



**CITY OF NEWPORT BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION ACTION REPORT**

**TO:** CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

**FROM:** Kimberly Brandt, Community Development Director  
Brenda Wisneski, Deputy Community Development Director

**SUBJECT:** Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending September 16, 2016

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**ZONING ADMINISTRATOR ACTIONS  
SEPTEMBER 15, 2016**

- Item 1: Newport Harbor Yacht Club Limited Term Permit No. XP2016-006 (PA2016-135)  
Site Location: 720 West Bay Avenue between 7th and 8th Street on the Balboa Peninsula  
Action: Approved by Resolution No. ZA2016-049 Council District 1
- Item 2: 217 Marguerite Avenue Condominiums Tentative Parcel Map No. NP2016-009 (PA2016-103)  
Site Address: 217 Marguerite Avenue  
Action: Approved by Resolution No. ZA2016-050 Council District 6
- Item 3: 129 34th Street Condominiums Tentative Parcel Map No. NP2016-011 (PA2016-104)  
Site Address: 129 34th Street  
Action: Approved by Resolution No. ZA2016-051 Council District 1
- Item 4: Vacancy Coffee Bar Minor Use Permit No. UP2016-034 (PA2016-136)  
Site Address: 6480 W. Coast Highway  
Action: Approved by Resolution No. ZA2016-052 Council District 2
- Item 5: 429 Snug Harbor Modification Permit Permit No. MD2016 (PA2016-132)  
Site Address: 429 Snug Harbor Road  
Action: Approved by Resolution No. ZA2016-053 Council District 3

Item 6: Vibe Organic Kitchen & Juice Minor Use Permit No. UP2016-036 (PA2016-140)  
Site Address: 1000 Bristol Street, Suite 28

Action: Approved by Resolution No. ZA2016-054 Council District 3

**APPEAL PERIOD:** An appeal may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

## RESOLUTION NO. ZA2016-049

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING LIMITED TERM PERMIT NO. XP2016-006 FOR TEMPORARY YACHT CLUB FACILITIES DURING CONSTRUCTION OF A NEW CLUBHOUSE LOCATED AT 720 WEST BAY AVENUE (PA2016-135)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. On February 25, 2014, the City Council adopted Resolution No. 2014-20 approving Minor Use Permit No. UP2012-016 and Planned Development Permit No. PL2012-002 for the demolition and construction of the Newport Harbor Yacht Club (PA2012-091). The project was determined exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15302 (Replacement or Reconstruction) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3.
2. On March 10, 2016, the California Coastal Commission approved Coastal Development Permit No. 5-15-1459 (CDP) allowing the yacht club construction project. The CDP also authorized all of the temporary facilities described in the subject application. The City's previous approval of the project did not include a Limited Term Permit for the proposed temporary facilities.
3. An application was filed by the Newport Harbor Yacht Club with respect to property located at 720 West Bay Avenue requesting approval of a limited term permit for temporary facilities in excess of 90 days to conduct yacht club activities at the site during the reconstruction of the permanent clubhouse.
4. The applicant requests the installation of temporary land and water facilities consisting of: (1) kitchen and office facilities will be placed in portable (modular) structures on the east boatyard deck; (2) at the east docks, three slip fingers will be modified to allow the mooring of a vessel of approximately 80 feet in length for use as a temporary clubhouse; (3) in the main boatyard, two trailers on wheels will provide offices for sailboat coaching functions and restrooms. The temporary facilities would be in place throughout the construction anticipated to be 17 months.
5. The subject property is located within the Private Institutional (PI) Zoning District and the General Plan Land Use Element category is Private Institutional (PI).
6. The subject property is located within the coastal zone.
7. A public hearing was held on September 15, 2016, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting 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 meeting.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The project is categorically exempt under Section 15303, of the State CEQA (California Environmental Quality Act) Guidelines - Class 3 (New Construction or Conversion of Small Structures). The temporary modular buildings will be installed on existing concrete boat storage areas and not require any permanent modifications. The changes to the docks consist of the removal of 3 slips and 3 support piles and the placement of 8 new piles and a floating walkway for the 80-foot boat that will serve as a temporary clubhouse. An eelgrass survey and mitigation consistent with the City's approved eelgrass mitigation and avoidance policy will ensure a less than significant effect upon eelgrass. All improvements will be removed upon completion of the permanent clubhouse construction project anticipated to be completed in 2018. Lastly, the activities supported by the temporary facilities are no different and are no more intensive than the existing yacht club use.
2. The Zoning Administrator finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

## SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.040(G) (Limited Term Permits – Findings and Decisions) 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 requested 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 property will be undergoing redevelopment consisting of the demolition of the existing clubhouse and the construction of a new permanent clubhouse. Boating activities and limited assembly activities would continue and would be supported by temporary modular buildings and a boat large enough to function as a temporary clubhouse.

2. Parking during the use of the temporary facilities will be accommodated within the existing Newport Harbor Yacht Club parking lot. Parking will be subject to a parking management program applicable to the operation of the existing and future clubhouse to minimize parking conflicts in the area.
3. The temporary clubhouse replaces the existing clubhouse on a short-term basis and does not constitute a new or expanded use of the site. Clubhouse activities will be conducted within a Coast Guard approved vessel to ensure safety.
4. The hours of operation are limited to between 8:00 a.m. and 11:00 p.m., Sunday through Thursday and between 8:00 a.m. and 12:00 a.m. (midnight) Friday and Saturday.
5. All improvements associated with this Limited Term Permit will be removed within 90 days of the completion of construction of the permanent clubhouse.
6. According to the applicant, approximately 90% of intensive club activities (dining, assembly activities and regattas) are conducted on the weekends or evenings and do not overlap typical construction hours. Club operations that do overlap with normal construction hours are limited in scope and occupancy and as a result, concurrent construction and yacht club activities can occur without detriment to the area. Access and parking conflicts if they occur will be intermittent and of limited duration.

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 1.7 acres in size not including the leased tidelands area directly bayward of the site that will accommodate the temporary clubhouse within an 80-foot boat.
2. Parking is located on a separate lot that is approximately one acre in size and parking will be not affected by the proposed temporary facilities or concurrent construction of the new clubhouse.
3. The lot is developed with two boat storage areas that will accommodate the proposed modular buildings. Displaced boats will be stored more efficiently on-site or relocated to other off-site facilities.

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 project site is served by West Bay Avenue, 7<sup>th</sup> Street, 8<sup>th</sup> Street, and Balboa Boulevard. These streets have served the existing Newport Harbor Yacht Club for many years and the temporary facilities are located on the same site.
2. These streets will remain open during construction to facilitate construction and the concurrent operation of the yacht club. The yacht club operating within its temporary facilities will not generate any more traffic that it would generate otherwise.

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.*

Facts in Support of Finding:

1. Construction of the permanent clubhouse will not eliminate parking within the existing yacht club parking lot. The existing parking lot is located adjacent to the proposed temporary facilities and will continue to provide parking for the yacht club while the yacht club operates from the temporary facilities
2. A parking management plan is required to be implemented during construction and operations pursuant to the conditions of approval applied to Minor Use Permit No. UP2012-016 and Planned Development Permit No. PL2012-002. The parking management plan will be modified to address parking needs for conducting yacht club activities within the proposed temporary facilities concurrent with construction.

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 PI (Private Institutional) land use designation of the General Plan is intended to provide for privately-owned facilities that serve the public, including places for religious assembly, private schools, healthcare, cultural institutions, museums, yacht clubs, congregate homes, and comparable facilities.
2. The use authorized by the Limited Term Permit is a yacht club that currently operates at the site and the temporary facilities will allow continued use of the site for an allowed use while a new permanent clubhouse building is constructed.

3. Pursuant to Section 20.26.020 of the Municipal Code, temporary uses within the PI (Private Institutional) Zoning District are allowed subject to the approval of a Limited Term Permit. Limited Term Permits may authorize uses that might not meet the development or use standards of the applicable zoning district, but may otherwise be acceptable because of their temporary or limited nature. In this case, the temporary improvements allow for existing yacht club activities during the construction of a new replacement clubhouse. The use of all temporary improvements will cease and be removed within 90 days of the completion new clubhouse.
4. The proposed use is conditioned such that it will comply with all other applicable provisions of the General Plan, Municipal Code, and other City regulations. Applicable ministerial permits must be obtained prior to construction.
5. The site is not located within a specific plan area.
6. The proposed temporary facilities have been authorized by the California Coastal Commission pursuant to Coastal Development Permit No. 5-15-1459.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Limited Term Permit No. XP2016-006, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen (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 15TH DAY OF SEPTEMBER, 2016.**



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Patrick J. Alford  
Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL**

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 Limited Term Permit shall expire 24 months from the issuance of a building permit for the temporary facilities. All temporary structures shall be removed from the project site within 90 days of the occupancy of the permanent clubhouse.
3. Limited Term Permit No. XP2016-006 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Municipal Code, unless an extension is otherwise granted.
4. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval. 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 Limited Term Permit.
5. The Limited Term Permit may be modified or revoked by the Zoning Administrator, Planning Commission or City Council, should they determine 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.
6. Potential changes to the project shall be reviewed by the Community Development Department pursuant to Section 20.54.070 of the Zoning Code.
7. Anything not specifically approved by this Limited Term Permit is prohibited and shall be addressed by a separate and subsequent review.
8. 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.
9. 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.
10. The hours of operation are limited to between 8:00 a.m. and 11:00 p.m., Sunday through Thursday and between 8:00 a.m. and 12:00 a.m. (midnight) Friday and Saturday.
11. The Parking Management Plan required as part of Minor Use Permit No. UP2012-016 and Planned Development Permit No. PL2012-002 shall be implemented at all times during the

use of temporary facilities. The final parking management plan shall ensure that adequate off-street parking is available for concurrent construction and yacht club activities within the proposed temporary facilities. The parking management plan shall be subject to the review and approval of the Community Development Department.

12. No outside paging system or exterior sound system shall be utilized in conjunction with the Newport Harbor Yacht Club and temporary facilities.
13. All trash shall be stored within structures 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 service providers.
14. The exterior of the facility 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.
15. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Community Development Director.
16. Storage outside of the buildings in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
17. An encroachment permit is required for all work activities within the public right-of-way.
18. The operator of the facility shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by activities occurring at the project site and by any events conducted on the project site or within the temporary clubhouse and docks, food service operations, delivery/loading operations, and mechanical equipment, etc. 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
19. Construction activities which produce loud noise that disturb, or could disturb a person of normal sensitivity who works or resides in the vicinity, shall be limited to the weekdays between the hours of 7:00 a.m. and 6:30 p.m., and Saturdays between the hours of 8:00 a.m. and 6:00 p.m. No such noise occurrences shall occur at anytime on Sundays or federal holidays.
20. Boats or other materials displaced by temporary facilities or construction materials shall not be stored in the Newport Harbor Yacht Club parking lot. The parking lot shall remain open for parking and shall not be used to store or stage construction materials.
21. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless the 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 the City's approval of the Newport Harbor Yacht Club Temporary Facilities including, but not limited to, Limited Term Permit No. XP2016-006 (PA2016-135). 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, the City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of the City's costs, attorneys' fees, and damages which the 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.

22. The applicant is required to obtain all applicable approvals and/or permits from the City's Harbor Resources Division for the mooring of the temporary clubhouse vessel.

## RESOLUTION NO. ZA2016-050

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2016-009 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 217 MARGUERITE AVENUE (PA2016-103)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by AA CA Property Portfolio 1 LLC, with respect to property located at 217 Marguerite Avenue, and legally described as Lot 17 and the southwesterly 10 feet of Lot 19, Block 138, Corona Del Mar Tract, requesting approval of a tentative parcel map.
2. The applicant proposes a tentative parcel map application for two-unit condominium purposes. No waiver of Title 19 (Subdivisions) design standards are proposed with this application. An existing two-unit duplex was demolished and will be replaced with a new two-unit duplex. The Tentative Parcel Map would allow each unit to be sold individually.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is located within the coastal zone.
5. A public hearing was held on September 15, 2016, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting 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 meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to the State CEQA (California Environmental Quality Act) Guidelines under Class 15 (Minor Land Divisions).
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel

Map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

### SECTION 3. REQUIRED FINDINGS.

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code and is approved based on the following findings per Section 19.12.070 (Required Findings for Action on Tentative Maps) of Title 19:

#### Finding:

- A. *That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.*

#### Facts in Support of Finding:

1. The Tentative Parcel Map is for two-unit residential condominium purposes. A two-unit duplex was demolished and will be replaced with a new two-unit duplex. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current RT General Plan Land Use Designation.
2. The Tentative Parcel Map does not apply to any specific plan area.

#### Finding:

- B. *That the site is physically suitable for the type and density of development.*

#### Facts in Support of Finding:

1. The lot is physically suitable for two-unit development because it is regular in shape and is relatively flat.
2. The subject property is accessible from the alley at the rear, and is adequately served by existing utilities.

#### Finding:

- C. *That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Facts in Support of Finding:

1. The site was previously developed with a two-unit duplex that was demolished and will be replaced with a new two-unit duplex.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 15 (Minor Land Alterations).

Finding:

- D. That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.*

Facts in Support of Finding:

1. The Tentative Parcel Map is for residential condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 (General Improvement Requirements) of the Municipal Code and Section 66411 (Local agencies to regulate and control design of subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

- E. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the decision making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Facts in Support of Finding:

1. The design of the development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development, because there are no public easements located on the property.

Finding:

- F. That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.*

Facts in Support of Finding:

1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The site, developed for residential use, lies in a Zoning District that permits residential uses.

Finding:

- G. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) there is an adopted specific plan for the area to be included within the land project; and (2) the decision making body finds that the proposed land project is consistent with the specific plan for the area.*

1. The property is not a "land project" as defined in Section 11000.5 of the California Business and Professions Code because the existing subdivision does not contain fifty (50) or more parcels.
2. The project is not located within a specific plan area.

Finding:

- H. That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Facts in Support of Finding:

1. The Tentative Parcel Map and any future improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

- I. That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the*

*regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.*

Facts in Support of Finding:

1. The proposed two-unit duplex is consistent with the R-2 Zoning District, which allows two residential units on the property. Therefore, the Tentative Parcel Map for condominium purposes will not affect the City in meeting its regional housing need.

Finding:

- J. That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Facts in Support of Finding:

1. The new two-unit duplex will be designed so that wastewater discharge into the existing sewer system complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

- K. For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.*

Facts in Support of Finding:

1. The subject property is located within the Coastal Zone. The subdivision conforms to the Local Coastal Program since the Coastal Land Use category is Two-Unit Residential (RT-D).

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2016-009 (PA2016-103), subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 10 days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community

Development in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 15<sup>TH</sup> DAY OF SEPTEMBER, 2016.**



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Patrick J. Alford, Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. A Parcel Map shall be recorded. The Map shall be prepared on the California coordinate system (NAD88). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
2. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
3. All improvements shall be constructed as required by Ordinance and the Public Works Department.
4. The existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter shall be constructed along the Marguerite Avenue frontage.
5. The existing broken and/or otherwise damaged alley adjacent to the property shall be reconstructed. Extent of repair shall be determined by the Public Works inspector.
6. All existing overhead utilities shall be undergrounded.
7. No above ground improvements shall be installed within the 5-foot alley setback.
8. Marguerite Avenue is part of the City's Moratorium List. Work performed on said roadway will require additional surfacing requirements. See City Standard 105-L-F.
9. All existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
10. Install new drought tolerant low-growing groundcover, of the type approved by the City, throughout the Marguerite Avenue parkway fronting the development site, including the 1-foot area between the sidewalk and the property line.
11. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and

- cover. Water meter and the sewer cleanout shall be located within the Public right-of-way.
12. An encroachment permit is required for all work activities within the public right-of-way.
  13. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L and Municipal Code 20.30.130.
  14. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
  15. All on-site drainage shall comply with the latest City Water Quality requirements.
  16. All unused water services to be abandoned shall be capped at the main (corporation stop) and all unused sewer laterals to be abandoned shall be capped at property line. If the sewer lateral to be abandoned has an existing cleanout, abandonment shall include removal of the cleanout riser, the 4TT box and the wye. Sewer lateral shall then be capped where the wye used to be.
  17. Per Chapter 13 of the City Municipal Code, one (1) 36-inch box street tree shall be planted along the Marguerite Avenue frontage. Tree species shall be per Council Policy G-6.
  18. Subsequent to the recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." **The development will not be condominiums until this permit is finalized.** The building permit for the new construction shall not be finalized until after recordation of the Parcel Map.
  19. 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 19 (Subdivision Code) of the Newport Beach Municipal Code.
  20. 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 the 217 Marguerite Avenue Condominiums, including, but not limited to, Tentative Parcel Map No. NP2016-009 (PA2016-103). 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.

## RESOLUTION NO. ZA2016-051

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2016-011 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 129 34<sup>th</sup> STREET (PA2016-104)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by 129 34<sup>th</sup> Street LLC, with respect to property located at 129 34<sup>th</sup> Street, and legally described as Lot 19, Block 34, requesting approval of a tentative parcel map.
2. The applicant proposes a tentative parcel map application for two-unit condominium purposes. No waiver of Title 19 (Subdivisions) design standards are proposed with this application. An existing single-family residence was demolished and will be replaced with a new two-unit duplex. The Tentative Parcel Map would allow each unit to be sold individually.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is located within the coastal zone. The Coastal Land Use category is Two-Unit Residential (RT-D).
5. A public hearing was held on September 15, 2016 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting 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 meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to the State CEQA (California Environmental Quality Act) Guidelines under Class 15 (Minor Land Divisions).
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

### SECTION 3. REQUIRED FINDINGS.

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code and is approved based on the following findings per Section 19.12.070 (Required Findings for Action on Tentative Maps) of Title 19:

Finding:

- A. *That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.*

Facts in Support of Finding:

1. The Tentative Parcel Map is for two-unit residential condominium purposes. A single-family residence was demolished and will be replaced with a new two-unit duplex. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current RT General Plan Land Use Designation.
2. The Tentative Parcel Map does not apply to any specific plan area.

Finding:

- B. *That the site is physically suitable for the type and density of development.*

Facts in Support of Finding:

1. The lot is physically suitable for a two-unit development because it is regular in shape and is relatively flat.
2. The subject property is accessible from 34<sup>th</sup> Street and an alley at the rear, and is adequately served by existing utilities.

Finding:

- C. *That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Facts in Support of Finding:

1. The site was previously developed with a single-family residence which has been demolished and will be replaced with a new two-unit duplex.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 15 (Minor Land Alterations).

Finding:

- D. That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.*

Facts in Support of Finding:

1. The Tentative Parcel Map is for residential condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 (General Improvement Requirements) of the Municipal Code and Section 66411 (Local agencies to regulate and control design of subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

- E. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the decision making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Facts in Support of Finding:

1. The design of the development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development, because there are no public easements located on the property.

Finding:

- F. That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.*

Facts in Support of Finding:

1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The site, developed for residential use, lies in a Zoning District that permits residential uses.

Finding:

- G. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) there is an adopted specific plan for the area to be included within the land project; and (2) the decision making body finds that the proposed land project is consistent with the specific plan for the area.*

1. The property is not a "land project" as defined in Section 11000.5 of the California Business and Professions Code because the existing subdivision does not contain fifty (50) or more parcels.
2. The project is not located within a specific plan area.

Finding:

- H. That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Facts in Support of Finding:

1. The Tentative Parcel Map and any future improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

- I. *That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.*

Facts in Support of Finding:

1. The proposed two-unit duplex is consistent with the R-2 Zoning District which allows two (2) residential units on the property. Therefore, the Tentative Parcel Map for condominium purposes will not affect the City in meeting its regional housing need.

Finding:

- J. *That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Facts in Support of Finding:

1. The new two-unit duplex will be designed so that wastewater discharge into the existing sewer system complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

- K. *For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.*

Facts in Support of Finding:

1. The subject property is located within the Coastal Zone. The subdivision conforms to the Local Coastal Program since the Coastal Land Use category is Two-Unit Residential (RT-D).

## SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2016-011 (PA2016-104), subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.

2. This action shall become final and effective 10 days after the adoption of this Resolution unless within such time an appeal or call for review is filed with the Director of Community Development in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 15<sup>th</sup> DAY OF SEPTEMBER, 2016.**



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Patrick J. Alford, Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. A Parcel Map shall be recorded. The Map shall be prepared on the California coordinate system (NAD88). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
2. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
3. All improvements shall be constructed as required by Ordinance and the Public Works Department.
4. The existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter along the 34<sup>th</sup> Street frontage shall be reconstructed.
5. All existing overhead utilities shall be undergrounded.
6. No above ground improvements shall be installed within the 5-foot alley setback.
7. 34<sup>th</sup> Street is part of the City's Moratorium List. Work performed on said roadway will require additional surfacing requirements. See City Standard 105-L-F.
8. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover. Water meter and the sewer cleanout shall be located within the public right-of-way.
9. An encroachment permit is required for all work activities within the public right-of-way.
10. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L and Municipal Code 20.30.130.
11. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

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12. All on-site drainage shall comply with the latest City Water Quality requirements.
  13. Prior to recordation of the Parcel Map, a park fee shall be assessed for one additional dwelling unit.
  14. Subsequent to the recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from “duplex” to “condominium.” **The development will not be condominiums until this permit is finalized.** The building permit for the new construction shall not be finalized until after recordation of the Parcel Map.
  15. 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.
  16. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City’s approval of the 129 34<sup>th</sup> Street Condominiums including, but not limited to Tentative Parcel Map No. NP2016-011 (PA2016-104). 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.

## RESOLUTION NO. ZA2016-052

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MODIFICATION PERMIT NO. MD2016-011 FOR A 21-PERCENT ADDITION TO AN EXISTING NONCONFORMING SINGLE-UNIT DWELLING LOCATED AT 429 SNUG HARBOR ROAD (PA2016-132)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Maurer Building and Design, with respect to property located at 429 Snug Harbor Road, and legally described as Lot 140 in Tract 1218, City of Newport Beach, County of Orange requesting approval of a modification permit.
2. The applicant proposes modification permit to allow an approximately 21-percent addition to an existing non-conforming single-story, single-family residence where the Zoning Code limits additions to 10 percent of the existing gross floor area when the required parking dimensions are not provided. The non-conforming garage is currently 17-feet, 6-inches wide by 20 feet deep, where a minimum 20-foot by 20-foot dimension is required. The project proposes an approximate 400-square-foot addition to the existing 1,895-square-foot dwelling to create a new master bedroom and bathroom.
3. The subject property is located within the Single-Unit Residential (R-1) Zoning District and the General Plan Land Use Element category is Single-Unit Residential Detached (RS-D).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on September 15, 2016, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting 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 meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 1 (Existing Facilities) of the Guidelines for CEQA.
2. This exemption includes additions up to 10,000 square feet where public services and utilities are available and the area is not considered environmentally sensitive. The proposed project is an approximately 400-square-foot addition to an existing single-

residence in a developed neighborhood and is not within an environmentally sensitive area.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.050.E (Modification Permits – Required Findings) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

#### Finding:

*A. The requested modification will be compatible with existing development in the neighborhood.*

#### Facts in Support of Finding:

1. The neighborhood is comprised of one-story and two-story single-unit dwellings. The Modification Permit will allow expansion of the existing single-story, single-unit dwelling, which is compatible with other properties in the neighborhood.
2. The addition would increase the dwelling by approximately 400 square feet, to provide for a new master bedroom. The proposed alterations will comply with all applicable development standards, including height, setbacks, and open volume and will not intensify or alter the existing nonconforming parking.
3. The proposed addition will result in a total floor area of approximately 2,292 square feet (including the 370-square-foot garage), which is equal or less than the bulk and scale of other single-unit dwellings within the neighborhood.
4. The existing development on the property is a single-family dwelling. As such, there is no change to the density or intensity as a result of the proposed addition.

#### Finding:

*B. The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use.*

#### Facts in Support of Finding:

1. The interior dimensions of the existing two-car garage were compliant with the County of Orange Zoning Code at the time of construction. The area was annexed from the County in 1953 and at the time of annexation the existing garage was compliant with the Newport Beach Zoning Code. However, as a result of amendments to the Zoning Code, the two-car garage is now substandard in size, and is therefore legal nonconforming.

2. Moving the garage wall that is not within the area of the proposed construction would be costly and significantly increase the scope of the project in order to gain 2 feet, 6 inches of garage width.
3. The granting of the Modification Permit is necessary to allow a reasonable addition to an existing dwelling that was constructed in compliance with garage standards in effect at the time of original construction, and that are adequate in width for the parking of two (2) vehicles.

Finding:

*C. The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.*

Facts in Support of Finding:

1. The addition will expand the master bedroom towards the rear yard of the property. Increasing the width of the garage to 20 feet would affect the existing laundry room and result in a practical difficulty by requiring significant structural alterations to the structure and a significant expansion in the scope of work in order to increase the width of the garage by approximately 2 feet, 6 inches. Widening the garage by moving the exterior wall towards the front property line is not feasible because it would encroach into the front setback.
2. The existing garage provides two (2) useable garage spaces only slightly less than the required width therefore fulfilling the intent of the Zoning Code by providing adequate parking on-site. Approval of the Modification Permit allows the applicant to continue using the existing two-car garage, which has not proven detrimental to the occupants or neighbors of the dwelling. Also, the driveway meets the minimum length (more than 20-feet-deep) to provide two additional parking spaces on-site.

Finding:

*D. There are no alternatives to the modification permit that could provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public.*

Facts in Support of Finding:

1. The alternative would require that the applicant bring the existing two-car garage into conformance by expanding the garage width. Expanding the garage width would require significant alterations to the structure well beyond the scope of the planned small addition.
2. The other alternative is to reduce the size of the addition to not more than 10 percent of the existing floor area of the structure and comply with the requirements of the

Zoning Code. Given the proposal is to create a new master bedroom, a redesign to reduce the size of the addition will not allow the project to meet these objectives of the applicant.

Finding:

*E. The granting of the modification would not be detrimental to public health, safety, or welfare, to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.*

Facts in Support of Finding:

1. The proposed one-story addition would maintain all required setbacks and will provide adequate protection for light, air, and privacy. The addition will not preclude access to the dwelling and will be consistent in scale with other dwellings in the neighborhood.
2. The existing nonconforming garage has not proven to be detrimental to the occupants of the property, nearby properties, the neighborhood, or the City and is adequate in width to park two (2) vehicles.
3. The approval of this Modification Permit is conditioned such that the applicant is required to obtain all necessary permits in accordance with the Building Code and other applicable Codes.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Modification Permit No. MD2016-011, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.



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Patrick J. Alford, Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL****PLANNING**

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. Each parking space within the garage shall be permanently available and maintained for parking purposes. The interior dimensions (17-feet, 6-inches wide by 20 feet deep) shall be kept clear of obstructions including cabinets, shelving, or similar that may impact the ability to adequately park two (2) vehicles.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. 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.
5. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department, including for the existing improvements that were constructed without the benefit of building permits. 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.
6. 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 property owner or the leasing agent.
7. This approval shall expire and become void unless exercised within twenty-four (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.
8. 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 the 429 Snug Harbor Modification including, but not limited to, Modification Permit No. MD2016-011 (PA2016-132). 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.

## RESOLUTION NO. ZA2016-053

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2016-034 FOR A TAKE-OUT SERVICE LIMITED, EATING AND DRINKING ESTABLISHMENT LOCATED AT 6480 WEST COAST HIGHWAY (PA2016-136)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Oliver Williams on behalf of Vacancy Coffee Bar, with respect to property located at 6480 West Coast Highway, and legally described as Lot 13 and the northeasterly half of Lot 14, Block 4 of Seashore Colony Tract, as shown on a map thereof recorded in Book 7, Page 25, Miscellaneous Maps, Records of Said Orange County in the City of Newport Beach requesting approval of a minor use permit.
2. The applicant proposes a minor use permit to allow the operation of a take-out service limited, eating and drinking establishment. No late hours (after 11:00 p.m.) or alcohol service are proposed as part of this application. A maximum of six seats are provided for patrons.
3. The subject property is located within the CG (Commercial General) Zoning District and the General Plan Land Use Element category is CG (General Commercial).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is General Commercial (CG-B).
5. A public hearing was held on September 15, 2016, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting 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 meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities)
2. This exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves alterations to the interior floor plan of an existing commercial space with no expansion in use.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

A. *The use is consistent with the General Plan and any applicable specific plan.*

Facts in Support of Finding:

1. The General Plan designates the site CG (General Commercial). This designation applies to properties intended to provide a variety of commercial activities oriented primarily to serve citywide or regional needs.
2. The proposed establishment is a commercial use intended to serve nearby residents, the surrounding community, and visitors to the City of Newport Beach. Therefore, it is consistent with the CG designation.
3. The proposed take-out service limited establishment would be complementary to the surrounding commercial and residential uses.
4. The subject property is not part of a specific plan area.

Finding:

B. *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 property is located in the Commercial General (CG) Zoning District. The proposed establishment, which includes accessory kitchen facilities (no oven or stove), six seats, no alcohol service, and no late hours, is a permitted use subject to the approval of a minor use permit pursuant to Newport Beach Municipal Code Section 20.20.020 (Commercial Retail Zoning Districts Land Uses and Permit Requirements).
2. The property is nonconforming in parking because it is deficient in parking for the nonresidential uses. Based on a general office or retail parking ratio of one space per 250 square feet, 8 spaces ( $1,836/250 = 7.344$ ) are required. The property currently provides four spaces on-site.
3. Zoning Code Section 20.38.060 (Nonconforming Parking) allows a change of use on sites with nonconforming parking. It specifies that there must be no intensification or enlargement in floor area or lot area, and the new use requires a parking rate of no more than one space per 250 square feet.

4. The parking requirement for a take-out service limited, eating and drinking establishment is one space per 250 square feet, and no intensification or enlargement is proposed. Therefore, no additional parking is required.
5. As conditioned, the proposed establishment will comply with Zoning Code standards for eating and drinking establishments, including those specific to the take-out service limited use classification, which includes a maximum of six seats.

Finding:

- C. *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 proposed establishment will be accessible from Walnut Street, West Coast Highway and the alley, which provide convenient access to motorists, pedestrians, and bicyclists.
2. The proposed establishment is compatible with the existing and allowed uses in the area.
3. As conditioned, the allowed hours of operation will be 7:00 a.m. to 9:00 p.m., daily, which will minimize any disturbance to residences near the property.
4. The existing trash storage area at the rear of the property is adequate to accommodate the proposed use. It is conveniently located where materials can be deposited and collected and does not impede with parking spaces.

Finding:

- D. *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 existing parking lot provides adequate circulation for patrons.
2. The site has been reviewed by the Fire Department to ensure adequate public and emergency vehicle access is provided.
3. Any proposed site and tenant improvements will comply with the Zoning Code and all Building, Public Works, and Fire Codes.

Finding:

- E. *Operation of the use at the location proposed 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 proposed use.*

Facts in Support of Finding:

1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The proposed take-out service, eating and drinking establishment will help revitalize the project site and provide an economic opportunity for the property owner to update the tenant space, and provide additional services to residents and visitors.
3. 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.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2016-034, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.

**PASSED, APPROVED, AND ADOPTED THIS 15<sup>TH</sup> DAY OF SEPTEMBER, 2016.**



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Patrick J. Alford, Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL****PLANNING**

1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. 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 Minor Use Permit.
3. 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.
4. 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.
5. The hours of operation for the establishment shall be limited to 7:00 a.m. through 9:00 p.m., daily.
6. The sale of alcohol shall not be permitted.
7. The maximum number of seats allowed in the eating and drinking establishment shall be six (6). No outdoor seating is permitted without further review and may require an amendment to this Minor Use Permit.
8. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new use permit.
9. 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.
10. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Minor Use Permit file. The plans shall be identical to those approved by all City departments for

building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Minor Use Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.

11. 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.
12. No outside paging system shall be utilized in conjunction with this establishment.
13. 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.
14. 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.
15. 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.
16. 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).
17. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m., on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Minor Use Permit.
18. 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.
19. 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 on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permit.

20. 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.
21. 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 Vacancy Coffee Bar including, but not limited to, Minor Use Permit No. UP2016-034 (PA2016-136). 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.

### **Public Works**

22. Sewer clean-outs shall be installed on all existing sewer laterals.

## RESOLUTION NO. ZA2016-054

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2016-036 FOR A FOOD SERVICE, EATING AND DRINKING ESTABLISHMENT USE LOCATED AT 1000 NORTH BRISTOL STREET, SUITE 28 (PA2016-140)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Kobra Design, with respect to property located at 1000 North Bristol Street, Suite 28, and legally described as Parcel 1, in the City of Newport Beach, County of Orange, State of California, as shown on a Parcel Map filed in book 97, pages 18 and 19 of Parcel Maps, in the Office of the County Recorder of said County, requesting approval of a minor use permit.
2. The applicant proposes a minor use permit to allow the operation of a new food service, eating and drinking establishment use within an existing commercial shopping center. No late hours (after 11:00 p.m.) or alcohol service is requested as part of the application.
3. The subject property is located within the PC-11 (Newport Place Planned Community – General Commercial Site 3) Zoning District and the General Plan Land Use Element category is CG (General Commercial).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on September 15, 2016, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting 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 meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 1 (Existing Facilities). The Class 1 exemption includes the ongoing use of existing buildings where there is negligible or no expansion of use
2. Class 1 exempts minor alterations to existing facilities that involve negligible expansion of the use. This project involves an interior remodel of an existing commercial space and a change in use from a physical therapy facility to an eating and drinking establishment, with a negligible expansion of use.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020F. of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

*A. The use is consistent with the General Plan and any applicable specific plan.*

Facts in Support of Finding:

1. The General Plan land use designation for this site is CG (General Commercial). The CG designation is intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs. The food service establishment is consistent with this land use designation, as the use will serve residents and persons working in the area.
2. The subject property is not part of a specific plan area.

Finding:

*B. 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 property is located within General Commercial Site 3 of the PC-11 (Newport Place Planned Community) Zoning District. Restaurants are a permitted use in General Commercial Site 3 of the Newport Place Planned Community District (PC-11), subject to the approval of a use permit. A Food Service, Eating and Drinking Establishment use with no late hours and no alcohol service requires approval of a minor use permit.
2. The Plaza Newport Shopping Center provides parking pursuant to Section 20.40.040 of the Newport Beach Municipal Code as required by the Development Regulations in PC-11. Each of the uses has a required parking ratio per this Section. The parking ratio required for a food service with no alcohol service and no late hours is 1 space per 30 – 50 square feet of net public area as determined by the use permit. Based on the size of Vibe, with no late hours and no alcohol service, staff has determined the required parking ratio of 1 space per 40 square feet of net public area. This results in a parking requirement of 14 spaces. A parking summary of all existing uses including Vibe and their required parking is provided on Sheet No. TS of the approved plans. The parking summary demonstrates that including Vibe, there is a surplus of 14 parking spaces for the shopping center.

3. As conditioned, the proposed establishment will comply with Zoning Code standards for eating and drinking establishments.

Finding:

- C. 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 food service, eating and drinking establishment use will occupy an existing 1,300-square-foot tenant space within the Plaza Newport Shopping Center. The space will be improved with a small-scale kitchen and related storage areas, a restroom, and a dining area with seating for up to 20 patrons.
2. The project is located within the Plaza Newport Shopping Center. The shopping center includes existing personal services, retail sales, eating and drinking establishments, and an urgent care. The surrounding area consists of retail and office buildings with the closest residential located across the 73 Freeway adjacent South Bristol Street. The operational characteristics of the project are conditioned to help ensure the use is compatible with the residential and other commercial uses in the vicinity.
3. As conditioned, the allowed hours of operation are 7:00 a.m. to 11:00 p.m., daily, thereby limiting the likelihood of late night/early morning land use conflicts with nearby businesses.

Finding:

- D. 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 Plaza Newport Shopping Center is approximately five acres and is developed with approximately 170,000 square feet in four (4) multi-tenant buildings and a parking lot. The existing buildings and parking lot have functioned satisfactorily with the current configuration which allows vehicular access from two separate driveways along North Bristol Street and one off of Dove Street.
2. Adequate public and emergency vehicle access, public services, and utilities are provided within the existing property and the proposed project will not negatively affect emergency access.

Finding:

*E. 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 ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. 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 with the establishment.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2016-036, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. 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 15<sup>th</sup> DAY OF SEPTEMBER, 2016.**



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Patrick J. Alford, 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. 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.
3. Minor Use Permit No. UP2016-036 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
4. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
5. 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.
6. This Minor Use Permit may be modified or revoked by the Zoning Administrator if it is 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.
7. Prior to issuance of Building Permits, a fair share fee shall be assessed Pursuant to Municipal Code Section 15.38 and paid by the applicant.
8. The hours of operation for the establishment shall be limited to between the hours of 7:00 a.m. and 11:00 p.m., daily.
9. A maximum number of twenty (20) seats may be provided inside the establishment.
10. No alcohol sales or service shall be permitted unless an amendment to this Use Permit is obtained.
11. Any change in operational characteristics, expansion in area, or other modification to the approved plans, may require an amendment to this Minor Use Permit or the processing of a new use permit.

12. 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.
13. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Minor Use Permit file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Minor Use Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.
14. 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.
15. No outside paging system shall be utilized in conjunction with this establishment.
16. 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.
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.
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 10:00 p.m. and 7:00 a.m., on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Minor 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 on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.

22. 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 Vibe Organic Kitchen & Juice MUP including, but not limited to, Minor Use Permit No. UP2016-036 (PA2016-140). 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**

23. 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.