



Legislation Text

File #: 19-0323, **Version:** 1

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Anne McIntosh, Community Development Director
Laurie Jester, Planning Manager
Angelica Ochoa, Associate Planner

SUBJECT:

Conduct Continued Public Hearing to Review Use Permit Amendment for an Existing Restaurant/Bar and Consider Request to Amend the Use Permit to Extend Operating Hours and Revise Other Conditions at 900 Manhattan Avenue (900 Club/Downstairs Bar) (Continued from the July 2, 2019, City Council Regular Meeting) (Community Development Director McIntosh).

- a) **CONDUCT CONTINUED PUBLIC HEARING**
- b) **DISCUSS AND PROVIDE DIRECTION**

RECOMMENDATION:

Staff recommends that the City Council consider public comment at the continued public hearing, review compliance with conditions of approval, consider revisions to conditions proposed by Applicant, and provide direction to staff. Staff further recommends that the Council consider modifying some of the conditions as requested by the Applicant but decline Applicant's request to add another hour of operation to Thursday nights.

FISCAL IMPLICATIONS:

There are no direct fiscal implications associated with the recommended action.

BACKGROUND AND DISCUSSION:

After conducting a duly noticed public hearing in 2018, the City Council adopted Resolution 18-0075, amending certain conditions of approval for the use permit issued to the 900 Club LLC ("900 Club") pursuant to Resolution 14-0063. Resolution 14-0063 approved a modified and restated use permit in 2014. Pursuant to Resolution 18-0075, the City Council approved:

1. An additional one hour on Thursday nights; and
2. An increase in the number of special events to 24 annually.

In addition, the Council removed an early "last call" condition. The approval was conditioned upon ten conditions, including that a duly noticed public hearing be held before the City Council for the

purpose of reviewing the use permit amendment for compliance with conditions. The condition also stated that the Applicant can seek further extensions of operating hours in connection with the review.

On July 2, 2019, the City Council opened the public hearing to initiate the review. Staff presented a staff report. The operator stated that he had implemented a number of measures to comply with the conditions and wanted to provide more information for the City Council to consider his request. Several people, including residential neighbors, spoke in favor of the 900 Club, stating that the operator had reduced noise and complaints. The Council continued the public hearing to August 6, 2019, providing another opportunity for the public to comment.

On July 29, 2019, staff met with the owner at the 900 Club to review the conditions. Staff discussed and clarified outstanding items. The business owner provided a written statement as to the conditions of approval. Based upon such recent meeting, Staff confirms that the business owner has substantially complied with all but one of the conditions set forth in Resolution 18-0075.

The 900 Club is in substantial compliance with conditions **1, 2, 4, 5, 6, 7, 8, 9 and 10**. Following is a summary of staff's findings for each operational condition:

Condition No. 1- Hours of Operation

- Monday through Wednesday, 11:00 AM to midnight, Thursday, 11:00 AM to midnight (downstairs), Thursday, 11:00 AM to 1:00 AM (upstairs), Friday, 11:00 AM to 1:00 AM, Saturday, 9:00 AM to 1:00 AM and Sunday, 9:00 AM to midnight.
- Closing times, all areas vacated, music off, no food or alcohol.
- Staff may remain on premises one hour after closing time.

Staff Response

- Only two complaints in the period from June 2018-June 2019 received by police regarding noise from loud music and loud customers after hours.

Note: The applicant is requesting that this condition be modified, to extend operating hours by one hour, to 1:00 AM on Thursdays, Downstairs only.

Condition No. 2 (amending Condition No. 5 of Resolution 14-0063) - Access and Windows

- Upstairs use Manhattan Avenue door after 10:00 PM.
- Upstairs ok to use rear Bayview door before 10:00 PM, door to stay closed.
- Downstairs to use 9th Street door, door to stay closed.
- Downstairs windows closed on Manhattan Avenue after 10:00 PM.
- Downstairs window on 9th Street replaced with fixed window.

Staff inspection:

- Downstairs 9th Street door used after 10:00 PM on Thursday, in compliance, but door open after hours during a few Police calls to site.
- Downstairs windows closed on Manhattan Avenue after 10:00 PM.
- Downstairs window on 9th Street is installed and inspected as fixed window; the City is processing the building permit.

Condition No. 4 - (amending Condition No. 14 of 14-0063) - Updated Floor Plans and Occupancy Limits

- Occupancy to be determined per updated floor plans submitted by business owner.

Staff response

- Concept plans submitted, comments provided by Building and Planning. Floor plans have been submitted to Plan Check.

Condition No. 5- (amending Condition No. 15 of 14-0063) - Signage

- Post Signage at downstairs exit: smoking prohibited and be respectful of neighbors.

Staff response

- Interior signage installed and inspected at front door facing Manhattan Avenue, 9th Street side door, and upstairs rear Bayview door.

Condition No. 6 - (amending Condition No. 16 (F), (G), and (H of 14-0063) Noise Mitigation installed within 45 days

- Downstairs windows on Manhattan Avenue and 9th Street and 9th Street door downstairs closed daily after 10:00 PM.
- Self-closing door on downstairs 9th Street door.
- No smoking signage downstairs exit.

Staff Inspection

- Windows downstairs, 9th Street and Manhattan Avenue and upstairs closed on Saturday after 10:00 PM.
- Self-closing door installed for 9th Street door.
- No smoking signs installed and inspected.

Conditions No. 7 (B) and (C) - (amending Condition No. 17 of 14-0063) Manager and Employee handbook

- On-site manager available at all times to address noise, unruly patrons, and other issues.
- Employee handbook listing all conditions to employees and onsite both upstairs and downstairs.

Staff Inspection

- No on-site manager for downstairs or upstairs bar during inspection, but follow-up verified manager on-site.
- Employee handbook verified on-site upstairs and downstairs.

The applicant has not demonstrated compliance with the noticing requirements of special events required by Condition 3. Among other requirements, Condition 3 requires the operator to notify the City's Community Development Department, police and neighbors in writing seven days prior to a special event with entertainment. However, the operator has notified the Community Development Department only one to two days prior to some events, and provided no prior notice of other events. Further, the operator did not produce any evidence that he has notified police and neighbors.

NOTE: The applicant is requesting that this condition be modified, to provide written notification of City staff, Police and immediate residents two or three days prior to entertainment/special events, instead of seven days prior notice.

In addition, Staff has reviewed the 20 conditions of approvals contained in Resolution No. 14-0063, adopted in 2014. Complaints for service and the staff inspection reveal the following incidents of noncompliance with the 2014 conditions:

- On an inspection conducted on a Saturday and during a few police calls in response to complaints, loud background music and noise were heard from the Upstairs club and the back door was open on Bayview Drive (In general, Conditions 6, 7 and 11 prohibit excessive noise).
- The operator did not submit its application for an entertainment permit on a timely basis (as required by Condition No. 9A).
- Staff and police did not observe the operator policing the adjacent area (as required by Condition No. 17) during the June 2019 inspection or police calls.
- The operator has not provided a state licensed, bonded and certified security guard at certain times (as required by Condition No. 4).

Applicant's Request and Staff Recommendation

The applicant is asking to amend conditions to:

- 1) Extend operating hours by one hour, to 1:00 AM on Thursdays, Downstairs only.
Staff does not support
- 2) Remove the security guard on Thursday nights and to employ security guard on other required days/events under business owner insurance, not through a private security company, and not licensed and bonded.
Staff does not support removing the security guard on Thursday, but police do not object to the business providing their own security guard as long as the guard is readily identifiable as a security guard and addresses the noise, smoking, loitering, trash, etc.
- 3) Reduce notification of entertainment/special events to 2-3 days, instead of 7 days.
Staff would support 3 days minimum notice.
- 4) Requirement to notify police of security code only if code changes, at least 7 days prior to change, instead of monthly as the security code is not changed frequently.
Staff supports.

The operator may provide additional information in an effort to demonstrate that the 900 Club is striving to comply with all conditions.

POLICY OPTIONS:

After the City Council conducts the review of the Use Permit Amendment and considers the Applicant's request, the City Council may take one or more of the following actions:

OPTION # 1:

Deny Applicant's request related to hours, security guard, noticing the neighbors for entertainment/special events, security code changes and direct staff to enforce all conditions of approval.

OPTION # 2:

Initiate revocation hearing process.

OPTION # 3:

Direct staff to proactively enforce all conditions, rather than waiting on a complaint basis.

CONCLUSION:

Staff feels that the applicant has complied with most of the conditions and supports Applicant's request with regards to the notification of entertainment/special events of only three days, allowing the owner to contract directly with a security guard, and a seven day notice for any change to the security code. Staff does not recommend approving an extra hour on Thursday night for the Downstairs bar.

If the Council concurs with staff's recommendation, the City Council should direct staff to return with a draft Resolution revising the conditions as to:

- Security guard,
- Notification of entertainment/events and
- Security code.

ENVIRONMENTAL REVIEW:

In accordance with the provisions of the California Environmental Quality Act, the Community Development Department found that the subject project would not have a significant effect on the environment because there is no expansion of the use and therefore exempt per Section 15301, Class 1.

LEGAL REVIEW:

The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

ATTACHMENTS:

1. Applicant's Additional Information
2. Resolution No. 14-0063
3. Resolution No. 18-0075