

ATTACHMENT 2

RESOLUTION NO. PC 24-13

A RESOLUTION OF THE MANHATTAN BEACH PLANNING COMMISSION APPROVING A USE PERMIT AMENDMENT TO ALLOW THE EXPANSION OF AN EXISTING EATING AND DRINKING ESTABLISHMENT TO INCLUDE SECOND STORY OUTDOOR DINING IN CONJUNCTION WITH ON-SITE SALES AND SERVICE OF ALCOHOL (BEER, WINE, AND DISTILLED SPIRITS) AND LIVE ENTERTAINMENT LOCATED AT 309 MANHATTAN BEACH BOULEVARD, AND FINDING THE PROJECT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

THE MANHATTAN BEACH PLANNING COMMISSION DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. On March 17, 2019, the Planning Commission adopted Resolution No. PC 19-03, approving a Use Permit Amendment (amending and superseding the previous Use Permit) to allow a major remodel of the existing restaurant on the ground floor at an existing two-story, mixed-use building located at 309 Manhattan Beach Boulevard ("Property").

SECTION 2. On June 9, 2023, Greg Newman ("Applicant") applied for a Use Permit Amendment and Coastal Development Permit to allow for the expansion of an existing eating and drinking establishment, including second story outdoor dining, on-site sales and service of alcohol, and live entertainment in conjunction with food service ("Project"). Pursuant to the Manhattan Beach Local Coastal Program ("LCP"), the existing first story use and proposed use for both the first and second stories are classified as eating and drinking establishments.

SECTION 3. Use permits and amendments thereto are governed by Chapter A.84 of the LCP. Section A.84.010 specifies that, "[U]se permits are required for use classifications typically having unusual site development features or operating characteristics requiring special consideration so that they may be designed, located, and operated compatibly with uses on adjoining properties and in the surrounding area." The Applicant's request includes modifications to existing conditions of approval, specifically that the business wishes to expand the restaurant use to the second story of the existing building, including a second-story outdoor dining area, alcohol service and sales and live entertainment, thus a use permit amendment is required.

SECTION 4. Coastal development permits thereto are governed by Chapter A.96 of the LCP. Section A.96.40 specifies that, "Except as provided by Section A.96.050, any person, partnership, or corporation, or state or local government agency wishing to undertake any development, as defined in Section A.96.030, in the CZ District, shall obtain a Coastal Development Permit in accordance with the provisions of this chapter, in addition to any other permit required by law." The subject request includes an intensification of the existing restaurant use by expanding it from the first floor to also occupy the second story as proposed.

SECTION 5. On October 9, 2024, the Planning Commission conducted a duly noticed public hearing to consider the Project, during which the Planning Commission received a presentation by staff and testimony from the Applicant, and provided an opportunity for the public to provide evidence and testimony. The Planning Commission also received and reviewed written testimony received by the City prior to the public hearing.

SECTION 6. The Planning Commission finds that the Project qualifies for a Categorical Exemption from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301 (Existing Facilities), a Class 1 exemption, as well as Section 15303 (New Construction or Conversion of Small Structures), a Class 3 exemption. The request, which consists of a negligible expansion of an existing restaurant use at an existing building and a change of use from residential to commercial, in order to expand that use, (with minor exterior changes to the existing structure) it is consistent with both the definition of existing facilities and the conversion of small structures. There are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances. Thus, no further environment review is necessary.

SECTION 7. The record of the public hearing indicates:

- A. The legal description of the Property is: Lot 3, in Block 92 of Manhattan Beach Division No. 2, in the City of Manhattan Beach. The Property is located in Area District III and is zoned Downtown Commercial (CD), with a General Plan land use designation of Downtown Commercial. The Property is within the appealable portion of the City's Coastal Zone, and surrounding properties are zoned CD on all sides.

- B. The use is conditionally permitted in the CD zoning district subject to a use permit and is in compliance with the City's General Plan designation of Downtown Commercial. The General Plan designation encourages the Downtown Commercial land use category to "provide locations for a mix of commercial businesses, residential uses with discretionary review, and public uses, with a focus on pedestrian-oriented commercial businesses that serve Manhattan Beach residents."
- C. A Coastal Development Permit is required for the proposed project because it involves an intensification of the existing restaurant use within the City's Coastal Zone.
- D. The Property is currently governed by a Use Permit Amendment approved by the Planning Commission in 2019 (Resolution No. PC 19-03).
- E. The Project is consistent with following General Plan goals and policies, as described in the staff report prepared for the Project:

Land Use Plan Goal LU-6: Maintain the viability of the commercial areas of Manhattan Beach.

The viability of commercial areas depends on a range of factors, including having various types of services and restaurants. The proposed eating and drinking establishment expansion will continue to offer dining options to the community and visitors to support the Downtown commercial businesses.

Land Use Plan Policy LU-6.1: Support and encourage small businesses throughout the City.

Allowing the existing eating and drinking establishment to expand enhances the viability of the business. Many other existing eating and drinking establishments in the Downtown have undergone tenant improvements and expansions over time, including those with on-site sales and service of alcohol, and those with live entertainment. The applicant's request is consistent with such uses.

Land Use Plan Policy LU-6.2: Encourage a diverse mix of businesses that support the local tax base, are beneficial to residents, and support the economic needs of the community.

Downtown Manhattan Beach has a mix of restaurants and services. The expansion of the existing restaurant could attract more patrons to the eating and drinking establishment. Eating and drinking establishments are required to collect sales tax, a portion of which goes back to the City.

Land Use Plan Goal LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach.

Downtown Manhattan Beach has a variety of commercial uses including, but not limited to, coffee shops, restaurants, and retail stores. As proposed, the expanded eating and drinking establishment is complimentary to these uses, as patrons may visit other Downtown businesses, thus contributing to the economic vitality of Downtown Manhattan Beach.

Land Use Plan Policy LU-7.4: Encourage first-floor street front businesses with retail, restaurants, service/commercial, and similar uses to promote lively pedestrian activity on Downtown streets, and consider providing zoning regulations that support these uses.

The existing use is a first-floor eating and drinking establishment use, with the business's façade facing a commercial corridor (Manhattan Beach Boulevard) in the heart of Downtown Manhattan Beach. The eating and drinking establishment will be open during daytime and nighttime hours, encouraging pedestrian activity. The applicant is maintaining the existing ground floor dining area adjacent to the sidewalk, thus continuing to encourage a lively environment on the street.

SECTION 8. Based upon substantial evidence in the record, and pursuant to Section 10.84.060 of the MBMC, the Planning Commission hereby makes the following findings related to the Use

Permit Amendment:

- A. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located for the following reasons:

The subject site is currently permitted as a restaurant on the first floor and residential use on the second floor at an existing mixed-use building in the CD zoning district. The applicant is proposing to expand the existing restaurant onto the second floor, which would change the use from residential to eating and drinking establishment. In association with the proposed restaurant expansion, the project scope also includes extending the sales and service of alcohol for on-site consumption to the second story as well as the ability to have live entertainment upstairs. As a result, the subject site would undergo a change of use, by removing the residential use and maintaining only a restaurant use at the site. As stated in the MBLCP Section 10.16.020, an "Eating and Drinking Establishment" use is permitted through a Use Permit in the CD zoning district. The first entitlement approved for this type of use at the subject site was on August 14, 1984, through adoption of Board of Zoning Adjustment Resolution No. BZA 84-37. The applicant proposes to maintain an eating and drinking establishment use at the site, with more limited hours of operation for the proposed expansion area on the second floor. The subject request does not alter the primary use of this commercially-zoned property.

- B. The proposed location of the use and the proposed conditions under which the uses would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project site or in or adjacent to the neighborhood of such uses; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the city for the following reasons:

The General Plan encourages a "vibrant downtown" that offers "services and activities for residents and visitors." The Property's General Plan land use designation is Downtown Commercial. Eating and drinking establishment uses are consistent with the intended mix of uses in the Downtown District. The Project is compatible with neighboring uses, as neighboring lots to the north, south, west, and east are all developed with commercial uses. Furthermore, the Project was reviewed by the Building & Safety and Traffic divisions, the Public Works, Police, and Fire Departments, and Waste Management, none of which raised concerns or objections. Therefore, the Project will not be detrimental to the public health, safety or welfare of persons residing or working on the site, or in or adjacent to the neighborhood of such use and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City.

When taken together, the requested physical and operational changes described above (expansion of restaurant use to the second floor with an outdoor dining area, with the sales and service of alcohol and indoor live entertainment) do not result in a significant intensification of use because the site will continue operating as an eating and drinking establishment. Additionally, the building is on a commercial street, is not adjacent to any residential uses, and would operate in a similar manner to other eating and drinking establishments in the vicinity, and conditions of approval, including conditions regarding hours of operation and operational standards related to entertainment and noise have been proposed to address any potentially adverse impacts.

- C. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed uses in the district in which they would be located for the following reasons:

The Project proposes to change the use of the second floor of the existing building from a residential use to an eating and drinking establishment, which is the same use already permitted on the first floor through the existing Use Permit. Per MBLCP Section A.16.020, the CD zoning district allows "Eating and Drinking Establishment" uses, which includes sit-down restaurants, through the approval of a use permit. A Use Permit Amendment is also required when a proposed project requires changes to the original Use Permit's conditions of approval.

The restaurant is a commercial use that is existing-to-remain at the site. The project scope is limited to expanding the first floor restaurant use to also occupy the second floor. Conditions of approval have been proposed which will ensure compliance with the required findings for a Use Permit and serve as an additional governing entitlement (in conjunction with the existing Resolution No. PC 19-03) for the development and operation of the subject site.

- D. The proposed use will not adversely impact or be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated for the following reasons:

The proposed use is located on a previously developed site along Manhattan Beach Boulevard and is consistent with uses surrounding the site, which include commercial uses. Project characteristics related to parking, noise, vibration, odors, security, personal safety, and aesthetics are addressed in the project design, Municipal Code requirements, and conditions of approval. Furthermore, the use will not create demands exceeding the capacity of public services and facilities.

The applicant contracted a transportation consultant to prepare a parking analysis, which analyzed the amount of additional parking required by the code based on the project request, provided an explanation and copy of the required off-site parking lease because the site cannot accommodate the additional parking required for the expansion, and analyzed the appropriateness of the proposed off-site parking location. The applicant also contracted an acoustic consultant to prepare an acoustic analysis for the proposed expansion. This study analyzed the project's potential noise impacts and proposed a sound attenuation plan. Measures outlined in the sound attenuation plan are included as conditions of approval for the Project in order to address potential adverse impacts.

SECTION 9. Based upon substantial evidence in the record, and pursuant to Section A.96.150 of the LCP, the Planning Commission hereby makes the following findings related to the Coastal Development Permit:

- A. The project, as described in the application and accompanying material, or as modified by any conditions of approval, conforms with the certified LCP.

The subject site is located within Area District III and zoned Downtown Commercial (CD). The General Plan and Local Coastal Program/Land Use Plan designation for the property is Downtown Commercial, which "provides locations for a mix of commercial businesses, residential uses with discretionary review, and public uses, with a focus on pedestrian-oriented commercial businesses that serve Manhattan Beach residents." The proposed eating and drinking establishment use for the second floor is allowed through a Use Permit in the CD zoning district and is consistent with the City's General Plan land use designation. As such, the project as conditioned conforms with the City's certified LCP.

- B. If the project is located between the first public road and the sea, that the project is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (Commencing with Section 30200 of the Public Resources Code).

As the project site is located east of Ocean Drive, it is not located between the first public road and the sea; therefore, it is not subject to this finding. Further, the structure does not impact public access to the shoreline. Adequate public access is provided and shall be maintained along Manhattan Beach Boulevard, Morningside Drive, Highland Avenue, and Center Place. Furthermore, the project does not create any barriers along Manhattan Beach Boulevard, Morningside Drive, Highland Avenue, and Center Place that prevent public access to the coast.

SECTION 10. Based upon the foregoing, the Planning Commission hereby APPROVES the Project, subject to the conditions below.

General

1. All conditions applied to Planning Commission Resolution No. PC 19-03 remain in full effect unless expressly modified by the conditions contained herein.
2. The Project shall be in substantial conformance with the plans and project description submitted to, and approved by, the Planning Commission on October 9, 2024, as amended by these conditions. Any substantial deviation from the approved plans and project description, as conditioned, shall require review by the Community Development Director to determine if further approval from the Planning Commission is required.
3. Any questions of intent or interpretation of any condition will be reviewed by the

Community Development Director to determine if further Planning Commission review and action is required.

4. At any time in the future, the Planning Commission or City Council may review the Use Permit for the purpose of revocation or modification in accordance with the requirements of the Manhattan Beach Municipal Code ("MBMC") Chapter 10.104. Modification may consist of conditions deemed reasonable to mitigate or alleviate impacts to adjacent land uses.
5. Community Development Department staff shall be allowed to inspect the Property at any time to determine compliance with the conditions imposed and Local Coastal Program requirements.
6. Modifications and improvements to the Tenant Space shall be in compliance with applicable Planning Division, Building Division, Public Works, Waste Management, Fire Department, and Health Department regulations, when applicable, and all other applicable codes and regulations (California Building Code, MBMC, etc.).

Operational

7. The Project shall be operated in conformance with all applicable provisions of the MBMC, MBLCP, and this Use Permit Amendment and Coastal Development Permit.
8. The first and second floors shall operate as one restaurant.
9. Hours of operation for the second story shall be limited to:

Indoor: 4:00 p.m. – 12:00 a.m. midnight daily
Outdoor: 4:00 p.m. – 10:00 p.m. daily

Hours of operation may be amended without a use permit amendment pursuant to Condition 20.

10. Live entertainment on the second story shall be permitted indoor only and limited to no more than five musicians and/or vocalists. The patio doors and windows shall be closed when live entertainment is occurring. The windows and doors shall have Sound Transmission Class (STC) rating of at least 30.
11. Live entertainment, amplified sound, and speakers are prohibited at the outdoor dining area.
12. Speakers inside the restaurant shall face inward towards the dining room, rather than towards the outdoor dining area. This condition applies to both the first and second stories.
13. A minimum 6-foot high glass panel shall be installed immediately adjacent to the wooden slats on the south-facing (front) side of the building. The panel shall have a minimum STC as prescribed by an acoustic engineer.
14. Noise emanating from the Property shall be within the limitations prescribed by the City's Noise Ordinance at all times, as specified in Chapter 5.48 of the MBMC, and shall not create a nuisance to nearby residents and property owners.
15. The kitchen shall remain open, and food shall be available for purchase, at all times when alcohol is available for purchase.
16. The applicant shall be allowed to operate indoors on the second floor until 2:00 a.m. and outdoor until 11:00 p.m. seven days a week for a trial period of 12 months from the time operation of the second-floor use commences. Prior to expiration of the 12-month period, the applicant may request that the Planning Commission consider at a noticed public hearing that the hours for the trial period shall supersede the hours in Condition No. 9, and determine if revisions to the conditions of approval are warranted.

Parking

17. Three parking stalls are required for the second-floor expansion of the existing eating and drinking establishment use.
18. A minimum of three parking stalls shall be provided and maintained off-site in accordance with the provisions of LCP Chapter A.64. Should any of the parking spaces provided for compliance with this condition become inaccessible or unusable during the life of the use, the Community Development Department shall be notified in writing immediately and this Use Permit and Coastal Development Permit shall become subject to

19. revocation/modification action within 30 days if replacement parking is not obtained.
20. This Use Permit Amendment and Coastal Development Permit shall not become effective until an executed copy of the off-site parking lease demonstrating compliance with the conditions above is submitted to the Community Development Department.
21. Should the operator obtain additional off-site parking stalls that are available prior to 4:00 p.m., then the operator may extend their hours of operation to allow daytime use prior to 4:00 p.m., subject to review and approval by the Community Development Director. Prior to extending the daytime operating hours, the operator shall submit an executed parking lease and parking plan (in accordance with the provisions of LCP Chapter 10.64) to the Community Development Department for review and approval.

Alcohol

22. The existing Type 47 ABC license must be modified through the California Department of Alcoholic Beverage Control ("ABC") to expand the licensed premises to include the second story (including the outdoor dining area) prior to commencement of sales and service of distilled spirits on the second story.
23. The operation shall abide by all ABC license requirements and conditions at all times. If conflicts exist between conditions contained in the ABC license and those contained in this Use Permit Amendment, the more stringent conditions shall govern.
24. Alcohol service shall only be allowed within the enclosed building and in outdoor dining areas located on private property unless amendments to the LCP allow for alcohol service in the public right-of-way adjacent to the Tenant Space.

Procedural

25. Terms and Conditions are Perpetual; Recordation of Covenant. The provisions, terms and conditions set forth herein are perpetual, and are binding on the owner, its successors-in-interest, and, where applicable, all tenants and lessees of the site. Further, the owner shall submit the covenant, prepared and approved by the City, indicating its consent to the conditions of approval of this Resolution, and the City shall record the covenant with the Office of the County Clerk/Recorder of Los Angeles. Owner shall deliver the executed covenant, and all required recording and related fees, to the Community Development Department within 45 calendar days of receipt of a signed copy of this Resolution. Notwithstanding the foregoing, the Director may, upon a request by owner, grant an extension to the 45-day time limit. The Project approval shall not become effective until the covenant is recorded.

SECTION 11. Indemnity, Duty to Defend and Obligation to Pay Judgments and Defense Costs, Including Attorneys' Fees, Incurred by the City. The operator and owner (operator/owner) shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, volunteers, agents, and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees") from and against any claims, damages, actions, causes of actions, lawsuits, suits, proceedings, losses, judgments, costs, and expenses (including, without limitation, attorneys' fees or court costs) in any manner arising out of or incident to this approval, related entitlements, or the City's environmental review thereof. The operator/owner shall pay and satisfy any judgment, award or decree that may be rendered against City or the other Indemnitees in any such suit, action, or other legal proceeding. The City shall promptly notify the operator/owner of any claim, action, or proceeding and the City shall reasonably cooperate in the defense. If the City fails to promptly notify the operator/owner of any claim, action, or proceeding, or if the City fails to reasonably cooperate in the defense, the operator/owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City or the Indemnitees. The City shall have the right to select counsel of its choice. The operator/owner shall reimburse the City, and the other Indemnitees, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Nothing in this Section shall be construed to require the operator/owner to indemnify Indemnitees for any Claim arising from the sole negligence or willful misconduct of the Indemnitees. In the event such a legal action is filed challenging the City's determinations herein or the issuance of the approval, the City shall estimate its expenses for the litigation. The operator/owner shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

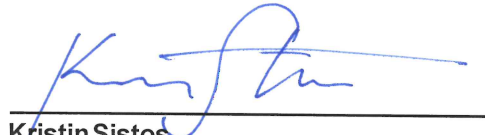
SECTION 12. The Planning Commission's decision is based upon each of the totally independent and separate grounds stated herein, each of which stands alone as a sufficient basis for its decision.

SECTION 13. This Resolution shall become effective when all time limits for appeal as set forth in MBMC Chapter 10.100 have expired.

SECTION 14. The Secretary of the Planning Commission shall certify the adoption of this Resolution and shall forward a copy of this Resolution to the Applicant. The Secretary shall make this resolution readily available for public inspection.

SECTION 15. These entitlements shall lapse two years after its date of approval, unless implemented or extended pursuant to Section A.84.090 of the LCP.

October 9, 2024



Kristin Sistos
Planning Commission Chair

I hereby certify that the following is a full, true, and correct copy of the Resolution as **ADOPTED** by the Planning Commission at its regular meeting on **October 9, 2024**, and that said Resolution was adopted by the following vote:

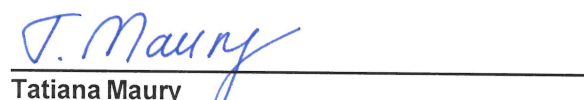
AYES: **Hackett, Tokashiki, Ungoco, Dillavou, Chair Sistos**

NOES: **None**

ABSTAIN: **None**

ABSENT: **None**



Adam Finestone, AICP
Secretary to the Planning Commission

Tatiana Maury
Recording Secretary