



**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 June 6, 2014

No action taken by Planning Division Staff this week.

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

- Item 1: 3-Thirty-3 Operator License No. OL2012-003 (PA2012-111)
333 Bayside Drive
- Action: Approved Council District 5
- Item 2: Pizza Nova Operator License No. OL2014-001 (PA2014-018)
2601 West Coast Highway
- Action: Approved Council District 3

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*)



OPERATOR LICENSE APPROVAL LETTER

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

Application No.	Operator License No. 2012-003 (PA2012-111)
Owner/Applicant	Jeffery Reuter
Location Name	3-Thirty-3
Site Address	333 Bayside Drive
Legal Description	Parcel B of Resubdivision 249 being a portion of Block 54 of Irvine's Subdivision as shown a map thereof recorded in Book 1, Page 88, miscellaneous record maps, records of Orange County, California

On June 5, 2014, the Chief of Police approved the following: An operator license to allow Jeffery Reuter to operate an existing food service restaurant, 3-Thirty-3 with late hours, a Type 47 (beer, wine, distilled spirits) Alcoholic Beverage Control (ABC) license, and accessory outdoor dining to increase their hours of operation for the outdoor dining patio from 9:00 a.m. through 9:30 p.m., daily, to 9:00 a.m. through 1:00 a.m., daily. Conditional Use Permit No. UP2011-007 (PA2011-041) was approved by the City Council on June 28, 2011 to extend the hours of operation on the outdoor dining patio until 1:00 a.m., daily. Pursuant to NBMC 5.25, the operation as described required the owner/operator to obtain an Operator License through the City.

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:

1. Conditional Use Permit No. UP2011-007 (PA2011-041) was approved by the City Council on June 28, 2011 to extend the hours of operation on the outdoor dining patio until 1:00 a.m., daily. The proposed floor plan has been determined to be in substantial conformance to the floor plans approved by the conditional use permit.

2. A food service restaurant with alcohol service is a permitted use in the CM (Commercial Recreational and Marine) zoning district through the approval of a conditional use permit.

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.*

Facts in Support of Finding:

1. The proposed occupancy is 221 persons and the security plan includes adequate security who will be stationed at the valet parking stand, the main entrance, and inside the restaurant. At least one security personnel shall be on duty during business hours. The personnel located at the valet parking stand will be responsible for patrolling the parking lot and the valet personnel on the property to control loitering, noise, illicit activity, and other objectionable conditions that may occur on the property.
2. The outdoor dining patio is situated towards the water side of the property. Conditional Use Permit No. UP2011-007 has been conditioned to require the outdoor patio windows and roof openings to be closed at 7:00 p.m., daily, to minimize the impact of noise to adjacent properties. Additional improvements have been made to the roof of the outdoor dining patio to provide additional sound attenuation as required by Condition of Approval No. 4a. The installation has been tested by an acoustical engineer and certified as to meeting city code noise standards. Quarterly sound monitoring is required to ensure compliance with Condition of Approval No. 4b, where the noise from the outdoor dining patio shall be attenuated to the same level as the main restaurant building.
3. A live entertainment permit is required for the restaurant to provide live entertainment within the main dining room area. The proposed establishment is required to comply with the additional regulations per Section 5.28.041 of the Municipal Code.
4. Signage for the proposed establishment will be required to comply with the provisions of Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code.
5. The entire interior portion of the viewing area where live entertainment may occur is open and visible from aisles and public areas within the restaurant.
6. A manager will be present on-site at all times if entertainment is performed at the main dining room.

7. The establishment will not operate between the hours of 2:00 a.m. and 7:00 a.m.

Finding:

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

Facts in Support of Finding:

1. A restaurant has been operated in this location since 1968. The building has operated as an eating and drinking establishment in the past and demonstrated the location's capability of operating. The conditions of approval will ensure the compatibility of the use with other land uses in the vicinity.
2. The bar area is located within the dining area of the restaurant. The proposed floor plan accommodates 85 seats in the main dining room, 25 seats in the bar area, and 37 seats on the outdoor dining patio, consistent with the use permit approval.
3. The windows of the outdoor dining patio are required to be closed at 7:00 p.m. to limit noise on the water side of the restaurant.

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:

1. A security plan is provided, which includes a minimum of three security personnel Thursday through Saturday to monitor the parking area, the main entrance, and the dining areas. A minimum of one security personnel shall be on duty outside the premises at all times while the business is open.
2. The security guarding the valet parking stand will be responsible for regulating the loitering, noise, illicit activity, and other objectionable conditions that may occur outside of the restaurant.
3. The business will be required to comply with the hours of operation as specified in the conditions of approval for the operator license.
4. The operator license has been conditioned to require the applicant to work diligently with the City if any parking or circulation issues occur on-site. A valet parking plan is required to ensure adequate parking circulation and to ensure valet pick-up and drop-off areas are adequately shielded from nearby residences on Linda Isle.

5. Condition of Approval No. 4 requires the outdoor dining patio to be sound attenuated to the same level as the main restaurant. Quarterly monitoring will ensure that the operator adheres to the City code noise standards and Condition of Approval No. 4a.

CONDITIONS OF APPROVAL

In no case shall the conditions be inconsistent with, or less restrictive than, those required by any applicable use permit. The following operational conditions are reiterated from the Conditional Use Permit and the applicant shall comply with the conditions of approval of Conditional Use Permit No. UP2011-007 (PA2011-041).

4. "The Outdoor Dining Patio" shall be subject to the following requirements:
 - a. Require the outdoor dining patio to be attenuated to the same sound level as the main restaurant building when all exterior openings are closed. The plans for modifying the patio shall be reviewed and certified by an acoustical engineer as meeting the same sound attenuation levels as the main restaurant building subject to the review and approval by the Community Development Director. Subsequent to construction, the installation shall be tested by an acoustical engineer and certified as to meeting city code noise standards.
 - b. Require the applicant to fund a quarterly monitoring test and report by an acoustical engineer selected by the Community Development Director as to meeting city codes. The monitoring shall include a minimum of one Thursday, Friday, or Saturday between the hours of 10:00 p.m. and 1:00 a.m. of operation until the one-year review by the Planning Commission. The monitoring program shall be subject to the review and approval of the Community Development Director. At least one such monitoring test shall take place during the months of July or August. Code compliance includes compliance with Municipal Code Chapter 10.26, Community Noise Control.
 - c. Require that the outdoor patio windows and roof openings be closed at the currently required time of 7:00 p.m. daily.
 - d. Extend the outdoor dining patio hours of operation from 9:00 a.m. to 1:00 a.m.
 - e. Require that the conditional use permit be reviewed by the Planning Commission one year from the date of this approval to ensure the increased hours of operation on the outdoor dining patio have not resulted in detrimental impacts.
5. All doors and windows of the interior of the eating and drinking establishment shall remain closed at all times except for the ingress and egress of patrons and employees.

7. Full meal service shall be provided and available for ordering at all times the establishment is open for business.
8. The outdoor dining area shall be used in conjunction with the eating and drinking establishment. No special events/promotional activities shall be allowed within the area of the outdoor dining patio.
11. All employees shall park on on-site.
14. Prior to implementation of the late hours on the outdoor dining patio, the applicant/operator shall submit a valet parking plan for review and approval by the Public Works Department and Community Development Department/Planning Division. The valet parking plan shall demonstrate that adequate on-site parking, vehicular circulation and pedestrian circulation systems are provided. The valet parking plan shall include the location of valet parking pick-up and drop-off area so as to be shielded from nearby residences on Linda Isle by the subject restaurant building in order to minimize the transmission of noise to Linda Isle to the maximum extent feasible. The parking plan shall include a waiting/queuing area for guests dropping off or picking up automobiles from valet parking and a designated smoking area for patrons of the restaurant.
15. The applicant/operator shall conspicuously post and maintain signs at all outdoor dining, waiting, smoking and parking areas indicating to patrons the proximity of the restaurant and public dock and boat slip areas to the residential areas, requesting patrons be courteous to residential neighbors while outside the establishment.
18. The applicant/operator shall maintain a copy of the most recent City permit conditions of approval on the premises and shall post a notice that these are available for review on the premises. The posted notice shall be signed by the permittee.
23. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 47 in conjunction with the service of food as the principal use of the facility. Any upgrade in the alcoholic beverage license shall be subject to the approval of an amendment to this application, and may require the approval of the Planning Commission.
27. Lighting shall be in compliance with applicable standards of the Zoning Code. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental

resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.

28. All noise generated by the existing eating and drinking establishment 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:

	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.
Measured at the property line of commercially zoned property:	65 dBA	60 dBA
Measured at the property line of residentially zoned property:	55 dBA	50 dBA
Measured in the interior of a residential structure	45 dBA	40 dBA

29. The applicant shall retain a qualified engineer specializing in noise/acoustics to monitor the sound generated by the outdoor dining activity to insure compliance with these conditions, if required by the Community Development Director.
30. The applicant/operator of the facility shall be responsible for and shall actively control any noise generated by the subject facility including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment.
32. No live entertainment shall be allowed in the interior of the eating and drinking establishment unless the operator has first obtained a permit from the City.
33. No outside paging system or loudspeaker device shall be used in conjunction with this establishment.
34. No live entertainment shall be permitted in the outdoor dining area. Recorded music or other types of sound amplification within the outdoor dining area shall only be audible to the audience within this area, and shall cease after the hour of 10:00 p.m. daily.
35. No dancing shall be allowed on the premises of the eating and drinking establishment.
36. The applicant/operator shall provide licensed security personnel while offering live entertainment. A comprehensive security plan for the permitted uses shall be submitted for review and approval by the Newport Beach Police Department

- (NBPD). The procedures included in the plan and any recommendations made by the NBPD shall be implemented and adhered to for the life of the Conditional Use Permit.
45. All exits shall remain free of obstructions and available for ingress and egress at all times.
 46. Strict adherence to maximum occupancy limits is required.
 47. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas are prohibited.
 48. All owners, managers and employees selling, serving or giving away 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.
 49. Any event or activity staged by an outside promoter or entity, where the restaurant owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge, including minimum drink orders or sale of drinks is prohibited.
 50. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the license.
 51. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except in conjunction with food service available from the full service menu. There shall be no reduced price alcoholic beverage promotion after 9:00 p.m.
 52. "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.
 53. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food and retail sales during the same period. The licensee shall maintain records that reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less

frequently than on a quarterly basis and shall be made available to the NBPD on demand.

54. No on-site radio, television, video, film or other media broadcasts from the establishment that includes the service of alcoholic beverages shall be permitted without first obtaining an approved Special Event Permit issued by the City. This prohibition of media broadcasts includes recordings to be broadcasted at a later time.
56. 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 that are clearly visible to the exterior shall constitute a violation of this condition.
57. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.

The Chief of Police has attached additional conditions and requirements to the license as necessary in order to make the foregoing findings. In no case shall the conditions be inconsistent with, or less restrictive than, those required by any applicable use permit.

1. The restaurant shall not be permitted to operate beyond the hour of 2:00 a.m. daily.
2. The outdoor dining patio shall not be permitted to operate beyond the hour of 1:00 a.m., daily.
3. The business shall comply with Title 20 (Zoning Code) and any other applicable provisions of the Newport Beach Municipal Code.
4. This Operator License may be modified or revoked by the Chief of Police 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.
5. Operator License No. OL2012-003 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code (NBMC), unless an extension is otherwise granted.
6. Should the property be sold or otherwise come under different ownership, a new Operator License shall be required.
7. To the fullest extent permitted by law, applicant/operator 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 3-Thirty-3 Waterfront Restaurant including, but not limited to, the Operator License No. 2012-003 (PA2012-111) and Use Permit No. 2011-007 (PA2012-041). 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/operator, City, and/or the parties initiating or bringing such proceeding. The applicant/operator 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/operator shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

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.

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 posted on the subject property 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 Department at 949 644-3200.

REVOCATION, 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;
- D. 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 City Manager in the manner set forth in Section 5.25.050(C) and (D).

By: _____


Jay R. Johnson
CHIEF OF POLICE



OPERATOR LICENSE APPROVAL LETTER

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

Application No. **Operator License No. 2014-001 (PA2014-018)**
Owner/Applicant **Pizza Nova Newport Beach, LLC**
Location Name **Pizza Nova Operator License**
Site Address **2601 West Coast Highway**
Legal Description **Lot H northwesterly 50 ft and southeasterly 1300 ft,
Tract 919**

On **June 5, 2014**, the Chief of Police approved the following: An operator license to allow Pizza Nova Newport, LLC to operate a food service restaurant with late hours, live entertainment, a Type 47 (On Sale General Eating Place) ABC alcohol license, and outdoor dining. The restaurant will provide sit-down meal service and delivery. The allowed hours of operation are 11:00 a.m. to 2:00 a.m., Monday through Friday and 9:00 a.m. through 2:00 a.m., Saturday and Sunday. The outdoor dining patio is required to close by 1:30 a.m., daily. Live entertainment in the form of instrumental non-amplified music is proposed on Saturdays and Sundays from 3:00 p.m. to 7:00 p.m. Dancing is not allowed. The building is 3,509 square feet in gross floor area, with 1,857 square feet of net public (seating and customer) area, which accommodates approximately 94 seats. The waiting area/outdoor patio is located outside of the main entrance facing the parking lot. A delivery service is proposed for lunch hours from 11:00 a.m. to 2:00 p.m. and for dinner hours from 4:30 p.m. to 11:00 p.m., daily. Pursuant to NBMC 5.25, the operation as described required the owner/operator to obtain an Operator License through the City.

REQUIRED FINDINGS

The Chief of Police has made the following findings as required by NBMC 5.25.050 (Issuance of License-Criteria and Findings):

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:

1. Conditional Use Permit No. UP2011-001 (PA2011-005) was approved by the Planning Commission on June 9, 2011, to allow a restaurant to operate at this location. The proposed floor plan has been determined to be in substantial conformance to the floor plans approved by the conditional use permit.
2. A food service restaurant with alcohol service is a permitted use in the Mixed-Use Water Related (MU-W1) zoning district through the approval of a conditional use permit.

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.*

Facts in Support of Finding:

1. The proposed occupancy is less than 200 persons. The restaurant personnel located at the entrance will be responsible for patrolling the patio parking lot and the valet personnel on the property to control loitering, noise, illicit activity, and other objectionable conditions that may occur on the property.
2. The interior dining area and bar are situated towards the water side of the property, and there is no patio along the water that would allow sounds to carry across the Lido Channel. Conditional Use Permit No. UP2011-001 has been conditioned to require the exterior windows to be maintained in the closed position after 11:00 p.m., daily, to minimize the impact of noise to adjacent properties.
3. The proposed establishment is required to comply with the additional regulations per Section 5.28.041(Additional Regulations) of the Municipal Code.
4. Signage for the proposed establishment will be required to comply with provisions of Chapter 20.42 of the Newport Beach Municipal Code.
5. The entire interior portion of the viewing area where entertainment will occur is open and visible from aisles and public areas within the restaurant.
6. A manager will be present on-site at all times when entertainment is performed at the establishment. Live entertainment is limited to Saturdays and Sundays from 2:00 p.m. to 7:00 p.m.

Finding:

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

Facts in Support of Finding:

1. A restaurant has been operated in this location since 1968. The building has operated as an eating and drinking establishment in the past and demonstrated the location's capability of operating as a compatible use with other land uses in the vicinity.
2. The proposed floor plan accommodates 94 seats and the use permit approval accommodates 122 seats.
3. The bar area is located within the dining area of the restaurant and is limited to 10 seats.
4. The windows of the dining area are required to be closed at 11:00 p.m. to limit noise on the water side of the restaurant.

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:

1. Security personnel (a minimum of 1 per 50 persons) will be present when live entertainment is provided at the restaurant. The need for security personnel has been reviewed by the Police Department and is waived during other operating hours.
2. Restaurant personnel at the entrance will be responsible for regulating the loitering, noise, elicit activity, and other objectionable conditions that may occur outside of the restaurant.
3. The business will be required to comply with the hours of operation as specified in the conditions of approval for the operator license.
4. The restaurant includes off-site parking located at 2615 Avon Street.
5. The operator license has been conditioned to require the applicant to work diligently with the City if any parking or circulation issues occur on-site. A valet parking plan is required to ensure adequate parking circulation and to prevent parking queuing from spilling over onto West Coast Highway.

CONDITIONS OF APPROVAL

In no case shall the conditions be inconsistent with, or less restrictive than, those required by any applicable use permit. The following operational conditions are reiterated from the Conditional Use Permit and the applicant shall comply with the conditions of approval of Conditional Use Permit No. UP2011-001 (PA2011-005).

6. All windows shall remain closed at all times after 11:00 p.m., daily.
8. Live entertainment is limited to Saturdays and Sundays from 2:00 p.m. to 7:00 p.m.
9. There shall be no live entertainment allowed on the premises without first obtaining a live entertainment permit from the City.
10. Noise from the live entertainment shall be confined to the interior of the structure.
11. The applicant shall provide licensed security personnel (a minimum of one (1) per 50 patrons) while offering live entertainment. A comprehensive security plan for the permitted use shall be submitted for review and approval by the Police Department. Should security personnel not be deemed necessary by the Chief of Police, the requirement for security personnel may be reduced or waived.
12. There shall be no dancing allowed on the premises or Cafe Dance permit issued without an amendment to this Conditional Use Permit.
13. Conformance with the Parking Management Plan shall be required at all times.
14. A parking agreement, which guarantees the long term availability of the off-site parking facility for the use located at 2601 West Coast Highway, shall be recorded with the County Recorder's Office. The agreement shall be recorded at 2615 Avon Street, which provides parking for 2700 West Coast Highway. The agreement shall be in a form approved by the City Attorney and Community Development Director.
15. All parking in conjunction with this use shall be confined to the parking lots over which the applicant, owner, or operator has written rights to park. If, in the opinion of the Community Development Director or City Traffic Engineer, the proposed use creates parking congestion at the site, the applicant shall immediately resolve the congestion problem by increasing valet attendants or through other means until the parking congestion is eliminated and parking is properly managed. Adequate valet personnel shall be provided to eliminate queuing onto West Coast Highway. The Community Development Director or City Traffic Engineer has the discretion to require the preparation and implementation of a revised Parking Management Plan.

16. The parking lot layout including any future changes shall be subject to the review and approval of the City Traffic Engineer.
17. The valet plan shall be reviewed and approved by the City Traffic Engineer.
19. All delivery trucks shall be required to service the restaurant from on-site and shall be prohibited from loading/unloading on West Coast Highway. Deliveries shall be scheduled outside of the peak operating hours of the restaurant so that access to the side will not be blocked.
20. 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.
22. Delivery vehicles for food delivery service offered as part of the restaurant operation shall not park in the public right-of-way when not in use. The food delivery service loading and unloading shall occur on-site. The food delivery service shall be prohibited from loading and unloading within the West Coast Highway right-of-way.
23. No recreational vehicles, boats, or similar vehicles shall be stored at any time at the subject site.
32. 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.
33. Approval of this Conditional Use Permit does not permit Pizza Nova to operate as a bar, tavern, cocktail lounge, or nightclub, as defined by the Municipal Code, unless a new or amended Conditional Use Permit is first approved by the Planning Commission.
34. Full menu service shall be available for ordering at all times that the restaurant establishment is open for business.
35. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
36. 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 p.m.
37. "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.

38. The use of private (enclosed) "VIP" rooms or any other temporary or permanent enclosures separate from public areas is prohibited.
39. The operator 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.
40. 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.
41. 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.
42. Strict adherence to the maximum occupancy limits is required.
43. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
45. There shall be no exterior advertising or signs of any type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverage. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition.
52. All lighting shall conform with the standards of Section 20.30.070 (Outdoor Lighting).
53. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control) and other applicable noise control requirements of the Newport Beach Municipal Code.
54. No outside paging system shall be utilized in conjunction with this establishment.
55. 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. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.

56. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
57. 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 debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
58. 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 Department. 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).
59. 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.
66. All employees shall obtain annual or master parking permits and shall park at the Mariners' Mile lot on Avon Street.

The Chief of Police has attached additional conditions and requirements to the license as necessary in order to make the foregoing findings. In no case shall the conditions be inconsistent with, or less restrictive than, those required by any applicable use permit.

1. The restaurant shall not be permitted to operate beyond the hour of 2:00 a.m. daily.
2. The outdoor dining patio shall not be permitted to operate beyond the hour of 1:30 a.m., daily.
3. The business shall comply with Title 20 (Zoning Code) and any other applicable provisions of the Newport Beach Municipal Code.
4. This Operator License may be modified or revoked by the Chief of Police 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.
5. Operator License No. OL2014-001 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code (NBMC), unless an extension is otherwise granted.
6. Should the property be sold or otherwise come under different ownership, a new Operator License shall be required.

7. 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 Pizza Nova including, but not limited to, the OL2014-001 (PA2014-018) and Conditional Use Permit No. UP2011-001 (PA2011-005). 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.

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.

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 posted on the subject property 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 Department at 949 644-3200.

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;
- D. 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 City Manager in the manner set forth in Section 5.25.050(C) and (D).

By:  _____
Jay R. Johnson
CHIEF OF POLICE