

USE DETERMINATION AGREEMENT

THIS USE DETERMINATION AGREEMENT (“Agreement”) is entered into and effective as of this 31st day of March, 2021, between the City of Costa Mesa (“City”) and 1750 Newport Blvd CM LLC (“Owner”) (collectively “Parties”) with respect to 1750 Newport Boulevard in the City of Costa Mesa (“Property”).

RECITALS

WHEREAS, Owner has a legal or equitable interest in the approximately twenty-three thousand six hundred six square foot (23,600) Property located on the southeast corner of Newport Boulevard and Rochester Street in the City of Costa Mesa (APNs: 425-442-12 and 425-442-13) and intends to develop and operate the Property with a commercial kitchen (“Project,” as described below);

WHEREAS, the Property is the location of a non-conforming structure (Grant’s Guns) which building has remained closed and otherwise vacant for over five years. City desires that the Property be occupied as expeditiously as possible with necessary building and facade improvements and a use suitable for this location in order to avoid blight and otherwise for the benefit for the health, safety and welfare of the City, provided however, that any proposed use and structure remain in conformance with all applicable requirements of the Costa Mesa Municipal Code (“CMMC”) and that the City have an adequate and effective remedy to deter unpermitted uses;

WHEREAS, Owner proposes that the Project will include twenty-nine (29) individually demised kitchens that will be used for food preparation for offsite business or event gatherings (catering), to serve the onsite food hall open to the public, and/or to serve application-based delivery services for off-site delivery to customers, although a limited number of customers may make direct purchases at the Property;

WHEREAS, the Property is in the City’s C-2 Zone, which permits catering and establishments where food and beverages are served subject to compliance with applicable development standards;

WHEREAS, Section 13-30(d) of the CMMC provides as follows: “(d) Any proposed use not listed in the Land Use Matrix shall be reviewed by the development services director to determine its similarity to another listed use. If no substantial similarity exists, the proposed use shall require approval of a conditional use permit prior to establishment of the use”;

WHEREAS, pursuant to Section 13-30(d) of the CMMC, on or about March 31, 2021 the City’s Director of Economic and Development Services (“Director”) issued a “Use Determination Letter”, which describes the Project’s development and operation and concludes that the Project is an allowable use in the City’s C-2 Zone because it is substantially similar to a catering establishment and an establishment where food and beverages are served, provided it conforms to the limitations set forth in the Use Determination Letter, all applicable provisions of the CMMC

and this Agreement. The City's Use Determination Letter is attached hereto as Exhibit 1 and incorporated into this Agreement by this reference as though fully set forth herein;

WHEREAS, in order to develop the Property in an as expeditious manner as permissible, Owner desires to proceed with the Project on a by-right basis pursuant to this Agreement including the Use Determination Letter instead of obtaining another form of discretionary permit under the CMMC;

WHEREAS, based on a request from and information provided by Owner, Director had previously issued a use determination letter for the Project on August 3, 2020, which use determination has been withdrawn and is of no further force and effect; and

WHEREAS, the Parties now desire to enter into this Agreement to document the terms of the Property's Use Determination and set forth the remedies for the Parties if the use of the Property and/or the Project materially differs from that set forth in Owner's submitted Project materials and/or the Use Determination Letter.

AGREEMENT

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION AND THE COMMITMENTS CONTAINED HEREIN, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. Incorporation of Recitals. The Recitals set forth above are true and correct and are incorporated into this Agreement in their entirety by this reference as a material part hereof.

2. Agreement as to Use Determination. The City hereby acknowledges and agrees that the Project may be considered a permitted use in the City's C-2 Zone because it is a combination of a catering use and an establishment where food and beverages are served and that no discretionary approvals (e.g., a Conditional Use Permit ["CUP"]) are required for the Project's development or operation, provided the Project and/or any other use of the Property conforms in all material respects, in the discretion of the Director, to that set forth in the Use Determination Letter.

3. Expansion or Change of Use. The Parties understand, acknowledge and agree that any use materially inconsistent with the Project as set forth in the previously submitted applicant materials and/or the Use Determination Letter that would not otherwise be permitted as a matter of right under the CMMC shall be subject to all current requirements of the CMMC and applicable City policies, including, but not limited to the requirement to obtain discretionary and other permits, including a CUP. Owner hereby agrees that it shall not be entitled to claim estoppel, laches or any other remedy at law or in equity, or be entitled to award of monetary damages, caused by or in any way related to Director or any other City official or body's determination and/or finding of material inconsistency under this Agreement.

4. Revocation and Abatement. If the Director finds Owner is in violation of the terms of this Agreement, including the Use Determination Letter, this Agreement may be revoked, and/or the Use Determination Letter withdrawn, by the City at any time after City provides

Owner with ninety (90) calendar days' written notice (including a description of the alleged violation) and an opportunity to cure within that ninety-day period. Should Owner fail to cure the defect within these ninety days, Owner hereby agrees and stipulates that such use and/or failure to cure, shall constitute a violation of this Agreement, shall be considered an unpermitted land use, and may be abated by the City as a nuisance pursuant to all remedies available at law or in equity, including, but not limited to those remedies set forth in the Costa Mesa Municipal Code.

5. Appeal. Owner may appeal Director's finding or other action by the City that results in a determination of an alleged violation of this Agreement, including the Use Determination Letter, pursuant to the provisions and requirements of Chapter IX of Title 2 of the CMMC or any successor chapter thereto.

6. Defense, Indemnity and Hold Harmless. Owner shall defend, with attorneys of City's choosing, 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 City's approval of the Project, the Use Determination Letter, and/or this Agreement. 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 Owner, the City and/or the parties initiating or bringing such proceeding. This indemnity provision shall include the Owner'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 paragraph number 6.

7. Notices, Demands and Communications between the Parties. All notices or other communications required or permitted between the Parties hereunder shall be in writing, and shall be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, or (iii) sent by nationally recognized overnight courier service (e.g., Federal Express or United Parcel Service), addressed to the party to whom the notice is given at the addresses provided below, subject to the right of any party to designate a different address for itself by notice similarly given. Any notice so given by registered or certified United States Mail shall be deemed to have been given on the third business day after the same is deposited in the United States Mail. Any notice not so given by registered or certified mail, such as notices delivered by personal delivery or courier service, shall be deemed given upon receipt, rejection or refusal of the same by the party to whom the notice is given. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice or other communication sent.

To City:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: Lori Ann Farrell Harrison, City Manager

To Owner:

1750 Newport Blvd. CM LLC
c/o Cox, Castle & Nicholson LLP
3121 Michelson Drive, Ste. 200
Irvine, CA 92612
Attn: Sean Matsler, Esq.

8. Binding Agreement. This Agreement shall be binding upon the Parties and their respective heirs, executors, administrators, successors in interest and assigns. Owner shall provide a copy of this Agreement to any and all successors in interest and/or assigns.

9. Land Use Restriction. This Agreement and/or the Use Determination may be recorded against the Property as a land use restriction.

9. Counterparts. This Agreement may be executed in one or more counterparts, each of which so executed and delivered shall be deemed to be original and all of which, together, shall constitute one and the same instrument.

10. Captions. The captions in this Agreement have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

11. Severability. If any term or provision, or portion of any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the extent permitted by law.

12. Entire Agreement. This Agreement contains the entire agreement of the Parties concerning the subject matter contained in this Agreement and supersedes any prior written or oral agreements between them concerning the subject matter of this Agreement. Except as otherwise expressly provided herein, there are no representations, agreements, arrangements, or understandings, oral or written, between the Parties concerning the subject matter of this Agreement that are not fully expressed in this Agreement.

13. Amendment. This Agreement may not be amended or altered except by a written instrument executed by all of the Parties.

14. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California. Venue shall lie exclusively in the Orange County Superior Court in the State of California.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date written above.

[SIGNATURES FOLLOW ON NEXT PAGE]

CITY

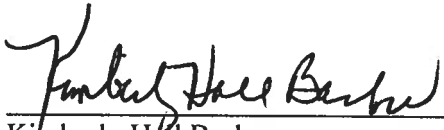
CITY OF COSTA MESA



Lori Ann Farrell Harrison
City Manager

**APPROVED AS TO FORM AND
CONTENT:**

JONES & MAYER



Kimberly Hall Barlow
City Attorney

OWNER:

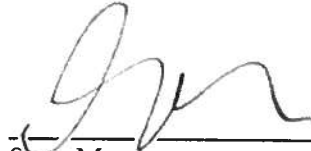
1750 NEWPORT BLVD CM LLC



George Hajjar
Authorized Signatory

**APPROVED AS TO FORM AND
CONTENT:**

Cox, Castle & Nicholson LLP



Sean Matsler
Attorney for Owner

Exhibit 1

Use Determination Letter



CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

March 30, 2021

Electronic Transmittal: SMatsler@coxcastle.com

1750 Newport Blvd. CM LLC
c/o Cox, Castle & Nicholson LLP
Attn: Sean Matsler
3121 Michelson Drive, Ste. 200
Irvine, CA 92612

**RE: USE DETERMINATION LETTER
1750 NEWPORT BOULEVARD, COSTA MESA**

Dear Mr. Matsler:

This letter has been prepared in response to the request to establish a multi-use commercial kitchen facility with 29 individual commercial kitchens at the subject property. A 293-square-foot "food hall" is also proposed to be open to the public and commonly accessible to eight of the kitchens.

Description of the Property

The approximately 23,600-square-foot (0.54-acre) property is located on the southeast corner of Newport Boulevard and Rochester Street. It is zoned C2 (General Business) and has a General Plan Land Use Designation of General Commercial. The property currently contains a 12,723-square-foot vacant building. The site was previously operated by The Grant Boys, a retail facility for sales of firearms, clothes, and fishing and camping items. The site contains 31 existing parking spaces which are proposed to be maintained.

Description of the Proposed Use / Operation

As described in the applicant letter and subsequent communications and applicant submittals (collectively, "applicant materials"), the proposed use involves repurposing the existing building to create 29 individually demised commercial kitchens that will be used for food preparation for an offsite business or event gathering (traditional catering), to serve the onsite food hall open to the public, or to serve application-based delivery services for off-site delivery to customers. In addition, a limited number of customers may make direct purchases at the Property.

The proposed individual commercial kitchens range in size from 155 square feet to 350 square feet (though operators have the option of combining multiple individual

kitchens into a single large kitchen). The floor plan includes 2,939 square feet of storage, a processing area, a common locker/break area and restroom areas as well as a 293-square-foot food hall.

All uses would be conducted indoors and no sale of alcoholic beverages for on-site or off-site consumption is proposed. In addition to the on-site staff for the individual kitchens operating, the facility would have facility staff on-site to manage operations including a facility manager, two food runners and an additional staff member to assist with managing the facility operations and processing area.

Of the 29 commercial kitchens, eight are proposed to have physical access to the 293-square-foot food hall accessible to the general public. The proposed hours of operation for the food hall are Sunday through Saturday, 8AM to 11PM. Each kitchen is proposed to be individually licensed and operated by a single operator with multiple "shifts" throughout the day (morning, day, night). It is also possible that a single operator will license and operate more than one kitchen. Based on historic data from similar facilities operated by the applicant, no more than 50% of the kitchens' brands will be available for online ordering at any one time-. The hours of operation of the commercial kitchens that are not serving customers at the food hall or via pick-up/delivery are Sunday through Wednesday, 8AM to 2AM, and Thursday through Saturday, 8AM to 4AM.

Land Use Determination

Section 13-30(d) of the Costa Mesa Municipal Code (CMMC) provides as follows: "(d) Any proposed use not listed in the Land Use Matrix shall be reviewed by the development services director to determine its similarity to another listed use. If no substantial similarity exists, the proposed use shall require approval of a conditional use permit prior to establishment of the use". The Property is in the City's C-2 Zone, which permits catering and establishments where food and beverages are served subject to compliance with applicable development standards.

Based on applicant materials, and pursuant to CMMC Section 13-30(d), and subject to the provisions set forth in this Use Determination Letter, the City finds that the Project is a permitted use in the City's C-2 Zone because it is substantially similar to a catering establishment and an establishment where food and beverages are served, provided it conforms to the limitations set forth in this Use Determination Letter, and subject to all applicable provisions of the CMMC.

Additional Requirements

Since the property is located within 200 feet of a residentially-zoned property, the development standards listed in CMMC Section 13-49 will apply. Of note, compliance with CMMC Section 13-49 will require customer service (i.e., the food hall and pick up/deliveries) to close between 11PM and 6AM; prohibits truck deliveries between 8PM and 7AM; requires shielding of all exterior lighting; and requires trash facilities to be screened from view and designed and located away from residential uses.

In addition, since the property includes two separate parcels containing the building and the parking lots, the City will require recordation of a lot line adjustment prior to issuance of building permits and prior to commencement of the use. Furthermore, please note that applicable fees will require payment prior to issuance of building permits.

Non-conforming Floor Area Ratio (FAR)

The maximum allowable square footage (based on Floor Area Ratio standards) for a commercial building is 0.3 of the site-area or 7,080 square feet based on a 23,630-square-foot lot; the existing building exceeds the allowable building area on a lot of its size by 5,643 square feet. Based on the City's building records, the building was built over the years in several phases and expanded with a mezzanine (12,723 square feet in area). CMMC Section 13-204 (nonconforming provisions) states that if at any point the non-conforming building needs to be substantially rebuilt or torn down, the project must be modified to comply with current development standards including FAR standards.

In order to occupy the building for the proposed use, and as stated in the submitted Consultant Report prepared by AEI dated July 21st, 2020, the City understands that building renovations will be necessary, such as modifying the walls and roofing, and installation of a concrete slab for a portion of the building (referred to as Structure #2 in the AEI report). In addition, each kitchen would require installation of a commercial grade hood that will require roof penetrations and structural retrofits at those locations. The non-conforming status of the site can be maintained as long as the improvements are carried out based on the submitted reports, and in compliance with the applicable codes and any approved plans, and do not result in the demolition and reconstruction of a substantial portion of the buildings pursuant to CMMC Section 13-204. It will be important for your team to work with City staff during the preparation of construction plans and to diligently pursue construction per those approved plans in order for the site to retain its legal non-conforming status.

Non-conforming Parking

At a parking rate of 4 spaces/1,000 square feet of gross floor area applicable to retail / commercial uses, 51 parking spaces would typically be required for the 12,723-square-foot building; the site contains 31 parking spaces. The parking area will be required to be restriped according to commercial parking standards and provide a minimum of two accessible stalls to meet ADA requirements. No additional parking spaces are required beyond the 31 existing spaces for operations conforming to this agreement. However, any change to the operation of the facility that will intensify the parking demand, such as expansion of the food hall, will require discretionary approvals by the City.

Operating Requirements

1. The use shall be limited to the type of operation described in this letter including:

- The facility shall contain no more than 29 individually licensed and operated kitchens; up to eight may physically access the food hall (public area);
 - The food hall (public area) shall be 300 square feet or less;
 - Permitted Hours of Operation for the food hall and any food pick up/delivery service shall be Sunday through Saturday, 8AM to 11PM per CMMC Section 13-49;
 - Permitted Hours of Operation for the kitchens are Sunday through Wednesday, 8AM to 2AM, and Thursday through Saturday, 8AM to 4AM;
 - No more than 20 kitchens shall be in simultaneous operation. In addition, the number of kitchens in simultaneous operation offering online ordering and pick up/delivery shall not exceed 15 kitchens. This provision shall be revisited 6 months after the effective date of this agreement and may be revisited every 6 months thereafter and the number of kitchens may be adjusted via letter agreement approved by the City Manager; A facility manager shall be on site and accessible at all times;
 - Each kitchen shall contain one operator/licensee; subleasing of kitchens is prohibited;
 - All uses shall be conducted underroof;
 - No food trucks are allowed onsite, unless otherwise approved by the City.
 - Applicant shall notify pick up/delivery drivers to enter the site via the Newport Boulevard or Rochester driveway and exit via Newport Boulevard.
2. The use shall be operated as described in the applicant's Standard Operating Procedures referenced herein, with minor adjustments subject to approval by the Development Services Director.
 3. Applicant shall submit a parking lot striping plan subject to review and approval of the Planning Division at the time of Building plan check. Prior to issuance of an occupancy permit, the applicant shall restripe the parking lot per the City approved plan.
 4. The parking lot to the rear of the building shall be used for employee parking only. The driveway shall be designed and signed for "left turn only" onto Rochester Street from the employee parking lot and for "right turn only" onto

Newport Boulevard as shown in the applicant's Operational Plan, and as approved by the Public Services Director or designee. No third party pick up/delivery shall occur in the rear parking lot.

5. Commercial catering trucks shall not use Rochester Street and shall not be parked on public streets.
6. The parking lot at the front of the building shall be used for third party pick up/delivery and food hall customer parking only.
7. The facility manager shall be responsible for managing operations including but not limited to adjusting kitchen schedules, providing employee transportation options, etc. to ensure parking demand is accommodated onsite. Employees shall not use on-street public parking as employee parking.
8. Applicant will station a traffic controller to manage couriers accessing the site if 100% of the third party pick up/delivery and food hall parking spots are occupied. The traffic controller will ensure there is no project-related queuing or traffic congestion on Newport Boulevard and no traffic flow east onto Rochester Street as described in the applicant's Standard Operating Procedures referenced herein.
9. If queuing occurs on Newport Boulevard or Rochester Street from the use, the applicant shall implement immediate corrective action. Upon request, applicant shall submit a corrective action plan within 10 days as approved by the Director of Public Services or designee.
10. Should parking or vehicular circulation become a nuisance for neighboring properties, the operator shall institute appropriate operational corrections as necessary to minimize or eliminate the problem, including but not limited to, modifying the hours of operation, adjusting the kitchen schedule, or other similar measures as approved by the Public Services Director or designee on operational corrections.
11. The business shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhoods. The property manager and individual operators shall institute whatever security and operational measures are necessary to comply with this requirement.
12. The applicant shall contact the Planning Division to arrange a planning inspection of the site prior to final building inspection.
13. This Agreement and/or the Use Determination may be recorded against the Property as a land use restriction.

14. Recordation of a lot line adjustment to ensure that the lots cannot be developed or sold separately and that required parking remains for the proposed use is required prior to issuance of building permits and prior to commencement of the use.
15. Compliance with CMMC Section 13-49 is required.
16. The Use Determination Agreement/Use Determination Letter shall be printed on the first page as part of the Building plan check submittal package.
17. Applicable fees will require payment prior to issuance of building permits.

Building Permit and Occupancy

The proposed building remodeling is required to comply with building and safety requirements; a Certificate of Occupancy shall be obtained prior to building occupancy. Based on an initial review of the preliminary plans, the following will need to be addressed with the building plan check submittal:

1. Occupancy classification per California Building Code section 302.0.
2. Maximum allowed Occupant load per California Building Code section 1004 and table 1004.5.
3. Number of required exists per California Building Code section 1006.
4. Exit access through intervening rooms and kitchen areas per California Building Code section 1016.
5. First floor unisex restrooms. All shall comply with disabled access requirements per California Building Code section 11B-603 unless the restrooms are clustered together, then only 5% will need to comply with California Building Code section 11B-213.2, exception no. 3. The second floor restroom shall comply as the first floor restroom.
6. Kitchen areas used by the public; at least 5% of the total number of kitchen areas shall comply with disabled access requirements California Building Code sections 11B-212 and 11B-804.
7. Stairs shall comply with disabled access requirements per California Building Code sections 11B-504.0 and 11B-505.
8. An accessible path of travel shall be provided from the city sidewalk to the main entrance of the building.

9. Accessible parking stall shall comply with California Building Code sections 11B-208 and 11B-502.
10. Please contact Jon Neal, Fire Marshal, at jon.neal@costamesaca.gov to discuss compliance with Fire Code, including but not limited to the potential for fire sprinklers.

Any change in the operational characteristics described in this letter as determined by the Director of Economic and Development Services, including but not limited to, hours of operation, expansion of the food hall, and any sales of onsite or offsite alcoholic beverages, will render the Land Use Determination null and void, will require additional review by the Planning Division, and may require that discretionary entitlements and/or permits be obtained and/or that such use cease.

If you have any questions, please contact Justin Arios at 714.754.5667, or at justin.arios@costamesaca.gov.

Sincerely,



Jennifer Le
Director of Economic and
Development Services

Applicant Materials on File with the City:

- Applicant Letters (dated July 2, 2020 and August 28, 2020)
- AEI Consultants Report (portion submitted to City, dated July 21, 2020)
- Conceptual Site Plan (dated August 25, 2020)
- Standard Operating Procedures (dated October 19, 2020)
- CSS Parking and Traffic Analysis (dated October 19, 2020)
- Traffic Impact Assessment prepared by Linscott, Law, & Greenspan (LLG) (dated January 2, 2021, and as subsequently amended and approved by the City)

cc: Building Division
Transportation Division
Engineering Division
File