

## **RESOLUTION NO. 18-0074**

### **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 ALLOW PERSONAL IMPROVEMENT USES IN CERTAIN LOCATIONS AND THE CONVERSION OF ONE RESTAURANT INTO TWO RESTAURANTS WITHIN ITS EXISTING FOOTPRINT (METLOX SITE, 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. Metlox, LLC c/o Tolkin Group (the “Applicant”), 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. 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 modifying the conditions, and other persons spoke in support of the request. Others spoke in opposition to converting retail space to restaurant uses. After the close of the public hearing and deliberations, the City Council decided to defer a final decision on the expansion of restaurant square footage and allowing a restaurant use on the second floor. Councilmembers stated that they wanted a balance of different uses but recognized that it might become difficult to maintain that mix in the future. Councilmembers encouraged the Applicant to seek retail uses to replace future retail vacancies. Accordingly, the City Council directed staff to draft a resolution for Council consideration to: (1) approve division of one restaurant into two separate restaurants where Nick’s Manhattan Beach currently operates;

and (2) allow personal services and personal improvement uses at the spaces currently occupied by Waterleaf and Beehive (“collectively referred to herein as the “modifications”). In addition, the Council retained jurisdiction to allow the Applicant to resubmit its request to convert retail space to restaurant use in the event of a vacancy.

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 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, the modifications to the conditions of approval requested by the Applicant require a Master Use Permit amendment (“MUP Amendment”).

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 across the street (Valley Drive) to the east are zoned Open Space. The area located east of Veterans Parkway and Ardmore is zoned Single-Family Residential.

D. Pursuant to the California Environmental Quality Act (“CEQA”) and the CEQA Guidelines, the proposed MUP Amendment has 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 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.

E. 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 an 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 MUP Amendment 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 are 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 MUP 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. 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 modifications to the MUP are consistent with the following General Plan Goals and Policies:

*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.

*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.

*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 not change the overall scope of the original approved MUP. Restaurant and personal improvement uses are already permitted at this location.

4. The MUP Amendment will not alter the fundamental use, purpose, or character of the Metlox Project, because the changes requested are within the existing footprint and envelope of the existing structures; and there is ample parking for the 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 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.

F. In 2002, the California Coastal Commission approved a Coastal Development Permit (“CDP”) for the Metlox Project. The Amendment will not: (1) alter the fundamental use of the Metlox Project as approved by the Coastal Commission; (2) change the allocation of parking, public areas and the overall commercial development approved by the Coastal Commission; (3) or reduce public services such as parking. The modifications do not constitute “development” within the meaning of the Coastal Act, and thus no coastal permit amendment is required.

G. On appeal from the Planning Commission’s approval of the Amendment, the City Council received comments from Don McPherson and his attorney, Beverly Palmer. They argue that the City’s parking analysis and environment determination are inaccurate based on the proposed expansion of restaurant square footage. Such arguments are without merit. In any event, the City Council has not approved expansion of restaurant square footage.

SECTION 5. The City Council hereby denies without prejudice the requested expansion of restaurant square footage and encourages the Applicant to re-submit its request upon future notification of vacancies in tenant space proposed for restaurant use and retains jurisdiction in the event the Applicant re-applies for the same requests.

SECTION 6. 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 the Applicant’s application to amend the MUP.

SECTION 7. After considering all of the evidence in the record, the City Council hereby approves: (a) the division of one restaurant into two separate restaurants where Nick’s Manhattan Beach currently operates; and (b) personal services and personal improvement uses at the spaces currently occupied by Waterleaf and Beehive, subject to the following conditions:

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1. The Applicant shall submit all necessary plans to the Community Development Department for the tenant improvements associated with: (a) creating two restaurants in the space currently occupied by Nick's Manhattan Beach; and (b) converting the spaces currently occupied by Waterleaf and Beehive into personal services and personal improvement uses.
2. Conditions 25 A and 25 B in City Council Resolution No. 5770 are hereby amended to read as follows:

“The following land uses and maximum square footages are allowed:

- A. Retail Sales and services, including food service uses, 20,000 square feet total maximum, including:
    1. Retail sales;
    2. Personal services;
    3. Retail/specialty food service uses 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.
    4. Limited personal improvement services, such as yoga studios, spin studios, pilates and personal training are permitted in Building C, 1210 Morningside Drive and 451 Manhattan Beach Boulevard, Suite C130; Building B at Suite B100 at 451 Manhattan Beach Boulevard; and
    5. At her or his discretion, the Director of Community Development may approve similar uses that are permitted (by right) in the underlying zoning district (CD).
  - B. Eating and Drinking Establishments (restaurants): 8,000 square feet total maximum, (including 6,400 square feet maximum dining/seating area regardless of whether located indoors or outdoors). Suite D126 in Building D, 451 Manhattan Beach Boulevard currently occupied by Nick's Restaurant, may be divided into two separate restaurants.”
3. Condition 38 in City Council Resolution No. 5770, as previously amended by Condition No. 6 in Resolution No. PC 08-08, is hereby amended by deleting the reference to two restaurants, to read as follows:

“All restaurant uses in the following current restaurant locations may provide alcohol service pursuant to a validly issued state Department of Alcohol Beverage Control (ABC) license Type 47 (On Sale General for Bona Fide Public Eating Place): Suite D126 and Suite B110. Service of alcohol at the restaurants shall be in conjunction with the service

of food at all times during all hours of operation. Any alcohol service in a restaurant location not listed above that does not have an ABC license as of June 1, 2018 shall require a master use permit amendment.”

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. *Indemnity, Duty to Defend and Obligation to Pay Judgments, Awards of Attorney Fees and Defense Costs, Including Attorneys’ Fees, Incurred by the City.* 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, including any award of attorney’s fees. The City shall promptly notify the Applicant of any claim, action, or proceeding 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 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, 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 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 for the payment of such expenses as they become due. The Applicant shall replenish the deposit as necessary based upon notice by the City.

**SECTION 8.** 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 9. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED June 5, 2018.

Ayes:

Noes:

Absent:

Abstain:

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AMY HOWORTH  
Mayor

ATTEST:

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LIZA TAMURA  
City Clerk