

**ZONING ADMINISTRATOR ACTION 10-011  
CONDITIONAL USE PERMIT 10-010  
13011 NEWPORT AVENUE, #104**


The Zoning Administrator of the City of Tustin does hereby resolve as follows:

- I. The Zoning Administrator finds and determines as follows:
  - A. That a proper application for Conditional Use Permit 10-010 was filed by Mr. Bodie Berg of The Lost Bean, requesting authorization for on-site alcoholic beverage sales for beer and wine (ABC License Type "41") in conjunction with an existing bona fide restaurant/cafe located in an approximately 1,500 square foot tenant space at 13011 Newport Avenue, #104.
  - B. That the proposed land use is consistent with the Tustin City Code and General Plan. The site is designated as Community Commercial by the City General Plan and is zoned Central Commercial (C-2) district, where restaurants are permitted and alcoholic beverage sales establishments are conditionally permitted. The project is consistent with the Air Quality Sub-element of the City of Tustin General Plan.
  - C. That pursuant to Section 9299b(3)(f) of the Tustin City Code, the Zoning Administrator has the authority to consider requests for on-site alcoholic beverage sales licenses for restaurants.
  - D. That a public hearing was duly called, noticed, and held for Conditional Use Permit 10-010 on November 8, 2010, by the Zoning Administrator.
  - E. That the proposed use is allowed within the Central Commercial zoning district, with the approval of a Conditional Use Permit, and consistent with the Community Commercial land use designation of the City of Tustin General Plan, which provides for a variety of commercial uses.
  - F. The use is located in an existing commercial area where a variety of retail and restaurant uses are located. The characteristics of the use and hours of operation would continue to be similar to other restaurants in the vicinity.
  - G. That the establishment, maintenance, and operation of the proposed use will not, under the circumstances of this case, be detrimental to the health, safety, morals, comfort, or general welfare of the persons residing or working in the neighborhood of such proposed use, nor be injurious or detrimental to the property and improvements in the neighborhood of the subject property, or to the general welfare of the City of Tustin in that:
    1. The proposed sale of on-site general alcoholic beverages in conjunction with an existing restaurant use is allowed within the Central Commercial zoning district with the approval of a Conditional Use Permit.

2. As conditioned, the proposed on-site consumption of general alcoholic beverages is consistent with the Alcoholic Beverage Sales Establishment Guidelines as amended by the Planning Commission and adopted by the City Council on May 21, 2001.
  3. The on-site consumption of alcoholic beverages would be in conjunction with a restaurant/cafe where food will be served at all times when alcoholic beverages are served. Any bar area shall function as a food and beverage service bar.
  4. The existing restaurant/cafe provides sit-down meals typical of restaurant/cafe uses. Bona fide restaurants with on-site alcoholic beverage sales are exempt from distance separation requirements to residential uses, sensitive uses and other alcoholic beverage sales establishments.
  5. The existing restaurant/cafe use is located within a retail center and a commercial corridor along Newport Avenue where a variety of retail, office, and restaurant uses are located. The proposed hours of operation are from 5:30 a.m. to 10:30 p.m., Monday through Saturday, and from 6:30 a.m. to 8:00 p.m. on Sunday. The characteristics of the restaurant/cafe use and hours of operation of the restaurant/cafe would be similar to other restaurants in the center and in the vicinity.
  6. There is no increase in seating or square footage proposed, so no additional parking spaces need to be provided.
  7. The Tustin Police Department has reviewed the application and has no immediate concerns.
  8. Development guidelines and criteria as adopted by the City Council.
- H. This project is Categorically Exempt pursuant to Section 15301 (Class 1) of the California Code of Regulations (Guidelines for the California Environmental Quality Act).
- II. The Zoning Administrator hereby approves Conditional Use Permit 10-010 authorizing the on-site sale and consumption of beer and wine (ABC License Type "41") and outdoor restaurant seating in conjunction with the existing 1,500 square foot restaurant/cafe (The Lost Bean) located at 13011 Newport Avenue, #104, subject to the conditions contained within Exhibit A, attached hereto.

PASSED AND ADOPTED by the Zoning Administrator of the City of Tustin, at a regular meeting on the 8th day of November, 2010.

  
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ELOISE HARRIS  
RECORDING SECRETARY

  
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DANA L. OGDON  
ACTING ZONING ADMINISTRATOR

STATE OF CALIFORNIA )  
COUNTY OF ORANGE )  
CITY OF TUSTIN )

I, Eloise Harris, the undersigned, hereby certify that I am the Zoning Administrator Secretary of the City of Tustin, California; that Zoning Administrator Action 10-011 was duly passed and adopted at a regular meeting of the Tustin Zoning Administrator, held on the 8th day of November, 2010.

  
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ELOISE HARRIS  
RECORDING SECRETARY

**EXHIBIT A  
ZONING ADMINISTRATOR ACTION 10-011  
CONDITIONAL USE PERMIT 10-010  
CONDITIONS OF APPROVAL  
13011 NEWPORT AVENUE, #104**

**GENERAL**

- (1) 1.1 The proposed project shall substantially conform with the submitted plans for the project date stamped November 8, 2010, on file with the Community Development Department, as herein modified, or as modified by the Director of Community Development in accordance with this Exhibit.
- (1) 1.2 Conditional Use Permit 10-010 approval shall become null and void unless an Alcoholic Beverage Control License Type "41" is obtained from the State Department of Alcoholic Beverages Control and the sale and consumption of beer and/or wine commences within twelve (12) months of the date of this exhibit. Time extensions may be granted by the Community Development Department if a written request is received by the Community Development Department within thirty (30) days prior to expiration.
- (1) 1.3 The applicant shall be responsible for obtaining the appropriate license (Type 41) license from the State Department of Alcoholic Beverage Control for the type of alcoholic sales authorized for the site (on-sale beer and wine). A copy shall be provided to the Community Development Department prior to the establishment of the use.
- (1) 1.4 All conditions in this Exhibit shall be complied with prior to the establishment of alcoholic beverage sales, subject to review and approval of the Community Development Department.
- (1) 1.5 Approval of Conditional Use Permit 10-010 is contingent upon the applicant and property owner signing and returning to the Community Development Department a notarized "Agreement to Conditions Imposed" form and the property owner signing and recording with the County Clerk-Recorder a "Notice of Discretionary Permit Approval and Conditions of Approval" form. The forms shall be established by the Director of Community Development, and evidence of recordation shall be provided to the Community Development Department. Failure to comply with the conditions of approval shall be grounds for revocation of the conditional use permit.

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**SOURCE CODES**

(1) STANDARD CONDITION

(2) CEQA MITIGATION

(3) UNIFORM BUILDING CODE/S

(4) DESIGN REVIEW

(5) RESPONSIBLE AGENCY REQUIREMENT

(6) LANDSCAPING GUIDELINES

(7) PC/CC POLICY

\*\*\* EXCEPTION

- (1) 1.6 Any violation of any of the conditions imposed is subject to the issuance of an Administrative Citation pursuant to Tustin City Code Section 1162(a).
- (1) 1.7 Conditional Use Permit 10-010 may be reviewed on an annual basis, or more often if necessary, by the Community Development Director. The Community Development Director shall review the use to ascertain compliance with conditions of approval. If the use is not operated in accordance with Conditional Use Permit 10-010, or is found to be a nuisance or negative impacts are affecting the surrounding tenants or neighborhood, the Community Development Director shall impose additional conditions to eliminate the nuisance or negative impacts, or may initiate proceedings to revoke the Conditional Use Permit.
- (1) 1.8 As a condition of approval of Conditional Use Permit 10-010, the applicant shall agree, at its sole cost and expense, to defend, indemnify, and hold harmless the City, its officers, employees, agents, and consultants, from any claim, action, or proceeding brought by a third party against the City, its officers, agents, and employees, which seeks to attack, set aside, challenge, void, or annul an approval of the City Council, the Planning Commission, or any other decision-making body, including staff, concerning this project. The City agrees to promptly notify the applicant of any such claim or action filed against the City and to fully cooperate in the defense of any such action. The City may, at its sole cost and expense, elect to participate in the defense of any such action under this condition.
- (1) 1.9 The applicant shall be responsible for costs associated with any necessary code enforcement action, including attorney's fees, subject to the applicable notice, hearing, and appeal process as established by the City Council by ordinance.

### **USE RESTRICTIONS**

- (1) 2.1 The authorization to serve alcoholic beverages on-site is subject to the use remaining as a restaurant as defined in the City of Tustin Alcoholic Beverage Sales Establishment Guidelines. Any change to the use shall require review and approval by the Community Development Director. This approval authorizes a Type 41 ABC License (on-site beer and wine sales) in conjunction with a bona fide public eating place. Any changes and/or upgrades to the ABC License shall be reviewed and approved by the Community Development Director.
- (1) 2.2 No off-site sale or consumption of alcohol is authorized, except partially consumed bottles of wine as authorized in Business and Professions Code Sections 23396.5 and 23401.

**(1) 2.3** Business hours are limited to the following:

5:30 a.m. to 10:30 p.m., Monday through Saturday;  
6:30 a.m. to 8:00 p.m., Sunday

Hours of sales of beer and wine shall be limited to the hours when food is available. Modifications to the hours of operation may be approved by the Community Development Director if it is determined that no impact to the surrounding tenants or properties will occur.

**(1) 2.4** The menu of the restaurant shall consist of foods that are prepared on the premises.

**(1) 2.5** Any bar area within the restaurant shall function as a food and beverage service bar.

**(1) 2.6** Any live entertainment provided at the project site shall comply with TCC Section 3231 et seq. regarding Live Entertainment.

**(1) 2.7** All persons serving alcoholic beverages within a restaurant establishment must be 18 years of age or older and supervised by someone 21 years of age or older. A supervisor shall be present in the same area as point of sale.

**(1) 2.8** The restaurant shall operate within all applicable Federal, State, and Tustin City Code provisions, including the City of Tustin Noise Ordinance. Any violations of the regulations of the Department of Alcoholic Beverage Control as they pertain to the subject location, or the City of Tustin, as they relate to the sale of alcoholic beverages, may result in the revocation of the subject Conditional Use Permit, as provided in the Tustin City Code.

**(1) 2.9** The gross annual sales receipts shall be provided to the Community Development Department upon request. To verify that the gross annual sales of food exceeds the gross annual sales of alcohol, an audited financial statement shall be provided for review and approved by the Community Development Director upon request or as deemed necessary upon obtaining a business license. If the audited financial statement demonstrates that the sale of alcohol exceeds the sale of food, the sale of alcoholic beverages shall cease upon receiving notice from the City until it can be determined whether the use is operating as a restaurant or a bar that would be subject to distance separation requirements.

**(1) 2.10** No sexually oriented businesses shall be conducted on the premises without approval by the City in accordance with the Tustin City Code.

- (1) 2.11 Business operations shall be conducted in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of Tustin.
- (1) 2.12 No alcoholic beverage shall be sold, served or consumed in the outdoor restaurant seating area without prior approval from the City of Tustin.
- (1) 2.13 Food service shall be available at all times when alcoholic beverages are served.

### **FEES**

- (1, 5) 3.1 Within forty-eight (48) hours of approval of the subject project, the applicant shall deliver to the Community Development Department, a cashier's check payable to the COUNTY CLERK in the amount of fifty dollars (\$50.00) to enable the City to file the appropriate environmental documentation for the project. If within such forty-eight (48) hour period the applicant has not delivered to the Community Development Department the above-noted check, the statute of limitations for any interested party to challenge the environmental determination under the provisions of the California Environmental Quality Act could be significantly lengthened.