

**RESOLUTION NO. 2022-45**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL BEACH, CALIFORNIA, APPROVING REGULAR COASTAL PERMIT (CP-22-0008), DESIGN REVIEW CASE (DRC-22-0022), SITE PLAN REVIEW (SPR-22-0023), CONDITIONAL USE PERMIT (CUP-22-0007), AND A CATEGORICAL EXEMPTION PURSUANT TO CEQA GUIDELINES 15332 (IN-FILL DEVELOPMENT PROJECTS) FOR THE CONSTRUCTION OF A MIXED-USE DEVELOPMENT WITH FOURTEEN RESIDENTIAL UNITS AND 2,212 SQUARE FEET OF COMMERCIAL SPACE AT 236-238 PALM AVENUE (APN 625-023-07-00) SUBJECT TO SPECIFIED CONDITIONS OF APPROVAL. USE-22-0077.**

**DEVELOPER: 2K COMMERCIAL IB, LLC**

**WHEREAS**, on June 15, 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 Permit (CP-22-0008), Conditional Use Permit (CUP-22-0007), Design Review Case (DRC-22-0022), Site Plan Review (SPR-22-0023), and Categorical Exemption pursuant to CEQA Guidelines 15332 (In-fill Development) proposing to construct a new mixed-use development with approximately 2,212 square feet of commercial space and fourteen (14) residential units with an affordable housing component at 236-238 Palm Avenue (APN 625-023-07-00) in the C/MU-2 (Seacoast Commercial & Mixed-Use) Zone. The project also includes the sale of approximately 3,262 square feet of un-used right-of-way and excess dedicated easements on the northern side of Palm Avenue from the City of Imperial Beach, which easements and right-of-way the City would summarily vacate, with a condition that utility easements be dedicated to the City; and

**WHEREAS**, on July 26, 2018, the Design Review Board recommended approval of the project with a vote of 3-1 (1 absent); and

**WHEREAS**, the project design is compatible with the community and would be 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 compliance with the Land Use and Housing Elements of the General Plan; and,

**WHEREAS**, the City of Imperial Beach hereby grants a density bonus for applicant's development that proposes to designate more than 15% of the units to be affordable for "very low-income households" pursuant to Government Code Section 65915 subject to the applicant and owners of the Property entering into affordable housing/density bonus agreement with the City pursuant to Chapter 19.65 of the Imperial Beach Municipal Code; 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 Seacoast Commercial & Mixed-Use (C/MU-2 Zone). The purpose of the C/MU-2 Zone is to provide land to meet the demand for goods and services required primarily by the tourist population, as well as local residents who use the beach area. It is intended that the dominant type of commercial activity in the C/MU-2 Zone will be visitor-serving retail such as specialty stores, surf shops, restaurants, and hotels and motels. Mixed-use and multiple family residences are also permitted in the C/MU-2 Zone and in the Seacoast Mixed Use/Residential Overlay Zone. The development standards of the C/MU-2 Zone encourage pedestrian activity through the design and location of building frontages and parking provisions (IBMC Section 19.27.010). The proposed mixed-use project meets the purpose and intent of the land use designation because mixed-use buildings are permitted in the C/MU-2 Zone and the project would encourage pedestrian activity through the design and location of the building frontage and would provide commercial goods and services required by the tourist population and local residents.

The project's approval is contingent upon: (1) the City providing 30 days' notice to the Housing and Community Development Department ("HCD") of the City's determination of the street vacation, easements and right-of-way property being exempt surplus property under the Surplus Lands Act as stated in Resolution No. 2022-52 prior to any disposition of the subject property and receiving no comments from HCD that would prohibit the sale; (2) the completed sale of approximately 3,262 square feet of un-used right-of-way and excess dedicated easements on the northern side of Palm Avenue from the City of Imperial Beach, which easements and right-of-way the City would summarily vacate, with a dedication to the City of any necessary utility easements, resulting in 12,401 square feet of lot area as described in Resolution No. 2022-46; and (3) Developer's compliance with the conditions set forth in this Resolution. In general, a city may dispose of real property for the common benefit or for the benefit of the city. In addition, a city may summarily vacate public streets that have not been used for vehicle traffic and are impassable for more than five years or are considered excess right-of-way. The subject City right-of-way is excess right-of-way and exempt surplus property.

Vacating and selling the City right-of-way at the intersection of Palm Avenue and Silver Strand Boulevard that is not used for right-of-way purposes is consistent with the Local Coastal Program/General Plan, which was adopted in 1994. Specifically, Policy C-8 of the Circulation Element states the following:

80 Foot Right-of-Ways: The City should reduce the existing 80-foot street rights-of-ways for streets that are not shown as prime, major or collector streets on the Street Classification Plan. Palm Avenue between Ninth Street and Third Street is classified as a 2-lane collector with traffic calming measures and designated for an alternative transportation network, such as on-street bicycle facilities. Other such reductions should take place on a block-by-block basis when initiated by property owners or the City and where it can be shown, by a comprehensive traffic impact analysis, that there will be no public detriment or expense.

The current right-of-way exceeds 80', and the Local Coastal Program/General Plan supports reductions of such rights-of-way based on the above. This property is located on a corner and reduction of right-of-way would bring it into parity with the neighboring properties. Traffic counts are low in this area and a comprehensive traffic impact

analysis is not warranted because vacating the right-of-way would bring the property into parity with neighboring properties. Staff anticipates that the City will not have a need for the property for street or sidewalk purposes for the foreseeable future. After the vacation, the right-of-way in this area will be 80' for Palm Avenue and approximately 70-80' for Silver Strand Boulevard. The remaining right-of-way is sufficient for the existing and anticipated sidewalk and street purposes and would continue to provide adequate access to coastal areas as the area to be vacated has not been used for road purposes many years.

**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 primary parcel of land (625-023-07-00) is not located between the seaward of the first public road; however, the excess right-of-way the applicant proposes to incorporate into the project is located between a coastal area and the first public road, which, in this case, is Silver Strand Boulevard and a portion of Palm Avenue. The excess right-of-way is .23 miles from the beach, .50 miles from Pond 10A, and .80 miles from San Diego Bay and has not been used for public access purposes for many years because street and sidewalk improvements already exist with a sufficient configuration to provide public access and circulation without need of the excess right-of-way. As such, incorporating the excess right-of-way into the project described in this Resolution would have no negative impact for public access because existing access improvements would be maintained or enhanced and would better conform to the local coastal program, which states that excess right-of-ways should be reduced (Policy C-8). After the vacation, the right-of-way in this area will be 80' for Palm Avenue and approximately 70-80' for Silver Strand Boulevard, allowing for continued public access. Given the fact that there is not existing coastal access that could be impacted by the project, it can be found that the project would have no impact to public access. Additionally, the project conforms to all other development criteria findings as provided within this Resolution.

**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.**

Pursuant to California Government Code Section 65915 a project that designates at least 15% of the units as very low-income units shall receive an affordable housing density bonus of 50% over the maximum allowable gross residential density and three development incentives. In addition, all density calculations resulting in fractional units shall be rounded up to the next whole number for projects that include affordable housing.

The proposed development is located on a lot that is 12,401 square feet in the C/MU-2 Zone which would permit for 8.28 residential units with a base density of one unit for every 1,500 square feet of lot area, or ten units with a Conditional Use Permit, allowing for one unit for every 1,210 square feet of lot area. The applicant has proposed to designate 22% of the units as very low-income units that, with the 50% density bonus, allows for the project's proposed density of 14 residential units which does not exceed the density bonus provisions per state law. In addition, the applicant proposed to utilize one development incentive to reduce the width of parking spaces adjacent to columns. The project complies with all other criteria set forth in the City of Imperial Beach Zoning Ordinance, the City's landscaping and irrigation standards, and the City's design guidelines.

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 located approximately .23 miles from the beach, .50 miles from Pond 10A, and .80 miles from San Diego Bay and is already developed with an existing mixed-use building with residential units above commercial space and surface parking. The proposed project with approximately 2,212 square feet of commercial space and fourteen (14) residential units 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 exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Article 19 Sections 15332 (In-Fill Development Projects). 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 May 26, 2022, and a public hearing notice was published in the Imperial Beach Eagle & Times newspaper on June 9, 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 purpose of the C/MU-2 Zone is to provide land to meet the demand for goods and services required primarily by the tourist population, as well as local residents who use the beach area. It is intended that the dominant type of commercial activity in the C/MU-2 Zone will be visitor-serving retail such as specialty stores, surf shops, restaurants, and hotels and motels. Mixed-use and multiple family residences are also permitted in the C/MU-2 Zone and in the Seacoast Mixed Use/Residential Overlay Zone. The development standards of the C/MU-2 Zone encourage pedestrian activity through the design and location of building frontages and parking provisions (IBMC Section

19.27.010). The proposed mixed-use project meets the purpose and intent of the land use designation. The use with a maximum building height of thirty-five feet is necessary and desirable as it will develop an underutilized lot, provide residential units to assist in meeting housing demand, provide commercial space, and provide an economic benefit for the neighborhood and community.

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 use will not be detrimental to the public, as there will be no hazardous materials, fumes, or operations at the facility, nor will there be any noxious odors, loud noises, or excessive traffic generated at the site. The proposed use is compatible with other uses in the neighborhood and would function in a similar manner as other nearby uses.

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**

Mixed-use developments are permitted in the C/MU-2 Zone. Properties east of Seacoast Drive shall have a height limit not to exceed three stories and thirty-five feet with approval of a conditional use permit that demonstrates compliance with setbacks, stepbacks, and two or more development incentives. The project complies with the setback and stepback requirements and meets or exceeds the minimum development incentive criteria. Pursuant to California Government Code Section 65915 the project shall receive an affordable housing bonus of 50% and an incentive to reduce the width of parking spaces adjacent to columns. The proposed project is consistent with the density bonus provisions of state law, the zoning for this area and will comply with all other regulations and conditions for these uses.

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 C/MU-2 Zone allows for properties east of Seacoast Drive to have a height limit not to exceed three stories and thirty-five feet with approval of a conditional use permit that demonstrates compliance with setbacks, stepbacks, and two or more development incentives. The project complies with the setback and stepback requirements and meets or exceeds the minimum development incentive criteria. Pursuant to California Government Code Section 65915 the project shall receive an affordable housing bonus of 50% and an incentive to reduce the width of parking spaces adjacent to columns. The proposed project and conditional use permit complies with the density bonus provisions of state law, the General Plan and Local Coastal program and is in harmony with the purpose and intent of the zoning code because the project is east of Seacoast Drive and demonstrates compliance with setbacks, stepbacks, development incentives, which allows for the height limit not to exceed three stories. In addition, the project is in harmony with the adopted General Plan because it provides for affordable housing, which is consistent with the adopted Housing Element.

**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 project proposes the construction of a mixed-use building with commercial and residential uses. The project would not have a detrimental effect on the general health, welfare, safety and convenience of persons residing or working in the neighborhood because it is consistent with the development standards and zoning designations. The development would not be injurious to the value of the property and improvements in the neighborhood because the project represents an improvement of the existing conditions and the project could improve property values and stimulate growth in the area.

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

The General Plan/Local Coastal Plan designates the site as Seacoast Commercial & Mixed-Use (C/MU-2 Zone). The purpose of the C/MU-2 Zone is to provide land to meet the demand for goods and services required primarily by the tourist population, as well as local residents who use the beach area. It is intended that the dominant type of commercial activity in the C/MU-2 Zone will be visitor-serving retail such as specialty stores, surf shops, restaurants, and hotels and motels. Mixed-use and multiple family residences are also permitted in the C/MU-2 Zone and in the Seacoast Mixed Use/Residential Overlay Zone. The development standards of the C/MU-2 Zone encourage pedestrian activity through the design and location of building frontages and parking provisions (IBMC Section 19.27.010). The C/MU-2 Zone allows for properties east of Seacoast Drive to have a height limit not to exceed three stories and thirty-five feet with approval of a conditional use permit that demonstrates compliance with setbacks, stepbacks, and two or more development incentives. The project complies with the setback and stepback requirements and meets or exceeds the minimum development incentive criteria. Pursuant to California Government Code Section 65915 the project shall receive an affordable housing bonus of 50% and an incentive to reduce the width of parking spaces adjacent to columns. In addition, the proposed vacation and selling the City right-of-way at the intersection of Palm Avenue and Silver Strand Boulevard that is not used for right-of-way purposes is consistent with Policy C-8 of the Circulation of the Local Coastal Program/General Plan, which was adopted in 1994. Specifically, Policy C-8 of the Circulation Element. Therefore, the proposed mixed-use project meets the purpose and intent of the General Plan and Local Coastal Plan.

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

The property to the north of the site is residential and the properties to the east, west, and south are commercial or mixed-use with residential above commercial. The proposed mixed-use project is compatible with other uses in the neighborhood because it is a mixed-use commercial/residential project and nearby properties are comprised of mixed-use and multiple-story buildings.

**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 building is oriented to Palm Avenue and the surrounding uses consist of commercial uses to the east, west, and south, and a residential neighborhood to the north. The project proposes varied rooflines and architectural detailing and relief through the incorporation of building recesses. The site layout and design is harmonious

with the area because it meets or exceeds all minimum height, setback, and stepback requirements.

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

The project proposes commercial and residential uses within a building that is properly integrated. The design style and the choice of building materials properly integrate the building with surrounding uses.

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

Vehicular ingress and egress to and from the site would be provided from the Silver Strand Boulevard and pedestrian access would be provided from Palm Avenue and Silver Strand Boulevard. Access and ingress and egress for the project should not create undue traffic problems.

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

Pursuant to California Government Code Section 65915 the project shall receive an affordable housing bonus of 50% and an incentive to reduce the width of parking spaces adjacent to columns. 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 May 26, 2022, and a public hearing notice was published in the Imperial Beach Eagle & Times newspaper on June 9, 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 Permit (CP-22-0008), Conditional Use Permit (CUP-22-0007), Design Review Case (DRC-22-0022), Site Plan Review (SPR-22-0023), and Categorical Exemption pursuant to CEQA Guidelines 15332 (In-fill Development) for the construction of a new mixed-use development with approximately 2,212 square feet of commercial space and fourteen (14) residential units with an affordable housing component at 236-238 Palm Avenue (APN 625-023-07-00) in the C/MU-2 (Seacoast Commercial & Mixed-Use) Zone are hereby approved subject to the following:

**CONDITIONS OF APPROVAL:**

- 1. Approval** of Regular Coastal Permit (CP-22-0008), Conditional Use Permit (CUP-22-0007), Design Review Case (DRC-22-0022), Site Plan Review (SPR-22-0023), and

Categorical Exemption pursuant to CEQA Guidelines 15332 (In-fill Development) 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 June 30, 2023**, unless vested with substantial construction pursuant to an approved building permit. Approvals of the v Regular Coastal Permit (CP-22-0008), Conditional Use Permit (CUP-22-0007), Design Review Case (DRC-22-0022), Site Plan Review (SPR-22-0023), and Categorical Exemption pursuant to CEQA Guidelines 15332 (In-fill Development) shall run coterminous.

2. The site shall be developed in substantial compliance with the plans dated April 19, 2022, on file at the Community Development Department, or as otherwise amended and approved, and the conditions contained herein.
3. Any use of the public right-of-way is subject to a separate license agreement and encroachment permit. The City Manager, or designee thereof, is authorized to execute all documents and take any actions necessary and appropriate to carry out a license agreement and encroachment permit.
4. Noise shall not have a negative effect on the existing neighborhood. If the property receives any noise complaints, the Developer shall investigate said complaint and mitigate any issues to meet Imperial Beach Municipal Code noise requirements (Imperial Beach Municipal Code 9.32 – Noise).
5. 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 applicant shall investigate said complaint and mitigate any issues (adjustment, shades, removal of light, etc.).
6. The Developer and owner shall execute a binding density bonus agreement (“Density Bonus Agreement”) with the City which sets forth the conditions and guidelines to be met in the implementation of the density bonus law requirements pursuant to Government Code Sections 65915(c) and 65917 and IBMC Section 19.65.040 in a format as specified by the City. The Density Bonus Agreement must be signed by the developer and owner and recorded before any building permit is issued for work on the project. Also, the developer and owner shall pay all costs for the preparation of the Density Bonus Agreement by the City and submit a deposit in the amount of \$1,500 prior to the City performing any work on the Density Bonus Agreement. The City Manager has the authority to sign the Density Bonus Agreement on behalf of the City.
7. Prior to issuance of an encroachment permit or building permit, whichever comes first, (1) the Developer and owner shall have completed the purchase and closing on the City’s right of way as more particularly described in Resolution No. 2022-46 and shall be the legal owner of such right of way; (2) Developer and owner shall dedicate to the City any utility easements that the City deems necessary with respect to the City’s right of way; and (3) Developer and owner shall have taken all steps necessary to have created a new legal parcel with the addition of the City’s right of way.
8. The Developer shall dedicate a minimum of one foot of private property frontage along Palm Avenue to public use.
9. No portion of the building may exceed the 35-foot height limit as measured per Imperial Beach Municipal Code Section 19.04.400, except those allowed by Imperial Beach Municipal Code Section 19.40.020.



10. All stormwater requirements must comply with the most recent Municipal Storm Water Permit.
11. Drought tolerant landscaping shall be provided throughout the site.
12. All landscaping and bio-filtration areas shall be maintained by the Developer. All landscaped areas shall be permanently maintained 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 Developer shall comply with all State requirements for the Model Water Efficient Landscape Ordinance.
14. All building permits required for the project shall be obtained from the Imperial Beach Building Department.
15. This project is subject to all Model Codes, State Codes and City Ordinances adopted by the City of Imperial Beach.
16. Developer shall obtain a fire-flow demand report from water purveyor California American Water indicating that the existing water supply infrastructure can meet the demand required by the new structure(s). The nearest fire hydrant is located at the intersection of Silver Strand Blvd. and Palm Ave; Fire-Flow Demand; 2,500 GPM for 120 Minutes. Once the report has been obtained from California American Water provide (1) copy to the Imperial Beach Fire-Rescue Department for review and (1) copy to the Imperial Beach Planning Department for retention. The Developer is responsible for providing any additional fire hydrants and/or supporting infrastructure as necessary for the development of the project.
17. A licensed surveyor/engineer shall verify pad elevations and all building corners and setbacks.
18. Hours of Construction: 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. Construction work on Sundays, or alteration of the approved hours of construction, is subject to City approval.
19. New sewer connections to the main line shall be coordinated with the City Sewer Division.
20. All sewer laterals shall be installed per Regional Standards S-13 or S-14. Upon completion, the applicant shall contact the Public Works Department for an inspection of the tie to the Main by calling the Public Works Director or designee at (619) 423-8311.
21. Abandon the existing sewer lateral(s) per the Greenbook standards or other approved building standards. Include the abandonment procedures on the building plans for City approval.
22. 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.
23. Project shall comply with San Diego Regional Water Quality Control Board issued Order Number R9-2017-0077 regarding trash capture, as applicable.
24. Building foundation elevations shall be at least one (1) foot above gutter line to minimize flooding during storm conditions.

25. Proposed driveway approach on Silver Strand Boulevard will require curb and gutter and sidewalk removal on City right-of-way. Proposed driveway approach on Evergreen shall be constructed in compliance with San Diego Regional Standard Drawings as depicted on the plans (G-14C) and as further required during the encroachment permit process. New curb and gutter shall be constructed in compliance with San Diego Regional Standard Drawings as required by the Public Works Department.
26. 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.
27. For alley, sidewalk or curb & gutter replacement ensure compliance with San Diego Regional Standard Drawings 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.
28. Existing sidewalk shall be reconstructed and replaced per SDRSD G-7. Sidewalk joint locations per SDRSD G-9 and concrete joint details per SDRSD G-10.
29. Along the public right-of-way, the applicant shall eliminate any existing tripping hazard caused by the condition of the existing public sidewalk along the property frontage. The remedial work required herein shall be performed to the satisfaction of the Public Works Director.
30. 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 Director. Existing street widths shall not be narrowed as a result of apron placement.
31. 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 Director or designee. The permittee shall be responsible for calling for an inspection at (619) 423-8311. Trenches and improvements in streets shall conform to regional standards as follows:
  - Trenches wider than six (6) inches: Use Regional Standard G-24 type B. 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-34 Type C. Call for an inspection prior to the Asphalt repair at (619) 423-8311.
  - 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.
32. For any work to be performed in the street or alley, submit a traffic control plan for approval by Public Works Director 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.
33. 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.
34. 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 on forms available at the Community Development Department.
35. 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
36. 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.
37. Any disposal/transportation of solid/construction waste in roll off containers must be contracted through the City's waste management provider unless the hauling capability exists integral to the prime contractor performing the work.

38. 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.
39. 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.
40. 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
41. 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.
42. Two days prior to any excavation, "Dig-Alert" (800) 227-2600 shall be notified to locate all known underground utilities.
43. Applicant must underground all utilities in accordance with I.B.M.C. 13.08.060.C.
44. 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-22-0077) including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision (including the Regular Coastal Permit (CP-22-0008), Conditional Use Permit (CUP-22-0007), Design Review Case (DRC-22-0022),

Site Plan Review (SPR-22-0023), Categorical Exemption pursuant to CEQA Guidelines 15332 (In-Fill Development Projects)), the determination of exempt surplus property as provided in Resolution No. 2022-52, and approval of the vacation and sale of the City right-of-way as set forth in Resolution No. 2022-46, 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 and shall submit a deposit to the City in an amount as requested by the City. 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.

45. The Developer or Developer's representative 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.
46. The Developer shall pay off any deficits in his project account (22-0077-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 Permit (CP-22-0008), Conditional Use Permit (CUP-22-0007), Design Review Case (DRC-22-0022), Site Plan Review (SPR-22-0023), and Categorical Exemption pursuant to CEQA Guidelines 15332 (In-Fill Development Projects) is approved for the construction of a new mixed-use development with approximately 2,212 square feet of commercial space and fourteen (14) residential unit with an affordable housing component on a 9,139 square feet property located at 236-238 Palm Avenue (APN 625-023-07-00) in the C/MU-2 (Seacoast Commercial & Mixed-Use) Zone, contingent upon: (1) the City providing 30 days' notice to the Housing and Community Development Department ("HCD") of the City's determination of the street vacation, easements and right-of-way property being exempt surplus property under the Surplus Lands Act as stated in Resolution No. 2022-52 prior to any disposition of the

subject property and receiving no comments from HCD that would prohibit the sale; (2) the completed sale of approximately 3,262 square feet of un-used right-of-way and excess dedicated easements on the northern side of Palm Avenue from the City of Imperial Beach, which easements and right-of-way the City would summarily vacate, with a dedication to the City of any necessary utility easements, resulting in 12,401 square feet of lot area as described in Resolution No. 2022-46; and (3) Developer's compliance with the conditions set forth in this Resolution.

3. In the event that (1) the City's determination of exempt surplus property under Resolution No. 2022-52 is not upheld or is otherwise invalidated, (2) the escrow fails to close for any reason on the sale of approximately 3,262 square feet of un-used right-of-way and excess dedicated easements on the northern side of Palm Avenue by the City of Imperial Beach to developer and owner, as more particularly described in Resolution No. 2022-46, such sale is unwound for any reason, or Developer is not the legal owner of such un-used right-of-way and excess dedicated easements; or (3) Resolution No. 2022-46 is rescinded or repealed by the City Council or is declared invalid or unenforceable by a court or other body of competent jurisdiction over the matter, this Resolution No. 2022-45 shall be null and void with no force and effect and all entitlements issued pursuant to this Resolution shall be null and void and Developer will be required to reapply for a new entitlement.
4. The City Manager or his designee shall provide notice to the California Coastal Commission of the City Council's approval of the Coastal Permit pursuant to IBMC Section 19.87.160(A)(2).

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Imperial Beach at its meeting held on the 15<sup>th</sup> day of June 2022, by the following vote:

<b>AYES:</b>	<b>COUNCILMEMBERS:</b>	<b>AGUIRRE, LEYBA-GONZALEZ, FISHER,</b>
<b>NOES:</b>	<b>COUNCILMEMBERS:</b>	<b>NONE</b>
<b>ABSENT:</b>	<b>COUNCILMEMBERS:</b>	<b>DEDINA</b>
<b>DISQUALIFIED:</b>	<b>COUNCILMEMBERS:</b>	<b>SPRIGGS</b>

  
**JACK FISHER,**  
**MAYOR PRO TEMPORE**

**ATTEST:**

  
**JACQUELINE M. KELLY, MMC**  
**CITY CLERK**