

## RESOLUTION NO. 24-0091

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, APPROVING A COMMERCIAL ENCROACHMENT PERMIT FOR AN ACCESSIBLE RAMP WITHIN THE PUBLIC RIGHT OF WAY TO SERVES AN EXISTING BUILDING LOCATED AT 401 MANHATTAN BEACH BOULEVARD (401 MANHATTAN BEACH LLC)

THE MANHATTAN BEACH CITY COUNCIL HEREBY RESOLVES FINDS AND DETERMINES AS FOLLOWS:

SECTION 1. On July 2, 2024, Great White, an eating and drinking establishment, on behalf of 401 Manhattan Beach LLC ("Applicant"), applied for an Encroachment Permit to accommodate an accessible ramp (the "Project") within the public right of way serving property located at 401 Manhattan Beach Boulevard ("Subject Property"). The property is owned by 401 Manhattan Beach LLC.

SECTION 2. On July 24, 2024, the Planning Commission conducted a duly noticed public hearing to consider a Master Use Permit Amendment to modify the existing structure by reducing the indoor seating area and increasing the outdoor seating area, expanding hours of operation for outdoor patio dining, and allowing for sale and service of distilled spirits in addition to existing beer and wine sales and service, at an existing tenant space located at 401 Manhattan Beach Boulevard. After the public hearing was closed, the Planning Commission adopted Resolution No. PC 24-06 to conditionally approve the project with modifications. In addition, the Planning Commission determined that the project qualified for a categorical exemption in accordance with the California Environmental Quality Act (CEQA).

SECTION 3. Pursuant to Section 7.36.170 (A) of the Manhattan Beach Local Coastal Program ("LCP"), the long-term commercial use of the public right of way requires City Council approval. Per a condition of approval, the Master Use Permit Amendment approved by the Planning Commission shall not be effective unless and until the City Council approves an encroachment permit for long-term commercial use of the right of way for the Project.

SECTION 4. On September 3, 2024, the City Council considered the commercial encroachment permit request at a regularly scheduled City Council meeting.

SECTION 5. The proposed Project is Categorically Exempt from the requirements of the California Environmental Quality Act ("CEQA") under Section 15301 (Class 1, Existing Facilities) of the CEQA Guidelines because the proposed commercial encroachment involves the modification of an existing accessible ramp for the tenant's entry within the public right of way. There are no unusual circumstances or other applicable exceptions to the Class 1 exemption.

SECTION 6. The Master Use Permit amendment approved by adoption of Planning Commission Resolution No. 24-06 included changes to the exterior building. As part of exterior changes to the existing building, modification of the

existing accessible ramp within the public right of way was proposed to accommodate the new tenant. While the Master Use Permit Amendment was approved by the Planning Commission, the long-term commercial use of the public right of way requires City Council approval, per Section 7.36.170 (A) of the LCP. Accordingly, Resolution No. PC 24-06 states that the Master Use Permit Amendment shall not be effective unless and until the City Council approves an encroachment permit for long-term commercial use of the right of way for an accessible entrance ramp into the tenant space.

SECTION 7. Based upon substantial evidence in the record, and pursuant to LCP Sections 7.36.065 and 7.36.170, the City Council hereby finds:

- 1. The granting of the encroachment permit will not be materially detrimental to the public health, safety, convenience, and welfare or injurious to property and improvements in the same vicinity and zone in which the property is located.**

The proposed location of the encroachment and the mandatory conditions (LCP Section 7.36.060 (B)) under which it would exist and be maintained will not be detrimental to the public health, safety, convenience, or welfare of persons residing or working near the encroachment or in the surrounding area because the LCP's mandatory conditions address safety, aesthetics, and pedestrian access. The encroachment will not be injurious to properties and improvements in the vicinity; rather, it serves to provide an accessible ramp to the entrance of the establishment at 401 Manhattan beach Boulevard.

- 2. The granting of the encroachment permit will be in conformity with the policies and goals of the General Plan.**

The encroachment as proposed is consistent with the following goals, policies, and programs of the Land Use Element of the City's General Plan, as the encroachment permit will allow for the vitality of a business in downtown and support the overall downtown businesses:

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

Goal LU-6.2: Encourage a diverse mix of businesses that support the local tax based, are beneficial to residents, and support the economic needs of the community.

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

- 3. The proposed encroachment will comply with the provisions of this chapter, including any specific condition required.**

There are no provisions of LCP Chapter 7.36 that prohibit the proposed encroachment. LCP Chapter 7.36.170 (A) allows the City Council to approve the commercial use of the public right-of-way. The encroachment will comply with all applicable conditions provided in LCP Section 7.36.060

(B) and this Resolution.

- 4. The proposed encroachment will not encroach into the area of the right of way occupied by an improved paved sidewalk or pedestrian or vehicular accessway or stairway, except as expressly provided in this chapter.**

The proposed encroachment will occupy a small area of the public right of way and allow the applicant to comply with accessibility requirements in a manner that will not impair or reduce the existing paved street or sidewalk. The accessible ramp will conform to Building Code and Public Works standards for required clearances.

- 5. The proposed encroachment will not reduce or adversely impact public pedestrian access along the paved and improved portion of the sidewalk, walk street, alley or stairway and does not reduce or adversely impact the vehicular access along the improved alley.**

The proposed encroachment does not adversely impact public access along the sidewalk, as all required minimum sidewalk widths are maintained along Morningside Drive and Manhattan Beach Boulevard sidewalks. The proposed encroachment will not impact vehicular streets or alleys as the encroachment encroaches into the sidewalk, not into any streets or alleys.

- 6. For properties that are located in the coastal zone, the proposed encroachment will be consistent with the public access and recreation policies of Chapter 3 of the California Coastal Act of 1976, as follows:**
  - 1. The proposed encroachment will not impact public access to the shoreline, adequate public access is provided and shall be maintained in the public right of way adjacent to the subject property (Section 30212 (a)(2)).**

The project as proposed is consistent with the Coastal Access policies in the Local Coastal Program, the goal of which is to preserve coastal access for the public. Specifically, the project is consistent with the following coastal access policies:

Policy I.A.1: The City shall maintain the existing vertical and horizontal accessways in the Manhattan Beach Coastal Zone.

The project does not block or impede any accessways to the coast. Access to the coast remains unaffected by the project.

Policy I.A.3: The City shall preserve pedestrian access systems including the Spider Web park concept (Spider Web park concept: a linear park system linking the Santa Fe railroad right-of-way jogging trail to the beach with a network of walk streets and public open spaces.).

The project does not alter any pedestrian access systems, including existing sidewalks or streets, in a way that blocks or impedes access systems to the coast. Access to the coast

remains unaffected by the project. The walk streets and public open spaces linking the Santa Fe railroad right-of-way jogging trail are unaltered by the project.

**2. The present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area (Section 30221).**

Potential recreational activities occur either on private property or on non-right of way public property (i.e. parks). The sidewalk is right of way that provides a path of travel for pedestrians, include pedestrians seeking to access coastal resources. Thus, the granting of the encroachment does not affect potential locations for recreational activities and will thus not affect the present and foreseeable future demand for public or commercial recreational activities. The proposed 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), in that the existing and proposed encroachment does not impact public access to the shoreline.

SECTION 8. Based upon the evidence in the record and the findings set forth in Section 7 of this Resolution, the City Council hereby approves the request for the commercial encroachment permit for an accessible ramp located in the right of way on Morningside Drive for an existing restaurant building, subject to the following conditions:

1. The Project shall be in substantial conformance with the plans and project description submitted to, and approved by the City Council, on September 3, 2024.
2. The Project shall conform to all procedures and standards of the Manhattan Beach Municipal Code, LCP, and California Building Code.
3. The Applicant shall pay the long-term commercial use of the public right of way monthly fee of \$3.00 per square foot of the encroachment area per the approved encroachment plans. Should the City Council adopt in the future a new monthly fee for a commercial encroachment permit, the applicant shall pay the updated fee.
4. 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 9. California Code of Procedure Section 1094.6 governs the time within which judicial review, if available, of the decision, or any conditions attached thereto, reflected in this resolution must be sought, unless a shorter time is provided by other applicable law. The City Clerk shall send a certified copy of this Resolution to the Applicant, and if any, persons who spoke against the application at the Council meeting at the address of said person set forth in the record of the proceedings and such mailing shall constitute the notice required by California Code of Civil Procedure Section 1094.6.

SECTION 10. The City Clerk shall certify to the adoption of this Resolution.

ADOPTED on September 3, 2024.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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JOE FRANKLIN  
Mayor

ATTEST:

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LIZA TAMURA  
City Clerk