



COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

3300 Newport Boulevard, Building C, Newport Beach, CA 92663

(949) 644-3200 Fax: (949) 644-3229

www.newportbeachca.gov

CITY OF NEWPORT BEACH ZONING ADMINISTRATOR STAFF REPORT

January 10, 2013

Agenda Item 2

SUBJECT: Island Cinema MUP Amendment - PA2012-144
999 Newport Center Drive
Amendment 1 to UP2011-029

APPLICANT: Cindy Block

PLANNER: Fern Nueno, Associate Planner
(949) 644-3227, fnueno@newportbeachca.gov

ZONING DISTRICT/GENERAL PLAN

- **Zone:** PC-56 (North Newport Center)
- **General Plan:** CR (Regional Commercial)

PROJECT SUMMARY

A minor use permit amendment to change the operational characteristics of an existing movie theater that offers food and alcohol service, including the addition of patio seating areas and changes to the alcoholic beverage service.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Draft Zoning Administrator Resolution No. _ approving Amendment 1 to UP2011-029 (Attachment No. ZA 1).

DISCUSSION

- The subject property is located in the Fashion Island Sub-Area of PC-56. The theater is located on the second floor near restaurant and retail sales uses.
- A Minor Use Permit ("MUP") was approved by the Zoning Administrator on November 9, 2011, to allow the addition of a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control ("ABC") license at the existing movie theater. The

approval included alcohol service at a separate concession bar for screenings that are limited to persons 21 years of age or over. The approved hours for alcohol service are from 12:00 p.m. to 1:00 a.m., daily. Applicable conditions of approval from the original MUP have been included in the draft resolution for approval. If the amendment is approved, the previous MUP approval will be superseded.

- The applicant's amendment request includes the addition of two outdoor dining areas totaling approximately 800 square feet in area, a change in the approved hours of operation to allow the theater to open and serve alcohol at 11:00 a.m., the addition of a secondary concession counter devoted to beer and wine sales, the service and consumption of alcohol during all movie screenings, and the option to order food and alcohol from a server within the theater screening rooms and outdoor dining areas.
- The request also includes cleanup language for previous Condition No. 22 regarding the drink limit per person per transaction. The intent of the condition was to limit each transaction to two (2) drinks per person. However, the applicant would like to clarify that the condition does not limit each person to two drink purchases per movie. The Police Department recommended that no more than two alcoholic beverages be served to any one person during a movie screening and that a person could purchase two alcoholic beverages per transaction at the concession area.

Previous Condition No. 22: No more than two alcoholic beverages shall be sold or served to any one person at any time.

New Condition No. 23: No more than two (2) alcoholic beverages shall be sold or served to any one (1) person during a single transaction. The delivery of alcoholic beverages to patrons inside the auditoriums shall be limited to two (2) per patron per screening.

- The original Minor Use Permit was found to be consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code. The movie theater is located within Police Department Reporting District (RD) 39. The Whole Foods located at 415 Newport Center Drive is located within the same RD and the Whole Foods Police Department report and alcohol related statistics dated May 9, 2012, contains the most current data. Based on the Police Department Memorandum for this application and the Whole Foods report (Attachment No. ZA 4) and consideration of surrounding land uses, staff believes that the finding can be made for consistency with Section 20.48.30 of the Zoning Code. The reporting district map is available on the Police Department website at the following link: <http://www.nbpd.org/crime/calls/map.asp>
- Due to the additional seating area, late hours, and alcohol sales, an operator license will be required pursuant to Municipal Code Chapter 5.25 (Operator License for

Establishments Offering Alcoholic Beverages for On-Site Consumption in Combination with Late Hours, Entertainment, and/or Dance). The requirement for an Operator License is because of the additional seating areas and the accessibility of the concession and seating areas to patrons without purchasing a movie ticket, which suggests that a portion of the theater could operate as an eating and drinking establishment.

- Movie theaters and eating and drinking establishment uses are allowed by right in Fashion Island. Subject to the approval of a Minor Use Permit by the Zoning Administrator, alcohol sales is an allowed use within Fashion Island.
- Fashion Island has a Regional Commercial parking requirement of 3 spaces per 1,000 square feet. The proposed amendment does not change or increase the parking requirement.
- As demonstrated in the attached draft resolution, staff believes the proposed project meets the requirements of the Zoning Code and the findings for approval can be made.

ENVIRONMENTAL REVIEW

This project qualifies for an exemption from environmental review pursuant to Section 15301 (Class 1 Existing Facilities) of the Implementing Guidelines of the California Environmental Quality Act ("CEQA"), which exempts minor alterations to existing facilities involving negligible expansion of use. The change in alcoholic beverage service and the addition of tables for outdoor dining use is a negligible expansion of the existing movie theater use.

PUBLIC NOTICE

Notice of this application was published in the Daily Pilot, 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 10 days prior to the decision date, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

APPEAL PERIOD

An appeal may be filed with the Director of Community Development within fourteen (14) days following the date of action. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

Prepared by:



Fern Nueno, Associate Planner

GBR/fn

Attachments: ZA 1 Draft Resolution
 ZA 2 Vicinity Map
 ZA 3 Applicant's Project Description
 ZA 4 Police Department Memorandum and Alcohol Related Statistics
 ZA 5 Project Plans

Attachment No. ZA 1

Draft Resolution

RESOLUTION NO. ZA2012-___

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING AMENDMENT 1 TO MINOR USE PERMIT NO. UP2011-029 FOR A MOVIE THEATER WITH FOOD AND ALCOHOLIC BEVERAGE SERVICE LOCATED AT 999 NEWPORT CENTER DRIVE (PA2012-144)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Cindy Block on behalf of the Irvine Company and Regal Cinemas, Inc., with respect to property located at 999 Newport Center Drive, and legally described as Parcel 2 of Lot Line Adjustment LA2009-001 requesting approval of an amendment to a Minor Use Permit.
2. On November 9, 2011, the Zoning Administrator approved Minor Use Permit No. UP2011-029 (PA2011-170) to allow the addition of a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control ("ABC") license at the existing movie theater.
3. The applicant proposes the addition of two outdoor dining areas totaling approximately 800 square feet in area, a change in the approved hours of operation to allow the theater to open and serve alcohol at 11:00 a.m., the addition of a second concession area dedicated to the sale of beer and wine, the service and consumption of alcohol during all movie screenings, and the option to order food and alcohol from a server within the theater screening rooms and outdoor dining areas.
4. The subject property is located within the North Newport Center Planned Community (PC-56) Zoning District and the General Plan Land Use Element category is Regional Commercial (CR).
5. The subject property is not located within the coastal zone.
6. A public hearing was held on January 10, 2013, 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 ("CEQA") under Class 1 (Existing Facilities).

2. Class 1 exempts minor alterations to existing facilities involving negligible expansion of use. The change in alcoholic beverage service and the addition of tables for outdoor dining use is a negligible expansion of the existing movie theater use.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.48.030 and Section 20.52.020 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 purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.*

Facts in Support of Finding:

1. 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 beer and wine is intended for the convenience of movie theater patrons. Operational conditions of approval recommended by the Police Department relative to the sale of beer and wine will ensure compatibility with the surrounding uses and minimize alcohol related impacts.
2. Due to the high concentration of commercial land uses, the calls for service, crime rate, and number of arrests are greater than adjacent reporting districts containing residential uses.
3. Fashion Island does not abut sensitive land uses and is separated from other uses by parking lots, roadways and other commercial uses. The proposed use is not located in close proximity to residential districts, day care centers, park and recreation facilities, places of religious assembly, or schools. The Police Department has reviewed the Minor Use Permit application and recommended conditions of approval to ensure that the design and security of the movie theater are properly addressed.
4. Several restaurants in the Fashion Island Sub-Area provide alcohol service as an amenity to customers. The number of alcohol licenses and the type of alcohol service proposed is typical and expected to be found at a regional mall such as Fashion Island.
5. The movie theater does not have any current objectionable conditions.
6. The provision of food service and beer and wine sales will not substantially change the operational characteristics of the movie theater.
7. The existing movie theater is an allowed use in the Fashion Island Sub-Area of the North Newport Center Planned Community. The on-site consumption of beer and wine

provides a public convenience by allowing the sale of beer and wine in addition to other concession items offered for sale.

Finding:

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

Facts in Support of Finding:

1. The property is designated as Regional Commercial (CR) by the Land Use Element of the General Plan. The theater use is consistent with that designation as it is a supporting use that is integrated as part of a retail multi-tenant commercial center, an allowed use under the CR designation.
2. The existing movie theater is consistent with General Plan Anomaly 44, which limits Fashion Island to 1,700 movie theater seats.
3. The food and alcohol concessions for the movie theater are compatible with the existing and allowed land uses in Fashion Island.
4. 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:

1. The subject property is located within the Fashion Island Sub-Area of PC-56, which allows commercial recreation and entertainment uses (including movie theaters) and eating and drinking establishments by right. Alcohol sales is an allowed use upon the approval of a Minor Use Permit by the Zoning Administrator.
2. The intent of the PC-56 Zoning District is to allow for uses that support existing retail, dining, and commercial entertainment uses. Fashion Island is intended to be a vibrant regional retail and entertainment center and a day/evening destination with a wide variety of businesses that serve visitors, residents, and employees of the area. The proposed changes to the beer and wine service at the movie theater are compatible with other uses within Fashion Island.
3. The existing movie theater is within the limits of the 1,700 seat limit allocated for the Fashion Island portion of the North Newport Center Planned Community. The proposed outdoor dining areas do not affect the development limit because they are not enclosed.

4. Fashion Island has a Regional Commercial parking requirement of 3 spaces per 1,000 square feet. The proposed amendment does not change or increase the parking requirement.
5. The proposed project is consistent with the on-sale alcohol sales provisions within Chapter 20.48 of the Zoning Code (Standards for Specific Land Uses).

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:

1. A movie theater has operated in this location since 1989 and the use has not proven detrimental to the area. The movie theater has provided food service in the past and demonstrated the location's capability of operating as a compatible use with other land uses in the vicinity. The existing alcohol service has been offered for approximately a year and no problems have been brought to the City's attention.
2. The service of alcohol will be restricted to between the hours of 11:00 a.m. and 1:00 a.m., daily.
3. The movie theater is located within the center of the Fashion Island Mall on the second floor. Beer and wine sales will be limited to two concession areas within the main lobby dedicated for only beer and wine sales.
4. Outdoor dining areas with alcoholic beverage service are typical and expected uses within a regional mall such as Fashion Island.
5. There are no residential properties, or other incompatible land uses, within the immediate vicinity of the theater.
6. The operational conditions of approval recommended by the Police Department relative to the sale of beer and wine will ensure compatibility with the surrounding uses and minimize alcohol related impacts.
7. The movie theater is required to comply with the California Building Code and requirements of the California Department of Alcoholic Beverage Control to ensure the safety and welfare of customers and employees within the movie theater.

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.

Facts in Support of Finding:

1. The project site is located within an existing movie theater building. The lobby and theater screening rooms are designed and developed for food and beverage service.
2. Adequate public and emergency vehicle access, public services, and utilities are provided within the existing infrastructure. Fashion Island is an outdoor mall with wide and open walkways. Fashion Island is encircled by Newport Center Drive and is developed with several surface parking and loading areas.

Finding:

F. 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.

Facts in Support of Finding:

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 nuisance areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the movie theater.
2. The proposed beer and wine service is provided as a public convenience to movie theater patrons. The service of beer and wine will provide an economic opportunity to maintain a successful business at this location in a way which best serves the quality of life for the surrounding community.
3. The hours of operation will be between 11:00 a.m. and 1:00 a.m., daily.
4. The proposed changes will not change the principal movie theater use.
5. Fashion Island provides the required parking for the entire mall and the proposed amendment does not change or increase the parking requirement.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Amendment 1 to Minor Use Permit No. UP2001-029, 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 Zoning Administrator Action Letter dated November 9, 2011, for the approval of Minor Use Permit No. UP2011-029 (PA2011-170), which upon vesting of the rights authorized by this application, shall become null and void.

PASSED, APPROVED, AND ADOPTED THIS 10TH DAY OF JANUARY, 2013.

BY:

Brenda Wisneski, AICP, Zoning Administrator

draft

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan and floor plan dated with this date of approval, except as modified by applicable conditions of approval.
2. This Minor Use Permit may be modified or revoked by the Zoning Administrator upon a finding of failure to comply with the conditions set forth in Chapter 20.82 of the Municipal Code, other applicable conditions and regulations governing alcohol service, or 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.
3. Any change in operational characteristics, hours of operation, 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. Amendment 1 to Minor Use Permit No. UP2011-029 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Zoning Code, unless an extension is otherwise granted.
5. Should the alcohol license be transferred, any future license holders, operators or assignees shall be notified of the conditions of this approval by either the current licensee, business operator, or the leasing company. Future licensees, operators or assignees shall submit, within 30 days of transfer of the alcohol license, a letter to the Planning Division acknowledging their receipt and acceptance of the limitations, restrictions and conditions of approval of this minor use permit.
6. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
7. 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 Minor Use Permit.
8. Approval is required from the Orange County Health Department.
9. The project shall comply with Building Code requirements regarding egress/exit analysis and occupant load. The project may necessitate additional requirements, as required by the Building Division.
10. Approval is required from the Fire Department. The project may necessitate additional requirements regarding exit discharge widths, as required by the Fire Department.

11. The approval is only for beer and wine sales with the sale and service of alcoholic beverages incidental to the theater use. The type of alcoholic beverage license issued by the California Department of Alcoholic Beverage Control shall be a Type 41(On Sale Beer and Wine, Eating Place) in conjunction with the movie theater as the principal use of the facility.
12. The hours of operation for sales, service, and consumption of alcohol at the movie theater shall be allowed only between the hours of 11:00 a.m. to 1:00 a.m., daily. Any increase in the hours of operation shall be subject to the approval of an amendment to this Minor Use Permit.
13. Prior to implementation of this Minor Use Permit amendment, the operator of the theater shall obtain an Operator License pursuant to Chapter 5.25 of the Municipal Code to ensure the business is operated in a safe manner. The Operator License may be subject to additional and/or more restrictive conditions to regulate and control potential late-hour nuisances associated with the operation of the theater. Future operators are required to obtain an Operator License prior to assuming management of the movie theater.
14. The alcoholic beverage sales concession shall be limited to a maximum of two concession areas and shall be used in conjunction with the related food service concessions. Any change in the operation of beer and wine service or increase in the counter space devoted to alcohol sales shall be subject to the approval of an amendment to this Minor Use Permit issued by the Zoning Administrator.
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 owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling beer and wine. 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 movie theater 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.
17. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned.
18. 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.

19. Patrons shall be required to show valid identification to verify age at the point of sale for alcohol.
20. This approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Municipal Code, unless the Zoning Administrator first approves a new or amended Minor Use Permit.
21. Alcoholic beverages shall be dispensed, sold, and served in containers that are easily distinguishable from non-alcoholic beverage containers.
22. The sale of alcoholic beverages for consumption off the premises shall be prohibited.
23. No more than two (2) alcoholic beverages shall be sold or served to any one (1) person during a single transaction. The delivery of alcoholic beverages to patrons inside the auditoriums shall be limited to two (2) per patron per screening.
24. All sales or service of alcoholic beverages in the licensed premises shall be made only from the concession bars or servers.
25. During the period of time from the initiation of seating until the completion of the feature presentation, ambient lighting in the auditoriums shall remain at a level sufficient enough to allow a reasonable person to observe patrons who may be consuming alcoholic beverages.
26. Orders from patrons seated in theater seats must be made to the server serving that area and the alcoholic beverages ordered must be personally delivered to the patron by the server who took the order.
27. Servers shall not carry a supply of unordered alcoholic beverages.
28. The petitioner 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.
29. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
30. The 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 or cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks. This does not include ticket sales or any other fee for the standard movie theater use.
31. Live entertainment and dancing shall be prohibited as a part of the regular operation of the movie theater.
32. Strict adherence to the occupancy limits is required.

-
33. The quarterly gross sales of beer and wine 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 beer and wine 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 command.
 34. 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 movie theater.
 35. The beer and wine outlet operator shall take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the beer and wine outlet and adjacent properties during business hours, if directly related to the patrons of the subject beer and wine outlet. If the operator fails to discourage or correct nuisances, the Zoning Administrator may review, modify, or revoke this minor use permit in accordance with Chapter 20.68 of the Zoning Code (Enforcement).
 36. The area outside of the movie theater shall be maintained in a clean and orderly manner. 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 walkways within 20 feet of the premises. The operator of the movie theater use shall be responsible for the clean-up of all on-site and off-site trash, garbage, and litter generated by the use.
 37. All trash shall be stored within dumpsters inside the mall buildings or designated areas.
 38. 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 Island Cinema Minor Use Permit including, but not limited to, Minor Use Permit No. UP2011-029 (PA2011-170) and Amendment No. 1 to Minor Use Permit No. UP2011-029 (PA2012-144). 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.

Attachment No. ZA 2

Vicinity Map

VICINITY MAP



Amendment 1 to UP2011-029
PA2012-144

999 Newport Center Drive

Attachment No. ZA 3

Applicant's Project Description



LIQUORLICENSE.COM

12304 Santa Monica Blvd., Ste. 100 • Los Angeles, CA 90025
Phone: 1-800-222-5777 • Fax: 1-800-771-0254

October 22, 2012

City of Newport Beach
Planning Department
330 Newport Boulevard
Newport Beach, CA 92633

RE: Regal Cinemas, Inc.
Minor Use Permit Application to Modify Existing Permit No. UP2011-029
DBA: Island 7
999 Newport Center Drive
Newport Beach, CA 92660-6947

To Whom It May Concern:

Liquor License Specialist is submitting this Minor (Conditional) Use Permit Application on behalf of the Irvine Company and Regal Cinemas, Inc. ("Regal") to modify current operations at Island 7 Cinemas. After operating this location for the past 9 to 10 months without incident, Regal has reevaluated their operations and policies to ensure that the location is providing the best service possible to its patrons and the surrounding community.

Summary of Request

The applicant, Regal Cinemas, Inc., who is doing business as Island 7 Cinemas, is requesting a modification to existing Minor Use Permit No. UP 2011-029. This modification consists of the following changes: (1) the service and consumption of beer and wine by patrons 21 years or older in mixed age movie screenings; (2) the addition of two enclosed outdoor patio dining areas to be used for food service and beer and wine sales, service and consumption in conjunction with food sales; (3) the addition of a secondary point of sale in the lobby for beer and wine sales to be used in peak hours; (4) clarification of condition #24, to specify that a patron may purchase no more than 2 drinks at any transaction; (5) to open 1 hour earlier at 11:00 AM; and (6) the ability for customers to be served food and drinks throughout the premise in addition to the current method of service which allows customers to purchase and carry their food and drinks throughout the premise. These requested modifications, will all take place in the



LIQUORLICENSE.COM

12304 Santa Monica Blvd., Ste. 100 • Los Angeles, CA 90025

Phone: 1-800-222-5777 • Fax: 1-800-771-0254

current operating premise and will only extend the footprint of the premise by a maximum of 791 square feet.

Operational Changes

The classical pairing of dinner and a movie has evolved into dinner and drinks *with* a movie. The appetite for such a concept has been growing exponentially across the nation as theaters are adjusting their customer experience to increase ticket sales and recoup declining profits. With the struggling economy and increasing rents, the availability of having a dinner and drink with a movie allows theater operators to attract audiences in the 30-45 year old range and provide the ultimate movie experience that elicits customer loyalty.

Regal Cinemas, Inc. has been at the forefront of updating the theater experience across the nation. Currently Regal operates theaters in Florida, North Carolina, and Tennessee, all of which offer patrons a selection of beer and wine for onsite consumption by mixed aged patrons during movie screenings. Ultimately, Regal is looking to establish Island 7 Cinemas as the premiere movie screening destination in Orange County. Regal believes Fashion Island is an ideal location because tourists and locals both know Fashion Island to be a premiere shopping and entertainment destination.

Currently, Island 7 Cinemas operates 7 auditoriums. At any time any of these auditoriums are available for a screening specifically for patrons 21 years old and older, during which patrons would be allowed to purchase and consume alcohol during the movie. These showings are advertised as "21+ screenings" and patrons are carded when a ticket is bought, upon purchase of an alcoholic drink and upon entrance into an auditorium for a "21+ screening". Once the age of a customer has been initially verified, that customer is outfitted with a neon-colored wristband placed on the right arm. The color of the wristband is selected daily at random by the manager. While this method has been successful in preventing underage drinking and sales of alcohol to minors, the community has voiced a desire for mixed age groups in all auditoriums and for all movie screenings.

Segregating audiences so that only those patrons of legal drinking age can be inside a theater when alcohol can be consumed has created unintentional operational consequences. The practice effectively excludes minors and mixed aged patrons from enjoying the usual variety of show times offered, many of which can be the most popular or convenient showings. This requires Regal to either limit the variety of movies being screened—so that concurrent screening can be run for both age groups—or open screenings to mixed ages and prevent customers who wish to have a glass of beer or wine from enjoying a drink during the film. Neither alternative is an ideal solution since



LIQUORLICENSE.COM

12304 Santa Monica Blvd., Ste. 100 • Los Angeles, CA 90025
Phone: 1-800-222-5777 • Fax: 1-800-771-0254

both options prevent full customer satisfaction. In order to address the desires of patrons and provide a reasonable variety of movie screenings, Regal no longer wants to isolate patrons who wish to enjoy a glass of beer, wine or champagne during a movie from the general population.

The entire premise is currently licensed with a type 41 liquor license, which the Alcoholic Beverage Control defines as an on-sale beer and wine eating place license. This type of liquor license is commonly used by restaurants that serve beer and wine to patrons in conjunction with food service. Regal has taken steps in the design of the auditoriums and crafting of the menu to encourage patrons to purchase and enjoy the full meals offered. The arm rests of the seating in the theaters are wide and fixed to make a table available for patrons to enjoy their food during the screening of the movie. Food can be ordered by patrons and delivered to the customer's seat in the auditorium or patio after being freshly prepared or customers can purchase then food and drink and carry it through the premise. The atmosphere and practice is similar to being served in a restaurant. Preventing patrons from consuming a glass of beer or wine with a meal is a break from the common accepted use of a type 41 liquor license, where minors are allowed onsite and alcoholic drinks are served in the presence of minors. The current restriction on mixed age theater audiences detracts from patrons experience and Regal's ability to provide that fully actualized dining experience.

The decision to mix ages groups in the theaters is not made lightly, and with this decision, Island 7 Cinemas will be instituting new preventative measures in order to offer patrons the best experience while ensuring that the community does not suffer negative consequences. Opening all screenings for potential alcohol sales will require additional security and operational changes in the auditoriums and the entire premise overall.

In terms of the considering auditoriums, Regal will not be modifying the current seating or theater layouts and will continue employing the current monitoring practices employed by the staff. This means that any employee who handles or serves alcohol will still be required to complete Responsible Server Training course or Training for Intervention Procedures (TIPS). Customers who are over the age of 21 will continue to have their age verified upon the purchase of a glass of beer, wine or champagne and patrons over the age of 21 years old will still receive and wear a neon colored wrist band on his/her right arm. Alcoholic drinks will still be sold in cups that are clearly distinguishable from the other non-alcoholic drinks available for purchase. Patrons will not be required to purchase any concessions in order to view a screening. Entry to the auditoriums will continue to be limited to patrons who have purchased a ticket for a movie screening.



LIQUORLICENSE.COM

12304 Santa Monica Blvd., Ste. 100 • Los Angeles, CA 90025
Phone: 1-800-222-5777 • Fax: 1-800-771-0254

In order to ensure theaters with mixed ages do not experience any issues, Regal will adopt additional monitoring methods similar to those methods used in other mixed ages venues such as concert auditoriums and performance theaters. Each auditorium will be monitored by a rotating usher who will be circulating in the auditoriums at all times. The presence of the usher will discourage underage patrons from trying to sneak a drink and make all patrons aware that their behavior is being monitored. In addition the presence of the usher will allow any potential issues to be dealt with swiftly. While the addition of a roaming usher in the auditoriums will significantly increase the staff's ability to more closely monitor alcohol consumption, Regal will be instituting additional service adaptations in order to increase control over alcohol service, sales and consumption. These added operational changes include the addition of two dining patios, availability of a second point of sale for beer and wine at peak sales times, and the delivery of drinks by a serving staff.

The addition of dining patios allows patrons to enjoy a meal and drink prior to or after a movie screening in a traditional dining setting. There will be two patios. One located in front of the lobby on the east side of the theater. This patio will be 476 square foot patio, seat 12 patrons and be enclosed by 36 inch high barrier with a hard surface gate. The second patio is located on the southern side of the theater and is attached to the lobby. It will be 315 square feet, seat 16 patrons and be enclosed by a 36 inch high barrier. The location and visibility of both patios from inside the cinemas will allow Regal's staff to observe and control any potential problems that could arise. The addition of patios will also encourage patrons to enjoy a meal while waiting for a movie screening or enjoy desert after a movie has finished. Food and drink service on the patios will be operated in the same fashion as the theater. Patrons will be able to order food and drinks either from the counter and bring their purchase to their seat on either patio or place an order with a Regal employee and have their food and drink delivered by wait staff. Each patio will be clearly visible from the interior of the theater and will be closely monitored. In addition, the patio dining areas will resemble a patio of a typical restaurant solidifying patrons' idea of the theater as a dining destination.

Currently beer and wine sales are only available at one point of sale in the lobby. This has allowed Island 7 Cinemas to verify the age of each patron who purchases a glass of beer, wine or champagne and allowed Regal to physically separate the minors from the patrons old enough to purchase an alcoholic drink. However, during peak hours, this line can grow increasingly long causing delays in service and preventing patrons from being able to purchase all types of desired concessions. The addition of a second point of sale, used only during peak hours, will allow Regal's staff to better serve customers while also allowing staff to confirm that alcoholic drinks are not being passed off to underage patrons. The second point of sales will also increase line visibility and allow staff to be vigilant about verifying patron's ages.



LIQUORLICENSE.COM

12304 Santa Monica Blvd., Ste. 100 • Los Angeles, CA 90025
Phone: 1-800-222-5777 • Fax: 1-800-771-0254

Controlling the point of sale and manner in which customers purchase beer and/or wine allows Regal to set the customer's expectations of what level of scrutiny beer and wine service will be under. Under the existing, Minor Use Permit, customers are restricted to purchasing no more than 2 drinks in a visit. In order to ensure that patrons are not exceeding their limit, Regal has developed a system to track the number of drinks purchased by each customer. Regal staff places an X on each patron's wristband by the Regal logo each time a patron purchases a glass of beer, wine or champagne. While this practice allows staff to clearly determine how many drinks a customer purchases, the practice is very restrictive and does not allow patrons the same service they would receive at a restaurant licensed with a beer and wine license. Furthermore, the practice of marking and checking customers' wrist bands at each purchase, distracts staff from fully monitoring the line and prevents the line from moving at a reasonable pace. During the initial Minor Use Permit application and approval process, a transcription error occurred between the police department conditions and the final conditions listed on the Minor Use Permit. This transcription error changed the phrasing of the condition. While the Police Department's condition restricted a customer from purchasing no more than 2 drinks per transaction, the Minor Use Permit condition prevents a customer from purchasing more than 2 drinks in a visit. Regal would like to correct this error and reestablish the intent of the police department's initial conditions. In addition, this correction will be in line with the current conditions from the Alcoholic Beverage Control, which states "No more than two (2) alcoholic beverages shall be sold or served to any one (1) person during any sales transaction." This correction will easily allow staff to ensure that customers are not being over served without causing delays in service or distractions from monitoring service.

The addition of a service option that would allow wait staff to deliver food and drinks to patrons in the theaters and to seated patrons on the patio, will increase the staff's ability to monitor alcohol sales and consumption. Ultimately, adding a server will add another check point to verify a patron's age and another person monitoring consumption. Servers would not be soliciting drink orders and would not bring drinks in the auditorium that had not been previously ordered and purchased. The Alcoholic Beverage Control has not restricted Regal's ability to use servers for service in the theaters.

Lastly, Regal's request to open Island 7 Theaters one hour earlier at 11:00 AM will allow Regal to provide customers with more convenient show times. Various theaters throughout Orange County including Triangle Square Cinemas, Century Huntington Beach & XD, Woodbridge Movies 5, Regency Westminster 10 and AMC Tustin 14@ The District all offer movie screening beginning at 11:00 AM. The ability to offer customers flexibility in screening times will be more convenient to customers of Islands 7 Cinemas and Fashion Island. In addition, the earlier screening time will encourage customers to enjoy lunch with their movie which reinforces the dining component of the business.



Regal believes that the requested operational changes and modified uses of the existing Minor Use Permit will benefit customers, Fashion Island and the overall community. The execution of these changes will allow Regal more control in the operation of the business and ultimately facilitate a better experience for all parties involved. Each requested modification was evaluated on its merits as a stand-alone request in addition to being considered as a piece of the overall request. Regal believes the community will reap numerous advantages from the requested modifications and would like to institute each the operational changes including the addition of the patio dining areas based upon the benefits to be gained from that specific modification.

Zoning Information

The property is located in the PC-56 North Newport Center Planned Community District.

Findings:

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

Under the General Plan Fashion Island is designated "Regional Commercial" or CR by the Land Use Element of the General Plan and is not located in a specific plan area. Under the General Plan CR designation is described as: "intended to provide retail, entertainment, service, and supporting uses that serve local and regional residents." The dining and entertainment currently offered by Island 7 Cinemas meet this designation and is in line with the neighboring businesses by adding a unique and luxury entertainment option for local residents and tourists visiting Fashion Island. The full service dining and beer and wine service is consistent with other restaurant uses permitted in both Fashion Island and the surrounding North Newport Center Planned Community, while offering local and regional residents a unique entertainment option.

The theater has already established itself as an entertainment destination by providing patrons with upscale, luxurious movie screenings and gourmet dining options. The modifications requested herein, will further establish Island 7 Cinemas as a premiere movie theater. Regal does not see this location as a typical movie theater, and seeks to provide an exceptional entertainment and dining experience. The addition of dining patios and serving staff will reinforce the location as a dining destination. The high quality dining options and additional wait staff service creates an ambience unlike any theater in the area. In order to get the same service, patrons would have to visit the IPic Theater in downtown Pasadena, CA. The addition of a second point of sale will facilitate Regal's ability to meet the service expectations of customers and allow the Island 7 Cinemas staff to provide superior customer service. By tracking the number of drinks purchased at a time, instead of the total number of drinks purchased, Regal will



be able to offer customers a service similarly to other restaurants that offer beer and wine for on-site consumption. In addition, clarification of this condition will express the intent of the Police Department and be in line with the Alcoholic Beverage Control's standard movie theater conditions.

The ability to improve services and open screening times to customers of all ages further will allow Regal to expand their customer base while upholding the high standard of service expected at Fashion Island. After all, Fashion Island is not simply a local mall or shopping center, but a premium destination offering unparalleled dining and entertainment. The requested modifications will increase the desirability of Island 7 Cinemas and Fashion Island overall, and will allow the premise to be further developed as a premiere entertainment destination.

The requested modifications are consistent with the General Plan and will be a benefit to Fashion Island.

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

Islands 7 Cinemas is located in the North Newport Center Planned Community District known as the PC-56 Zoning District. Fashion Island is included in the seven sub-areas of the North Newport Center Planned Community District and this area is governed by the North Newport Center Planned Community Development Plan. The Plan designates Fashion Island as the primary retail hub in Newport Center and describes Fashion Island as, "intended to be a vibrant regional retail and entertainment center and a day/evening destination with a wide variety of uses that will service visitors, residents, and employees of the area."

The theater and full meal service availability is consistent with a retail multi-tenant commercial center which is permitted under the Regional Commercial area. The request to modify the existing Minor Use Permit will result primarily in operational changes. The only physical change to the premise is the addition of the dining patios totalling an additional 791 square feet. The operational changes and the added dining patios will not change the premise zone designation. The additional spaces to be occupied by the patio areas are also zoned PC-56, which allows for outdoor dining and on-site beer and wine service.

The overall effect of the operational changes will allow Regal to further cement a link between a visit to Fashion Island and Island 7 Cinemas as a paired entertainment and dining experience. The operational modifications will not alter the intent of the business, but will reinforce Regal's vision of dinner with a movie. The use of a type 41



liquor license at a premise in conjunction with dining and beer and wine service is an allowed use in this area. The pairing of dining with a movie screening is a unique entertainment option for Fashion Island and the North Newport Center Planned Community District. The operations of the premise will be on par with restaurants in the surrounding area while offering an extraordinary movie screening environment and experience.

The requested modifications on Minor Use Permit UP2011-039—allowing for mixed age screenings, a secondary point of sale for beer and wine, the addition of the exterior dining patios, and the addition of a wait staff—will allow Regal to provide customers with a more enjoyable entertainment experience. The combination of dining with a movie screening allows Regal to offer the residents and visitors a variety of different uses within the same premise and enhances its compatibility with the intention for this District. Island 7 Cinemas is currently offering customers an extraordinary movie screening experience and Regal is looking to employ the requested modifications to further set itself apart from other theaters of the area. This drive to exceed expectations meets the goals of Fashion Island where residents and locals are not simply presented with shopping options, but are provided a cohesively designed and conscientiously selected collection of shopping and entertainment possibilities.

Thus, the requested modifications to Minor Use Permit, UP2011-029 will permit a use allowed in this zone which complies with all other provisions of the Zoning Code and Municipal Code.

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

Fashion Island is designated as Orange County's premiere coastal shopping destination. The Zoning district (PC-56) allows commercial recreation and entertainment uses in conjunction with alcohol sales upon approval of a minor use permit by the Zoning Administrator. The requested modification is primarily focused upon operational changes with the only modification to the premise consisting of a 791 square feet of additional patio dining space. The location and design of a premiere cinema were already approved in Minor use Permit No. UP2011-029.

The operational characteristics and modifications requested will be operated in a manner fully consistent with other uses in the vicinity. Fashion Island is a retail and entertainment destination composed of department stores, restaurants, specialty shops and entertainment. The effect of the operational modification and the addition of the dining patios will enrich the entertainment and dining experience allowing Island 7 Cinemas to offer visitors a sophisticated experience which matches the expectations



associated with Fashion Island. The requested use is fully consistent with the adjoining uses, which combine entertainment and dining. The exceptional renovation of the auditoriums completed in 2011 has attracted customers looking to pair comfortable convenience and gourmet dining. The opportunity to enjoy gourmet food with a movie screening combines the dining and entertainment aspect of Fashion Island.

The cinemas will open daily at 11:00 AM and close around 1:00 AM depending on movie length. Last screenings will begin anywhere from 10:00 PM to 10:30 PM. The hours of movie screening is consistent with other theaters in the area including Edwards Big Newport 6 which has showing starting as late as 10:30 PM and Lido Theater which offers screenings as late as 10:00 PM. The kitchen will be operational daily for the duration of business so customers can always pair food and drinks with a movie screening. The addition of the dining patios will allow residents and visitors to enjoy a meal, a drink or both while waiting for their screening or to discuss the movie they just watched.

In addition, Regal has a comprehensive alcohol policy which oversees all aspects of beer and wine sales, service and consumption. The randomly selected neon-colored wrist bands and ID checks at all points of sale and service ensure no minors have the opportunity to purchase or be served an alcoholic drink. All employees who handle alcohol service and sales are TIPS trained. There will be ushers circulating throughout the auditoriums on a rotating basis. These ushers will be specially trained to monitor alcohol sales, service and consumption and will complete LEAD training. The addition of a server adds another line of inquiry and an additional person to verify a patron's age. The presence of an usher in all theaters will limit any possibility of issues arising and allows Regal to monitor all patrons without interrupting their enjoyment of a screening. By adding an additional point of sale during busy hours, Regal can limiting crowding in the lobby and ensure that all customers and purchases can be monitored. The additional enforcement measures combined with the existing protocols demonstrate that Regal can be relied upon to ensure none of the negative impacts that are often associated with the irresponsible sale and service of beer and wine, as well as ensuring that Island 7 Cinemas operations are compatible with the surrounding uses.

For these reasons, the design, location, size and operating characteristics will be compatible with the allowed uses in the vicinity.

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



The requested modification of Minor Use Permit UP2011-029 is an operational permit in terms of design, location and the size of use. The premise was recently remodeled in 2011 and this requested modification primarily seeks to modify operational characteristics, with the addition of a 476 square foot dining patio to the front of the premise and the addition of a 315 square foot patio to the south side of the premise. The changes and remodeling of the structure were previously approved and the premise has been operating since December 2011. Therefore, the City has already determined that the movie theater will be physically suitable in terms of the design, location and size of use.

In terms of access for utilities, fire and/or medical services, the premise is located in Fashion Island which is a large shopping center that was designed in an integrated and unified manner. Many of Regal's patrons already visit Fashion Island to shop or dine or work in the surrounding area. The unique services and entertainment has already drawn additional patrons from Newport Beach and the greater surrounding area, bringing additional patrons to Fashion Island without incident or requiring additional services. Therefore, Regal does not anticipate the theater itself will have any impact on the need for such services. In addition, the theater is located on the upper level of Fashion Island near the parking structure, making the theater easy to locate and easily accessible.

In terms of beer and wine sales, Regal has a very extensive employee training and alcohol monitoring program. Regal operates many theaters throughout the United States, including select locations in Florida, North Carolina, and Tennessee that offer patrons beer and wine for on-site consumption. Regal has an outstanding record of compliance with the California Alcoholic Beverage Control (please see a copy of the attached License Query System Summary, which show no pending or previous violations on the license) and all other agencies having jurisdiction over the numerous locations through the country. Because of Regal's experience, outstanding record and training programs, Regal can be relied upon to mitigate the negative impacts sometimes associated with the irresponsible service and sales of alcoholic beverage products. As a result, Regal does not anticipate the requested operational changes or the addition of the dining patios will have any impact on the need for public services.

The requested modification to Minor Use Permit UP2011-029 will be physically suitable for the use in terms of the design, location, size and operating characteristics and the provisions of accessibility for utilities and public services for the above stated reasons.

5. 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,



LIQUORLICENSE.COM

12304 Santa Monica Blvd., Ste. 100 • Los Angeles, CA 90025
Phone: 1-800-222-5777 • Fax: 1-800-771-0254

safety or general welfare of persons residing or working in the neighborhood of the proposed use.

Regal does not believe the requested modification of Minor Use Permit No. 2011-029 will 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. Instead, Regal believes the requested operational changes will benefit the community and Fashion Island, specifically.

Regal will provide a safe, convenient location for the responsible on-site sales and consumption of beer and wine paired with dining and entertainment. The operational modifications have been requested in part to allow Regal to better monitor beer and wine sales and consumption while providing superior service. Island 7 Cinemas is located on the upper level of Fashion Island and is isolated from other shopping and retail locations. This separation from other retail uses will allow Regal to easily observe and monitor the patio dining areas. There are no sensitive uses bordering either Island 7 Cinemas or Fashion Island. All additional uses are buffered by the parking lots, roadways and other commercial uses. The premise is not in close proximity to residential districts, parks and recreation facilities, schools, places of religious assembly or day care centers.

The opening of movie screenings to mixed aged customers will allow all patrons to enjoy the movie of their choice at any time of day and will allow local residents and visitors to fully utilize the services offered at Island 7 Cinemas. Regal has carefully considered the operational changes needed to ensure the premise remains a family friendly environment focusing not only on the customer experience, but ensuring the operational modifications 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, safety or general welfare of persons residing or working in the neighborhood of the proposed use.

The dual purpose of these operational modification—to provide more amenities and service to patrons and to increase Regal's abilities to monitor beer and wine sales and consumption—serve to reinforce Regal's history of operating in a conscientious manner. Regal operates over 500 theaters throughout the country and has an excellent record of compliance including at those select locations that are licensed for on-site beer and wine service and consumption. This location has been in operation for nearly a year without incident and has remained in compliance with the Alcoholic Beverage Control rules, regulations and conditions. Regal welcomes input from the community, planning staff, Police Department and the Alcoholic Beverage Control as it pertains to operational conditions which will ensure this location does not experience any of the negative



LIQUORLICENSE.COM

12304 Santa Monica Blvd., Ste. 100 • Los Angeles, CA 90025

Phone: 1-800-222-5777 • Fax: 1-800-771-0254

impacts sometimes associates with irresponsible alcohol sales. Therefore, Regal offers the following conditions voluntarily:

1. A telephone number for a corporate complaint line will be posted in a conspicuous location at all times so the public can report any suspicious activity or complaints at all times.
2. Taxicab phone numbers shall be posted in a conspicuous location at all times in the area(s) where alcohol is served to customers.
3. Signs advertising brands and types of alcoholic beverages or the availability of alcohol for sale at the subject site shall not be visible from the exterior of the premise.

The modification of the existing uses at this location will not add an additional liquor license to the census tract. While the census tract remains over concentrated, the use at Island 7 Cinema is unlike any in the surrounding area. Fashion Island remains a popular destination for the local community and visitors. The operational modifications will result in a positive upgrade of the surrounding area and allow the premise to attract additional business to Island 7 Cinemas and Fashion Island. The addition of the dining patios will provide patrons with another dining option and will allow customers to enjoy a meal while waiting for friends or while discussing a movie. This additional dining area is consistent with other dining options in the area, but is more convenient for movie patrons because of its location in front of the theater.

Overall, the theater's location and services will be beneficial to the harmonious and orderly growth of the City and will not constitute a hazard to the public convenience, health, interest safety or general welfare of persons residing in or working in the neighborhood of the proposed use.

If you have any questions or concerns, please do not hesitate to contact me by phone at (310) 893-1121 or by email at cindy@liquorlicense.com.

Sincerely,



Cindy Block

Attachment No. ZA 4

Police Department Memorandum and
Alcohol Related Statistics

**City of Newport Beach
Police Department**

M e m o r a n d u m

January 3, 2013

TO: Fern Nueno, Assistant Planner

FROM: Detective Brian Haas

SUBJECT: Regal Cinemas (Island 7 Cinemas), 999 Newport Center Drive
Use Permit No. UP2011-029 (PA2012-14), Amendment 1

At your request, the Police Department has reviewed the project application for Regal Cinemas, located at 999 Newport Center Drive, Newport Beach. Per the project description, the applicant is requesting a minor use permit amendment to change the operational characteristics of an existing movie theater that offers food and alcoholic beverage service. The changes include the addition of two patio dining areas totaling approximately 800 square feet in area, modifying the approved hours of operation to allow the theater to open at 11:00 a.m., and allowing the service and consumption of alcohol during all movie screenings with the option to order from a server.

The applicant currently has a Type 41 (On-Sale Beer and Wine, Eating Place) license with the Department of Alcoholic Beverage Control. This license includes beer and wine for consumption on the licensed premises. The license has been conditioned appropriately to protect the health, safety and welfare of the community.

Applicant History

The applicant, Regal Cinemas, Inc., is currently doing business as Island 7 Cinemas and is located within the Fashion Island, which is owned by the Irvine Company. Regal Cinemas currently offers alcohol sales on the premises to patrons 21 years or older with the ability to consume alcoholic beverages during screenings in auditoriums restricted to patrons 21 years or older. It is modeled after several similar movie theater operations in the area.

The goal of the cinema has been to provide the opportunity for the more mature audience to enjoy an alcoholic beverage while enjoying a movie while also offering a more upscale dining menu. Regal Cinemas has recently indicated that they no longer wish to isolate patrons who wish to enjoy a glass of beer, wine or champagne during a movie from the general population.

Recommendations

The Police Department has no objection to the changes as described by the applicant provided the applicant successfully obtains an Operator License issued by the Chief of Police. However, the Police Department does have some concerns regarding service of alcohol in a low light environment that includes patrons of all ages. As a result, the Police Department met and spoke with the applicant and/or their representatives on several occasions to gain more information and insight into their planned operations. The Police Department also researched and visited similar operations in the area (Cinopolis-Laguna Niguel) in order to gauge what type of impact the establishment might have on police resources. With the below listed conditions in place, the Police Department does not feel that the operation will have a negative impact on the community and police services.

Signs and Displays

Any signs or displays would need to conform to City requirements. 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.

Hours of Operation

The proposed hours of operation are from 11 a.m. to 1 a.m. daily.

Security

The Police Department has no recommendations. This location lies within Fashion Island, which currently has security operations in place.

Per the project description, patrons will be required to show valid identification to verify age at the point of sale for tickets and again at the point of sale for alcohol. Each auditorium will be monitored by a rotating usher who will be circulating in the auditoriums at all times. The Police Department recommends that these safeguards be strictly adhered to at all times.

Employee Training

Require all owners, managers, and employees selling alcoholic beverages to undergo and successfully complete a certified training program in responsible methods and skills for serving and selling alcoholic beverages.

Additional Comments

For the purposes of this application, staff may also want to consider establishing conditions that would require a Special Event Permit. 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 of contract promoters, or any other activities as specified in the Newport Beach Municipal Code to require such permits.

Other Recommended Conditions

Should the application be approved, the Police Department has determined that the following conditions in addition to those currently in place would be appropriate for the Conditional Use Permit for the business:

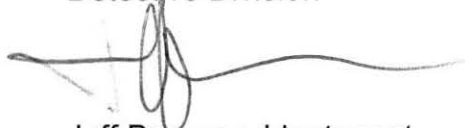
1. Approval does not permit Regal Cinemas to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Municipal Code, unless the Planning Commission first approves a use permit.
2. Alcoholic beverages shall be dispensed, sold and served in non-glass containers easily distinguishable from non-alcoholic beverage containers.
3. Sales, service and consumption of alcohol shall be permitted only between the hours of 11 a.m. and 1 a.m. daily.
4. The sale of alcoholic beverages for consumption off the premises shall be prohibited.
5. No more than two (2) alcoholic beverages shall be sold or served to any one (1) person at any one (1) time. The delivery of alcoholic beverages to patrons inside the auditoriums shall be limited to two (2) per patron per screening.
6. All sales or service of alcoholic beverages in the licensed premises shall be made only from the service bars or waiter or waitress service.
7. During the period of time from the initiation of seating until the completion of the feature presentation, ambient lighting in the auditoriums shall remain at a level sufficient enough to allow a reasonable person to observe patrons who may be consuming alcoholic beverages.
8. Only persons seated in designated theater seats shall be permitted to order and be served alcoholic beverages.
9. Orders from patrons seated in designated theater seats must be made to the waiter or waitress serving that area and the alcoholic beverages ordered must be personally delivered to the patron by the waiter or waitress who took the order.
10. The waiter or waitress serving the designated areas shall not carry a supply of unordered alcoholic beverages.

11. Petitioner shall post signs measuring 12" by 12" with lettering no smaller than 2 inches in height that read, "No Alcoholic Beverages Beyond This Point" at all premise exits.
12. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
13. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed.
14. 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.
15. 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.
16. There shall be no live entertainment allowed on the premises.
17. There shall be no dancing allowed on the premises.
18. Strict adherence to maximum occupancy limits is required.
19. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.

If you have any questions, please contact Detective Brian Haas at (949) 644-3709.



Brian Haas, ABC/Vice/Intelligence
Detective Division



Jeff Brouwer, Lieutenant
Detective Division



NEWPORT BEACH POLICE DEPARTMENT

870 Santa Barbara, P.O. Box 7000, Newport Beach, CA 92658-7000

MEMORANDUM

May 9, 2012

TO: Benjamin M. Zdeba, Planning Technician

FROM: Caroline Staub, Senior Crime Analyst

SUBJECT: Alcohol Related Statistics

At your request, our office has reviewed police services data for the Whole Foods Market at 415 Newport Center Drive. This area encompasses our reporting district (RD) number 39 as well as part of Census Tract 630.08. This report reflects City of Newport Beach crime data for calendar year 2011, which is the most current data available.

Calls for Service Information

City wide there were approximately 65,411 calls for police services during this time, of which 4,421 were in RD 39. A "call for service" is defined as *any citizen contact of the police department which results in the dispatching of a unit or causes the contacted employee to take some sort of action, such as criminal investigations, alarm responses, traffic accidents, parking problems, animal control calls, etc.*

Crime Information

There were 5,751 crimes reported to the Newport Beach Police Department during this period. Of this total, 2,408 were Part One Crimes. Part One crimes are the eight most serious crimes (*Homicide, Forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny-Theft, Auto Theft and Arson*) as defined by the FBI in the Uniform Crime Reports. The remaining 3,343 reports were Part Two crimes. The Part One crime rate for the entire city during this same period was 2,820.46 per 100,000 people. The national Part One crime rate was 3,345.52¹ per 100,000 people.

| Crimes | RD 39 | Newport Beach ² | California ¹ | National ¹ |
|------------|----------|----------------------------|-------------------------|-----------------------|
| Part 1 | 191 | 2,408 | 1,146,072 | 10,329,135 |
| Part 2 | 195 | 3,343 | N/A | N/A |
| Crime Rate | 8,500.22 | 2,820.46 | 3,076.38 | 3345.52 |

This reporting district had a total of 386 reported crimes as compared to a city-wide reporting district average of 152 reported crimes. This reporting district is **234 crimes over** or **154% above** the city-wide reporting district average.

¹ Figures based on the 2010 Uniform Crime Reports, which is the most recent edition.

² The Newport Beach population figure used for calculations is 85,376, as estimated by the CA Department of Finance.

ABC License Information

The number of active ABC licenses in this RD is 35, which equals a per capita ratio of one license for every 64 residents. This location is within an RD that is over the Orange County per capita average of ABC licenses.³

Arrest Information

In 2011, there were 64 DUI/Drunkness arrests in RD 39 compared to 1,304 DUI/Drunkness arrests for the entire city. This RD amounts to 4.91% of the DUI/Drunk arrests made in the entire City. According to a recent national study by the Department of Justice, more than 36% of adult offenders convicted of crimes in 2009 had been drinking at the time of their arrest.

| Arrests | RD 39 | Newport Beach | California ¹ | National ¹ |
|---------------|-------|---------------|-------------------------|-----------------------|
| DUI/Drunk | 64 | 1,304 | 4,663 | 1,972,941 |
| Total Arrests | 188 | 3,198 | 1,357,573 | 13,120,947 |

Additional Information

The Alcoholic Beverage Outlets ordinance states that the Planning Commission shall consider the crime rate in the adjacent reporting districts. The three adjacent reporting districts requested are RD 38, RD 41, and RD 43.

| Measure | RD 38 | RD 41 | RD 43 |
|--------------------------|----------|---------|----------|
| Part 1 Crimes | 26 | 54 | 23 |
| Part 2 Crimes | 20 | 111 | 25 |
| Crime Rate | 1,157.09 | 2,403.2 | 1,023.58 |
| Arrests (DUI/Drunk) | 6 | 36 | 6 |
| Total Arrests | 15 | 66 | 20 |
| Calls For Service | 728 | 2066 | 885 |
| Active ABC Licenses | 1 | 9 | 5 |
| Per capita license ratio | 2,247 | 250 | 450 |

If you are in need of any further assistance, please feel free to contact me.

Sincerely,



Caroline Staub
Senior Crime Analyst
Newport Beach Police Department
(949) 644-3791
cstaub@nbpd.org

³ The number of active ABC licenses is the total of all types of licenses known to the police department as of the date of this document. As of June 30, 2011 the Orange County average of active, retail ABC licenses was one license for every 518 residents. (5,839 licenses and a population of 3,018,963)

Attachment No. ZA 5

Project Plans

ADDITIONAL
MATERIALS
RECEIVED

Item 2. Island Cinema - Amendment 1 to UP2011-029 (PA2012-144)

Comments regarding the draft resolution:

SECTION 4. DECISION.

"1. The Zoning Administrator of the City of Newport Beach hereby approves Amendment 1 to Minor Use Permit No. UP~~2001~~2011-029, ..."

"3. This Resolution supersedes Zoning Administrator Action Letter dated November 9, 2011, for the approval of Minor Use Permit No. UP2011-029 (PA2011-170), which upon vesting of the rights authorized by this application, shall become null and void."

If the previous Action Letter is to become null and void, it would have seemed useful to include a copy in the staff report so that it can be verified the Conditions of Approval are being carried forward.

CONDITIONS OF APPROVAL

"19. Patrons shall be required to show valid identification to verify age at the point of sale for alcohol."

The Applicant's Project Description (Attachment ZA 3) suggests a wrist-band system is currently used to identify 21-and-over patrons, but the permit does not seem to be any condition requiring that.

"21. Alcoholic beverages shall be dispensed, sold, and served in containers that are easily distinguishable from non-alcoholic beverage containers."

This protection seems easily evaded by pouring drinks from one container to another.

"23. No more than two (2) alcoholic beverages shall be sold or served to any one (1) person during a single transaction. The delivery of alcoholic beverages to patrons inside the auditoriums shall be limited to two (2) per patron per screening."

There seems to be a disconnect between the applicant's desire and the understanding of the Police Department's intent as described on page 2 of the staff report:

- *"The Police Department recommended that no more than two alcoholic beverages be served to any one person during a movie screening and that a person could purchase two alcoholic beverages per transaction at the concession area."*
- *"the applicant would like to clarify that the condition does not limit each person to two drink purchases per movie."*

If the Police intend to limit consumption to two drinks per person per screening, then it sounds like they chose the word "delivery" to mean delivery by self-service **or** by a paid server; yet the applicant appears to read this as meaning self-service doesn't count as delivery of a drink to a patron in an auditorium. I read the Police-suggested conditions to mean that a patron can order two drinks at a time by either means (either for themselves or themselves and a legal-age companion), but each can consume at most two in the theater during a movie. There seems to be no limit only on the number consumed in the

concession areas; seemingly leaving open the possibility they will indeed serve as after-the-movie bars.

“25. During the period of time from the initiation of seating until the completion of the feature presentation, ambient lighting in the auditoriums shall remain at a level sufficient enough to allow a reasonable person to observe patrons who may be consuming alcoholic beverages.”

Is this realistic? And why not say “At **all times** ambient lighting in the auditoriums shall remain...”? If not, at what times is a lesser lighting level allowed?

*“28. The **petitioner permittee** shall post and maintain...”*

*“30. The **petitioner permittee** shall not share any ...”*

“38. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City ...”

Same comment as for indemnity clause in previous agenda item.

Additional comments:

- I do not agree with the removal of the condition that alcohol sales be permitted only in connection with 21-and-over screenings; and it seems inconsistent with the Planning Commission’s recent decision regarding the Port Theater, in which, under very similar circumstances, if I remember correctly alcohol sales were restricted to areas in which access was restricted to those 21 and older.
- It is unclear to me why Planning Division staff has rejected some of the conditions recommended by the Police Department (Attachment ZA 4), particularly that alcohol sales in the auditoriums be limited to patrons seated in designated areas. That said, it is also unclear to me if that was the system used in the theaters studied by the Police Department, or if the seating in such areas is limited to 21 and over patrons.
 - Other reasonable sounded recommended constraints, such as a prohibition on *“happy hour” type of reduced price alcoholic beverage promotion,* have also been omitted.
 - I understand that an additional Operator’s License will be required, but I think the public deserves some explanation of why specific recommendations of its Police Department have been ignored; especially since the Operator’s License is primarily concerned with late night operations, and alcohol service will be occurring starting the theater’s opening at 11 am.
- Likewise, it appears the applicant makes a number of statements in Attachment ZA 3 that it promises will ensure a safe and orderly operation, yet the proposed Conditions of Approval do not appear to require they adhere to most of them, including some that are part of the present operation (for example, use of wrist bands to identify age-cleared patrons).