

RESOLUTION NO. 18-0052

A RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL APPROVING A MASTER USE PERMIT AMENDMENT AND THE THIRD AMENDMENT TO THE DISPOSITION & DEVELOPMENT AGREEMENT & GROUND LEASE TO MODIFY THE EXISTING USES AND ALLOW ADDITIONAL RESTAURANTS AT THE METLOX SITE LOCATED AT 451 MANHATTAN BEACH BOULEVARD

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

SECTION 1. In July 2002, the City Council adopted Resolution No. 5770 approving a Master Use Permit (“MUP”) for the Metlox Project located at 451 Manhattan Beach Boulevard (the “Subject Property”). The Metlox Project consists of a commercial development with restaurants and shops, a 38-room boutique hotel, and a two-story subterranean parking structure. The Applicant, Metlox, LLC c/o Tolkin Group, submitted an application for amendments to the MUP to reconfigure commercial uses, increase the restaurant square footage, allow second-floor outdoor dining, and allow for administrative modifications to the MUP.

SECTION 2. The Planning Commission conducted a duly noticed public hearing on January 24, 2018 to consider the application. After the close of the public hearing, the Planning Commission adopted Resolution No. PC 18-01 approving the: (1) division of one restaurant into two separate restaurants where Nick’s Manhattan Beach currently operates; (2) conversion of commercial space on the second floor from a personal service use (currently Kasai Hair Salon) to an indoor-only restaurant; and (3) division of two commercial spaces into three commercial spaces for restaurant, personal service, or personal improvement uses (“collectively referred to herein as the “Amendment” or “modifications”). The Planning Commission declined to approve the Applicant’s requests to delegate to the City Manager the authority to approve additional administrative modifications to the MUP, second-floor outdoor dining, and a bank on the ground floor on Morningside Drive. The Planning Commission’s decision was appealed to the City Council.

SECTION 3. On April 3, 2018, the City Council held a duly noticed public hearing *de novo* at which time it provided an opportunity for the public to provide oral and written testimony. City staff and the Applicant presented evidence in support of refining the subject conditions and other persons spoke in favor of the refinements. At least one person spoke in opposed to the application.

SECTION 4. Based on the foregoing and substantial evidence presented at the public hearing, the City Council hereby finds:

A. In July 2002, the City Council determined that the Metlox Project is consistent with the General Plan and the City’s Zoning Code and made all of the necessary findings to adopt the

Final Environmental Impact Report (“EIR”) and to approve the MUP. The certification of the Environmental Impact Report (“EIR”) and approval of the MUP are thus final and conclusive.

B. Pursuant to Municipal Code Sections 10.84.100 and 10.84.105, approval of an amended Master Use Permit amendment is required for any modification to conditions of approval for a Master Use Permit.

C. The General Plan designation for the property is Downtown Commercial. The property is located within Area District III and is zoned Downtown Commercial. The properties to the west and south are also zoned Downtown Commercial; the properties to the north are zoned Downtown Commercial and Public and Semipublic, and the properties to the east are zoned Open Space. Further east past Valley/Ardmore and the Veterans parkway is zoned Single-Family Residential.

D. The subject property is located within the Manhattan Beach Coastal Zone, and the Coastal Development Permit for the Project was issued by the California Coastal Commission.

E. Pursuant to the California Environmental Quality Act (“CEQA”) and the CEQA Guidelines, the proposed MUP Amendments have been environmentally reviewed. The proposed modifications are categorically exempt from further environmental review under CEQA Guidelines Section 15301 (Class 1 - Existing Facilities) because the MUP Amendment authorizes the continued operation of an existing facility with a negligible expansion of the presently existing use of the property. Further, the MUP Amendments are exempt under CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the reconfiguration and minor expansion of existing uses may have a significant effect on the environment. Additionally, the City Council certified an EIR for the Metlox Project; and, pursuant to CEQA Guidelines Section 15162, the City Council finds in its independent judgment that no subsequent environmental review is required because there are no substantial changes or new information related to the modifications that require major revisions to the EIR involving new or substantially increased significant environmental effects.

F. Manhattan Beach Zoning Code Section 10.84.060.A and the corollary section of the Manhattan Beach Local Coastal Program set forth the required findings to approve a MUP and any amendments thereto. The required findings are designed to ensure that proposed land uses are compatible with surrounding uses and will not be detrimental to surrounding uses or the City in general. In 2002, the City Council made these findings supported by substantial evidence. The proposed MUP Amendments do not change the types of land uses of the Metlox Project or adversely affect or alter the findings made by the City Council in 2002, which are final and conclusive and cannot be challenged at this time. The findings contained in Resolution No. 5770 are hereby incorporated herein by this reference. Nevertheless, such findings are satisfied with respect to the modifications approved herein, as follows:

1. The modifications do not make any changes to the location of the Metlox project, which the City Council found in 2002 to be in accord with the objectives of Zoning Code and the purposes of the district in which the site is located. The proposed Amendment, including the expansion of restaurant uses, is consistent with the Downtown Commercial (CD) Zone designation. The Downtown Commercial (CD) zone provides opportunities for residential,

commercial, public and semipublic uses that are appropriate for the downtown area. This district is intended to accommodate a broad range of community businesses and to serve beach visitors. The proposed modifications will strengthen the City's economic base, but also protect small businesses that serve City residents. The proposed modifications are intended to enhance a suitable environment for various types of commercial uses, and, as conditioned, will continue to protect surrounding residential uses from the potential adverse effects of inharmonious uses on adjacent residential districts. Additionally, the proposed modifications are intended to accommodate a broad range of community businesses and serve beach visitors.

2. The modifications, as conditioned, do not make any changes to the location of the Metlox Project, which the City Council found in 2002 to be: consistent with the General Plan; not detrimental to the public health, safety or welfare of persons residing or working on the Subject Property or in or adjacent to the neighborhood of the Subject Property; and not detrimental to properties or improvements in the vicinity or to the general welfare of the City. As is true with the overall Metlox Project, the modifications, including the expansion of restaurant uses, is consistent with the following General Plan Goals and Policies for the Commercial Downtown designation. The Metlox Project is a long-established commercial use and the proposed Amendment merely modifies the mix of commercial uses. Amending the MUP will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the Subject Property due to conditions imposed that limit square footages and prohibit outdoor second floor dining or bank uses adjacent to the ground floor public sidewalk. There will be no negative impact on properties or improvements in the vicinity or on the general welfare of the City due to these conditions. Specifically, the Amendments to the MUP are consistent with the following General Plan Goals and Policies:

Policy 2.3: Protect public access to and enjoyment of the beach while respecting the privacy of beach residents.

Policy 4.1: Protect all small businesses throughout the City which serve City residents.

Policy 5.1: The City recognizes the need for a variety of commercial development types and has designated areas appropriate for each. The City shall encourage development proposals which meet the intent of these designations.

Policy 5.2: Require the separation or buffering of low-density residential areas from businesses which produce noise, odors, high traffic volumes, light or glare, and parking through the use of landscaping, setbacks, and other techniques.

GOAL 6: CONTINUE TO SUPPORT AND ENCOURAGE THE VIABILITY OF THE "DOWNTOWN" AREA OF MANHATTAN BEACH.

Policy 6.1: Encourage the upgrading and expansion of business in the Downtown area to serve as a center for the community and to meet the needs of beach area residents.

Policy 6.2: Develop and encourage the use of design standards for the Downtown area to improve its visual identification as a unique commercial area.

GOAL 7: PROTECT EXISTING RESIDENTIAL NEIGHBORHOODS FROM THE INTRUSION OF INAPPROPRIATE AND INCOMPATIBLE USES.

3. The modifications will not change the types of uses permitted in the Metlox Project and do change the overall scope of the original approved MUP. Restaurant and other commercial uses are permitted at this location. Further, the required notice and public hearing requirements have been met, all of the required findings have been addressed, and conditions will be required to be met prior to the issuance of a certificate of occupancy.

4. The Amendment will not alter the fundamental use, purpose, or character of the Metlox Project, because there will be no change in the hours of operation, changes requested are within the existing footprint and envelope of the existing structures, and there is ample parking for the expansion of restaurant uses. The modifications will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities. As conditioned, the modifications and the expansion of the restaurant uses do not adversely affect the City Council findings in 2002: They will not adversely impact nor be adversely impacted by nearby properties. All potential impacts related to the Metlox Project (e.g., traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or demands exceeding the capacity of public services and facilities which cannot be mitigated) were evaluated and addressed in the Certified EIR.

G. In 2002, the California Coastal Commission approved a Coastal Development Permit ("CDP") for the Metlox Project. The Amendment will not: alter the fundamental use of the Metlox Project as approved by the Coastal Commission; change the allocation of parking, public areas and the overall commercial development approved by the Coastal Commission; or reduce public services such as parking. Nevertheless, the City Council makes the following finding with respect to the modifications approved herein:

1. The modifications, as described in the application and accompanying materials, as modified by any conditions of approval, conform with the certified Manhattan Beach Local Coastal Program for the reasons specified in subsection F above and because it is consistent with the following applicable policies from Chapter 4 of the Local Coastal Program:

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

Policy I.A.3: The City shall preserve pedestrian access systems including the Spider Web park concept (Spider Web park concept: a linear park system linking the Santa Fe railroad right-of-way jogging trail to the beach with a network of walkstreets and public open spaces. See Figure NR-1 of the General Plan).

Policy I.B.3: The City shall encourage pedestrian and bicycle modes as a transportation means to the beach.

Policy II.1: Control Development within the Manhattan Beach coastal zone.

Policy II.A.2: Preserve the predominant existing commercial building scale of one and two stories, by limiting any future development to a two-story maximum, with a 30' height limitation as required by Sections A.04.030, A.16.030, and A.60.050 of Chapter 2 of the Implementation Plan.

Policy II.A.3: Encourage the maintenance of commercial area orientation to the pedestrian.

The modifications to the Metlox Project are consistent with these Local Coastal Program policies because they do not change the overall development, range of permitted uses, and services provided at the Subject Property.

SECTION 5. After considering all of the evidence in the record, the City Council hereby approves the following new and amended conditions of approval on the Master Use Permit for the Metlox Project.

General Conditions

1. The Metlox Project shall be in substantial conformance with the MUP as amended by the City Council herein, subject to any special conditions set forth below. The Director of Community Development ("Director" hereinafter) shall determine whether any deviation from the approved project is substantial which requires an amendment to the MUP or any other discretionary entitlements. Any substantial deviation from the terms and conditions of this Resolution, and the MUP, as amended, shall require approval from the Planning Commission.

Land Use

(This condition replaces Condition 25 A and B – City Council Resolution No. 5770)

2. The following land uses and maximum square footages, as defined and approved by the DDA/Ground Lease, and shall be allowed:
 - A. Retail Sales and services, including food service uses, 20,000 square feet total maximum, including:
 - a. Retail sales;
 - b. Personal Services;
 - c. Retail/specialty food service uses that are non-destination type establishments such as a bakery, tea salon, coffee house, ice cream shop, yogurt, candy, cookies, juices, and other similar limited specialty food items. Each business is limited to a maximum of 300 square feet of outdoor seating area, including table, chairs and benches, within the Town Square and Public Areas;
 - d. Limited Personal Improvement Services, such as yoga studios, spin studios, pilates and personal training are permitted in Building C, 1200 Morningside Drive and 451 Manhattan Beach Boulevard, Suite C: and,

- e. Similar uses identified as permitted (by right) in the underlying zoning district (CD) which are not included in this Master Use Permit shall be left to the discretion of the Director of Community Development.
- B. Eating and Drinking Establishments (restaurants), 14,432 square feet total maximum, (including 9,916 square feet maximum dining/seating area regardless of whether located indoors or outdoors). All second floor outdoor dining is prohibited.

Alcohol

(This condition replaces Condition 38 – City Council Resolution No. 5770, as amended by Condition No. 6 in Resolution No. PC 08-08)

- 3. All restaurants may provide full liquor service, which is incidental to, and in conjunction with, the service of food. Service of alcohol at the restaurants shall be in conjunction with the service of food at all times during all hours of operation.

Procedural

- 4. *Terms and Conditions are Perpetual; Recordation of Covenant.* The provisions, terms and conditions set forth herein are perpetual, and are binding on the Applicant, its successors-in-interest, and, where applicable, all tenants and lessees of the site. Further, the Applicant shall submit to the City for recordation a covenant indicating its consent to the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The covenant is subject to review and approval by the City Attorney. The Applicant shall deliver the executed covenant, and all required recording fees, to the Department of Community Development within 30 days of the adoption of this Resolution. If the Applicant fails to deliver the executed covenant within 30 days, this Resolution shall be null and void and of no further effect. Notwithstanding the foregoing, the Director may, upon a request by the Applicant, grant an extension to the 30-day time limit.
- 5. *Review.* The modifications are subject to review by the Community Development Department six months after occupancy and yearly thereafter. At any time in the future, the Planning Commission or City Council may review the Use Permit for the purposes of revocation or modification. Modification may consist of conditions deemed reasonable to mitigate or alleviate impacts to adjacent land uses.
- 6. *Indemnity, Duty to Defend and Obligation to Pay Judgments, Awards of Attorney Fees and Defense Costs, Including Attorneys' Fees, Incurred by the City.* 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. 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, including any award of attorney's fees. The City shall promptly notify Applicant of any claim, action, or proceeding

RESOLUTION NO. 18-0052

and the City shall reasonably cooperate in the defense, however, cooperation does not include the City having to take any action or make any decision that the City does not believe, in the exercise of its good faith judgment, is in its own best interest, and cooperation shall not be construed in a manner that requires the City to exercise its discretion in a particular manner. If the City fails to promptly notify Applicant of any claim, action, or proceeding, or if the City fails to reasonably cooperate in the defense, 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. Applicant shall reimburse the City, and the other Indemnitees, for any and all legal expenses, fees, and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Nothing in this Condition shall be construed to require 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. Applicant shall deposit that amount with the City for the payment of such expenses as they become due. Applicant shall replenish the deposit as necessary based upon notice by the City.

SECTION 6. All other conditions in Resolution No. 5770 and Planning Commission Resolution Nos. 08-08 (Le Pain), 06-20 (Petros), and 14-0064 (Shade Hotel) shall remain in effect and in full force except as amended specifically herein.

SECTION 7. The entitlements conferred by this Resolution shall lapse five years after the date of this resolution, unless the subject improvements are installed or the Applicant seeks an extension pursuant to Municipal Code Section 10.84.090.

SECTION 8. In addition to the MUP, the City and the Applicant entered into that certain Disposition & Development Agreement & Ground Lease ("Ground Lease") dated May 13, 2002 as to the Subject Property, and amended the Ground Lease twice thereafter. The City Council hereby approves the Third Amendment to the Ground Lease, substantially in the form attached to the staff report, and hereby directs the City Manager and the City Attorney to make any necessary changes to conform the Third Amendment to the Council action on Applicant's application to amend the MUP.

SECTION 9. The time within which judicial review, if available, of the decision to amend the MUP must be sought is governed by California Code of Civil Procedure Section 1094.6, unless a shorter time is provided by other applicable law. The City Clerk shall mail by first class mail, postage prepaid, a certified copy of this Resolution and a copy of the affidavit or certificate of mailing to the Applicant and any other persons or entities requesting notice.

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

PASSED, APPROVED, AND ADOPTED April 3, 2018.

Ayes:

Noes:

Absent:

Abstain:

AMY HOWORTH
Mayor

Attest:

LIZA TAMURA
City Clerk