

RESOLUTION NO. 14-0063

**A RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL
APPROVING, SUBJECT TO CONDITIONS, A MODIFIED AND
RESTATED USE PERMIT FOR AN EXISTING
RESTAURANT/BAR ("EATING AND DRINKING
ESTABLISHMENT") AT THE PROPERTY LOCATED AT 900
MANHATTAN AVENUE (CEQA CATEGORICAL EXEMPTION)**

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

Section 1. On April 4, 1995, the City Council adopted Resolution No. 5155, modifying a discretionary use permit ("Use Permit") for a restaurant/bar (then called the Rock Bottom Saloon) at property located at 900 Manhattan Avenue (the "premises"), subject to a number of conditions. The property is owned by Manhattan Highlands LTD ("Owner") and the business is owned by the 900 Club LLC ("Business Operator"). At the time of the public hearing before the City Council on August 19, 2014, the Business Operator referred to the upstairs portion of the property as the 900 Club and the downstairs portion of the property as the Red Room.

Section 2. In reliance on the entitlements conferred by Resolution No. 5155, the Business Operator established a private club ("900 Club") in the upstairs of the premises and a restaurant/bar, open to the public, downstairs on the premises.

Section 3. At various times during the period of 2011-2014, the Business Operator has violated Manhattan Beach Municipal Code ("MBMC" or "Municipal Code") provisions and Use Permit conditions. The City initiated code enforcement proceedings, described with more particularity in the City Prosecutor's Log entered into the record at the February 26, 2014 Planning Commission meeting.

Section 4. Based on such violations, the Community Development Director determined that there were reasonable grounds for modification or revocation of the Use Permit and set a public hearing before the Planning Commission pursuant to MBMC Section 10.104.030.

Section 5. On February 26, 2014, the Planning Commission held a duly noticed public hearing to consider the modification or revocation of the Use Permit. In addition to providing legally required notice, the City provided courtesy notices to the owners, operators, and agents of the 900 Club and the Red Room on January 7, 2014. At the public hearing, City staff presented a staff report, testified and presented documentary evidence. The Planning Commission provided an opportunity to all interested parties, including the owners, operators, and agents of the 900 Club and the Red Room, and neighbors, residents and owners of properties in the vicinity, to offer testimony and evidence. There was evidence and testimony presented that, on numerous occasions, the police have visited the site in response to complaints about noise, serving alcohol after hours, operating after hours, violating conditions of approval, and other activities detrimental to public health, safety and welfare. The Planning Commission entered into the record all evidence presented, including but not limited to the staff report and all attachments, the City Prosecutor's log, Police Department reports and videotapes.

Section 6. Based upon substantial evidence in the record, the Planning Commission found that on one or more occasions the 900 Club has:

- a. Generated excessive noise that disturbed the peace and quiet of the neighborhood.
- b. Operated after closing hours, in violation Resolution No. 5155 Condition No. 1, as documented by Police Department Reports #13-780, #13-1289, and #13-3570 and the City Prosecutor's log.
- c. Violated Resolution No. 5155 Condition No. 5 and adversely impacted persons in the vicinity by generating excessive noise in violation of the City's noise ordinance.
- d. Operated in violation of Resolution No. 5155 Condition No. 11 by failing to provide adequate management to prevent loitering, unruliness, and boisterous activities of patrons outside the business or in the immediate area.
- e. Operated in violation of Condition No. 6 of Resolution No. 5155 by holding special events without obtaining a Class II Entertainment Permit.

Section 7. Based upon the foregoing, and substantial evidence in the record, the Planning Commission found:

- a. The 900 Club has operated in a manner that is detrimental to the public health, safety and welfare.
- b. The operation of the 900 Club has violated the terms and conditions of Resolution No. 5155 and the City's noise ordinance by generating excessive noise.
- c. The Business Operator has violated the terms and conditions of Resolution No. 5155 by operating after closing hours.
- d. The Business Operator has violated the terms and conditions of Resolution No. 5155 by failing to provide adequate management to prevent loitering, unruliness, and boisterous activities of patrons outside the business and in the immediate area.
- e. The Business Operator has violated the terms and conditions of Resolution No. 5155 by holding special events without first obtaining a Class II Entertainment Permit.
- f. The Business Operator has violated the Municipal Code and the Use Permit conditions of approval.
- g. Due to such violations, Resolution No. 5155's existing conditions of approval are inadequate to halt the interference with the neighbors' quiet enjoyment, and additional conditions are required to ensure that the 900 Club operates in a manner that does not adversely impact neighboring properties.
- h. To ensure that the 900 Club, the Red Room, and subsequent operators operate in a manner that does not adversely impact neighboring properties and is not detrimental to the health, safety or welfare of persons residing or working in the vicinity, Resolution No. 5155's conditions of approval need to be modified and augmented.

Section 8. After closing the February 26, 2014 public hearing, the Planning Commission directed staff to prepare a draft resolution with recommended modifications to the Use Permit and its conditions to mitigate the adverse impacts arising from the use identified in Sections 6 and 7.

Section 9. On May 14, 2014, the Planning Commission provided an opportunity for all interested parties, including the owners, operators, and agents of the 900 Club and the Red Room, neighbors and residents, to comment on the draft resolution and conditions. After providing that opportunity, the Planning Commission adopted Resolution No. PC 14-06, modifying the Use Permit subject to certain conditions.

Section 10. On May 27, 2014, Don McPherson (the "Appellant") filed an appeal of the Planning Commission's decision to modify the Use Permit, requesting that the City Council consider additional conditions. The Appellant and his attorneys of record supplemented the appeal with additional written material.

Section 11. On August 19, 2014, the City Council held a public hearing to consider the appeal. Staff presented a staff report including a slide presentation. The City Council provided an opportunity for the Appellant and all interested parties, including the owners, operators, and agents of the 900 Club and the Red Room, neighbors and residents, to comment. The City provided to the Appellant and a lawyer supporting his position over half an hour to comment, testify, and present new evidence including a slide presentation. Attorneys representing the owner of the property and the operators were provided an equal opportunity to represent the interests of their respective clients. The operator of the 900 Club and others also provided comments to the City Council. The City Council asked questions of staff, the operator's and owner's representatives, and the Appellant. After the close of the public hearing, the City Council directed staff to prepare a draft resolution affirming the decision of the Planning Commission to modify the Use Permit subject to all of the conditions set forth in Resolution No. PC 14-06 and the following requirements: (a) the operator of the 900 Club shall obtain an Entertainment Permit; and (b) the security guard required by the Planning Commission shall stay on the premises until all staff members have left the premises.

Section 12. On September 2, 2014, the City Council provided an opportunity for all interested parties, including the owners, operators, and agents of the 900 Club and the Red Room, the Appellant and his representatives, neighbors, and residents, to comment on the draft resolution and conditions. On October 7, 2014, the City Council provided an additional opportunity for all interested parties, including the owners, operators, and agents of the 900 Club and the Red Room, the Appellant and his representatives, neighbors, and residents, to comment on the revised draft resolution and conditions.

Section 13. The modification of the existing Use Permit (the "Project") has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. It has been determined that the Project would not have a significant environmental impact and is exempt from CEQA pursuant to Section 15301 (Existing Facilities) and Section 15321 (Enforcement Actions of Regulatory Agencies) of Title 14 of the California Code of Regulations.

Section 14. Based on the foregoing facts and findings and the substantial evidence entered into the record, and pursuant to State law and the City's Municipal Code, the City Council hereby exercises its independent judgment and affirms the Planning Commission's modification of the Use Permit, subject to the conditions stated below. The City Council's decision is based upon each of the foregoing totally independent and separate grounds, including those stated in Sections 6 and 7 herein, each of which stands alone as a sufficient basis for its decision. The City Council hereby incorporates by reference each of the findings

made by the Planning Commission in support of this modification.

1. Hours of operation for the establishment shall be permitted as follows:

Monday - Thursday	11:00am – midnight
Friday	11:00am – 1:00am
Saturday	9:00am – 1:00am
Sunday	9:00am – midnight

At closing time, all areas (inside and outside) of the business must be vacated. All music (house system and bands) shall be turned off, and no sales, service or consumption of food or alcohol shall occur after closing time. Staff may remain on the premises for one hour after closing time. "Last call" for food and drinks to patrons shall commence 60 minutes prior to closing time and no sales or service of food or drinks, and all music shall be off 30 minutes prior to closing time.

2. The service of alcohol shall occur in conjunction with food service as a "bona fide eating place" type of alcohol license (Type 47) from the State of California shall be maintained.
3. The Business Operator's representatives shall provide a state licensed, bonded and certified security guard from 9:30 pm on Thursday, Friday and Saturday and any day there is a Special Event or Amplified Sound until all staff members have left the premises. The security guard shall ensure that operations comply with all conditions of approval, including but not limited to the following: noise, use of the back door, litter, access, windows and doors being closed, and any other adverse impacts on the neighborhood.
4. The back door and storage/utility room on Bayview Drive shall remain closed and not be used after 10:00 pm, except the back door may be used for trash removal or disabled or emergency access only. Additionally, bands shall be allowed to use the back door for the loading and unloading of amplified sound equipment and shall vacate the site by closing time. The back door keypad access shall be maintained and only be accessible from the outside by the owners/operators and employees, however, all outside areas shall be disabled after 10:00 pm. No patron shall be provided a key or access code for the back door or the storage/utility room. The Business Operator's representatives shall contact the Police Department the first of every month to advise of key access code changes and any other changes.
5. Patrons must use Manhattan Avenue for access to the 900 Club after 10:00 pm except for the purpose of disabled or emergency access. The entrance on Bayview Drive for the 900 Club may be used by patrons before 10:00 pm and the door shall remain closed when not in use. Patrons shall use the 9th Street entrance for access to the first floor and the door shall remain closed when not in use.
6. Background music through the house system, is allowed on both the first and second floors during all hours of operation, so long as the music cannot be heard with the unaided ear at the eastern-most edge of Bayview Drive and the southern edge of 9th Street.

7. Non-amplified sound (up to a total of three instrumental musicians and/or vocalists) shall be allowed on both the first and second floors during all operating hours, so long as the music cannot be heard with the unaided ear at the eastern-most edge of Bayview Drive and the southern edge of 9th Street. Musicians performing with non-amplified sound shall be allowed to use the back or side door for the loading and unloading of equipment during operating hours only.
8. Dancing is permitted on Friday and Saturday nights only. Dancing shall be limited to a 12 foot x 12 foot maximum area on the second floor.
9. A. The Business Operator (and its successors-in-interest, if applicable) shall submit a complete application for an entertainment permit, pursuant to the process set forth in MBMC Chapter 4.20 applicable to Class I Permits, within 30 days of the date of this Resolution, and annually thereafter on or before the anniversary date of the initial issuance date in the event such permit is issued.

B. The City may issue, issue with conditions, or deny the entertainment permit. In addition to the conditions that may be imposed pursuant to MBMC Section 4.20.080, any entertainment permit issued pursuant to this condition shall contain the following additional conditions: entertainment is permitted only: (a) on the second floor of the premises; (b) on Thursday, Friday, Saturday, or on a day of a "Special Event" as defined in Condition 10; and (c) for no more than 18 days per year. The Business Operator shall provide written notification of the proposed entertainment to the Director of Community Development, the Police Department and each residence located on 9th Street between Highland Avenue and Manhattan Avenue and Bayview Drive between 9th Street and 10th Street a minimum of 7 days prior to such entertainment. For the purposes of this subsection B, "entertainment" shall mean any activity involving music, including but not limited to live bands, one or more performers of music, or amplified radio or pre-recorded music but shall not include background music allowed by Condition 6 or non-amplified sound allowed by Condition 7.
10. A maximum of 6 Special Events shall be allowed annually. For the purpose of this section, "Special Events" are events of more than 50 people for which there is a contract for exclusive use of the second floor of the venue. A security guard shall be on-site at all times during Special Events to ensure that operations comply with all conditions of approval, including but not limited to, noise, use of back door, litter, access, windows and doors being closed, and any other adverse impact on the neighborhood. If entertainment (as defined in Condition 9) is proposed for a Special Event, the day of the Special Event shall be included in the maximum allowable 18 days per year for entertainment, as specified in any permit issued pursuant to Condition No. 9. The Business Operator shall provide written notification of each Special Event to the Director of Community Development, the Police Department and each residence located on 9th Street between Highland Avenue and Manhattan Avenue and Bayview Drive between 9th Street and 10th Street a minimum of 7 days prior to such entertainment.
11. Noise emanating from the site shall not exceed maximum noise standards established by the Municipal Code and any applicable State Code. Outdoor sound equipment and outdoor amplification systems are prohibited. All doorways and windows shall remain closed during entertainment (as defined in Condition 9) and any Special Event (as defined in Condition 10) except as required for ingress and egress.

12. Three parking spaces shall be maintained on-site at the rear of the building.
13. Required access and exits shall remain unobstructed at all times in compliance with Fire and Building requirements.
14. The occupancy limits stated below shall not be exceeded and are required to be posted on-site at all times:

Downstairs – 31

Upstairs – 92

15. All signs shall be in compliance with the City's Sign Code. Pole signs and internally illuminated awnings shall be prohibited.
16. The following noise mitigation measures shall be installed within 45 days and maintained at all times:
 - a. Tempered glass panels installed over each upstairs stained glass window along the south wall.
 - b. A separate tempered glass panel installed over the inside windows upstairs along the south rear hallway.
 - c. Double pane windows on Manhattan Avenue and 9th Street upstairs and downstairs.
 - d. Signage on the Bayview Drive rear door (inside and outside) to not enter or exit after 10:00 pm.
 - e. Sound curtains shall be installed on the double pane windows adjacent to Manhattan Avenue and 9th Street on the second floor.
17. The Business Operator's representatives shall police the property in all areas immediately adjacent to the premises to keep it free of litter, and shall undertake and implement all reasonably necessary actions to discourage patrons from entering residential areas. The Business Operator's representatives shall ensure all City and other governmental laws, rules, ordinances, regulations, codes, requirements, operating permits, and conditions are met, maintained and upheld. The Business Operator's representatives shall undertake and implement all reasonably necessary techniques to prevent loitering, unruliness, and boisterous activities of patrons and limit all activities to comply with the City's Municipal Noise Ordinance.
18. The Community Development Department staff shall be allowed to inspect the site at any time. The Business Operator's representatives shall provide the Police, Fire, County Health Departments and the Alcoholic Beverage Control (ABC) with the key pad code for access any time. The Business Operator's representatives shall contact the Police Department the first of every month to advise of any key access code changes.

Procedural

19. At any time in the future, the Planning Commission or City Council may review the Use Permit for the purpose of revocation or modification. The Planning

Commission or City Council may modify the Use Permit in any manner it deems necessary to protect the public health, safety, and welfare, and ensure that the activities on the premises do not adversely impact neighboring properties, including, but not limited to the following: limitation of hours; limitation of total occupancy; requiring valet parking; elimination of live entertainment or amplified sound; dancing or the establishment of any other condition deemed necessary to mitigate or alleviate impacts to adjacent land uses.

20. One year following the effective date of this Resolution, a duly noticed public hearing shall be conducted by the Planning Commission for the purpose of reviewing the subject Use Permit for compliance with all conditions.

Section 15. This Resolution shall serve as the amended and restated Use Permit for the subject property. Resolution Nos. 5155, 3555, and 5117 shall no longer be in effect.

Section 16. RECORDATION. The Owner and Business Operator shall record a covenant, satisfactory in form and content to the City Attorney, accepting the conditions of approval set forth in this resolution. The covenant shall include a copy of the resolution as an exhibit. The executed covenant shall be delivered to the Department of Community Development within 30 days of the date of this Resolution. At the time of delivery of the covenant, all fees necessary to record the document with the County Recorder shall be paid to the City.

Section 17. VIOLATION OF CONDITIONS. The Owner and Business Operator shall comply with all conditions herein within 45 days of the date of this Resolution. A violation of any of the conditions may result in further proceedings to consider revocation or modification of the Use Permit pursuant to MBMC Section 10.104.030.

Section 18. Section 1094.6 of the California Code of Civil Procedure governs the time within which judicial review, if available, of the City Council's decision 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 Appellant and the attorneys for the Owner and the Business Operator.

Section 19. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 7th day of October , 2014

Ayes: Howorth, Lesser, D'Errico, Burton, and Mayor Powell
Noes: None
Absent: None
Abstain: None



Mayor
City of Manhattan Beach

Attest:



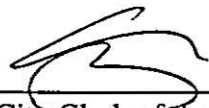
_____(SEAL)
Liza Tamura, City Clerk

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) SS.
)
CITY OF MANHATTAN BEACH)

I, LIZA TAMURA, City Clerk of the City of Manhattan Beach, California, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing resolution, being Resolution No. 14-0063 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 8th day of October, 2014, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Howorth, Lesser, D'Errico, Burton, and Mayor Powell.
Noes: None
Absent: None
Abstain: None.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 8th day of October 2014.



City Clerk of the City of
Manhattan Beach, California

(SEAL)