

RESOLUTION NO. PC 24-06

A RESOLUTION OF THE MANHATTAN BEACH PLANNING COMMISSION APPROVING A MASTER USE PERMIT AMENDMENT TO MODIFY AN EXISTING STRUCTURE TO REDUCE THE INDOOR SEATING AREA AND INCREASE THE OUTDOOR SEATING AREA, EXPAND HOURS OF OPERATION FOR OUTDOOR DINING, AND ALLOW THE SALE AND SERVICE OF DISTILLED SPIRITS IN ADDITION TO EXISTING ALLOWANCE OF SALE AND SERVICE OF BEER AND WINE, AT AN EXISTING TENANT SPACE LOCATED AT 401 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 December 15, 1992, the City Council approved a use permit (City Council Resolution No. 4974) to allow the establishment of a drinking and eating establishment at 401 Manhattan Beach Boulevard ("Property"). On March 8, 2000, the Planning Commission approved a Master Use Permit (Planning Commission Resolution No. 00-7) to divide the existing building into three separate tenant spaces to accommodate two eating and drinking establishments and one office use. On May 2, 2000, the City Council considered an appeal of the Planning Commission's decision and upheld the approval of the Master Use Permit (City Council Resolution 5570) with revised conditions related to alcohol, parking, and hours of operation. On March 23, 2005, the Planning Commission approved a Master Use Permit amendment (Planning Commission Resolution No. 05-05) to modify an existing outdoor dining area patio and allow for service of beer and wine at an existing tenant space at the Property.

SECTION 2. On January 18, 2024, Manny Diaz, on behalf of Great White Partners Manhattan Beach, LLC ("Applicant"), applied for a Master Use Permit Amendment to modify an existing structure to reduce the indoor seating area and increase the outdoor seating area, expand hours of operation for outdoor dining, and allow for sale and service of distilled spirits in addition to the existing allowance of sale of beer and wine in conjunction with the operation of an eating and drinking establishment in an existing tenant space ("Project"). The amendment applies to the subject eating and drinking establishment and does not affect the existing eating and drinking establishment or office use on the site. Pursuant to the Manhattan Beach Local Coastal Program ("LCP"), the existing and proposed uses 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." Section A.84.105.D denotes that an amendment to a master use permit is required any time modifications to existing conditions of approval are requested. The Applicant's request includes modifications to existing conditions, thus a master use permit amendment is required.

SECTION 4. On July 24, 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 5. The Project qualifies for a Categorical Exemption from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, Existing Facilities, which is a Class 1 exemption. The Master Use Permit amendment involves a request to reduce the indoor seating area and increase the outdoor seating area, expand hours of operation for outdoor dining, and allow for sale and service of distilled spirits in addition to the existing allowance of sale and service of beer and wine in conjunction with the operation of an eating and drinking establishment in an existing tenant space. The proposed changes would be a negligible expansion to an existing use. There are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances.

SECTION 6. The record of the public hearing indicates:

- A. The legal description of the site is: Lot 1 in Block 97 of Manhattan Beach Division No. 2 Tract, in the City of Manhattan Beach, County of Los Angeles, as per Map recorded in Book 1 page 95-96. The site is located in Area District III and is zoned Downtown Commercial (CD), with a General Plan land use designation of Downtown Commercial. The site is within the non-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 zone subject to a Use Permit and is in compliance with the City's General Plan designation of General Commercial. The General Plan designation of General Commercial encourages the Downtown Commercial land use category to provide "services and activities to our residents and visitors."
- C. The eating and drinking establishment use is currently governed by a master use permit approved by the Planning Commission in 2005. The use has been operated in compliance with the current Master Use Permit.
- D. The Applicant is requesting approval of a master use permit amendment for the following changes:
 - 1) A decrease in the maximum indoor seating area from 1,200 square feet to 818 square feet and an increase in the maximum outdoor seating area from 450 square feet to 832 square feet;
 - 2) Extension of hours of operation for outdoor dining to allow service until 11pm, whereas the current limit is 10pm; and
 - 3) Allowance for sales and service of distilled spirits (Type 47 ABC License) in addition to the existing allowance of beer and wine sales and service (Type 41 ABC License).
- 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.

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.

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

SECTION 7. Based upon substantial evidence in the record, and pursuant to Section A.84.060 of the LCP, the Planning Commission hereby makes the following findings related to the Master 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 proposed project is in the City's CD zoning district. The LCP's stated purpose for the CD zone is to provide opportunities for residential, commercial, public and semipublic uses that are appropriate for the downtown area. In addition, the CD zoning district is intended to accommodate a broad range of businesses that serve beach visitors. Such businesses include eating and drinking establishments. Eating and drinking establishment uses are permitted in a commercial zone with a use permit. An existing eating and drinking establishment was approved in March 23, 2005, through adoption of Planning Commission Resolution No. 05-05. The new tenant will continue the same use and have substantially similar operating characteristics.

- 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, and the proposed changes to the existing eating and drinking establishment use are consistent with that designation. The Project is compatible with neighboring uses, as neighboring lots on all sides are developed with commercial uses. Furthermore, the Project was reviewed by the Building 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 (expanded outdoor dining area, extended operating hours, and addition of alcohol service) do not result in a significant intensification of use because the site will continue to operate as an eating and drinking establishment, with the total seating area being reduced (when combining the indoor and outdoor seating areas). Additionally, the property is on a busy street and is not adjacent to any residential uses and would operate in a similar manner to other eating and drinking establishments in the vicinity.

- 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 proposed project does not alter the existing use of the tenant space, which is an eating and drinking establishment. Eating and drinking establishments are permitted with the approval of a use permit within the subject property's zoning district (CD) per LCP Section A.16.020. A Master Use Permit amendment is required if the new use does not conform to the approved mix of uses, parking requirements and certain conditions per LCP Section A.84.105.D, which is the case with this project. If the requested Master Use Permit amendment is approved, the eating and drinking establishment use will be in compliance with all provisions of Title A of the LCP. Furthermore, conditions of approval that serve to minimize any potential adverse impacts associated with the project such as the hours of operation, the City's noise ordinance, waste management, and signage requirements are included in the draft resolution (Attachment "A" to this staff report). Specifically, if adopted, the conditions in the Resolution will ensure compliance with the required findings for a Use Permit and serve as the governing resolution for the development and operation of the project.

- 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 eating and drinking establishment use, does not adversely impact neighboring properties since there is no change in use and the project includes a minor expansion related to an existing alcohol license type and hours of operation for an outdoor seating area. Furthermore, eating and drinking establishments in the CD zone were contemplated by the General Plan and will not create demands exceeding the capacity of public services and facilities. Additionally, a Type 47 ABC license must be obtained from the California Department of Alcohol Beverage Control prior to commencement of sale of distilled spirits. Conditions of approval have been included in the draft resolution to address potential concerns and to minimize adverse impacts to the community.

SECTION 8. Based upon the foregoing, the Planning Commission hereby APPROVES the Project, subject to the conditions below.

General

1. All conditions applied to PC Resolution No. 05-05 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 July 24, 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 Master 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 site at any time to

determine compliance with conditions imposed and Local Coastal Program requirements.

6. Future modifications and improvements to the site shall be in compliance with applicable Planning Division, Building Division, Public Works, Waste Management, Fire Department, and Health Department regulations, when applicable.
7. Any modifications to the site that necessitate accessibility improvements must comply with the accessibility requirements found in Title 24 of the California Code of Regulations, or successor code.

Operational

8. The Project shall be operated in conformance with all applicable provisions of the MBMC and this use permit.
9. The subject eating and drinking establishment shall have a maximum of 951 square feet of interior seating area and 699 square feet of outdoor seating area and no more than 3,000 square feet of building floor area.
10. Hours of operation shall be 7am-11pm daily, including outdoor seating area.
11. 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 property owners.
12. The kitchen shall remain open, and food shall be available for purchase, at all times when alcohol is available for purchase.
13. Sound attenuation measures shall be incorporated into the final outdoor patio design and be approved by the Director of Community Development prior to issuance of a building permit.
14. The Master Use Permit Amendment shall be reviewed by the Planning Commission one year after the commencement of restaurant operations which shall include a public hearing and public notice.

Alcohol

15. A Type 47 ABC license must be obtained from the California Department of Alcoholic Beverage Control prior to commencement of sales and service of distilled spirits.
16. 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.
17. Alcohol service shall only be allowed within the enclosed building and in outdoor dining areas located on private property.

Procedural

18. 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.
19. This 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 9. 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 10. 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 11. This Resolution shall become effective when all time limits for appeal as set forth in MBMC Section Chapter 10.100 have expired.

SECTION 12. The Secretary of the Planning Commission shall certify to 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.

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SECTION 13. This Use Permit Amendment shall lapse two years after its date of approval, unless implemented or extended pursuant to 10.84.090 of the Municipal Code.

July 24, 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 **July 24, 2024**, and that said Resolution was adopted by the following vote:

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

NOES: None

ABSTAIN: None

ABSENT: None



Talya Mirzakhani
Secretary to the Planning Commission



Rosemary Lackow
Recording Secretary