. Residential uses are permitted in the northern sections of the PC-56 (North Newport Center Planned Community) Zoning District within Blocks 500, 600, 800, and San Joaquin Plaza. The proposed use is not located in close proximity to these residential districts.

iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.

1. There are several other restaurants within the Fashion Island mall. These include tenants such as Fleming’s Steak House, True Food Kitchen, Whole Foods, Cheesecake Factory, P.F. Chang’s, Sushi Roku. These restaurants have Type 41 (On-Sale Beer and Wine) or Type 47 (On-Sale General) Alcoholic Beverage Control (ABC) licenses and there is no evidence suggesting these uses have been detrimental to the neighborhood. These establishments are a common use within regional shopping centers or malls. Additionally, there is no evidence to suggest that the conditional approval of this new alcohol sales license would create new objectionable conditions.

2. The proposed hours of operation do not include late hours and the café will close by 9 p.m. with the department store. According to the NBPD, an adequate security plan is currently in place for Fashion Island. Conditions of approval are included to adequately manage alcohol service, which will occur only within the indoor dining area.

v. Whether or not the proposed amendment will resolve any current objectionable conditions.

1. The proposed café is located within an existing commercial tenant space and is designed as a restaurant that includes onsite service and consumption of alcoholic beverages. There are no current objectionable conditions.

2. The NBPD has reviewed the application and has provided operational conditions of approval to help minimize any potential detrimental impacts, which are included in Exhibit “A.”

Minor Use Permit

In accordance with NBMC Section 20.52.020.F (Findings and Decision), the following findings and facts in support of such findings for a use permit are set forth:

Finding

B. The use is consistent with the General Plan and any applicable specific plan:

Facts in Support of Finding

1. The Land Use Element of the General Plan designates the project site as Regional Commercial (CR), which is intended to provide retail, entertainment, service, and
supporting uses that serve local and regional residents. The proposed restaurant with alcoholic beverage sales will serve local and regional residents and is consistent with land uses in the CR land use designation.

2. The subject property is not a part of a specific plan area.

Finding

C. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code:

Facts in Support of Finding

1. The project is located in the Fashion Island Sub-Area of the PC-56 (North Newport Center Planned Community) Zoning District. Fashion Island is intended to be a regional retail and entertainment center that is a destination with a wide variety of uses that will serve visitors, residents, and employees of the area. The eating and drinking establishment with alcoholic beverage sales is a commercial use that serves visitors, residents, and employees in the area and, therefore, is consistent with the purposes of the North Newport Center Planned Community District.

2. Eating and drinking establishments are permitted uses within the Fashion Island Sub-Area of the North Newport Center Planned Community Zoning District. Pursuant to the Planned Community Text, the on-site sale of alcohol in conjunction with an eating and drinking establishment requires a minor use permit.

Finding

D. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity:

Facts in Support of Finding

1. The Fashion Island Sub-Area permits a range of retail, dining, and commercial entertainment. The proposed use is compatible with surrounding permitted commercial uses in the vicinity and there are no sensitive land uses located nearby.

2. The on-site consumption of alcoholic beverages will be incidental to the cafe. The quarterly gross sales of alcoholic beverages will not exceed the gross sales of food during the same period, per the conditions of approval. Alcoholic beverage service and consumption will be under the supervision of employees who have completed a certified training program pursuant. The minimum 42-inch barrier fence will be provided around the outdoor dining to meet the Alcoholic Beverage Control License requirements.

3. The café hours will mirror the hours of the department store and the mall, closing at 9 p.m. daily.
4. The conditions of approval reflected in Exhibit “A” of this resolution ensure that potential conflicts with surrounding land uses are eliminated or minimized to the greatest extent possible.

Finding

E. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities:

Facts in Support of Finding

1. The Fashion Island mall provides adequate required parking within the onsite surface parking lots and parking structures. The proposed café with alcohol service will be within an existing retail space with an accessory outdoor dining patio, which does not require additional parking to what was required for the retail tenant.

2. This site has been reviewed by the Fire Department to ensure adequate public and emergency vehicle access is provided. Utilities are provided with all applicable requirements.

3. The food service use is permitted by right within the PC-56 Zoning regulations and the tenant space is currently in the plan check process for the food service use.

4. Any improvements to the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Finding

F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or 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 proposed use:

Facts in Support of Finding

1. The project has been reviewed and includes conditions of approval to help ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible.

2. The café with alcohol service will serve visitors and the surrounding business community. The proposed establishment will provide alcohol service as a public convenience to visitors and workers within the surrounding area.

3. Fashion Island management has historically provided efficient onsite security and cooperates with the NBPD.
4. The Applicant is required to obtain Health Department approval prior to opening for business, and comply with the California Building Code to ensure the safety and welfare of customers and employees within the establishment.

5. The facts in support of Findings A through F above are incorporated by reference

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) 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 Minor Use Permit No. UP2021-052, 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 is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 14th DAY OF APRIL, 2022.

Jaime Murillo
Zoning Administrator
EXHIBIT “A”

CONDITIONS OF APPROVAL

Planning Division

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).

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

3. 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 Use Permit.

4. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 (Signs) of the Newport Beach Municipal Code.

5. Use Permit No. UP2021-052 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.

6. The café shall close by 9 p.m., daily.

7. This Minor Use 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.

8. A copy of the Resolution, including conditions of approval Exhibit “A” shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.

9. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.

10. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
11. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

<table>
<thead>
<tr>
<th>Location</th>
<th>Between the hours of 7:00AM and 10:00PM</th>
<th>Between the hours of 10:00PM and 7:00AM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Property</td>
<td>Interior 45dBA</td>
<td>Exterior 55dBA</td>
</tr>
<tr>
<td>Residential Property located within 100 feet of a commercial property</td>
<td>Interior 45dBA</td>
<td>Exterior 60dBA</td>
</tr>
<tr>
<td>Mixed Use Property</td>
<td>Interior 45dBA</td>
<td>Exterior 50dBA</td>
</tr>
<tr>
<td>Commercial Property</td>
<td>N/A</td>
<td>65dBA</td>
</tr>
<tr>
<td></td>
<td></td>
<td>60dBA</td>
</tr>
</tbody>
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12. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.

13. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7a.m. and 6:30 p.m., Monday through Friday, and 8a.m. and 6 p.m. on Saturday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.

14. No outside paging system shall be utilized in conjunction with this establishment.

15. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.

16. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.

17. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.

18. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
19. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10p.m. and 7a.m. on weekdays and Saturdays and between the hours of 10p.m. and 9a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.

20. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.

21. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of onsite media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.

22. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.

23. 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 Neighborhood Goods Café including, but not limited to, Minor Use Permit No. UP2021-052 (PA2021-293). 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.

Fire Department

24. The outdoor dining patio shall not encroach into 20foot wide pedestrian walkway within interior of the mall. The pedestrian walkway shall maintain 20 feet clear for pedestrians.

25. Propane heaters shall be prohibited in the outdoor dining area.

26. Fire sprinklers shall be required if the outdoor dining patio is covered.

Building Division
27. The applicant is required to obtain all applicable permits from the City’s Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.

Police Department

28. The approval is for an eating and drinking establishment with on-sale alcoholic beverage service. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be Type 47 (OnSale General). Any substantial change in the ABC license type shall require subsequent review and potential amendment of the Minor Use Permit.

29. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the Newport Beach Municipal Code.

30. The Applicant shall comply with all federal, state, and local laws, and all conditions of the Alcoholic Beverage License. Material violation of any of those laws or conditions in connection with the use is a violation and may be cause for revocation of the use permit.

31. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. This training must be updated every three years regardless of certificate expiration date. The certified program must meet the standards of the certifying/licensing body designated by the State of California. The establishment shall comply with the requirements of this section within 60 days of approval. Records of each owner’s, manager’s, and employee’s successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.

32. The quarterly gross sales of onsale alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.

33. The Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.

34. Any event or activity staged by an outside promoter or entity, where the applicant, operator, or owner or is employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge cover charge or any other form of admission charge is prohibited.
35. “VIP” passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order of the sale of drinks is prohibited (excluding charges for prix fixe meals).

36. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.

37. There shall be no live entertainment or dancing allowed on the premises.

38. The approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code.

39. Full menu food service shall be available for ordering at all times that the restaurant establishment is open for business.

40. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs that are clearly visible to the exterior shall constitute a violation of this condition.

41. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.

42. Strict adherence to maximum occupancy limits is required.

43. The operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the NBMC.

44. The Applicant shall maintain a security recording system with a 30-day retention and make those recordings available to police upon request.