



Legislation Text

File #: 20-0177, **Version:** 1

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Carrie Tai, Community Development Director
Ted Faturos, Assistant Planner

SUBJECT:

Public Hearing to Consider: Application for the Expansion of an Existing Restaurant with Full Alcohol Service (Manhattan Beach Post) Into an Adjacent Vacant Restaurant Space (Formerly Subway) and Expansion of Hours of Operation, at 1142 Manhattan Avenue, and Make an Environmental Determination in Accordance with the California Environmental Quality Act (Simms Restaurant Group/Simms) (Community Development Director Tai).

a) CONDUCT PUBLIC HEARING DE NOVO

b) MAKE AN ENVIRONMENTAL DETERMINATION IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

c) CONSIDER DIRECTING STAFF TO DRAFT A RESOLUTION CONDITIONALLY APPROVING THE USE PERMIT AMENDMENT FOR COUNCIL CONSIDERATION AT A SUBSEQUENT COUNCIL MEETING

RECOMMENDATION:

Staff recommends that after conducting the public hearing de novo, the City Council direct staff to prepare a resolution approving the Use Permit Amendment subject to conditions.

EXECUTIVE SUMMARY:

On March 11, 2020, the Planning Commission unanimously approved a Use Permit Amendment to allow for the expansion of an existing restaurant with full alcohol service (Manhattan Beach Post - 1142 Manhattan Avenue) into the adjacent vacant restaurant space (formerly Subway - 1144 Manhattan Avenue) and expansion of the hours of operation, subject to conditions. The subject restaurant is located in the "CD" (Downtown Commercial) zoning district in Area District III. The Planning Commission added specific conditions to the resolution with the aim of balancing the needs of the applicant while being sensitive to the concerns of nearby residents.

Two members of the City Council called up the Planning Commission's decision for review. The Planning Commission's decision was also appealed to the City Council by the President and Vice President of Coastal Defender. The Municipal Code provides that appeals and reviews of Planning Commission quasi-judicial hearings be conducted as a public hearing *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 Council hearing.

FISCAL IMPLICATIONS:

There are no fiscal implications associated with the recommended action.

DISCUSSION:

MB Post at 1142 Manhattan Avenue currently operates under an entitlement approved in 1999 (Use Permit Amendment /City Council Resolution No. 5513). The approved entitlement allows for full alcohol service in conjunction with food service, as well as limited entertainment. The Council approved the following operating hours: 11:00a.m. to 11:00p.m. Monday through Wednesday, 11:00 a.m. to 12:00 a.m. Thursday through Friday, 7:00 a.m. to 12:00 a.m. on Saturdays, and 7:00 a.m. to 11:00 p.m. on Sundays. The entitlement also allows for limited entertainment for “kids night” on Monday nights from 5:00p.m. to 7:00p.m., with no live entertainment or dancing allowed.

The adjacent vacant 1,447 square-foot restaurant space at 1144 Manhattan Avenue operated under Board of Zoning Adjustment Resolution No. 82-41. The Board approved a “restaurant, juice bar and deli service” with onsite consumption of food. No alcohol service was allowed by BZA Resolution No. 82-41.

The applicant is requesting an amendment to the existing Use Permit Amendment to expand the existing 3,283 square-foot restaurant into the adjacent vacant restaurant space. The applicant also proposes to partially enclose a 148 square-foot front patio area, bringing the total square footage of the expanded restaurant to 4,878 square feet. The applicant is proposing to use the expanded floor space to add seating and bar area in a rearranged floorplan that will also include additional bathrooms and storage area. There are no planned changes to the kitchen, prep area, and most of the rest of the “back of house”. The applicant proposes to build a trash enclosure in the rear of the property along Bayview Drive; and also proposes to use this area for loading, as on-site parking is not required per Manhattan Beach Municipal Code 10.64.050.

The applicant proposes to have operable windows facing Manhattan Avenue in the “Atrium Dining Area” and “Lounge Area” (see the attached plans), and eliminate the French doors that currently open onto Manhattan Avenue in the southern portion of the building adjacent to Center Place.

The applicant is requesting to expand their allowed operating hours, with a proposed opening time of 6:00 a.m. every day and to extend closing time to 1:00 a.m. on Thursdays through Saturday. The proposed hours of operation are 6:00 a.m. to 11:00p.m. Sunday through Wednesday, and 6:00 a.m. to 1:00 a.m. Thursday through Saturday. The applicant has requested that the City remove its limited entertainment entitlement.

Planning Commission

At the March 11, 2020, Planning Commission meeting, staff presented the applicant’s Use Permit Amendment request and recommended approval. The applicant spoke in favor of the project. During the public comment period, four residents expressed concern that the proposed restaurant’s floorplan would allow the restaurant to function more like a bar, and that noise might be generated from the proposed extra hour of alcohol service. The Executive Director of the Downtown Business and Professional Association expressed the Association’s support of the project as proposed. The Commissioners generally supported the project and praised the applicant for its track record of being a responsible operator. The Commissioners acknowledged the neighbors’ concerns, and after hearing suggestions from the applicant and the neighbors, unanimously approved the application

with conditions and with the following modifications:

1. The restaurant's windows facing Manhattan Avenue shall be closed no later than 10:00 p.m. every day in order to minimize any noise generated by the restaurant.
2. No alcoholic beverages can be ordered by customers past 12:00 a.m., Thursday through Saturday. Customers who have ordered alcohol beverages before 12:00 a.m. can still consume their alcoholic beverages between 12:00 a.m. and 1:00 a.m.
3. Staff will provide a report to the Planning Commission one year after the commencement of operations after Manhattan Beach Post's expansion. The report will detail any complaints the City has received that can be traced back to the operations of the restaurant. The report will be a general business item on the Planning Commission's agenda. The owner, at its own expense, will be required to notify all property owners within 500 feet of the site that the Planning Commission will be receiving the one-year report. The notice shall be mailed at least 10 days prior to the meeting date, with the owner providing proof of such mailing to the satisfaction of Community Development Director. The notice will give the date and time of the Planning Commission meeting, as well as the directions on sending comments to the Planning Commissioners.

If the Council adopts a resolution of approval, the approved resolution will rescind Board of Zoning Adjustment Resolution No. 82-41, the previous entitlement for Subway.

Public Hearing Process

California Governor Gavin Newsom's Executive Order N-29-20 authorizes cities to hold public hearings without the physical presence of the public during the State of Emergency declared by the Governor on March 4, 2020. That declared State of Emergency is still in effect. Manhattan Beach Municipal Code Section 10.100.010 (B) states "The appeal shall be heard within 60 days of the City Clerk's receipt of the appeal, unless the applicant and appellant consent to a later date." The applicant has not consented to a later date, and has asked for a date within the 60-day period. Thus, this public hearing is being held by the City Council within 60 days of the appeal. As noted in the both the notice of the hearing and in tonight's agenda, the City has offered several opportunities for the public to comment prior to the close of the public hearing, including live testimony during the public hearing. In response to the notice, numerous people have submitted emails either in favor of or opposed to the request.

Appeal

An appeal was submitted by Donald McPherson and James Quilliam, who are respectively President and Vice President of the group known as Coastal Defender. In the attached email addressed to the City Council, the appellant states that Manhattan Beach Post should not be allowed to expand its closing hours to 1:00 a.m. Appellant argues that the expansion of hours will create more noise, and that the Planning Commission approval has "environmental review deficiencies", and violates California Alcoholic Beverage Control (ABC) regulations. The appellant proposes different conditions of approval for closing hours and to mitigate noise.

Staff addresses specific arguments made by the appellant below, with the italicized text taken directly from the appellants' written materials submitted to the City Council.

"Approximately 150 eating and drinking patrons adjacent to open windows fronting on

*Manhattan Ave constitute prima facie evidence that MB Post will violate the noise ordinance, per MBMC §5.48.300. Noise that exceeds the municipal-code standards constitutes substantial evidence, per the California Environmental Quality Act ["CEQA"]
If substantial evidence exists that the MB Post project may have significant effect on the noise environment, then the city must conduct an environmental review, per CEQA."*

The appellant states that there are "approximately 150 eating and drinking patrons adjacent to open windows front Manhattan Ave", when the floor plan shows no more than 25 seats that line the restaurant's western wall adjacent to Manhattan Avenue under the proposed plans. It is unclear what noise, if any, is exceeding the Municipal Code standards. There have not been any noise complaints relating to seating near any windows within nine years of operation.

Since Manhattan Beach Post's opening in 2011, the Police Department has received one call regarding Manhattan Beach Post's operations. The call was from July 2017 for a "loud compressor" being used by the restaurant in the early morning, not about noise coming from the business' evening dinner service or general operations. This is notable considering that Manhattan Beach Post currently has French doors that open onto Manhattan Avenue.

Further, the Planning Commission added a condition of approval to the resolution that requires MB Post to close all windows facing Manhattan Avenue by 10:00 p.m. as a way to address public comments about potential noise. This condition preceded the appeal, so it is unclear what the concern is.

"The Attachment A resolution fails to specify amplified-music levels permitted, to comply with the noise-ordinance standard that music (sic) inaudible within 50 feet of the premises, when windows open. [MBMC §5.48.120]"

The applicant is not proposing amplified music; as live entertainment is prohibited. If the application is approved, MB Post will no longer be entitled to limited entertainment. There are thus no "amplified-music levels" for the resolution to specify.

"The former Subway premises lie within 100 feet of residences on the north side of 12th St and of the city Parking Lot 2. Per regulations, the Department of Alcoholic Beverage Control ["ABC"] may not approve a license, unless " ... the applicant establishes that the operation of the business would not interfere with the quiet enjoyment of the property by residents." The application (sic) incomplete, because the applicant has not established that their business will not interfere with quiet enjoyment by residents."

Manhattan Beach Post has been operating with a full liquor license (Type 47) from the ABC since it opened nine years ago. A review of the applicant's alcohol licenses on the ABC's website's "License Lookup" feature shows zero disciplinary action from the ABC, and is an attachment.

There has been no indication, in terms of noise complaints or disciplinary actions, that commercial uses would interfere with quiet enjoyment of property.

The Planning Commission Resolution has a condition that states "The owner shall be in substantial compliance with all restrictions imposed by the Alcohol Beverage Control Board

(ABC) prior to service of liquor.” The City uses the use permit process to place its own restrictions on a business serving alcohol, independent of those restrictions placed by the ABC. If the Council approves the request, staff recommends that the same condition be imposed in the Council’s Resolution approving the project.

“The Attachment A resolution in the staff report does not specify occupancy, so the finding for public safety cannot be made, to ensure fire and life safety. For a restaurant, the occupancy must correspond to the seating capacity, with no food or alcohol service to persons standing and blocking the egress aisles.”

During the review process for the Use Permit Amendment, the proposed plans, including floor plans, were reviewed the Building & Safety Division and Fire Department to ensure feasibility for complying with Building Code requirements, including but not limited to occupancy, egress, and life and safety systems. There were no comments received, indicating the ability of the proposed plans to comply with above-mentioned Code requirements during the “Plan Check Process

Before issuing any permits for construction, the City requires the applicant to submit for “Plan Check”. Plan Check is the review process where the Building & Safety Division, Planning Division, Fire Department, and Public Works Department all review the proposed construction plans to ensure compliance with any relevant codes, including egress requirements. The proposed occupancy is also further analyzed by the various City departments, and any relevant codes are applied to the project based on the occupancy. The proposed project requires a variety of permits (building, electrical, plumbing, mechanical, etc.). As with any project, the City will not issue the applicant any permits unless the plans demonstrate conformance with all relevant codes.

“The one-hour increase in closing time, from midnight to 1 AM constitutes a major policy change by the city, that abrogates the undocumented standard of midnight closing for eating and drinking establishments not located in the Manhattan Mall. For 20 years since 1999, in the Downtown, the city has approved only one increase in hours, namely, midnight to 12:30 AM for Petros in 2002. The city now plans to abandon this policy.”

The Municipal Code does not have any regulations that require all Downtown restaurants to close at 12:00 a.m. The Planning Commission and, on appeals, the City Council, reviews Use Permit requests on an individual basis, with each Use Permit request analyzed based on each proposal’s unique merits, location, compatibility with the neighborhood, and ability to meet the required findings as outlined in the Code and state law.

As stated above, entitlements at other locations are not relevant to the issue of whether the request for a later closing time is appropriate for this site. Nevertheless, there have been three instances within the last 15 years when the Planning Commission or City Council reviewed Use Permit requests for Downtown, non-Metlox restaurants with full alcohol service where the Planning Commission or City Council allowed each site’s previous post-midnight closing time to remain unchanged in each site’s new entitlement:

- 1) BREWCO (124 Manhattan Beach Boulevard): Obtained their Use Permit Amendment (Resolution No. PC 09-01) in 2009 and was allowed to keep a 1:00 a.m.

closing time on Fridays and Saturdays.

- 2) The Strand House (117 Manhattan Beach Boulevard): Obtained their Use Permit (Resolution No. 6304) in 2011 and was allowed to keep a 1:00 a.m. closing time on Fridays and Saturdays.
- 3) Esperanza (309 Manhattan Beach Boulevard): Obtained their Use Permit (Resolution No. PC 19-03) in 2019 and was allowed to keep a 2:00 a.m. closing time seven nights a week.

Required Findings

Section 10.84.010 of the Manhattan Beach Municipal Code states that “Use Permits are required for use classifications typically having unusual site development features or operating characteristics requiring special consideration so that they may be designed, located, and operated compatibly with uses on adjoining properties and in the surrounding area.”

The following findings must be met in order to grant the Use Permit Amendment. Staff suggests the following findings in support of the Use Permit Amendment for the project.

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

Manhattan Beach Post is a commercial use located in the CD Downtown Commercial zone, and its expansion is likewise appropriate for its zoning classification.

2. *The proposed location of the expanded use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will be compatible, as conditioned, with the surrounding uses and neighborhood, 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.*

Manhattan Beach Post’s restaurant use is a commercial use consistent with the General Plan’s Downtown Commercial land use designation assigned to the project lot and the neighboring lots. The proposed use is compatible with neighboring uses, as the neighboring lots are developed with commercial uses, many of which are eating and drinking establishments that operate into the late evening, and serve alcohol. As stated below, significant buffers exist between Manhattan Beach Post (and the proposed expansion area) and residents in nearby blocks, with Manhattan Avenue, Bayview Drive, Center Place, City Parking Lot 2 (between Bayview Drive and Highland Avenue), and other businesses providing barriers that help minimize any impacts associated with the use. Indeed, a restaurant has been located on the southeast corner of Manhattan Avenue and 12th Street for decades. The General Plan encourages a “vibrant downtown” that offers “services and activities for residents and visitors”, and Manhattan Beach Post is part of the downtown commercial mix of businesses that help create a dynamic and interesting Downtown. Manhattan Beach Post’s expansion will only enhance the services provided to residents and visitors.

3. *The proposed expanded use and expanded hours 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.*

Manhattan Beach Post is an eating and drinking establishment use that complies with all provisions of Municipal Code Title 10 (Planning and Zoning) and specific conditions imposed previously. Likewise, its expansion and additional hours of operation will fully comply with Municipal Code's Title 10 and specific conditions imposed.

4. *The expansion of the use will not adversely impact or be adversely impacted by nearby properties.*

Manhattan Beach Post has been operating at their current location since April 2011, serving meals with craft beer, small-production wine, and craft cocktails in conjunction with such food service revolving around an artisan menu of shared plates. The use is located on the commercial portion of Manhattan Avenue in the heart of Downtown Manhattan Beach, with some of the surrounding businesses having similar operating characteristics. Significant buffers exist between Manhattan Beach Post and residents in nearby blocks, with Manhattan Avenue, Bayview Drive, Center Place, City Parking Lot 2 (between Bayview Drive and Highland Avenue), and other businesses providing barriers that help minimize any impacts associated with the use. Accordingly, any potential impacts arising from the expanded space and hours related to traffic, parking noise, vibration, odors, resident security and personal safety, and aesthetics are either minimal or mitigated by conditions of approval contained herein. The expansion will not create demands exceeding the capacity of public services and facilities.

General Plan

The General Plan encourages Downtown businesses that offer "services and activities to our residents and visitors". The project is specifically consistent with General Plan Policies as follows:

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.

PUBLIC OUTREACH:

A public notice for the project's May 5, 2020, City Council public hearing was published in the Beach Reporter on Thursday, April 23, 2020, and was also mailed to surrounding property owners on April 20, 2020. The public notices and agenda posted on Wednesday, April 29, 2020 included information on how members of the public could comment via eComment, email, and voicemail prior to the meeting. The public notice also informed that the public that anyone can provide live testimony by Zoom, and instructions were included on the City website as well as the meeting agenda.

As of the writing of this report, staff received over two dozen emails support for the project, while three emails were received expressed opposition to MB Post's request to expand their hours. One email was received that did not have any written text. The comments are attached. (See Attachment 7).

ENVIRONMENTAL REVIEW:

The Project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to State CEQA Guidelines Section 15301 (Existing Facilities) based on staff's determination that there is a negligible expansion of use associated with the Project, as the existing restaurant is taking over an adjacent restaurant space, the expanded hours are consistent with several other commercial establishments in the CD Downtown Commercial zone, and the project's conditions of approval require the restaurant's windows facing Manhattan Avenue to be closed no later than 10:00 p.m. every day in order to minimize any noise generated by the restaurant. Pursuant to State CEQA Guidelines Section 15300.2 (Exceptions), there is no reasonable possibility that the activity will have a significant impact on the environment because there are no unusual circumstances in this situation, where an existing restaurant is taking over an adjacent restaurant space. The Project will neither individually nor cumulatively have an adverse effect on wildlife resources, as defined in Fish and Game Code Section 711.2.

LEGAL REVIEW:

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

CONCLUSION:

The City Council has the following options:

1. Direct staff to draft a resolution conditionally approving the application, with the same conditions imposed by the Planning Commission in Planning Commission Resolution No. PC 20-01 (attached);
2. Direct staff to draft a resolution conditionally approving the application, with additional conditions; or
3. Direct staff to draft a resolution containing findings to deny the expansion, expanded hours, or both.

Staff recommends Options 1 or 2.

ATTACHMENTS:

1. Proposed Plans
2. Planning Commission Resolution No. PC 20-01
3. Planning Commission Draft Meeting Minutes, March 11, 2020
4. Planning Commission Report, Attachments, and Related Material (March 11, 2020)
5. Appellants' Materials
6. ABC Report on 1142 Manhattan Avenue
7. Public Comment (Received as of April 29, 2020)