



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

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION
FROM: Seimone Jurjis, Community Development Director
SUBJECT: Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending November 20, 2020.

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

Item 1: Newport Dunes Christmas Trees Limited Term Permit No. XP2020-008 (PA2020-336)
Site Address: 1131 Back Bay Drive

Action: Approved

Council District 5

APPEAL PERIOD: An appeal or call for review 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 (*All PD related*)
Sgt. Randy Parker, NBPD (*All PD related*)



COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

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ZONING ADMINISTRATOR ACTION LETTER

Application No. **Newport Dunes Christmas Trees (PA2020-336)**
 • **Limited Term Permit No. XP2020-008**

Applicant **Newport Dunes**

Site Address **1131 Back Bay Drive**
 Newport Dunes Christmas Tree Lot

Legal Description **Portions of Multiple Parcels**

On **November 20, 2020**, the Zoning Administrator approved a Limited Term Permit (less than 90 days) for a 4,900-square-foot Christmas tree sales lot (seasonal sales) in the Newport Dunes Resort and Marina parking lot located in the PC48 (Newport Dunes) Zoning District. The Zoning Administrator's approval is based on the following findings and subject to the following conditions:

ZONING DISTRICT/GENERAL PLAN

- **Zone:** PC48 (Newport Dunes)
- **General Plan:** PR (Parks and Recreation)

REQUIRED FINDINGS

In accordance with Section 20.52.040 (Limited Term Permits) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of such findings are set forth:

Finding:

- A. *This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act Guidelines under Class 4 (Minor Alterations to Land).*

Fact in Support of Finding:

1. Class 4 exempts minor temporary uses of land having negligible or no permanent effects on the environment including the sale of Christmas trees. The proposed application is for the temporary sale of Christmas trees and is anticipated to have negligible or no permanent effects on the environment.

Finding:

- B. *The operation of the requested limited duration use at the location proposed and within the time period specified 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 requested limited duration use.*

Facts in Support of Finding:

1. The operation of temporary Christmas tree sales has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
2. The subject property has been used for temporary Christmas tree sales in the past and has not proven detrimental or hazardous to public convenience, health, or safety of persons residing or working in the neighborhood.

Finding:

- C. *The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot.*

Facts in Support of Finding:

1. The proposed limited duration use will take place in a 4,900 square-foot (0.11 acres) temporary tent located on a portion of an existing parking lot that is approximately four acres in size. Within the tent will be a tree display area and a sales booth.
2. All temporary structures and improvements will be erected on private property.
3. Adjacent properties to the northeast, east, and southeast are buffered from the limited duration use by Back Bay Drive and a private access drive into the parking lot.
4. As conditioned, the applicant is required to maintain public access and parking in accordance with the Newport Dunes Settlement Agreement, including, but not limited to boat launch and trailer parking, wash down, beach and day use facilities, bike trail, human-powered launch, and camping.

Finding:

- D. *The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate.*

Fact in Support of Finding:

1. The subject lot maintains adequate access from Back Bay Drive via a four lane access drive.

Finding:

- E. Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator.*

Facts in Support of Finding:

1. The Christmas tree sales lot is not anticipated to generate an excess of vehicular traffic or impact the parking for patrons and guests of the Newport Dunes Resort and Marina because high turnover is expected.
2. Adequate temporary parking will be provided by way of the existing Newport Dunes Resort and Marina parking lot.
3. The project is conditioned requiring adequate traffic flow on Back Bay Drive and circulation within the parking lot be maintained.

Finding:

- F. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.*

Facts in Support of Finding:

1. Christmas tree sales will be held no earlier than November 21, 2020 and end no later than December 22, 2020.
2. The Christmas tree sales lot is conditioned to comply with all applicable provisions of the General Plan, Municipal Code, and other City regulations.
3. The subject lot is not located within a specific plan.
4. The project is exempt from coastal development permit requirements pursuant to Section 21.52.035.D of the NBMC because the event will not occur between Memorial Day weekend and Labor Day, will not occupy any portion of a public sandy beach, no fee will be charged for general public admission, does not involve permanent structures or structures that involve grading or landform alteration for installation, and has no potential for adverse effect of sensitive coastal resources.

CONDITIONS OF APPROVAL

1. The limited duration sales use shall not commence operation prior to November 21, 2020 and shall conclude by end of day December 22, 2020.
2. During the temporary event, the operator shall maintain public access and parking in accordance with the terms of the Newport Dunes Settlement Agreement, including but not limited to, boat launch and trailer parking, wash down, beach and day use facilities, bike trail, human-powered launch, and camping.
3. The limited duration use shall only operate between the hours of 10:00 a.m. and 9:00 p.m., daily.
4. The operator of the limited duration use shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by patrons and equipment. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the NBMC. If noise generation does not comply with the aforementioned provisions, the Community Development Director may require remediation measures which may include relocation of equipment.
5. No outdoor sound system, loudspeakers, or paging system shall be permitted in conjunction with the facility.
6. Operation of the Christmas tree lot/sales shall not impact the vehicular circulation within the remaining parking areas.
7. The site shall be cleaned of debris, litter, or any other evidence of the limited duration use upon completion or removal of the use and shall continue to be used in compliance with the Zoning Code. The site shall be adequately cleaned by midnight on January 5, 2021. An inspection by Code Enforcement is required. Failure to adequately clean the site will result in a forfeiture of a portion or the entirety of the \$500 deposit.
8. A valid Business License Tax Certificate shall be secured from the Revenue Division prior to commencement of the limited duration use.
9. All signs shall be in compliance with Chapter 20.42 (Sign Standards) of the NBMC and the site is limited to two temporary banner signs not to exceed 75 square feet each. Placement of temporary signage shall be subject to Planning Division approval.
10. Signage shall be placed in a manner that does not impact the view of drivers while entering and exiting the site.
11. Lighting shall be in compliance with applicable standards of the Zoning Code. Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or

create a public nuisance. "Walpak" type fixtures are not permitted. If in the opinion of the Community Development Director the existing illumination creates an unacceptable negative impact on surrounding land uses or sensitive habitat areas, the dimming of light sources or other remediation may be ordered. An electrical permit shall be secured for lighting as required by the Building Division.

12. All electrical shall be in good working order and shall be protected from pedestrian traffic. An electrical permit shall be obtained, and the site inspected by the Building Division.
13. Accommodations for accessibility shall be provided as close as possible to the tree lot.
14. The site driveway access shall have adequate sight distance pursuant to City Standard STD-110-L.
15. The applicant shall ensure patron vehicles do not impact traffic flow on Back Bay Drive.
16. All temporary structures shall be anchored, and a building permit shall be secured for those structures as required by the Building Division.
17. All temporary structures are required to be inspected by a Building Division Inspector. The applicant shall comply with all lawful orders and requirements of the Building Inspector. Inspection approval is required before the temporary tent can be entered by the public.
18. All proposed temporary structures and any site contents shall be located within the private property lines.
19. Tents and canopies shall be fire retardant and be installed and maintained in accordance with State and Local codes for such structures. Please follow Newport Beach Fire Department *Guideline A.03 Tents and Temporary Membrane Structures* found on the Fire Department website:

<https://www.newportbeachca.gov/government/departments/fire-department>
20. A minimum of two 2A:10BC fire extinguishers will be required. Additional extinguishers may be necessary in order to provide coverage as follows:
 - a. In or about the sales area;
 - b. In or about the work/flocking areas;
 - c. In any and all tents and canopies on premises;
 - d. When access to an extinguisher from any point exceeds 75 feet travel distance.

All extinguishers shall be mounted in a visible unobstructed location at a height of 3 to 5 feet. Extinguishers shall have a current State Fire Marshal servicing tag attached to the fire extinguisher. California Fire Code Section 906.1

21. An electrical permit shall be obtained, and the site inspected by the Building Division.
22. Fuel powered equipment (generators) shall be a minimum of 20 feet from any combustible materials (including Christmas trees). California Fire Code (CFC)Section 5704.4.6 (clearance from combustibles) and section 3103.8.2. (Location).
23. Motor vehicles shall be a minimum of 20 feet from all trees stored on the lot and any tents on the property.
24. Fuel powered equipment (generators) shall be isolated from contact with the public by physical guards, fencing or enclosure.
25. Open flame devices, such as torches, candles, warming devices and other devices using a flame, capable of igniting combustible materials, shall not be used in or adjacent to tents or canopies, or near or on combustible decorations or materials such as, but not limited to, weeds, straw or hay and the like unless previously approved by the Fire Department.
26. All weeds, combustible vegetation, trash and combustible storage shall be removed from areas adjacent to and within 30 feet of tents and canopies.
27. Combustible ground covering greater than two inches in depth shall not be permitted unless approved by the Fire Department. Straw and other combustible ground covering, which may be readily ignitable, shall be maintained in a damp or moist condition and/ or be treated with an approved fire-retardant chemical.
28. The attached notice (ZA 3) shall be posted near the sales area to be seen by all tree purchasers, notifying any person purchasing a tree that will be located in a place of public use that the tree must be treated with a flame retardant chemical or paint that has been approved by the California State Fire Marshal Office. The retardant or paint, if applied by other than the purchaser, shall be applied by a California State Fire Marshal licensed applicator.
29. Trees treated with flame retardant chemical or paint shall bear a tag stating the following:
 - a. Date of placement in the public building
 - b. Type of flame-retardant treatment used
 - c. The name of the person who applied the flame retardant
 - d. The name of the person affixing the tag
 - e. A permit expiration date
 - f. The name of the designated individual making daily inspections
30. All flocking material shall be flame retardant.

31. Smoking shall not be permitted in tents or canopies or in adjacent areas where hay, straw, sawdust, Christmas trees, or other combustible materials are being used, displayed, or stored. "NO-SMOKING" signs shall be conspicuously posted throughout the lot and in the tent or canopy, as well as all points of entry that are visible to all patrons who enter the premises.
32. The approval of the requested limited term permit is contingent upon compliance with applicable provisions of the NBMC and the successful granting of all required permits from any other department or governing agency.
33. 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 Newport Dunes Christmas Trees including, but not limited to, Limited Term Permit No. XP2020-008 (PA2020-336). 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.

APPEAL PERIOD

An appeal or call for review 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. For additional information on filing an appeal, contact the Planning Division at 949-644-3204.

Approved by:



Jaime Murillo
Zoning Administrator

MN/vk

Attachments: ZA 1 Vicinity Map
ZA 2 Fire Department Special Event Tent Permit Conditions
ZA 3 Christmas Tree Notice
ZA 4 Site Plan

Attachment No. ZA 1

Vicinity Map

VICINITY MAP



Limited Term Permit – Seasonal No. XP2020-008
(PA2020-336)

1131 Back Bay Drive

Attachment No. ZA 2

Fire Department Special Event Tent Permit
Conditions



Newport Beach Fire Department Fire Prevention Division

Special Event Tent Permit Conditions

Event Date/Time: 11/21-12/22/2020 – 10am-9pm
Event Attendance: N/A
Event Location: 1131 Back Bay Drive, Newport Beach, CA 92660
Christmas Tree Lot

TENT

- Inspection required on all tent permits. Inspection fees apply, call when ready for inspection.
- Post occupant load
- Do not exceed posted occupant load inside building.
- Visible and Mounted Fire Extinguishers with Current Service Tags
- No Smoking Signs
- Illuminated Exit Signs
- Emergency Lighting
- Exit doors are not to be blocked and are to remain accessible as exits when the tent is occupied.
- All interior decorative fabrics or materials shall be flame resistant. Provide Certificates of Flame Resistance.
- If Propane is being used, a permit is required: Cooking and heating equipment shall not be located within 10 feet of exits or combustible materials.
- LPG containers, if used, shall be located outside and be adequately protected and secured, a permit will be required. Open flame or other devices emitting flame, such as candles, are not permitted inside or within 20 feet of the tent, canopy, or temporary membrane structure.

ANY CHANGES TO THE SITE PLAN(S) PROVIDED OR APPROVED PERMIT CONDITIONS SHALL BE RESUBMITTED FOR APPROVAL PRIOR TO THE EVENT.

Attachment No. ZA 3

Christmas Tree Notice

**THIS NOTICE SHALL BE CONSPICUOUSLY POSTED
AT ALL CHRISTMAS TREE SALES LOCATIONS**

NOTICE

TO ALL PURCHASERS OF CHRISTMAS TREES

In accordance with County and State Regulations, all cut natural Christmas trees, which are located in the following occupancies, must be treated with a California State Fire Marshal approved fire retardant chemical to the satisfaction of the Fire Chief.

- * Hotels
 - * Apartment Buildings (except in private apartment suites)
 - * Mental Hospitals
 - * Boarding Homes
 - * Hospitals
 - * Children's Homes
 - * Schools
 - * Special Schools
 - * Commercial Buildings
 - * Day Nurseries
 - * Theaters
 - * Motion Picture Theaters
 - * Bars
 - * Restaurants
 - * Dance Halls
 - * Banks
 - * Office Buildings
 - * Churches
 - * Retail Stores
- * And all other places where the public is invited or required to pass through

For further information on flame-retardants, please contact the California State Fire Marshal's Office at (510) 357-8173.

Attachment No. ZA 4

Site Plan

Site Plan (PA2020-336)

