

RESOLUTION NO. 2025-xx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, UPHOLDING THE PLANNING COMMISSION APPROVAL OF A MINOR CONDITIONAL USE PERMIT AND OUTDOOR DINING PERMIT (PODA-24-0001 AND PMCP-24-0008) AT 814 WEST 19TH STREET (“WESTEND”)

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

WHEREAS, a Conditional Use Permit and Outdoor Dining Permit was filed by Tyler Hertzske/Roland Barrera, authorized agent for the property owner, Monica Chang requesting approval for outdoor dining, construction of a new outdoor patio structure, expanding the hours of operation for service of alcoholic beverages, and to allow for live entertainment at an existing food and beverage establishment.

WHEREAS, a Notice of Zoning Administrator approval was provided pursuant to the Costa Mesa Municipal Code Section 13-29(d);

WHEREAS, the project was called up for review by Council Member Harper on May 30, 2024;

WHEREAS, a duly noticed public hearing was held by the Planning Commission on October 14, 2024 with all persons having the opportunity to speak for and against the proposal;

WHEREAS, the Planning Commission upheld the Zoning Administrator approval on a vote of four to two (with one Commissioner absent) of the project and added further conditions of approval;

WHEREAS, the project was called up for review by Council Member Harper on October 20, 2024;

WHEREAS, a duly noticed public hearing held by the City Council on January 21, 2025 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 the California Environmental Quality Act (CEQA) per Section 15303 (Class 3), for new construction and conversion of small structures.

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

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA
HEREBY RESOLVES as follows:

BE IT RESOLVED that based on the evidence in the record and the findings contained in Exhibit A, the City Council hereby approves Minor Conditional Use Permit and Outdoor Dining Permit (PODA-24-0001 and PMCP-24-0008) with respect to the property described above.

BE IT 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.

BE IT FURTHER 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 and upon applicant's compliance with each and all of the conditions in Exhibit B, and compliance with 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 21st day of January, 2025.

John Stephens, Mayor

ATTEST:

APPROVED AS TO FORM:

Brenda Green, City Clerk

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. 2024-xx and was duly passed and adopted by the City Council of the City of Costa Mesa at a regular meeting held on the 21st day of January, 2025, 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 22nd day of January, 2025.

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 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”.*

Facts in Support of Findings: The proposed use is compatible and harmonious with developments in the same general area and would not be materially detrimental to other properties within the area. 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. In addition, the use is surrounded by other commercial properties to the east, west and south, and industrial properties to the north. The nearest residential property is located approximately 265 feet from the subject property. The project is conditioned to operate in compliance with the City’s Noise Ordinance. The applicant also has an agreement with an adjacent industrial property to provide parking.

Finding: *“Granting the minor 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 Findings: The proposed development complies with the City’s development standards and other requirements, such as ADA requirements. 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. Additionally, the proposed outdoor dining areas have been conditioned to comply with the development standards for all outdoor dining areas per CMMC Section 13-48(a)(1) and the City’s noise ordinance. On-site security and additional parking will also be provided.

Finding: *“Granting the minor 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 Findings: Granting the minor conditional use permit will not allow a use, density or intensity that is not in accordance with the General Plan designation. The site has a General Plan designation of

General Commercial, which is intended to permit a wide range of commercial uses that serve both local and regional needs. Appropriate uses include smaller retail stores, theaters, restaurants, hotels and motels, and automobile sales and service establishments. As such, the proposed restaurant operations and use are anticipated by General Plan designation. Lastly, the City Council recently 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.

- B. 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.

EXHIBIT B

CONDITIONS OF APPROVAL (PODA-24-0001 & PMCP-24-0008)

- Plng. 1. The use shall be limited to the type of operation described in the staff reports. The approved hours of operation are Mondays through Fridays, 5 PM to 2 AM and Saturdays and Sundays from 2 PM to 2 AM. Any change in the operational characteristics shall be subject to Planning Division review and may require an amendment to the Minor 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 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 or employees arising out of, or which are in any way related to, the applicant’s project, or any approval 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 City.
3. The applicant shall contact the Planning Division to arrange a Planning inspection of the site. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
4. Any change in the operational characteristics of the use shall be subject to Planning Division review and may require an amendment to the minor conditional use permit, subject to either Zoning Administrator or Planning Commission approval, depending on the nature of the proposed change.
5. Outdoor dining areas shall be maintained in good condition, kept clean and shall not result in conditions which are harmful or injurious to the public health, safety and welfare.
6. Outdoor dining areas shall be removed, and the areas returned to

previous conditions if the corresponding food and beverage establishment is replaced by a non-food and beverage establishment, or if the outdoor dining area is no longer in use.

7. Outdoor dining areas and their corresponding restaurant shall comply with all applicable Building and Fire Safety code requirements, circulation standards, and aesthetic development standards outlined in Section 13-48 at the time of their construction.
8. All outdoor dining areas shall observe State and local health guidelines for restaurants.
9. Any service of alcoholic beverages in outdoor dining areas shall be subject to approval by the California Department of Alcoholic Beverage Control and shall adhere to all requirements and standards implemented by said State agency.
10. All proposed outdoor dining structures and improvements shall be subject to Fire and Building Department approval.
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.
12. Live entertainment shall conclude by 2 AM except as set forth in Condition of Approval Nos. 17 and 18. The 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.
13. All sales and service staff (within 90 days of hire) shall complete

Responsible Beverage Service (RBS) training with a provider approved by the California Department of Alcoholic Beverage Control. A copy of the training certificates shall be kept on premises and presented to any authorized City official upon request.

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 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.
15. Landscaping shall be installed around outdoor dining areas to the greatest extent possible.
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. Customer parking 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/or requiring employees to bike, walk or take public transit.
- PC 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.
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.

19. The applicant shall work with staff to incorporate directional / wayfinding parking lot signage, directing customers of approved parking locations.

CODE REQUIREMENTS

The following list of 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. The applicant is also required to comply with any other applicable State and local laws not provided below.

- Plng. 1. Approval of the planning/zoning application is valid for two 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 has continued to maintain a valid building permit by making satisfactory progress as determined by the Building Official, 2) a certificate of occupancy has been issued, or 3) the use is established and a business license has been issued. A time extension can be requested no less than 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. Hours of construction shall comply with Section 13-279, Title 13, of the Costa Mesa Municipal Code.
 3. Street address shall be visible from the public street. The street address may be displayed on the fascia adjacent to the main entrance or on another prominent location. Numerals shall be a minimum twelve (12) inches in height with not less than three-fourth-inch stroke and shall contrast sharply with the background.
 4. Any mechanical equipment such as air-conditioning equipment and duct work shall be screened from view in a manner approved by the Planning Division.
 5. Trash enclosure(s) or other acceptable means of trash disposal shall be provided. Design of trash enclosure(s) shall conform to City standards.
 6. Vehicle standing, loading and unloading shall be conducted so as not

- to interfere with normal use of streets, sidewalks, driveways and on-site parking.
7. No vehicle loading area shall encroach into a required building setback along a public right-of-way.
- Bldg. 8. Comply with the requirements of the following adopted codes: 2022 California Residential Code, 2022 California Building Code, 2022 California Electrical Code, 2022 California Mechanical Code, 2022 California Plumbing Code, 2022 California Green Building Standards Code and 2022 California Energy Code (or the applicable adopted, California Residential Code, 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 2022 California Building Code.
9. The conditions of approval and ordinance or code provisions of Outdoor Dining Application PODA-24-0001 & Minor Conditional Use Permit PMCP-24-0008 including subsequent amendments shall be blueprinted on the face of the site plan as part of the plan check submittal package when building permits are necessary.
10. Plans shall be prepared by a California licensed Architect or Engineer. Plans shall be wet stamped and signed by the licensed Architect or Engineer prior to the issuance of building permits.
11. Provide a plan to the County of Orange Health Department for review and approval.
12. Due to added seating the number of plumbing fixtures shall comply with the 2019 California Plumbing Code Section 422.1 and Table 422.1.
- Fire 13. A complete plan submittal and permit shall be required, in accordance with Building Code Sections CBC 105.1, CBC 105.3, and CBC 107.2.1 through 107.2.8.
14. Equipment shall comply with California Building and Fire Code requirements, including, but not limited to, the requirement that equipment be approved by a recognized testing laboratory for the specific use.
15. Comply with the requirements of the 2022 California Fire Code, including the 2022 Intervening Update and referenced standards as amended by the City of Costa Mesa.
16. Quarterly Fire & Life Safety Inspections will be conducted by the Community Risk Reduction Division to verify compliance with the approval operation. The applicant will pay for the inspection according to the Additional Required Inspections as adopted in the Fee

- Schedule.
17. Annual Fire & Life Safety Inspections will be conducted by the Fire Station Crew for emergency response pre-planning and site access familiarization. The applicant will pay for the inspection according to the adopted Fee Schedule.
- Bus. 18. All contractors and subcontractors must have valid business licenses to
Lic. do business in the City of Costa Mesa. Final inspections, final occupancy and utility releases will not be granted until all such licenses have been obtained.