



Legislation Text

File #: 20-0303, **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 A Master Use Permit Amendment to Allow Full Liquor Service in Conjunction with Food Service at an Existing Restaurant with Beer and Wine at 1131 Manhattan Avenue, Part of a Multi-Tenant Building at 1125-1131 Manhattan Avenue and 133 Manhattan Beach Boulevard, and Make an Environmental Determination in Accordance with the California Environmental Quality Act (Nando Milano LA, LLC/Vullo) (Community Development Director Tai).

a) CONDUCT PUBLIC HEARING DE NOVO

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

c) CONSIDER DIRECTING STAFF TO DRAFT A RESOLUTION CONDITIONALLY APPROVING THE MASTER USE PERMIT AMENDMENT FOR CITY 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 Master Use Permit Amendment subject to conditions.

EXECUTIVE SUMMARY:

On September 9, 2020, the Planning Commission unanimously approved a Master Use Permit Amendment to allow for full liquor service in conjunction with food service at an existing restaurant with beer and wine at 1131 Manhattan Avenue, part of a multi-tenant building at 1125-1131 Manhattan Avenue and 133 Manhattan Beach Boulevard, subject to conditions. The subject restaurant is located in the "CD" (Downtown Commercial) zoning district in Area District III.

The Planning Commission's decision was appealed to the City Council by Donald McPherson, 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:

The multi-tenant building currently operates under a Master Use Permit approved in 1995. The Master Use Permit was most recently amended in 2019 (Planning Commission Resolution No. PC 19 -10) to upgrade the alcohol service at 1129 Manhattan Avenue (Tacolicious) from beer and wine to full alcohol service. The Master Use Permit, as amended, ("MUP") currently allows beer and wine service in the restaurant space at 1131 Manhattan Avenue (formerly occupied by the Little Sister restaurant), as well as the following hours: 6:00 a.m. to 11:00 p.m. Sunday through Thursday, 6:00 a.m. to 12:00 a.m. Friday through Saturday. The MUP also allows the following alcohol service and operating hours at the three other restaurants in the multi-tenant building:

1127 Manhattan Avenue (Dash Dashi Sushi)

Beer & Wine

6:00 a.m. to 11:00 p.m. Sun - Thu, 6:00 a.m. - 12:00 a.m. Fri - Sat

1129 Manhattan Avenue (Tacolicious)

Full Alcohol

6:00 a.m. to 11:00 p.m. Sun - Thu, 6:00 a.m. - 12:00 a.m. Fri - Sat

133 Manhattan Beach Boulevard (Manhattan Pizzeria)

Beer & Wine

6:00 a.m. to 2:00 a.m. Mon - Sun

Those uses (and hours) are not part of this application and will remain unaffected by the Council's ultimate action here. Under California law, local jurisdictions such as Manhattan Beach may maintain local control as to the sale and service of alcoholic beverages. Concurrently with a local jurisdiction's approval of such sale and service, an applicant must apply to the California Department of Alcoholic Beverage Control (ABC) for a state license to sell and serve the alcoholic beverages approved by the local jurisdiction.

The applicant is requesting an amendment to the existing MUP to allow full alcohol service (beer, wine, and distilled spirits) in conjunction with food service for its designated tenant space. The applicant does not propose any interior improvements to the tenant space beyond cosmetic changes. The applicant is not proposing any changes in operating hours, nor requesting any change to the operating hours or alcohol entitlements of any other restaurant tenants that are also located in the multi-tenant building. Accordingly, the proposed restaurant can operate under the existing MUP. The only reason an amendment is necessary is that the MUP approved the prior restaurant for service of beer and wine. The pending application requests City approval of full alcohol service, including distilled spirits.

The City has worked with Waste Management, the City's refuse service provider, to determine the size and number of refuse containers and pick-up frequency needed for the entire building. The building has one existing trash enclosure that currently houses a 3-yard trash bin, but recycling and food waste carts are stored in the public right-of-way on Center Place daily. The property owner's representative applied for a building permit on September 24, 2020, to create an additional trash enclosure in the building with an opening facing Center Place, to accommodate the building's recycling bins and food waste bins. Once completed, the trash enclosure will provide the applicant,

along with the other tenants, the ability to satisfy the Master Use Permit Amendment's trash enclosure conditions. This is an ongoing activity to comply with previous conditions of approval for waste disposal and storage.

Planning Commission

At the September 9, 2020, Planning Commission meeting, staff presented the applicant's Master Use Permit Amendment request and recommended approval. The applicant spoke in favor of the project. During the public comment period, two residents expressed concern about the full alcohol service while four speakers supported the request. The Planning Commission expressed support for the project and voted unanimously to adopt the resolution with conditions.

Appeal

Donald McPherson, President of Coastal Defender, submitted an appeal of the Planning Commission's decision. In the appeal (attached), the appellant states that "Coastal Defender opposes intensifying alcohol service in Manhattan Beach, without conditions to offset impacts to nearby residents", that all future applicants applying for full alcohol at the site should have permanent restricted operating hours, that the City did not use applicable standards of environmental review, and that the City's approval does not meet California Department of Alcoholic Beverage Control (ABC) regulations. The appellant's materials include Exhibit 1, "Substantial Evidence of Nando Significant Impacts on Nearby Residents" and Exhibit 2, the Petition of Writ for a recently filed lawsuit brought by the appellant against the City regarding the City Council's approval of a Use Permit Amendment for MB Post (1142 Manhattan Avenue).

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.

"In exchange for permitting Nando full-alcohol service, the city council should condition the use permit, to require that when applying to the ABC for the new Type-47 license, the applicant includes retaining the current closing hours of 11 PM Sun-Thu and 12 AM Fri-Sat. This condition... will preclude increasing operating hours in the future..."

A condition of approval restating the existing hours already exists and the applicant, Nando Milano LA, LLC, is not proposing to extend those hours. Any future applicant has the right to request an amendment to any Use Permit condition at any time in the future. The Municipal Code does not have a provision precluding an applicant from applying for a change or expansion in operating hours in the future. It is the duty of the Planning Commission and/or City Council to determine whether any applicant's request meets the required Use Permit findings in granting the Use Permit.

"Neither the city nor the applicant has conducted an environmental review, so the above provisions [referencing Department of Alcohol Beverage Control regulations] does not apply. Consequently, by approving a Type-47 license for Nando, the city will violate ABC regulations."

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 no expansion of use associated with the Project, as the existing restaurant is shifting from beer and wine service to full alcohol service in

conjunction with food service, and there is no change in the proposed hours, which are consistent with several other commercial establishments in the CD Downtown Commercial zone. Pursuant to State CEQA Guidelines Section 15300.2 (Exceptions), there is no reasonable possibility that the change in alcohol service will have a significant impact on the environment because there are no unusual circumstances in this situation, where an existing restaurant is shifting from beer and wine service to full alcohol service in conjunction with food service. The Project will neither individually nor cumulatively have an adverse effect on wildlife resources, as defined in Fish and Game Code Section 711.2.

The Planning Commission Resolution has a condition that states “The owner shall be in substantial compliance with all restrictions imposed by the California Department of Alcohol Beverage Control (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.

“A glance at Exhibit 1 reveals that the recent intensification of alcohol service on north Manhattan Ave constitutes a substantial cumulative impact, from Nando now, MB Post in May and Tacolicious in 2019” This appeal incorporates all evidence of cumulative impact presented in Exhibit 2, Verified Petition for Writ of Mandate [MB Post, 1142 & 1144 Manhattan Ave].”

Many of those restaurants are located in the Downtown. The Municipal Code’s stated purpose for the Downtown Commercial (CD) zone is that the “district is intended to accommodate a broad range of community businesses and to serve beach visitors.” 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. As noted above, under CEQA, allowing a restaurant to seek the ability to serve full liquor in an area where other restaurants also serve full liquor does not require a cumulative impact analysis.

“Eating and drinking places in the Downtown northwest corner have the unusual circumstance that the nearest parking lots directly adjoin or intrude into residential zones... neither the city nor the applicant have evaluated noise disturbances by inebriated persons in the city and pier parking lots, regarding, “The proximity of the noise to residential sleeping facilities.” [MBMC 5.48.140 (A)] ... Coastal Defender believes Nando patrons in Lot 2 and the pier parking will create noise disturbances, per the subjective standards in the noise ordinance.”

The applicant’s request is to provide full alcohol service in conjunction with food in a tenant space where beer and wine have been served with food since 1995. There is no evidence that adding the sale of distilled spirits to a tenant space where beer and wine have been sold in conjunction with food for decades will lead to more noise or noise-making “inebriated persons”. The Resolution approved by the Planning Commission preempts some noise generating activities by continuing to prohibit live entertainment in the entire building, including the applicant’s tenant space. The applicant is also maintaining a floorplan layout that matches the operational characteristics of a restaurant, not a bar. Furthermore, the applicant’s request is also consistent with many other restaurants in the Downtown area, many of which offer full alcohol service in conjunction with food service.

Required Findings

Section 10.84.010 of the Manhattan Beach Municipal Code and Section A.84.010 of the City's Local Coastal Program 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."

MUPs have the same required findings as Use Permits. The following findings must be met in order to grant the Master Use Permit Amendment. Staff suggests the following findings in support of the Master Use Permit Amendment for the project.

1. The proposed location of the use is in accord with the objectives of this title [10] 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. The Municipal Code's stated purpose for the CD Downtown Commercial zone is that the "district is intended to accommodate a broad range of community businesses and to serve beach visitors." Restaurants are quintessential community business 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; the City Council found that its location is in accord with the objectives of Title 10 and the purposes of the commercial district in which the site is located in 1995.

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 is a commercial use consistent with the General Plan's Downtown Commercial land use designation of the subject and neighboring properties. 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 serve food and alcohol. 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 Milano and many neighboring structures. 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. Nando Trattoria's full alcohol service in conjunction with food service will only enhance consistency with services provided to residents and visitors. The service of full alcohol in conjunction with meals will not change the City Council's findings in 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 General Plan encourages Downtown businesses that offer “services and activities to our residents and visitors”. The application 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.

The City Council made these findings in 1995 in connection with the approval of the MUP to allow, among other uses, a restaurant at this site. Adding service of distilled liquor will enhance the City’s ability to maintain and encourage the viability of the Downtown Commercial area.

3. The proposed use will comply with the provisions of the City’s Planning and Zoning Title 10, 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 the City’s Planning and Zoning Title 10, 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.

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 Milano 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.

In addition, under applicable California case law, the City must evaluate whether applications for Master Use Permits, Use Permits, or amendments thereto, are compatible with surrounding uses. For the reasons stated above, the application is compatible with surrounding uses. There is no change in the use at the site or expansion of hours; the application merely requests the opportunity to offer more options to its diners.

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 20-07 (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 application.

Staff recommends Options 1 or 2.

PUBLIC OUTREACH:

A public notice for the project's October 20, 2020, City Council public hearing was published in the Beach Reporter on Thursday, October 8, 2020, and was also mailed to surrounding property owners on October 5, 2020. The public notices and agenda posted on Wednesday, October 14, 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 one public comment from a neighbor expressing opposition to Nando Trattoria's request for full alcohol service. The comment is attached.

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 no expansion of use associated with the Project, as the existing restaurant is shifting from beer and wine service to full alcohol service in conjunction with food, and the operating hours are the same as the operating hours that were approved in 2019 and are consistent with several other commercial establishments in the CD Downtown Commercial zone. 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 shifting from beer and wine service to full alcohol service in conjunction with food. 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.

ATTACHMENTS:

1. Proposed Plans
2. Planning Commission Resolution No. PC 20-07
3. Planning Commission Draft Minutes (September 9, 2020)
4. Planning Commission Report, Attachments, and Related Material (September 9, 2020)
5. Appellant's Materials