

# ATTACHMENT 1

## RESOLUTION NO. 2022-XX

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, DENYING THE APPEAL OF AND UPHOLDING THE PLANNING COMMISSION'S DECISION APPROVING PLANNING APPLICATION 21-07 AND ZONING APPLICATION 19-50 (ZA-17-16 A1) FOR A CONDITIONAL USE PERMIT TO ALLOW OFF-SITE VALET PARKING AND TO PERMANENTLY ALLOW TEMPORARY OUTDOOR SEATING FOR AN EXISTING RESTAURANT (TRENTA PIZZA AND CUCINA) AND A MINOR CONDITIONAL USE PERMIT TO AMEND THE PREVIOUS APPROVAL FOR THE RESTAURANT (ZA-17-16) IN THE MG ZONE FOR PROPERTY AT 1661 SUPERIOR AVENUE, SUITE C & D**

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY FINDS AND DECLARES AS FOLLOWS:

WHEREAS, Planning Application 21-07 and the first amendment to Zoning Application 17-16 was filed by Marco Palazzo (with Trenta Pizza), authorized agent for the property owner, 126 Properties LLC, requesting approval of the following:

1. Planning Application (Conditional Use Permit) 21-07 to allow off-site parking at 1645 Superior Avenue for the use of the property at 1661 Superior Avenue and a request to permanently allow temporary outdoor seating for the restaurant, and
2. Zoning Application (Minor Conditional Use Permit) 19-50 (ZA-17-16 A1) to amend previously approved minor conditional use permit for the restaurant.

WHEREAS, a duly noticed public hearing was held by the Planning Commission on September 12, 2022 with all persons having the opportunity to speak for and against the proposal, and the project was approved by the Commission on a 6-1 vote.

WHEREAS, a review of the Planning Commission's approval of the project was filed on September 19, 2022.

WHEREAS, a duly noticed public hearing was held by the City Council on November 15, 2022 with all persons having the opportunity to speak for and against the proposal;

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), the project is exempt from the provisions of CEQA per CEQA Guidelines Section 15301 (Class 1), for Existing Facilities.

WHEREAS, the CEQA categorical exemption for this project reflects the independent judgement of the City of Costa Mesa.

NOW, THEREFORE, based on the evidence in the record and the findings contained in Exhibit A, and subject to the conditions of approval contained within Exhibit B, the City Council hereby denies the appeal of the Planning Commission's decision and **APPROVES** Planning Application 21-07 and Zoning Application 19-50 (ZA-17-16 A1).

BE IT RESOLVED that the Costa Mesa City Council does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the staff report for Planning Application 21-07 and Zoning Application 19-50 (ZA-17-16 A1) and upon applicant's compliance with each and all of the conditions in Exhibit B, and compliance of all applicable federal, state, and local laws. Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the document in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

**PASSED AND ADOPTED this 15<sup>th</sup> day of November, 2022.**

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John Stephens, Mayor

ATTEST:

APPROVED AS TO FORM:

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Brenda Green, City Clerk

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Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA   )  
COUNTY OF ORANGE    )       ss  
CITY OF COSTA MESA    )

I, BRENDA GREEN, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that the above and foregoing is the original of Resolution No. 2022-\_\_\_\_ and was duly passed and adopted by the City Council of the City of Costa Mesa at a regular meeting held on the 15<sup>th</sup> day of November 2022, by the following roll call vote, to wit:

AYES:           COUNCIL MEMBERS:

NOES:           COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 16<sup>th</sup> day of November 2022.

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BRENDA GREEN, CITY CLERK

## EXHIBIT A

### FINDINGS

- A. The proposed project complies with Costa Mesa Municipal Code Section 13-29(g)(2) because:

**Finding:** The proposed use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area.

**Facts in Support of Findings:** The proposed project includes the permanent approval of an existing temporary outdoor seating area that is currently operating without impacts to neighboring properties. The applicant proposes to remove the outdoor seating area when not in use by the restaurant, making all 25 on-site parking spaces available for use by the other tenants on-site. The proposed outdoor patio is currently operating without affecting other properties in the area and therefore the permanent approval of the outdoor seating is not anticipated to result in impacts to surrounding properties. Lastly, as proposed, the site will be in conformance with Code required parking requirements for the restaurant and maintain a surplus of customer parking.

**Finding:** Granting the conditional use permit will not be materially detrimental to the health, safety, and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.

**Facts in Support of Finding:** The proposed restaurant project would not generate adverse noise or traffic impacts that are unusual for this zoning designation. Condition of approval number six requires the operation to be conducted in a manner that would allow for the quiet enjoyment of the surrounding neighborhood. Furthermore, the project has been conditioned (Condition of Approval No. 7) so that if parking problems arise, the restaurant shall institute appropriate operational measures necessary to minimize or eliminate the problem. Compliance with the applicable Building, Fire Safety and Health Codes will also ensure that the project is not materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.

**Finding:** Granting the conditional use permit will not allow a use, density, or intensity which is not in accordance with the General Plan designation and any applicable specific plan for the property.

**Facts in Support of Finding:** Granting the conditional use permit will not allow a use, density or intensity, which is not in accordance with the general plan designation and any applicable specific plan for the property. In accordance with CMMC Section 13-93(m) and Section 13-96, off-site parking and valet parking may be authorized with approval of a conditional use permit and as proposed with

the off-site and valet parking, the use would maintain a parking surplus. In addition, the existing restaurant is a complementary use to the area, including the adjacent residential uses, and as conditioned, the restaurant does not generate noise or parking impacts unusual for an industrially-zoned property, and the current operations (which are essentially the same as proposed) do not adversely impact the surrounding uses. Lastly, the proposed project is consistent with applicable policies and objectives of the 2015-2035 General Plan as described below.

1. **Policy LU-1.1:** *Provide for the development of a mix and balance of housing opportunities, commercial goods and services, and employment opportunities in consideration of the needs of the business and residential segments of the community.*

**Consistency:** The proposed project upholds the balance of land uses satisfying the needs of the community as it pertains to commercial goods and services, and employment opportunities by providing for outdoor dining restaurant options.

2. **Policy LU-6.7:** *Encourage new and retain existing businesses that provide local shopping and services.*

**Consistency:** The proposed project would allow for the retention of an existing restaurant within the City, thus encouraging the long-term productivity and viability of the community's economic base. The proposed project would expand an existing successful local land use, which contributes to the City's tax base and ultimately preserves the City's long-term fiscal health.

3. **Policy LU-6.19:** *Provide flexibility and support for development of residential, office, small retail centers, and similar uses that would serve local residents and would also benefit from the high visibility along major corridors outside of significant commercial or industrial nodes.*

**Consistency:** Approval of the project would provide permanent restaurant outdoor seating that is currently being conducted under an approved TUP. In addition, the applicant proposes to remove the outdoor seating area when not in use by the restaurant, making the parking spaces (used to accommodate the outdoor dining area) available for use by the other tenants on-site. Lastly, the proposed restaurant satisfies Land Use Policy LU-1.1 because it provides an outdoor dining experience that signals economic vitality on one of the City's commercial corridors.

- B. **Finding:** The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures. The project is categorically exempt from the provisions of

the California Environmental Quality Act (CEQA) under Section 15301 for Existing Facilities. This exemption allows for the alteration and permitting involving negligible or no expansion of an existing use. The proposed project involves approval of a restaurant outdoor seating that is already operating under a temporary use permit and is in current operation and therefore complies with the CEQA Exemption. The project is also consistent with the applicable General Plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

- C. The project is exempt from Chapter XII, Article 3 Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

## **EXHIBIT B**

### **CONDITIONS OF APPROVAL**

- PIng.      1.    The use shall be limited to the type of operation described in this staff report: a restaurant use with offsite valet parking and an outdoor seating patio, and change in restaurant operation hours. Any change in the operational characteristics shall be subject to Planning Division review and may require an amendment to the conditional use permit, subject to either Zoning Administrator or Planning Commission approval, depending on the nature of the proposed change. The applicant is reminded that Code allows the Planning Commission to modify or revoke any planning application based on findings related to public nuisance and/or noncompliance with conditions of approval [Title 13, Section 13-29(o)].
2.    The conditions of approval, code requirements, and special district requirements of PA-21-07 & ZA-17-16 A1 shall be blueprinted on the face of the site plan as part of the plan check submittal package.
3.    The applicant shall defend, indemnify, and hold harmless the City, its elected and appointed officials, agents, officers and employees from any claim, legal action, or proceeding (collectively referred to as "proceeding") brought against the City, its elected and appointed officials, agents, officers and/or employees arising out of, or which are in any way related to, the applicant's project, or any approvals granted by City related to the applicant's project. The indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and cost of suit, attorney's fees, and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, the City and/or the parties initiating or bringing such proceeding. This indemnity provision shall include the applicant's obligation to indemnify the City for all the City's costs, fees, and damages that the City incurs in enforcing the indemnification provisions set forth in this section. City shall have the right to choose its own legal counsel to represent the City's interests, and applicant shall indemnify City for all such costs incurred by the City.
4.    The applicant shall contact the Planning Division to arrange a Planning inspection of the site prior to the release of occupancy/utilities. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
5.    A copy of the conditions of approval for the conditional use permit must be kept on premises and presented to any authorized City official upon request. New business/property owners shall be notified of conditions of approval upon transfer of business or ownership of land.
6.    The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The applicant and/or business owner shall institute whatever security and operational measures that are necessary to comply with this requirement.

7. If parking problems arise, the restaurant shall institute appropriate operational measures necessary to minimize or eliminate the problem including, but not limited to, reducing the operating hours of the business and/or obtaining an entitlement for additional off-site or valet parking.
8. All dining areas shall observe State and local health guidelines for restaurants.
9. Any service of alcoholic beverages in outdoor seating areas is subject to approval by the ABC.
10. The patio shall be posted with a contact phone number so any noise concerns can be reported to the business owner or her/his representative.
11. Any canopies or tents (with or without heaters) will require Fire and Building Department approval prior to installation.
12. The applicant shall maintain a parking agreement that secures offsite parking as described in the report. Should the agreement for off-site parking provided at 1645 Superior be terminated, the applicant must notify the Director of Economic and Development Services in writing at least 30 days prior to termination and modify operations appropriately (including but not limited to removal of outdoor seating), or secure other equivalent offsite parking to address parking requirements. Any changes to the off-site parking location or valet service may require an amendment to the Conditional Use Permit.
13. The restaurant shall operate the valet service and provide the available parking as described in the report. A minimum of three valet attendants shall be utilized.
14. The restaurant hours of operation, including the outdoor seating area, are Sunday through Thursday, 5 PM to 9 PM and Friday and Saturday, 5 PM to 10 PM. The restaurant may also be open during lunchtime hours (11:30 AM to 2:30 PM), seven days a week; however, during this time outdoor seating is limited to the 250-square-foot outdoor seating patio area noted on the approved plans and shall not include use of the expanded outdoor seating area located within the parking lot. Weekday lunchtime hours of operation are also specifically limited pursuant to Condition of Approval No. 17.
15. When not in operation, the outdoor seating area shall be removed to provide for sufficient parking for the other onsite tenants, pursuant to the CMMC.
16. Valet attendants when entering or leaving the offsite parking location shall not “rev” engines and shall turn-off vehicles as soon as parked. Vehicle radios shall remain off at all times when on the offsite parking property. Valet attendants will also keep their voices low in respect to the adjacent residential properties.
- PC 17. Prior to implementation of weekday lunchtime hours (11:30 AM to 2:30 PM), a Parking Management Plan shall be submitted and approved by the Director of Economic and Development Services.

## **CODE REQUIREMENTS**



The following list of federal, state and local laws applicable to the project has been compiled by staff for the applicant's reference. Any reference to "City" pertains to the City of Costa Mesa.

- Plng.
1. Approval of the planning/zoning application is valid for two (2) years from the effective date of this approval and will expire at the end of that period unless applicant establishes the use by one of the following actions: 1) a building permit has been issued and construction has commenced, and a valid building permit has been maintained by making satisfactory progress as determined by the Building Official; 2) a certificate of occupancy has been issued; or 3) the use has been established and a business license has been issued. A time extension can be requested no less than thirty (30) days or more than sixty (60) days before the expiration date of the permit and submitted with the appropriate fee for review to the Planning Division. The Director of Development Services may extend the time for an approved permit or approval to be exercised up to 180 days subject to specific findings listed in Title 13, Section 13-29 (k) (6). Only one request for an extension of 180 days may be approved by the Director. Any subsequent extension requests shall be considered by the original approval authority.
  2. Permits shall be obtained for all signs according to the provisions of the Costa Mesa Sign Ordinance.
  3. Development shall comply with all requirements of Articles 5 and 9, Chapter V, Title 13 of the Costa Mesa Municipal Code relating to industrial development standards.
  4. Parking stalls on both projects site locations (1661/1663 Superior Ave. & 1645 Superior Ave.) shall be double-striped in accordance with City standards.
  5. Any mechanical equipment such as air-conditioning equipment and duct work shall be screened from view in a manner approved by the Planning Division.
- Bldg.
6. Comply with the requirements of the following adopted codes: 2019 California Building Code, 2019 California Electrical Code, 2019 California Mechanical Code, 2019 California Plumbing Code, 2019 California Green Building Standards Code and 2019 California Energy Code (or the applicable adopted, California Building Code, California Electrical Code, California Mechanical Code, California Plumbing Code, California Green Building Standards and California Energy Code at the time of plan submittal or permit issuance) and California Code of Regulations also known as the California Building Standards Code, as amended by the City of Costa Mesa. Requirements for accessibility to sites, facilities, buildings and elements by individuals with disability shall comply with chapter 11B of the 2019 California Building Code.
  7. Prior to issuing the Building permit the conditions of approval shall be on the approved Architectural plans.

8. A change of occupancy shall require compliance with the Disabled access requirements of chapter 11B of the 2019 California Building Code.

### **SPECIAL DISTRICT REQUIREMENTS**

The requirements of the following special districts are hereby forwarded to the applicant:

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| AQMD   | <ol style="list-style-type: none"><li>1. Prior to the Building Div. (AQMD) issuing a demolition permit contact South Coast Air Quality Management District located at:<br/>21865 Copley Dr.<br/>Diamond Bar, CA 91765-4178<br/>Tel: 909- 396-2000<br/>Or<br/>Visit their web site<br/><a href="http://www.costamesaca.gov/modules/showdocument.aspx?documentid=23381">http://www.costamesaca.gov/modules/showdocument.aspx?documentid=23381</a><br/>The Building Division will not issue a demolition permit until an Identification number is provided by AQMD.</li><li>2. Applicants shall contact the Air Quality Management District (AQMD) at 1-(800) 288-7664 for potential additional conditions of development or for additional permits required by AQMD</li></ol> |
| County | <ol style="list-style-type: none"><li>3. Provide a plan to the County of Orange Health Department for review and approval.</li></ol>  |