

RESOLUTION NO. 20-0128

RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL APPROVING A MASTER USE PERMIT AMENDMENT FOR AN EXISTING COMMERCIAL BUILDING LOCATED AT 1125 – 1131 MANHATTAN AVENUE AND 133 MANHATTAN BEACH BOULEVARD TO ALLOW FULL LIQUOR SERVICE IN CONJUNCTION WITH FOOD SERVICE AT AN EXISTING RESTAURANT SPACE WITH BEER AND WINE AT 1131 MANHATTAN AVENUE; AND MAKING AN ENVIRONMENTAL DETERMINATION IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (NANDO MILANO LA, LLC/VULLO)

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

SECTION 1. On June 20, 1995, the Manhattan Beach City Council adopted Resolution No. 5175, granting a Master Use Permit and Coastal Development Permit for a multi-tenant building at the property located at 1125 -1131 Manhattan Avenue and 133 Manhattan Beach Boulevard, subject to conditions. On February 18, 1997, the City Council adopted City Council Resolution No. 5312, modifying Resolution No. 5175. On June 12, 2019, the Planning Commission adopted Resolution No. PC 20-19 to allow full alcohol service in conjunction with food at an existing restaurant (Tacolicious) located at 1129 Manhattan Avenue. Hereinafter, the original Master Use Permit and the amendments referenced in this Section 1 will be referred to as the “MUP.” The MUP is final and beyond challenge.

SECTION 2. On May 15, 2020, Nando Milano LA, LLC (“Applicant”) applied for a MUP Amendment to allow full alcohol service in conjunction with food at an existing restaurant (Nando Trattoria) (the “Project”) located at 1131 Manhattan Avenue (the “site”). The Applicant is not seeking any other modifications or amendments to the MUP. For instance, the Applicant is not seeking to expand operating hours. The Applicant can operate a restaurant at the site under the existing MUP, and serve beer and wine in conjunction with food. Pursuant to the Manhattan Beach Municipal Code (“MBMC” or “Municipal Code”) a MUP amendment is required to allow full liquor service. The Applicant’s Doing Business As (DBA) name is Nando Trattoria. The property is owned by Crazy Horse Investments, LLC (“the “Property Owner”).

SECTION 3. A Coastal Development Permit is not required for the Project because serving additional alcoholic beverages is not within the meaning of “development” as defined in the City’s Local Coastal Program (LCP Section A.96.030). The Project is not an intensification of use, as the Applicant’s use and the previous tenant’s use are both “Eating and Drinking Establishments” as defined in LCP Section A.08.050. An Eating and Drinking Establishment is a business that serves “prepared food or beverages for consumption.” The “Eating and Drinking Establishment” land use classification does not distinguish

between the types of beverages served. Beer, wine, and distilled spirits are all beverages. Service of additional alcoholic beverages does not change the intensity of use because the prior restaurant also served alcoholic beverages.

SECTION 4. On September 9, 2020, the Planning Commission conducted a duly noticed public hearing to consider the Project, during which the Planning Commission received a presentation by staff and testimony from the Applicant and members of the public both supporting and opposing full liquor service. The Planning Commission also received and reviewed written testimony received by the City prior to the public hearing. After the public hearing was closed, the Commission adopted Resolution No. PC 20-07 to conditionally approve the Project.

SECTION 5. On September 22, 2020, Donald McPherson, on behalf of Coastal Defender (“Appellant”), appealed the Planning Commission’s decision to the City Council. Appellant asserts that allowing full alcohol service in conjunction with food would create noise, did not receive proper environmental review, and violates California Department of Alcoholic Beverage Control regulations. The Appellant requested that the City impose an additional condition that would prohibit the restaurant from applying for a subsequent MUP amendment to expand hours. In addition, the Appellant claims that full alcohol service requires a coastal development permit.

SECTION 6. On October 20, 2020, the City Council conducted a duly noticed public hearing *de novo* to consider the Project in accordance with Municipal Code Chapter 10.100. Evidence, both written and oral, was presented to the Council, including a staff report and staff presentation. All persons wishing to address the Council regarding the Project before and during the hearing were provided an opportunity to do so in full compliance with the Brown Act, as modified by Governor Gavin Newsom’s Executive Order N-29-20 for public hearings occurring during the COVID-19 emergency. The City provided the Applicant and the Appellant with ample opportunity to submit material in advance of the meeting, and provided the Applicant and Appellant, and their respective officers and representatives, an equal opportunity to speak during the public hearing. The Appellant provided written materials to the City Council on several occasions, including shortly before the public hearing. At the public hearing, both the Applicant and Appellant presented testimony. In addition, numerous people provided comments prior to and at the public hearing. Approximately four persons expressed full support for the Project. Approximately four persons expressed concerns about full alcohol service. At the conclusion of the public hearing, the City Council determined that the Project qualified for a Class 1 Categorical Exemption in accordance with Section 15301 of the California Environmental Quality Act Guidelines and directed staff to return with a resolution approving the MUP Amendment.

SECTION 7. The record of the public hearing conducted by the City Council demonstrates:

- A. The Project consists of allowing full alcohol service in conjunction with

food at an existing restaurant tenant space, which is currently permitted to serve beer and wine and which will be occupied by a new restaurant.

B. The legal description of the site is Lots 10, 11, & 12, Block 13, Manhattan Beach Division No. 2 in the City of Manhattan Beach, County of Los Angeles. The property is located in Area District III and is zoned CD, Downtown Commercial. The surrounding properties are zoned CD to the North (across Center Place), CD to the South (across Manhattan Beach Boulevard), CD to the East (across Manhattan Avenue), and CD to the West.

C. The Land Use Element in the City's General Plan designates the Downtown Commercial Zone as an area for the provision of a mix of commercial uses, including restaurants. Restaurants with full alcohol service are permitted in the CD zone subject to a Use Permit.

D. An eating and drinking establishment has been operating at 1131 Manhattan Avenue since 1995 under a MUP approved by the City Council in 1995. The use is located on the commercial portion of Manhattan Avenue in Downtown Manhattan Beach, with some of the surrounding businesses having similar operating characteristics. Staff presented evidence that any potential impacts associated with the operation of a restaurant at the site, such as noise from patrons, are minimized by the physical distance between the site's location and residents in the neighborhood, with Manhattan Avenue, Center Place, Manhattan Beach Boulevard, and other commercial structures providing physical separation between Nando Trattoria and residential uses. There was no substantial evidence presented that the service of additional alcoholic beverages would increase noise from patrons.

E. The existing MUP authorizes: (1) full alcohol service in conjunction with food service at 1129 Manhattan Avenue; and (2) beer and wine service in conjunction with food service at 133 Manhattan Beach Boulevard, 1127 Manhattan Avenue, and 1131 Manhattan Avenue. The MUP authorizes the following operating hours at 133 Manhattan Beach Boulevard: 6:00 a.m. – 2:00 a.m., Monday – Sunday, and authorizes the following operating hours at 1127, 1129, and 1131 Manhattan Avenue: 6:00 a.m. – 11:00 p.m. Sunday – Thursday, 6:00 a.m. – 12:00 a.m. Friday – Saturday. The Applicant is not seeking any change to or expansion of operating hours.

F. Evidence and testimony was submitted at the public hearing that:

1. The Project is consistent with the General Plan and Zoning Code.
2. The Police Department has reviewed the Project and has no concerns about or objections to the request for full alcohol service in conjunction with food service. The Police Department has not requested any additional conditions of approval.

3. The proposed full alcohol service in conjunction with food service is compatible with surrounding uses and the neighborhood.
4. The Project is consistent with the following General Plan Policies:

LU-6: Maintain the viability of the commercial areas of Manhattan Beach.

LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach.

G. Appellant submitted a letter with a “City Parking Lot Noise Impact Analysis” prepared by its consultant. The consultant asserts that future noise levels predicted by the consultant at two public parking lots blocks away from the site would result “in a violation of the noise regulations in the MBMC.”

SECTION 8. Based upon substantial evidence in the record, and pursuant to Manhattan Beach Municipal Code Section 10.84.060 and applicable state law, the City Council hereby finds:

- 1. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located.**

Nando Trattoria is a restaurant use located in the CD Downtown Commercial zone. Pursuant to the Municipal Code, the CD Downtown Commercial zone “is intended to accommodate a broad range of community businesses and to serve beach visitors.” Restaurants are quintessential community businesses that help define a neighborhood. Restaurant uses provide food, beverages, and a sense of comradery to restaurant patrons, which include both residents and visitors. The service of alcoholic beverages alongside food is a common component of dining in a restaurant, and does not change the existing use of the site; in approving the MUP, the City found that the site’s location is in accord with the objectives of Title 10 and the purposes of the commercial district in which the site is located.

- 2. The proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project 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.**

Nando Trattoria’s restaurant use, including full alcohol service in conjunction with food service, is a commercial use consistent with the General Plan’s Downtown Commercial land use designation of the subject and neighboring properties. In connection with approving the MUP approximately 25 years ago,

the City has already found that a restaurant use is compatible with neighboring uses, as the neighboring lots are developed with commercial uses, many of which are eating and drinking establishments that serve food and alcohol. Service of additional beverages does not in any way adversely change that finding. The City previously found that any potential impacts associated with a restaurant use at that location are minimized by the physical distance between the use's location and residents in the neighborhood. Manhattan Avenue, Center Place, Manhattan Beach Boulevard, and other commercial structures provide physical separation between Nando Trattoria and residential uses, buffering any noise that might arise from the restaurant. The General Plan encourages a "vibrant downtown" that offers "services and activities for residents and visitors," and Nando Trattoria is part of the downtown commercial mix of businesses that help create a dynamic and interesting Downtown. Full alcohol service in conjunction with food service at Nando Trattoria will only enhance consistency with services provided to residents and visitors. The service of full alcohol in conjunction with meals will not change the Planning Commission and City Council findings since 1995 that the location of the use and the conditions under which it operates is consistent with the General Plan; is not 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 is not detrimental to properties or improvements in the vicinity or to the general welfare of the City. The operation of a restaurant at the site: has been demonstrated to be not detrimental to the public health, safety or welfare of persons residing or working on the site or in or adjacent to the neighborhood; and has not been detrimental to properties or improvements in the vicinity or to the general welfare of the City. The service of additional alcoholic beverages will not in any way adversely affect public health, safety or welfare or be detrimental to City properties or residents.

The General Plan encourages Downtown businesses that offer "services and activities to our residents and visitors." The City's General Plan contains the following Policies directly applicable to commercial uses in the Downtown Commercial Zone:

LU-6: Maintain the viability of the commercial areas of Manhattan Beach.

LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach.

In finding that the uses permitted by the MUP, including a restaurant with a beer and wine license at the site, are consistent with the City's General Plan, the City made these specific findings. Adding service of distilled liquor will enhance the City's ability to maintain and encourage the viability of the Downtown Commercial area, and does not negate the consistency finding previously made by the City on several occasions.

There is no substantial evidence that serving additional alcoholic beverages will increase noise at the site. Indeed, Appellant has not submitted any evidence to support its argument that serving distilled liquor, as opposed to beer and wine as is currently permitted, will increase noise at the site. Rather, Appellant has submitted "The City Parking Lot Noise Impact Analysis ("Parking Lot Report") prepared by Steve Rogers Acoustics, LLC, which measures ambient noise levels in public parking lots located several blocks from the site, not projected noise from the site. The Report is based solely on conjecture and supposition, offers only general conclusions that are not specific to the restaurant, does not provide any baseline noise analysis as to the restaurant, does not account for any noise attenuation features of the site, and rests its conclusions on speculative future conditions. The conclusions in the Parking Lot Report are not based on alleged projected future sound coming from the restaurant attributable to the service of additional alcoholic beverages.

The conditions of approval require that sound emanating from the property not exceed the limitations prescribed by the City Noise Ordinance. As previously stated, the Parking Lot Report concludes that the assumed future violation of the Noise Ordinance will take place at two public parking lots, not at Nando Trattoria. Any allegation that the service of additional alcoholic beverages at Nando Trattoria, beyond those currently permitted, will somehow be the contributing factor for such "violation," is pure speculation without any evidentiary basis.

3. The proposed use will comply with the provisions of the City's Planning and Zoning Title, including any specific condition required for the proposed use in the district in which it would be located.

In 1995, the City Council found that the multi-tenant building and all uses within would comply with the provisions of Municipal Code Title 10 Planning and Zoning, including any specific condition required for the proposed use in the district in which it would be located. Nando Trattoria's predecessors complied with all of Title 10's provisions and the conditions imposed since its inception in 1995. As was true with its predecessor(s), Nando Trattoria is an eating and drinking establishment use that will comply with all provisions of Municipal Code Title 10 Planning and Zoning and specific conditions imposed previously. Likewise, Nando Trattoria's full alcohol service in conjunction with food service will fully comply with Municipal Code's Title 10 Planning and Zoning and specific conditions imposed in connection with this application. Any suggestion to the contrary that such finding no longer applies if the restaurant serves distilled liquor is based upon pure conjecture and is not supported by any substantial evidence.

4. The proposed use will not adversely impact or be adversely impacted by nearby properties.

The City Council found that the multi-tenant building and all uses within would not adversely impact or be adversely impacted by nearby properties. The use is located on the commercial portion of Manhattan Avenue in Downtown Manhattan Beach, with some of the surrounding businesses having similar operating characteristics. Any potential impacts associated with Nando Trattoria's use are minimized by the physical distance between the use's location and most residents in nearby blocks, with Manhattan Avenue, Center Place, Manhattan Beach Boulevard, and other commercial structures providing physical separation between Nando Trattoria and many neighboring structures. Full alcohol service in conjunction with food service will not create demands exceeding the capacity of public services and facilities, and will not adversely impact nearby properties. No evidence was presented that the service of distilled liquor will be adversely impacted by nearby properties.

5. No substantial evidence was presented to support Appellant's additional arguments.

Appellant asserts that full alcohol service in conjunction with food requires a coastal development permit and violates California Department of Alcoholic Beverage Control regulations.

There is no evidence that shifting from beer and wine service only to full alcohol service in conjunction with food service will reduce beach access or otherwise contravene the goals and policies of the Coastal Act. The Appellant's prediction that "When eating and drinking establishments resume full indoor service, Lot 2 will overflow into the pier lots, ...thus reducing beach access, the highest priority policy in the Coastal Act" is based upon pure conjecture. Currently, most restaurants in the Downtown Commercial area are utilizing former on-street parking spaces to accommodate outdoor dining while the COVID-19 pandemic regulations prevent operation of indoor dining rooms. When indoor dining is permitted again, on-street parking spaces will also become available again. Furthermore, several other parking lots (Lot 1, Lot 3, Lot 6, Lot M) are located closer to restaurants and commercial areas that are more likely to be used in general. There is no indication that Lot 2 users will choose the Pier lots to visit restaurants, or that patrons of Nando Trattoria will – as alleged by the Appellant – take parking spaces away from those "who desire a late-night walk, picnic, or to fish."

The Appellant's arguments based upon ABC regulations are likewise without merit. Under its Municipal Code and applicable state law, the City Council must make the findings contained in this Resolution. Over the last 25 years, the City Council and Planning Commission have repeatedly made the finding

that a restaurant serving alcohol in conjunction with food at the site is compatible with neighboring uses and meets all City and State requirements. Full alcohol service at the site is compatible with neighboring uses and meets all City and State requirements.

SECTION 9. CEQA Finding. Staff has determined, and the City Council in its independent judgment finds, in light of the whole record before it, that the Project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to State CEQA Guidelines (14 Cal. Code Regs.) Section 15301 (Existing Facilities), for the following reasons, *inter alia*:

A. There is no expansion of use associated with the Project, as the existing restaurant is merely shifting from beer and wine service only to full alcohol service in conjunction with food. Under CEQA, the categorical exemption for existing facilities is appropriate even where, unlike here, there is external construction such as the physical expansion of buildings. There is absolutely no change or expansion of the use – the site will remain a restaurant, within the confines of the existing structure. The Applicant is not proposing any interior improvements to the tenant space beyond cosmetic changes that do not require permits.

B. There is no reasonable possibility that the Project will result in potential adverse cumulative impacts, including as to noise.

- i. Appellant's speculation that the shift to full alcohol service in conjunction with food service will result in cumulative noise impacts is unsupported. The Parking Lot Report prepared by Steve Rogers Acoustics, LLC, and proffered by Appellant, is based solely on conjecture and supposition, offers only general conclusions that are not specific to the restaurant, does not provide any baseline noise analysis as to the restaurant, does not account for any noise attenuation features of the site, and rests its conclusions on speculative future conditions.
- ii. The Appellant claims "The city has considered each project separately, without evaluating the growing volume of noise in the parking lots from the seven projects that have increased alcohol service intensity." The downtown parking lots accommodate a variety of users throughout the downtown area, including patrons to downtown establishments and overnight residential parking permit holders. People also walk or bicycle, use rideshare, or park in on-street parking spaces. The Appellant has offered no evidence that noise from parking lots is attributable to patrons visiting restaurants. Furthermore, there was no evidence presented that noise in a parking lot can be attributed to the service of alcohol at restaurants.

C. There is no reasonable possibility that the Project will create a significant impact on the environment based on unusual circumstances. The shifting to full alcohol service in conjunction with food from beer and wine service at an existing restaurant in an urbanized, commercial area is not unusual within the meaning of CEQA. Likewise, potential noise arising from full alcohol service does not constitute an “unusual circumstance” within the meaning of CEQA. There is no evidence to show, or even suggest, that the service of full alcohol as opposed to wine and beer, creates a materially different type or level of noise. The restaurant with full alcohol service in conjunction with food service would continue to be surrounded by compatible uses, including other restaurants, retail establishments, offices, and thus full alcohol service will not affect the environment in an unusual way. This negligible change that does not affect the type of land use on site is typical of the projects contemplated by CEQA to be exempt under Guidelines Section 15301. Indeed, the circumstances here – an existing restaurant shifting from beer and wine service to full alcohol service in conjunction with food – are not unusual in any significant way. There are a number of establishments that serve full alcohol, including at least 19 restaurants in the Downtown commercial zone. Thus, allowing a restaurant to serve alcohol is not an unusual circumstance, as that phrase is used in connection with a categorical exemption determination.

SECTION 10. Based upon the foregoing, and after considering all of the evidence in the record, the City Council hereby approves the MUP Amendment to allow service of full alcohol service in conjunction with food service at an existing restaurant space at 1131 Manhattan Avenue subject to the following conditions:

1. The Applicant must comply with all applicable MUP conditions of approval set forth in Resolution No. PC 19-10 adopted on June 12, 2019, which are hereby incorporated by reference.
2. Any questions of intent or interpretation of any condition will be reviewed by the Community Development Director to determine if Planning Commission review and action is required.

Operation

3. The Applicant shall obtain an “eating place with full liquor” type of alcohol license from the California Department of Alcoholic Beverage Control (ABC) prior to serving any alcohol other than beer and wine. Alcohol service must be in conjunction with a “bona fide public eating place”, per Section 23038 of the California Business and Professions Code, generally meaning a place which is regularly open for the serving of meals to guests for compensation and which has kitchen facilities for cooking the usual assortment of foods prepared in the kitchen and commonly ordered at various hours of the day. The Applicant shall not provide any specific bar area serving alcohol exclusively. The

restaurant shall have food service available throughout each meal period, and shall not pare down menu items for later hours.

4. The restaurant shall maintain compliance with all Fire and Building occupancy requirements at all times.
5. The management of the property shall monitor the property and all areas adjacent to the business during the hours of operation to keep it free of litter and food debris.
6. The operator of the business shall provide adequate management and supervisory techniques to prevent loitering and other security concerns outside the subject business.
7. All rooftop mechanical equipment shall be screened from the public right-of-way.
8. All mats shall be cleaned on the premises with no outside cleaning of mats permitted. If any floor mats cannot be cleaned within the premises, a service company must be contracted.
9. The restaurant operator shall be in substantial compliance with all restrictions imposed by the ABC.
10. Sale of alcoholic beverages for consumption off-premise is prohibited, unless otherwise permitted by ABC.
11. At all times the business shall identify itself as a “restaurant” and will not identify itself as a “bar” in public advertisements.
12. Noise emanating from the property shall be within the limitations prescribed by the City Noise Ordinance.
13. At any time in the future, the Planning Commission or City Council may review the MUP Amendment for the purpose of revocation or modification in accordance with the requirements of the MBMC Chapter 10.104. Modification may consist of conditions deemed reasonable to mitigate or alleviate impacts to adjacent land uses.

Refuse

14. A trash enclosure(s), with adequate total capacity for all site tenants, shall be provided on the site which is accessible from the exterior of the building for each tenant’s trash disposal and City pick-up, subject to the specifications of the Public Works Department, Community Development Department, and City’s waste contractor.

15. The management shall arrange for special on-site pickup as often as necessary to ensure that the refuse area has adequate space to accommodate the needs of the subject business.
16. No refuse generated at the subject site shall be located in the non-alley Public Right-of-Way for storage or pickup, including the disposal of refuse in any refuse container established for public use.

Signage

17. All new signs and alterations to existing signs shall require sign permits. All signs shall be in compliance with the City's Sign Code except as provided below:
 - A. The permitted total sign area, upon replacement of all nonconforming signs, on the site may be a maximum of 165 square feet.
 - B. Each tenant space shall be permitted one square foot of wall sign area per lineal foot of tenant street frontage except for 1125 Manhattan Avenue.
 - C. The tenant space at 1125 Manhattan Avenue shall be permitted 80 square feet of wall sign area upon removal or 50% replacement of any of the existing nonconforming signs.
 - D. Freestanding or pole signs shall be prohibited on the subject property.
18. A-frame or other sidewalk signs in the public right-of-way shall be prohibited.
19. No temporary banner or other signs shall be placed on the site without City permit and approval.

Procedural

20. The property owner shall be required to obtain a City of Manhattan Beach right-of-way encroachment permit for any projections into the public right-of-way.
21. *Terms and Conditions are Perpetual; Recordation of Covenant.* The provisions, terms and conditions set forth herein are perpetual, and are binding on the property owner, its successors-in-interest, and, where applicable, all tenants and lessees of the site. Further, the property owner shall submit the covenant, prepared and approved by the City, indicating its consent to the conditions of approval of this Resolution, and the City shall record the covenant with the Office of the County Clerk/Recorder of Los Angeles. Property owner shall deliver the executed covenant, and all required recording and related fees, to the

Department of Community Development within 30 days of the adoption of this Resolution. Notwithstanding the foregoing, the Director may, upon a request by property owner, grant an extension to the 30-day time limit. The project approval shall not become effective until recordation of the covenant.

22. *Indemnity, Duty to Defend and Obligation to Pay Judgments 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. 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 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 said amount with the City or, at the discretion of the City, enter into an agreement with the City to pay such expenses as they become due.

SECTION 10. The City Council's decision is based upon each of the totally independent and separate grounds stated herein, each of which stands alone as a sufficient basis for its decision.

SECTION 11. This MUP Amendment shall lapse two years after its date of approval, unless implemented or extended pursuant to 10.84.090 of the Municipal Code.

SECTION 12. The time within which judicial review, if available, of this decision 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, Nando Milano LA, LLC, and Appellant, Coastal Defender, and to any other persons or entities requesting notice of the decision.

SECTION 13. The City Clerk shall certify to the adoption of this Resolution.

ADOPTED on November 4, 2020

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD MONTGOMERY
Mayor

ATTEST:

LIZA TAMURA
City Clerk