

## **RESOLUTION NO. 18-0075**

### **RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL APPROVING A USE PERMIT AMENDMENT TO EXTEND THE OPERATING HOURS AND INCREASE THE NUMBER OF SPECIAL EVENTS AT AN EXISTING RESTAURANT/BAR LOCATED AT 900 MANHATTAN AVENUE (900 CLUB AND DOWNSTAIRS BAR)**

#### **THE MANHATTAN BEACH CITY COUNCIL HEREBY RESOLVES, FINDS AND DETERMINES:**

SECTION 1. On August 17, 2017, the owner of the 900 Club and Downstairs Bar located at 900 Manhattan Avenue (the “Subject Property”) filed an application for a Use Permit Amendment to increase the hours of operation and increase the number of annual Entertainment Permits.

SECTION 2. On January 24 and February 28, 2018, the Planning Commission held a duly noticed public hearing to consider the Use Permit Amendment. At the public hearing, there was testimony presented that the 900 Club has generally operated within the conditions of approval of the existing Use Permit, but that the Downstairs Bar had become a source of noise concerns detrimental to public health, safety and welfare. On March 14, 2018, the Planning Commission approved Resolution PC 18-03, eliminating the “last call” provision and increasing the number of annual entertainment events to 24 subject to additional conditions to reduce noise. The Planning Commission did not approve an increase to the hours of operation. The Planning Commission’s decision was appealed to the City Council.

SECTION 3. On May 1, 2018, the City Council held a duly noticed public hearing *de novo*, at which time the public had the opportunity to provide oral and written testimony. After the close of the public hearing and deliberations, the City Council directed staff to draft a resolution for Council consideration to extend the time of operation, including the service of alcohol, for the upstairs only, until 1:00 a.m. on Thursday night/Friday morning, increase the number of annual entertainment events to 24, and implement additional noise-reducing measures.

SECTION 4. This amendment to the existing Use Permit (the “Project”) was assessed in accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The City Council finds that the Project has no potential to result in a significant environmental impact and is exempt from CEQA pursuant to CEQA Guidelines Sections 15301 (Existing Facilities).

SECTION 5. The Subject Property is a single commercial building occupied by the 900 Club upstairs and the Downstairs Bar downstairs with three existing on-site parking spaces. It is located in Area District III and is zoned CD, Downtown Commercial. Surrounding properties are zoned CD to the north, south and west, and RM (Medium-family Residential) to the east.

SECTION 6. The use is permitted in the CD zone subject to a Use Permit issued on April 4, 1995 and is consistent with the City’s General Plan designation of Downtown Commercial. In 2014, the

## RESOLUTION NO. 18-0075

City Council adopted Resolution No. 14-0063 approving a modified conditional use permit with additional conditions of approval (the “Use Permit”). Unless specifically amended hereinafter, such conditions are still in full force and effect. On December 9, 2015, the Planning Commission held a public hearing for a one-year review of the conditional use permit to assess whether the use had been in compliance with all conditions of approval. The Planning Commission determined that the applicant had complied with all conditions of approval and that no further annual review or conditions were warranted at that time.

SECTION 7. In accordance with Manhattan Beach Municipal Code Section 10.84.060, the City Council makes the following findings related to the Use Permit Amendment:

1. **The location of the use is in accord with the objectives of the Zoning Code and the purpose of the district in which the site is located.**

The Subject Property is located within the (CD) Downtown Commercial district. The Project does not encompass a change in classification of use, but rather a change in the operational characteristics. The use is within an existing commercial building and will continue as a commercial use consisting of a restaurant/bar. The business is in accord with the objectives of the Zoning Code and the purpose of the district in which it is located because the project is a commercial use consistent with the Manhattan Beach Zoning Code. Section 10.16.010 states that the district is intended to provide opportunities for a full range of commercial uses needed by residents of, and visitors to, the City and region, and to strengthen the City’s economic base, but also protect small businesses that serve City residents.

2. **The location of the use and the proposed conditions under which it would be operated or maintained is consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the site or in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City.**

The additional one hour of operation on Thursday and the increase in the number of special events, with the amended and additional conditions, would pose no detrimental effects to the public health, safety, or welfare of persons residing or working on the proposed project site, or to the adjacent neighborhood, and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City because the additional hour of service is within the establishment’s state-approved hours of operation.

## RESOLUTION NO. 18-0075

3. **The use will continue to comply with the provisions of the Zoning Code, including any specific condition required for the proposed use in the district in which it would be located.**

It is not anticipated that the additional one hour of operation on Thursday and the increase in the number of special events will cause the use to fall out of compliance with applicable performance and development standards.

4. **The additional one hour of operation on Thursday and the increase in the number of special events will not adversely impact nor be adversely impacted by nearby properties.**

The proposed operational changes will not adversely impact nearby properties as the use currently exists at the site, and further conditions are imposed. The proposed operational change poses no increase to the parking demand in the Downtown Commercial zone. The change in operations of the use will not affect required parking, and the conditions imposed by the Use Permit Amendment will lessen impacts on noise, resident security and personal safety. It is not anticipated that the operational changes in the existing commercial property will impact the capacity of public services and facilities.

SECTION 8. The City Council hereby **APPROVES** an additional one hour of operation on Thursdays and an increase in the number of yearly special events to 24, subject to the following conditions of approval. The Council hereby retains jurisdiction to conduct the one year review referenced in Condition 10.

1. Condition 1 of Resolution No. 14-0063 is amended to increase the hours of operation on Thursday to 1:00 a.m. for the upstairs, and eliminate the early “last call” to read as follows:

- “1. Hours of operation for the establishment shall be permitted as follows:

Monday – Wednesday	11:00 a.m. – midnight
Thursday	11:00 a.m. – midnight (downstairs) 11:00 a.m. – 1:00 a.m. (upstairs)
Friday	11:00 a.m. to 1:00 a.m.
Saturday	9:00 a.m. – 1:00 a.m.
Sunday	9:00 a.m. – midnight

## **RESOLUTION NO. 18-0075**

At closing time, all areas (inside and outside) of the business must be vacated. All music (house system and bands) shall be turned off; and no sales, service or consumption of food or alcohol shall occur after closing time. Staff may remain on the premises for one hour after closing time.”

2. Condition 5 of Resolution No. 14-0063 is amended to require a fixed window and closed windows to read as follows:

“5. Patrons must use Manhattan Avenue for access to the 900 Club after 10:00 p.m. except for the purpose of disabled or emergency access. The entrance on Bayview Drive for the 900 Club may be used by patrons before 10:00 p.m., and the door shall remain closed when not in use. Patrons shall use the 9th Street entrance for access to the first floor, and the 9th Street door downstairs shall remain closed when not in use. The downstairs windows on Manhattan Avenue shall be closed daily after 10:00 p.m. The downstairs window on 9th Street shall be replaced with a fixed window that cannot open.”

3. Subsection B of Condition 9 of Resolution No. 14-0063 is amended to increase the number of yearly special events to 24 to read as follows:

“B. The City may issue, issue with conditions, or deny the entertainment permit. In addition to the conditions that may be imposed pursuant to MBMC Section 4.20.080, any entertainment permit issued pursuant to this condition shall contain the following additional conditions: entertainment is permitted only: (a) on the second floor of the premises; (b) on Thursday, Friday, Saturday, or on a day of a “Special Event” as defined in Condition 10; and (c) for no more than 24 days per year. Entertainment is not permitted downstairs. The Business Operator shall provide written notification of the proposed entertainment to the Director of Community Development, the Police Department and each residence located on 9th Street between Highland Avenue and Manhattan Avenue and Bayview Drive between 9th Street and 10th Street a minimum of seven days prior to such entertainment. For the purposes of this subsection B, “entertainment” shall mean any activity involving music, including but not limited to live bands, one or more performers of music, or amplified radio or pre-recorded music but shall not include background music allowed by Condition 6 or non-amplified sound allowed by Condition 7.”

4. Condition 14 of Resolution No. 14-0063 is amended to read as follows:

“14. The applicant shall provide updated dimensioned floor plans to the Building Official and Fire Marshall to reassess occupancy loads for the entire building based on the egress system. The occupancy limits established by the City shall not be exceeded and are required to be posted on-site downstairs and upstairs respectively.”

## RESOLUTION NO. 18-0075

5. Condition 15 of Resolution No. 14-0063 is amended to read as follows:

“15. All signs shall be in compliance with the City’s Sign Code. Pole signs and internally illuminated awnings shall be prohibited. New signage stating that smoking is prohibited and occupants need to be respectful of neighbors shall be posted near the downstairs exit, subject to review and approval of the Director of Community Development.”

6. Condition 16 of Resolution No. 14-0063 is amended to add additional noise measures as new subsections f, g, and h to read as follows. The existing language of Condition 16, including the conditions in subsections a through e, shall remain in full force and effect.

“f. The downstairs windows on Manhattan Avenue and 9th Street and the 9th Street door downstairs shall be closed daily after 10:00 p.m.

g. A self-closing mechanism shall be affixed to the downstairs 9th Street door.

h. Signage related to “no smoking and respecting neighbors” as described in condition #15.”

7. Condition 17 of Resolution No. 14-0063 is amended to add new subsections B and C as follows, and labelling the existing language in Condition 17 as subsection A.

“B. An on-site manager shall be available at all times to actively address noise and other issues, be responsive to neighbors, and manage unruly patrons.

C. The operator shall provide the list of conditions for the business to all employees when they are hired and trained, include them in any employee handbook and make sure they are physically available at the bars both upstairs and downstairs.”

8. Terms and Conditions are Perpetual; Recordation of Covenant. The provisions, terms and conditions set forth herein are perpetual, and are binding on 900 Club/Downstairs Bar, their respective successors-in-interest, and, where applicable, all tenants and lessees of 900 Club/Downstairs Bar. Further, 900 Club/Downstairs Bar shall record 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, 900 Club/Downstairs Bar 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 900 Club/Downstairs Bar 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 900 Club/Downstairs Bar, grant an extension to the 30-day time limit.

**RESOLUTION NO. 18-0075**

9. Indemnity, Duty to Defend and Obligation to Pay Judgments and Defense Costs, Including Attorneys' Fees, Incurred by the City. 900 Club/Downstairs Bar 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. 900 Club/Downstairs Bar 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 900 Club/Downstairs Bar of any claim, action, or proceeding and the City shall reasonably cooperate in the defense. If the City fails to promptly notify 900 Club/Downstairs Bar of any claim, action, or proceeding, or if the City fails to reasonably cooperate in the defense, 900 Club/Downstairs Bar 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. 900 Club/Downstairs Bar 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 900 Club/Downstairs Bar 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. 900 Club/Downstairs Bar shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

10. One year following the effective date of this Resolution, a duly noticed public hearing shall be conducted by the City Council for the purpose of reviewing the subject Use Permit Amendment for compliance with all conditions. At that time, the Applicant can seek further extensions of operating hours.

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