

**RESOLUTION NO. 14-0064**

**RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL  
APPROVING AN AMENDMENT TO A MASTER USE PERMIT TO  
ALLOW AN EXISTING HOTEL TO: MODIFY THE EATING, DRINKING  
AND BANQUET SERVICES ASSOCIATED WITH THE HOTEL;  
CONDUCT SPECIAL EVENTS ON ITS TERRACE; AND MODIFY  
CONDITIONS REGULATING MARKETING, SUBJECT TO  
INSTALLATION OF NOISE MITIGATION MEASURES AND OTHER  
CONDITIONS AT THE SHADE HOTEL, METLOX SITE, 1221 N  
VALLEY DRIVE (MANHATTAN INN OPERATING COMPANY, LLC -  
MICHAEL A. ZISLIS, OWNER) (CATEGORICAL EXEMPTION)**

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

SECTION 1. In 2002, the City Council adopted Resolutions No. 5770 and No. 5771 approving a Master Use Permit for an approximately 63,850 square feet commercial development, including a 38-room hotel (the "Shade Hotel" or "Hotel") located at 1221 N. Valley Drive and subterranean parking. In 2005, the Planning Commission adopted Planning Commission Resolution PC 05-08 approving an amendment to the Master Use Permit to modify the scope of its sale and service of food and alcohol and special events associated with the Hotel. Manhattan Inn Operating Company, LLC ("Applicant") seeks (1) further modifications to the scope of eating, drinking, and special events associated with the Hotel; (2) modifications to the conditions regulating marketing of the Hotel; and (3) installation of noise mitigation measures ("Application"). Pursuant to Chapter 10.84 of the Manhattan Beach Municipal Code ("MBMC" or "Code"), the Application requires a second amendment ("Amendment") to the Master Use Permit.

SECTION 2. The City Council certified an Environmental Impact Report (EIR) for the Metlox/Civic Center project on April 17, 2001 (State Clearinghouse No. 99121090). The requested Amendment, as conditioned, is within the scope of the EIR, and will not cause any significant environmental impacts that have not been analyzed in the EIR. In addition, the City has environmentally reviewed the Amendment pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000, et seq. ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 et seq.), and the City's environmental guidelines. Pursuant to CEQA Guidelines Section 15301, the City has issued a Class 1 Categorical Exemption because the Amendment authorizes the continued operation of an existing facility, with a negligible expansion of the presently existing use of the property. In fact, the Amendment authorizes minor changes to the facility that will reduce environmental impacts by decreasing noise impacts to the surrounding community. There is no intensification of use or increase in occupancy as the occupancy remains the same as approved by the Fire Department and posted on the site in 2005.

SECTION 3. The subject site is located within Area District III and is designated Downtown Commercial in the General Plan and zoned Downtown Commercial. The properties to the west and south are also zoned Downtown Commercial, the property to the north is zoned Public and Semipublic, and the property to the east is zoned Open Space, with Single Family Residential and High Density Residential to the east past Valley and Ardmore Drives. The Amendment will not change the primary use of the Shade Hotel, which is a hotel offering first-class accommodations to visitors. The Amendment merely modifies associated special event and food support services, subject to conditions. As conditioned herein, the marketing and promotion of the establishment will be as a hotel, not as a bar or restaurant.

SECTION 4. After conducting duly noticed public hearings on February 12, March 12, April 23, and May 28, 2014, the Planning Commission adopted Resolution No. PC 14-08

approving the Amendment, subject to conditions. On June 9, 2014, Don McPherson (“Appellant”) filed an appeal of the Planning Commission decision, asserting that additional noise mitigation measures are needed and that hours of food and alcohol service be further restricted.

SECTION 5. On September 2, 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 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. The City Council provided an equal opportunity to the Applicant to provide comments to the City Council. Others testified in support of the Application. The City Council asked questions of staff, the Appellant and the Applicant.

SECTION 6. Based upon the comments and evidence received at the public hearings, the primary issue for neighboring residents is mitigating the noise levels generated at the site by the existing use, and any modifications to its associated support services. In order to fully analyze noise impacts, a number of studies have been performed.

- A. Four independent acoustics analyses were conducted by an independent noise consultant, Don Behrens & Associates. The first reports, dated September 30 and October 7, 2013, are continuous sound monitoring reports from three residential locations across Valley Drive to the east. The reports continuously recorded the noise received at these properties from September 20 through October 4, 2013. During this period, several large events took place on the Hotel’s skydeck, courtyard, and lobby. The reports indicate that the average hourly sound levels in the area range between a low of about 35 to 47 dBA, and a high of about 51 to 69 dBA. The highest levels of noise occur during the daytime, typically 9:00 a.m. to 7:00 p.m., and the lowest levels of noise typically occur between 2:00 a.m. and 4:00 a.m. Based upon such analyses, the consultant concluded, in his expert opinion, that existing operations at the Shade Hotel do not significantly alter the noise levels in the area and do not exceed the Code’s objective noise standards.
- B. The Applicant submitted a report dated February 4, 2014 and three-dimensional modeling of noise to evaluate noise mitigation measures based on the proposed architectural plans, dated December 10, 2013. The report provides an assessment and recommendations for the Applicant’s proposed noise mitigation measures and indicates a noise reduction of up to 6 dBA at the residences, with the south side terrace (“Terrace”) noise mitigation being most effective.
- C. The Applicant also requested an analysis of the data from the September/October 2013 continuous sound monitoring reports referenced in Section 6A to determine the source of single-event noise increases above the average sound levels. The independent noise consultant analyzed twelve instances which showed noise levels ranging from 68.2 to 99.5 dB. According to such analysis, none of these single-event noise events were attributable to the Shade Hotel but instead were attributable to vehicles, mainly emergency vehicles, and airplanes. The Fire and Police station is directly to the north of the Shade Hotel across 13<sup>th</sup> Street and emergency vehicles exit and enter from that location, sometimes onto Valley Drive.
- D. After the February 12, 2014 Planning Commission meeting, the independent noise consultant evaluated additional possible noise mitigation measures for the Hotel and constructed three-dimensional modeling of noise to assess various mitigation measures. The consultant’s report dated April 16, 2014 indicates that the most effective noise mitigation improvements would be the combination of a door on the

Terrace entrance and new upgraded sound curtains, which would achieve a minimum decrease of 5 dBA. At the September 2, 2014 public hearing before the City Council, the consultant clarified that in his professional opinion, the proposed mitigation measures, even without the installation of a door on the Terrace entrance, would effectively mitigate noise generated by the Hotel, including any noise generated by the associated support services requested by the Applicant. The consultant testified that there are a series of noise mitigation measures for the site that as a package will significantly reduce noise impacts to the residential area to the east including removing reflective materials and replacing with absorbent materials on the Terrace including noise baffles and curtains, addressing noise leakage from the front entry off Valley Drive, sealing gaps in the east and south Terrace walls and the new wall on the south side of the Terrace that will radically eliminate the potential for sound traveling out of the Terrace and to the properties to the east by blocking the direct line of sight. He indicated that these are reasonably feasible measures to implement that will significantly mitigate noise impacts.

SECTION 7. After the close of the public hearing and deliberation, the City Council directed staff to prepare a draft resolution affirming the decision of the Planning Commission to amend the Master Use Permit subject to all of the conditions set forth in Planning Commission Resolution No. PC 14-08 and the following conditions: (a) establishment of operating hours in the conference room known as the "Green Room"; (b) requiring a hearing before the City Council within six months after the noise mitigation measures are installed to review the efficacy of such measures; and (c) a stipulation by the Applicant that he agrees to all of the conditions and that the noise mitigation measures would be timely installed. The Applicant so stipulated, on the record, provided that he could apply for an increase in hours in the event the noise mitigation measures are effective. He also stated for the record that he anticipated that, if the Council approved this Amendment, he could complete installation of the noise mitigation measures in five months.

SECTION 8. On October 7, 2014, the City Council provided an opportunity for all interested parties, including the Applicant, Appellant, neighbors and residents, to comment on the draft resolution and conditions. Courtesy copies of the draft resolution and conditions were provided to the Appellant and Applicant on or before October 3, 2014.

SECTION 9. Based upon substantial evidence in the record of the above-mentioned proceedings and pursuant to MBMC Chapter 10.84, the City Council finds:

A. Hotels with associated services such as special events and eating, drinking, and banquet services are permitted by the Code. In approving the Master Use Permit in 2002, the Council found and determined that the entitlements conferred by the Master Use Permit, including the Hotel and its associated support services such as food and alcohol service, hosting events, and activities on the roof deck ("Skydeck"), and in the courtyard, lobby, and other facilities, satisfied the criteria set forth in MBMC Section 10.84.060. In 2005, the Planning Commission likewise made such findings in connection with the first amendment. This Amendment is consistent with such determinations. The mitigation measures incorporated herein provides additional protection to nearby residential uses from the potential adverse effects of inharmonious uses by further minimizing the impact of commercial development on nearby residential districts through the conditions of approval, which require physical noise mitigation and operational revisions. The associated support services modified by this Amendment, the proposed conditions under which they would operate, the installation of noise mitigation measures, and the accompanying minor architectural features (which do not require an amendment to the Master Use Permit) are consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City.

B. The associated support services modified hereby, as conditioned, are consistent with the General Plan for the Commercial Downtown designation because such modifications to services already approved remain consistent with commercial downtown uses and will result in minimal changes of such services. The Amendment is consistent with all General Plan Goals and Policies, including:

**GOALS AND POLICIES: LAND USE**

**Goal LU-5: Protect residential neighborhoods from the intrusion of inappropriate and incompatible uses.**

Policy LU-5.2: Work with all commercial property owners bordering residential areas to mitigate impacts and use appropriate landscaping and buffering of residential neighborhoods.

Policies LU-5.7, 6.4 and 7.6: Recognize the unique qualities of mixed-use areas, and balance the needs of both the residential and commercial uses.

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

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.

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

Policy LU-7.1: Encourage the upgrading and growth of businesses in the Downtown area to serve as a center for the community and to meet the needs of local residents and visitors.

**GOALS AND POLICIES: NOISE**

**Goal N-2: Incorporate noise considerations into land use planning decisions.**

Policy N-2.2: Ensure acceptable noise levels near residences, schools, medical facilities, and other noise-sensitive areas.

Policy N-2.5: Require that the potential for noise be considered when approving new development to reduce the possibility of adverse effects related to noise generated by new development, as well as impacts from surrounding noise generators on the new development.

Policy N-3.4: Recognize in the Noise Ordinance that nighttime noise levels create a greater sensitivity than do daytime noise levels.

C. The modifications to the services and operations conferred by the Amendment will comply with the provisions of MBMC Title 10 (Planning and Zoning), including any specific condition required because of its location in Area District III. The Applicant must comply with all required physical noise mitigation measures before the modifications to the Shade Hotel's operations may be implemented. The entitlements conferred by this Amendment are consistent with the already approved

primary and associated services of the facility. The primary use of the Shade Hotel is and will continue to be to serve the community as a hotel offering first-class accommodations to visitors, with associated food, drink, and event services.

D. The modifications to the services and operations conferred by the Amendment, as conditioned, will not adversely impact nor be adversely impacted by nearby properties. Because such modifications will not alter the fundamental use, purpose, or character of the Hotel, and because there will not be any change in occupancy or intensification of the Hotel, the modifications to the associated services will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities. The site's subterranean parking and valet parking services provide ample parking for the use, even with the modifications to the associated services. Further, an increase in the hours of selling and serving food and drink does not change Code required parking requirements. Likewise, such increase in services will not create any substantial increase in traffic in the area. Additionally, the conditions of approval require: the installation of noise mitigation on the terrace and front door; limitations on hours of operation, special events, sales and service of alcohol, food and drinks, entertainment, amplified sound, security, marketing, closing of doors and windows; and limitations on valet, taxis, queue, staff parking, buses, and drop off.

E. The modifications to the services and operations will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.

SECTION 10. 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 approval of the Amendment to the Master 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 Section 9 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 Amendment.

SECTION 11. Based on the foregoing, the City Council hereby APPROVES an amendment to the Master Use Permit to permit: (a) modifications to permitted eating, drinking and banquet services associated with the Hotel; (b) special events on the Terrace; (c) modifications to existing conditions related to marketing; and (d) installation of new noise mitigation measures, awnings, curtains and lighting as shown in the concept plan dated August 4, 2014, subject to the following conditions:

*Entertainment and Noise*

1. General. The Applicant shall comply with all of the terms and conditions set forth herein. Except as provided in Condition 20, any proposed deviation of the terms and conditions can be approved only by the Planning Commission after a duly noticed public hearing.
2. Noise Mitigation and Other Improvements. The Applicant shall install the following noise mitigation measures, as shown on the approved concept plans dated August 4, 2014:
  - A) A new front door vestibule adjacent to Valley Drive with acoustic glass. The existing front door shall remain, and the existing laminated glass building wall may remain.
  - B) A new acoustic glass enclosure on the south wall of the southeast corner of the Terrace located from the top of the existing glass rail to the ceiling.

- C) Acoustic sealing of all existing openings and gaps between each panel in the glass enclosure on the southeast corner of the Terrace.
- D) Acoustic absorbent panels on the ceiling and suspended acoustic panel “clouds” below the ceiling of the Terrace.
- E) Acoustic curtains surrounding the Terrace on all sides in the areas where there is not a floor-to-ceiling glass enclosure, except the curtain above the access steps on the south side of the Terrace, which shall be a minimum of 7 feet 6 inches above the finished floor of the Terrace. Curtains are not required on the west side of the Terrace.

Such measures shall meet the following sound specifications: a) All new glass shall be acoustic glass rated at Sound Transmission Coefficient STC-36 or better; b) All new acoustic absorbers shall be rated at Noise Reduction Coefficient (NRC) of 0.85 or better; and, c) All assemblies and gaps shall be acoustically sealed.

- 3. Completion of Required Noise Mitigation Improvements. All noise mitigation improvements required in Conditions No. 2, 7-9, 15, and 24-31 must be completed to the satisfaction of the Community Development Director no later than March 31, 2015.
- 4. Special Events and Functions. Prior to March 1 of each year, the Hotel must apply for an annual Entertainment Permit for all special events and functions that will be attended by over 100 people. After consulting with the Fire Department, the Director of Community Development may approve, approve with conditions, or disapprove the application. For the purpose of these conditions, the following terms are defined as follows:

Public Areas-Venue: Any area or space open to the public where sales, service and consumption of food, alcohol, and other beverages is permitted.

Special Events: Any private event or function in which an unaffiliated third party under contract has exclusive use of one or more venues or a portion of a venue. Attendees at special events shall have an invitation from the host client, with the exception of non-profit or charity types of events such as the Downtown Holiday Open House, Charity Education Wine Events, and Chamber of Commerce events.

Functions: Generally “themed” public events held periodically for the general public, up to 12 per year, such as, Halloween, New Years, Valentine’s Day, St Patrick’s Day, Manhattan Beach Open, Surf Festival, Mothers Day, Fathers Day, and Six-Man.

- 5. No Special Event or Function with more than 100 people may take place after 10:00 p.m. prior to March 31, 2015 unless such Special Event or Function has been booked prior to October 7, 2014. No Special Event or Function that will be attended by more than 100 people may take place after 10:00 p.m. after March 31, 2015 unless all of the required noise mitigation improvements required in Conditions No. 2, 7-9, 15, and 24-31 are completed to the satisfaction of the Community Development Director. See condition 13 for additional requirements for Special Events.
- 6. Entertainment and Amplified Sound. Non-amplified music and sound is permitted in all public areas/venues listed in Condition No. 19 except the Terrace, subject to meeting the MBMC noise regulations. All amplified music and sound, including live entertainment and live music, shall use the house system only and shall be limited to background music, including background music with DJ’s, with the following exceptions:

- A) Courtyard - Microphones are allowed only prior to 10 p.m. and shall use the house system only;
  - B) Terrace - Background music through house system only is allowed. No DJ's, microphones, live entertainment, live music, amplified (other than background music through house system) or non-amplified sound.
  - C) Skydeck - Microphones are allowed and shall use the house system only. No amplified live entertainment or amplified live music is permitted. Microphone use shall end at the same time as food and drink service, which is 9:30 p.m.
  - D) Zinc bar and Lobby - Amplified sound for DJ's, live entertainment and live music is permitted, provided all exterior doors and windows, including those adjacent to the Courtyard, remain closed at all times, except when patrons and staff are entering and exiting.
7. House Sound Amplification System - The house sound amplification system and any proposed changes shall be reviewed by the Director of Community Development, who can approve, conditionally approve or disapprove the system or any proposed changes thereto.
8. Terrace Enclosure - A new acoustic glass enclosure on the south wall of the southeast corner of the Terrace located from the top of the existing glass rail to the ceiling, acoustic sealing of all existing openings and gaps between each panel in the glass enclosure on the southeast corner, acoustic absorbent panels on the ceiling and suspended acoustic panel "clouds" below the ceiling of the Terrace shall be installed.

The existing curtains shall be replaced within five months with acoustic curtains that shall surround the Terrace on all sides in the areas where there is not a floor-to-ceiling glass enclosure, except the access steps on the south side shall have curtains that are a minimum of 7 feet 6 inches above the finished floor of the Terrace to allow required emergency access. Additionally, curtains shall not be required on the west side of the Terrace, but if they are installed, they shall not be higher than 12 feet above the finished floor of the Terrace floor so that the top portion is always open to provide ventilation to meet Fire Department and Building Safety requirements.

The curtains shall remain open in the daytime and closed at 9:00 p.m. and then opened again at 11:30 p.m. Curtains may also be closed at anytime during inclement weather; such as cold or rain. Closure of curtains may be subject to special conditions by the Fire Department.

Existing heaters or other patio features shall be modified as required to meet Fire and Building Safety requirements. No temporary heaters, umbrellas, covers or other features that violate Fire and Building Safety requirements shall be placed on the Terrace. The Applicant shall verify to the satisfaction of the Fire Department that the heaters may be operational when the curtains are closed or the heaters shall be turned off when the curtains are closed. An emergency gas shut-off for the heaters shall be installed at the ground level in an accessible location. An emergency strobe light shall be provided on the Terrace.

The Terrace and all improvements shall meet all Building Safety, Fire and other City requirements, including but not limited to emergency egress and accessibility requirements.

9. Front (East) Main Entryway – In addition to the existing primary front entrance/exit doors, Applicant shall install a double-door vestibule.

The double-door vestibule shall include self-closing doors or a similar device or door hardware, so that doors close automatically instead of remaining open. The vestibule shall be large enough to

allow gurney access. Between 10:00 p.m. and 6:00 a.m., both sets of doors will remain in the automatic closed position and shall not be propped open.

The doors shall meet all Building Safety, Fire and other City requirements, including but not limited to emergency egress and accessibility requirements.

10. Courtyard -The courtyard may be used only for special events and functions. No general public gatherings are permitted in the courtyard, and no “spillover” from the Zinc bar and Lobby or other public areas is allowed in the courtyard.
11. Zinc bar and Lobby Interior Separation Wall - A separation wall or retractable partition as detailed in Finding “O.” of Resolution No. PC 05-08 is not required to be installed.
12. Sound Audibility - Noise emanating from the site, including but not limited to the volume of music, entertainment, group singing or group voices, whether or not amplified, shall comply with Section 5.48.140 of the MBMC and the California Penal Codes. All doorways and windows shall remain closed at all times during special events or functions in indoor public areas after 10:00 p.m.
13. Entertainment Permit - Pursuant to Condition 4 of this Resolution, the Hotel shall apply for an annual entertainment permit on or before March 1, in accordance with the Code and the additional criteria contained in Condition 40 in Resolution 5770, Metlox Master Use Permit.
14. Resident Notification - The Hotel shall e-mail to adjacent neighbors who sign-up, the schedule of special events and functions sent to the City, excluding client information.
15. Balconies - A permanent notice shall be placed on or near the doors to the Hotel room balconies informing guests to be respectful of the neighbors at all times and to make no noise on the balconies or outside after 10:00 p.m.
16. Exterior Doors - All exterior doors and windows to the public areas of the Hotel shall be closed after 10:00 p.m.
17. Noise Compliance Verification - The entitlements conferred by this Amendment shall only be granted after the installation of the mitigation measures, implementation of the improvements, and modifications to the operations of the facility. After completion of these requirements, the Community Development Director, in cooperation with the noise consultant, shall prepare a report to the City Council opining whether the measures are effective and meeting the objective noise criteria and mitigation standards described in the noise reports identified in Section 6.
18. Sale and Service of Food and Alcohol. The Applicant shall comply with the following time constraints:
  - A) Outdoor Public Areas/Venues - Terrace and Courtyard
    - a) 30 minutes prior to the time the venue is closed (“Closed Time”) - No sales or service of alcohol, food, or any drinks.
    - b) Closed Time - All drinks, food and other associated items shall be removed. Music and/or amplification shall cease, and lights turned up or turned off. All areas vacated, except staff may remain for one hour after Closed Time.
  - B) Outdoor Public Area/Venue - Skydeck



- a) 60 minutes prior to Closed Time - (9:30 p.m.) No sales or service of alcohol, food, or any drinks.
- b) 30 minutes prior to Closed Time - (10:00 p.m.) Any music, and/or amplification shall be turned off or terminated, and lights turned up or turned off. Staff shall remind customers of the Closed Time.
- c) Closed Time - (10:30 PM) No sales, service, or consumption of alcohol, food, or any drinks. At closed time, all drinks, food, and other associated items shall be removed. All areas vacated, except staff may remain for one hour after Closed Time.

C) Indoor Public Area/Venue - [Zinc Bar and Lobby, and Conference (Green) Room]

Consumption of alcohol, food and drinks is allowed up until Closed Time.

- a) Closed Time - No sales, service or consumption of alcohol, food or any drinks at Closed Time. At Closed Time, all drinks, food, and other associated items shall be removed. Background music only through the house system permitted, no DJ's or live entertainment or live music. All areas vacated, except staff may remain for one hour after Closed Time. All doors and windows, including the folding doors/wall on the east side of the Lobby that opens onto the Courtyard, shall remain closed.

19. Hours of Operation - See Condition 18 for definition of Closed Time and further regulations for when Public Areas/Venues are closed. See Condition 32 for food service regulations. Although the Hotel is a 24-hour operation and is the primary use on the site, there are limits to the hours of operation of the associated services of the site for food, drink, and alcohol service, events, and other activities, as addressed below and in other conditions.

<u>Public Area/Venue</u>	<u>Day-to-day Operations and Special Events and Functions Hours of Operation</u>	<u>Occupancy</u>
<b><u>Outdoor Public Area/Venues</u></b>		
<b>Terrace</b> - south side of Zinc Bar and Lobby	6:00 a.m. to 10:00 p.m. Sunday thru Thursday 6:00 a.m. to 11:00 p.m. Friday, Saturday and Sunday before Holidays	47
<b>Courtyard</b> - Special events and functions only allowed; no day-to-day operations (pass-through area only)	6:00 a.m. to 11:00 p.m. Sunday thru Thursday 6:00 a.m. to 12:00 a.m. (midnight) Friday, Saturday and Sunday before Holidays	151
<b>Skydeck</b> - roof deck	8:00 a.m. to 10:30 p.m. daily	92
<b><u>Indoor Public Areas/Venues</u></b>		
<b>Zinc bar and Lobby</b>	6:00 a.m. to 12:00 a.m. (midnight) daily	159
<b>Conference (Green) Room</b>	6:00 a.m. to 12:00 a.m. (midnight) daily	44

- A) Room service for alcohol is subject to ABC regulations of 6:00 a.m. to 2:00 a.m. Room service for food is permitted 24 hours a day, seven days a week.
- B) New Years Eve - Closing hours for all venues as regulated by the MBMC. The Applicant currently may request 1:00 a.m. closing time through a Temporary Use Permit, except the Skydeck which shall close at the time specified above (10:30 p.m.).

General Conditions

- 20. Substantial Compliance - The proposed structural improvements shall be in substantial conformance with the plans submitted, as approved by the City Council, subject to the conditions herein.
- 21. Occupancy Limits - Required occupancy loads shall not be exceeded and required access and exits shall remain unobstructed at all times. The exact occupancy numbers stated below are required to be posted on the site:
  - Skydeck – 92
  - Zinc Bar and Lobby – 159
  - Terrace/Porch-south side of Lobby – 47
  - Courtyard – 151
  - Conference (Green) Room – 44
- 22. Terrace Use - The Terrace shall not be a conditioned interior space as defined by the Uniform Building Code.
- 23. Public Property Clean-up - The Hotel staff shall monitor the area so that Hotel patrons do not litter or loiter on adjacent public property, including but not limited to the sidewalk, street, Metlox Town Square (“Town Square”) and all other public areas at Metlox. Hotel staff shall promptly clean up all areas with any litter and spills after all Special Events and Functions. The Public Works Department may bill the Hotel for any Special Event and Function related public property clean-up costs.
- 24. Security - The Hotel shall provide a third party security staff person for all Special Events and Functions attended by over 50 persons, and any Special Event or Function that has amplified sound, live entertainment or live music after 10:00 p.m., and for any Special Event or Function on the Skydeck that ends at 10:00 p.m. or later and has an attendance of 50 or more people, or when required by the Fire Department. The security staff shall supervise the site and surrounding area to ensure that all conditions of approval, including but not limited to noise, sales and service of food and drinks, access, windows and doors being closed, littering, loitering, occupancy limits, and any other nuisances are complied with. The security staff shall work cooperatively, and meet periodically with the Police and Fire Departments, if requested.

Ingress-Egress Control

- 25. Valet - At 10:00 p.m. daily, customers using the Hotel valet service shall wait inside of the lobby, not outside, until the valet arrives with their vehicle. The hours and days may be modified to be more, but not less, restrictive as determined to be necessary by the Director of Community Development. The valet shall keep all driving lanes, parking back up areas, and all vehicular and pedestrian accessways free and accessible to the general public, subject to approval of the Director of Community Development.
- 26. Taxis - Hotel employees shall discourage the public from using taxis on Valley Drive after 10:00 p.m. Taxi pickups and drop-offs for the general public at the Hotel entrance shall be

prohibited after 10:00 p.m. Everyone, except for registered Hotel guests and disabled persons, shall be directed to the taxi stand on Morningside Drive and 13<sup>th</sup> Street, after 10:00 p.m. Hotel staff may call for a taxi to pickup registered guests and disabled persons at the Hotel entrance on Valley Drive at any time.

27. Entry-Exit Queue - At or after 10:00 p.m., no queue or line or gathering of people waiting to enter or exit the Hotel shall be located outside of the building except the queue may be located on the Terrace, or customers may be directed to the Metlox Town Square area near the outdoor fireplace and fountain and be provided with “beepers” or electronic notification devices.
28. Staff parking - The Hotel shall instruct its employees, contract employees, contractors servicing events, and all others providing services to the Hotel to not park on the public streets east of Valley Drive, in the residential areas or in Parking Lot 8 (in the median of Valley and Ardmore). All parking shall be on the Metlox site or in other public parking structures or lots, such as Lot 3 (at the southwest corner of Morningside Drive and 12<sup>th</sup> Street).
29. Buses - Any large transportation, such as buses, oversized shuttles, or recreational vehicles, shall not use the Hotel drop-off area on the east side after 10:00 p.m. daily, but shall load and unload off of Morningside Drive or 13<sup>th</sup> Street. The vehicles shall observe and comply with all parking regulations in these areas.
30. Town Square –Special Events and Functions cannot be held in or spill over into the Town Square or other Public Open Areas, unless prior approval is granted by the City. The Applicant shall work cooperatively with the management company, landlord, any security personnel and the City to ensure that Shade Hotel patrons are not gathering in the Town Square and public areas outside of the Hotel and disturbing the neighbors after the Hotel public areas are closed. The doorman or other Hotel employee or security shall ensure that patrons do not leave the Hotel with alcoholic beverages.
31. Front Drop Off - Vehicles occupying the drop off/driveway area in front of the Hotel off Valley Drive shall not park on the curb or sidewalk or past the end of the south landscaped “island”. Any temporary barricade across the driveway shall not block access to 12<sup>th</sup> Walk at the bollards. The area at Valley Drive and 12<sup>th</sup> Walk by the bollards shall remain open, unobstructed and free of vehicles at all times, to allow for emergency vehicle access at the bollards, and vehicle access into the parking structure.

#### Food Service

32. Food Service – The Applicant shall not establish a full scale restaurant. The Hotel may provide full food service (breakfast, lunch and dinner) on the entire Terrace. The Zinc bar and Lobby may have up to 12 seats of “spill-over” from the Terrace with full food service. Full food service may be provided in all other public areas only during Special Events and Functions. Food service, primarily small-plates, may be provided in the Zinc bar and Lobby, and on the Skydeck only during the hours of operation. This shall not preclude 24-hour room service for food and non-alcoholic drinks, and room service of alcohol in compliance with ABC regulations.

#### Marketing

33. Marketing-General - Marketing and promotion of the facility will be first and foremost as a hotel use. The availability of the Hotel for Special Events and Functions, as well as food and the bar service, may be marketed as associated services, but not as the primary use. The Hotel shall not advertise, market, or promote alcoholic drinks or “happy hour” types of specials.

34. Menu Posting - The Hotel may post drink or food menus or signage outside of the Hotel, except that the Hotel may not post information about any alcoholic drink or “happy hour” types of specials. Any menu posted on the south side of the Terrace shall be adjacent to the outside of the Terrace and not extend past the existing planters on the south side.

Procedural

35. Retention of Jurisdiction to Monitor Compliance and Add or Modify Conditions; Review; and Violations. The City Council hereby retains jurisdiction to monitor compliance with these conditions and impose or modify conditions, if necessary. All provisions of the Master Use Permit Amendment shall be reviewed by the Community Development Department within 6 months after completion of improvements and yearly thereafter. The design, specifications and layout of sound mitigation measures is subject to further review by the Director of Community Development and noise consultant, who, pursuant to Condition 17, shall prepare a report to the City Council opining whether the measures are effective and meeting the objective noise criteria and mitigation standards described in the noise reports identified in Section 6. The Director of Community Development shall present such report and a status report to the City Council in September 2015. At that time (or any time thereafter), the Applicant may apply for an amendment to this Amendment seeking additional hours of operation on the Terrace. At any time, the City may schedule a public hearing to consider revocation or modification of the Amended Master Use Permit as it relates to the Shade Hotel. Modification may consist of conditions deemed reasonable to mitigate or alleviate impacts to adjacent land uses. If the Applicant fails to timely meet the conditions herein, the City will schedule a revocation or modification hearing.
36. Fish and Game. Pursuant to Public Resources Code Section 21089 (b) and Fish and Game Code Section 711.4 (c), the project is not operative, vested, or final until the required filing fees are paid.
37. Covenant Stipulating to Conditions. The Applicant, all successors-in-interest, all Hotel operators, and all tenants of the site, if applicable, must comply with all terms and conditions set forth in this Resolution and applicable conditions in City Council Resolution No. 5770, unless such terms and conditions are subsequently amended by a duly adopted Resolution. The Applicant shall sign and return to the Community Development Department a recordable covenant, approved as to form by the City Attorney, stipulating to and accepting the conditions of approval on or before November 7, 2014.
38. Inspections. The Applicant shall allow City staff to inspect the site during construction at any time.
39. Indemnification and Duty to Defend. The Applicant shall defend, indemnify, and hold 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”) free and harmless from and against any and all claims (including, without limitation, claims for bodily injury, death, or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including, without limitation, attorneys’ fees, consequential damages, disbursements, and court costs) of every kind and nature whatsoever (individually, a “Claim,” collectively, “Claims”), in any manner arising out of or incident to: (i) this approval and related entitlements, (ii) the City’s environmental review of this project, (iii) any construction related to this approval, or (iv) the use of the property that is the subject of this approval. The Applicant 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 arising out of or incident to this approval, any construction related to this approval, or the use of the property that is the subject of this approval. The City shall have the right to select counsel of its choice. The Applicant 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. The Applicant’s obligation to indemnify shall not be restricted to insurance proceeds, if

any, received by the Applicant or Indemnitees. This indemnity shall apply to all Claims and liability regardless of whether any insurance policies are applicable. In the event such a legal action is filed challenging the City's determinations herein or the issuance of the permit, the City shall estimate its expenses for the litigation. The Applicant 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. Solely for the purpose of ease of reference, this Resolution contains all of the still applicable conditions from Planning Commission Resolution No. PC 05-08 and supersedes all other conditions in that Resolution. This Resolution also amends Conditions 28 and 38 of City Council Resolution No. 5770. All other conditions in Resolution No. 5770 (unless amended by other Resolutions for other Metlox tenants) remain in effect and in full force.

SECTION 13. 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 Applicant.

SECTION 14. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED on October 7, 2014.

- Ayes:
- Noes:
- Absent:
- Abstain:

\_\_\_\_\_  
WAYNE POWELL  
Mayor

Attest:

\_\_\_\_\_  
LIZA TAMURA  
City Clerk (SEAL)