



**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 July 26, 2013

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**ZONING ADMINISTRATOR ACTIONS  
JULY 25, 2013**

- Item 1: Marigold Parcel Map No. NP2013-011 (PA2013-120)  
604 Marigold Avenue
- Action: Approved by Resolution No. ZA2013-037 Council District 6
- Item 2: Goldenrod Parcel Map NP2013-012 (PA2013-121)  
412 Goldenrod Avenue
- Action: Approved by Resolution No. ZA2013-038 Council District 6
- Item 3: Red O Minor Use Permit No. UP2013-009 (PA2013-109)  
143 Newport Center Drive
- Action: Approved by Resolution No. ZA2013-039 Council District 5
- Item 4: Girl Scouts Leadership Center Minor Use Permit No. UP2013-010 (PA2013-128)  
200 18th Street, East Side of 18th Street and North of Balboa Boulevard
- Action: Approved by Resolution No. ZA2013-040 Council District 1

**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.

Det. Randy Parker, NBPD (*ABC License*)  
Sgt. Chuck Freeman, NBPD (*Massage Therapy - ABC License*)

## RESOLUTION NO. ZA2013-037

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2013-011 FOR A PARCEL MAP FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 604 MARIGOLD AVENUE (PA2013-120)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Paul Craft, Apex Land Surveying, with respect to property located at 604 Marigold Avenue, and legally described as Lot 6 and the Northeasterly half of Lot 4, Block 640, Corona del Mar Tract requesting approval of a Tentative Parcel Map.
2. The applicant requests a tentative parcel map for two-unit condominium purposes. No exceptions to the Title 19 (Subdivisions) development standards are proposed with this application. The property was previously developed with a duplex that has been demolished and a new duplex is currently under construction. The code required two-car parking per unit will be provided.
3. The subject property is located within the Two-Unit Residential (R2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on July 25, 2013, 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 under the requirements of the California Environmental Quality Act under Class 15 (Minor Land Divisions).
2. Class 15 exempts 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 to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent. The proposed parcel map is for condominium purposes and is consistent with the requirements of the Class 15 exemption.

### SECTION 3. REQUIRED FINDINGS.

The Zoning Administrator determined in this case that the proposed parcel map is consistent with the legislative intent of Title 20 (Planning and Zoning) of the Municipal Code and is approved based on the following findings pursuant to Section 19.12.070 (Required Findings for Action on Tentative Maps) of the Municipal Code:

#### 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 proposed Parcel Map is for two-unit condominium purposes. A duplex was demolished and is being replaced with a new duplex currently under construction. The proposed subdivision and improvements are consistent with the Two-Unit Residential (R-2) Zoning District and the Two-Unit Residential (RT) General Plan Land Use Designation.

#### Finding

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

#### Facts in Support of Finding

1. The lot is regular in shape, has a slope of less than 20 percent, and is suitable for two-unit residential development.

#### Finding

- C. *That the design of the subdivision or the proposed improvements will not 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 subject property is developed and the lot, proposed improvements, and proposed parcel map application will not cause substantial environmental damage.
2. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 15 (Minor Land Divisions) which 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 2 years, and the parcel does not have an average slope greater than 20 percent. The proposed parcel map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

### 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 proposed Parcel Map is for residential condominium purposes. All construction for 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. Furthermore, the proposed project will conform to all applicable City ordinances.

### 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 easements 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 any easements acquired by the public at large for access through or use of property within the proposed development as there are no public easements that are located on the property. Sufficient access is provided with the proposed parcel map.

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. The subject property is not designated as an agricultural preserve and is less than 100 acres.

Finding

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

Facts in Support of Finding

1. The property is not a "land project" as defined in Section 11000.5 of the California Business and Professions Code.
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 proposed Parcel Map and improvements, including the duplex under construction, are subject to Title 24 of the California Building Code that requires new construction to

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meet minimum heating and cooling efficiency standards based 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 residential density allowed for the site will remain the same, which allows two units in the R-2 Zoning District. Therefore, the 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. Wastewater discharge into the existing sewer system has been designed to comply 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 not located within the Coastal Zone.

Finding

- L. *That public improvements will be required of the Applicant per the Municipal Code and the Subdivision Map Act.*

Facts in Support of Finding

1. The conditions of approval include requirements for public improvements including reconstruction of the existing broken and/or otherwise damaged concrete alley adjacent to the property.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2013-011, 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 25<sup>th</sup> DAY OF JULY, 2013.**

By:



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Brenda Wisneski, AICP, Zoning Administrator

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**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. Prior to recordation of the parcel map, the existing broken and/or otherwise damaged concrete alley adjacent to the property shall be reconstructed.
5. Marigold 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.
6. Prior to recordation of the parcel map, 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.
7. 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. The water meter and sewer cleanout shall be located within the public right-of-way.
8. An encroachment permit is required for all work activities within the public right-of-way.
9. All improvements shall comply with the City's sight distance requirement. See City Standard STD-110-L and Municipal Code 20.30.130.
10. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way may be required at the discretion of the Public Works Inspector.



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11. All on-site drainage shall comply with the current City Water Quality requirements.
  12. All utilities to be abandoned shall be done so per City standards.
  13. Each dwelling unit shall be served with individual gas and electrical service connection and shall maintain separate meters for the utilities.
  14. In compliance with the requirements of Chapter 9.04, Section 901.4.4, of the Newport Beach Municipal Code, approved street numbers or addresses shall be placed on all new and existing buildings in such a location that is plainly visible and legible from the street or road fronting the subject property. Said numbers shall be of non-combustible materials, shall contrast with the background, and shall be either internally or externally illuminated to be visible at night. Numbers shall be no less than four inches in height with a one-inch wide stroke. The Planning Division Plan Check designee shall verify the installation of the approved street number or addresses during the plan check process for the new or remodeled structure.
  15. The building permit for the new construction shall not be finalized until after recordation of the Parcel Map. Subsequent to 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.
  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 Marigold Parcel Map including, but not limited to, Parcel Map No. NP2013-011 (PA2013-120). 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.
  17. This Parcel Map shall expire if the map has not been recorded within 2 years of the date of approval, unless an extension is granted by the Community Development Director in accordance with the provisions of Section 19.16 of the Newport Beach Municipal Code.

## RESOLUTION NO. ZA2013-038

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2013-012 FOR A PARCEL MAP FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 412 GOLDENROD AVENUE (PA2013-121)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Paul Craft, Apex Land Surveying, with respect to property located at 412 Goldenrod Avenue, and legally described as Lot 14, Block 334, Corona del Mar Tract requesting approval of a Tentative Parcel Map.
2. The applicant requests a tentative parcel map for two-unit condominium purposes. No exceptions to the Title 19 (Subdivisions) development standards are proposed with this application. The property was previously developed with a duplex that has been demolished and a new duplex is currently under construction. The code required two-car parking per unit will be provided.
3. The subject property is located within the Two-Unit Residential (R2) 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 Plan category is Two Unit Residential (RT-D).
5. A public hearing was held on July 25, 2013, 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 under the requirements of the California Environmental Quality Act under Class 15 (Minor Land Divisions).
2. Class 15 exempts 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 to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent. The proposed parcel map is for condominium purposes and is consistent with the requirements of the Class 15 exemption.

### SECTION 3. REQUIRED FINDINGS.

The Zoning Administrator determined in this case that the proposed parcel map is consistent with the legislative intent of Title 20 (Planning and Zoning) of the Municipal Code and is approved based on the following findings pursuant to Section 19.12.070 (Required Findings for Action on Tentative Maps) of the Municipal Code:

#### 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 proposed Parcel Map is for two-unit condominium purposes. A duplex was demolished and is being replaced with a new duplex currently under construction. The proposed subdivision and improvements are consistent with the Two-Unit Residential (R-2) Zoning District and the Two-Unit Residential (RT) General Plan Land Use Designation.

#### Finding

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

#### Facts in Support of Finding

1. The lot is regular in shape, has a slope of less than 20 percent, and is suitable for two-unit residential development.

#### Finding

- C. *That the design of the subdivision or the proposed improvements will not 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 subject property is developed and the lot, proposed improvements, and proposed parcel map application will not cause substantial environmental damage.

2. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 15 (Minor Land Divisions) which 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 2 years, and the parcel does not have an average slope greater than 20 percent. The proposed parcel map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

#### 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 proposed Parcel Map is for residential condominium purposes. All construction for 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. Furthermore, the proposed project will conform with all applicable City ordinances.

#### 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 easements 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 any easements acquired by the public at large for access through or use of property within the proposed development as there are no public easements that are located on the property. Sufficient access is provided with the proposed parcel map.

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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. The subject property is not designated as an agricultural preserve and is less than 100 acres.

Finding

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

Facts in Support of Finding

1. The property is not a "land project" as defined in Section 11000.5 of the California Business and Professions Code.
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 proposed Parcel Map and improvements, including the duplex under construction, are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards based 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*

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*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 residential density allowed for the site will remain the same, which allows two units in the R-2 Zoning District. Therefore, the 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. Wastewater discharge into the existing sewer system has been designed to comply 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 proposed parcel map is for two-unit condominium purposes. The proposed subdivision and improvements are consistent with the RT-D (Two-Unit Residential) Coastal Land Use Plan designation.
2. The subject property conforms to public access policies of Chapter Three of the Coastal Act. The subject property is not located adjacent to the shoreline. The existing lot configuration does not affect the public rights-of-way and existing access to coastal resources.
3. Recreation policies pertaining to water-oriented recreational activities and uses contained within Chapter Three of the Coastal Act are not applicable to the subject property, which is zoned for residential use.

#### Finding

- L. That public improvements will be required of the Applicant per the Municipal Code and the Subdivision Map Act.*

Facts in Support of Finding

1. The conditions of approval include requirements for public improvements including reconstruction of the existing broken and/or otherwise damaged concrete alley adjacent to the property.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2013-012, 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 25<sup>th</sup> DAY OF JULY, 2013.**

By:



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Brenda Wisneski, AICP, Zoning Administrator

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**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. Prior to recordation of the parcel map, the existing broken and/or otherwise damaged concrete alley adjacent to the property shall be reconstructed.
5. Goldenrod 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.
6. Prior to recordation of the parcel map, 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.
7. 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. The water meter and sewer cleanout shall be located within the public right-of-way.
8. An encroachment permit is required for all work activities within the public right-of-way.
9. All improvements shall comply with the City's sight distance requirement. See City Standard STD-110-L and Municipal Code 20.30.130.
10. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way may be required at the discretion of the Public Works Inspector.



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11. All on-site drainage shall comply with the current City Water Quality requirements.
  12. All utilities to be abandoned shall be done so per City standards.
  13. Each dwelling unit shall be served with individual gas and electrical service connection and shall maintain separate meters for the utilities.
  14. In compliance with the requirements of Chapter 9.04, Section 901.4.4, of the Newport Beach Municipal Code, approved street numbers or addresses shall be placed on all new and existing buildings in such a location that is plainly visible and legible from the street or road fronting the subject property. Said numbers shall be of non-combustible materials, shall contrast with the background, and shall be either internally or externally illuminated to be visible at night. Numbers shall be no less than four inches in height with a one-inch wide stroke. The Planning Division Plan Check designee shall verify the installation of the approved street number or addresses during the plan check process for the new or remodeled structure.
  15. The building permit for the new construction shall not be finalized until after recordation of the Parcel Map. Subsequent to 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.
  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 Goldenrod Parcel Map including, but not limited to, Parcel Map No. NP2013-012 (PA2013-121). 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.
  17. This Parcel Map shall expire if the map has not been recorded within 2 years of the date of approval, unless an extension is granted by the Community Development Director in accordance with the provisions of Section 19.16 of the Newport Beach Municipal Code.

## RESOLUTION NO. ZA2013-039

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2013-009 TO ALLOW A TYPE 47 (ON SALE GENERAL) ALCOHOLIC BEVERAGE CONTROL LICENSE AT A NEW FOOD SERVICE, EATING AND DRINKING ESTABLISHMENT LOCATED AT 143 NEWPORT CENTER DRIVE (PA2013-109)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Red O, LLC, with respect to property located at 143 Newport Center Drive, and legally described as Parcel 3 of Lot Line Adjustment No. LA2012-005, recorded September 11, 2012 as Instrument No. 2012000529298 of official records, in the office of the County Recorder of the County of Orange, requesting approval of a minor use permit.
2. The applicant requests a minor use permit to allow a Type 47 (On Sale General) Alcoholic Beverage Control (ABC) license for Red O, a food service, eating and drinking establishment with late hours (after 11:00 p.m.), live entertainment, with and two outdoor dining patios. Due to the late hours of operation (after 11:00 p.m.), approval of an Operator's License by the Newport Beach Police Department will be required.
3. The subject property is located within the Fashion Island Sub-Area of the PC-56 (North Newport Center Planned Community) Zoning District and the General Plan Land Use Element category is CR (Regional Commercial).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on July 25, 2013 in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. 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 under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).
2. The proposed project involves the addition of alcoholic beverages at a restaurant that is under construction that will include live entertainment and two outdoor dining patios. Therefore, both the interior use and outdoor dining patios qualify for a categorical exemption under Class 1.

### SECTION 3. REQUIRED FINDINGS.

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

#### Finding

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

#### Facts in Support of Finding

In finding that the proposed use is consistent with Section 20.48.030 (Alcohol Sales) of the Zoning Code, the following criteria must be considered:

- i. The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
1. The proposed establishment is located within Reporting District 39, wherein the number of crimes is higher than adjacent Reporting Districts (RDs) and the City. The adjacent RDs (43, 44, and 47) have a lower number of crimes as they are primarily residential with few commercial uses. Due to the high concentration of commercial land uses in Fashion Island, the crime rate and shoplifting rate is greater than adjacent residential Reporting Districts; however, the Newport Beach Police Department does not consider the number significant given the type of development within this Reporting District.
- ii. The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
1. Due to the high concentration of commercial land uses, the calls for service and number of arrests are greater than adjacent residential Reporting Districts. The Police Department does not consider the rate high because of the concentration of restaurants and commercial uses within Fashion Island and the surrounding North Newport Center. The Newport Beach Police Department has not previously reported any calls for service to the subject property since the proposed use is part of a new development project.
- iii. The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*
1. Fashion Island does not abut sensitive land uses and is separated from other uses by parking lots, roadways and other commercial uses. Residential uses are permitted in the northern sections of the PC-56 (North Newport Center Planned Community) Zoning

District within Blocks 500, 600, 800, and San Joaquin Plaza. The proposed use is not located in close proximity to these residential districts, day care centers, park and recreation facilities, places of religious assembly, and schools.

- iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*
1. Muldoon's Irish Pub is located at 202 Newport Center Drive to the south of the project site at the intersection of Anacapa and Newport Center Drive. Muldoon's is authorized to operate until 2:00 a.m. and provides live entertainment, dancing, and Type 47 (On Sale General) and Type 68 (Portable Bar) alcohol licenses. Off-sale alcohol sales are located in the vicinity at Whole Foods, at 461 Newport Center Drive, within Fashion Island. Additionally, there are many comparable restaurant establishments within the Fashion Island Shopping Center. These include other pad restaurant tenants such as Roy's Hawaiian Fusion, Fleming's Steak House, and True Food Kitchen. The Type 47 (On Sale, General) alcohol license requested is the same as those obtained for said establishments and there is no evidence suggesting these uses have been detrimental to the neighborhood. However, Red O and the recently approved Fig & Olive will be the only locations with late hours after 12:00 midnight within Fashion Island. While the proposed hours of operation are later, an adequate security plan per the Police Department is in place for the Fashion Island Shopping Center and conditions of approval are proposed to adequately manage the late hour component of the proposed restaurant.
- v. Whether or not the proposed amendment will resolve any current objectionable conditions.*
1. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcohol is intended for the convenience of customers dining at the restaurant. Operational conditions of approval relative to the sale of alcoholic beverages will help ensure compatibility with the surrounding uses and minimize alcohol related impacts.
  2. The restaurant use will be located within a shopping center designated to include such development. The Regional Commercial (CR) designation of the General Plan allows eating and drinking establishments. The service and consumption of alcohol at the proposed restaurant, pursuant to a Type 47 Alcoholic Beverage Control license under the conditions imposed by this Minor Use Permit that it will be operated and maintained, complies with the provisions of the Zoning Code and the North Newport Center Planned Community District Regulations.
  3. The restaurant will be adjacent to a highly-traveled commercial area that is occupied by a mixture of office and retail uses. It is anticipated that the establishment will serve visitors and employees of the nearby businesses who stop and eat within the North Newport Center area. Adding alcohol service to the menu will compliment the food service and provide for the convenience of customers.

4. The proposed restaurant is located within a shell building that is currently under construction. Improvement to the interior of the building for the restaurant use is currently in plan check and will be designed specifically for a restaurant that includes on-site service and consumption of alcoholic beverages.

#### *Minor Use Permit*

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

#### Finding

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

#### Facts in Support of Finding

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

#### Finding

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

#### Facts in Support of Finding

1. The project is located in the Fashion Island Sub-Area of the PC-56 (North Newport Center Planned Community) Zoning District. Fashion Island is intended to be a regional retail and entertainment center and a day/evening destination with a wide variety of uses that will serve visitors, residents, and employees of the area. The restaurant with alcoholic beverage sales and live entertainment is a commercial use that serves visitors, residents, and employees in the area and, therefore, is consistent with the purposes of the North Newport Center Planned Community District for the Fashion Island Sub-Area.
2. Eating and Drinking Establishments are permitted uses within the Fashion Island Sub-Area of the North Newport Center Planned Community Zoning District. Pursuant to the Planned Community Text, live entertainment falls beneath the definition of "Commercial Recreation and Entertainment" which is a permitted use within the Fashion Island subarea. Pursuant to the Planned Community Text, the on-premise sale of alcohol in conjunction with an eating and drinking establishment requires a minor use permit.

3. The proposed outdoor dining area and the restaurant area are within the limits of the cumulative floor area allocated for Fashion Island.

#### Finding

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

#### Facts in Support of Finding

1. The Fashion Island Sub-Area permits a range of retail, dining, and commercial entertainment uses within the PC-56 (North Newport Center Planned Community) Zoning District. While the proposed establishment provides a component of late night dining services similar to a lounge, the use is compatible with surrounding permitted commercial uses in the vicinity and there are no sensitive land uses located nearby.
2. The proposed hours of operation are 9:00 a.m. to 2:00 a.m., daily. While the proposed hours of operation for Red O are later than the hours for other restaurants within Fashion Island, an adequate security plan is in place for the Fashion Island Shopping Center and conditions of approval are proposed to adequately manage the late hour component of the proposed restaurant.
3. Due to the late hours of operation (after 11:00 p.m.), approval of an Operator's License by the Newport Beach Police Department will be required. A copy of the Fashion Island Security Plan will be provided as part of the operator license process for the proposed business. An operator license required pursuant to NBMC Chapter 5.25 may be subject to additional and/or more restrictive conditions to regulate and control potential nuisances associated with the operation of the restaurant. The operator license will help ensure compatibility of the proposed business with the surrounding uses in the vicinity.
4. Live entertainment in the form of a piano bar and mood music is requested during the regular hours of operation. The recommended hours of operation for live entertainment during the evening hours are until 1:00 a.m., daily, to encourage patrons to leave in compliance with the 2:00 a.m. closing hour.
5. The on-site consumption of alcoholic beverages will be incidental to the restaurant use. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period, per the conditions of approval. Alcoholic beverage service will be under the supervision of employees who have completed a certified training program pursuant to Condition of Approval No. 15.

Finding

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

Facts in Support of Finding

1. The Fashion Island shopping center provides adequate parking and circulation within the surface parking lots and parking structures on site.
2. This site has been reviewed by the Fire Department to ensure adequate public and emergency vehicle access is provided. Utilities are provided with all applicable requirements.
3. The site is under construction with a shell building designed for a restaurant use. Improvement to the interior of the building for the restaurant use is currently in plan check.
4. Improvements to the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Finding

- F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a 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 food service, eating and drinking establishment with alcohol service will serve visitors and the surrounding business community. The proposed establishment will provide alcohol service as a public convenience to visitors and workers within the surrounding area.
3. Fashion Island management has historically provided efficient on-site security and cooperates with the Newport Beach Police Department. The provision of an operator license will further enable the Police Department to regulate the operation of the proposed business.

4. The applicant is required to install a grease interceptor, 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. UP2013-009 (PA2013-109), 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 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 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 25<sup>th</sup> DAY OF JULY, 2013.**

By:



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Brenda Wisneski, AICP, Zoning Administrator



**EXHIBIT "A"****CONDITIONS OF APPROVAL****Planning Division Conditions**

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. Alcohol service shall be limited to a Type 47 (On Sale General) Alcoholic Beverage Control License.
3. The hours of operation shall be limited to between 9:00 a.m. to 2:00 a.m., daily.
4. There shall be no live entertainment allowed on the premises without first obtaining a Live Entertainment Permit from the City. Live entertainment shall be permitted at the subject property until 1:00 a.m., daily or earlier if required by the Live Entertainment Permit. Prior to the final of building permits for the restaurant tenant improvement, the applicant shall obtain a Live Entertainment Permit from the Revenue Division.
5. The operator as well as any future operators of the restaurant shall obtain an Operator License pursuant to Chapter 5.25 of the Municipal Code to ensure the business is operated in a safe manner. The Operator License may be subject to additional and/or more restrictive conditions to regulate and control potential late-hour nuisances associated with the operation of the restaurant.
6. Prior to the issuance of building permits, Fair Share Traffic Fees shall be paid for any additional gross floor area associated with the restaurant and mezzanine in accordance with Chapter 15.38 of the Newport Beach Municipal Code. The applicant shall be credited for square footage identified in the restaurant pad shell building under Plan Check No. 1364-2012 and the remaining balance shall be charged to the applicant.
7. Prior to the issuance of building permits, San Joaquin Transportation Corridor Fees shall be paid for any additional gross floor area associated with the restaurant and mezzanine. The applicant shall be credited for square footage identified in the restaurant pad shell building under Plan Check No. 1364-2012 and the remaining balance shall be charged to the applicant.
8. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code, unless the Zoning Administrator first approves an amended minor use permit. This Minor Use Permit shall be terminated if the operation is no longer maintained as a "bona fide public eating place" as defined by the California Department of Alcoholic Beverage Control.
9. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.

10. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
11. There shall be no on-site radio, television, video, film or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved Special Event Permit issued by the City of Newport Beach.
12. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except when served in conjunction with food ordered from the full service menu.
13. Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
14. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of this restaurant business 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.
15. There shall be no dancing allowed on the premises unless permitted by a Special Events permit.
16. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
17. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
18. All owners, managers, and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's, and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.

19. The operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.
20. The boundary of the accessory outdoor dining area shall be marked through the use of a 36-inch-high rail. Fences, walls, or similar barriers shall serve only to define the outdoor dining area and not constitute a permanent all weather enclosure.
21. All mechanical equipment shall be screened from view of adjacent properties and adjacent public streets, and shall be sound attenuated in accordance with Chapter 10.26 of the Municipal Code, Community Noise Control.
22. 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.
23. 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).
24. The operator of the food service use shall be responsible for the clean-up of all on-site and off-site trash, garbage and litter generated by the use.
25. Storage outside of the building shall be prohibited, with the exception of the required trash container enclosure.
26. 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, and debris from the premises and on all abutting sidewalks within 20 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.
27. The alcoholic beverage outlet operator shall take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, and areas surrounding the alcoholic beverage outlet and adjacent properties, if directly related to the patrons of the subject alcoholic beverage outlet.
28. All proposed signs shall be in conformance with the provisions of the PC-56 (North Newport Center Planned Community), Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code, or an approved Comprehensive Sign Program for the project site.

29. 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 permit.
30. The Zoning Administrator may add to or modify conditions of approval to this Minor Use Permit, upon a determination that the operation which is subject of this Minor Use Permit causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.
31. Any changes in operational characteristics, hours of operation, expansion in area, or modification to the floor plan, shall require an amendment to this Minor Use Permit, unless otherwise approved by the Planning Division.
32. Should the business, subject to the Minor Use Permit conditioned herein, be sold or otherwise come under different ownership or a change in operators, any future owners, operators, or tenants shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
33. This Minor Use Permit shall expire unless exercised within twenty-four months from the date of approval as specified in Section 20.54.60 of the Newport Beach Municipal Code.
34. 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 Red O Minor Use Permit including, but not limited to, the Minor Use Permit No. UP2013-009 (PA2013-109). 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 and Fire Department Conditions**

35. 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.

36. A covered wash-out area (36 inches wide by 36 inches deep by 6 feet high) for refuse containers and kitchen equipment shall be provided and shall drain directly into the sewer system, unless otherwise approved by the Community Development Director and Public Works Director in conjunction with the approval of an alternative drainage plan. The washout area shall be specifically shown on the construction drawings submitted for building permits.
37. The facility shall comply with the provisions of Chapter 14.30 of the Municipal Code for commercial kitchen grease disposal, as determined by the Building Division and the Utilities Department.
38. The restaurant shall provide the number of plumbing fixtures to satisfy the requirements of Chapter 4 of the California Building Code, 2010.
39. Prior to issuance of building permits, an exit analysis shall be provided for the outdoor dining patio.
40. The facility shall be designed to meet exiting and fire protection requirements as specified by the California Building Code and shall be subject to review and approval by the Building Division.
41. Public sanitation facilities shall be available to the general public (patrons) during regular business hours of the operation, unless otherwise approved by the Building Division.

## RESOLUTION NO. ZA2013-040

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2013-010 FOR THE GIRL SCOUTS LEADERSHIP CENTER, LOCATED AT 200 18<sup>TH</sup> STREET (PA2013-128)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by the Girl Scouts of Orange County (GSOC), with respect to the property located at 200 18<sup>th</sup> Street, and legally described on Exhibit B of Attachment ZA 3 (Ground Lease Agreement).
2. The applicant proposes a minor use permit to allow the operation of a new 4,250 square-foot Girl Scouts facility with a 1,950 square-foot patio area to be located at the northwest corner of the future Marina Park facility.
3. The subject property is located within the PC 51 (Marina Park) Planned Community District and the General Plan Land Use Element category is PR (Park and Recreation).
4. The subject property is located within the coastal zone.
5. A public hearing was held on July 25, 2013, in the Corona del Mar Conference Room (Bay E-1<sup>st</sup> Floor) at 100 Civic Center Drive, Newport Beach, California. 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. All significant environmental concerns for the proposed project have been addressed in the previously certified Environmental Impact Report SCH No. 2008051096, and the City of Newport Beach intends to use said document for the above noted project, and further that there are no additional reasonable alternative or mitigation measures that should be considered in conjunction with said project. Copies of the previously prepared environmental document are available for public review and inspection at the Planning Division or at the City of Newport Beach website at [www.newportbeachca.gov/ceqadocuments](http://www.newportbeachca.gov/ceqadocuments).

#### SECTION 3. REQUIRED FINDINGS.

##### *Minor Use Permit*

In accordance with Section 20.52.020.F of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit 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 GSOC is a nonprofit corporation that provides organized Girl Scouts programs for girls as chartered by the Girl Scouts of the United States of America. The use of the Girl Scouts facility will be similar to that of the existing facility which includes troop and youth meetings, program activities, overnight stays, and limited adult leadership training. The proposed building is designed as assembly/meeting facility where classes, group meetings, and gatherings would be held.
2. Assembly/meeting facilities are consistent with the General Plan Land Use designation of Park and Recreation as they are intended to provide a facility for public or private recreation use that may include assembly and meeting facilities which include community centers, meeting halls for clubs and other membership organizations, and civic and private auditoriums, etc.

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 lease area of the Girl Scouts facility is located within the Marina Park Planned Community District which has been adopted to accommodate a unique facility in that it would combine community center, park, beach, recreational and visitor-serving boating facility, and a Girl Scouts house. The proposed Girl Scouts facility is consistent with the land uses identified within this planned community district.

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 Girl Scouts facility has been designed to aesthetically complement the Marina Park facility (a community center and sailing center) with curvilinear shapes of the roof, fence and accent entry wall, and uses many of the same materials with similar textures and colors. The height of the Girl Scouts building of 22 feet 6 inches, at the highest point, is consistent with the Marina Park facility, and provides a harmonious fit to the nearby residential properties.

2. The new Girl Scouts facility will replace and enhance the current function of the existing Girl Scouts House by providing a more efficient and multi-purpose environment that will be compatible with the Marina Park facility. The new facility is designed to visually and functionally anchor the northwest corner of the Marina Park complex and situated within an area defined by the lease line that encloses 7,156 square feet and serves as the limit for the construction of the new facility.
3. The use of the facility is consistent with the Girl Scouts Mission, which is similar to that of the existing facility, and the operating characteristics of the use are compatible with the anticipated uses planned for the Marina Park complex, which includes a community center, a sailing center and marina, and a public park.

#### 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 facility's main entry fronts the southern parking lot and has suitable physical access and parking for public and emergency vehicles within the driveway to serve the facility. The loading zone along the curb in front of the facility is intended to provide a convenient location for parent drop-off and pick-up, thereby improving the overall parking lot circulation.

#### 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, a safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

#### Facts in Support of Finding

1. The proposed Girl Scouts facility has been reviewed and this approval includes conditions to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The proposed new facility has been designed to meet all of the stipulations identified in the ground lease agreement between the GSOC and the City. The operator is required to take reasonable steps to ensure the operation of the Girl Scouts programs will not create a public or private nuisance to the surrounding uses and Marina Park facility.
2. The existing Girl Scouts facility has been operating near this location since 1947 and has not proven to conflict with surrounding uses or proven inconsistent with the surrounding area. The operational characteristics and function of the Girl Scouts



facility at this location will not substantially change from that of the existing facility which has not proven to be detrimental to the surrounding area or the City.

**SECTION 4. DECISION.**

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2013-010, 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 days after the adoption of this Resolution 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 25<sup>TH</sup> DAY OF JULY, 2013.**



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Brenda Wisneski, AICP, Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL****Planning Division Conditions**

1. The development shall be in substantial conformance with the approved ground lease agreement and the submitted plans which include 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. Use Permit No. UP2013-010 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. The Community Development Director shall consider any existing agreements between the applicant and the City, as well as any future agreements, in determining the exercise of Use Permit No. UP2013-010 and/or granting a time extension.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. 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.
5. This minor use permit may be modified or revoked by the Zoning Administrator if determined at a public hearing 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. The operation of the Girl Scouts facility shall be consistent with the terms and conditions stated herein and included in the ground lease agreement including but not limited to the use of the facility as identified in Exhibit H of the Ground Lease Agreement, and parking requirements as identified in the Exhibit G of the Ground Lease Agreement.
7. Any change in operational characteristics, expansion in the building area and/or lease area, or other modification to the approved plans, shall require subsequent review and may require an amendment to this use permit or the processing of a new use permit.
8. A copy of the Resolution, including conditions of approval Exhibit A shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
9. Signs shall be regulated by Chapter 20.42 (Signs) of the Newport Beach Municipal Code and shall be subject to the review and approval of the Public Works Department.

10. All trash shall be stored within the designated enclosed trash enclosure area (covered and with three walls and a self-latching gate), except when placed for pick-up by refuse collection agencies.
11. Kayak storage shall be kept within the enclosed outdoor patio area as identified on the approved site plan and storage racks shall be kept at a maximum of height of 6 feet.
12. 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 Girl Scouts Leadership Center including, but not limited to, the Minor Use Permit No. UP2013-010 (PA2013-128). 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.
13. All mechanical equipment shall be screened from view of adjacent properties and adjacent public streets, and shall be sound attenuated in accordance with Chapter 10.26 of the Newport Beach Municipal Code, Community Noise Control.

#### **Public Works Conditions**

14. Exterior lighting within the ground lease area shall be regulated by Section 20.30.070 of the Municipal Code and shall be subject to the review and approval of the Public Works Department.
15. The "Catering" kitchen shall be kept as a "non-commercial" grade facility and only be equipped with a residential type stove, microwave, and refrigerator as such the kitchen shall be used as a heat and serve kitchen. This means groups would bring in foods that require minimal preparation. The kitchen shall be used to heat the meals and provide a serving and clean up space. The kitchen shall not be used to prepare and cook or allow food types in the kitchen that would contain grease laden vapors. Signage shall be posted to notifying participants that the kitchen is to be used to heat and serve food only.

#### **Fire Department Conditions**

16. A separate underground fire line submittal shall be required.

17. The proposed fire ring shall have combustible clearances as recommended by the manufacturer or the Mechanical Code.
18. Emergency access shall be provided to the building and the rear yard, as determined by the Newport Beach Fire Department, such as a Knox Box which must contain the keys to the main entrance, rear yard, and mechanical rooms.
19. "Activity area" rooms with an occupant load of 50 or more people shall meet the requirements for assembly occupancy. (i.e., two exits from each room, door swings in direction of travel, panic hardware, etc.)
20. Approved numbers or addresses shall be placed on all new and existing buildings in such a position that is plainly visible and legible from the street or road fronting the property. Said numbers shall be of non-combustible materials, shall contrast with their background, and shall be either internally or externally illuminated to be visible at night. Commercial buildings shall have numbers or addresses placed above or immediately adjacent to all doors that would allow the Fire Department access in an emergency situation. In no case shall the numbers be less than four inches in height for residential and six inches in height for commercial with a one inch stroke.
21. A hood fire suppression system shall be required if any cooking is done which produces grease laden vapors.

### **Building Division Conditions**

22. 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.