



**CITY OF NEWPORT BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION ACTION REPORT**

**TO:** CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION  
**FROM:** Kimberly Brandt, Community Development Director  
Brenda Wisneski, Deputy Community Development Director  
**SUBJECT:** Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending September 28, 2012

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**ZONING ADMINISTRATOR ACTIONS  
SEPTEMBER 26, 2012**

- Item 1: Cucina Alessa Alcohol Minor Use Permit No. UP2012-017 (PA2012-100)  
6700 W. Coast Highway  
Action: Approved by Resolution No. ZA2012-036 Council District 2
- Item 2: Radiant Hot Yoga Minor Use Permit No. UP2012-018 (PA2012-101)  
1200 Bison Avenue, C-1  
Action: Approved by Resolution No. ZA2012-037 Council District 4

**APPEAL PERIOD:** An appeal may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

Brian Haas, NBPD  
Sgt. Chuck Freeman, NBPD

## RESOLUTION NO. ZA2012-036

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2012-017 TO AMEND USE PERMIT NO. UP1791 FOR A CHANGE IN ALCOHOLIC BEVERAGE LICENSE TYPE TO ALLOW A TYPE 47 (ON-SALE GENERAL – EATING PLACE) FOR AN EXISTING RESTAURANT LOCATED AT 6700 WEST COAST HIGHWAY (PA2012-100)**

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Michael Cho, Esq. on behalf of Cucina Alessa, Inc., dba “Alessa”, with respect to property located at 6700 West Coast Highway, and legally described as Parcel Map Book 100, Page 4, Parcel 1 requesting approval of a minor use permit.
2. The applicant proposes a change to the existing restaurant’s Alcoholic Beverage Control (ABC) license from a Type 41 (On-Sale Beer and Wine – Eating Place) to a Type 47 (On-Sale General – Eating Place). There are no proposed changes to the existing floor plan and hours.
3. The subject property is located within the CV (Commercial Visitor-Serving) Zoning District and the General Plan Land Use Element category is CV (Visitor-Serving Commercial).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is CV-A (Visitor Serving Commercial - (0.0 - 0.75 FAR)).
5. A public hearing was held on September 26, 2012 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

This action is covered by the general rule that the California Environmental Quality Act (CEQA) applies only to projects that have the potential for causing a significant effect on the environment (Section 15061.b.3 of the CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment. Therefore, this activity is not subject to CEQA.

**SECTION 3. REQUIRED FINDINGS.**

In accordance with Section 20.48.030 (Alcohol Sales) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit are set forth:

Finding

- A. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales of the Zoning Code). In making this finding the Zoning Administrator considered the following facts:*

Facts in Support of Finding

- i. *The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
  1. The subject property is located in Reporting District 17 (RD 17). The Part One Crimes crime rate in RD 17 is lower than in the adjacent reporting districts (RD 16 and RD 24), and higher than the City overall. Although the crime rate is higher than the City average, the Police Department has reviewed the proposal, provided operating conditions of approval, and has no objection to the change in alcoholic beverage license type.

<b>Reporting District</b>	<b>Part One Crimes (Serious offenses)</b>	<b>Part Two Crimes (All other offenses)</b>	<b>Part One Crimes Rate (per 100,000 people)</b>
17	89	126	3,960.84
16	116	221	5,162.44
24	111	190	4,939.92
Newport Beach	2,405	3,343	2,816.95

- ii. *The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
  1. The number of alcohol-related calls for service, crimes, or arrests in RD 17 is lower than in the adjacent reporting districts (RD 16 and RD 24).

<b>Reporting District</b>	<b>DUI/Drunk Arrests</b>	<b>Total Arrests</b>	<b>Calls for Service</b>
17	48	115	1,890
16	106	225	2,753
24	63	168	3,607
Newport Beach	1,297	3,343	66,374

- iii. *The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*

1. The General Plan designates the site as Visitor-Serving Commercial. The surrounding properties to the North and East are currently developed with residential dwelling units. The nearest recreational facility, West Newport Park, is located approximately 1,850 feet to the east of the subject property. The nearest church, Saint Andrew's Presbyterian Church, is located approximately 2.8 miles northeast of the subject property. The project site is not located near a school or similar use. A restaurant has been operating on the site since 1976 and the proposed change of ABC license type is not anticipated to alter the operational characteristics of the restaurant such that it becomes detrimental to the nearby residential properties in the area.
- iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*
1. There are three comparable establishments along West Coast Highway which provide alcohol service to patrons. These include The Spaghetti Bender, Eat Chow, and Cappy's Café. The Spaghetti Bender and Eat Chow operate with a Type 41 (On-Sale Beer and Wine – Eating Place) and Cappy's Café operates with a Type 47 (On-Sale General – Eating Place). The alcohol license requested is the same as that obtained for Cappy's Café and there is no evidence suggesting this use or the above-mentioned similar uses have been detrimental to the neighborhood.
  2. Beach Corner Market and Café is located on the same site as Cucina Alessa and is operating with a Type 21 (Off-Sale General) as a convenience and liquor store. The operational conditions of approval provided by the Police Department will ensure there is no conflict or detriment to the area.
- v. Whether or not the proposed amendment will resolve any current objectionable conditions*
1. The property has historically been used by a restaurant that included service of beer and wine. As such, there are no current objectionable conditions to be resolved since alcohol service has previously been a part of the business operation at this location.
  2. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcohol is intended for the convenience of customers dining at the restaurant. Operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts.
  3. The hours of operation will minimize the potential effects on land use. The 11:00 p.m. closing hour on Friday and the earlier closing hours throughout the week will ensure the restaurant does not become a late night bar, tavern, or nightclub.
  4. The restaurant site is abutting West Coast Highway which is used by commuters and visitors alike. It is anticipated that the establishment will serve residents of the nearby

neighborhood as well as visitors to the beach area. Adding alcohol service to the menu will complement the food service and provide for the convenience of customers.

In accordance with Section 20.52.020.F of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit are set forth:

Finding

*B. The use is consistent with the General Plan and any applicable specific plan;*

Facts in Support of Finding

- B-1. The General Plan land use designation for this site is CV (Commercial Visitor-Serving). The CV designation is intended to provide areas appropriate for accommodations, goods, and services intended to serve primarily visitors to the City. The existing restaurant, including the proposed Type 47 ABC license is consistent with this land use category.
- B-2. Eating and drinking establishments are common in the vicinity and are frequented by the surrounding businesses, travelers that visit the City and residents of the City. There is no evidence in the record that the subject establishment has operated in an incompatible manner and the proposed Type 47 ABC license is not anticipated to alter the current operation such that it becomes incompatible.
- B-3. The subject property is not part of a specific plan area.

Finding

*C. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;*

Facts in Support of Finding

- C-1. The site is located in the CV (Commercial Visitor-Serving) Zoning District. The restaurant, including the proposed Type 47 ABC license is allowed subject to the approval of a minor use permit.

Finding

*D. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;*

Facts in Support of Finding

- D-1. The operation of the interior of the restaurant is restricted to the closing hour of 11:00 p.m., daily. The closing hour is compatible with surrounding uses which are comprised of commercial businesses, restaurants, and residential.

- D-2. A restaurant has operated at this location since 1976 and the use has not proven detrimental to the area. This demonstrates the location's capability of operating as a compatible use with other land uses in the vicinity.
- D-3. The operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol-related impacts. The project has been conditioned to ensure the welfare of the surrounding community so that the business remains a restaurant and does not become a bar or tavern. The project has been conditioned so that no dancing or live entertainment will be permitted on the premises.

#### Finding

- E. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and*

#### Facts in Support of Finding

- E-1. The building structure and site are designed and developed for an eating and drinking establishment. There is no evidence in the record indicating that the design, size, location, and operating characteristics of the use are incompatible with the surrounding neighborhood.
- E-2. The Police and Fire Departments have reviewed the plans and determined that adequate public and emergency vehicle access, public services, and utilities are provided within the existing tenant space.

#### Finding

- F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

#### Facts in Support of Finding

- F-1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
- F-2. The food service, eating and drinking establishment will continue to serve the surrounding commercial and residential community locally and regionally. The

proposed establishment provides dining services as a public convenience to the surrounding neighborhood. The continued service of alcohol with the addition of distilled spirits will provide an economic opportunity for the property owner to maintain a successful business at this location in a way which best serves the quality of life for the surrounding community.

**SECTION 4. DECISION.**

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2012-017, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
3. This resolution supersedes Use Permit No. UP1791 and Outdoor Dining Permit No. OD2007-005, which upon vesting of the rights authorized by Minor Use Permit No. UP2012-017 (PA2012-100), shall become null and void.

**PASSED, APPROVED AND ADOPTED THIS 26TH DAY OF SEPTEMBER, 2012.**



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Patrick J. Alford  
Acting Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. This approval supersedes Use Permit No. UP1791 and Outdoor Dining Permit No. OD2007-005.
2. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
3. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new Use Permit.
4. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
5. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
6. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
7. The hours of operation for the restaurant and outdoor dining patio shall be limited to the hours of 8:00 a.m. and 11:00 p.m., daily.
8. A minimum of eight (8) on-site parking spaces shall be provided for the restaurant facility.
9. All employees shall park on-site.
10. The accessory outdoor dining shall be used in conjunction with the related adjacent food establishment and shall be limited to 130 sq. ft. maximum unless an amendment to this minor use permit is approved.
11. The hours of operation of the outdoor dining area is limited to between the hours of 8:00 a.m. and 10:00 p.m., daily; and any increase in the hours of operation shall be subject to separate review and approval.
12. The operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. The use of outside loudspeakers, paging system or sound system shall be prohibited in the outdoor dining area or outside of the building. The noise generated by the proposed use shall comply with the provisions of Chapter 10.26 of the Newport Beach Municipal Code. Chapter 10.26 provides, in part, that the sound shall be limited to no more than depicted below for the specified time periods:



	Between the hours of 7:00 a.m. and 10:00 p.m.		Between the hours of 10:00 p.m. and 7:00 a.m.	
	<u>interior</u>	<u>exterior</u>	<u>interior</u>	<u>exterior</u>
Measured at the property line of commercially zoned property:	N/A	65 dBA	N/A	60 dBA
Measured at the property line of residentially zoned property:	N/A	60 dBA	N/A	50 dBA
Residential property:	45 dBA	55 dBA	40 dBA	50 dBA

13. Should problems arise with regard to noise associated with the outdoor dining areas, the Planning Division shall require the removal of all or a portion of the outdoor dining area seating in the areas which contribute to the noise problems or complaints.
14. Should problems arise with regard to tables, chairs or stools encroaching into the public right-of-way, public walkway or other common area pathways, the Planning Division reserves the right to require the relocation of the railing/fence and removal of all or a portion of the outdoor dining area seating and/or the use of unitized table and chair construction.
15. Alcohol service shall be limited to a Type 47 (On Sale General – Eating Place) Alcoholic Beverage Control License.
16. All owners, managers, and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for serving and selling alcoholic beverages.
17. A special event permit may be required for any event or promotional activity outside the normal operational characteristics of the proposed operation. For example, events likely to attract large crowds, events for which an admission fee is charged, events that include any form or contract promoters, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
18. Approval does not permit the restaurant to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the Municipal Code.
19. Full menu food service shall be available for ordering at all times that the restaurant establishment is open for business.
20. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
21. Food from the full service menu must be made available during any “happy hour” type of reduced price alcoholic beverage promotion. There shall be no reduced price alcoholic beverage promotion after 9:00 p.m.

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22. VIP passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order or sale of drinks is prohibited.
  23. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas are prohibited.
  24. Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
  25. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
  26. There shall be no on-site radio, television, video, film, or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved special event permit issued by the City of Newport Beach.
  27. Strict adherence to maximum occupancy limits is required.
  28. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
  29. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
  30. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies.
  31. Prior to implementation of this minor use permit, a solid roof shall be added to the existing trash enclosure for aesthetic and screening purposes. Said roof shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency.
  32. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).

33. Trash generated by the establishment shall be adequately contained in sealed plastic bags to control odors prior to placement in the trash dumpster.
34. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Community Development Director, and may require an amendment to this Minor Use Permit.
35. No live entertainment or dancing shall be permitted in conjunction with the permitted use.
36. No outside loudspeaker or paging system shall be permitted in conjunction with the proposed operation and outdoor dining establishment.
37. The operator of the food service use shall be responsible for the clean-up of all on-site and off-site trash, garbage, and litter generated by the use and shall submit a detailed plan for the policing of the surrounding vicinity for compliance with this condition. Additionally, the area outside of the food establishment, including the public sidewalks, shall be maintained in a clean and orderly manner and may be subject to periodic steam cleaning of the public sidewalks as required by the Community Development Department.
38. This Minor Use Permit may be modified or revoked by the Zoning Administrator should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
39. Use Permit No. UP2012-017 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
40. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Cucina Alessa Alcohol Minor Use Permit including, but not limited to, Minor Use Permit No. UP2012-017 (PA2012-100). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

## RESOLUTION NO. ZA2012-037

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP 2012-018 FOR A HEALTH AND FITNESS CLUB IN THE FORM OF A YOGA STUDIO WITHIN AN EXISTING SHOPPING CENTER LOCATED AT 1200 BISON AVENUE (PA2012-101)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Darlene Dearen, with respect to property located at 1200 Bison Avenue, and legally described as Lot 6 of Tract Map 12309 requesting approval of a Minor Use Permit.
2. The applicant proposes to convert an existing 2,125-square-foot commercial suite into a health and fitness club in the form of a yoga studio within an existing shopping center. The suite would be improved with a workout area, reception/retail area, restrooms and storage lockers for patrons.
3. The subject property is located within the North Ford Planned Community District (PC-5) and the General Plan Land Use Element category is General Commercial (CG).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on September 26, 2012 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities) categorical exemption, Section 15301 of the California Environmental Quality Act.
2. The project is proposing a commercial service use within an existing commercial shopping center with a minor tenant improvement.

#### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020F. of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

*A. The use is consistent with the General Plan and any applicable specific plan*

Facts in Support of Finding:

1. The shopping center has a General Plan land use designation of General Commercial which is intended to provide for a wide variety of commercial activities to serve citywide needs such as the yoga studio.
2. The site is not within a specific plan.

Finding:

*B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding:

1. The proposed yoga studio is within the commercial area (Newport North Shopping Center) of the North Ford Planned Community District (PC-5) which is intended to provide services for the surrounding residential community.
2. Parking is provided by the shared parking lots of the shopping center. The proposed health and fitness club in the form of a yoga studio requires only 2 additional parking spaces compared to a general retail use. The existing shopping center parking lots contain a surplus of parking that accommodates the additional parking required for the yoga studio.
3. The minor use permit is conditioned to require the potential for additional parking and an amended use permit if square footage is added to the yoga studio.

Finding:

*C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. The existing suite where the yoga studio will be located is within a shopping center that contains various commercial retail and service uses.
2. The yoga studio will provide an additional service for the surrounding community and will also offer a city-wide service consistent with the intent of the General Plan.

Finding:

*D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

1. The yoga studio will be located in a suite in the southwest corner of the existing shopping center with access from Bison Avenue and Camelback Street. Additionally, there is a bike path that provides access along MacArthur Boulevard.
2. The existing shopping center parking lot was reviewed by the City Traffic Engineer and provides adequate circulation and access for the proposed yoga studio and the existing uses.
3. The tenant improvement to the existing suite requires a building permit and all Fire and Building Code regulations will be verified during the plan check process.

Finding:

*E. The Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

1. The use with its operational characteristics including hours of operation fits well with the existing uses within the shopping center as well as with the surrounding residential neighborhoods. A condition is in place to regulate the exterior noise levels in compliance with the Municipal Code and to mitigate impacts to the surrounding neighborhood.
2. The improvement of the suite to accommodate the use is minor in nature and will not impact the overall operation of the shopping center.
3. The use will not create any additional impacts outside of the existing shopping center operation. The minor use permit is conditioned so that the use is required to comply with the Municipal Code noise regulations.

## SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Use Permit No. UP2012-018, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.

2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 26<sup>th</sup> DAY OF SEPTEMBER, 2012.**



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Patrick J. Alford  
Acting Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL**

*(Project-specific conditions are in italics)*

**PLANNING**

1. *The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)*
2. *All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.67 of the Newport Beach Municipal Code.*
3. *Minor Use Permit No. UP20012-018 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.*
4. Any addition to the 2,125 square foot yoga studio may require additional parking and an amendment to the use permit.
5. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
6. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
7. This Minor Use Permit may be modified or revoked by the Zoning Administrator should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
8. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new Use Permit.
9. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:



Location	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

10. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
  
11. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
  
12. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City’s approval of the Radiant Hot Yoga including, but not limited to, the PA2012-101 for Minor Use Permit No. UP2012-018. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys’ fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City’s costs, attorneys’ fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

**Public Works Conditions**

13. Parking layout shall comply with the City Traffic Engineer approved parking layout for the shopping center.