



## Legislation Text

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**File #:** 19-0188, **Version:** 1

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**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 Public Hearing Regarding One-Year Review of Use Permit as Required by City Council Resolution No. 18-0075 for an Existing Restaurant/Bar and Consider a Request to Amend the Use Permit to Extend Operating Hours and Other Conditions at 900 Manhattan Avenue (900 Club/Downstairs Bar) (Community Development Director McIntosh).

a) **CONDUCT PUBLIC HEARING**

b) **DISCUSS AND PROVIDE DIRECTION**

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**RECOMMENDATION:**

Staff recommends that the City Council conduct the public hearing, review the existing use permit for compliance with the conditions, consider amendments proposed by applicant, and provide direction to staff. Staff does not recommend granting any additional entitlements as requested by the applicant until outstanding issues of non-compliance are addressed.

**FISCAL IMPLICATIONS:**

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

**BACKGROUND:**

In 1995, a Use Permit was approved for a Restaurant/Bar at 900 Manhattan Avenue. In 2014, due to a series of complaints and public safety concerns at the location, a Use Permit Revocation process was initiated. This resulted in a number of conditions imposed on the two existing businesses, the 900 Club and the Red Room (now Downstairs Bar), to address issues that included the use of the back door, noise, after-hours operations, unpermitted special events, and nuisance issues, such as loitering, unruliness, and boisterous activities outside of the business. These conditions are contained in City Council Resolution No. 14-0063 (Attached). Public hearings were held in 2014, 2015, 2017, and 2018 related to review of the Use Permit and condition changes to business operations requested by the business owner. Unless modified by Resolution No. 18-0075 (discussed immediately below) the conditions in Resolution No. 14-0063 remain unchanged and are still in effect.

On June 5, 2018, the City Council adopted Resolution No. 18-0075, conditionally approving: (1) an additional one hour of operation for the 900 Club (upstairs only) on Thursday nights from 12:00 midnight to 1:00 AM; and (2) an increase in the number of yearly special events to 24. The ten conditions include physical alterations to the building and a one-year review “for the purpose of reviewing the subject Use Permit Amendment for compliance with all conditions.” The Council retained jurisdiction to conduct the one year review (and, depending on its direction tonight, may want to further retain jurisdiction). See attached City Council staff report from May 1, 2018 for further detail. A writ of mandate challenging the Council decision adopting Resolution No. 18-0075 has been filed by Donald McPherson and is scheduled to be heard on November 12, 2019.

#### **DISCUSSION:**

Condition No. 20 of Resolution No. 18-0075 requires a one year review of the existing Use Permit Amendment for the 900 Club/Downstairs Bar. Conditions in Resolution No. 18-0075 modified some of the original conditions in Resolution No. 14-0063, as identified on the attached chart. Conditions of approval specifically addressed past neighbor complaints regarding noise from amplified sound and patrons of the business, and related impacts.

#### ***Staff Inspection***

The Code Enforcement officer conducted two inspections one on Saturday, June 1, 2019, and a second on Thursday, June 6, 2019, both starting at 10:00 PM. Planning staff also did a follow up inspection during daytime hours to review site conditions. The inspections indicated that certain conditions are not being met. A number of conditions, including hours of operation, closing procedures, last call for food and drinks, and policing of the property by business operator representatives are difficult to verify, unless a complaint is received. The Police Department received six calls/complaints between September 06, 2018 and June 16, 2019 regarding noise, loud music, one arrest, door open on Bayview Drive and no security guard on site.

#### ***Compliance with Conditions Contained in Resolution No. 18-0075***

The applicant has NOT shown compliance, or only partial compliance, with conditions **1, 2, 3, 4, 5, 6, 7 and 8**. Following is a summary of staff’s findings for each condition:

##### **1) 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.
- Last call for food and drinks one hour prior to closing.
- Music off one half hour prior to closing.

##### ***Staff Response***

Two after hours complaints verified by Police, loud music and loud customers on site.

##### **2) Condition No. 2 (Condition No. 5 of 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 9<sup>th</sup> Street door, door to stay closed.
- Downstairs windows closed on Manhattan Avenue after 10:00 PM.

- Downstairs window on 9<sup>th</sup> Street replaced with fixed window.

*Staff inspection:*

- 9<sup>th</sup> Street downstairs door used after 10:00 PM on Thursday, in compliance.
- Door open after hours during Police calls to site.
- Downstairs windows closed on Manhattan Avenue after 10:00 PM.
- No permit has been applied for downstairs window to be replaced with fixed window.

**3) Condition No. 3 - (Condition No. 9. B. of 14-0063) Entertainment Permits**

- No more than 24 entertainment activity days per year.
- Notify Community Development, Police and neighbors in writing 7 days prior to event.

*Staff response*

- Community Development notified with a phone call and email one to two days prior to only a few entertainment activities.
- Police and neighbors never notified.

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

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

*Staff response*

- Concept plans submitted, comments provided by Building and Planning, detailed floor plans have not been submitted per date.

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

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

*Staff response*

- No interior signage at front door facing Manhattan Avenue or 9<sup>th</sup> Street side door.

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

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

*Staff Inspection*

- Windows downstairs, 9<sup>th</sup> Street and Manhattan Avenue and upstairs closed on Saturday after 10:00 PM.
- Self-closing door installed for 9<sup>th</sup> Street door.
- No smoking signs not installed.

**7) Conditions No. 7 (B) and (C) - (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.
- No employee handbook on-site.

## 8) Condition No. 8 - Covenant

- Record a covenant consenting to conditions of approval within 30 days of adoption of Resolution dated June 5, 2018.

### *Staff Inspection*

- Covenant submitted more than 30 days.
- Recorded almost one year later.

In addition, the applicant has NOT demonstrated compliance, or only partial compliance, with conditions **3, 4, 6, 7, 9, 10, 11, 16, 17** and **18** of Resolution No. 14-0063 adopted in 2014:

## 1) Condition No. 3 - Security guard - (Licensed, bonded, and certified)

- Thursday, Friday and Saturday from 9:30 PM until all staff members leave.
- Special event or Amplified Sound.

### *Staff inspection:*

- No security guard on site Thursday or Saturday or during Police calls to site.

## 2) Condition No. 4 - Back door and Storage/Utility Room (Bayview Drive)

- Not used after 10:00 PM and remain closed with keypad access only.
- Trash, disabled, emergency, and band access only after 10:00 PM.
- Advise Police monthly of keypad access code changes or other changes.

### *Staff inspection:*

- Back door was closed on Thursday and during Police calls to site.
- Back door and storage/utility room were open on Saturday.
- After 10:30 PM on Saturday, door closed but patrons still entering.
- Police has not been advised of any keypad code or other changes.

## 3) Conditions No. 6, 7, and 11 - Background Music, Amplified Sound, and Noise

- Background music and live non-amplified musicians (up to three) allowed as long as not heard on Bayview Drive and 9<sup>th</sup> Street.
- Noise cannot exceed MBMC standards.
- No outdoor sound equipment.
- All doorways and windows closed during entertainment/special events.

### *Staff Inspection:*

- Loud background music and noise heard from Upstairs club and back door open on Bayview Drive on Saturday and during Police calls to site..

## 4) Condition No. 9 (A) and (B) - Entertainment Permit

- Complete entertainment permit annually.
- Entertainment permitted on second floor only on Thursday, Friday, Saturday, or any special event day.
- Notify Community Development, Police, and neighbors in writing 7 days prior to entertainment.

### *Staff Response*

- Entertainment permit submitted months late.
- Community Development notified with a phone call one to two days prior to only a few entertainment activities.
- Police and neighbors never notified.

## 5) Condition No. 10 - Special Events

- Maximum 6 special events annually, 50 people or more, only upstairs.
- Security Guard on site.
- Comply with conditions related to noise, use of back door, litter, access, windows and doors and other impacts to neighborhood.
- Notify Community Development, Police and neighbors in writing 7 days prior to event.

**Staff Response**

- Community Development notified with a phone call one to two days prior to only a few events.
- Police and neighbors never notified.

**6) Conditions No.16 (A) through (E) - Noise Mitigation installed within 45 days**

- Tempered glass panels installed upstairs over each stained glass window, south wall.
- Separate tempered glass panel installed over inside window upstairs, south rear hallway.
- Double pane windows on Manhattan Avenue and 9<sup>th</sup> Street upstairs and downstairs.
- Signage on Bayview Drive rear door (inside and outside) to not enter or exit after 10:00 PM.
- Sound curtains on double pane windows adjacent to Manhattan Ave and 9<sup>th</sup> Street, second floor.

**Staff Response**

- Tempered glass panels installed.
- Double pane windows not installed- existing openable windows screwed shut.
- Signage on Bayview Drive installed.
- Sound curtains installed and being used.

**7) Condition No. 17 - Operator to Police Surrounding Property**

- Keep free of litter.
- Discourage patrons from entering adjacent residential areas.
- Ensure conditions are met.
- Prevent loitering, unruliness, boisterous activities of patrons.

**Staff Inspection**

- No outside operator presence observed or during Police calls to site.

**12) Condition No. 18 - Access Code/Inspection**

- Provide access code to Police, Fire, County Health, and the Alcohol Beverage Control with key pad code for access first of every month.

**Staff Response**

Police has not been advised of any keypad code or other changes.

**Applicant Request**

The applicant is asking to amend the following conditions in Resolution No. 14-0063 and Resolution No. 18-0075 (Attached):

- 1) Extend operating hours by one hour, to 1:00 AM on Thursdays, Downstairs only.  
(Resolution No. 18-0075, Condition No. 1)
- 2) Request to remove the security guard on Thursday nights.  
(Resolution No. 14-0063, Condition No. 3)
- 3) Request to remove written notification of immediate residents prior to entertainment/special

events.

(Restated in Resolution No. 18-0075, Condition No. 3- No change from Resolution No. 14-0063)

### **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 of the following actions:

#### **OPTION # 1:**

Deny applicant's request related to hours, security guard and noticing the neighbors for entertainment/special events and continue enforcing Resolution No. 14-0063 and Resolution No. 18-0075 with no changes.

#### **OPTION # 2:**

Direct staff to return with a draft Resolution with additional or revised conditions at a future meeting.

#### **OPTION # 3:**

Initiate Revocation hearing process due to non-compliance with conditions.

### **CONCLUSION:**

The applicant has not complied with the majority of the conditions in Resolution No. 18-0075, and the Police Department has responded to several complaints with violation of conditions. Therefore, staff has concerns about future compliance and modification of the current conditions and would not recommend granting the applicant's request until outstanding issues of non-compliance are addressed.

### **PUBLIC OUTREACH:**

A public notice was published in the Beach Reporter on June 20, 2019, and mailed to property owners within 500 feet on June 18, 2019.

### **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. City Council Resolutions Comparison Chart (2014 and 2018)
2. Resolution No. 14-0063
3. Resolution No. 18-0075
4. Applicant's Amendment Request
5. City Council Staff Report (2018)