



**City Council Meeting, September 3, 2019
Agenda Item No. 10**

TO: Honorable Mayor and Members of the City Council

THROUGH: Bruce Moe, City Manager

FROM: Jeff Gibson, Interim Community Development Director

SUBJECT: Consider Adopting a Resolution Revising Conditions of Approval Imposed on the 900 Club

DATE: September 3, 2019

AGENDA ITEM NO. 10

An updated Resolution No. 19-0075, is being provided to replace agenda packet pages 251-257 with the enclosed pages.

RESOLUTION NO. 19-0075

RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL REVISING CONDITIONS FOR AN EXISTING RESTAURANT/BAR LOCATED AT 900 MANHATTAN AVENUE (900 CLUB AND DOWNSTAIRS BAR)

THE MANHATTAN BEACH CITY COUNCIL HEREBY RESOLVES, FINDS AND DETERMINES:

SECTION 1. On June 5, 2018, the Manhattan Beach City Council adopted Resolution No. 18-0075, approving an amendment to a use permit (“Amendment”) issued to the 900 Club and Downstairs Bar (the “Subject Use” or “use”) located at 900 Manhattan Avenue. The Amendment granted, subject to conditions, the following use entitlements: (1) an additional one hour of service on Thursday nights for the upstairs bar; and (2) an increase in the number of special events from 18 to 24 annually. In addition, the Council removed an early “last call” condition. The City Council retained direct jurisdiction over this matter and the conditions of approval included a condition requiring a one year review before the City Council to provide an opportunity for the use’s operator (“Operator”) to:

- Demonstrate substantial compliance with the existing conditions of approval;
- Demonstrate that the additional entitlements conferred--the additional hour of operation, and the six additional special events, per year--did not adversely impact the neighborhood; and
- Request further extensions of operation hours.

SECTION 2. On July 2 and August 6, 2019, the City Council held a duly noticed continued public hearing for the one year review, consistent with its retention of jurisdiction and the conditions of approval. In connection with this review, the Operator requested: (1) modifications to certain conditions regarding notification and the qualifications of the required security guard; and (2) an additional hour of operation for the downstairs bar on Thursdays.

SECTION 3. The Operator’s request was assessed in accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. The City Council finds that the modifications to conditions of approval have no potential to result in a significant environmental impact and are exempt from CEQA pursuant to CEQA Guidelines Section 15301 (Existing Facilities) because there is no expansion of the use.

SECTION 4. The record of the continued public hearing indicates:

- A. The use is located in a single commercial building in Area District III and is zoned CD, Downtown Commercial. Surrounding properties are zoned CD to the north,

south and west, and RM (Medium-family Residential) to the east. On April 4, 1995, the City issued a use permit for the Subject Use. The City Council has found the Subject Use to be consistent with the City's General Plan designation of Downtown Commercial a number of times since 1995. The requested modifications do not affect such findings. On June 5, 2018, the City Council adopted Resolution No. 18-0075 conditionally approving the Amendment, as stated in Section 1 above.

B. The Operator presented evidence of substantial compliance with all the conditions imposed on the Amendment, and stated that all of the physical improvements have been installed, and the conditions of operation have been satisfied.

C. Several members of the public spoke at the public hearings. Several neighbors spoke in favor of the use, stating that the Operator had reduced noise, and had taken a number of measures to decrease any negative impacts on the neighborhood. One neighbor spoke in opposition, complaining about noise and music she heard coming from the business. In addition, Donald McPherson, who has filed a lawsuit challenging the approvals granted in Resolution 18-0075, and his attorney of record, submitted written material opposed to the Club.

D. After the close of the public hearing, the City Council discussed and considered the evidence regarding compliance with conditions and the Operator's requested modifications to conditions.

SECTION 5. Based upon substantial evidence in the record, the City Council finds:

A. The proposed modifications to the conditions do not change prior findings that the use is consistent with the General Plan and compatible with surrounding uses; will not be detrimental to the public health, safety or welfare of persons residing or working near the 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. The modifications are: (1) employing a security guard instead of contracting with a state licensed, bonded and certified guard; (2) providing seven days prior notice of key access code changes, rather than monthly; and (3) reducing prior notice of special events and entertainment from seven days to three. None of these changes would be detrimental to the public health, safety, or welfare of persons residing or working near the site, or to the adjacent neighborhood, and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City because the modifications are minor in nature.

B. The use will continue to comply with all provisions of the Zoning Code. It is not anticipated that the minor modifications to the conditions related to the security guard, key access code change notification and notification of special and entertainment events

will cause the use to fall out of compliance with applicable performance and development standards.

C. The proposed modifications to conditions will not adversely impact nearby properties because there is no intensification of use and thus the modifications will not generate any foreseeable increase in noise or parking demand in the Downtown Commercial zone.

D. The Operator has demonstrated substantial compliance with the conditions of approval. There was no substantial evidence presented that the additional entitlements conferred in 2018--an additional hour of operation, six additional special events per year, a later "last call"--adversely impacted the neighborhood. The vast majority of the speakers at the public hearings supported the request. Don McPherson and his attorney, Beverly Grossman Palmer, Esq., submitted correspondence to the City dated July 29, 2019, August 5, 2019 and August 30, 2019 (after the agenda was posted) in opposition to the Club. They asserted procedural claims but did not present any evidence that the entitlements granted in 2018 adversely impacted the neighborhood. Specifically, they claim that: (1) the City Council does not have authority to retain jurisdiction to review the entitlements granted by the Council and conditions of approval imposed therein; (2) the notice of the July 2, 2019 public hearing was deficient; and (3) the Council did not have the authority in 2018 to allow an additional one hour of service on Thursday nights or increase the number of special events from 18 to 24 annually because the Operator was not in compliance with conditions imposed in 2014. The August 5, 2019 Supplemental Report rebuts each of these arguments. Perhaps most significantly, the Planning Commission held a duly noticed public hearing in December 2015 for the one year review of the Use Permit issued in 2014 to assess compliance with the 20 conditions of approval. After the public hearing was closed, the Planning Commission unanimously agreed that the Operator had substantially complied with all conditions of approval and no further annual review of conditions was warranted. Mr. McPherson did not appeal the Commission's determination, and thus is barred from raising that issue now. Finally, Mr. McPherson and Ms. Palmer requested that the City Council not grant any additional entitlements at this time. As shown in Section 7 hereinafter, the Council has not granted any additional entitlements at this time.

E. The Operator did not comply with certain procedural requirements such as: obtaining yearly entertainment licenses on a timely basis; providing a state licensed, bonded and certified security guard; providing the required amount of prior notice of events; or notifying the police department of the key access code on a monthly basis. There was no evidence presented that such non-compliance with such procedural requirements adversely impacted the neighborhood or the intensity of the use. Accordingly, it is reasonable that modifying the requested procedural requirements and the qualifications of the security guard likewise will not have an adverse impact upon the

neighborhood. More specifically, the qualifications for the security guard do not change the fact that a security guard will continue to be present on the days and times required by the conditions of approval. No evidence was presented to the Council that whether the security guard is licensed and bonded will affect his or her ability to perform the necessary duties or that licensing and bonding is needed here for any particular reason. With respect to the frequency of the Operator providing the City and Police Department with notice of changes to the access code, the modification still ensures that the City and the Police Department have knowledge of the access code at all times, and this revision does not affect the intensity of the use or any rights of the public. Finally, the modification to the prior notice of special events does not change the number of special events or the frequency of special events, does not change the intensity of the use, and does not give recipients of the notice the right to block the events (nor did it ever provide such a right). The modification to the number of days of required advance notice is thus a minor modification.

F. Nevertheless, the Council expects full compliance with all conditions. Thus, the Council cannot, at this time, approve Operator's request for an additional hour of operation for the downstairs bar, or any other additional entitlements.

SECTION 6. After the close of the continued public hearing and deliberation, the Council directed staff to prepare a resolution to modify conditions to allow the operator to:

- A. Employ a security guard who is not licensed, bonded, and certified.
- B. Notify the Police Department at least seven days prior to key access code changes to the security lock (instead of on a monthly basis).
- C. Notify City staff, the Police Department and neighbors at least three days prior to entertainment or special events (instead of seven days' notice).

SECTION 7. Based upon the foregoing and substantial evidence, the City Council hereby denies, without prejudice, the Operator's request for an additional hour of operation downstairs on Thursdays, and approves the following modifications to the following conditions of approval:

1. Condition 3 of Resolution No. 14-0063 is amended to change the security guard requirement to eliminate the requirement that the guard be state licensed, bonded and certified, to read as follows:

"3. The Business Operator's representatives shall employ a security guard from 9:30 p.m. on Thursday, Friday, and Saturday and any day there is a Special Event or Amplified Sound until all staff members have

left the premises. The security guard shall ensure that operations comply with all conditions of approval, including but not limited to the following: noise, use of the back door, litter, access, windows and doors being closed, and any other adverse impacts on the neighborhood.”

2. Conditions 4 and 18 of Resolution No. 14-0063 are amended to require a minimum seven-day notification when there are changes to the key access code, instead of providing monthly updates, to read as follows:

“4. The back door and storage/utility room on Bayview Drive shall remain closed and not be used after 10:00 p.m., except the back door may be used for trash removal or disabled or emergency access only. Additionally, bands shall be allowed to use the back door for the loading and unloading of amplified sound equipment and shall vacate the site by closing time. The back door keypad access shall be maintained and only be accessible from the outside by the owners/operators and employees, however, all outside areas shall be disabled after 10:00 p.m. No patron shall be provided a key or access code for the back door or the storage/utility room. The Business Operator’s representatives shall notify the Police Department a minimum of seven days prior to any key access code changes and/or any other changes.”

“18. The Community Development Department staff shall be allowed to inspect the site at any time. The Business Operator’s representatives shall provide the Police, Fire, County Health Departments and the Alcoholic Beverage Control (ABC) with the key pad code for access any time. The Business Operator’s representatives shall notify the Police Department seven days prior to any key access code changes.”

3. Condition 10 of Resolution No. 14-0063 is amended to decrease prior notice of special events from seven to three days, to read as follows:

“10. A maximum of six Special Events shall be allowed annually. For the purpose of this section, “Special Events” are events of more than 50 people for which there is a contract for exclusive use of the second floor of the venue. A security guard shall be on-site at all times during Special Events to ensure that operations comply with all conditions of approval, including but not limited to, noise, use of back door, litter, access, windows and doors being closed, and any other adverse impact on the neighborhood. If entertainment (as defined in Condition 9) is proposed for a Special Event, the day of the Special Event shall be included in the maximum allowable 24 days per year for entertainment. The Business Operator shall provide written notification of each Special Event to the

Director of Community Development, the Police Department and each residence located on 9th Street between Highland Avenue and Manhattan Avenue and Bayview Drive between 9th Street and 10th Street a minimum of three days prior to such entertainment.”

4. Condition 3 of Resolution No. 18-0075 is amended to decrease prior notice of entertainment from seven to three days, to read as follows:

“B. The City may issue, issue with conditions, or deny the entertainment permit. In addition to the conditions that may be imposed pursuant to MBMC Section 4.20.080, any entertainment permit issued pursuant to this condition shall contain the following additional conditions: entertainment is permitted only: (a) on the second floor of the premises; (b) on Thursday, Friday, Saturday, or on a day of a “Special Event” as defined in Condition 10; and (c) for no more than 24 days per year. Entertainment is not permitted downstairs. The Business Operator shall provide written notification of the proposed entertainment to the Director of Community Development, the Police Department and each residence located on 9th Street between Highland Avenue and Manhattan Avenue and Bayview Drive between 9th Street and 10th Street a minimum of three days prior to such entertainment and/or special events. For the purposes of this subsection B, “entertainment” shall mean any activity involving music, including but not limited to live bands, one or more performers of music, or amplified radio or pre-recorded music but shall not include background music allowed by Condition 6 or non-amplified sound allowed by Condition 7.”

SECTION 8. The City Council hereby imposes the additional reasonable standard conditions upon the approval conferred by this Resolution:

1. Terms and Conditions are Perpetual; Recordation of Covenant. The provisions, terms and conditions set forth herein are perpetual, and are binding on 900 Club/Downstairs Bar, their respective successors-in-interest, and, where applicable, all tenants and lessees of 900 Club/Downstairs Bar. Further, 900 Club/Downstairs Bar shall record a covenant indicating its consent to the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The covenant is subject to review and approval by the City Attorney, 900 Club/Downstairs Bar shall deliver the executed covenant, and all required recording fees, to the Department of Community Development within 30 days of the adoption of this Resolution. If 900 Club/Downstairs Bar fails to deliver the executed covenant within 30 days, this Resolution shall be null and void and of no further effect. Notwithstanding the foregoing, the

Director may, upon a request by 900 Club/Downstairs Bar, grant an extension to the 30-day time limit.

2. Indemnity, Duty to Defend and Obligation to Pay Judgments and Defense Costs, Including Attorneys' Fees, Incurred by the City. 900 Club/Downstairs Bar shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, volunteers, agents, and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees") from and against any claims, damages, actions, causes of actions, lawsuits, suits, proceedings, losses, judgments, costs, and expenses (including, without limitation, attorneys' fees or court costs) in any manner arising out of or incident to this approval, related entitlements, or the City's environmental determination therefor. 900 Club/Downstairs Bar shall pay and satisfy any judgment, award or decree that may be rendered against City or the other Indemnitees in any such suit, action, or other legal proceeding. The City shall promptly notify 900 Club/Downstairs Bar of any claim, action, or proceeding and the City shall reasonably cooperate in the defense. If the City fails to promptly notify 900 Club/Downstairs Bar of any claim, action, or proceeding, or if the City fails to reasonably cooperate in the defense, 900 Club/Downstairs Bar shall not thereafter be responsible to defend, indemnify, or hold harmless the City or the Indemnitees. The City shall have the right to select counsel of its choice. 900 Club/Downstairs Bar shall reimburse the City, and the other Indemnitees, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Nothing in this Section shall be construed to require 900 Club/Downstairs Bar to indemnify Indemnitees for any Claim arising from the sole negligence or willful misconduct of the Indemnitees. In the event such a legal action is filed challenging the City's determinations herein or the issuance of the approval, the City shall estimate its expenses for the litigation. 900 Club/Downstairs Bar shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due, at the City's choice.

SECTION 9. No earlier than six months from the date this Resolution is adopted, the Operator may request that the City Council consider the request to extend the closing time from midnight to 1:00 AM for the downstairs bar on Thursdays. The Council hereby retains jurisdiction to consider such request and other requests, and to consider whether the Operator has complied with all conditions of approval in conjunction with that request.

SECTION 10. The City Clerk shall certify to the adoption of this Resolution.

ADOPTED on September 3, 2019.

AYES:

NOES:

ABSENT:

ABSTAIN:

NANCY HERSMAN
Mayor

ATTEST:

LIZA TAMURA
City Clerk