

## RESOLUTION NO. 20-xx

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERMOSA BEACH, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT TO ALLOW ON-SALE GENERAL ALCOHOL AT AN EXISTING RESTAURANT (SPUMONI TRATTORIA & PIZZERIA) WITH OPERATING HOURS BETWEEN 10:00 A.M. TO 10:00 P.M. SUNDAY THROUGH THURSDAY AND 10:00 A.M. TO 11:00 P.M. FRIDAY AND SATURDAY, AND REPLACING AND ABANDONING RESOLUTION NO. PC 87-41, FOR PROPERTY LOCATED AT 1101 AVIATION BOULEVARD AND DETERMINATING THAT THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).**

The Planning Commission of the City of Hermosa Beach does hereby resolve and order as follows:

**SECTION 1.** The Planning Commission adopted Resolution No. PC 87-41 on July 21, 1987 to approve a Conditional Use Permit allowing the operation of a restaurant with the consumption of beer and wine and late night hours (11:00 p.m. to midnight daily).

**SECTION 2.** An application was filed on September 9, 2020 by Brett Engstrom representing Nando Silvestri (Business Owner), seeking approval for a Conditional Use Permit to allow on-Sale general Alcohol at an existing restaurant (Spumoni Trattoria & Pizzeria) with operating hours between 10:00 a.m. to 10:00 p.m. Sunday through Thursday and 10:00 a.m. to 11:00 p.m. Friday and Saturday, thereby replacing and abandoning the existing Conditional Use Permit for On-Sale Alcohol limited to beer and wine, which currently allows late night hours past 11:00 P.M. to 12:00 A.M. midnight daily and to determine that the project is Categorically Exempt from the California Environmental Quality Act (CEQA).

**SECTION 3.** The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA, as defined in Section 15301. Class 1 exemptions apply to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. More specifically, the project is comprised of a request for On-Sale General Alcohol at an existing restaurant (Spumoni Trattoria & Pizzeria). Moreover, none of the exceptions to the Categorical Exemption apply, nor will 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 a scenic highway or scenic resources within a state scenic highway. The site is not located on a hazardous waste site and will not cause a substantial adverse change in the significance of a historical

resource.

**SECTION 4.** The Planning Commission conducted a duly noticed public hearing to consider CUP 20-07 on December 15, 2020, at which time the Staff Report and testimony and evidence, both written and oral, was presented to and considered by the Planning Commission.

**SECTION 5.** Based on evidence received at the public hearing, the Planning Commission hereby makes the following findings to approve the Conditional Use Permit, pursuant to section 17.40.020 of the Municipal Code:

**17.40.020 General criteria for all uses**

*A. Distance from existing residential uses;*

The nearest residential uses are located directly west of Prospect Avenue approximately 88 feet from the north tenant space wall. These residences are within the C-3 zone and are non-conforming. Additional residential uses are located approximately 230 feet from the north tenant space within the R-1 zone, and approximately 200 feet from the south tenant space wall within the R-1 zone. The hours of operation will be reduced from 6:00 a.m. to midnight daily to 10:00 a.m. to 10:00 p.m. Sundays through Thursdays, and 10:00 a.m. to 11:00 p.m. Fridays and Saturdays. Staff believes that the reduced hours of operation will reduce the potential adverse effects from the proposed alcohol license. A condition of approval has also been added to the proposed resolution requiring the noise emanating from the property to be within the limitations prescribed by the City's Noise Ordinance.

*B. The amount of existing or proposed off-street parking facilities, and its distance from the proposed use;*

The project site is located within the Big Lots shopping center, which has a total of 134 existing off-street shared parking spaces. The proposal will not affect the existing off-street parking spaces since it will not increase the restaurant's capacity or result in physical modifications; therefore, parking demand generated by the restaurant will remain unaffected.

*C. Location of and distance to churches, schools, hospitals and public playgrounds;*

The Church of Christ and Hermosa View Elementary School are the nearest sensitive uses in the vicinity, which are located approximately 400 to 1,000 square feet from the subject site. The proposal is not likely to affect the nearest sensitive receptor at approximately 400 to 1,000 feet from the project site, or other parks or similar uses in the vicinity due to distance and hours of operation.

*D. The combination of uses proposed;*

The proposed project is located within the C-3 General and Highway Commercial zone which aims to provide opportunities for a full range of office, retail, and service commercial uses deemed suitable for the city, and appropriate for the Pacific Coast Highway and Aviation Boulevard commercial corridors, including business not appropriate for other zones because they attract heavy vehicular traffic or have specific

adverse impacts. The proposal will maintain the existing restaurant use with reduced operation hours, which is compatible with the surrounding commercial uses within the Big Lots shopping center and with surrounding commercial uses in the area, which serve residents and visitors east of the Pacific Coast Highway.

*E. Precautions taken by the owner or operator of the proposed establishment to assure the compatibility of the use with surrounding uses;*

Late-night alcohol beverage establishments are on-sale establishments which operate after 11:00 P.M., including restaurants, establishments that serve or allow alcoholic beverages as the primary use (e.g., bars), and establishments that provide live entertainment. The objective of the City's late-night alcohol beverage establishment policy is to reduce the potential for adverse impacts associated with late-night alcohol beverage establishments after 11:00 P.M. The proposal to alter hours will decrease the number of late-night alcohol beverage establishments and is consistent with the surrounding uses, and the intent of the C-3 zone. Additionally, the reduction of hours will reduce the number of existing "late-night establishment" located within the existing shopping center from a total of two late-night establishments to one late-night establishment. Conditions of approval have also been included to ensure compatibility of the use with surrounding uses.

*F. The relationship of the proposed business-generated traffic volume and the size of streets serving the area;*

The proposal does not include any modification to the existing floor area. Thus, the proposed alcohol license and reduction of operation hours are not anticipated to be generated additional trips that may impact the traffic volume. It is likely that the reduced hours of operation will reduce the impacts on the existing traffic volume.

*G. The proposed exterior signs and decor, and the compatibility thereof with existing establishments in the area;*

The existing business has been operating since September 2019. The proposal does not include additional signage for the existing business. Any future proposed signage shall be reviewed and approved through a separate sign permit review.

*H. The number of similar establishments or uses within close proximity to the proposed establishment;*

There is a mix of commercial businesses located within the existing shopping center, including two restaurants (two alcohol serving and one "late-night establishment"), two fitness facilities, four personal service facilities, three educational facilities and two general retail businesses. The proposal will have no effect on the number of similar establishments or uses within close proximity to the proposed establishment.

*I. Noise, odor, dust and/or vibration that may be generated by the proposed use;*

The existing floor plan shows that all existing televisions, which may generate noise impacts, are setback more than 12 feet from the exterior tenant space walls. Additionally, the reduction of operating hours will likely reduce noise generated from the

alcohol establishment. Conditions of approval are included to require that all noise emanating from the property shall be within the limitations prescribed by the City's Noise Ordinance.

*J. Impact of the proposed use to the city's infrastructure, and/or services;*

The existing restaurant use is not anticipated to impact the existing infrastructure.

*K. Will the establishment contribute to a concentration of similar outlets in the area;*

While the existing restaurant use will continue, the hours of operation will be reduced. Thus, the proposal will change concentration of late-night alcohol beverage establishments in the area. However, since subject site has operated as a restaurant since 1987, the proposal will not contribute to a concentration of restaurants in the area.

*L. Other considerations that, in the judgment of the planning commission, are necessary to assure compatibility with the surrounding uses, and the city as a whole.*

No other issues are identified.

**SECTION 6.** Based on the foregoing, and pursuant to Hermosa Beach Municipal Code (HBMC) 17.70.010(F) the Planning Commission hereby revokes Resolution No. PC 87-41, thus deeming it rescinded and of no further force and effect. In revoking Resolution No. PC 87-41, the Planning Commission hereby finds that the circumstances under which the Conditional Use Permit was granted have been changed by the owner or operator inasmuch as this resolution will replace the previous conditions of approval and authorize new hours of operation and an upgraded ABC license.

**SECTION 7.** Based on the foregoing, and pursuant to Hermosa Beach Municipal Code (HBMC) 17.40.020, the Planning Commission **hereby approves** the request for a **Conditions of Approval** for on-sale general alcohol, in conjunction with a restaurant for the property at 1101 Aviation Boulevard,:

1. **The continued operation of the business shall be as a bona fide restaurant: the kitchen shall be equipped to prepare food from its component ingredients whenever the restaurant is open and it shall offer a full-service lunch and/or dinner menu; food service from the menu shall be available during all hours that the establishment is open for business, provided that said food service may cease one hour prior to close daily.**
2. **Alcohol may be served for on-premise consumption only and in a manner consistent with its license issued by the State Department of Alcoholic Beverage Control (ABC).**
3. **Seating in the restaurant shall be limited to 72 patrons. Seating in the patio shall be limited to 19 patrons.**

4. **The restaurant shall maintain sales reports showing the actual items sold and price charged and invoices for all food, nonalcoholic beverages and alcohol beverages sold for the prior twelve (12) months. Should the Planning Commission or City Council initiate a CUP modification or revocation proceeding, the Commission, or the Council, may at its discretion require the subject business to provide (a) a statement of the percentage of gross sales, computed monthly, that resulted from the sale of prepared food for not longer than the prior twelve (12) months; and (b) the supporting data upon which the percentage is based.**

**The Planning Commission, or City Council, may also require an audit of the records of the business by a certified public accountant to determine the gross sales of food and alcohol or a forensic audit by a qualified auditor selected by the city of the information and data systems by which the information is produced. The results of these audits may be used to determine whether the grounds for modification or revocation exist. When considering revocation or modification, a restaurant that sells or provides on-sale alcoholic beverages will be presumed to be operating as a restaurant if the monthly food to alcohol sale ratios are consistent with the ratios in HBMC Subsection 17.70.010(H).**

5. **Live entertainment (including amplified music, disc jockeys, live music whether acoustic or amplified, and live performances of all kinds) and customer dancing is prohibited. Televisions and amplified music, including speakers shall be prohibited within the first ten (10) feet of the front of the building. A maximum of five (5) televisions or similar displays shall be permitted in the remainder of the restaurant.**
6. **The permittee shall not solicit, advertise, or otherwise encourage the use of its premises for "pub crawl" activities whereby persons travel in an organized or predetermined fashion between premises with the goal of consuming alcoholic beverages at each stop along the way.**
7. **The hours of operation for all operations of the restaurant, including the bar area, shall be limited to between 7:00 A.M. and 11:00 P.M. daily. All customers shall vacate the premises by no later than 11:00 P.M. and the doors shall be locked.**
8. **The furniture and interior improvement within the business operation shall conform to the floor plan. The use consisting of a restaurant with on-sale general alcohol – general alcohol, shall be substantially consistent with the plans submitted September 9, 2020 and approved by the Planning Commission on December 15, 2020. Minor modifications to the plans shall be reviewed and may be approved by**

**the Community Development Director. Any substantial deviation must be reviewed and approved by the Planning Commission.**

- 9. The modifications and the operation shall comply with all requirements of the Building, Fire and Public Works Departments. The applicant shall submit a plan for occupant load calculation and approval prior to issuance of the Certificate of Final Occupancy.**
- 10. Noise emanating from the property shall be within the limitations prescribed by the City's Noise Ordinance (Hermosa Beach Municipal Code Chapter 8.24) and shall not create a nuisance to surrounding residential neighborhoods and/or commercial establishments.**
- 11. Management shall be responsible for maintaining noise volumes at reasonable levels.**
- 12. The establishment shall not adversely affect the welfare of the residents, and/or commercial establishments nearby.**
- 13. The business shall employ adequate staffing and management/ supervision to prevent serving underage persons, over-serving alcohol, and loitering, unruliness, and boisterous behavior by patrons both inside and outside on the business premises, or in the immediate area. A manager who is aware of the conditions of this Conditional Use Permit shall be on the premises during business hours. The Conditional Use Permit shall be maintained on the premise in a location where employees can easily read the conditions.**
- 14. If the Police Chief determines that there are a disproportionate number of police calls to the business due to the disorderly or disruptive behavior of patrons and the inability or refusal of the business to manage its patrons, the Chief shall so notify the Director of Community Development of this action, who shall forthwith schedule a public hearing before the Planning Commission to consider modification or revocation of this Conditional Use Permit.**
- 15. The exterior of the premises shall be maintained in a neat and clean manner and maintained free of graffiti at all times.**
- 16. The rear door, emergency exit, facing the shopping center shall remain closed at all times during business hours, and shall be equipped with panic hardware including an alarm and a self-closing door mechanism, equipment shall be maintained in operational order at all times.**

17. **Storage of trash bins or cans must be screened and remain in the utility room as described on the approved floor plans. Odor elimination equipment shall be installed for the trash bin area; venting untreated air from this area shall be prohibited.**
18. **Deliveries to the rear doors adjacent to Prospect Avenue are prohibited between the hours of 10:00 P.M and 8:00 A.M daily.**
19. **The provisions of this Conditional Use Permit shall take effect immediately upon adoption by the Planning Commission and upon completion of the applicable appeal period, should no appeal be filed.**
20. **The conditions of approval contained in this resolution shall supersede and replace the conditions of approval contained in Planning Commission Resolution No. PC 87-41 which are hereby rescinded and of no further force and effect.**
21. **The operation of the business shall comply with all Ordinances, regulations and laws applicable to a business of this kind in effect as of the date hereof or hereafter adopted. In addition to any other remedy available at law, in equity or as provided in the Municipal Code, (i) any significant or material violation, or (ii) any repeated, continuous or sustained violation of any condition of approval of this Conditional Use Permit shall constitute cause for revocation of this Permit. The Permittee shall be required to reimburse the City fully for its costs and expenses, including but not limited to attorney's fees, in undertaking any such corrective action. Reimbursement of enforcement costs shall constitute a civil debt and may be collected by any means permitted by law. In the event that violations of this Permit occur, the City shall refrain from issuing further permits, licenses or other approvals until such violation has been fully remedied.**
22. **The project shall maintain in conformance with all other applicable City of Hermosa Beach and regulatory agency requirements and standards, including but not limited to: California Department of Alcoholic Beverage Control, Los Angeles County Health Department, California Disabled Access Standards (Government Code Title 24), and Los Angeles County National Pollutant Discharge Elimination System Permit (NPDES).**

23. The restaurant with on-sale alcoholic beverage service may be subject to a periodic review process established by the City to verify conformance with the conditions of approval.
24. The provision of alcoholic beverages shall comply with the following:
  - a. All alcoholic beverages shall be served in non-disposable drinkware.
  - b. Signs shall be posted in a conspicuous location warning patrons of the illegality of removing alcoholic beverages from the restaurant, and carrying and consuming alcoholic beverages in any public place such as the public sidewalk or beach.
25. To reduce marine debris associated with take-out containers, the establishment shall not use take-out containers with a “No. 6” recycle code or use certain polystyrene products, single-use plastic products, and single-use products in compliance with HBMC Chapter 8.64.
26. The practice of washing and rinsing restaurant floor mats, equipment, tables, etc., or discharge of any liquids, other than stormwater, onto the public right-of way, into the parking lot drain or stormdrains, is strictly prohibited. Discharge of liquids or wash water shall be limited to the sanitary sewer.
27. Exterior and interior water use shall comply with Chapter 8.56.
28. Approval of this permit shall expire twenty-four (24) months from the date of approval by the Planning Commission, unless significant construction or improvements or the use authorized hereby has commenced. One or more extensions of time may be requested. No extension shall be considered unless requested, in writing to the Community Development Director including the reason therefore, at least 60 days prior to the expiration date. No additional notice of expiration will be provided.

**SECTION 8.** The Conditional Use Permit shall be recorded, and proof of recordation shall be submitted to the Community Development Department prior to commencement or issuance of Building Permit Certificate of Occupancy.

This permit shall not be effective for any purposes until the permittee and the owners of the property involved have filed at the office of the Planning Division of the Community Development Department their affidavits stating that they are aware of, and agree to accept, all of the conditions of this Conditional Use Permit.

Each of the above conditions is separately enforced, and if one of the conditions of approval is found to be invalid by a court of law, all the other conditions shall remain valid and enforceable.

The subject property shall be developed, maintained and operated in full compliance with the conditions of this permit and any law, statute, Ordinance or other regulation hereafter adopted that is applicable to any development or activity on the subject property. Failure of the permittee to cease any development or activity not in full compliance shall be a violation of these conditions.

The Planning Commission may review this Conditional Use Permit and may amend the subject conditions or impose any new conditions if deemed necessary to mitigate detrimental effects on the neighborhood resulting from the subject use.

The Permittee shall defend, indemnify and hold harmless the City of Hermosa Beach and its agents, officers and employees from any claim, action or proceeding against the City or its agents, officers or employees to attack, set aside, void or annul this Conditional Use Permit. The City shall promptly notify the Permittee of any claim, action or proceeding and the City shall fully cooperate in the defense. If the City fails to promptly notify the Permittee of any claim, action or proceeding, or the City fails to cooperate fully in the defense, the Permittee shall not thereafter be responsible to defend, indemnify or hold harmless the City.

The Permittee shall reimburse the City for any court and attorney's fees that the City may be required to pay as a result of any claim or action brought against the City because of this permit. Although the Permittee is the real party in interest in an action, the City may, at its sole discretion, participate at its own expense in the defense of the action but such participation shall not relieve the Permittee of any obligation under this Permit.

**SECTION 9.** Pursuant to the Code of Civil Procedure Section 1094.6, any legal challenge to the decision of the Planning Commission, after a formal appeal to the City Council, must be made within 90 days after the final decision by the City Council.

VOTE:       AYES:  
              NOES:  
              ABSTAIN:  
              ABSENT:

#### CERTIFICATION

I hereby certify the foregoing Resolution P.C. No. 20-XX is a true and complete record of the action taken by the Planning Commission of the City of Hermosa Beach, California at its regular meeting of December 15, 2020.

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Rob Saemann, Chairman

Ken Robertson, Secretary

December 15, 2020

Date