

## RESOLUTION NO. 20-0020

RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL (1) RESCINDING RESOLUTION NO. 18-0075; (2) REINSTATING THE FOLLOWING ENTITLEMENTS AND ACTIONS: (A) AN ADDITIONAL ONE HOUR OF SERVICE ON THURSDAY NIGHTS FOR THE UPSTAIRS BAR; (B) AN INCREASE IN THE NUMBER OF SPECIAL EVENTS FROM 18 TO 24 ANNUALLY; AND (C) REMOVING AN EARLY "LAST CALL" REQUIREMENT; AND (3) MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (900 CLUB AND DOWNSTAIRS BAR, 900 MANHATTAN AVENUE)

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

SECTION 1. On June 5, 2018, the Manhattan Beach City Council adopted Resolution No. 18-0075, approving an amendment to a use permit ("Amendment") issued to the 900 Club and Downstairs Bar (the "Applicant") located at 900 Manhattan Avenue, subject to certain conditions. The Amendment granted the following use entitlements: (1) an additional one hour of service on Thursday nights for the upstairs bar; (2) an increase in the number of special events from 18 to 24 annually. In addition, the Council removed an early "last call" provision.

SECTION 2. On January 28, 2020, the Los Angeles County Superior Court (Case No. BS174550) ruled that Resolution No. 18-0075 must be set aside and the City must evaluate the Applicant's submittal of floor plans for occupancy and life safety issues prior to taking any action on the Amendment request. The court further ruled the City Council is not required to consider any additional evidence or testimony related to any other issues, including the Applicant's compliance with the City's Noise Ordinance. The Court also ruled that Resolution No. 18-0075 and the Council's decision to confer entitlements thereby are supported by substantial evidence.

SECTION 3. On February 18, 2020, the City Council held a duly noticed public hearing for the purpose of: (a) rescinding Resolution No. 18-0075; (b) evaluating floor plans submitted by the Applicant for occupancy and life safety issues and considering the recommendations of the City's Building Official and Fire Marshal related to the plans; (c) receiving public testimony; and (d) after closing the public hearing, considering the requested entitlements and the Amendment request. In addition to noticing the public hearing in the City's local newspaper and mailing public hearing notices to all properties within a 500 foot radius of the site, the City notified Donald McPherson, the petitioner in Los Angeles County Superior Court Case No. BS174550, and his attorney of record. Mr. McPherson acknowledge receipt. The City Council provided an opportunity for the public to provide evidence and testimony at the public hearing.

SECTION 4. Prior to opening the public testimony portion of the public hearing, the City Council adopted a motion to rescind Resolution No. 18-0075.

SECTION 5. In 2018, the Applicant's request 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 found at that time that the entitlements and Amendment have no potential to result in a significant environmental impact and are exempt from CEQA pursuant to CEQA Guidelines Section 15301 (Existing Facilities) because there is no expansion of the use as already allowed by the underlying use permit. Such CEQA finding was not challenged in a timely fashion, and thus cannot be challenged now. In any event, the additional one hour of operation on Thursdays, six additional special events annually, and elimination of an early "last call" provision do not change the use allowed by the use permit issued many years ago or alter the use allowed by governing zoning regulations or the City's General Plan. The submitted floor plans, which have been reviewed by both the City's Building Official and Fire Marshal, substantiate no change in use.

SECTION 6. The record of the public hearing indicates:

A. The use is located in a single commercial building 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. On April 4, 1995, the City issued a use permit for the Subject Use. The City Council has found the Subject Use to be consistent with the City's General Plan designation of Downtown Commercial a number of times since 1995. The requested entitlements do not affect such findings.

B. The Applicant has submitted floor plans as required by the Court's ruling. The City's Building Official and the City's Fire Marshal have reviewed the plans, including for occupancy and life safety issues, and have approved such plans.

C. The City provided an opportunity to speak at the public hearing to members of the public. On behalf of Coastal Defender, Don McPherson submitted an email opposing an "increase in entitlements" on February 11, 2020.

D. After the close of the public hearing, the City Council evaluated the floor plans for occupancy and life safety issues, in compliance with the Court's ruling, and considered the recommendations of the Building Official and Fire Marshal.

SECTION 7. Based upon substantial evidence in the record, and its evaluation of the submitted floor plans for occupancy and life safety issues, the City Council finds:

A. The floor plans demonstrate that the occupancy loads recommended by the Fire Department are suitable for the use, taking into consideration life safety issues. The floor plans further demonstrate that the building provides adequate egress.

B. The addition of one operating hour on Thursday nights, and six additional special events each year, will not overtax occupancy loads or endanger patrons and guests.

C. In 2018, the City Council found, *inter alia*, that the entitlements and Amendment are consistent with the General Plan and compatible with surrounding uses; will not be detrimental to the public health, safety or welfare of persons residing or working near 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 City Council further found that none of the entitlements would be detrimental to the public health, safety, or welfare of persons residing or working near the 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. Upon reviewing the submitted plans, the City Council hereby makes those same findings. Nothing in the building plans changes the Council's 2018 findings, all of which were supported by substantial evidence, and are only further supported by the building plans as reviewed and approved by the Building Official and Fire Marshal in 2020.

D. In 2019, the City Council conducted its one year review of the entitlements conferred by Resolution No. 18-0075. Don McPherson and his attorney, Beverly Grossman Palmer, Esq., submitted correspondence to the City in opposition to the Club at that time. The Council found that: the Petitioner demonstrated substantial compliance with the conditions of approval; and there was no substantial evidence presented that the additional entitlements conferred in 2018--the additional hour of operation, six additional special events per year, and the later "last call"--adversely impacted the neighborhood. The Council imposed a number of conditions at that time, including a modification to condition 3 of Resolution No. 18-0075 to decrease the prior notice of special events from seven days to three days. No one filed any legal action to challenge the Council's decision, and the statute of limitations to file such a lawsuit has expired.

**SECTION 8.** Based upon the foregoing and substantial evidence in the record, including its review of the approved floor plans, the City Council hereby approves the floor plans and Applicant's request for the following use entitlements: (1) an additional one hour of service on Thursday nights for the upstairs bar; (2) an increase in the number of special events from 18 to 24 annually; and (3) removal of an early "last call" condition, subject to the following conditions of approval:

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

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 and to decrease the required prior notice of entertainment and special events from seven days to three days, 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 three days prior to such entertainment and special events. 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 submitted floor plans to the City's Building Official and Fire Marshall, who approved the plans. The occupancy limits established by the City shall not be exceeded and are required to be posted on-site downstairs and upstairs respectively."

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.

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.

SECTION 9. California Code of Civil Procedure Section 1094.6 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 Applicant and to Donald McPherson.

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

ADOPTED on February 18, 2020.

AYES:

NOES:

ABSENT:

ABSTAIN:

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NANCY HERSMAN  
Mayor

ATTEST:

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LIZA TAMURA  
City Clerk