

CITY OF HERMOSA BEACH

RESOLUTION NO. 24-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT (CUP 23-12/APE23-08) AMENDMENT TO MODIFY CONDITIONS OF APPROVAL AT AN EXISTING RESTAURANT LOCATED AT 1332 HERMOSA AVENUE (PEDONE'S PIZZA & FINE FOOD), AND DETERMINING THAT THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, several violations of selling alcohol to patrons after-hours were documented in a memorandum from the Hermosa Beach Police Chief dated September 13, 2023 and in Code Enforcement Administrative Citations from August 28, 2023 and September 7, 2023; and

WHEREAS, on September 13, 2023, the business owner was notified via letter of the violations, and made aware that the City was preparing the matter to be heard at the September 19, 2023, Planning Commission meeting; and

WHEREAS, at its September 19, 2023 meeting, the Planning Commission acted and directed staff to prepare a public hearing item at a regularly scheduled meeting; and

WHEREAS, at its November 13, 2023 meeting, the Planning Commission considered all testimony and evidence, both oral and written, that was presented to the Planning Commission; and

WHEREAS, at its November 13, 2023 meeting, the Planning Commission voted, 3–2, to approve PC Resolution 23-22; and

WHEREAS, the City Council, at its public meeting of November 28, 2023, initiated a review of the Planning Commission's approval in accordance with Hermosa Beach Municipal Code Section 2.52.040; and

WHEREAS, the City Council, at its public meeting of January 23, 2024, considered all testimony and evidence, both oral and written, that was presented to the City Council; and

WHEREAS, the City Council determined the project is categorically exempt from the California Environmental Quality Act defined in CEQA Section 15301, as the project

involves an existing use and would not result in a direct or reasonably foreseeable indirect physical change in the environment. Moreover, none of the exceptions to the categorical exemption apply, nor would the project result in a significant cumulative impact of successive projects of the same type in the same place over time or have a significant effect on the environment due to unusual circumstances or damage of scenic highway or scenic resources within a state highway.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Based on the evidence received at the public meeting, the City Council hereby further finds, determines, and declares that the project is consistent with the City's General Plan (PLAN Hermosa) because the Conditional Use Permit Amendment (CUP) is consistent with Public Safety Element Policy 5.8.

Section 2. Based on evidence received at its January 23, 2024 meeting, the City Council makes the following factual findings:

1. The restaurant with on-sale beer and wine at 1332 Hermosa Avenue has committed multiple violations of operating and selling alcohol after-hours as documented by Hermosa Beach Police Department memo and City of Hermosa Beach Code Enforcement Administrative Citations.
2. The site is zoned C-2, Community Commercial, allowing on-sale beer and wine in conjunction with a restaurant use approval with a Conditional Use Permit.
3. The business currently operates under a Board of Zoning Adjustment (BZA) Resolution 154-591.
4. Precautions taken by the owner or operator of the proposed establishment to assure the compatibility of the use with surrounding uses has not been complied with as evidenced by the documented violations of hours of operation established by BZA Resolution 154-591.

Section 3. Based on the foregoing, the City Council hereby modifies BZA Resolution 154-591:

1. Service of alcoholic beverages shall be in an establishment that operates a full kitchen and provides a full menu (complete lunches and/or dinners, with hot entrees) and the primary purpose of the establishment is the service of food.

2. All alcoholic beverages shall be consumed within the premises and sold only in conjunction with food.
3. Posting of sign inside advising illegality of open containers on public streets, sidewalks, Strand and beach.
4. If the operation of the establishment poses a risk of harm to persons or property, the Police Chief may direct the presence of a police department approved doorkeeper and/or security personnel to eliminate the problem, at the owner/operators' expense. If the problem persists the Chief, then shall submit a report to the Planning Commission, which will automatically initiate a review of this conditional use permit by the Commission.
5. Operators of the business must police the sidewalks which are directly adjacent to the business for litter and maintain in a clean and orderly manner on a daily basis.
6. Any changes to the interior design of the establishment shall require that it be returned to the Planning Commission.
7. Maximum permissible occupancy must be clearly posted at all times and may not be exceeded at any time. If the Police and/or Fire Departments determine that the maximum permissible occupancy of the building is being violated, they may cite the business and initiate a conditional use permit revocation.
8. Hours of operation for alcohol sales shall be from 8:00 a.m. to 11:00 p.m. all days except Friday and Saturday at which time the hours of operation shall be from 8:00 a.m. to 12:00 a.m.
9. This conditional use permit is issued exclusively for and so long as the premises remain a restaurant, which is defined as having gross sales as follows: not less than 65 percent food and 35 percent beer and/or wine sales computed monthly. The applicant shall maintain separate books and records identifying sales of food/alcoholic beverages. The City shall have the right during business hours upon 15 days' notice to inspect the books and records of the applicant to determine the gross sales of food and/or the gross sales of alcoholic beverages. Upon request at the time the City inspects the books and records of the applicant, the applicant shall also submit to the City copies of all records submitted to the State Board of Equalization for purposes of computing sales tax. Applicant gives the right to the City to review the records of the State Board of Equalization for

the purposes of verifying the applicant's books and records, with the understanding that these reviews are confidential.

10. This conditional use permit is to be for this current use as defined in the present conditions; any change in use or nonobservance of any condition of operation will be cause for revocation of the permit.
11. There will be a four-month review and hereafter one- or two-year reviews.
12. If any one condition is found to be illegal and unenforceable by a court of competent jurisdiction, then the parties agree that all other conditions shall remain in full force and effect. The parties understand that the applicant is represented by counsel at all steps of these proceedings and it is the opinion of the City Attorney that the conditions meet Constitutional requirements, and in the event that either attorney is in error both parties agree that no action for damages shall be brought against the other party and that the exclusive remedy on behalf of the applicant is for a Mandate of Declaratory Relief to make the determination that any one or more conditions is illegal and unenforceable and parties waive all rights to damages under the Civil Rights Act as promulgated by recent Supreme Court decision.
13. A fence or wall 42 inches in height shall be installed to clearly separate the outside dining area from the public sidewalk.
14. In addition to any other remedy provided by law, if the business operating pursuant to this CUP violates any condition of this CUP, the Police Chief or designee may meet and confer with the business to clarify the reason for the violation and to formulate a course of action to mitigate the risk for any future violation. If the business operating pursuant to this CUP continues to violate this CUP (i.e., either a repeat violation or another violation) within any six- (6) month period following a meet and confer with the Police Chief, then, at the sole discretion of the Police Chief, modified or additional operational requirements may be imposed by the Police Chief to temporarily curtail the violations until the matter is brought before the Planning Commission. These modifications include, but are not limited to, a reduction in operating hours, the required number of staff members during operational hours, additional training for existing staff, and/or any other measures deemed appropriate by the Police Chief. The Planning Commission shall consider any modification or additional operational requirement(s) imposed by the Police Chief during its discussion of the matter.

The Police Chief's determination will remain in effect until considered by the Planning Commission.

15. Clear/see-through glassware shall be used for all liquid consumption.
16. Hours of operation for alcohol sales shall be posted in the front entrance of the establishment notifying customers that it is open from 8:00 a.m. to 11:00 p.m. all days except Friday and Saturday, at which time the hours of operation shall be from 8:00 a.m. to 12:00 a.m.
17. The owner shall place the Department of Alcoholic Beverage Control (ABC) license in a frame placed conspicuously in plain view behind the counter.

Section 4. The City Council further takes the following action:

1. There shall be a seven-day suspension of alcohol sales beginning the day after the City Council action.

PASSED, APPROVED, and ADOPTED on the 23rd of January 2024 by the following roll call vote.

AYES:

NAYS:

ABSTAIN:

ABSENT:

Justin Massey

PRESIDENT of the City Council and **MAYOR** of the City of Hermosa Beach, CA.

ATTEST:

APPROVED AS TO FORM:

Myra Maravilla
City Clerk

Patrick Donegan
City Attorney