



**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 March 27, 2015

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

Item 1: Sushi Roku Operator's License No. OL2015-001 (PA2014-228)
327 Newport Center Drive

Action: Approved

Council District 5

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.

Wendy Joe, Civilian Investigator, NBPD (*Massage Therapy – ABC License*)
Det. Randy Parker & Det. Dave Mock, NBPD (*ABC License*)
Sgt. Brad Miller, NBPD (*Massage Therapy - ABC License*)



OPERATOR LICENSE

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

Application No. **Operator License No. OL2015-001 (PA2014-228)**
Owner/Applicant **David Overton and Douglas Benn**
Location Name **Sushi Roku**
Site Address **327 Newport Center Drive**
Legal Description Parcel 3, Resubdivision 0836 of Parcel Map No. 221 30-36

On **March 27, 2015**, the Chief of Police approved the following: An operator license to allow Lee Maen of Sushi Concepts O.C., LLC Innovative Dining Group a full service restaurant with hours Monday through Wednesday, 11:30 a.m. to 11:00 p.m. and late hours Thursday through Sunday, 11:30 a.m. to 1:00 a.m. and a Type 47 (On-Sale General - Eating Place) Alcohol Beverage Control license. The establishment will operate under Use Permit No. UP3276 originally approved in June 1987. The operator license is required due to an approved alteration to the tenant space that results in an increase of occupancy (147 persons to 218 persons, approximately). 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:

1. *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. 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.
2. The food service, eating and drinking establishment will operate under an existing Use Permit No. UP3276 approved in June 1987.

Finding:

2. *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:

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

Finding:

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

Facts in Support of Finding:

1. The floor plan is designed to accommodate a maximum of 218 persons as submitted in the building permit plan set and is consistent with the operation of a food service restaurant.
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 11:00 p.m. Monday through Wednesday and 1:00 a.m. Thursday through Saturday, 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:

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

4. In addition to the security plan for all of Fashion Island as conditioned, the Operator will implement the security plan for Sushi Roku as submitted with the Operator's License application which was reviewed and approved by the Police Department. The plan of operations along with the conditions of approval provided, are adequate in light of the establishment's location in Fashion Island to ensure the public health, safety, and welfare of the community.
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 Sushi Roku, 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 applicant shall comply with all other conditions of approval set forth by Use Permit No. UP3276.
4. The hours of operation shall be limited from 11:30 a.m. to 11:00 p.m., Monday through Wednesday and 11:30 a.m. to 1:00 a.m. Thursday through Sunday.
5. There shall be no dancing or live entertainment allowed on the premises.
6. 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.
7. 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 use permit. This Operator License 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.

8. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
9. 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.
10. There shall be no reduced price alcoholic beverage promotions after 9:00 p.m.
11. The Operator shall implement the security plan approved by the Police Department and found in Attachment A. Any changes to this security plan are required to be reviewed and approved by the Police Department. Failure to implement the approved security plan could jeopardize the Operator License.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. Strict adherence to maximum occupancy limits is required.

18. 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.
19. 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.
20. The outdoor dining patio shall be separated from the main mall corridor with a solid decorative barrier (subject to ADA compliance) at least 36 inches high placed around the perimeter of the consumption area.
21. Patrons shall be required to show valid identification to verify age at the point of sale for alcohol.
22. 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.
23. 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;

5. 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

Attachment A – Approved Sushi Roku Security Plan

February 24, 2015

City of Newport Beach
Community Development Department/Planning Division
100 Civic Center Dr.
Newport Beach, CA 92660
Attn: Melinda Whelan, Assistant Planner

Sushi Roku ***Security/Operational Plan***

The owner/applicant of Sushi Roku restaurant ("Applicant") understands the importance of being proactive and partnering with the City of Newport Beach in order to run a successful business that benefits both the Applicant, the City and the community.

The Applicant has met with the Newport Beach Police Department officials to develop a detailed security and operational plan for its businesses. Per the City's request, the Applicant has created this comprehensive Security/Operational Plan for Sushi Roku.

a.) License: 47-409200

b.) Square Footage of Premises: (Approximately 5,600Sq.Ft.)

c.) Proposed Occupancy: (218)

d.) Hours of Operation:

Sunday through Wednesday 11:30am to 11:00pm

Thursday through Saturday 11:30am to 1:00am

e.) Sushi Roku does not offer live entertainment

SECURITY PERSONNEL

The Applicant will engage security personnel who will be present at Sushi Roku from 9:00pm until 15 minutes after close of business any night that the restaurant is open past 11:00pm. Under the proposed hours of operations security would be present on Thursday, Friday and Saturday nights.

All security personnel will be directly employed by the Applicant and subject to procedures and policies, including, but not limited to; having a current guard card for the duration of the employment and being L.E.A.D Certified.

The security personnel responsibilities will include but not be limited to:

- Verifying that guests are the appropriate age and possess current up to date and acceptable age identification.
- Taking all actions to ensure that no minors are being served alcoholic beverages.
- Greeting Customers.
- Enforcing Dress Code:
 - No tank tops
 - No bandanas
 - No club affiliation (gang attire)
- Maintaining orderly conduct and safe environment both inside and outside of the Sushi Roku restaurant.
- Observing to prevent over-intoxicated guests.
 - Not allowing intoxicated persons entrance to Sushi Roku
- Being proactive in watching for aggressive or confrontational guests.
- Intervening before any confrontation or altercation becomes a problem.

SECURITY PERSONNEL UNIFORMS

All security personnel will be required to wear dark sports coats and black pants. Security personnel will be required to carry current guard cards on them at all times.

CONTROL AND CLEARANCE OF OCCUPANCY/PARKING LOT/SIDEWALK

Security personnel will be in constant communication with the restaurant manager(s) to monitor/maintain the permitted occupancy and acceptable standards of conduct.

Security personnel will be required to perform periodic patrols of the immediate parking lot to ensure against loitering, littering, graffiti or illegal consumption of alcohol or narcotics. If any persons are observed partaking in any illegal activities, they will be asked to cease and desist. In addition, the manager on duty will be notified to alert the Newport Beach Police Department.

INCIDENTS INVOLVING FORCE

The Applicant has a strict no hands on guests policy. All personnel are instructed to avoid aggressive or forceful confrontation with a potentially aggressive guest and encourage a verbal and diplomatic resolution of all problems. The Applicant does, however, support reasonable force to subdue an aggressive guests if they are under direct threat to the safety of themselves, another guest or staff member.

If any force is required, security personnel will follow the strict procedures that have been set forth and signed by each security staff member. These procedures include notifying the Newport Beach Police Department as soon as it is safe or the situation allows.

Attached is a copy of the incident report Applicant uses if force is necessary or if a guest is injured. Also, attached is Applicant's policies and procedures for handling a guest demonstrating aggressive and/or unruly conduct.

INTOXICATED PERSONS

Once an over intoxicated guest has been identified, the security member will notify the manager. Then, all serving staff will be notified that the person in question will no longer be served alcohol. If the person in question is with a group of people, the manager or a member of the security staff will approach one of the sober members of the group to assist in getting the person in question an alternative form of transportation home. The Applicant understands that under California Law, it is illegal to serve or permit a person that is obviously intoxicated in Applicant's establishment.

If the person in question is alone, a manager accompanied by a security staff member will approach the guest and inform them that the Applicant will no longer (by law) be allowed to serve them alcohol. At which point, the manager will arrange an alternative means of transportation (i.e., taxi, Uber or a friend to pick them up) to the customer. If the person refuses and insists on driving, the security staff member will attempt to engage in a conversation with the customer until the Newport Beach Police Department has been contacted and arrives on the scene.

CONCLUSION

Applicant takes pride in engaging knowledgeable, friendly and professional security staff that understand when it comes to security situations, it is vital to be firm and impartial. The Applicant will require security personnel to stick to the facts when dealing with a problem. (Opinions and personal feelings may not and cannot be a part of decision making when it deals with the safety and control of the guests).

It is the Applicant's policy to also have an on duty manager involved in any security related issue whenever possible.

The Applicant understands the importance of police involvement in altercations or other specific security issues. The Applicant encourages the support of the Newport Beach Police Department and is committed to work cooperatively with the Newport Beach Police Department to ensure the safety of the restaurant guests and those pedestrians walking by or in the area of the Sushi Roku restaurant.

Policy and Procedures (Aggressive Guests)

Sushi Roku has a strict no hands on policy. All personnel must always try to avoid aggressive or forceful confrontation with any guest at the establishment. In order to avoid potential physical conflicts, personnel shall be proactive and in constant communication with all staff of any potential aggressive behavior.

BEING PROACTIVE

Sushi Roku security and staff shall take a proactive approach to handling all potential conflicts. In a circumstance where a personnel deems a guest can become a potential threat to others in the establishment, the following shall occur:

- A security member shall approach the individual by introducing themselves and explain the reason for their presence.
- Ignore, distract or divert all verbal abuse when communicating.
- Act in slow movements and stand to one side of them.
- Listen patiently to any potential problems the individual may have without interrupting.
- Acknowledge any failings or mistakes made, where they exist, especially if it caused anger.
- Demonstrate an understanding of the frustration by paraphrasing what the person has said.
- If the aggressive individual has been asked to leave, the manager will inform the neighboring bars of the incident to avoid a possible conflict somewhere else.

AGGRESSIVE AND FORCEFUL BEHAVIOR

In the unfortunate circumstance when a guest becomes aggressive and forceful, below are the proper procedures for personnel to abide by:

- The manager on duty shall immediately call the Newport Beach Police Department to inform them of the situation.
- Security members shall approach the guest(s) involved by removing them from the contentious area to speak with him/her outside.
 - After removing the individual from the situation, security members shall, without making assumptions, listen and observe what took place from the aggressive individual.
 - The security member shall decipher the potential of any additional aggressive guests in the establishment and their removal.
- The manager will inform all staff of everyone involved in the situation to attentively monitor another situation from occurring with additional guests.
- Staff will cease serving alcohol beverages during time of incident as needed on a case by case basis.

- After the situation has been resolved or Newport Beach Police has arrived and given permission, the security personnel or manager must complete an incident report.
- If the aggressive individual has been asked to leave, the manager will inform the neighboring bars of the incident to avoid another conflict elsewhere.

FACTORS.

While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, security members are only expected to use force that reasonably appears necessary given the facts and circumstances perceived by the security member at the time of the event to protect themselves and the other guests in the establishment. The following factors should be taken into consideration, as time and circumstances permit.

These factors include, but are not limited to:

- Immediacy and severity of the threat to others (potential for injury to security member, aggressive individual and/or others)
- The conduct of the individual being confronted, as reasonably perceived by the security member at the time
- The effects of drugs or alcohol (subject's mental state or capacity)
- Proximity of weapons or other dangerous devices
- The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained
- The apparent need for immediate control of the subject for a prompt resolution of the situation
- Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the security member, himself or herself or others
- Prior contacts with the subject or awareness of any propensity for violence
- Any other exigent circumstances requiring immediate action

**** For internal use and IDG eyes only ****

*** Guest does NOT receive a copy ****



GUEST INCIDENT FORM

GUEST INFO.	First Name:	Last Name:	
	Home Address: (Number and Street)		
	City:	State:	Zip:
	Phone Number/Email:		
INCIDENT INFO.	Date of Incident:	Time of Incident:	
	Location of Incident (Name of restaurant and specifics of location):		
	Witness(es) to Incident:	Manager on Duty:	
	Detailed description of the incident: (Please use additional sheet if necessary)		
	Actions Taken / Medical Treatment:		
EVIDENCE INFO.	Is there evidence? Yes: <input type="checkbox"/> No: <input type="checkbox"/>	Were pictures taken? Yes: <input type="checkbox"/> No: <input type="checkbox"/>	
	Where is evidence saved?	Pictures forwarded to corp? Yes: <input type="checkbox"/> No: <input type="checkbox"/>	
Please describe evidence:			

Print Name:	Signature:	Date:
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****Please submit form to Human Resources and call the corporate office immediately to report incident**