



Revised
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 April 18, 2014

COMMUNITY DEVELOPMENT DIRECTOR
OR PLANNING DIVISION STAFF ACTIONS
(Non-Hearing Items)

Item 1: 440 Mendoza Terrace Extension of Time for Modification Permit No. MD2010-024 (PA2014-046)
440 Mendoza Terrace

Action: Approved Council District 6

ACTION TAKEN BY THE CHIEF OF POLICE
(Non-Hearing Item)

Item 2: The Cheesecake Factory - Operator License No. OL2014-003 (PA2014-029)
1141 Newport Center Drive

Action: Approved Council District 6

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.

Det. Randy Parker, NBPD (*ABC License*)
Sgt. Chuck Freeman, NBPD (*Massage Therapy - ABC License*)



COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915
(949) 644-3200 Fax: (949) 644-3229
www.newportbeachca.gov

REQUEST FOR EXTENSION

April 14, 2014

David L. Sanner
440 Mendoza Terrace
Corona del Mar, CA 92625
dsanner@craigrealtygroup.com

Re: Sanner Modification Permit – Modification Permit No. MD2010-024
(PA2010-169) Extension of Time

Dear Mr. Sanner:

The City has evaluated your request for an extension of time for the above-referenced application. Your extension request is hereby approved and the new expiration date of Modification Permit No. MD2010-024 is **April 28, 2015**. If you have any questions, please contact me at (949) 644-3221 or contact me via email at mwhelan@newportbeachca.gov.

On behalf of Kimberly Brandt, Community Development Director

By:

Melinda Whelan
Assistant Planner



OPERATOR LICENSE

POLICE DEPARTMENT
870 SANTA BARBARA DRIVE
NEWPORT BEACH, CA 92660
(949) 644-3681 FAX (949) 644-3794

Application No. Operator License No. OL2014-003 (PA2014-029)
Owner/Applicant David Overton and Douglas Benn
Location Name The Cheesecake Factory
Site Address 1141 Newport Center Drive
Legal Description Parcel 3 of Lot Line Adjustment No. LA2009-001, recorded May 6, 2009, as Instrument No. 2009000226826 of official records, in the office of the County Recorder of the County of Orange.

On **April 17, 2014**, the Chief of Police approved the following: An operator license to allow David Overton and Douglas Benn to operate a food service, eating and drinking establishment with late hours, one outdoor dining patio, and a Type 47 (On Sale General Eating Place) alcoholic beverage control (ABC) license. A building permit was issued on January 7, 2014, to remodel the existing restaurant and increase the occupancy load. This operator license required pursuant to NBMC Chapter 5.25 may be subject to additional and/or more restrictive conditions to regulate and control potential nuisances associated with the operation of the restaurant.

REQUIRED FINDINGS

The Chief of Police has made the following findings as required by NBMC 5.25.050(B):

Finding:

- A. *The business or enterprise is located in a zone permitting the proposed use under Title 20 of the NBMC, and is subject to such use permits as may be required.*

Facts in Support of Finding:

- A-1. A food service, eating and drinking establishment with outdoor dining is a permitted use in the Fashion Island Sub-Area of the PC-56 (North Newport Center Planned Community) Zoning District. Alcohol service is permitted in the North Newport Center Planned Community with the approval of a minor use permit; however, the existing food service eating and drinking establishment was

part of the original entitlement for the shopping center and predates the minor use permit requirement.

Finding:

B. In the case of a business or enterprise offering "Entertainment," as defined, the premises meets all of the criteria in Chapter 5.28.040.B.2-7 (Standards for Approval of Permit, Live Entertainment Establishments).

Facts in Support of Finding:

B-1. The food service, eating and drinking establishment does not currently offer or propose to offer live entertainment.

Finding:

C. The proposed site plan and improvements are consistent with the use and the plan of operations.

Facts in Support of Finding:

C-1. The floor plan is designed to accommodate a maximum of 310 persons as submitted in the building permit plan set and is consistent with the operation of a food service restaurant.

C-2. The approved floor plan includes seating principally for dining purposes with an ancillary bar area. In conjunction with the limited hours of operation of the restaurant to 12:30 a.m., daily, the use of the establishment as a restaurant will be maintained and is not anticipated to convert to a bar or nightclub use.

Finding:

D. The plan of operations as proposed, with attached conditions in place, is adequate in light of the neighborhood in which the operation is located and supports the public health, safety, and welfare of the community.

Facts in Support of Finding:

D-1. The business will be required to comply with the hours of operation as specified in the conditions of approval for the operator license.

D-2. Fashion Island is intended as a regional commercial center, is designed to accommodate restaurant uses, and provides required parking within the surface parking lots and parking structures on site.

- D-3. The operator license and conditional use permit have been conditioned to ensure the location is maintained and operated as a food service restaurant and not a bar, tavern, or nightclub.
- D-4. An adequate security plan is in place for the Fashion Island Shopping Center and conditions of approval are proposed to adequately manage the late hour component of the proposed restaurant. The plan of operations along with the conditions of approval provided below are adequate in light of the establishment's location in Fashion Island to ensure the public health, safety, and welfare of the community.
- D-6. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, curbs, gutters, and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.

CONDITIONS OF APPROVAL

1. The business shall comply with Title 20 (Zoning Code) and any other applicable provisions of the Newport Beach Municipal Code.
2. The approval is for the operation of The Cheesecake Factory, a food service, eating and drinking establishment with late hours, outdoor dining, and on-sale alcoholic beverage service. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 47 (On-Sale General) Alcoholic Beverage Control License in conjunction with the restaurant as the principal use of the facility.
3. The hours of operation shall be limited from 10:00 a.m. to 12:30 a.m., daily.
4. There shall be no dancing or live entertainment allowed on the premises.
5. All owners, managers, and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's, and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.

6. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code, unless the Zoning Administrator first approves an amended minor use permit. This Minor Use Permit shall be terminated if the operation is no longer maintained as a "bona fide public eating place" as defined by the California Department of Alcoholic Beverage Control.
7. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
8. 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.
9. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of this restaurant business 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.
10. 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.
11. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris from the premises and on all abutting sidewalks within 20 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.
12. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
13. All proposed signs shall be in conformance with the provisions of the PC-56 (North Newport Center Planned Community), Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code, or an approved Comprehensive Sign Program for the project site.
14. Strict adherence to maximum occupancy limits is required.

15. No exterior amplified music, public address speakers, outside paging system, loudspeaker, sound system, or other noise generating device shall be utilized in conjunction with this restaurant.
16. The applicant shall post and maintain professional quality signs measuring 12 inches by 12 inches with lettering no smaller than 2 inches in height that read, "No Alcoholic Beverages Beyond This Point" at all premise exits.
17. Patrons shall be required to show valid identification to verify age at the point of sale for alcohol.
18. The operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. 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.
19. A copy of this operator license shall be kept on the premises at all times and shall be made available to any member of the Police Department upon request.

OPERATOR LICENSE NONTRANSFERABLE

No operator license issued pursuant to this chapter shall be sold, transferred, or assigned by any license holder, or by operation of law, to any other person, group, partnership, corporation or any other entity, and any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such license, and such license shall be, thereafter, null and void. A license held by an individual in a corporation or partnership is subject to the same rules of transferability as contained above. License shall be valid only for the exact location specified in the license.

REVOCAION, SUSPENSION OR MODIFICATION OF LICENSE FOR CAUSE

The Chief of Police may commence a process to revoke, suspend or modify an operator license issued under the provisions of this chapter should there be reasonable suspicion of any of the following:

- A. The licensee has ceased to meet the requirements for issuance of license;
- B. The applicant gave materially false, fraudulent or misleading information within the application;
- C. Impacts emanating from the establishment for which the license was issued has substantially interfered with the peace and quiet of the neighborhood;

- E. The licensed business or activity has operated in violation of any of the requirements of this chapter, the license as issued, or any condition thereof. The Chief of Police shall notify the operator of the commencement of such revocation, suspension or modification process and shall conduct an investigation to determine if, and to what degree, one or more of the foregoing has occurred. Upon completion of the investigation, the Chief of Police may add, delete or modify the license conditions. The Chief of Police shall notify the applicant regarding the determination of the operator license, on the outcome of the investigation, and the action taken. The applicant or any interested party may appeal a determination or an added or modified condition of approval to the City Manager in the manner set forth in Section 5.25.050.C-D (Issuance of License-Criteria and Findings).

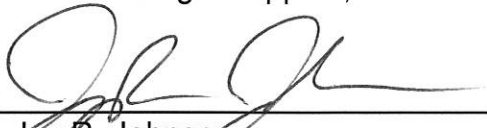
Public Notice

Notice of this application was mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and at least 21 days prior to the decision date, consistent with the provisions of the Municipal Code.

Appeal Period

The determination of the Chief of Police to deny or to place conditions upon the approval of an operator license shall be appealable by the applicant or any interested party. Such appeal shall be made in writing to the City Manager, within fifteen (15) days of the postmark date of the Chief of Police's notice of decision. For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

By: _____


Jay R. Johnson
CHIEF OF POLICE