

RESOLUTION NO. 16-0073

A RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL APPROVING AN ENCROACHMENT PERMIT FOR AWNINGS TO COVER PREVIOUSLY APPROVED BALCONIES ENCROACHING INTO THE PUBLIC RIGHT-OF-WAY AT A RESTAURANT LOCATED AT 117 MANHATTAN BEACH BOULEVARD (MB DINING LLC/ STRAND HOUSE)

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

SECTION 1. MB Dining LLC/Strand House ("Applicant") has applied for an encroachment permit for retractable awnings ("Project") to cover existing five-foot wide dining balconies at 117 Manhattan Beach Boulevard ("Subject Property"). In 2011, the City Council approved a use permit for an overall restaurant remodel project at the Subject Property. Concurrently with the remodeling project, the City Council approved an encroachment permit to allow the two existing balconies to encroach into the City's right-of-way.

SECTION 2. The proposed Project is Categorically Exempt from the provisions of the California Environmental Quality Act ("CEQA") under Section 15301 (Class 1, Existing Facilities) of the CEQA Guidelines because the awnings are, at most, a minor alteration to an existing structure and there will be no expansion of any uses. The balconies are already existing and in use. In addition, the proposed Project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.

SECTION 3. At a duly noticed public meeting held on December 20, 2016, the City Council considered the request. The Council received evidence, both oral and written, from the public.

SECTION 4. The record of the hearing indicates the following:

MBMC Section 7.36.170 governs long-term commercial use encroachment permits. Pursuant to Subsection A(c), the Director of Community Development may approve awnings that benefit the public and comply with applicable codes. However, when the Council adopted Resolution No. 6304 allowing the encroachment permit for the two existing second floor balconies on the subject property, the Council imposed a condition prohibiting any additional encroachments.

A. Based upon its review of the application, the City's Parking and Public Improvements Commission recommends that the Council approve the encroachment permit, based upon the following:

1. **The application is in accordance with the encroachment objectives of the MBMC. The awnings would have a low visual profile, reduce visual obstruction and safety concerns from umbrellas used as an alternative, be similar in form and function to existing area encroachments, and will comply with applicable codes.**
2. **The 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 awnings will match existing balcony encroachments, and have a low visual profile.

3. The encroachment permit is in conformity with the policies and goals of the General Plan. The proposal preserves visual aesthetics (Goal LU-3), and supports Downtown business (Goal LU-7).
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. The awnings will be above the public sidewalk and will conform to Building Code standards for vertical 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 will not reduce or adversely impact the vehicular access along the improved right-of-way. The awnings will be above the public sidewalk and will conform to Building Code standards for vertical clearances.
6. The proposed encroachment will not impact public access to the shoreline because Manhattan Beach Boulevard, as well as other streets in the area, contains sidewalks that provide public access to the shoreline, including the sidewalk immediately adjacent to the restaurant. The awnings will be above the public sidewalk, will not reduce the width of the sidewalk, and will conform to all Building Code standards for vertical clearances.
7. The present and foreseeable future demand for public or commercial recreational activities that already accommodated in the area. Manhattan Beach Boulevard is built to its full width, and there is no anticipated need for widening.

SECTION 5. Based upon the evidence in the record, including the facts set forth in the staff report and Sections 1-4 of the Resolution, the City Council hereby finds:

A. The proposed retractable awning encroachment, as conditioned herein, is in accordance with the encroachment objectives of the MBMC.

B. The 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, because the awnings will match existing balcony encroachments, and have a low visual profile.

C. The granting of this encroachment permit will be in conformity with the policies and goals of the General Plan.

D. The proposed encroachment will comply with the provisions of MBMC Chapter 7.36.

E. 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 since the awnings will be above the public sidewalk in conformance to Building Code standards for vertical clearances.

F. 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 right-of-way, since the awnings will be above the public sidewalk in conformance to Building Code standards for vertical clearances.

G. 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 since the awnings will be above the public sidewalk in conformance to Building Code standards for vertical clearances.

H. 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 as the Manhattan Beach Boulevard roadway is built to its full width, and there is no anticipated need for widening.

I. Based upon the foregoing facts, the encroachment permit benefits the public and will comply with applicable codes.

SECTION 6. Based upon the evidence in the record and the findings set forth in Section 5 of this Resolution, the City Council hereby approves the request for retractable awnings above existing dining balcony encroachments into the Manhattan Beach Boulevard right-of-way 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 December 20, 2016, and April 5, 2011.

2. The Project shall conform to the procedures and standards of the Manhattan Beach Municipal Code, Manhattan Beach Local Coastal Program, and California Building Code.

3. No sidewalk dining or other normally permitted encroachments shall be permitted while the balcony and awning encroachments are in place.

4. The encroaching awnings shall be in the retracted/non-extended position when the restaurant is not open to customers, and when appropriate due to special circumstances, as determined by the Community Development Director or Chief of Police.

5. The Applicant 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 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. The City shall promptly notify the Applicant of any claim, action, or proceeding and the City shall reasonably cooperate in the defense. If the City fails to promptly notify the Applicant of any claim, action, or proceeding, or if the City fails to reasonably cooperate in the

defense, the Applicant 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 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. Nothing in this Section shall be construed to require the Applicant 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 Applicant shall deposit that amount with the City or enter into an agreement with the City to pay such expenses as they become due.

SECTION 7. 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 8. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED December 20, 2016.

Ayes:

Noes:

Absent:

Abstain:

Tony D'Errico, Mayor

ATTEST:

Liza Tamura, City Clerk