



CITY COUNCIL AGENDA REPORT

MEETING DATE: OCTOBER 6, 2009

ITEM NUMBER: _____

SUBJECT: ALCOHOLIC BEVERAGE CONTROL LICENSE FOR TIKI BAR
1700 PLACENTIA AVENUE

DATE: SEPTEMBER 24, 2009

FROM: DEVELOPMENT SERVICES DEPARTMENT

PRESENTATION BY: KIMBERLY BRANDT, AICP, ACTING DEV. SVS. DIRECTOR

FOR FURTHER INFORMATION CONTACT: WENDY SHIH, ASSOCIATE PLANNER (714) 754-5136

RECOMMENDATION:

Adopt the attached resolution finding there is public convenience or necessity for the proposed person to person/premise to premise transfer of a Type 48 (on-sale general - public premises) alcoholic beverage control license for Tiki Bar located at 1700 Placentia Avenue.

BACKGROUND:

Restaurant/Bar Approvals

The property is located in the City's Westside, on the northeast corner of Placentia Avenue and West 17th Street. On December 27, 1982, Planning Commission approved Conditional Use Permit (CUP) ZE-82-189 to allow re-establishment of a restaurant/bar in an existing, nonconforming building with nonconforming parking.

According to City records, the restaurant/bar ceased serving customers in May 2007. However, the CUP approval for a restaurant/bar use is still valid. The CUP runs with the land unless it is revoked or modified by the Commission. Although Tiki Bar has not been operating for over two years, the owner has a valid building permit for interior improvements and current business license.

Alcoholic Beverage License Application

While the CUP for Tiki Bar is still valid, the on-sale ABC license (Type 48) is no longer operative. The previous owner withdrew the ABC license after the business temporarily closed in 2007.

On September 1, 2009, the ABC Department notified the City that Kyle Raymond Kontny of NOTKON LLC applied to transfer a Type 48 ABC license from the City of Anaheim to this location. This person to person/premise to premise transfer of the on-sale ABC license from the Anaheim restaurant to the Tiki Bar location is necessary to reopen the Tiki Bar as a restaurant/bar where alcoholic beverages are served.

Public Convenience or Necessity Finding Requirement

ABC Department indicated that this census tract has an "undue concentration" of on-sale alcoholic beverage licenses because the ratio of the number of alcoholic beverage licenses to population within the census tract exceeds the countywide ratio.

State Law requires that the City Council make a PCN finding for the transfer of the on-sale ABC license in an area of overconcentration of on-sale licenses. Other than the PCN finding, no other discretionary approval from the City is required to reopen the Tiki Bar.

State Law Requirements – 90 Day Application Period

State Law requires ABC to make a decision on the license, within 90 days of notification of a completed application. The full observance of the 90-day processing time is dependent on City action on the request, as follows:

- The City takes action that that public convenience or necessity would be served by the issuance. It is not necessary to wait the full 90 days once the City takes action, and ABC may make a decision on the license.
- The City takes action to forego the option to make the PCN finding and require the applicant show that public convenience or necessity would be served. It is not necessary to wait the full 90 days once the City takes action, and ABC may make a decision on the license.
- The City does not take action, and the applicant is then required to show that the public convenience or necessity would be served. The full 90 day review period must lapse before ABC makes a decision on the license.

ANALYSIS:

Following are justifications for City Council to make the PCN finding:

- In consultation with the Police Department, Planning staff reviewed the history of the Tiki Bar operations and found that there were no previous problems associated with the alcohol beverage service at the establishment. A building permit was issued for interior tenant improvements, and progress continues for the completion of permitted improvements. There are currently no code enforcement violations.
- If Council takes action to make the PCN finding, this action will eliminate the required 90 day processing time to render a decision on the license. The applicant could obtain a license by early October 2009 to coincide with the tentative opening date of Tiki Bar.

ALTERNATIVES CONSIDERED:

City Council may consider the following options:

1. Take action and make a finding of public convenience or necessity. This would allow ABC to issue the license based on the City's finding of public convenience or necessity by early October 2009. (Resolution, Attachment 1A)
2. Take action and forgo City's option to make a finding of public convenience or necessity. This action would place the burden of proof on the applicant, but ABC would not need to observe the full 90-day review period. If the applicant shows ABC that public convenience or necessity would be served, ABC could issue the license by early October 2009. (Resolution, Attachment 1B)
3. Take no action. This action would place the burden of proof on the applicant, but ABC could not issue the license until the 90-day processing period has lapsed (December 1, 2009).

FISCAL REVIEW:

Fiscal review is not required for this item.

LEGAL REVIEW:

The City Attorney's office approved the attached resolution as to form.

CONCLUSION:

The State Department of ABC requires a determination from the City Council with regard to a finding of public convenience or necessity prior to issuance of a license transfer for Tiki Bar. Planning staff and the Police Department have verified that there are no related code enforcement or law enforcement matters that would preclude the issuance of the ABC license transfer.

Council may make the PCN finding or forgo the option to make the PCN finding to allow ABC to render a decision by early October 2009. If the Council takes no action, ABC will continue to process the application after December 1, 2009.

Mel La For

WENDY SHIH
Associate Planner

Kimberly Brandt

KIMBERLY BRANDT, AICP
Acting Development Services Director

DISTRIBUTION: City Manager
Assistant City Manager
City Attorney
Public Services Director
City Clerk (2)
Staff (4)
File (2)

NOTKON LLC
1700 Placentia Avenue
Costa Mesa, CA 92627

- ATTACHMENTS:
1. City Council Resolutions
 2. ABC license application
 3. City Council Policy No. 500-8

File: 1009091700Placentia(ABC)	Date: 092409	Time: 3:30 p.m.
--------------------------------	--------------	-----------------

RESOLUTION NO. 09-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, FINDING PUBLIC CONVENIENCE OR NECESSITY FOR THE PROPOSED PERSON TO PERSON/PREMISE TO PREMISE TRANSFER OF A TYPE 48 (ON-SALE GENERAL - PUBLIC PREMISES) ALCOHOLIC BEVERAGE CONTROL LICENSE FOR TIKI BAR AT 1700 PLACENTIA AVENUE.

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, the State Department of Alcoholic Beverage Control (ABC) notified the City on September 1, 2009, that NOTKON LLC has filed an application for person-to-person and premise-to-premise transfer an existing type 48 (on-sale general – public premises) alcoholic beverage license at 1700 Placentia Avenue;

WHEREAS, the City Council received this application on September 15, 2009, under written communications;

WHEREAS, the census tract that contains this property has an “undue concentration” of on-sale alcoholic beverage licenses and pursuant to California Business and Professions Code Section 23958.4(b)(2), ABC may issue the license if the City either makes a determination within 90 days of notification of a completed application that a public convenience or necessity would be served or foregoes the option to make the finding, in which case the burden of proof would be upon the applicant to show ABC that a public convenience or necessity would be served;

WHEREAS, consistent with Council Policy 500-8, Planning staff and the Police Department have verified that there are no historic problems associated with alcoholic beverage service at the establishment, and there are no related code enforcement or law enforcement matters that would preclude the issuance of the ABC license transfer.

BE IT RESOLVED that the City Council HEREBY finds public convenience or necessity for the proposed person to person/premise to premise transfer of a Type 48 on-sale ABC license to Tiki Bar at 1700 Placentia Avenue.

PASSED AND ADOPTED this 6th day of October 2009.

ALLAN MANSOOR
MAYOR, CITY OF COSTA MESA

ATTEST:

APPROVED AS TO FORM:

CITY CLERK OF THE
CITY OF COSTA MESA

CITY ATTORNEY

RESOLUTION NO. 09-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, FOREGOING THE OPTION TO MAKE A FINDING OF PUBLIC CONVENIENCE OR NECESSITY FOR THE PROPOSED PERSON TO PERSON/PREMISE TO PREMISE TRANSFER OF A TYPE 48 (ON-SALE GENERAL - PUBLIC PREMISES) ALCOHOLIC BEVERAGE CONTROL LICENSE FOR TIKI BAR AT 1700 PLACENTIA AVENUE.

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, the State Department of Alcoholic Beverage Control (ABC) notified the City on September 1, 2009, that NOTKON LLC has filed an application for person-to-person and premise-to-premise transfer of an existing type 48 (on-sale general – public premises) alcoholic beverage license at 1700 Placentia Avenue;

WHEREAS, the City Council received this application on September 15, 2009, under written communications;

WHEREAS, the census tract that contains this property has an “undue concentration” of on-sale alcoholic beverage licenses and pursuant to California Business and Professions Code Section 23958.4(b)(2), ABC may issue the license if the City either makes a determination within 90 days of notification of a completed application that a public convenience or necessity would be served or foregoes the option to make the finding, in which case the burden of proof would be upon the applicant to show ABC that a public convenience or necessity would be served;

BE IT RESOLVED that the City Council HEREBY FOREGOES the option to make a finding of public convenience or necessity for the proposed person to person/premise to premise transfer of a Type 48 on-sale ABC license to Tiki Bar at 1700 Placentia Avenue.

PASSED AND ADOPTED this 6th day of October 2009.

ALLAN MANSOOR
MAYOR, CITY OF COSTA MESA

ATTEST:

APPROVED AS TO FORM:

CITY CLERK OF THE
CITY OF COSTA MESA

CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above Council Resolution No. 09- __ was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on the 6th day of October 2009.

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this __ day of _____, 2009.

RESOLUTION NO. 09-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, FINDING PUBLIC CONVENIENCE OR NECESSITY FOR THE PROPOSED PERSON TO PERSON/PREMISE TO PREMISE TRANSFER OF A TYPE 48 (ON-SALE GENERAL - PUBLIC PREMISES) ALCOHOLIC BEVERAGE CONTROL LICENSE FOR TIKI BAR AT 1700 PLACENTIA AVENUE.

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, the State Department of Alcoholic Beverage Control (ABC) notified the City on September 1, 2009, that NOTKON LLC has filed an application for person-to-person and premise-to-premise transfer an existing type 48 (on-sale general – public premises) alcoholic beverage license at 1700 Placentia Avenue;

WHEREAS, the City Council received this application on September 15, 2009, under written communications;

WHEREAS, the census tract that contains this property has an “undue concentration” of on-sale alcoholic beverage licenses and pursuant to California Business and Professions Code Section 23958.4(b)(2), ABC may issue the license if the City either makes a determination within 90 days of notification of a completed application that a public convenience or necessity would be served or foregoes the option to make the finding, in which case the burden of proof would be upon the applicant to show ABC that a public convenience or necessity would be served;

WHEREAS, consistent with Council Policy 500-8, Planning staff and the Police Department have verified that there are no historic problems associated with alcoholic beverage service at the establishment, and there are no related code enforcement or law enforcement matters that would preclude the issuance of the ABC license transfer.

BE IT RESOLVED that the City Council HEREBY finds public convenience or necessity for the proposed person to person/premise to premise transfer of a Type 48 on-sale ABC license to Tiki Bar at 1700 Placentia Avenue.

PASSED AND ADOPTED this 6th day of October 2009.

ALLAN MANSOOR
MAYOR, CITY OF COSTA MESA

ATTEST:

APPROVED AS TO FORM:

CITY CLERK OF THE
CITY OF COSTA MESA

CITY ATTORNEY

RESOLUTION NO. 09-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, FOREGOING THE OPTION TO MAKE A FINDING OF PUBLIC CONVENIENCE OR NECESSITY FOR THE PROPOSED PERSON TO PERSON/PREMISE TO PREMISE TRANSFER OF A TYPE 48 (ON-SALE GENERAL - PUBLIC PREMISES) ALCOHOLIC BEVERAGE CONTROL LICENSE FOR TIKI BAR AT 1700 PLACENTIA AVENUE.

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, the State Department of Alcoholic Beverage Control (ABC) notified the City on September 1, 2009, that NOTKON LLC has filed an application for person-to-person and premise-to-premise transfer of an existing type 48 (on-sale general – public premises) alcoholic beverage license at 1700 Placentia Avenue;

WHEREAS, the City Council received this application on September 15, 2009, under written communications;

WHEREAS, the census tract that contains this property has an “undue concentration” of on-sale alcoholic beverage licenses and pursuant to California Business and Professions Code Section 23958.4(b)(2), ABC may issue the license if the City either makes a determination within 90 days of notification of a completed application that a public convenience or necessity would be served or foregoes the option to make the finding, in which case the burden of proof would be upon the applicant to show ABC that a public convenience or necessity would be served;

BE IT RESOLVED that the City Council HEREBY FOREGOES the option to make a finding of public convenience or necessity for the proposed person to person/premise to premise transfer of a Type 48 on-sale ABC license to Tiki Bar at 1700 Placentia Avenue.

PASSED AND ADOPTED this 6th day of October 2009.

ALLAN MANSOOR
MAYOR, CITY OF COSTA MESA

ATTEST:

APPROVED AS TO FORM:

CITY CLERK OF THE
CITY OF COSTA MESA

CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, City Clerk and ex-officio Clerk of the City Council of the City of Costa Mesa, hereby certify that the above Council Resolution No. 09- __ was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on the 6th day of October 2009.

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the Seal of the City of Costa Mesa this __ day of _____, 2009.

ATTACHMENT 2

Department of Alcoholic Beverage Control

State of California

APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE(S)

ABC 211 (6/99)

TO: Department of Alcoholic Beverage Control
 605 W. Santa Ana Blvd.
 Bldg. 28, Ste. 369
 Santa Ana, CA 92701
 (714)558-4101

File Number: **482523**
 Receipt Number: **1729541**
 Geographical Code: **3004**
 Copies Mailed Date: **September 1, 2009** *B*
 Issued Date: **Received**

**City of Costa Mesa
 Development Services Department**

DISTRICT SERVING LOCATION: SANTA ANA
First Owner: NOTKON LLC
Name of Business: TIKI BAR
Location of Business: 1700 PLACENTIA AVE
COSTA MESA, CA 92627-4417
County: ORANGE
Is premise inside city limits? Yes **Census Tract** 0636.05

SEP - 3 2009

Mailing Address:
 (If different from premises address)

Type of license(s): 48

Transferor's license/name: 396398 / ABEE RESTAURA **Dropping Partner:** Yes No

<u>License Type</u>	<u>Transaction Type</u>	<u>Fee Type</u>	<u>Master</u>	<u>Dup</u>	<u>Date</u>	<u>Fee</u>
48 ON-SALE GENERAL	<i>Supplemental</i> PERSON TO PERSON TRANSF	P40	Y	0	08/31/09	\$1,250.00
48 ON-SALE GENERAL	ANNUAL FEE	P40	Y	0	08/31/09	\$847.00
48 ON-SALE GENERAL	STATE FINGERPRINTS	NA	N	4	08/31/09	\$156.00
48 ON-SALE GENERAL	FEDERAL FINGERPRINTS	NA	N	4	08/31/09	\$96.00
48 ON-SALE GENERAL	EXCHANGE LICENSE	P40	Y	0	08/31/09	\$100.00
48 ON-SALE GENERAL	PREMISE TO PREMISE TRANS	P40	Y	0	08/31/09	\$100.00
Total						\$2,600.00

Have you ever been convicted of a felony? **No**

Have you ever violated any provisions of the Alcoholic Beverage Control Act, or regulations of the Department pertaining to the Act? **No**

Explain any "Yes" answer to the above questions on an attachment which shall be deemed part of this application.

Applicant agrees (a) that any manager employed in an on-sale licensed premise will have all the qualifications of a licensee, and (b) that he will not violate or cause or permit to be violated any of the provisions of the Alcoholic Beverage Control Act.

STATE OF CALIFORNIA

County of ORANGE

Date: August 31, 2009

Under penalty of perjury, each person whose signature appears below, certifies and says: (1) He is an applicant, or one of the applicants, or an executive officer of the applicant corporation, named in the foregoing application, duly authorized to make this application on its behalf; (2) that he has read the foregoing and knows the contents thereof and that each of the above statements therein made are true; (3) that no person other than the applicant or applicants has any direct or indirect interest in the applicant or applicant's business to be conducted under the license(s) for which this application is made; (4) that the transfer application or proposed transfer is not made to satisfy the payment of a loan or to fulfill an agreement entered into more than ninety (90) days preceding the day on which the transfer application is filed with the Department or to gain or establish a preference to or for any creditor or transferor or to defraud or injure any creditor of transferor; (5) that the transfer application may be withdrawn by either the applicant or the licensee with no resulting liability to the Department.

Applicant Name(s)

Applicant Signature(s)

NOTKON LLC

See 211 Signature Page

211 sig, 211A, 227, 209 attached

This is a supplemental App. Please ref Fee from Lic # 478344 receipt # 1712728 to this Lic # 482523 receipt # 1729541.

ATTACHMENT 3

CITY COUNCIL POLICY NO. 500-8

PURPOSE:

The purpose of this policy is to establish a clear and efficient process for review of applications for new liquor licenses and transfers of existing liquor licenses, and for filing of protest and accusations letters by City Council.

PROCEDURE:

Sec. 1 When notice of an application for a liquor license, or transfer thereof, is received by any officer or employee of the City of Costa Mesa, the notice shall be stamped with the date received and promptly delivered to the Director of Development Services or his or her designee.

Sec. 2 Upon receipt of the notice, the Director shall transmit a copy of the notice to the Police Chief or his or her designee with a request for information necessary to make findings provided herein. The Police Chief and Director shall prepare a report on the application and shall transmit said report to the decision-making body or person, as provided herein.

Sec. 3 Upon receipt of the notice and report by the Director and Police Chief on the application, the decision-making body or person may make findings appropriate for the type of application or take no action within its sole discretion as provided herein.

Sec. 4 The following liquor license transactions shall be processed by the Planning Division, after consultation with the Police Department; no finding of public convenience or necessity is required except for premises-to-premises transfer of a license for a business remaining in the same building but relocating to a different suite:

- Person-to-person transfer
- Stock transfer
- Drop partner(s)
- Add partners(s)
- New or premises-to-premises transfer of license for bona fide eating place that is a permitted use under the zoning code (the business is closed from 11 p.m. to 6 a.m. and does not have live entertainment)
- Premises-to-premises transfer of off-sale license for business that will remain in the same building but is relocating to a new suite.

- a. If the Planning Division and Police Department find that there has not been a history of problems related to the alcohol establishment or the applicant, the Planning Division shall forward the application to the City Clerk for inclusion in the City Council reading folder.
- b. If the Planning Division and Police Department find that there has been a history of problems related to the alcohol establishment or the applicant, the Planning Division shall forward the application to the City Clerk for inclusion on the next available City Council agenda under "New Business."

Sec. 5 Land uses involving the following liquor license transactions require approval of a conditional use permit (CUP) or minor conditional use permit (MCUP):

- New or premises-to-premises transfer of on-sale establishment (restaurant, bar, nightclub, etc.) that will be open between 11 p.m. and 6 a.m. or that proposes live entertainment.
- Change of license from bona-fide eating place to a "public premises" (bar) that is open between 11 p.m. and 2 a.m.
- New mini-market, liquor store or convenience store.
- Sale of alcoholic beverages in conjunction with the sale of gasoline.
- Premises-to-premises transfer of off-sale license, if in conjunction with an action requiring review by the Zoning Administrator or Planning Commission.

The Planning Commission or Zoning Administrator may make a finding of public convenience or necessity, as provided for in Business and Professions Code (BPC) Section 23817.7 or 23958.4(b)(2), in conjunction with action on the CUP or MCUP. The Planning Commission shall transmit notice of its decision to the City Council within five (5) days of the decision. The Zoning Administrator shall transmit notice of his or her decision to both the Planning Commission and the City Council within five (5) days of the decision. Such decision may be appealed by an interested party or called up for review by the Planning Commission or City Council within seven (7) days of the date of the notice of the decision, in accordance with procedures set forth in Costa Mesa Municipal Code Section 2-300 et seq.

Sec. 6 The following liquor license transactions shall be referred to the City Council for determination of a finding of public convenience or necessity as provided for in BPC Section 23817.7 or 23958.4(b)(2):

- New on-sale licenses for existing bars, and off-sale licenses for businesses not included in section 4 or 5 of this policy.
- Premise-to-premise transfer of off-sale licenses not included in section 4 or 5 of this policy.

Sec. 7 With regard to an application for an original liquor license or transfer of an existing liquor license not covered in Sections 4, 5 or 6 (including a person-to-person transfer), or an existing licensed premises without a pending application, City Council or the Police Chief may file a protest letter pursuant to BPC Sec. 24013 or an accusation letter pursuant to BPC Sec. 24203, where either the City Council or the Police Chief find that reasonable or probable cause exist to request the denial of the application or revocation of an existing license pursuant to BPC Sec. 24013, 24200, and 24203.

Sec. 8 Where the thirty (30) day period to file a protest letter may expire before consideration by the City Council or Police Chief of those licenses discussed under Sections 4, 5, 6 or 7, the Police Chief or his or her designee is authorized to file a letter requesting an extension with the Department of Alcohol Beverage Control pursuant to BPC Sec. 23987.

Sec. 9 Upon the City Council making a determination to file a protest or accusation letter, the City Clerk or Police Chief shall promptly transmit a letter of such protest or accusation, signed by the authorized officer, to the Department of Alcoholic Beverage Control. The letter of protest or accusation should be in a form approved by the City Attorney. Upon filing of a letter of protest or accusation, all pertinent records on such premises and notices shall be transmitted to the City Attorney for prosecution at the protest or accusation hearing.

Sec. 10 For a protest or revocation letter under Sections 7 and 8, the ground or grounds to support a denial of an application or revocation of a license include, but are not limited to the following grounds:

- a) The continuance of the license would be contrary to the public welfare or morals;
- b) A violation of the Revenue and Taxation Code and any rules of the ABC Department;
- c) A misrepresentation of material fact by the applicant in obtaining a license;
- d) A conviction of a public offense involving moral turpitude or federal law relating to alcoholic beverages;
- e) Failure to take reasonable steps to correct objectionable conditions at the licensed premises, any public sidewalk abutting the licensed premises, or immediately adjacent area that is owned, leased or rented by licensee which constitutes a public nuisance, within a reasonable time after receipt of notice to correct such conditions by either ABC Department, District Attorney, City Attorney or County Counsel:
 - 1) "Objectionable conditions" under subsection (e) includes, but is not limited to, disturbance of the peace, public drunkenness, drinking in public, harassment of passerby, gambling, prostitution, loitering, public urination, lewd conduct, drug trafficking or excessive loud noise;
 - 2) "Any public sidewalk abutting a licensed premises" under subsection (e) includes the publicly owned, pedestrian traveled way, not more than 20 feet from the premises, that is located between the licensed premises and immediately adjacent area owned, leased or rented by the licensee, and a public street;
 - 3) "Reasonable steps" under subsection (e) include calling the police (timely calls to police cannot be construed as evidence of objectionable conditions) and requesting persons to leave the premises that are contributing to the objectionable conditions.

Sec. 11 Where desired, City Council may recommend conditions of approval applicable to the sales of alcoholic beverages. These conditions shall be forwarded to ABC by the City Clerk's office.