

RESOLUTION NO. 2022-73

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING REGULAR COASTAL DEVELOPMENT PERMIT (CP-21-0004), CONDITIONAL USE PERMIT (CUP-21-0004), DESIGN REVIEW CASE (DRC-21-0017), SITE PLAN REVIEW (SPR-21-0018), & CATEGORICAL EXEMPTION PURSUANT TO CEQA GUIDELINES SECTION 15332 (IN-FILL DEVELOPMENT PROJECTS) TO DEMOLISH AN EXISTING BUILDING AND CONSTRUCT A NEW RAISING CANE'S RESTAURANT WITH A DRIVE-THROUGH FACILITY AT 900 PALM AVE (APN 626-212-36-00) IN THE C/MU-1 (GENERAL COMMERCIAL AND MIXED USE) ZONE. USE-21-0054.

APPLICANT: BRANDON LAYMAN/RAISING CANE'S

WHEREAS, on September 21, 2022, the City Council of the City of Imperial Beach held a duly advertised and noticed public hearing to consider the merits of approving or denying an application for a Regular Coastal Development Permit (CP-21-0004), Conditional Use Permit (CUP-21-0004), Design Review Case (DRC-21-0017), Site Plan Review (SPR-21-0018), and a categorical exemption pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15332 Class 32 (In-fill Development Projects) proposing to demolish an existing building and construct a new Raising Cane's restaurant with a drive-through facility at 900 Palm Ave (APN 626-212-36-00) in the C/MU-1 (General Commercial and Mixed Use) Zone on the Zoning Map; and

WHEREAS, on June 16, 2022, the Design Review Board recommended approval of the project with a vote of 4-0 (1 member absent); and

WHEREAS, the project is demolishing an existing building and constructing a new Raising Cane's restaurant with a drive-through facility and outdoor patio seating area is compatible in use with other developments in the vicinity which consist of commercial buildings and retail and is consistent with Policy D-8 (Project Design) of the Design Element of the General Plan; and,

WHEREAS, the City Council finds that the project is in substantial compliance with Policy L-4c of the Land Use Element of the General Plan, which promotes commercial uses that provide goods and services to residents and visitors that will increase the City's tax base in the C/MU-1 Zone (General Commercial and Mixed Use) Zone; and

WHEREAS, the City Council finds that the project is consistent with the C/MU-1 (General Commercial and Mixed Use) Zone of the Zoning Ordinance, to provide areas for businesses to meet the local demand for commercial goods and services; and

WHEREAS, the City Council finds that the project complies with the requirements of the California Environmental Quality (CEQA) as the project is categorically exempt pursuant to CEQA Guidelines 15332 (In-Fill Development Projects); and

WHEREAS, the City Council further offers the following findings in support of its decision to conditionally approve the project:

REGULAR COASTAL PERMIT (IBMC § 19.87.050):

- 1. The proposed development conforms to the certified local coastal plan including coastal land use policies.**

The General Plan/Local Coastal Plan designates the site as General Commercial and

Mixed Use (C/MU-1) Zone, providing for offices performing services for residents of the City, service establishments consistent with the purposes of General Commercial and Mixed Use Zone, and restaurants with a drive-through subject to a Conditional Use Permit. The project would demolish an existing commercial building (Union Bank) with a drive-through and construct a new Raising Cane's restaurant (commercial building) with a drive-through and outdoor patio seating, which is consistent with the Local Coastal Plan with approval of a Conditional Use Permit. The project site is located in a non-appealable coastal zone and complies with the land use designation of the General Plan/Local Coastal Plan. The project does not propose to obstruct access the beach or obstruct coastal views.

2. For all development seaward of the nearest public highway to the shoreline, the proposed development meets standards for public access and recreation of Chapter Three of the 1976 Coastal Act and regulations promulgated thereunder.

The project site is not located between the seaward of the first public road or nearest public highway to the shoreline. The General Plan/Local Coastal Program designates the site as General Commercial & Mixed-Use (C/MU-1 Zone). The purpose of the C/MU-1 zone is to provide areas for mixed-use development, multiple-family dwellings, and for businesses to meet the local demand for commercial goods and services. It is intended that the dominant type of commercial activity in the C/MU-1 zone will be community and neighborhood serving retail and office uses (IBMC Section 19.26.010). The proposed Raising Cane's restaurant with a drive-through meets the purpose and intent of the land use designation because drive-through establishments are permitted in the C/MU-1 Zone with a conditional use permit and the business meets the local demand for commercial goods and services. As such, the proposed development meets standards for public access and recreation of Chapter Three of the 1976 Coastal Act and regulations promulgated thereunder.

3. The proposed development meets the minimum criteria set forth in the City of Imperial Beach Zoning Ordinance, the City's Minimum Landscape Planting and Irrigation Standards, and the City's Design Guidelines, as applicable.

The project complies with the City's Design Guidelines, landscaping requirements, parking requirements, and building height limitations specified in the Zoning Ordinance. The project meets the side yard and rear yard setback requirements. The project fronts Palm Avenue and new buildings with frontage along Palm Avenue would be required to provide an active commercial use and a building depth of 25-feet per IBMC Section 19.26.020(A)(1). The project provides a large decorative canopy with a screening element that completely screens the drive-through drive aisles from the street views from both Palm Avenue and 9th Street. The screening element is comprised of brick columns that measure 16'7" tall and cement stucco archway pop outs that either have the business logo or Imperial Beach coastal wave art. The archways measure between 17'9¼" to 20'5" with the tallest archway framing the pedestrian walkway on Palm Avenue. Two of the prominent archways located directly adjacent to the southern property line fronting Palm Avenue highlight and enhance the five-foot wide ADA accessible pedestrian walkway comprised of stamped concrete which leads directly from the sidewalk fronting Palm Avenue to the business entrance as well as open patio seating. The enhanced pedestrian walkway provides direct pedestrian access from the Palm Avenue sidewalk to the business.

Per IBMC Section 19.26.070, all commercial spaces on the ground floor are required to have a floor-to-ceiling height of 15-feet. The applicant has stated that they are proposing

a reduced interior floor-to-ceiling height of 11-feet to maintain health and life safety standards, improve the energy efficiency of the building, and to adhere to proportional design standards. As the Raising Cane's drive-through/walk-up is a unique business model that provides no interior customer access or seating area aside from access to customer restrooms (one ADA public gender-neutral restroom), and instead, provides customer ordering via walk-up and an outdoor patio area for seating, the interior of the building is only functioning as an interior kitchen where food is prepared, and as such, environmental health and life safety adherence is imperative. The applicant stated that the proposed 11-foot-tall ceiling is the height which is easily cleanable and within reach of its crew members who will be tasked with maintaining cleanliness. Additionally, with regards to maximizing the energy efficiency of the structure, the energy consumption necessary to provide conditioned air in a volume to accommodate a building with a 15-foot floor to ceiling height for a functional kitchen is inefficient. Furthermore, given the small size of the proposed Raising Cane's structure, a 15-foot floor to ceiling height would require the design to be disproportionately tall and would, by Brand standards, be out of the realm of good proportional design.

Additionally, the applicant has proposed a lower canopy floor to ceiling height of 10-feet as the applicant states that a 15-foot floor-to-canopy height would negatively impact the customer experience as it would minimize the total shaded square footage provided beneath the canopy, and thus, maximizing the sun exposure for customers dining outdoors. By providing a lower canopy height more shading would be provided to the customers, enhancing their dining experience. The canopy proposed by Raising Cane's is maximizing its usable outdoor square footage, providing increased 'activated' space on site. As such, the proposed restaurant provides an 11-foot interior floor to ceiling height, a 10-foot floor-to-ceiling height for the outdoor patio, and a 77-foot building depth.

4. **The proposed development meets minimum criteria set forth in Sections 19.81.060, 19.82.050., 19.83.120., 19.84.050., and 19.86.100., of this title for site plans, conditional use permits, design review, variances, zoning classification and rezonings.**

The proposed development meets the minimum criteria set forth in Sections 19.81.060, 19.82.050, and 19.83.110 (Section 19.83.120 is no longer applicable) for a site plan review, conditional use permit, and design review subject to the findings provided within this Resolution. Sections 19.84.050 and 19.86.100 are not applicable because the project does not require a variance or zoning classification/rezoning.

5. **For all development involving the construction of a shoreline protective device, a mitigation fee shall be collected which shall be used for each sand replenishment purposes. The mitigation fee shall be deposited in an interest-bearing account designated by the Executive Director of the California Coastal Commission and the city manager of Imperial Beach in lieu of providing sand to replace the sand a beach area that would be lost due to the impacts of any proposed protective structure.**

The subject site is not located near an area that would require shoreline protection. As such, the proposed project does not necessitate the construction of a shoreline protection device and would not have an impact on the sand in any beach area. Therefore, a mitigation fee is not required for the project.

6. **This project complies with the California Environmental Quality Act.**

This project is categorically exempted from the requirements of the California

Environmental Quality Act (CEQA) as a Class 32 project pursuant to CEQA Guidelines Section 15332 (In-Fill Development). The City has prepared a Categorical Exemption per the CEQA requirements for this project and the Notice of Exemption will be filed with the County Clerk in compliance with CEQA.

7. Public Notice requirements, pursuant to Zoning Ordinance Section 19.87.090, of the Coastal Development Project have been satisfied.

The project description and the date of the City Council public hearing were sent to property owners within 300 feet and occupants within 100 feet of the subject site on September 7, 2022, and a public hearing notice was published in the South County Eagle & Times newspaper on September 8, 2022.

CONDITIONAL USE PERMIT (IBMC § 19.82.040):

8. That the proposed use is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or community;

The C/MU-1 (General Commercial and Mixed Use) Zone is to provide areas for mixed-use development, multiple-family dwellings, and for businesses to meet the local demand for commercial goods and services. It is intended that the dominant type of commercial activity in the C/MU-1 zone will be community and neighborhood serving retail and office uses. The proposed use provides a new Raising Cane's restaurant with a drive-through facility and outdoor patio seating area, which would be consistent with the Local Coastal Plan/General Plan with approval of a Conditional Use Permit. The use is similar to the existing use, necessary and desirable as it will provide a restaurant establishment that would generate income for the community, and there are similar uses in the vicinity.

9. That the use will not, under the circumstances of the particular use, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity;

The proposed Raising Cane's restaurant with a drive-through facility and outdoor patio seating area in the C/MU-1 (General Commercial and Mixed Use) Zone will not be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity because specific conditions have been set forth by the Community Development Department, Public Works Department, Building Department, and Public Safety Department to mitigate public safety and welfare concerns such a development project may raise in the Conditions of Approval. In addition, the use is similar to other establishments in the vicinity.

10. That the proposed use will comply with the regulations and conditions specified in this title for the use and for other permitted uses in the same zone; and

The proposed use will comply with the regulations and conditions specified in the title for such use and for other permitted uses in C/MU-1 (General Commercial and Mixed Use) Zone because the conceptual plans for the discretionary entitlements have been reviewed for compliance with zoning regulations.

11. That the granting of the conditional use permit will be in harmony with the purpose and intent of the zoning code, the adopted General Plan and the adopted Local Coastal Program.

The granting of the Conditional Use Permit for the proposed use will be in harmony with

the purpose and intent of the zoning code, General Plan, and Local Coastal Program because the C/MU-1 (General Commercial and Mixed Use) Zone provides for restaurant establishments consistent with the purposes of General Commercial Zone and drive-through establishments subject to a Conditional Use Permit. In addition, the project would be considered a substantial improvement to the area that would serve to increase the City's tax base, which serves Land Use Element Policy L-4c of the adopted General Plan and Local Coastal Program.

DESIGN REVIEW/SITE PLAN REVIEW (IBMC § 19.81.060):

- 12. The proposed use does not have any detrimental effect upon the general health, safety and convenience of persons residing or working in the neighborhood, or is not detrimental or injurious to the value of the property and improvements in the neighborhood.**

The proposed Raising Cane's restaurant with a drive-through facility and outdoor patio seating area in the C/MU-1 (General Commercial and Mixed Use) Zone will not be detrimental to the health, safety or convenience of persons residing or working in the neighborhood, or detrimental or injurious to the property and improvements in the neighborhood because it is consistent with the development standards and zoning designation of the site as well as provides improvements to the project site and public right-of-way. Specific conditions have been set forth by the Community Development Department, Public Works Department, Building Department, and Public Safety Department to mitigate public safety and welfare concerns such a development project may raise in the Conditions of Approval.

- 13. The proposed use does not adversely affect the General Plan or the Local Coastal Plan.**

The proposed use will not adversely affect the General Plan or Local Coastal Plan because the C/MU-1 (General Commercial and Mixed Use) Zone provides for restaurant uses and drive-through establishments subject to a Conditional Use Permit. In addition, the project would be considered a substantial improvement to the area that would increase the City's tax base, which serves Land Use Element Policy L-4c of the adopted General Plan and Local Coastal Program.

- 14. The proposed use is compatible with other existing and proposed uses in the neighborhood.**

The proposed Raising Cane's restaurant with a drive-through facility and outdoor patio seating area is compatible in use with established uses in the neighborhood which consist of a mix of commercial businesses, retail shops, some of which have drive-through services. The subject site is in the C/MU-1 (General Commercial and Mixed Use) Zone, which provides uses similar in character and scale.

- 15. The location, site layout and design of the proposed use orients the proposed structures to streets, driveways, sunlight, wind and other adjacent structures and uses in a harmonious manner.**

The proposed new Raising Cane's restaurant with a drive-through facility and outdoor patio seating area would be replacing an existing commercial building. The surrounding uses consist of a mix of other commercial businesses, retail shops, gas stations, and a drive-through restaurant. The primary building elevation would face Palm Avenue, which is consistent with the surrounding commercial and mixed-use uses along the Palm

Avenue Corridor. The applicant is proposing a large decorative canopy with a screening element that completely screens the drive-through drive aisles from the street views from both Palm Avenue and 9th Street. The screening element is comprised of brick columns that measure 16'7" tall and cement stucco archway pop outs that either have the business logo or Imperial Beach coastal wave art. The archways measure between 17'9¼" to 20'5" with the tallest archway framing the pedestrian walkway on Palm Avenue. Two of the prominent archways located directly adjacent to the southern property line fronting Palm Avenue highlight and enhance the five-foot wide ADA accessible pedestrian walkway comprised of stamped concrete which leads directly from the sidewalk fronting Palm Avenue to the business entrance as well as open patio seating. The enhanced pedestrian walkway provides direct pedestrian access from the Palm Avenue sidewalk to the business. Additionally, landscaping would be provided adjacent to the screening elements. The design of the proposed use orients the proposed structures to streets, driveways, sunlight, wind and other adjacent structures and uses in a harmonious manner promoting pedestrian access to the business from Palm Avenue.

16. The combination and relationship of one proposed use to another on the site is properly integrated.

The Raising Cane's restaurant with a drive-through facility and outdoor patio seating area is properly integrated so that the entrance to the Raising Cane's is provided off of Palm Avenue. The applicant is proposing a large decorative canopy with a screening element that completely screens the drive-through drive aisles from the street views from both Palm Avenue and 9th Street. The screening element is comprised of brick columns that measure 16'7" tall and cement stucco archway pop outs that either have the business logo or Imperial Beach coastal wave art. The archways measure between 17'9¼" to 20'5" with the tallest archway framing the pedestrian walkway on Palm Avenue. Two of the prominent archways located directly adjacent to the southern property line fronting Palm Avenue highlight and enhance the five-foot wide ADA accessible pedestrian walkway comprised of stamped concrete which leads directly from the sidewalk fronting Palm Avenue to the business entrance as well as open patio seating. The enhanced pedestrian walkway provides direct pedestrian access from the Palm Avenue sidewalk to the business. Additionally, landscaping would be provided adjacent to the screening elements and throughout the site. The opening to the drive-through lane would be located at the northeastern corner of the proposed building, and the drive-through lane would wrap around the north and east sides of the building in a counter-clockwise direction. The proposed site improvements, right of way improvements, and building design style and materials properly integrate the building with surrounding uses.

17. Access to and parking for the proposed use does not create any undue traffic problem.

The parking design will not create any undue traffic problems as the required amount of parking is provided and the drive-through queue can accommodate 28 vehicles which, based on the applicant's queuing analysis, would be maintained on site with no overflow on the street. Vehicular ingress and egress occurs through a public alley entrance west of the property as well as a curb cut on Georgia Street. Vehicular ingress and egress to the property would be provided from two of the existing curb cuts, one located on 9th Street which is a full-movement driveway, and one located on Palm Avenue that is a right-in right-out only driveway. The second existing curb cut located along 9th Street, south of the curb cut that is proposed to be maintained, would be removed as a part of

the project. For the project's proposed internal circulation, the project proposes a two-way drive aisle located east and north of the commercial building and west of the parking spaces which are located adjacent to the eastern property line. The two drive aisles dedicated to the use of the drive-through are situated parallel to each other in a "C" shape that wraps around the western side of the restaurant and is located adjacent to the western and southern property lines for the site. The drive-through drive aisles that front 9th Street (western PL) and Palm Avenue (southern PL) are completely screened.

Per IBMC Section 19.48.050(E)(1), drive-through establishments are required to provide one parking space for every 50 square feet of net floor area plus one space per two employees at the largest work shift. Per IBMC Section 19.04.575, net floor area is defined as, "...the total horizontal area of all the floors of a building included within the interior walls, exclusive of areas used exclusively for permanently installed heating and air conditioning units, mechanical equipment rooms, elevator shafts, basements or attics less than seven feet in height, permanent parking spaces, driveways, ramps, common kitchens, bathrooms, and hallways included within a building and areas used exclusively by employees in commercial and manufacturing businesses within a building." As the proposed Raising Cane's building interior would be exclusively utilized by employees with the only customer accessible space being a bathroom, there is no proposed net floor area for this project. However, staff requested that the applicant provide parking calculations for the outdoor patio seating area to meet the intent of the requirement which is to provide customers and employees with sufficient off-street parking. The outdoor patio is 776 square feet (1 stall/50 square feet) = 16 off-street parking spaces and the largest shift would have 10 employees (1 stall/2 employees) = 5 off-street parking spaces for a total of 21 off-street parking spaces for the project. The applicant has proposed to provide a total of 16 off-street parking spaces, including 11 standard, two ADA stalls, three designated mobile curbside pickup, and three designated carpool/vanpool/EV charging stations in conjunction with implementing transportation demand management (TDM) strategies to off-set the employee and customer parking needs.

The applicant assessed the potential TDM strategies for the project site and developed a TDM Plan to off-set the employee and customer parking needs, reduce vehicle miles traveled and greenhouse gas emissions, while increasing the utilization of active transportation. The TDM plan recommendations were to implement the following strategies:

- Providing secure bicycle storage racks for at least (2) bicycles. A long-term bicycle parking rack should also be provided for (1) bicycle. These storage racks should be provided at the Raising Cane's.
- Clean air / Vanpool / EV parking spaces to be provided per the 2019 CALGreen standards but also to encourage carpooling for employees.
- Disseminate information on the two SDMTS bus routes within a short walking distance of the Raising Cane's. Bus Routes 933/934 and 901 provide convenient access to the property along 9th Street and Palm Avenue.
- Raising Cane's to offer Commuter Benefits which allow Crew members (employees) to defer pre-tax funds towards their own purchasing of transit funds.

The applicant is proposing to include a new bicycle parking area inclusive of two secure bicycle storage areas, one for long-term bicycle parking (one long term covered, lockable enclosure with permanently anchored racks for one bicycle) and one for short-

term bicycle parking (three new bicycle racks with two bike capacity each); three designated mobile curbside pickup and three designated carpool/vanpool/EV charging stations; will disseminate information on the two SDMTS bus routes 933/934 and 901; and provide commuter benefits to their employees. The proposed 16 parking spaces proposed for the project in conjunction with the implementation of the TDM strategies would meet the purpose of the off-street parking requirements which is to provide space off public streets for automobiles and other vehicles, to prevent traffic congestion, to encourage safe vehicular travel, and to provide for the welfare and convenience of residents and shoppers.

In accordance with the City's commercial landscaping requirements, the parking lot would include landscaping such as trees, shrubs, and grasses. Additionally, as a part of the project, one existing curb cut off 9th Street would be removed.

The opening to the drive-through lane would be located at the northeastern corner of the proposed building, and the drive-through lane would wrap around the north and east sides of the building in a counter-clockwise direction. The drive-through would provide two side-by-side entry lanes and two order boards, which would allow Raising Cane's to take orders from two customers at the same time. After the order boards, the two lanes would merge into a single drive-through lane prior to the pay and pick-up window. Overall, the project site would provide a total queuing capacity of 300 feet, for a drive-through queuing capacity of 15 vehicles. Additionally, the site would have an additional on-site queuing capacity of 145 feet in the drive aisle connecting to Palm Avenue, and 120 feet in the drive aisle connecting to Ninth Street, resulting in an additional on-site queuing capacity of 13 vehicles.

The applicant completed a drive-through (DT) queuing analysis for the proposed project to evaluate the adequacy of the drive-through lane queuing capacity. The applicant analyzed the proposed restaurant against two existing Raising Cane's located within San Diego County. Based on the report's findings, it was determined that the proposed project site would have an on-site queuing capacity of 28 vehicles which would be able to accommodate the expected peak demand. The applicant would be required to show conformance with the off-street parking requirements per IBMC Section 19.48.050.

18. All other applicable provisions of the Zoning Code are complied with.

The project complies with all other criteria set forth in the City of Imperial Beach Zoning ordinance.

19. Any other considerations as the Community Development Department deem necessary to preserve the health, safety and convenience of the City in general.

Standard and applicable conditions of approval have been included with the Resolution to further ensure that the health, safety, welfare, and convenience of the City in general is preserved.

20. Public Notice requirements, pursuant to Zoning Ordinance Section 19.81.050, have been satisfied.

The project description and the date of the City Council public hearing were sent to property owners within 300 feet and occupants within 100 feet of the subject site on September 7, 2022, and a public hearing notice was published in the Imperial Beach Eagle & Times newspaper on September 8, 2022.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Imperial Beach that the above-listed findings and recitals are true and correct and are incorporated by reference; and

BE IT FURTHER RESOLVED by the City Council of the City of Imperial Beach that Regular Coastal Development Permit (CP-21-0004), Conditional Use Permit (CUP-21-0004), Design Review Case (DRC-21-0017), Site Plan Review (SPR-21-0018), and a categorical exemption pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15332 Class 32 (In-fill Development Projects) proposing to demolish an existing building and construct a new Raising Cane's restaurant with a drive-through facility at 900 Palm Ave (APN 626-212-36-00) in the C/MU-1 (General Commercial and Mixed Use) Zone are hereby approved subject to the following:

CONDITIONS OF APPROVAL:

1. **Approval** Regular Coastal Development Permit (CP-21-0004), Conditional Use Permit (CUP-21-0004), Design Review Case (DRC-21-0017), Site Plan Review (SPR-21-0018), and a categorical exemption pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15332 Class 32 (In-fill Development Projects) is valid for one year from the effective date following final action by the City Council (10 working days following final action) and **shall expire at the end of business on October 6, 2023**, unless vested with substantial construction pursuant to an approved building permit. Approvals of the Coastal Development Permit (CP-21-0004), Conditional Use Permit (CUP-21-0004), Design Review Case (DRC-21-0017), Site Plan Review (SPR-21-0018), and a categorical exemption pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15332 Class 32 (In-fill Development Projects) shall run coterminous.
2. The site shall be developed in substantial compliance with the plans dated July 8, 2022, on file at the Community Development Department, or as otherwise amended and approved, and the conditions contained herein.
3. Traffic circulation for the site shall not negatively impact the public right of way and/or traffic patterns. If the project circulation causes any negative impacts to the public right of way and/or traffic patterns, the owner or owner's designee must investigate and mitigate impacts to the satisfaction of the City. As determined by the City, traffic control measures may need to be implemented and adjustment to ingress and egress to the site may be required.
4. Project shall address any comments related to stormwater documents/plans to comply with the Municipal Stormwater Permit, as requested by the City Engineer.
5. All public right of way improvements must be in conformance with the Palm Avenue Master Plan subject to City review and approval.
6. Any alterations to the business such as changes to the hours of operation and/or business characteristics are subject to review and approval by the City.
7. Noise shall not have a negative effect on the existing neighborhood. If the property receives any noise complaints, the owner or owner's designee shall investigate said complaint and mitigate any issues to meet Imperial Beach Municipal Code noise requirements (Imperial Beach Municipal Code 9.32 – Noise).
8. Lighting shall not have a negative effect on the existing neighborhood. All lighting shall be situated and adjusted to shine only on the subject property. If the property receives

complaints related to lighting, the owner or owner's designee shall investigate said complaint and mitigate any issues (adjustment, shades, removal of light, etc.).

9. Transportation demand management strategies shall be provided and permanently maintained by the applicant and/or property owner to encourage multiple methods of transportation, including the following:
 - Providing secure bicycle storage racks for at least (2) bicycles. A long-term bicycle parking rack should also be provided for (1) bicycle. These storage racks should be provided at the Raising Cane's.
 - Clean air / Vanpool / EV parking spaces to be provided per the 2019 CALGreen standards but also to encourage carpooling for employees.
 - Disseminate information on the two SDMTS bus routes within a short walking distance of the Raising Cane's. Bus Routes 933/934 and 901 provide convenient access to the property along 9th Street and Palm Avenue.
 - Raising Cane's to offer Commuter Benefits which allow Crew members (employees) to defer pre-tax funds towards their own purchasing of transit funds

The transportation demand management strategies shall be revisited and revised at the expense of the owner or owner's designee if determined reasonably necessary by the City.

10. The project must install commercial solar.
11. All proposed EV charging parking spaces must install the EV charging stations.
12. All landscaped areas on site and within the public right-of-way adjacent to the property shall be drought tolerant and shall be permanently irrigated and maintained by the applicant/owner in a healthy condition, free from weeds, trash, and debris.
13. A permanent irrigation system shall be installed and permanently maintained to serve all landscaped areas. The applicant/owner shall comply with all State requirements for the Model Water Efficient Landscape Ordinance.
14. This project is subject to all Model Codes, State Codes and City Ordinances adopted by the City of Imperial Beach.
15. Obtain all required building permits (Building, Plumbing, Mechanical, Electrical, Grading etc.) for this project. All construction shall comply with the adopted 2019 California Building Standards Codes; Residential, Building, Electrical, Mechanical, Plumbing, Energy, Fire, Green Building, Historic Building, Existing Building, as amended by City Ordinance 2019-1190 and other applicable Municipal Codes in effect at the time of plan submittal for building permits.
16. Prior to Foundation Inspection a survey of the property shall be conducted from a California Licensed Surveyor or Engineer and survey pins shall be in placed to identify the corners.

A setback certification prepared by the responsible licensed Land Surveyor or Engineer shall be submitted to the City Building Inspector prior to inspection or approval of the foundation.
17. Provide a note on plans: "Prior to foundation approval, a setback and pad elevation certification shall be provided by a California Licensed Surveyor verifying that the proposed foundation is in conformance with the approved plans."

18. All projects greater than or equal to twenty-five thousand dollars (\$25,000), or which involve the construction and/or demolition of two-hundred-fifty (250) square feet or more of floor space shall comply with Imperial Beach Municipal Code Chapter 8.38. A completed Waste Management Plan shall be submitted with the building permit application.
19. Any development of property other than single-family residence(s) or duplex(es) with a valuation in excess of fifty thousand dollars (\$50,000) will be required to underground all utility services on-site, adjacent thereto and those which traverse the site. IBMC 13.08
20. Plans deviating from conventional wood frame construction shall have the structural portions signed and sealed by the California state licensed engineer or architect responsible for their preparation, along with structural calculations. (California Business and Professions Code).
21. No work for which a building permit is required shall be performed within the hours of 7:00 P.M. - 7:00 A.M. Monday - Friday, nor prior to 8:00 A.M. or after 5:00 P.M. on Saturday nor anytime on Sundays. A sign shall be posted at a conspicuous location near the main entry to the site, prominently displaying these hour restrictions.
22. A soils report must be provided with the building permit application. The report shall include foundation design recommendations based on the engineer's findings and shall comply with Section R401.4.

Should the soils engineer recommend that he/she review the foundation excavations, provide a note on the foundation plan that "Prior to the contractor requesting a Building Department foundation inspection, the soils engineer shall advise the building official in writing that:

- The building pad was prepared in accordance with the soils report,
- The utility trenches have been properly backfilled and compacted, and
- The foundation excavations, the soils expansive characteristics and bearing capacity conform to the soils report."

A letter will need to be provided from the soils engineer confirming that the foundation plan, grading plan and specifications have been reviewed and that it has been determined that the recommendations in the soils report are properly incorporated into the construction documents (when required by the soil report).

23. This project will be required to provide an energy design detailing compliance with the Mandatory Measures and either the Performance or Prescriptive methods of compliance.
24. The mandatory Green Building requirements for nonresidential construction must be included on your plans. Green Building Standards are applicable to newly constructed buildings, building additions of 1,000 square feet or greater, and/or building alterations with a permit valuation of \$200,000 or above. California Green Building Standards Nonresidential Mandatory Measures checklist plan sheets are available from the following website:
<https://aiacalifornia.org/calgreen-checklists/>
25. Please contact the San Diego Gas & Electric Project Planning Team (Metro Service Order Team) at 619-230-7800 to confirm the proposed service locations detailed on your site plan are in compliance with their service standards.

26. The width of the opening between the screening wall for the bathroom and the planters / landscape features along the building does not appear to be adequate for ADA or egress. Please specify this width on the plans.
27. The accessible route crosses over the 3' wide valley gutter in multiple locations. Specify that the cross slope of the gutter meets the minimum accessible route requirements per CBC Chapter 11B.
28. All conditions of approval related to the right of way work (Public Works Department) must be included in the building permit plan set.
29. All proposed improvements located within or impacting the public right of way must be shown on the project plans.
30. Any new sewer connection to the main line shall be coordinated with the City of Imperial Beach Public Works Department.
31. Prior to approval of these plans the sewer lateral locations shall be drawn on the plans and submitted to the City for review and approval. If applicable, new buildings cannot be constructed on top of existing sewer lateral, rerouting is required.
32. Sewer laterals shall be installed per Regional Standards SS-01 through SS-04, SP-01 through SP-03 & SC-01. Upon completion, the applicant shall contact the Public Works Department for an inspection of the tie to the Main by calling the Public Works Inspector at (619) 551-8005.
33. If applicable, for new structure using existing sewer lateral, the applicant is required to demonstrate that the sewer lateral conforms to all City standards, specifications and codes. In order to determine the existing condition of the lateral, the applicant must provide an in-line closed-circuit video (CCTV) inspection of the lateral from the building to the City's sewer main. Any damaged sections of pipe found during the video inspection must be repaired before approval of the lateral for use.
34. If an existing sewer lateral servicing the site will not be utilized and is to be abandoned, it shall be abandoned per the Greenbook standards or other approved building standards. Include the abandonment procedures on the building plans for City approval.
35. No building roof or landscape water drains may be piped to the street or onto impervious surfaces that lead to the street. A design that has these water discharges directly into the storm drain conveyance system (onto an impervious surface that flows to the street) is in violation of the Municipal Storm Water Permit - Order R9-2013-0001.
36. Building foundation elevations shall be at least one (1) foot above gutter line to minimize flooding during storm conditions.
37. The owner of private property adjoining the public right-of-way shall be responsible to maintain the proposed bio retention landscaping in the area between the sidewalk and private property line for the entire frontage of the property. Such maintenance shall include watering and clearing of weeds.
38. Proposed driveway approaches on 9th St. & Palm Ave. shall be constructed in compliance with San Diego Regional Standard Drawings G-14B (Concrete Driveway Non -Contiguous Sidewalk), G-15 (Driveway Location – Adjacent to Curb Returns and Street Lines), and G-16 (Driveway Location and Width Requirements).
39. The proposed driveways shall be constructed in a manner so as to:
 - Maintain existing stormwater runoff flows:

- Avoid the flow of stormwater across the new driveway (or associated sidewalk); and
 - Include the installation of an expansion joint between the paved surface on the private property and the paved surface of the public right-of-way.
40. If it is necessary to cut into the alley pavement as part of this project, all concrete cuts in the alley must be replaced with #4 rebar dowels positioned every 1 foot on center and secured with approved epoxy. Concrete specification must be 560-C-3250. Concrete parallel to the alley drainage must be at least 2 feet from the alley drain line.
 41. For alley, sidewalk or curb & gutter replacement ensure compliance with San Diego Regional Standard Drawing G-11 (Concrete Curb, Gutter, Sidewalk & Pavement Removal and Replacement) in that, the “Area to be removed [must be] 5’ or from joint to joint in panel, whichever is less.” The distance between joints or score marks must be a minimum of 5-feet. Where the distance from “Area to be removed”, to existing joint, edge or score mark is less than the minimum shown, “Area to be removed” shall be extended to that joint, edge or score mark.
 42. Along the public right-of-way, the applicant shall replace all tree grates located in the public sidewalk along the property frontage. The remedial work required herein shall be performed to the satisfaction of the Public Works Inspector.
 43. All existing sidewalk abutting the property on Palm Ave. & 9th St. that does not conform to current ADA standards shall be reconstructed and replaced per SDRSD G-7, with sidewalk joint locations per SDRSD G-9 and concrete joint details per SDRSD G-10.
 44. Existing curb coring for roof drainage in two locations on 9th St. shall be removed. New curb and gutter shall be installed per SDRSD G-3.
 45. Existing telecommunications pedestal on Palm Ave. shall be removed and replaced with flush mount hand hole/cover. Applicant shall coordinate this portion of project through local telecommunications company.
 46. Alley pedestrian ramps on far east side of property along Palm Ave. will require replacement and shall be constructed per SDRSD G-30, G-31 (Curb Ramp Type D), G-32A & G-32B.
 47. Applicant shall monetarily reimburse the City of Imperial Beach In lieu of removing and replacing the non-ADA compliant pedestrian ramp at the Northeast corner of Palm Ave. & 9th St. Estimated cost to applicant shall be determined and agreed upon at a later date.
 48. Where existing right-of-way pavement is to be removed, a clean, neat line shall be saw-cut at the edge of existing pavement where the new replacement pavement to be installed. A minimum twelve (12) inch cut shall be provided between a new driveway, curb or other concrete work that meets with asphalt. This will give a clean, compactable area to transition from new concrete to existing road surface. All driveways or sidewalks shall be poured as soon as possible after disturbance of existing pavement to prevent erosion of pavement integrity. Any damaged pavement shall be repaired with like material to the satisfaction of the Public Works Inspector. Existing street widths shall not be narrowed as a result of apron placement.
 49. All trench resurfacing shall be performed in accordance with the standards shown below and shall be subject to inspection by the City’s Public Work Inspector. The permittee

shall be responsible for calling for an inspection at (619) 551-8005. Trenches and improvements in streets shall conform to regional standards as follows:

- Trenches wider than six (6) inches: Use Regional Standard G-24A type C & G-24B. The base shall be compacted with twelve (12) inch maximum lifts to 95% modified proctor and test reports
 - Trenches six (6) inches or less: Use regional standard G-33 Type B. Call for an inspection prior to the Asphalt repair at (619) 551-8005.
 - Traffic Control plans shall be followed per approved plans and adjusted by the contractor for changing conditions.
 - Trench plates used for a SDG&E gas connection (which can take several weeks), or on downhill road sections, need to be ground down so plates are flush with roadway. All plates are to be slip resistant. All open trenches in roadway shall be plated and secured at the end of the work day. All other open trenches shall be plated or covered in heavy plywood.
 - Where a curb exists, the applicant shall bore under curb or saw cut a minimum of the width of the asphalt patch and replace with same construction.
 - No trench shall be opened in any street for the purpose of laying pipes, conduits or ducts except when the prior written consent of the Director of Public Works has been obtained. Construction shall include restoration of all speed controls (bumps or humps) and all striping and/or any signage that may be disturbed as the result of project implementation. Restoration of disturbed speed humps shall include a double coat of speed hump paint with glass crystals. No open trench shall be allowed across any street or within 10 ft. of any travel way.
50. For any work to be performed in the street or alley, submit a traffic control plan for approval by Public Works Inspector a minimum of 5 working days in advance of street work. Traffic control plan is to be per Regional Standard Drawings or CALTRANS Traffic Control Manual.
51. The applicant shall be responsible for informing the public of the traffic conditions existing within the construction area at all times by placement of appropriate warning and advisory signs. The applicant shall also provide and maintain all traffic control and safety items. Barricades and any other delineation in the right of way shall be required and maintained by applicant for the duration of the right of way improvements. Applicant assumes sole and complete responsibility for the job and site conditions during the course of construction, including safety of all persons and property. This requirement shall apply continuously twenty-four (24) hours per day and shall not be limited to normal work hours.
52. For any project that proposes work within the public right-of-way (i.e., driveway removal/construction, sidewalk removal/construction, street or alley demolition/reconstruction, sewer lateral trenching and installation, landscaping and irrigation, fences, walls within the public right-of-way, etc.), a Temporary Encroachment Permit (TEP) shall be applied for and approved either prior to or concurrent with issuance of the building permit required for the project. Application for a Temporary Encroachment Permit shall be made available on the City website and/or the City permit portal (Citizen Self Service portal).
53. Permittee shall schedule inspections with the Public Works Department (619) 423-8311 at least 24 hours prior to need as follows:

- Sidewalk, Driveway, Curb and Gutter and other Concrete Work Pre-pour and Final
 - Street Excavation T-Cut and Final
 - Sewer Lateral Capping during Demolition and New Lateral Connection to Main
 - All Other Encroachment Activity Final
54. All alley, driveway, sidewalk, or curb & gutter construction within the City right-of-way shall require either a “CLASS A” or “C-8” Contractor’s license. All sewer lateral installations and trenching work within the City right-of-way shall require a “CLASS A” Contractor’s license.
55. Ensure construction design includes adequate storage (out of the front yard setback) for three (3) trash barrels (regular trash, recycled waste, green waste).
56. Any disposal/transportation of solid/construction waste in roll off containers must be contracted through EDCO Disposal Corporation unless the hauling capability exists integral to the prime contractor performing the work.
57. The parcel impervious surfaces are not to increase beyond that proposed in the project review drawings. This will be as a post-construction condition in order to maximize the water runoff infiltration area on the parcel in compliance with Municipal Storm Water Permit – Order R9-2013-0001.
58. Install/set property survey monuments at all property corners. Prepare either a Record of Survey or Corner Record, whichever is applicable pursuant to the requirements of the State Land Surveyor’s Act. Said Record of Survey or Corner Record shall be recorded in the office of the San Diego County Recorder. Provide the City with a recorded copy.
59. Applicant required to provide verification of post construction Best Management Practice (BMP) maintenance provisions through a legal agreement, covenant, CEQA mitigation requirement, and / or Conditional Use Permit. Agreement is provided through the Community Development Department.
60. Property owner must institute “Best Management Practices” to prevent contamination of storm drains, ground water and receiving waters during both construction and post construction. The property owner or applicant BMP practices shall include but are not limited to:
- Contain all construction water used in conjunction with the construction. Contained construction water is to be properly disposed in accordance with Federal, State, and City statutes, regulations and ordinances.
 - All recyclable construction waste must be properly recycled and not disposed in the landfill.
 - Water used on site must be prevented from entering the storm drain conveyance system (i.e. streets, gutters, alley, storm drain ditches, storm drain pipes).
 - All wastewater resulting from cleaning construction tools and equipment must be contained on site and properly disposed in accordance with Federal, State, and City statutes, regulations, and ordinances.
 - Erosion control - All sediment on the construction site must be contained on the construction site and not permitted to enter the storm drain conveyance system. Applicant is to cover disturbed and exposed soil areas of the project with plastic–

like material (or equivalent product) to prevent sediment removal into the storm drain system. See CASQA's (California Stormwater Quality Association) Construction Best Management Practices Handbook for other alternative erosion and sediment control BMPs.

61. Two days prior to any excavation, "Dig-Alert" (800) 227-2600 shall be notified to locate all known underground utilities.
62. Applicant must underground all utilities in accordance with I.B.M.C. 13.08.060.C as noted below, applicability to new structures:
 - For any development which requires a building permit but is of a valuation of fifty thousand dollars or less, the applicant will be required either to underground the utilities or to sign a deferral agreement pertaining thereto.
 - For any development of single-family residence(s) or duplex(es) which exceeds a valuation of fifty thousand dollars, the applicant will be required to sign a deferral agreement with, and pay a recording fee to, the City.
 - Any development of property other than as described in subsection A or B of this section in excess of fifty thousand dollars valuation will be required to underground all utility services on-site, adjacent thereto and those which traverse the site."
63. Applicant shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees and costs incurred by the City and any claim for private attorney general fees and costs claimed by or awarded to any party against the City or its agents officers or employees against the City or its agents, officers, or employees, relating to the approval of the project (USE-21-0054) including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision Regular Coastal Development Permit (CP-21-0004), Conditional Use Permit (CUP-21-0004), Design Review Case (DRC-21-0017), Site Plan Review (SPR-21-0018), and a categorical exemption pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15332 Class 32 (In-fill Development Projects)), including any claims for violation of the Public Records Act or discovery law arising from and with respect to litigation involving these approvals (collectively "Development Approvals"). The City will promptly notify applicant of any claim, action or proceeding concerning the Development Approvals. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, applicant shall pay all the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of such election applicant shall pay all the costs related thereto including without limitation attorney's fees and costs incurred by the City. In the event of a disagreement between the City and applicant regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the applicant shall not be required to pay or perform any settlement unless such settlement is first approved by applicant.
64. The applicant/property owner shall read, understand, and accept the conditions listed herein and shall, within 30 days, return a signed statement to the Community Development Department accepting said conditions.

65. The applicant/property owner shall pay off any deficits in his project account (21-0054-DEP) prior to building permit issuance and prior to final inspection.

Appeal Process under the California Code of Civil Procedure (CCP): The time within which judicial review of a City Council decision must be sought is governed by Section 1094.6 of the CCP. A right to appeal a City Council decision is governed by CCP Section 1094.5 and Chapter 1.18 of the Imperial Beach Municipal Code.

PROTEST PROVISION: The 90-day period in which any party may file a protest, pursuant to Government Code Section 66020, of the fees, dedications or exactions imposed on this development project begins on the date of the final decision.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Imperial Beach as follows:

- 1. That the foregoing recitals are true and correct.
- 2. That Regular Coastal Development Permit (CP-21-0004), Conditional Use Permit (CUP-21-0004), Design Review Case (DRC-21-0017), Site Plan Review (SPR-21-0018), and a categorical exemption pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15332 Class 32 (In-fill Development Projects) is approved for the demolition of an existing building and construction of a new Raising Cane’s restaurant with a drive-through facility at 900 Palm Ave (APN 626-212-36-00), subject to the conditions set forth in this Resolution.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Imperial Beach at its meeting held on the 21st day of September 2022, by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

SERGE DEDINA, MAYOR

ATTEST:

JACQUELINE M. KELLY, MMC
CITY CLERK