



Agenda Report

Item #: 25-134

Meeting Date: 01/21/2025

TITLE: REVIEW OF THE PLANNING COMMISSION'S DECISION TO UPHOLD THE ZONING ADMINISTRATOR'S DECISION TO APPROVE MINOR CONDITIONAL USE PERMIT AND OUTDOOR DINING PERMIT (PODA-24-0001 AND PMCP-24-0008) LOCATED AT 814 WEST 19TH STREET ("WESTEND")

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTED BY: JUSTIN ARIOS, ASSOCIATE PLANNER

CONTACT INFORMATION: JUSTIN ARIOS, ASSOCIATE PLANNER, 714-754-5667

RECOMMENDATION:

Staff recommends the City Council review the Planning Commission's decision to uphold the Zoning Administrator's decision to approve PODA-24-0001 AND PMCP-24-0008.

APPLICANT OR AUTHORIZED AGENT:

The authorized agent is Tyler Hertzske/Roland Barrera, representing the property owner, Monica Chang.

BACKGROUND:

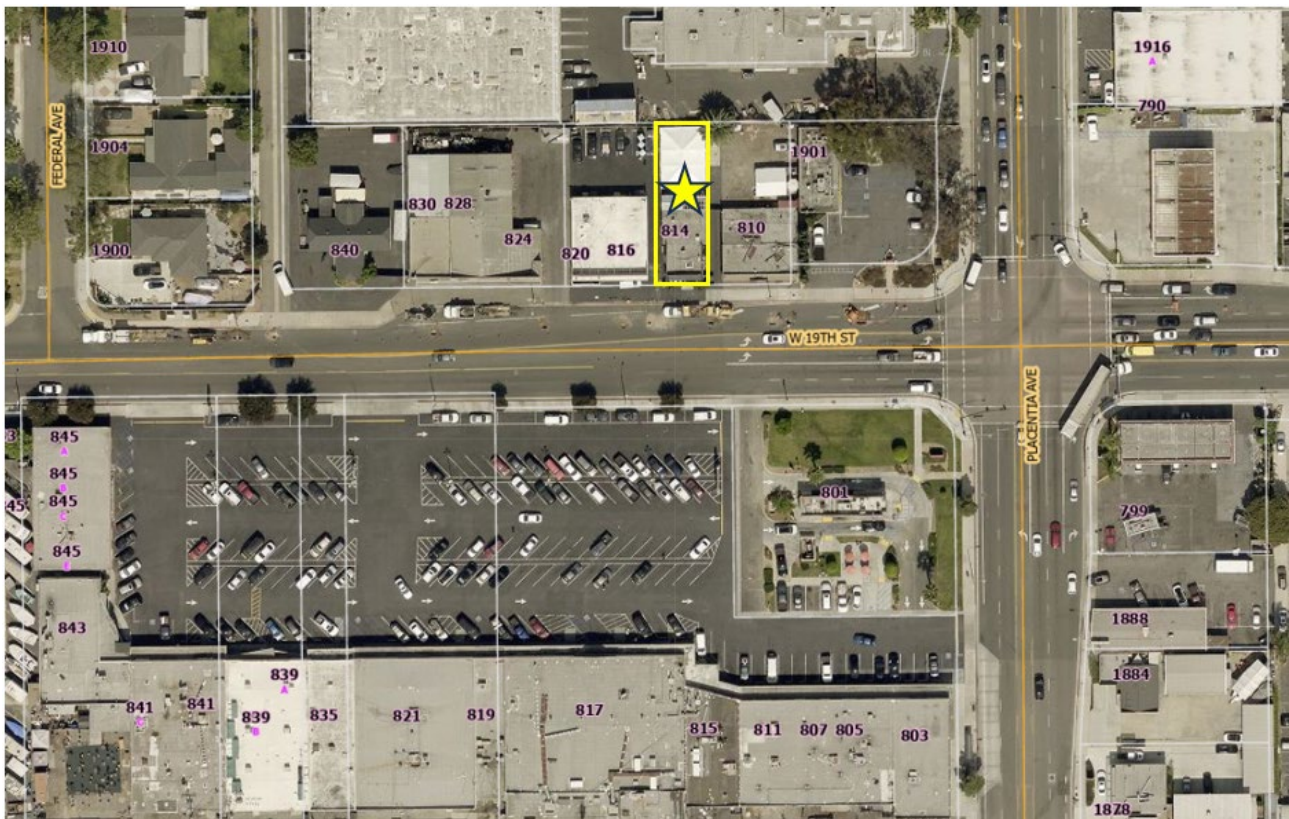
The existing business, Westend, was approved administratively with a business license to replace a food and beverage serving establishment in 2017 ("Big Belly Deli"). The Westend business license approved a coffee/café eatery with beer and wine, as well as the retail sale of antiques. The approved hours of operation are from 6 a.m. to 11 p.m., with a maximum of 300 square feet of indoor restaurant seating area.

The project site is located along the north side of West 19th Street between Federal Avenue and Placentia Avenue. The property is zoned C1 (Local Business District) and has a General Plan land use designation of "General Commercial". Physical on-site improvements include an existing 1,034-square-foot building with an approximate 175 square-foot front courtyard area. The property has vehicular access from a narrow on-site driveway that connects to a three-car surface parking lot located at the rear of the property. The project site is surrounded by commercially zoned properties to the south (across West 19th Street), east and west; and by industrially zoned properties to the north (along Placentia Avenue). Several existing eating and drinking establishments are located nearby and on both sides of the subject property. See Figure 1 – Site Plan, below.

Zoning Administrator Review

On May 28, 2024, the City’s Zoning Administrator approved a project to permit outdoor dining and construct a new outdoor patio structure, removal of two of the three existing site parking spaces to accommodate the new outdoor patio, expand the hours of operation for service of alcoholic beverages, and to allow for live entertainment indoor and outdoor (new patio) at an existing food and beverage establishment. On May 30, 2024, an “application for review” of the approval was submitted by then City Councilmember Harper, concerned specifically with “adequate parking for both the applicant and the surrounding businesses.” At the October 14, 2024, Planning Commission meeting, the Planning Commission reviewed the call for review and upheld the Zoning Administrator’s approval. On October 20, 2024, an “application for review” of the Planning Commission’s decision upholding the approval was submitted by City Councilmember Harper.

Figure 1 – Location Map



Public Comments

Two public comment letters were submitted and considered by the Zoning Administrator for the May 28, 2024, decision date: both letters indicating project opposition. After reviewing these letters, Planning Division staff informed the applicant of these neighbor issues and the applicant attempted to reach out to the neighbors in order to resolve potential concerns.

Outdoor Dining Ordinance

On January 16, 2024, the City Council determined that outdoor dining promotes private and public economic interests, creates a community oriented and pedestrian friendly dining environment, and adopted ordinance modifications that encourage existing and new food and beverage serving establishments to offer outdoor dining. Pursuant to provisions of the Costa Mesa Municipal Code (CMMC) dealing with parking, Section 13-89, "outdoor seating areas shall not be included in the floor area calculations for the purposes of determining the required parking." Therefore, the proposed new outdoor seating area is exempted from the requirement of parking.

AB 2097

Additionally, the project location is subject to Assembly Bill 2097 (AB 2097), which was signed into law by Governor Newsom and became effective on January 1, 2023. The primary objective of this legislation is to restrict local governments from imposing parking regulations on commercial and residential projects that are located within 0.5 miles of a "major transit location." AB 2097 defines a "major transit location" as an existing rail or bus rapid transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 20 minutes or less during the morning and afternoon peak commute periods. Pursuant to the "Costa Mesa SCAG Data/Map Book", the subject site is located within 0.5 miles of a major transit location (bus route intersection) and is therefore exempted from the requirement to provide additional parking pursuant to State law.

ANALYSIS:

The applicant is requesting to permit outdoor dining, allow the construction of a new outdoor patio structure, which includes the elimination of two of the three onsite parking spaces, expand the hours of operation for service of alcoholic beverages, and allow live entertainment indoors and outdoors within the proposed new patio area. See Figure 2 – Site Plan, below. The project proposes an increase in the restaurant customer serving area of approximately 800 square feet (outdoor dining area only). The proposed hours of operation are Mondays through Fridays, 5 p.m. to 2 a.m. and Saturdays and Sundays from 2 p.m. to 2 a.m. The applicant is also proposing the installation of a bike rack, and the use of 17 offsite parking spaces located at 1945 Placentia Avenue. The 1945 Placentia off-site parking is located directly behind the subject property with vehicular access from Placentia Avenue. The proposed change in hours for alcoholic beverage service, operations and new outdoor seating area requires a Minor Conditional Use Permit (MCUP) for the following:

- Establishing an outdoor dining area within an existing parking area that results in more than a 50-percent increase of public indoor area [CMMC Table 13-47(b)];
- The removal of more than 25% of existing required parking [CMMC Table 13-47(b)];
- Outdoor dining area cover/structure to encroach into a setback area [CMMC Section 13-48(a)(1)(k)];
- The sale of alcoholic beverages for on-site consumption after 11 p.m. located farther than 200 feet from a residential zone [CMMC Table 13-47(b)]; and
- To provide live entertainment after 11 p.m. located farther than 200 feet from a residential zone [CMMC Table 13-47(b)];

A detailed description and analysis of the proposed project well as the proposed use, operations, and improvements to the property are described in the May 28, 2024, Zoning Administrator report (Attachment 7) and October 14, 2024, Planning Commission staff report (Attachment 6), linked below:

Zoning Administrator Report:

<https://www.costamesaca.gov/home/showdocument?id=57109&t=638524889579825007>

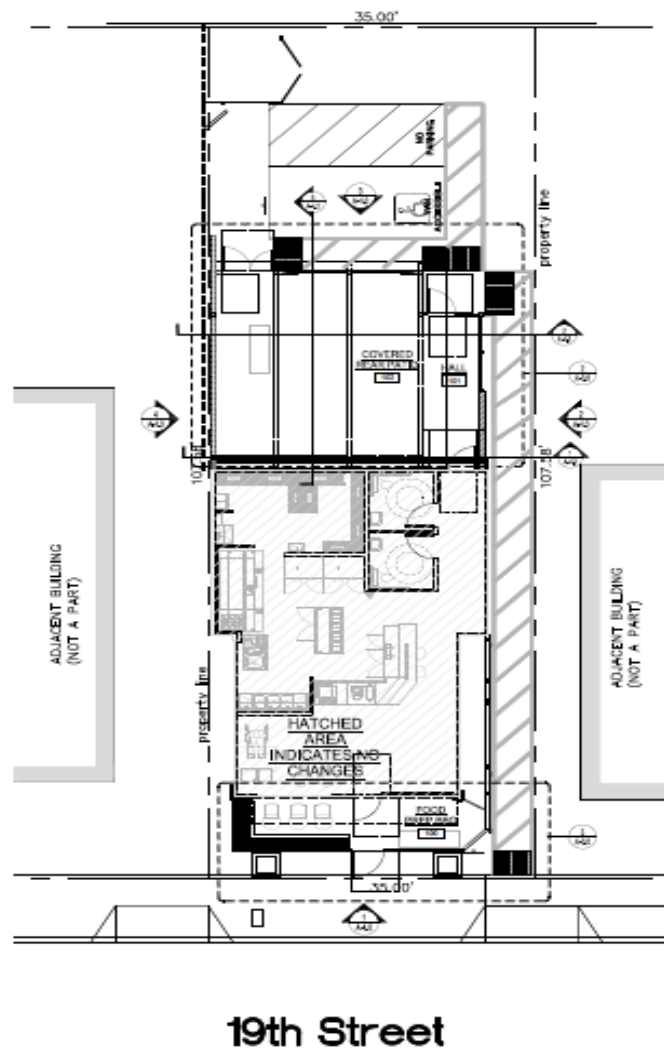
Planning Commission Report:

<https://costamesa.legistar.com/LegislationDetail.aspx?ID=6892008&GUID=D2C79D0D-9BF3-4FCE-B995-BB081059ABB1>

The Planning Commission meeting minutes are also provided as an attachment to this report (Attachment 3) and the meeting video is linked below:

https://costamesa.granicus.com/player/clip/4181?meta_id=322344

Figure 2 - Site Plan



Planning Commission Review

Following the “call for review” of the Zoning Administrator’s decision, the applicant obtained 17 offsite parking spaces that are located at 1945 Placentia Avenue for restaurant customer use while in operation. The 1945 Placentia off-site parking is located directly behind the subject property with vehicular access from Placentia Avenue. The applicant also indicated that the restaurant would provide security staff to monitor customers crossing the public right-of way from nearby businesses and request that if they have parked at other nearby businesses, they relocate their vehicles to available street parking or at 1945 Placentia Avenue before entering the premises.

Public Comments

For the October 14, 2024, Planning Commission meeting, eleven public comment letters were submitted and considered by the Planning Commission (all letters indicating project concerns/opposition). Copies of the submitted public comment letters are provided in Attachment 5. In addition, eleven public speakers (several of whom also submitted public comments) attended the Planning Commission meeting and provided further public comments. The commenters generally stated concern for parking deficiency, noise and the proximity to residential properties. Concerns were also raised with patrons parking at off-site locations, across the street at a retail commercial center, or in residential neighborhoods.

Added Conditions of Approval

As part of their motion for approval of the project, the Planning Commission added conditions of approval to require a six-month review of the use after operation has commenced, to restrict the approved hours of operation until the six-month review is conducted, and for the applicant to work with staff and incorporate directional/wayfinding parking lot signage, directing customers to approved parking locations. See the below conditions of approval:

Condition of Approval No. 17: The Planning Commission shall conduct a review of business operations for neighborhood compatibility issues, with particular attention given to parking impacts and noise issues, after the extended hours for alcohol sales and live entertainment have been in operation for six (6) months. The Planning Commission may modify the days and hours that alcohol sales and live entertainment are conditionally permitted at Westend, including the option to revoke this approval, based on the Planning Commission’s assessment of the facts and findings presented at the six-month review hearing.

Condition of Approval No. 18: Until the Planning Commission’s six-month review of this entitlement has concluded, Westend’s approved hours of operation for alcohol sales and live entertainment shall conclude by 11 p.m. Sunday through Thursday, and Fridays and Saturdays alcohol sales and live entertainment shall conclude by 2 a.m. Based on the final determination by the Planning Commission at the conclusion of their six-month review of this entitlement, Westend shall adjust their hours of operation for alcohol sales and live entertainment to align with the Planning Commission’s decision.

Condition of Approval No. 19: The applicant shall work with staff to incorporate directional/wayfinding parking lot signage, directing customers to approved parking locations.

By a vote of four to two, with one Commissioner absent, the Planning Commission determined it was able to make the Findings for the MCUP and Outdoor Dining Permit and conditionally approve the project by upholding the Zoning Administrator’s decision. (Planning Commission Resolution No. PC-2024-24 approving the project is provided as Attachment 4).

Call for Review

On October 20, 2024, City Council Member Harper submitted an “application for review” of the Planning Commission’s decision, which is provided as Attachment 2 to this report. As indicated by Councilmember Harper, the topics for requesting the review of the Planning Commission’s decision included the following concerns: (1) inadequate parking, (2) parking history, (3) applicant’s accessibility, (4) outdoor noise and expansion plans, (5) proximity to residents, (6) noise at late hours, and (7) parking control measures. Below are the Councilmembers specific “reasons for requesting review” followed by staff responses/clarification to each:

1. *“Inadequate Parking - The current parking situation is insufficient for the space. Patrons are likely to park in nearby residential neighborhoods, which are already designated as permit-only parking zones. The lack of enforcement of these parking restrictions exacerbates the problem. Additionally, nearby establishments such as Semi-Tropic and 3-13 Bar have been reported to misuse parking spaces designated for other businesses, creating further strain on parking resources.”*

Staff Response: Pursuant to the City’s Parking Code, Section 13-89 provides that “outdoor seating areas shall not be included in the floor area calculations for the purposes of determining the required parking.” Therefore, the project does not require additional parking. Also, as previously mentioned, the applicant obtained 17 offsite parking spaces that are located at 1945 Placentia Avenue for use by the restaurant while in operation. This is 14 additional parking spaces for customer use over what is currently available on-site. Lastly, State Law (AB 2097) precludes the City from requiring parking for the proposed expansion of use because the subject site is located within 0.5 miles of a major transit location. The proposed project is therefore exempted from the requirement to provide additional parking pursuant to State law.

2. *“Parking History - The applicant has admitted that parking has always been an issue at this location, raising concerns about their ability to effectively manage the situation, especially with nearby businesses contributing to the parking overflow.”*

Staff Response: The applicant has obtained 17 offsite parking spaces located at 1945 Placentia Avenue that are available for restaurant customer use while in operation. In addition, the Planning Commission approval included Conditions of Approval Nos. 14, 16, and 19 to address potential parking-related concerns:

Condition of Approval No. 14: On-site security shall include a minimum of three security guards with one of the three security staff stationed at the front of the restaurant checking for age identification. Restaurant security staff shall also monitor customers crossing the public right-of way from nearby businesses and request that that if they have parked at other nearby businesses that they relocate their vehicles to available street parking or at 1945 Placentia Avenue before entering the premises. The operator shall be required to provide additional on-site security if requested by the Police Department, or by the Director of Economic and Development Services Department.

Condition of Approval No. 16: Outdoor dining areas shall not result in any customer parking offsite, (including in any adjacent commercial property parking areas, unless authorized by both property owners), with the exception of available public parking. Restaurant customers shall not park in adjacent residential areas or on residential streets. If parking shortages or other parking-related problems arise, the business operator shall institute appropriate operational measures necessary to minimize or eliminate the problem in a manner deemed appropriate by the Director of Economic and Development Services or designee, including, but not limited to, reducing operating hours of the business, reducing interior or exterior seating capacities, hiring an additional employee trained in traffic control to monitor parking lot use and assist with customer parking lot circulation, and requiring employees to bike, walk or take public transit.

Condition of Approval No. 19: The applicant shall work with staff to incorporate directional/wayfinding parking lot signage, directing customers of approved parking locations.

3. *“Applicant’s Accessibility - By the applicant’s own admission, they do not drive to this location, potentially limiting their understanding of the parking issues faced by patrons and neighbors.”*

Staff Response: The applicant and the current restaurant staff generally live nearby the site and often do not drive (they either ride their bicycles or walk).

4. *“Outdoor Noise and Expansion Plans - The applicant’s plan to add an outdoor stage and PA system could significantly increase noise levels. Although acoustic measures could mitigate the impact, no verification or detailed analysis of these measures was provided during the planning commission meeting. This is particularly concerning given that noise complaints have already been raised against nearby establishments, which has led to citations for non-compliance.”*

Staff Response: The project is conditioned to operate in compliance with the City’s Noise Ordinance, and the application included an acoustical analysis. Additionally, the Planning Commission approval included the following Conditions of Approval No. 11 and 12 to address potential noise concerns:

Condition of Approval No. 11: Noise concerns shall be addressed in a timely manner pursuant to Title 13, Chapter XIII of the Costa Mesa Municipal Code. A contact phone number shall be posted at the establishment’s entrance and outdoor dining area so any noise concerns can be reported to the business operator. Outdoor dining areas shall be subject to review by authorized City officials to ensure that noise complaints and/or potential noise ordinance violations are addressed. If necessary, modifications of the operating characteristics of outdoor dining areas may be required. If any noise complaints and/or noise ordinance violations are not adequately addressed, approvals for outdoor dining areas may be revoked at the discretion of the appropriate review authority.

Condition of Approval No. 12: Live entertainment shall conclude by 2 a.m. except as modified by Condition of Approval Nos. 17 and 18. Live entertainment may include various genres of musical performances, open mic, DJ, comedy, dance performances and live art entertainment. The areas of entertainment shall be limited to the interior of the building and the proposed rear patio area. The live entertainment shall operate without impacting the surrounding developments and businesses. Installation of soundproofing shall occur with live entertainment pursuant to the applicant provided sound management plan. All restaurant operations, including but not limited to live entertainment shall be in compliance with the City’s Noise Ordinance standards. If the live entertainment creates off-site noise and/or other impacts, and

complaints are received, the City may require that the live entertainment either be limited to the inside of the restaurant or a reduction of the hours of live entertainment. A noise study with structural and non-structural noise mitigations may also be required. The noise study will be paid by the restaurant operator under the administration of the City.

5. *“Proximity to Residents - The closest residential property is just 275 feet from the location. Residents have raised concerns about noise disturbances, particularly with the extended operating hours until 2 a.m., which could negatively affect their quality of life.”*

Staff Response: The nearest residential property is located approximately 265 feet from the subject property. The CMMC Section 13-49 provides special findings for restaurants located within 200 feet of residentially-zone property; however, does not require the same level of scrutiny for restaurants located further than 200 feet away, such as the subject property. However, and as previously mentioned, the Planning Commission approval included Conditions of Approval No. 11 and 12 to address potential noise concerns, and the use is subject to the City’s Noise Ordinance. Lastly, the use is located along a commercial corridor developed with other similar food and beverage establishments, operating under similar hours, with live entertainment and with outdoor dining.

6. *“Noise at Late Hours - Residents may not be sufficiently protected if noise becomes an issue late at night and addressing these complaints could involve a long and burdensome process. The recent approval of a 6-month “trial period” allowing music on Fridays and Saturdays further heightens concerns about late-night disturbances, especially given past violations of COVID-19 restrictions by Westend Bar.”*

Staff Response: The design of the proposed addition is intended to direct any potential noise impacts toward Placentia Avenue (away from residential). The nearest residential property is located approximately 265 feet from the subject property and the restaurant is located along a commercial corridor with other similar uses, and where the Zoning Code intends for these types of restaurant uses to operate. As previously mentioned, the Planning Commission approval included Conditions of Approval No. 11 and 12 to address potential noise concerns, and the Costa Mesa Police Department operate during all hours and are experienced in responding to noise and nuisance calls for service.

7. *“Parking Control Limitations - The applicant has acknowledged they cannot control where patrons park, and with ongoing parking challenges in the area, this could lead to further overflow into residential neighborhoods, making the situation unmanageable for both businesses and residents.”*

Staff Response: The Planning Commission approval included Conditions of Approval Nos. 14, 16, and 19 to address potential parking-related concerns. Specifically, Condition of Approval No. 16 requires that “customers shall not park in adjacent residential areas or on residential streets.”

City Council “De Novo” Hearing

Pursuant to CMMC Chapter 9, Appeal and Review Procedures, the City Council shall conduct a new or “de novo” review of the matter. The City Council may exercise its independent judgement and discretion in making a decision, and the call for review hearing is not limited to the grounds stated for the review or the evidence that was previously presented to the Planning Commission and Zoning Administrator. The City Council’s decision on the matter is the final decision.

Findings and Review Criteria

Pursuant to the CMMC, approval of each of the project’s applications must be based on evidence in the administrative record that substantially supports the following applicable review criteria and findings:

CMMC Section 13-29 (e) Review Criteria:

- Compatible and harmonious relationship between the proposed building and site development, and use(s), and the building and site developments, and uses that exist or have been approved for the general neighborhood.
- Safety and compatibility of the design of buildings, parking area, landscaping, luminaries, and other site features which may include functional aspects of the site development such as automobile and pedestrian circulation.
- Compliance with any performance standards as prescribed elsewhere in the Zoning Code.
- Consistency with the general plan and any applicable specific plan; and
- The planning application is for a project-specific case and is not to be constructed to be setting a precedent for future development.

CMMC Section 13-29 (g)(2) Minor Conditional Use Permit Findings:

- The proposed development or use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area.
- 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; and
- 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.

Staff has attached a draft City Council resolution (Attachment 1) for approval based on the Planning Commission’s decision on October 14, 2024. Notwithstanding this, should the City Council determine to overturn the Planning Commission’s decision, staff requests that the City Council articulate its reasons for denial based on the required findings.

ENVIRONMENTAL DETERMINATION:

If the City Council decides to uphold the Planning Commission decision and approve the application, the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15303 (Class 3), New Construction and Conversion of Small Structures. This project site contains an existing commercial building that has been used for a restaurant use, and the application does not propose a change in use. The project is consistent with the applicable General Plan land use designation and policies as well as with the applicable zoning designation and regulations. Furthermore, none of the exceptions that bar the application of a categorical exemption pursuant to CEQA Guidelines section 15300.2 applies. Specifically, the project would not result in a significant cumulative impact; would not have a significant effect on the environment due to unusual circumstances; would not result in damage to scenic resources; is not located on a hazardous site or location; and would not impact any historic resources.

Alternatively, if the City Council determines that the required applicable CMMC findings cannot be made to approve the project, CEQA Guidelines section 15270 statutorily exempts projects that a public agency rejects or disapproves.

ALTERNATIVES:

The City Council has the following alternatives:

- Uphold the Planning Commission’s decision and adopt a resolution to approve Minor Conditional Use Permit and Outdoor Dining Permit; or
- Uphold the Planning Commission’s decision with modifications and adopt a resolution to approve Minor Conditional Use Permit and Outdoor Dining Permit; or
- Overturn the Planning Commission’s decision and adopt a Resolution to deny Minor Conditional Use Permit and Outdoor Dining Permit; or
- Remand Minor Conditional Use Permit and Outdoor Dining Permit back to the Planning Commission to reconsider the matter based on specific City Council direction.

FISCAL REVIEW:

There are no fiscal impacts associated with this agenda item.

LEGAL REVIEW:

The City Attorney’s Office has reviewed this report and approves it as to form.

PUBLIC NOTICE:

Pursuant to Title 13, Section 13-29(d), of the Costa Mesa Municipal Code, three types of public notification have been completed no less than 10 days prior to the date of the public hearing:

1. **Mailed notice.** A public notice was mailed to all property owners and occupants within a 500-foot radius of the project site on Wednesday, January 8, 2025. The required notice radius is measured from the external boundaries of the property.
2. **On-site posting.** A public notice was posted on each street frontage of the project site on Friday, January 10, 2025.
3. **Newspaper publication.** A public notice was published once in the Daily Pilot newspaper on Friday, January 10, 2025.

Any public comments received prior to the January 21, 2025, City Council meeting, may be viewed at this link: [CITY OF COSTA MESA - Calendar \(legistar.com\)](https://legistar.com/CITY_OF_COSTA_MESA_Calendar)

CITY COUNCIL GOALS AND PRIORITIES:

This item is administrative in nature.

CONCLUSION:

The subject review is intended to provide the City Council with an opportunity to review the Planning Commission's decision of a project to permit outdoor dining and construct a new outdoor patio structure, expand the hours of operation for service of alcoholic beverages, and to allow for live entertainment at an existing food and beverage establishment (Westend).