

## PLANNING COMMISSION STAFF REPORT

**TO:** Planning Commission  
**FROM:** Ursula Luna-Reynosa, Community Development Director  
**BY:** Hayden Beckman, Senior Planner

**SUBJECT:**

**ENTITLEMENT PLAN AMENDMENT NO. 2021-001 (KILLARNEY'S ROOFTOP DINING - CONTINUED FROM AUGUST 10, 2021 MEETING)**

**REQUEST:**

To amend Conditional Use Permit No. 99-021 to permit the conversion of an existing restaurant rooftop to a 1,936 sq. ft. dining area with alcohol sales and service. This request includes participation in the Downtown Parking In-Lieu Fee Program for sixteen (16) parking spaces required for the new dining area, and deviation from the Exhibit B Standard Conditions of City Council Resolution No. 2017-42 regarding hours of operation.

**LOCATION:**

209 Main Street, 92648 (West side of Main Street, north of Walnut Avenue)

**APPLICANT:**

Jeff Bergsma, TEAM Design, 221 Main Street, Suite S, Huntington Beach CA 92648

**PROPERTY OWNER:**

Gregory Newman, 703 Pier Avenue, Suite B-815, Hermosa Beach CA 90254

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**STATEMENT OF ISSUE:**

1. Is the project proposal consistent with the City of Huntington Beach's adopted land use regulations (i.e. General Plan, Zoning Map, and Zoning Code)?
2. Does the project proposal satisfy all the findings required for approving and Entitlement Plan Amendment?
3. Has the appropriate level of environmental analysis been determined?

**RECOMMENDATION:**

That the Planning Commission take the following actions:

- A) Find the proposed project categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301, Class 1 – Existing Facilities, and
- B) Approve Entitlement Plan Amendment No. 21-001 with findings and conditions of approval (Attachment No. 1).

**ALTERNATIVE ACTION(S):**

- A) Do not make the suggested findings, which will result in a mandatory denial per Section 241.10 C. of the Zoning and Subdivision Ordinance.
- B) Continue Entitlement Plan Amendment No. 21-001 and direct staff accordingly. |

**PROJECT PROPOSAL:**

The subject property is located at 209 Main Street, and is currently developed and operated as Killarney's Pub, a single-story restaurant building with outdoor dining within the Main Street public right-of-way, dancing, and live entertainment. The proposed Entitlement Plan Amendment (EPA) is a request to modify Conditional Use Permit (CUP) No. 99-021 to convert the rooftop of Killarney's Pub to an accessible dining area with alcohol (ABC Type 47 – On-Sale General, Eating Place) sales and service. This EPA request also includes participation in the Downtown Parking In-Lieu Fee Program for sixteen (16) parking spaces required for the new rooftop dining area, totaling 1,936 sq. ft., and to deviate from the Exhibit B Standard Conditions of City Council Resolution No. 2017-42 (Attachment No. 4) with regards to hours of operation. The applicant is not proposing any live entertainment for the rooftop dining area as part of this request.

**Background:**

**Downtown Alcohol and Live Entertainment**

In 2010, the City Council Ad Hoc Downtown Image Committee recommended numerous new conditions of approval to address late night alcohol related problems in the downtown area. The Downtown Image Committee recommendations were adopted by the City Council as Resolution No. 2010-5, which established standardized conditions of approval for new downtown eating and drinking establishments.

In 2011, the City Council revisited the issue and a new Resolution No. 2011-16 was adopted. The new resolution maintained the original conditions of approval and added additional items.

In January 2013, the City Council directed the Chief of Police to present a report including recommendations regarding the impact of alcohol sales and consumption in the downtown area. In July 2013, the City Council adopted Resolution No. 2013-24, further modifying the City's conditions of approval as they pertain to restaurants and bars with alcohol sales and live entertainment located in District 1 of the Downtown Specific Plan. In particular, Resolution No. 2013-24 specified that the new conditions apply to new

requests for eating and drinking establishments with alcohol sales or live entertainment, as well as amendments to existing conditional use permits. The resolution also stated that only the City Council may approve modifications to the conditions of approval. Therefore, the Planning Commission reviewed proposed requests and made a recommendation to the City Council for action.

In 2017, the City Council made further modifications to the conditions and a new Resolution No. 2017-42 (Attachment No. 4) was adopted. The amendments addressed processing procedures for restaurant remodels and expansions, strengthened revocation proceedings, and established that any requested deviations to the standard conditions could be approved by the regular decision making body, as opposed to only the City Council. In particular, the revised resolution specified that the more stringent conditions of approval apply to establishments that propose to increase or expand the floor area serving alcohol but not to simple remodels or architectural improvements. Resolution No. 2017-42 remains in effect for the eating and drinking establishments and live entertainment operators in the Downtown District 1 today.

#### Killarney's Existing Operation

Hours of operation for new or amended restaurants with alcohol and/or live entertainment in this location are limited to between 7:00 AM and 12:00 AM, which is intended to address public safety, as well as the growing presence of nightclubs and bars in the downtown area. Killarney's Pub was permitted to stay open from 8:00 AM until 2:00 AM daily prior to any of the aforementioned Resolutions were adopted by the City Council. The existing outdoor dining patio on Main Street ceases all service at 10:00 PM.

Killarney's request to establish the rooftop dining area triggers compliance with Resolution No. 2017-42, and would require the entire business to operate only between 7:00 AM to 12:00 AM. Killarney's request to amend this standard condition and allow the operation to continue late night hours until 2:00 AM is subject to Planning Commission approval.

#### Killarney's Entitlement History

CUP 99-021 was originally processed with a Special Permit and Coastal Development Permit No. 99-12 and was approved by the Planning Commission in January 2000 for the following:

- Façade improvements;
- A 550 sq. ft. single story addition to the existing single-story restaurant (Ibiza);
- Outdoor dining on public property with alcohol sales;
- Special Permit for reduced rear setback to accommodate trash enclosures; and
- Approval of an in-lieu parking participation agreement for four (4) spaces.

The improvements made pursuant to the approvals of CUP 99-21 and CDP 99-12 constitute the existing physical conditions of the Killarney's Pub restaurant building that exists today.

However, it is important to identify that an EPA application that is nearly identical to the current request was processed and ultimately approved by the City Council in 2001.

EPA No. 00-011 was a request to establish live entertainment within the restaurant (Ibiza), and to allow occupancy of a 2,530 sq. ft. roof deck for restaurant use. The request included participation in the In-Lieu Parking Program for 17 spaces. The Planning Commission approved live entertainment in both the enclosed first floor restaurant area and the roof top dining area, pursuant to conditions of approval as recommended by staff and the Police Department. Per the Planning Commission approval of EPA 00-011, live entertainment was restricted on the roof deck to 8:00 PM, and general dining hours of operation to 12 midnight. On the roof deck, no amplification was permitted, and types of entertainment were limited to acoustic musical performances only.

The Planning Commission's conditional approval was appealed to the City Council by then-Mayor Pro Tempore Debbie Cook. The appeal was based on the potential detrimental effects the live entertainment may have on surrounding property owners and residents. At the March 19, 2001 City Council meeting, the Council discussed the appeal, and ultimately approved the request with modified conditions that limited rooftop live entertainment to two stringed instruments with no bass, and a six-month permit review.

Subsequently, the applicant submitted plans for building permits in May 2001 to construct new elevator and stair access and improvements for rooftop dining. However, building permits were not issued before an entitlement application for a new CUP for the restaurant (Ibiza) was submitted. CUP No. 2003-009 was a request to permit a maximum of 100 sq. ft. of dancing with live entertainment between two dance floors (50 sq. ft. each); one in the ground floor restaurant and one located on the rooftop deck. Staff and the Police Department supported the request for establishing dancing within the restaurant, but did not recommend dancing on the rooftop deck as it was counter to the Planning Commission and City Council's previous approvals for live entertainment. As such, the Planning Commission approved a 100 sq. ft. dance floor for the interior of the restaurant, entertainment hours from 11:00 AM to 1:30 AM, and an in-lieu parking fee agreement for two parking spaces.

The 2001 building permit for construction of the new stairway and elevator access and occupancy of the rooftop expired in plan check in February 2004 without have ever been issued. As such, the development rights provided by the discretionary approval of EPA No. 00-011 also expired, and neither the construction of stairway and elevator access nor occupancy of the rooftop deck occurred.

#### **ISSUES AND ANALYSIS:**

**Subject Property And Surrounding General Plan Designations, Zoning And Land Uses:**

LOCATION	GENERAL PLAN	ZONING	LAND USE
Subject Property:	M-sp (Mixed Use – Specific Plan Overlay - 30-50 du/ac)	SP5 – CZ (District 1, Downtown Specific Plan – Coastal Zone Overlay	Killarney’s Restaurant and Pub
North of Subject Property:	M-sp	SP5-CZ	Restaurant and Office
East of Subject Property (Across Main Street):	M-sp	SP5-CZ	Retail/Restaurant, City Parking Structure
South of Subject Property:	M-sp	SP5-CZ	Retail
West of Subject Property:	M-sp	SP5-CZ	Restaurant, Residential

**General Plan Conformance:**

The General Plan Land Use Map designation on the subject property is Mixed Use – Specific Plan Overlay. The proposed project is consistent with the following goals and policies of the City’s General Plan:

Land Use Element

Policy LU-1 (C): Support infill development, consolidation of parcels, and adaptive reuse of existing buildings.

Policy LU-2 (B): Ensure that new and renovated structures and building architecture and site design are context-sensitive, creative, complimentary of the city’s beach culture, and compatible with surrounding development and public spaces.

Policy LU-8 (B): Reinforce Downtown as the city’s historic center and as a pedestrian and bicycle-oriented village with commercial, entertainment, and recreation uses to meet the needs of residents and visitors.

Goal LU-11: Commercial land uses provide goods and services to meet regional and local needs.

Policy LU-11 (A): Encourage a variety of commercial uses that cater to local and regional demand to create an environment that meets resident needs and increases the capture of sales tax revenues.

The occupancy of the restaurant’s rooftop for an expansion of outdoor dining with alcohol sales represents a unique design as adaptive reuse of an existing open-air rooftop space

without adding bulk or massing that could impact the streetscape along Main Street. The rooftop dining patio caters to both visitors and residents alike in that it will provide a new accessible space for ocean-view outdoor dining that remains a consistent resident and visitor attraction to the Downtown commercial core, benefitting surrounding commercial uses.

### **Zoning Compliance:**

#### *Parking*

SP5 Section 3.2.24.4 requires parking for outdoor dining areas that exceed either 20% of the existing restaurant area, or 400 sq. ft. Additionally, outdoor dining is defined in the Downtown Specific Plan (SP5) as “an area where a restaurant provides food service on either public right-of-way, city owned open space, or privately owned open space.” As such, the request to permit 1,936 sq. ft. of rooftop outdoor dining requires 16 additional parking spaces, calculated at the ratio of 1 space per 125 sq. ft. of outdoor dining area.

Because there is no physical space to add parking at the site, the applicant has identified that the 16 parking spaces will be satisfied through payment of in-lieu parking fees by the property owner. A parking in-lieu fee of \$229,368 will be required to be paid by the property owner for the 16 spaces. This fee reflects 50% of the current fee of \$28,671 per parking space, based upon an Owner Participation Agreement between the City and the property owner that has been in effect since 1990. The Community Development Department has supported other requests for in-lieu parking fee participation agreements with other downtown businesses, and supports this request based on the overall shared parking concept in the downtown area. The Community Development Department will utilize the fees collected to provide additional parking in downtown or for plans and programs that maximize use of existing parking spaces.

#### *Alcohol Sales and Service*

Killarney’s Pub currently maintains an ABC Type 47 (On-Sale General – Eating Place) alcohol license. The applicant’s request would permit the expansion of the sales and service of beer, wine, and distilled spirits to the proposed bar and dining areas on the rooftop deck. The Police Department recommends several conditions of approval to accommodate sufficient video surveillance and staff supervision of the rooftop dining area (Attachment No. 3). As such, staff supports the request for an expansion of the existing alcohol sales and service for Killarney’s Pub.

#### *Hours of Operation*

Currently, the hours of operation for Killarney’s are:

- Interior restaurant space - 8:00 AM to 2:00 AM daily,
- Outdoor dining on Main Street - 11:00 AM to 10:00 PM daily

In order to maintain these late night hours of operation, the applicant requests to deviate from Resolution 2017-42 instead of closing no later than 12:00 Midnight. Further, the applicant is requesting that the new rooftop dining area operate between 9:00 AM and 12:00 Midnight, daily.

First, Planning and Police Department staff support the request for deviation and recommend that the Planning Commission allow Killarney's to continue their existing hours within the interior of the restaurant. As of late, the Police Department indicates that Killarney's is a good operator and abides by other conditions of approval for alcohol and live entertainment despite the late night hours. Allowing the expansion of the outdoor dining on the roof deck while maintaining the hours of operation indoors, encourages reinvestment in the property and fosters economic activity in the downtown area.

Second, Planning and Police Department staff recommend limiting the hours for the rooftop dining area between 9:00 AM and 10:00 PM, daily. The 10:00 PM closing for outdoor dining ensures compatibility with surrounding mixed commercial and residential uses in the area and is consistent with recent Planning Commission actions for outdoor dining citywide. All other standard conditions of Resolution 2017-42 to control and mitigate alcohol and live entertainment uses are included in the suggested conditions of approval (Attachment No. 1) for the entire restaurant.

**Urban Design Guidelines Conformance:**

The proposed project includes adding a 12 in. high glass railing atop the parapet to act as a wind break for customers seated along the bar top (Attachment No. 2). The new railing is in conformance with the Design Guidelines of the Downtown Specific Plan, and the proposed project would not impact the existing façade. In addition, the elevator and stairway access additions are located at the center and rear of the building, and would not impact the façade or streetscape along Main Street.

**Environmental Status:**

The proposed project is Categorical Exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15301, Class 1 – Existing Facilities, because the project involves the minor alteration of an existing structure involving a negligible expansion of the existing use.

**Coastal Status:**

The proposed project is located within the non-appealable portion of the Coastal Zone and is exempt from a Coastal Development Permit because the project involves the minor alteration of an existing structure that was previously subject to a coastal development permit. The proposed project complies with the Downtown Specific Plan and coastal zone requirements.

**Other Departments Concerns and Requirements:**

The Departments of Community Development, Public Works, Police, and Fire have reviewed the project and identified a list of applicable code requirements (Attachment No. 3). The Police Department has identified conditions of approval for the proposed project in addition to those required by Resolution No. 2017-42.

**Public Notification:**

Legal notice for the August 10, 2021 Planning Commission meeting was published in the Orange County Register on July 29, 2021, and notices were sent to property owners of record and tenants within a 500 ft. radius of the subject property, individuals/organizations requesting notification (Planning Division's Notification Matrix), applicant, and interested parties. Staff did not received any inquiries or comments regarding the project prior to the hearing.

Prior to the August 10 public hearing, staff requested a continuance of the item to the September 14, 2021 public hearing. Since the item was continued to a date certain, no additional public hearing noticing was required.

**Application Processing Dates:**

DATE OF COMPLETE APPLICATION:	MANDATORY PROCESSING DATE(S):
July 14, 2021	September 14, 2021

**SUMMARY:**

Staff recommends that the Planning Commission approve the project based on the following:

- The outdoor dining will be compatible with adjacent restaurants on the second block of Main Street;
- The use is consistent with the General Plan, the Downtown Specific Plan (SP5), and the Huntington Beach Zoning and Subdivision Ordinance (HBZSO);
- Proposed project will provide parking through payment of parking in-lieu fees for 16 spaces;
- With suggested conditions, the expanded outdoor dining area with alcohol sales and service will be compatible with adjacent uses in the immediate vicinity, and will not be detrimental to property owners and residents in the area;
- The improvements associated with the proposed project will further the vision and viability of District 1 of the Downtown Specific Plan.

**ATTACHMENTS:**

- ~~1. Suggested Findings and Conditions of Approval~~
- ~~2. Conceptual Site Plan and Floor Plans Received and Dated May 10, 2021~~
- ~~3. Code Requirements Letter Dated July 14, 2021~~
- ~~4. City Council Resolution No. 2017-42~~
- ~~5. Project Narrative Dated August 15, 2021~~