

Staff recommends that after conducting the public hearing the City Council adopt Resolution No. 18-0052 approving a master use permit amendment and amendment to the disposition and development agreement.

FISCAL IMPLICATIONS

No fiscal implications associated with the recommended action.

EXECUTIVE SUMMARY

Metlox, LLC c/o Tolkin Group (“Applicant”) submitted an application to amend the existing Master Use Permit (“MUP”) as follows:

- 1) Modification of the spaces for the two full service restaurants (currently occupied by Nicks and Petros) to allow more than two restaurant uses at Nick’s and increase the allowed square footage for both.
- 2) Modification of previously approved personal service use on the second floor, (currently occupied by Kasai Hair Salon) to allow a restaurant, including outdoor patio dining.
- 3) Modification of previously approved retail use (currently occupied by Waterleaf (two tenant spaces)) to convert the space to a restaurant with an outdoor patio, personal service or personal improvement service use.
- 4) Modification of previously approved retail use (currently occupied by Beehive) to convert the space to restaurant use.
- 5) Delegate to the City Manager more discretion to approve future modifications.

After conducting a public hearing, the Planning Commission approved by a 3:2 vote, the following modifications:

- 1) division of Nick’s Manhattan Beach into two restaurant spaces;
- 2) conversion of commercial space on the second floor from a personal service use to an indoor-only restaurant;
- 3) expansion of the allowed retail and services uses to include personal improvement services;
- 4) division of two commercial spaces into three commercial spaces for a combination of restaurant, personal service, or personal improvement uses.

The Amendment to the conditions of approval (and Ground Lease) increases the total amount of allowed restaurant square footage; expands the types of Retail and Services uses allowed to include personal improvement services; and allows all restaurants to service alcohol.

See Planning Commission Resolution No. 18-01 (Attachment 4).

The Planning Commission’s decision was appealed (Attachment 5) by Don McPherson and called up for review by two Councilmembers. The Municipal Code provides that appeals of Commission decisions (and calls for review) are public hearings *de novo*. *De novo* means that the Council must take a “fresh look” at all the evidence presented at the public hearing and, after the public hearing is

closed, base its decision on the evidence presented at the hearing.

In addition, if the Council approves the request, or any portion of it, corresponding changes must be made to the Disposition and Development Agreement and Ground Lease ("Ground Lease") between the Applicant and the City recorded in May of 2002. By letter dated February 3, 2015 and updated August 8, 2017 (Attachment 6), Jonathan Tolkin, the Applicant's Manager, has specified the requested changes to the Ground Lease.

Staff has drafted a Resolution (Attachment 1) and Ground Lease Amendment (Attachment 2) for City Council consideration. Depending on the Council action, both may need to be revised.

BACKGROUND

Prior History

The following is a summary of some of the key milestones for the Metlox site:

1995- 96- The City Council authorized development of the Downtown Strategic Action Plan (DSAP) to provide a comprehensive approach and community vision for the Downtown including the Metlox site
1997/98- The City purchased the Metlox property to control development and master plan the site
1998- 2001 Numerous public meetings and workshops held to solicit public input on the site and Downtown.

December 1998- The City selected the Tolkin Group as a development partner

April 2001- The City Council certified the EIR

April 2002- The City Council approved the Disposition and Development Agreement (DDA)/Ground Lease

July 2002- Master Use Permit and Coastal Development Permit for the Metlox project approved by the City Council

November 2002- California Coastal Commission denied an appeal of the Coastal Development Permit, and unanimously approved the Permit

February 2003- Groundbreaking for the Metlox parking structure

2004- Grand opening of public parking structure with 460 parking spaces, Shade Hotel and Metlox commercial buildings started construction

December 2005- Ribbon cutting and grand opening for the Metlox Center

On April 4, 2016, a request was submitted by the Applicant, Metlox, LLC c/o Tolkin Group, to amend the existing Master Use Permit as follows:

- 1) Modification for the two full service restaurants, Nicks and Petros to allow more than two restaurant uses and increase the allowed square footage.
- 2) Modification of previously approved personal service use on the second floor, Kasai Hair Salon to allow a restaurant with an outdoor patio.
- 3) Modification of previously approved retail use, Waterleaf (two tenant spaces) to be converted

- to restaurant with an outdoor patio, personal service or personal improvement service use.
- 4) Modification of previously approved retail use, Beehive to be converted to restaurant use.
 - 5) Allow City Manager to approve future modifications.

After conducting a public hearing, the Planning Commission approved by a 3:2 vote, certain changes to the conditions as stated in the attached Planning Commission Resolution No. 18-01 (Attachment 4).

Specifically, the Commission approved modifications to the MUP's conditions to allow:

- 1) division of one restaurant into two restaurant spaces;
- 2) conversion of commercial space on the second floor from a personal service use to an indoor-only restaurant;
- 3) expansion of the allowed retail and services uses to include personal improvement services;
- 4) division of two commercial spaces into three commercial spaces for a combination of restaurant, personal service, or personal improvement uses.

To implement these changes, the Amendment to the conditions of approval increase the total amount of allowed restaurant square footage; expand the types of Retail and Services uses allowed to include personal improvement services; and allow all restaurants to service alcohol.

The Commission denied the request for outdoor dining on the second floor, and the request that the City Manager be given greater discretion in approving changes to the project.

Council Review and Appeal

On February 20, 2018, two Councilmembers requested Council review of the Planning Commission decision. Also, Don McPherson filed an appeal on February 22, 2018 (See Attachment 5). The appeal claims: the City did not fully comply with the California Environmental Quality Act (CEQA) because the modifications constitute an "expansion" of existing land uses that exceeds the threshold for categorical exemptions; and that the service of alcohol will "intensify" the uses previously approved.

The Municipal Code requires a public hearing *de novo* for all appeals and councilmember review requests concerning quasi-judicial matters. *De novo* means that the Council must take a "fresh look" at all the evidence presented at the public hearing and, after the public hearing is closed, base its decision on the evidence presented at that hearing. In general, the Council must make the following land use findings to approve a MUP, or amendment thereto:

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;
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;

3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located; and
4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated.

DISCUSSION

Overview

The Metlox project includes a two-story subterranean public parking structure accommodating approximately 460 cars with a public Town Square on top of the parking deck, as well as a commercial development approximately 63,850 square feet in area. The Master Use Permit for the project site was approved by the City Council in July 2002. The commercial development includes two full service restaurants with outdoor dining adjacent to the central Town Square with up to 8,000 square feet, dining/seating area limited to 6,400 square feet and various retail sales, personal services, and specialty food services uses limited to a maximum of 20,000 square feet. Other uses on the second floor, include offices and personal services not to exceed 17,500 square feet.

The Master Use Permit has been revised a number of times over the years to amend various individual tenants conditions for the Shade Hotel, Le Pain Quotidian, and Petros restaurant, related to hours, alcohol and operational characteristics, but no changes to land uses.

Existing Master Use Permit - City Council Resolution No. 5770

The following describes the changes to the specific conditions in the Master Use Permit. These changes give the applicant the flexibility to allow other uses and tenants depending on the demand of services by residents and visitors:

Land Use

1) Condition No. 25. B limits restaurants to two (2) total maximum, 8,000 square feet total maximum, (including 6,400 square feet maximum dining/seating area regardless of whether located indoors or outdoors).

The applicant proposed five additional restaurants, more than the maximum allowable of two restaurants. Specifically, Nicks space will be split into two restaurants within the existing space (no change to number of restaurants), Beehive space will be converted to restaurant use, Waterleaf space will be converted to two restaurants and Kasai Hair Salon space converted to restaurant use. These changes will add more restaurant square footage than the allowable of 8,000 square feet. The Waterleaf and Kasai Hair Salon tenant spaces request includes outdoor patio dining seating areas for a total of 800 square feet.

2) Condition No. 25. C allows offices on the second floor only and personal improvement services on the first floor are subject to Community Development Director approval.

The applicant requested the existing Waterleaf space, on the first floor, facing Morningside Drive to

be converted to a bank (bank and savings and loan use), yoga studio (personal improvement service use) or hair care service (personal service use). These are permitted uses per Resolution No. 5770, Condition No. 25. C) c) but offices, and similar uses such as banks, are not allowed on the first floor. The applicant wanted the flexibility of allowing either the above mentioned uses or restaurant use. The parking requirement calculation numbers were used for restaurant use as it is more restrictive than office, bank, personal improvement service and personal service uses.

3) Condition No. 25. A) d) and C) c) allows the Director of Community Development to allow similar uses not listed in the permitted uses of the Master Use Permit.

The applicant requested that any future modifications under the Land Use conditions, No. 25 through 32 be approved by the City Manager. These modifications included some conditions related to hours of all uses, events at the Shade and use of the Town Square area, etc.

Planning Commission Decision - Resolution No. PC 18-01

The Planning Commission approved the following changes amending the following conditions in the Master Use Permit as stated in the attached Resolution No. PC 18-01:

1. **Condition No. 2. B)** - Revised to allow 14,432 square feet maximum of restaurant square footage and 9,916 square feet maximum of indoor/outdoor dining/seating area. This condition affects Petros, Kasai Hair Salon, Waterleaf and Beehive.
2. **Condition No. 2.A)c)** - Revised to allow the Waterleaf space to have the flexibility to convert the tenant space adjacent to Morningside Drive to a service oriented commercial use, such as a yoga studio, spin studio, pilates and personal training services. These uses are defined as limited personal improvement services in the Zoning Code.
3. **Condition No. 3** - Revised to allow alcohol at all restaurants not limited to two restaurants only.

The Planning did not approve the following changes:

1. **Request to allow conversion of second floor outdoor patio area to dining area.**
The Planning Commission did not support this request since it would not be consistent and in conflict with the intent of the Downtown Specific Plan. The Downtown Specific Plan prohibits second floor outdoor dining. Also, the public had concerns related to noise and impacts to the overall surrounding neighborhood. A condition was added to Condition No. 2.B) in Resolution No. PC 18-01 to prohibit all second floor outdoor dining.
2. **Request to add a provision under "Procedural" in City Council Resolution, No. 5770 to allow City Manager to approve future modifications to Sections 25 through 32 of the Resolution.** The Planning Commission did not support this request since they felt the conditions affected were significant changes to the Master Use Permit and a public hearing process would still be required for any future modifications. The public also had concerns on allowing changes without going through a public hearing process.

No other changes to the conditions are proposed. All other approved conditions from the Original Master Use Permit, as previously amended, remain the same and stated in the PC Resolution No. 18

-01. Previous Use Permit amendments related to alcohol and hours for Le Pain (PC No. 08-08), Petros (PC No. 06-20) and Shade Hotel (PC No. 14-0064) and Master Use Permit (Resolution No. 5770) remain effective and in full force.

Overall, the Planning Commission was in support of the requested changes to allow the applicant to provide a mix of services that would continue making Metlox successful and meet the future demands of the community. Some of the Planning Commissioners had concerns on the increased amount of existing uses being converted to restaurant uses. They felt the applicant should implement the changes gradually and return to the Planning Commission requesting new restaurant uses at a future meeting date once the requesting changes are implemented and any potential impacts are addressed.

The Coastal Development Permit ("CDP") for the Metlox Project was issued by the California Coastal Commission on February 11, 2003. After the City Council takes action on the application, the decision will be forwarded to the Coastal Commission. The Coastal Commission permit includes special conditions that allow its Executive Director to determine whether a CDP amendment is required for the proposed modifications.

Disposition and Development Agreement and Ground Lease

As the property owner, the City is also required through the Ground Lease with Metlox LLC to review any proposed changes in uses. The Ground Lease is an agreement between the City (Landlord) and Metlox LLC (tenant) that details the rights and responsibilities of each party. The draft amendment to the Ground Lease (Attachment 2) reflect the modified conditions of approval approved by the Planning Commission. The amendment may need to be changed to reflect the Council action.

COUNCIL OPTIONS

The Council may:

1. Approve the Application
2. Conditionally Approve the Application
3. Direct staff to draft a resolution denying the Application

Staff has drafted a resolution, consistent with the Planning Commission's decision, to conditionally approve a portion of the requested amendments. If the Council decides to deny the application, staff will draft a resolution for denial of the application and present it to the City Council at a future Council Meeting.

PUBLIC OUTREACH

Notices of the public hearing were provided to all property owners within a 500 foot radius of the project site and published in the Beach Reporter. As of the date this report was prepared, the city has received no comments.

ENVIRONMENTAL REVIEW

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 Amendment is 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 (State Clearinghouse No. 99121090). 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.

LEGAL REVIEW -

The City Attorney has reviewed and approved as to form the draft Resolution and Ground Lease Amendment.

Attachments:

1. Draft Resolution No. 18-0052
2. Draft Ground Lease Amendment (Redline Version Included)
3. Master Application and Project Request
4. Planning Commission Resolution No. 18-01
5. Donald McPherson Appeal - February 22, 2018
6. Jonathan Tolkin Letter - August 8, 2017
7. Planning Commission Documents - January 24, 2018 (Web-Link Provided)
8. Planning Commission Documents - February 14, 2018 (Web-Link Provided)
9. Public Comments - February 14, 2018 Planning Commission Meeting (Web-Link Provided)