



Legislation Text

File #: 24-0125, Version: 1

TO:
Honorable Mayor and Members of the City Council

THROUGH:
Bruce Moe, City Manager

FROM:
Talyn Mirzakhonian, Community Development Director
Erick Lee, Public Works Director
Steve S. Charelian, Finance Director
Katherine Doherty, City Engineer
Adam Finestone AICP, Planning Manager
Jeff Fijalka, Senior Civil Engineer
Jaehee Yoon AICP, Senior Planner

SUBJECT:
Consideration of:

- a) A Rough Order of Magnitude (ROM) Estimate to Implement the Long-Term Outdoor Dining Program's Preferred Vision;
- b) Recommendations from the Outdoor Dining Task Force; and
- c) Amendment No. 1 to the Professional Services Agreement (PSA) with Moore Iacofano Goltsman, Inc. (MIG), and if Approved, Appropriation of \$91,727 from the General Fund (Community Development Director Mirzakhonian).

(Estimated Time: 2 Hrs.)

A) DISCUSS AND PROVIDE DIRECTION
B) APPROPRIATE FUNDS
C) ADOPT RESOLUTION NO. 24-0038

RECOMMENDATION:
Staff recommends that the City Council:

- (1) receive a report on the ROM cost estimate to implement the long-term outdoor dining program's preferred vision;
- (2) consider recommendations from the outdoor dining task force; and
- (3) adopt Resolution No. 24-0038, amending the original PSA with MIG to develop preliminary plans and appropriate necessary funds.

FISCAL IMPLICATIONS:
If the City Council desires to expand the consultant's work scope to include developing preliminary civil engineered plans for the preferred program vision, an additional appropriation of \$91,727 is needed from the unreserved General Fund balance to fully fund the agreement. Additionally, potential

funding sources are included in the 'Discussion' section below.

BACKGROUND:

On February 20, 2024, staff presented a second status update report to the City Council regarding community outreach efforts conducted, the preferred program vision for the long-term outdoor dining program, and potential amendments to MIG's PSA to develop preliminary plans of the preferred program vision. Following discussions regarding whether to approve the amendment to MIG's PSA, the City Council directed staff to report back with a ROM estimate for the proposed sidewalk widening and any other associated costs. In addition, the City Council confirmed that the task force need not explore other design alternatives during the interim and focus its efforts on private property outdoor dining (e.g., second floor outdoor dining regulations), noise, trash, vehicle loading, and program regulations.

DISCUSSION:

ROM Estimate of the Preferred Program Vision

Consistent with City Council direction, staff prepared a ROM estimate based on the Conceptual Plans from the February 20, 2024, City Council meeting. The scope of the estimate is based on six segments in Downtown and North Manhattan Beach, with a breakdown of various components involved in building out the preferred program vision. Specifically, the ROM estimate includes, but is not limited to, widening existing sidewalks along select building frontages, constructing elevated concrete platforms for outdoor dining areas immediately adjacent to Eating and Drinking Establishments on sloping streets, and reconfiguring parking spaces as indicated in the Conceptual Plans.

Staff attempted to capture the work depicted on the Conceptual Plans as closely as possible in the ROM estimate. As indicated in the attached ROM Cost Estimate spreadsheet, the total cost to implement the proposed improvements is anticipated to be on the order of \$7,500,000 to \$12,500,000. This cost range was developed by applying factors of -20 percent and +30 percent to the total estimated project costs, consistent with the recommendations of the Association for the Advancement of Cost Engineering (AACE International) for a concept-level cost estimate.

It should be noted that due to limited information and resources available, the following assumptions were made related to the existing and proposed site features:

- At the location of each proposed outdoor dining area, all existing above-grade improvements between the edge of asphalt and the face of the building will be demolished and reconstructed.
- Sidewalk widening will only occur at the locations indicated in the Conceptual Plans.
- New concrete surfaces will be gray concrete with a broom finish.
- Within any given block, existing tiled sidewalks leading up to an outdoor dining area will be replaced with plain concrete sidewalks to match the existing sidewalk width.
- Some outdoor dining areas along Manhattan Beach Boulevard will require retaining walls to create an elevated pad area that is level with the finished floor of the Eating and Drinking Establishment. The costs associated with the retaining walls and railings are included in the ROM estimate.
- Non-accessible sidewalk ramps within the limits of construction will be replaced with ADA compliant ramps.
- New crosswalks will be decorative thermoplastic overlays placed over new concrete or asphalt

roadway (similar to the decorative crosswalks installed in North Manhattan Beach in 2023).

- Public flex spaces will be improved with concrete street furniture, trash receptacles, and bicycle facilities, depending on the configuration and size of the identified areas.
- All parking meters within the project area will be removed and will not be replaced, as it is assumed that parking kiosks will be installed as part of a separate project.
- Existing trees will be protected in place, or salvaged and re-planted, to the extent feasible.
- In areas of full sidewalk reconstruction, new street lighting will be installed along the current lighting alignment.
- Existing roadway profiles will remain unchanged.
- Traffic signal modification costs, if applicable, have *not* been included.
- ADA-compliant pedestrian access to each business and throughout the project area will need to be maintained for the duration of all construction activities.

Potential Funding Options

Based on internal discussions on potential funding for this project thus far, staff will explore the issuance of bonds and identify potential grant opportunities available to cover the construction work. These funding options will be analyzed by the consultant team and recommendations will be provided for the City to pursue. It should be noted that if MIG's contract amendment is approved, a more detailed cost estimate regarding the build out, and recommendations on potential grant opportunities will be provided to the City.

Costs could be recovered through various mechanisms should bond issuance be necessary. Average annual debt service on 20-year Certificates of Participation (COP) bonds issued for \$10 million to \$15 million are roughly estimated to be \$727,375 to \$1,083,515, respectively. Options to pay for the annual debt service costs include:

1. Imposing appropriate outdoor dining permit fees, as determined by the consultant team, for program participants.
2. Increasing parking meter rates for City lots and streets from \$2.00 per hour to \$2.50 per hour, resulting in additional revenue of approximately \$1 million per year.
3. Increasing parking citations from the current fee of \$53. For every \$1 increase, additional revenue of \$60,000 per year is estimated. Staff recommends increasing parking citation rates by \$5 to generate approximately \$300,000 annually.
4. Exploring a Street Lighting & Landscape ballot measure similar to the successful Storm Drain measure that passed in January 2024. The City's General Fund supports the Street Lighting & Landscape Fund by subsidizing approximately \$300,000 per year.
5. Exploring a revenue enhancement ballot measure such as a locally controlled sales tax measure. For each one-quarter ($\frac{1}{4}$) cent increase in the City's sales tax, approximately \$2.5 million could be generated in Manhattan Beach.

The City has several other competing capital projects throughout the community in discussion simultaneously. Parking Lot/Structure No. 3, on the corner of 12th Street and Morningside Drive, is currently undergoing a replacement assessment to determine optimal uses for this prime downtown location, which could cost up to \$30 million. A new Aquatic Center, which would replace Begg Pool, is also in review, with potential project costs up to \$40 million. Additionally, the City has a robust 5-Year Capital Improvement Plan with a budget exceeding \$200 million. These planned projects also compete for resources and have additional funding needs.

MIG Contract Amendment

If the City Council desires to move forward to further develop the Conceptual Plans, the next step is to prepare preliminary plans, which requires an amendment to MIG's PSA to include such work scope. On a parallel track, staff will be able to proceed with the regulatory process needed to establish a long-term outdoor dining ordinance, including amendments to the City's Local Coastal Program. While the City's ROM estimate provides some reference as to the potential costs associated with implementing the preferred program vision, MIG's proposed preliminary design work scope, accounted for in the additional contract amount of \$91,726.33, is still necessary to proceed with this project, both from a technical and entitlement processing standpoint. Given that the ROM estimate is based on limited information and a list of assumptions noted above, MIG will carry out a more thorough analysis, which will include additional field visits, research, and engineering work to better assess the technical and financial feasibility of the concept and to support the future development of construction documentation.

Task Force Recommendations

At the February 27, 2024, task force meeting, discussions amongst the task force members involved live outdoor entertainment and amplified music on private and public property. The task force also considered regulatory frameworks, which would serve to incentivize permittee compliance with applicable regulations and hold permittees accountable for non-compliance.

Live Outdoor Entertainment and Amplified Music

The task force unanimously recommended that live outdoor entertainment and amplified music be allowed with permits pursuant to existing provisions in Chapter 4.20 (Amusements - Dances and Café Entertainment) and 5.48 (Noise Regulations) of the Manhattan Beach Municipal Code (MBMC). The task force indicated that their notion to support is based on the idea that entertainment and music in general have a welcoming effect, which helps create a pleasant ambiance and a sense of place for the community to thrive.

To ensure that noise generated in the outdoor dining area from such activities does not negatively impact the surrounding areas, the task force recommended additional guidelines and requirements as follows:

- Set noise level standards (quantitative) for compliance at all times
- Allow such activities to occur from 9 a.m. to 10 p.m.
- Place speakers on private property only; prohibit encroachment into the public right-of-way
- Restrict live outdoor entertainment in the public right-of-way to holidays or special events only, in which case no additional encroachment is allowed beyond the approved outdoor dining area parameters. That is, chairs and tables within the outdoor dining area must be removed to accommodate the necessary space for live outdoor entertainment.
- Ensure proper enforcement of regulations
- Prohibit live outdoor entertainment and amplified music on second floor outdoor dining areas, where permittees may not apply for exceptions pursuant to MBMC Section 5.48.150 (Amplified Sound Permits). This includes prohibiting such activities on the second floor that is not fully enclosed (i.e., partially open to the second floor deck)

The last provision regarding second floor outdoor dining areas was recommended by the task force

at its most recent meeting on March 26, 2024, as noise impacts are greater when it is generated from the second floor. The task force recommendation is also consistent with other local jurisdictions (e.g., Santa Monica, Hermosa Beach) in that they prohibit all forms of amplified sound and entertainment on roof deck dining areas.

Subsequent to the task force's recommendations, staff reviewed the City's noise ordinance in Chapter 5.48 of the MBMC to evaluate options for setting a noise level standard and creating an effective enforcement mechanism. In reviewing its applicability to what is being recommended by the task force, staff also discussed the matter with the City's Code Enforcement Division and Police Department to better understand noise related issues and enforcement protocols. Based on their field observations and experience, both the Code Enforcement Division and Police Department have found that the thresholds established in MBMC Section 5.48.160 (Exterior Noise Standards) are difficult to enforce as it relates to outdoor dining operations. This is because the ambient noise levels generated by people, traffic, helicopters, and other activities, often exceed established thresholds. In addition, ambient noise levels vary during different times of the day (i.e., 60 decibel may be too high at night but too low in the afternoons), season, and other circumstances such as special events that may occur from time to time.

Because there are multiple external factors in the surrounding environment that affect how noise levels are perceived versus how they are measured, utilizing a quantitative parameter will be challenging from an enforcement perspective. Moreover, the Code Enforcement Division and Police Department currently do not have sound level meters or training/certification to effectively enforce noise via quantitative means.

Given the variables surrounding noise measurements, staff does not recommend establishing quantitative noise thresholds for outdoor dining related to live outdoor entertainment and amplified music. It should be noted that general noise complaints are currently addressed by relying on the 'reasonable person test' found in MBMC Section 5.48.140 (Noise Disturbances), which largely consists of subjective criteria that looks at each complaint on a case-by-case basis rather than through quantitative means.

Given the foreseeable challenges in enforcing noise regulations, staff's recommendation differs from that of the task force. Instead of establishing a quantitative threshold, staff recommends that the City continue to prohibit live outdoor entertainment and amplified music in public outdoor dining areas, consistent with current City regulations. However, an establishment would still have the opportunity to apply for an amplified sound permit, which would allow for outdoor amplified sound at events no more than twice a year, per MBMC Section 5.48.150 (Amplified Sound Permits).

Enforcement of Outdoor Dining Regulations

Based on feedback from the various community outreach efforts, there were concerns that some permittees may not strictly comply with the regulations and/or the conditions imposed as part of their approval. In an effort to have better enforcement mechanisms in place with consequences for repeat violators, the task force discussed and unanimously recommended revoking an outdoor dining permit on the fourth enforcement action within a one-year period, based on the schedule below. (Each violation may cite more than one violation related to outdoor dining operations.)

1 st violation:	Notice of Violation
2 nd violation:	Administrative Citation No. 1

3rd violation: Administrative Citation No. 2

4th violation: Administrative Citation No. 3 and outdoor dining permit revoked

In addition, the task force recommended that the permittee be unable to reapply for an outdoor dining permit for one year following the revocation. The Code Enforcement Division was consulted regarding the proposed regulations and concurred with this approach to enforcement and revocation.

The Code Enforcement Division has limited staffing on Saturdays and relies on the Police Department's Community Service Officers after-hours on all days for assistance on time-sensitive matters. This furthers the enforcement concerns discussed in the *Live Outdoor Entertainment and Amplified Music* section above. Currently, the City has been able to manage outdoor dining-related enforcement issues because the number of establishments with an active outdoor dining permit are limited.

As the number of outdoor dining participants will likely increase, with most violations related to outdoor dining operations anticipated to occur outside of the Code Enforcement Division's regular work hours, the City Council could, in the future, consider a part-time Code Enforcement officer (costing approximately \$42,000 per year) to actively enforce proposed outdoor dining regulations after hours. Alternatively, the City may continue the current complaint-based enforcement practice by authorizing potential overtime for Code Enforcement Division staff, with assistance provided from the Police Department's Community Services Officers during evenings and weekends.

Direction needed

Staff requests City Council direction on the following matters:

- A. Adopt Resolution No. 24-0038, approving Amendment No. 1 to the PSA with MIG in the amount of \$91,726.33 to assist the City in developing a preliminary plan for the preferred program vision;
- B. Provide direction related to the task force's recommendations regarding:
 - 1) live outdoor entertainment and amplified music in outdoor dining areas; and,
 - 2) code enforcement mechanism for outdoor dining permits

CONCLUSION:

Based on the discussions, staff requests further direction from the City Council regarding the items specified in the 'Direction Needed' section of this report above.

PUBLIC OUTREACH:

A courtesy notice was published in The Beach Reporter on April 4, 2024, and an email was sent out to all interested parties notifying them of the scheduled discussion before the City Council. Additionally, this report will be uploaded to the City's dedicated outdoor dining webpage. As of the writing of this report, staff received no public comments as attached.

ENVIRONMENTAL REVIEW:

The City has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the discussion and direction from Council is not a "Project" as defined under Section 15378 of the State CEQA Guidelines; therefore, pursuant to Section 15060(c) (3) of the State CEQA Guidelines the activity is not subject to CEQA. In addition, the original agreement with MIG was determined to be exempt from environmental review pursuant to State

CEQA Guidelines Section 15061(b)(3), the common sense exemption (formerly the “general rule”), which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment; and the PSA amendment is subject to the same exemption. However, the long-term outdoor dining program and associated code and policy amendments are subject to CEQA, and the CEQA analysis is included in the current contract with MIG.

LEGAL REVIEW:

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

ATTACHMENTS:

1. Resolution No. 24-0038
2. Amendment No. 1 - Moore Iacofano Goltsman, Inc. (MIG)
3. Agreement - Moore Iacofano Goltsman, Inc. (MIG)
4. ROM Cost Estimate
5. Preferred Program Vision Conceptual Plan
6. PowerPoint Presentation