


**CITY OF MANHATTAN BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT**

**TO:** Planning Commission

**FROM:** Laurie B. Jester, Acting Director of Community Development 

**DATE:** July 28, 2010

**SUBJECT:** Adoption of a Resolution Approving a Master Use Permit Amendment for Modifications to the Hours of Operation, Notification for Special Events, and Restaurant Operations, and Denying a Height Variance at the Shade Hotel, Metlox Site, 1221 North Valley Drive (Manhattan Inn Operation Company, LLC- Michael A. Zislis, President)

**RECOMMENDATION**

Staff recommends that the Planning Commission **DISCUSS** and **ADOPT THE DRAFT RESOLUTION APPROVING THE MASTER USE PERMIT AMENDMENT WITH CONDITIONS AND DENYING THE HEIGHT VARIANCE.**

**PROPERTY OWNER**

City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, CA 90266

**APPLICANT**

Manhattan Inn Operation Company  
1221 North Valley Drive  
Manhattan Beach, CA 90266

**PROJECT OVERVIEW**

The Metlox project was approved by the City Council in July 2002 and includes a two-story subterranean public parking structure accommodating approximately 460 cars with a public Town Square on top of the parking deck, as well as a commercial development approximately 63,850 square feet in area. The commercial development includes a 38-room hotel, the Shade Hotel.

The Shade Hotel has requested that three changes be made to the existing Master Use Permit for the site as follows: 1- Extension of hours of operation, 2- An increase to 125 people for special events (weddings, parties, etc.) without administrative approval, and 3- A full-service restaurant (breakfast, lunch and evening "small plates"). Additionally, the proposal includes a Variance request for six-foot high noise barriers around the north, south and east sides of the roof deck. The hotel is currently at the maximum 30 foot height limit.

## **BACKGROUND/DISCUSSION**

Five public hearing meetings were held before the Planning Commission for the subject proposal. At its meeting of June 23, 2010, the Planning Commission concluded the public hearing and directed staff to make a number of revisions to the draft Resolution, generally approving the request. The attached Resolution includes highlighting, strikeouts, and underlining to identify requirement changes. Many condition adjustments were made addressing Commission and neighbor concerns, and the height variance issue is proposed for denial since the related roof deck sound walls were determined not to be appropriate. The revisions to the conditions are consistent with changes shown in the adopted minutes (Exhibit B).

The revisions to the Resolution that may warrant further discussion include the following:

Functions (Condition No. 3): Concerns regarding themed functions open to the public such as New Year's Eve and Halloween had been expressed. These activities are not treated as private special events such as weddings and meetings and have been defined in the Resolution as such. Up to twelve annual functions are allowed in the Resolution. While the Commission discussed the locations of functions, limits to their locations were not proposed and are not included in the condition language.

Terrace Enclosure (Condition No. 11): Noise concerns for the southerly hotel patio area abutting the Metlox town square were addressed by requiring that an enclosure be installed that must be open during rain-free daytime/evening hours, and closed during late night operating hours. Staff added language to this condition to clarify that the enclosure shall meet the noise standards for the fully enclosed terrace as defined in the project noise study.

Alcohol Marketing Limitations (Condition No. 38): Restrictions on bar and alcohol promotion have been provided in order to emphasize the hotel use as the primary use of the business. Staff deleted the "Happy Hour" subheading and replaced it with "Bar and functions" to more accurately reflect the standards in the condition.

## **CONCLUSION**

The project before the Planning Commission is an Amendment to the Master Use Permit and a height Variance for the Shade Hotel. Staff recommends that the Planning Commission review the information, discuss the project, and adopt the draft Resolution, which would replace the existing Shade Resolution No PC 05-08. The Planning Commission decision will then be received and filed by the City Council, unless it is appealed, then a public hearing will be held before the Council.

## **ATTACHMENTS**

Exhibit A: Resolution No. PC 10-05

Exhibit B: Minutes excerpt, dated 6/23/10

c: Mike Zislis- Shade Hotel  
Jon Tolkin- Tolkin Group  
Glenn Loucks- Tolkin Group  
Bryan Klatt, Police  
Don Behrens and Tom Corbishley, Behrens and Associates

RESOLUTION NO. PC 10-05

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH APPROVING AN AMENDMENT TO A MASTER USE PERMIT FOR MODIFICATIONS TO THE PREVIOUSLY APPROVED HOURS OF OPERATION, NOTIFICATION FOR EVENTS, ALLOWING EXPANDED FOOD SERVICE OPERATIONS, APPROVING VARIOUS NOISE MITIGATION MEASURES AND DENYING A HEIGHT VARIANCE FOR A 6-FOOT HIGH ROOFDECK NOISE BARRIER AT THE SHADE HOTEL, METLOX SITE, 1221 NORTH VALLEY DRIVE (MANHATTAN INN OPERATION COMPANY, LLC- MICHAEL A. ZISLIS, PRESIDENT)

THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission of the City of Manhattan Beach, California, hereby makes the following findings:

- A. Manhattan Inn Operation Company, LLC is seeking approval of an Amendment to a Master Use Permit, to allow modifications to the previously approval. The three changes include: 1- Extension of hours of operation to midnight on Friday, Saturday and Holidays, except for the skydeck and other minor exceptions, 2- An increase to 125 people for special events (weddings, parties, etc.) without administrative approval, and 3- Expanded public food service (breakfast, lunch and evening "small plates"). Additionally, a Variance for six-foot high noise barriers around the north, south and east sides of the roofdeck is requested. The current Use Permit approval allows hours until 11:00 PM daily for the lobby bar and outside terrace, 10:00 PM daily for the roofdeck, and 11:00 PM Thursday-Sunday and 12 midnight Friday-Saturday for special event use only for the Courtyard, 99 people for special events without notification, and limited food service for guests.
- B. In accordance with the Master Use Permit approval an Amendment to the existing Master Use Permit approval is required for the project.
- C. The subject property is located within the City of Manhattan Beach Coastal Zone, and the Coastal Development Permit for the Master Use Permit was issued by the California Coastal Commission. An amendment to the Coastal Permit will not be required to be processed as there are no relevant coastal issues related to the subject application.
- D. An amendment to the Disposition and Development Agreement (DDA) may be required, and that action will be determined by the City Council.
- E. The applicant is Manhattan Inn Operation Company, LLC and the property owner is the City of Manhattan Beach.
- F. An Environmental Impact Report for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which includes the environmental clearance for the Metlox project. There have been no substantial changes to the project, the surrounding area or environment, and the facts associated with the project have not substantially changed from those evaluated in the certified EIR from an environmental impact viewpoint. Therefore, the existing certified EIR is a valid environmental document that adequately evaluates the environmental impacts of

the project in accordance with the requirements of CEQA and the project can rely upon this document for conformance with the requirements of CEQA. The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting Program in accordance with the requirements of CEQA. The Environmental Impact Report is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerks office, the public Library, and on the City's website.

- G. The property is located within Area District III and is zoned Downtown Commercial. The properties to the west and south are also zoned Downtown Commercial, the property to the north is zoned Public and Semipublic, and the property to the east is zoned Open Space, with single Family Residential and High Density Residential to the east past Valley and Ardmore Drives.
- H. The General Plan designation for the property is Downtown Commercial.
- I. The following is a summary of some of the key milestones for the Metlox site:
  - 1995- 96- The City Council authorized development of the Downtown Strategic Action Plan (DSAP) to provide a comprehensive approach and community vision for the Downtown including the Metlox site
  - 1997/98- The City purchased the Metlox property to control development and Master Plan the site
  - 1998- 2001 Numerous public meetings and workshops held to solicit public input on the site and Downtown.
  - December 1998- The City selected the Tolkin Group as a development partner
  - April 2001- The City Council certified the EIR
  - April 2002- The City Council approved the Disposition and Development Agreement (DDA)/Ground Lease
  - July 2002- Master Use Permit and Coastal Development Permit for the Metlox project approved by the City Council
  - November 2002- California Coastal Commission denied the appeal of the Coastal Development Permit, and unanimously approved the Permit
  - February 2003- Groundbreaking for the Metlox parking structure
  - January 2004- Grand opening of public parking structure with 460 parking spaces
  - April 2004- Shade Hotel construction commenced
  - September 2004- Construction of the Metlox commercial buildings started
  - May 2005- Planning Commission approved first Shade Amendment Resolution No. PC 05-08
- J. The Planning Commission of the City of Manhattan Beach conducted a public hearing regarding the first Amendment to the Master Use Permit for the Shade related to alcohol sales and special events at their regular scheduled meeting of May 25, 2005. The public hearing was advertised pursuant to applicable law and testimony was invited and received. The Planning Commission approved the Amendment for the Shade Hotel, and adopted Resolution No. PC 05-08. The facts and findings for that approval are included in the public records for that application.
- K. The original approval (Condition No. 38- City Council Resolution No. 5770) allowed full liquor in self-service in-room mini-bars and beer and wine throughout the Hotel facility for guests only. The original approval (Condition No. 28- City Council Resolution No. 5770) also limited special events (weddings, parties, etc.) to 60 people.
- L. Resolution No. PC 05-08 allowed a Type 47 ABC license for the site, allowing full liquor open to the general public and including the service of food in order to allow the in-room mini-bars (Type 66 license), as well as the portable bar with full liquor (Type 66 license), all for on-site consumption of alcohol only, as well as events up to 99 people without approval of a Temporary Use Permit.

- M. Portions of Resolution No. PC 05-08 have been subject to interpretation as the hotel is a 24-hour operation while the support services of the bar, food service and events are limited. Additionally, there are no definitions of special events, guests, closing, and other regulatory terms in the Resolution. One of the goals of this Amendment is to clarify definitions and language in the Resolution.
- N. The Planning Commission of the City of Manhattan Beach conducted public hearings regarding the second Amendment to the Master Use Permit related to the Shade Hotel on June 24, 2009, July 22, 2009, October 28, 2009, May 12, 2010 and June 23, 2010. The public hearings were advertised pursuant to applicable law and testimony was invited and received, and on June 23, 2010, the public hearing was closed. The Planning Commission directed staff to bring back a final Resolution on July 28, 2010. The Planning Commission approved the Amendment for the Shade Hotel, and adopted Resolution No. PC 10-05 10-04 on July 28, 2010 June 23, 2010.
- O. Testimony from many neighboring residents at the Planning Commission public hearings have testified that indicates Shade Hotel makes noise that discomforts and irritates "reasonable persons of normal sensitiveness," as defined by the subjective standard in Chapter 5.48 of the MBMC. The Manhattan Beach Police Department has responded to numerous calls regarding Shade disturbances, and for several of these incidents, has reports and recordings of noise from Shade.
- P. Neighbors indicate that taxi pickup and drop-off on Valley Drive create disturbances. The City established a taxi stand on Morningside Drive at 13<sup>th</sup> Street in 2009 to address this issue and has notified the taxi franchises of the requirements.
- Q. Two independent acoustics analysis, dated October 21, 2009 and March 10, 2010, were conducted by Don Behrens & Associates under the direction of the Community Development Department. The reports indicate that noise from the Shade Hotel does not exceed the objective noise standards in the MBMC; the subjective standard was not evaluated in the reports. Actual noise measurements and continuous noise monitoring was conducted during large events on the skydeck, courtyard, lounge and terrace. A three-dimensional modeling of noise to assess various mitigation was also constructed. The reports proposed a variety of mitigation options including a front (east) entry vestibule, terrace enclosure, roofdeck extensions, west entry/exit/queue and taxi stand. Mitigation is incorporated into the conditions based on these recommendations, public hearing comments and Planning Commission discussion and direction.
- R. Due to the open design, the terrace has minimal soundproofing and constitutes a major noise source, particularly for residents south of 12<sup>th</sup> Street. Additionally, the front (east) entry door has noise leakage that impacts residents, largely between 12<sup>th</sup> and 13<sup>th</sup> Streets. The rooftop deck generates noise that largely impacts residents north of 13<sup>th</sup> Street.
- S. The primary use and purpose of Shade Hotel, is and will continue to be, to serve the community as a hotel offering first-class accommodations to visitors. The hotel may also offer event, function, food, and other similar support functions as secondary uses. Marketing and promotion of the hotel shall be consistent with these uses as provided in the conditions.
- T. Potential noise and other neighborhood impacts from Entertainment, as defined and regulated in Chapter 4.20 of the MBMC, will be addressed through the administrative review of the annual Entertainment Permit. The Entertainment Permit is a separate administrative permit, and is regulated independently from the land use entitlement of the Master Use Permit and Master Use Permit Amendment.

- U. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- V. This Resolution, upon its effectiveness, constitutes the Amendment to the Master Use Permit for the subject property. This Resolution supersedes Resolution No. PC 05-08. It also amends only Conditions No's 28 and 38 of Resolution No. 5770, all other conditions in that Resolution (unless amended by other separate Resolutions for other Metlox tenants) remain effective and in full force.
- W. Based upon State law, and MBMC Section 10.84.060, relating to the Amendment to the Master Use Permit application for the proposed project, the following findings are hereby made:
  - 1. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located since, the proposed amendments to the use permit for Shade Hotel is consistent with the Commercial Downtown designation. This area is specifically designated for commercial activity and services for residents and out-of-town visitors. Several other business operations in the area already engage in similar uses. The project provides a full range of services needed by residents of, and visitors to, the city and region. The project will strengthen the City's economic base, but also protect small businesses that serve city residents. The project protects surrounding residential uses from the potential adverse effects of inharmonious uses by minimizing the impact of commercial development on adjacent residential districts through the conditions of approval which require physical noise mitigation and operational revisions.
  - 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 since, the proposed amended use permit is consistent with the General Plan for the Commercial Downtown designation, because it is granting additional privileges to already approved uses that will result in minimal fundamental change of those uses. Amending the use permit will have no environmental impact and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the location of the hotel facility. There will be no negative impact on properties or improvements in the vicinity, or on the general welfare of the city, due to the conditions. Additionally, the project is consistent with the following General Plan Goals and Policies:

**GOALS AND POLICIES: LAND USE**

Policy LU-5.2: Work with all commercial property owners bordering residential areas to mitigate impacts and use appropriate landscaping and buffering of residential neighborhoods.

Policy LU-5.4: Discourage the outdoor commercial and industrial use of property adjacent to residential use.

Policies LU-5.7, 6.4 and 7.6: Recognize the unique qualities of mixed-use areas, and balance the needs of both the residential and commercial uses.

**Goal LU-6: Maintain the viability of the commercial areas of Manhattan Beach.**

Policy LU-6.2: Encourage a diverse mix of businesses that support the local tax base, are beneficial to residents, and support the economic needs of the community.

**Goal LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach.**

Policy LU-7.1: Encourage the upgrading and growth of businesses in the Downtown area to serve as a center for the community and to meet the needs of local residents and visitors.

**GOALS AND POLICIES: NOISE**

**Goal N-2: Incorporate noise considerations into land use planning decisions.**

Policy N-2.2: Ensure acceptable noise levels near residences, schools, medical facilities, and other noise-sensitive areas.

Policy N-2.5: Require that the potential for noise be considered when approving new development to reduce the possibility of adverse effects related to noise generated by new development, as well as impacts from surrounding noise generators on the new development.

Policy N-3.4: Recognize in the Noise Ordinance that nighttime noise levels create a greater sensitivity than do daytime noise levels.

3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located since, the required notice and public hearing requirements have been met, all of the required findings have been addressed, and conditions will be required to be met prior to the implementation of the new conditions. The proposed amended use permit is consistent with the already approved primary and secondary uses of the facility.
  4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated. All of the potential impacts related to the proposed project were evaluated and addressed in the Certified EIR. The Mitigation Measures applicable to the project will all be complied with. Conditions to conform to applicable Code standards will apply. Because the proposed amended use permit will not alter the fundamental use, purpose or character of the hotel facility, and because there will not be any change in occupancy or intensification of the property, the proposed amended use will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities.
- X. Based upon State law, and MBMC Section 10.84.060, relating to the Variance application for the proposed project, the following findings CAN NOT be made:
1. Because of special circumstances or conditions applicable to the subject property—including narrowness and hollowness or shape, exceptional topography, or the extraordinary or exceptional situations or conditions—strict application of the requirements of this title would result in peculiar and exceptional difficulties to, or exceptional and/or undue hardships upon, the owner of the property;



2. The relief may be granted without substantial detriment to the public good; without substantial impairment of affected natural resources; and not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety or general welfare; and
3. Granting the application is consistent with the purposes of this title and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district and area district.

SECTION 2. The Planning Commission of the City of Manhattan Beach hereby APPROVES the subject Master Use Permit Amendment, subject to the following conditions, and DENIES the subject Variance.

Definitions.

1. ~~(PREVIOUSLY RC1-1)~~ Closed. Music off and lights turned up in all public areas. Terrace, courtyard, skydeck, Zinc bar and Lobby, and all public areas vacated, except for staff throughout, as well as registered guests in the Lobby only. All members of the general public, including special event and function guests who are not registered guests, shall be out of the hotel. In the Zinc bar and lobby, terrace, courtyard, skydeck and all public areas, without exception, on or before closing, staff shall collect all glasses, bottles, cans, and drinks alcoholic beverages, including from registered guests, to comply with the ABC definition of closed, as “no sale, service, or consumption of alcoholic beverages.”

2. ~~(PREVIOUSLY RC1-2)~~ Special event. An event in which an unaffiliated third party under contract ~~that~~ has exclusive use of one or more venues or a portion of a venue. Attendees at special events shall have an ~~written~~ invitation from the host client. The general public may not join nor participate in special events other than. ~~Special events include non-profit or charitable events such as Chamber events, Downtown Open House and Charity Education Wine Events Auction.~~

3. Function. A “themed” function held periodically for the general public, up to twelve (12) per year, such as, Oktoberfest, Halloween, New Years, Valentines, St Patrick’s Day, AVP, Surf Festival, Mothers Day, Fathers Day and Six-Man. Functions shall not include “spillover” of the general public from day-to-day operations from the Zinc bar and lobby, or any other area, into the Courtyard.

4. ~~(PREVIOUSLY RC1-4)~~ Registered Guest. A guest who occupies a room overnight. Privileges for registered guests extend to a limited number of their invitees only, and not the general public.

5. Invitee. Invited guests of a registered guest.

6. Marketing and Promotion. Any marketing, promotion or advertising, using any media, including but not limited to, fliers, newspapers, radio-TV, Internet, social networking sites, email to the general public and the Shade website. This does not include marketing and promotions to customers who have specifically signed up to be included on a Shade mailing, e-mailing or similar mass notification list.

7. Background music. Sound intensity anywhere in a room or venue not greater than 65 dBa, ~~or normal conversation for 4 people at a range of 3 to 5 feet, whichever less.~~

8. Public Areas. Any public area or space where sales, service and consumption of alcoholic beverages is permitted.

Entertainment and Noise

9. ~~(PREVIOUSLY RC2-1)~~ General- The Director of Community Development shall not reduce restrictions or conditions as set forth in this Amendment, without approval by the Planning Commission, with notice to property owners within a 300 foot radius with standard notice procedures.

10. ~~(PREVIOUSLY RC2-2)~~ Entertainment and amplified sound- ~~Non-amplified music and sound is permitted in any venue for special events and functions, to the extent that the Noise standards of the MBMC are complied with.~~ All amplified music and sound shall use the house system only and shall be limited to background music with the following exceptions;

- A. The Courtyard may have one annual function, for example, event, Oktoberfest, with live amplified entertainment , from 4 to 8 PM.
- B. The Courtyard may use amplification, other than the house system for background music and microphones, for wedding ceremonies only prior to 9 PM and not to exceed 30 minutes in length;
- C. The Zinc bar and lobby may have amplified DJ's, live entertainment or music, other than background music. All doors leading to the outside shall remain closed. ~~A maximum of 6 performers shall be permitted at any one time. Dancing is limited to a 15' by 20' area.~~

11. Terrace enclosure- A deployable means (glass or similar panels that roll or slide down from the top portion of the terrace) shall ~~entirely~~ enclose the terrace, including a closable south entrance that meets Building Safety and other City requirements. Existing walls shall have gaps acoustically sealed. The ceiling of the terrace shall have sound-absorbing fixtures installed. The enclosure and entire terrace area shall be acoustically sealed, designed and constructed to meet the City Noise consultants' acoustical standards consistent with their noise studies for the fully enclosed terrace. The terrace shall remain open at all times except, between 9 PM and 6 AM each day and when raining. Shade staff shall be responsible for enclosing and opening the terrace daily. If the terrace has drapes or other decorative features to enclose ~~use~~ the area, they may only be closed during special events and when raining, or for shade.

12. Front (East) Entry Vestibule- A permanent front entrance vestibule, bonded and sealed to the building, shall be constructed to enclose the front doors. The vestibule shall be acoustically sealed, designed and constructed to meet the City Noise consultants' acoustical standards consistent with their noise studies. The vestibule shall also meet all Building Safety and other City requirements, including but not limited to emergency egress and disabled access. Between 9:00 PM and 6:00 AM on Friday, Saturday, New Years Eve and Sundays before Memorial Day and Labor Day, the following conditions shall apply: a) the front entrance doors shall be closed and only operable through the interlock/double door vestibule; b) ~~the~~ the hotel clerk or other hotel employee shall only allow passage for disabled, or registered hotel guests- and ~~A~~ all others shall use the west entrance; c) ~~the~~ the vestibule may also be operable with a hotel room key- , and; d) ~~Additionally,~~ only one set of doors may be opened at any time.

13. ~~(PREVIOUSLY RC2-5)~~ Courtyard-Only special events and functions may use the courtyard. No general public gatherings permitted in the courtyard, and no "spillover" from the Zinc bar and lobby or other public areas.

14. ~~(PREVIOUSLY RC2-6)~~ Courtyard-bar corridor wall-A new acoustic moveable wall shall be installed to separate the interior courtyard from the corridor north of the lobby bar. After 9 PM Friday, Saturday, New Years Eve, and Sundays before Memorial and Labor Day, and any day if the entry/exit queue is greater than 5 people for more than ~~40~~ 15 minutes, both corridor walls (adjacent to the courtyard and the lobby bar) shall remain closed, for the rest of the night, unless there is a special event or function using both the Courtyard and Zinc bar/ lobby. Whenever the Zinc bar and lounge has amplified sound, other than background music, after 9 PM the north acoustic wall shall remain closed. There shall be no sale, service or consumption of alcohol in the corridor when one or both moveable walls are closed.

15. Skydeck- All amplified music and sound, including DJ's for weddings only, shall use the house system only. No ~~DJ's or~~ live amplified music is permitted. Amplified sound is prohibited on the skydeck after 9 PM, except for background music. The hotel shall relocate house speakers nearer to floor-level, not atop glass windscreen posts. The location and number of the speakers shall be based on the recommendations from an audio specialist in cooperation with the City's noise consultant, and shall be designed to mitigate off-site noise impacts and maximize efficiency on-site.

~~DELETED RC2-8- Penthouse restrictions- The Penthouse shall not be used for special events or functions. Use of the penthouse is limited to registered hotel guests and their~~

~~invitees, not to exceed a maximum of eight (8) occupants.~~

16. Sound audibility- The volume of music, entertainment, group singing, or voice, whether or not amplified, may not be audible outside of the hotel facilities to the following extent. For any length of time, except for the one function referenced in Condition No. 10, Oktoberfest, the noise may not dominate the background ambient noise, ~~as defined in the MBMC noise regulations~~, nor disturb surrounding residents, as defined in the MBMC noise regulations. After cessation of alcohol service in any venue or for any event or function, only background music is permitted.

17. Temporary Use Permit- Special events and functions of more than 125 attendees require City notice and a temporary use permit.

~~18. (PREVIOUSLY RC2-11) Dancing- Dancing is limited to the Zinc bar/lounge in a 15-foot by 20-foot area. Dancing on skydeck and in Courtyard also permitted, but only for special events and functions-~~

~~19~~ 18. Entertainment Permit- Each year, the hotel shall apply for an annual entertainment permit on or before March 1, in accordance with Condition 40 in Resolution 5770, Metlox Master Use Permit.

~~20~~ 19. Resident notification- The hotel shall e-mail to residents who sign-up, the schedule of special events and functions sent to the City, excluding client information.

24 20. Balconies- A permanent notice shall be placed on the doors to the hotel room balconies informing guests to be respectful of the neighbors at all times and to make no noise on the balconies or outside after 10:00 PM.

~~22~~ 21. Exterior Doors- All exterior doors to the public areas of the hotel facility shall be closed after 9:00 PM on Friday, Saturday, Sundays before Memorial Day and Labor Day, New Years Eve, and daily for all special events and functions.

~~23~~ 22. NEW---Noise Compliance Verification- The privileges within this Use Permit for extension of hours of operation, ~~an increase to 125 people for special events and functions without administrative approval, and a full public food service~~, shall only be granted after the installation of the mitigation measures, implementation of the improvements and modifications to the operations of the facility. After completion of these measures, the Community Development Director, in cooperation with the Noise consultant, shall determine if the measures are effective and meeting the objective noise criteria and mitigation standards described in the previously submitted Noise reports. The neighbor representative may have input on the location, days and hours of the monitoring for any follow-up noise studies. The privileges and rights within this Use Permit shall not be effective unless the objective noise criteria and dBA reductions, as described in the previously submitted Noise reports, are achieved.

**24 23. (PREVIOUSLY RC-3) Hours for alcohol service**

**Alcohol service restricted to venues below; not permitted in any other public areas.**

<u>Venue/Event/Services</u>	<u>Venue Closing Time (Closed); Open 6 AM- per Cond. 39, Reso. 5770</u>	<u>End of Alcohol Service, Before Closed, Minutes</u>
Zinc bar and lounge, Friday-Saturday and Sundays before Memorial Day and Labor Day	Midnight	20
Zinc bar and lounge, Sunday-Thursday	11 PM	20
Terrace	11 PM Sun-Thu; midnight Fri-Sat and Sundays before Memorial Day and Labor Day	20
Conference (Green) Room(s)	11 PM Sun-Thu; midnight Fri-Sat and Sundays before Memorial Day and Labor Day	20
Courtyard- Special events	11 PM Sun-Thu; midnight Fri-Sat and Sundays before Memorial Day and Labor Day	20
Courtyard- Functions	10 PM	20
Skydeck	10 PM	60

**Note 1. New Years Eve closed for all venues as regulated permitted by MBMC- currently 1:00 AM**

General Conditions.

~~25~~ **24. Substantial Compliance-** The proposed changes shall be in substantial conformance with the plans submitted, and the project description as approved by the Planning Commission, subject to any special conditions set forth in this amendment. The design, specifications and layout of sound mitigation measures is subject to further review and approval by the Director of Community Development, and the Planning Commission as determined to be necessary by the Director of Community Development. Any substantial deviation from the approved plans, or project description, shall have review and approval by the Planning Commission.

~~26~~ **25. (PREVIOUSLY RC4-2) Occupancy Limits-** Required occupancy loads shall not be exceeded and required access and exits shall remain unobstructed at all times. The exact occupancy numbers stated below are required to be posted on the site:

- Roof Deck – 92
- Lobby Bar (Zinc Lounge) – 159
- Patio to south of Zinc Lounge- 47
- Courtyard Area – 151
- Conference Room - 44

~~27~~ **26. Terrace Use-** The terrace shall not be a conditioned interior space as defined by the Building Code.

~~28~~ 27. Public property clean up- The Shade staff shall monitor the area so that Shade patrons do not litter adjacent public property, including but not limited to the sidewalk, street, Metlox Town Square and all other public areas at Metlox. The hotel staff shall police and promptly clean up all areas with any litter and spills after all special events and functions. Public Works may bill Shade for any special event and function related public property clean-up costs.

Ingress-Egress Control

~~29~~ 28. Valet- The Shade valet service shall relocate away from the Shade east or south entrances after 9:00 PM on Fridays, Saturdays, Sundays before Memorial Day and Labor Day, New Years Eve, and after special events and functions any day of the week. ~~The podium shall be located so that it has no line of sight to residences.~~ Everyone, except for registered hotel guests, shall be prohibited from picking up their vehicles from the Shade front (east) entrance after 9 PM on Fridays, Saturdays, Sundays before Memorial Day and Labor Day, New Years Eve, and after special events and functions any day of the week. The hours and days may be modified to be more, but not less, restrictive as determined to be necessary by the Director of Community Development. The valet shall keep all driving lanes, parking back up areas, and all vehicular and pedestrian accessways free and accessible to the general public, subject to approval of the Director of Community Development.

~~30~~ 29. (PREVIOUSLY RC5-2) Taxis- Hotel employees shall discourage the public from using taxis on Valley Dr after 9 PM. Taxi pickups and drop-offs for the general public at the Shade entrance shall be prohibited after 9 PM. Everyone, except for registered hotel guests, shall be directed to the taxi stand on Morningside Drive and 13<sup>th</sup> Street, after 9 PM on Fridays, Saturdays, Sundays before Memorial Day and Labor Day, New Years Eve and after special events and functions any day of the week. Hotel staff may call for a taxi to pickup registered guests at the entrance at any time.

~~34~~ 30. Entry-Exit Queue- The hotel shall locate the entry and exit queue at the west side of the building as required in condition 31 ~~XXX~~, but the queue shall not extend past the south or north sides of the building.

~~32~~ 31. (PREVIOUSLY RC5-4) West entry-exit- After 9:00 PM on Friday, Saturday, Sundays before Memorial Day and Labor Day, New Years Eve, and after 9:00 PM for special events, and functions, everyone except registered hotel guests and disabled shall use the west door, opening on to the Metlox Plaza, to enter and exit the hotel. The front east door that opens onto Valley Drive, and the south terrace doors shall not be used for entry and exit at these times, except registered hotel guests and disabled may use the front east door.

On Sunday through Thursday, if more than five patrons are waiting for more than 15 ~~40~~ minutes to enter, staff shall establish the queue at the west side of the building for the rest of the night. Employees shall close and monitor the front (east) entry door as required to ensure access only by registered hotel guests and the disabled, and that everyone else uses the west door. Employees shall remind the patrons as they depart to respect the neighbors and to minimize noise and disturbance.

The hours and days may be administratively modified in the annual entertainment permit to be more, but not less, restrictive as determined to be necessary by the Director of Community Development.

~~33~~ 32. Staff parking- The hotel shall instruct ~~ensure that~~ their employees, contract employees, contractors servicing events, and all others providing services to the Hotel ~~shall to~~ not park on the public streets east of Valley Drive, in the residential areas or in Parking Lot 8 (the lot in the median of Valley and Ardmore). All parking shall be on the Metlox site or in other public parking structures or lots such as Lot 3.

~~34~~ 33. Buses- Any large transportation such as buses, shuttles, or recreational vehicles shall not use the hotel drop off area on the east side after 9 PM daily, but shall load and unload off of Morningside Drive or 13th Street. The vehicles shall observe and comply

with all parking regulations in these areas.

~~35~~ 34. Town Square- Special Events and functions may not use the Town Square or other Public Open Areas unless prior approval is granted by the City. The applicant shall work cooperatively with the Management Co, landlord, any security personnel and the City to ensure that Shade facility patrons are not gathering in the Town Square and public areas outside of the hotel and disturbing the neighbors after the hotel public areas are close. The doorman or other Shade employee shall ensure that patrons do not leave the hotel facility premises with alcoholic beverages.

~~36~~ 35. Front Drop Off- The drop off driving lane, in front of the hotel off Valley Drive, including the area at Valley and "12<sup>th</sup> Walk" by the bollards shall remain open, unobstructed and free of vehicles at all times, except for vehicles transitioning during valet drop off and pick up.

Food service.

~~37~~ 36. Food Service- The hotel may serve food in all public areas during the hours consistent with the service of alcohol. This shall not preclude 24-hour room service.

Promotion and Advertising.

All these are up to the Planning Commission- Neighbors suggestions in yellow and Staff suggestions in blue.

~~38~~ 37. Marketing-

~~Any marketing and promotion of the facility will be first and foremost as a hotel use. The availability of the hotel for special events and functions shall not be marketed as the primary use. The hotel website may have pages that describe various venues, including costs and availability, but may not advertise individual functions or periodic events such as pool parties.~~

Any marketing and promotion of the facility will be first and foremost as a hotel use. The availability of the hotel for special events and functions shall not be marketed as the primary use. The hotel website may have pages that describe various venues, including costs and availability, but may not advertise pool parties.

~~39~~ 38. Marketing-Happy Hour Bar and Functions

~~All hotel marketing, advertising, and promotions shall be limited to attracting potential hotel guests and event planners. The Zinc bar/lounge, terrace and Skydeck will not be marketed to the general public as separate hospitality attractions. All advertising, marketing and promotions will be focused on potential hotel guests and not the general public.~~

The hotel shall not advertise, market or promote drink or "happy hour" type of specials. Primary advertising and marketing shall be for the hotel, food and special events. Marketing and promotion for the bar and functions shall be secondary. The Zinc bar/lounge, terrace, and Skydeck will not be exclusively marketed to the general public as separate hospitality attractions.

~~40~~ 39. Menu Posting-The hotel shall not post any drink or food menus or any drink or food signage outside of the hotel.

The hotel may post drink or food menus or signage outside of the hotel, with the exception of no posting of any drink or: happy hour" type of specials.

~~44~~ 40. Review. All provisions of the Master Use Permit Amendment are subject to review by the Community Development Department 6 months after completion of improvements and yearly thereafter. At any time in the future, the Planning Commission or City Council may review the Master Use Permit Amendment for the purposes of revocation or modification.

Modification may consist of conditions deemed reasonable to mitigate or alleviate impacts to adjacent land uses.

*Procedural*

~~42~~ 41. Expiration. Unless appealed to the City Council, the subject Use Permit and Coastal Development Permit shall become effective after expiration of the time limits established by Manhattan Beach Municipal Code and Local Coastal Program.

~~43~~ 42. Fish and Game. Pursuant to Public Resources Code Section 21089 (b) and Fish and Game Code Section 711.4 (c), the project is not operative, vested, or final until the required filing fees are paid.

~~44~~ 43. Lapse of Approval. The Master Use Permit Amendment shall lapse three (3) years after its date of approval unless implemented or extended in accordance with Manhattan Beach Municipal Code (MBMC) Section 10.84.090

~~45~~ 44. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions. Further, the applicant shall record the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The format of the recording instrument shall be reviewed and approved by the City Attorney.

~~46~~ 45. Effective Date. Unless appealed to the City Council, the subject Master Use Permit Amendment shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.

~~47~~ 46. Review. All provisions of the Master Use Permit Amendment are subject to review by the Community Development Department 6 months after occupancy and yearly thereafter. At any time in the future, the Planning Commission or City Council may review the Master Use Permit Amendment for the purposes of revocation or modification. Modification may consist of conditions deemed reasonable to mitigate or alleviate impacts to adjacent land uses.

~~48~~ 47. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.

~~49~~ 48. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction at any time.

~~50~~ 49. Legal Fees. The applicant agrees, as a condition of approval of this project, to pay all reasonable legal and expert fees and expenses of the City of Manhattan Beach, in defending any legal action associated with the approval of this project brought against the City. In the event such a legal action is filed against the project, the City shall estimate its expenses for the litigation. Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.



SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of **July 28, 2010**, and that said Resolution was adopted by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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LAURIE B. JESTER  
Acting Secretary to the Planning Commission

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Sarah Boeschen  
Recording Secretary

**SHADE HOTEL EXCERPTS  
FROM THE  
CITY OF MANHATTAN BEACH  
PLANNING COMMISSION  
MINUTES OF REGULAR MEETING  
JUNE 23, 2010**

The Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 23rd day of June, 2010, at the hour of 6:35 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.

**A. ROLL CALL**

Present: Lesser, Paralusz, Seville-Jones, Chairman Fasola  
Absent: Andreani  
Staff Present: Laurie Jester, Acting Director of Community Development  
Angelica Ochoa, Assistant Planner  
Recording Secretary, Sarah Boeschen

**04/28/10-3 Consideration of a Master Use Permit Amendment for Modifications to the Previously Approved Hours of Operation, Notification for Special Events, Restaurant Operations, and a Height Variance for a Six Foot High Noise Barrier at the Roofdeck at the Shade Hotel, Metlox Site, 1221 North Valley Drive**

Chairman Fasola indicated that he has previously recused himself from consideration of the issue, and he left the dais.

Acting Director Jester commented that staff feels all of the information that is necessary has been presented in order for the Commission to reach a decision. She indicated that the Commissioners have been provided with a memorandum from the City Attorney that addresses the Entertainment Permit for the hotel; document #1-draft staff resolution; document #2-from the neighbors regarding the conditions in the draft Resolution; and document #3-from the applicant's attorney regarding the conditions in the draft Resolution. The Commission has these three documents labeled 1, 2, and 3, and after the public hearing is closed, staff would like the Commission to focus on these three documents and use these to walk through the Resolution and conditions. She pointed out that a revision has been made to Condition 23 on page 8 of the draft Resolution at the suggestion of the City Attorney. The conditions where there is disagreement with the neighbors are highlighted in yellow and the neighbors condition numbers are cross-referred in staff resolution, document #1.

Acting Director Jester said that she would like to highlight the main areas of disagreement. The applicant and neighbors were not able to agree regarding the definition of special events and functions and non profit and charity events. She pointed out that the existing Use Permit does not provide a definition of special events. She indicated that the neighbors have expressed concern regarding functions being held in the courtyard of the hotel that generate noise, and they would like for limits to be placed on the use of the courtyard for functions. She commented that a concern was also expressed regarding hours of operation on holidays. She stated that the neighbors have concerns with allowing weekend operating hours for the Sundays before Memorial Day and Labor Day. She commented that the neighbors also expressed concerns with allowing events until 1:00 a.m. on New Years Eve, particularly on the skydeck. She indicated that the applicant would like for the hours permitted for alcohol service on the

skydeck to be extended, and the neighbors do not want to have any changes to the existing hours. She stated that the neighbors would like for the Entertainment Permit to be incorporated with the Use Permit. She stated that the neighbors would like for staff to come before the Commission for approval of the Entertainment Permit if they are proposing to relax any of the requirements. She pointed out that the City Attorney has given his opinion that the Entertainment Permit is an administrative permit rather than a land use permit. She commented that there was also disagreement between the applicant and the neighbors regarding promotions and advertisement for the hotel, and staff is requesting that the Commissioners provide their opinions.

In response to a question from Commissioner Seville-Jones, Acting Director Jester said that she has only had contact with **Mr. Hubbard** as the representative of the neighbors and has not had discussions with the other neighbors. She stated that she has received e-mails from **Mr. McPherson**, who is not an adjacent neighbor to the hotel.

In response to a question from Commissioner Seville-Jones, Acting Director Jester said that the applicant is limited to background music on the skydeck, which does not provide much opportunity to have dancing. She said that the Entertainment Permit does allow live entertainment, amplified sound and events on the skydeck with a 14-day notice. She indicated that "themed functions" would be permitted under the current permit as special events. She stated that under the proposal, themed functions would be classified differently than special events. She commented that it is typical for hotels to have events for occasions such as Halloween, Mother's Day, and Father's Day which are open to the general public. She indicated that staff would envision the hotel having themed functions maybe two times a month. She indicated that the Commission has the ability to place limits on the hours and on the number of themed functions as they feel appropriate.

In response to a question from Commissioner Lesser, Acting Director Jester said that the meeting was noticed to property owners within 500 feet of the subject site, and published in the paper.

In response to a question from Commissioner Lesser, Acting Director Jester indicated that the Use Permit is a land use regulation that is vested with the property. She said that the Entertainment Permit is an administrative approval that is reviewed annually by the Community Development Director. She said that the Entertainment Permit is reviewed annually in March, and there have been revisions to some of the conditions.

Vice Chairman Paralusz opened the public hearing.

**Mike Zislis**, the applicant, commented that he has worked very hard on the current draft Resolution along with Acting Director Jester and **Mr. Hubbard**, and he would not want any substantial changes to the current proposal. He commented that the agreement has reduced the rights that he currently has in operating the hotel. He indicated that the only gain he has with the proposal is one additional half hour of operation on Friday and Sunday nights and an additional hour on the Sunday nights before Memorial Day and Labor Day. He said that the role of the Commission is to represent his interests and the interests of the residents to arrive at a solution that will resolve the issues. He commented that advertising for the hotel should not be an issue as long as it is not specifically advertising the Zinc lounge. He pointed out that themed functions on New Years and Halloween do help to sell hotel rooms. He requested to be allowed to have alcohol service end 20 minutes rather than one hour before the closing time of the skydeck. He said that he would propose providing a 2 foot wall on the north side of the skydeck which would help to mitigate the noise from **Mr. Hubbard's** house. He indicated that it is a significant hardship to stop serving alcohol at 9:00 p.m. on the skydeck.

Commissioner Seville-Jones commented that she does not feel the rights of the applicant are being removed for use of the skydeck, and she does not feel that the skydeck was originally intended under Resolution PC 05-08 as a place for people to congregate, dance, and listen to music. She said that she feels the skydeck is one of the significant sources of noise that is impacting the neighbors.

**Mr. Zislis** requested that the reference to food service and the allowance of 125 people for special events without prior approval be removed from Condition 23. He said that he feels food service and the allowance for 125 people for special events without prior approval should be permitted once the Resolution is passed rather than after the sound mitigation measures are installed. He indicated that his understanding is that the intent was that the extension of hours not be permitted until the sound mitigation measures are installed and that the extension of food service and allowance of up to 125 people for special events without prior approval were not issues. He commented that there have been three calls to the Police Department in the last three months, and none of them were related to the hotel.

In response to a question from Commissioner Seville-Jones, **Mr. Zislis** indicated that they would advertise functions such as a Halloween party by sending e-mails to their e-mail list and advertising in the Beach Reporter. He pointed out that they have listed every function that they intend to have annually. He said that he would not object to a limit of one function per month. He pointed out that his intent is not to have large functions frequently that would generate a great deal of noise and disturb guests staying overnight at the hotel. He commented that the expectation for quiet hours on weekend nights for hotels generally is midnight.

Commissioner Lesser commented that his recollection is that the sound engineer indicated that the skydeck was a significant source of noise particularly as the evening hours progress and there is less ambient noise.

**Mr. Zislis** pointed out that he is not requesting to increase the hours for the skydeck but rather only to serve alcohol up to 20 minutes rather than an hour before closing. He said that the deck would need to be cleared by 10:00 p.m. with the regulations as proposed. He also commented that live music would also be required to end on the skydeck at 9:30 p.m. with the new requirements rather than at 10:00 p.m. as is the case currently.

Commissioner Seville-Jones pointed out that the March 10, 2010 report from the sound engineer indicates that barriers on the skydeck would make little difference to the noise levels experienced at the residential properties.

Acting Director Jester pointed out that the sound report did indicate that the noise from **Mr. Hubbard's** property to the north would potentially be significantly reduced from a barrier being placed on the skydeck.

In response to a question from Vice-Chairperson Paralusz, **Mr. Zislis** indicated that they obtain e-mail addresses from people who stay overnight at the hotel, from people who sign a guest book at the front desk, and people who request to be on the list from the website or on Face Book and Twitter. He said that people have to specifically sign up to receive e-mails, and they do not buy lists of e-mail addresses for mass advertising.

**John Strain**, the applicant's attorney, pointed out that the skydeck is open during the summer for general patrons of the lounge. He said, however, that the main use of the deck is for events such as weddings and private parties. He commented that dancing occurs during weddings on the skydeck, as it is a natural part of a wedding reception. Regarding the wording of Condition

23, he pointed out that it was clear from the last meeting that the agreement was that the additional hours would be subject to the sound mitigation measures being installed and that the extension for food service and people for special events was not tied to the installation of the sound mitigation measures. He requested that the Commission consider possibly allowing for some flexibility if the applicant applies all of the mitigation measures and still is not able to quite meet the noise reduction standards that are in the noise report. He said that he has a concern that the applicant may spend a great deal of money on implementing the sound mitigation and still not be able to have the extension of hours if they do not quite meet the objective that was established by the sound engineer.

**Mr. Strain** requested that the wording of Finding O be revised. He said that he is concerned that the use of the word “indicates” is too strong in the sentence that reads: “Testimony from many neighboring residents at the Planning Commission public hearings indicates Shade Hotel makes noise that discomforts and irritates ‘reasonable persons of normal sensitiveness’ as defined by the subjective standard in Chapter 5.48 of the MBMC.” He commented that he also feels the rest of the language of the finding regarding the Police Department responding to disturbance calls at the hotel would seem to be unnecessary. He stated that he has sent the Commissioners a letter with comments regarding the proposed conditions for their consideration.

In response to a question from Commissioner Lesser, **Mr. Strain** indicated that continuing to require the skydeck have with no further service of alcohol or music after 9:00 p.m. would restrict the deck from being used by members of the community as a venue for events.

In response to a question from Vice-Chairperson Paralusz, **Mr. Strain** indicated that the current request is for the skydeck to continue to close at 10:00 p.m. every evening but allow alcohol service to end 20 minutes before closing, instead of 60 minutes.

**Mr. Strain** requested that Condition 12 on page 7 of the draft Resolution be revised to clarify that the requirements for use of the front door vestibule would apply after 9:00 p.m. He commented that he has a similar concern regarding the requirements for valet service in Condition 29. He indicated that he would like for the wording of the condition to clarify that the valet service shall relocate away from the east or south entrances of the hotel after 9:00 p.m.

**Nate Hubbard**, a resident of the 1300 block of Ardmore Avenue, said that he has met with Acting Director Jester and **Mr. Zislis** twice since the last meeting. He said that there are four areas where the neighbors were not able to come to an agreement with **Mr. Zislis**. He indicated that the neighbors have withdrawn their request for a wall to separate the Zinc lounge from the lobby area; they are agreeing to allow special non-profit and charity events on the skydeck; they are agreeing to the applicant having the annual Oktoberfest event in the courtyard with live music; and they are agreeing to allow a full service restaurant and amplified music on the terrace. He said that with the language of the new revised draft Resolution, the number of public patrons would be increased by permitting them to use the courtyard and skydeck; the entertainment would be made as an entitlement rather than subject to the entertainment permit; and the height of the skydeck wind screens would be increased to 7 feet above the permitted height. He stated that their understanding was that all glasses, bottles and drinks were to be required to be picked up at closing time. He commented that the wording was then changed in the revised draft Resolution to only require that all alcoholic drinks be picked up at closing time. He said that the police would not be able to enforce the condition by checking any drinks after closing to determine if they contain alcohol, and the condition would allow people to hold onto their drinks after closing. He commented that there are patrons inside the lobby of the hotel after 11:30 p.m. at night currently. He commented that they would

like to see the final language of the draft Resolution before the final version is approved by the Commission.

In response to a question from Commissioner Lesser, **Mr. Hubbard** said that he sends e-mails to the neighbors regarding the discussions that have taken place. He commented that the only notice that the adjacent neighbors received regarding the current Commission meeting was from his e-mail.

In response to a question from Commissioner Seville-Jones, **Mr. Hubbard** said that they have a concern that the general public would be able to attend functions at the hotel, and the neighbors would not want for functions to expand into the courtyard or skydeck. He said that they are impacted by noise even with the number of functions being limited to one per month. He said that noise spills into the neighborhood from functions and events in the courtyard even without amplified music or sound.

**Don McPherson**, a resident of the 1000 block of 1<sup>st</sup> Street, stated that the concern regarding the courtyard is with the folding doors being open while there is a band in the Zinc lounge. He commented that there is a condition included requiring that the doors remain closed. He stated that **Mr. Zislis** had previously indicated that a special event is one in which an outside party is under contract with the hotel. He indicated that the neighbors have classified themed functions as those events that are sponsored by the hotel rather than an outside party. He said that the entertainment permit in December of 2008 limited the number of events that are permitted in the courtyard area to six per year. He indicated that the only reference to dancing that he is aware of is in the Entertainment Permit, and it is strictly limited to the dance floor in the Zinc lounge. He stated that he is not certain whether dancing on the skydeck is an entitlement for the hotel. He said that the Metlox Master Use Permit restricts entertainment to two non-amplified performers and indicates that any additional approvals must be through the Entertainment Permit. He said that the current proposal is to incorporate entertainment into the Use Permit which was not the intent of the City in approving the original Master Use Permit. He commented that they are recommending that everything related to entertainment for the hotel be moved from the Use Permit to the Entertainment Permit. He pointed out that the regulations can be changed regarding events if they are approved as part of the Entertainment Permit, but they become an entitlement if they are included with the Use Permit. He commented that he would also recommend moving the approval for the annual Oktoberfest event to the Entertainment Permit.

**Mr. McPherson** said that allowing alcohol service up to 9:40 p.m. should not be based upon extending walls on the skydeck which the engineer has indicated would not significantly reduce noise. He commented that he and **Mr. Hubbard** spent a great deal of time reviewing the conditions that were on the draft Resolution that was posted on the internet. He said that they have provided staff with their recommended changes to the wording. He requested that the final language be brought back to the Commission before it is approved. He commented that the wording had been changed from the previous draft which completely changed the meaning of the conditions.

**Viet Ngo** said that the Commissioners must comply with the requirements of the Brown Act included in U.S. Government Code Section 54950 et seq. He commented that the draft Resolution that was available for review by the public is very different than the revised draft that was provided to the Commission before the hearing. He said that changing the language of the draft Resolution before the meeting without allowing an opportunity for review by the public is in violation of the Brown Act. He requested that the Commission stop their efforts in helping **Mr. Zislis** to steal public money. He indicated that **Mr. Zislis** has created Manhattan Inn Operation Company LLC with Jonathan Tolkin in order to maintain and control a

racketeering enterprise. He commented that the ABC license for the hotel is a fraud. He suggested that the neighbors contact the ABC to request a hearing to revoke the Type 47 alcohol license for the hotel that was obtained fraudulently. He commented that communication between staff and the Commissioners through e-mail without knowledge from the public is not permitted by law.

**Katie Kroft**, the general manager of the hotel, said that she understands the concern of the neighbors that the operation of the lounge not spill out into the courtyard; however, it has not happened in the past. She said that she has a concern with including wording that the general public may not join nor participate in special events. She indicated that they receive many offers to sign contracts for events in the courtyard which are open to the general public and which result in good public relations for the hotel. She said that she would not have an objection to a condition that the lounge operation not be permitted to spill out into the courtyard, but she would have a concern with the restriction for special events.

**Esther Besbris**, a resident of 2<sup>nd</sup> Street, said that while she does not have the same vested interest and concerns as the adjacent neighbors, the hotel operation does have an impact on all of the City's residents. She indicated that she has been following the hearings regarding the hotel. She commented that she feels there needs to be a clear understanding of the meaning of the word "event." She said that the word "closing" also needs to be clearly understood. She commented that the parameters must be clearly set that the operation must be completely shut down rather than in the process of closing at the specified closing time. She commented that she also has a concern with the language of the draft Resolution being decided by only three Commissioners, as the vote and outcome could be different with the input of Commissioner Andreani.

Vice-Chairperson Paralusz pointed out that the issue would come before the City Council regardless of whether it is approved or denied by the vote of the Commissioners.

**Ms. Besbris** said that the final vote that would result with four rather than three Commissioners present will never be known if action is taken at this hearing, which she feels is important to consider.

**Scott Murch**, a resident of the 500 block of 12<sup>th</sup> Street, indicated that the neighbors are not receiving notice of the hearings, and the neighbors were informed of this hearing through **Mr. Hubbard**. He commented that there need to be a limit on the number of themed functions, and he feels allowing 24 per year is too many. He said that he feels the findings in the draft Resolution should include the reference to the noise reports taken by the Police Department and that the wording should not be omitted as suggested by **Mr. Strain**. He stated that it does not take a sound engineer to recognize the impact that the noise spilling over from people on the skydeck has on the adjacent neighbors. He commented that all of the adjacent neighbors are located uphill from the hotel, and they are all impacted by the noise. He indicated that to the extent that the Commission considers the comments from the applicant's attorney, they should also consider the comments of **Mr. McPherson**. He indicated that eliminating the language that the general public may not join or participate in special events could result in an event turning into a large public party. He commented that the intent is for special events to be classified as weddings or similar events where a limited number of written invitations are sent out to guests.

**William Victor**, a Manhattan Beach resident, indicated that the original vision of the hotel that was the basis for approving the EIR document for the Metlox project is nothing like the current operation. He pointed out that people's voices raise when they are drinking. He said that allowing alcohol to be served until 9:40 p.m. on the deck as being requested by the applicant

would result in people being louder until later in the evening. He stated that he is opposed to any extension of hours for alcohol being served on the skydeck. He said that the deck was not originally intended to be used for events and to include alcohol service. He commented that the noise from the hotel does reach the residential area down to The Strand, contrary to the assertion of **Mr. Zislis** that the noise does not travel that distance.

**Jackie May**, a resident of the Downtown area, said that she is concerned with the oversaturation of drinking establishments in the Downtown area. She pointed out that residents are not permitted to have rooftop decks on their homes, and she is not certain of the reason that the hotel is permitted to have such a deck. She commented that she is concerned that the deck sets a precedent for other establishments in the City.

Acting Director Jester commented that the skydeck has always been part of the hotel and meets the height limit and Zoning Code requirements. She indicated that it provides a location for events and does have very limited hours. She pointed out that any property owner can have a roof deck provided that it meets the requirements of the Zoning Code. She indicated that a resident may have a deck on the third level of their home if it is in a zone that allows three story buildings. She commented that many commercial establishments Downtown have large windows or roll-up doors which allow them to incorporate more of the outdoors.

**Nancy Gilombardo**, a resident of the 1100 block of North Ardmore Avenue, indicated that she also did not receive formal notice of this hearing and only received notice from **Mr. Hubbard**. She commented that she has to close her windows during the summer because of the noise at the hotel. She said that she agrees with the comments of **Mr. Hubbard** and would like for his suggestions to be included in the draft Resolution.

**Stephanie Hubbard**, a resident of the 1300 block of Ardmore Avenue, said that she felt that the issues were basically resolved at the last hearing. She commented that she is now confused by the changes that have been made to the language of the draft Resolution. She requested that any additional hours for alcohol service to be permitted on the skydeck not be considered. She commented that she does not believe that any wall installed on the roof deck would help to mitigate noise. She pointed out that the intent of the deck was to provide an area with a pool for the hotel guests. She said that she also would not have been informed regarding this meeting if it had not been for her husband being involved.

**Mr. Zislis** said that his intent is to mitigate sound. He said that he would request that no additional conditions be placed on the skydeck if the permitted use of the deck is to remain as it is currently. He indicated that closing has been clearly defined in the language of the conditions. He indicated that he feels providing consistency with having alcohol service end 20 minutes before closing time on the skydeck as is the case for the other areas of the hotel would allow for easier enforcement. He also indicated that he believes that there are mitigation measures that would help reduce the noise impacts from the skydeck to the neighbors. He stated that the conditions in the proposed draft Resolution would mitigate a lot of the problems for the neighbors. He said that he would request that the Commissioners vote on the draft Resolution at this hearing rather than continue the matter to another meeting.

Vice Chairperson Paralusz closed the public hearing.

At 9:20 p.m., a 10 minute break was taken.

Acting Director Jester commented that notice of this hearing was sent to all of the property owners within a 500 foot radius of the subject site. She stated that she believes staff has



incorporated the conditions that were agreed to in concept at the last meeting into the draft Resolution.

The Commissioners agreed to revise the wording of Finding O on page 3 of the draft Resolution to read: “~~Testimony from many neighboring residents at the Planning Commission public hearings~~ Many neighboring residents at the Planning Commission public hearings have testified that Shade Hotel makes noise that discomforts and irritates ‘reasonable persons of normal sensitiveness’ as defined by the subjective standard in Chapter 5.48 of the MBMC. The Manhattan Beach Police Department has responded to numerous calls regarding Shade disturbances, and for several of these incidents, has reports and recordings of noise from Shade.”

Commissioner Seville-Jones asked about enforcement of the condition that all alcoholic beverages be collected at closing. She said that it is not clear how the condition could be enforced because the police would have difficulty in determining which drinks contain alcohol. She indicated that she is in agreement with the proposed language of the neighbors for Condition 1, as she feels there would be difficulty enforcing closing hours if only alcoholic drinks are collected.

Acting Director Jester commented that there are no other establishments such as the Shade in the City which have a lounge next to a lobby area that is accessible 24 hours.

The Commissioners agreed to revise the language of the third sentence of Condition 1 on page 6 of the draft Resolution to read: “. . . In the Zinc bar and lobby, terrace, courtyard, skydeck and all public areas, without exception, on or before closing, staff shall collect all ~~alcoholic beverages~~ glasses, bottles, cans and drinks, including from registered guests, to comply with the ABC definition of closed . . .”

In response to a question from Commissioner Lesser, Acting Director Jester indicated that the types of events referenced by **Ms. Kroft** that are open to the public would be classified and addressed as “functions” rather than special events with the language of the draft Resolution.

Vice-Chairperson Paralusz said that she would support striking the language regarding the general public not being permitted to join or participate in special events if a charity education wine auction is classified as a special event. She indicated that although it may be sponsored by a third party, members of the public may purchase tickets for such an event at the time it is held.

Commissioner Seville-Jones commented that she would support retaining the language regarding the general public not being allowed to join or participate in special events.

The Commissioners agreed to revise the language of Condition 2 to read: “Special event- An event in which an unaffiliated third party under contract has exclusive use of one or more venues or a portion of a venue. Attendees at special events shall have ~~a written~~ an invitation from the host client. The general public may not join nor participate in special events. ~~Special events include~~ other than non-profit or charitable events such as Chamber of Commerce events, Downtown Open House and Charity Education Wine ~~Auction~~ Events.”

Commissioner Lesser indicated that he would not support posing a cap on the number of special events, as he would not want to overly regulate the applicant’s business.

Commissioner Seville-Jones said that she feels that a limit on the number of functions would be appropriate. She said that she feels consideration should also be given to the area in which the functions are held.

The Commissioners supported placing a limit of 12 functions per year.

Commissioner Seville-Jones and Vice-Chairperson Paralusz indicated that they would support placing the limit on the number of functions in the Use Permit rather than in the Entertainment Permit.

Commissioner Seville-Jones commented that the wording of Condition 4 is open and does not specify a limit on the number of invitees that a guest may extend their privileges.

In response to a question from Commissioner Seville-Jones, Acting Director Jester said that registered guests have the privileges of remaining in the lobby after closing hours for the Zinc lounge and of exiting out of the main entrance after 9:00 p.m.

Commissioner Seville-Jones asked about the method of determining whether a person is an invitee.

Acting Director Jester commented that generally invitees are with a registered guest, and Condition 4 would be self-regulating.

Commissioner Lesser suggested putting faith in the applicant to interpret the condition based on the intent.

Vice-Chairperson Paralusz said that she would not support changing the language of Conditions 4 or 5.

Commissioner Seville-Jones suggested changing the wording of Condition 4 to read: “Registered guest- A guest who occupies a room overnight. Privileges for registered guests extend to a limited number of their invitees only. . .”

Commissioner Lesser said that he would support the suggested language for Condition 4 as proposed by Commissioner Seville-Jones.

Vice Chairperson Paralusz indicated that she would be concerned that “limited number of invitees” is subjective.

Commissioner Seville-Jones commented that she is concerned that using a large e-mail list and Twitter for advertising is very different than the initial vision for the hotel. She indicated that it was very clear in the original Master Use Permit that advertising would be limited to the hotel and would not be done on a large scale.

Vice Chairperson Paralusz indicated that people who do not wish to receive e-mails can ask to be removed from the e-mail list. She indicated that she is concerned that the applicant’s First Amendment rights would be violated if the City were to regulate the method they use in advertising their business. She stated that she would not be in favor of restricting the method by which the applicant is permitted to advertise.

Commissioner Lesser commented that the mediums that business owners use to advertise are constantly changing. He said that he understands the concern raised by Commissioner Seville-

Jones regarding the hotel becoming more than was originally intended. He stated that hotels generally also offer functions as part of their business.

Commissioner Seville-Jones said that she is concerned with changing the means by which the hotel was originally permitted to advertise.

In response to a question from Commissioner Seville-Jones, Acting Director Jester said the original intent for allowing advertising only for hotel “guests” is subject to interpretation, as a guest is not currently defined.

Commissioner Lesser commented that he would give greater consideration to the mitigation measures to limit the number of people at the hotel and reducing the noise levels rather than focusing on the method used by the hotel for advertising.

In response to a question from Vice Chairperson Paralusz, Commissioner Seville-Jones indicated that she has an objection to the concept of Condition 6, as the original intent was for advertising to be limited to attracting potential hotel guests.

Acting Director Jester said that a person who attends a special event or a function would be considered as a guest of the hotel as originally intended; however, currently she would say there is a distinction between an overnight guest and a person who is attending a function or event.

Vice-Chairperson Paralusz said she has a concern that the wording of Condition 7 is very subjective, as the term “normal conversation” can be interpreted differently.

Acting Director Jester commented that she agrees that there would be an issue with enforcing Condition 7. She said that it would be difficult to measure the decibel level of noise in a room, and it would also be difficult to determine the noise level of normal conversation of four people at a range of 3 to 5 feet.

The Commissioners agreed to revise Condition 7 to read: “Background Music. Sound intensity anywhere in a room or venue not greater than 65 dBa. ~~or normal conversation for four people at a range of 3 to 5 feet, whichever is less.~~”

The Commission agreed to modify Condition 10 to read: “Entertainment and amplified sound-~~Non-Amplified music and sound is permitted in any venue for special events and functions, to the extent that the Noise standards of the MBMC are complied with.~~ All amplified music and sound shall use the house system only and shall be limited to background music with the following exceptions: (A) The Courtyard may have one annual ~~event~~ function, for example Oktoberfest, with live amplified entertainment, from 4 to 8 p.m.; (B) The Courtyard may use amplification, other than the house system for background music and microphones, for wedding ceremonies only prior to 9:00 p.m. and not to exceed 30 minutes in length; (C) The Zinc bar and lobby may have amplified DJ’s, live entertainment or music, other than background music. All doors leading to the outside shall remain closed. ~~A maximum of six performers shall be permitted at any one time. Dancing is limited to a 15’ by 20’ area.~~”

Commissioner Seville-Jones suggested modifying the first sentence of Condition 11 to read: “... glass or similar transparent panels.”

In response to a question from Commissioner Lesser, Acting Director Jester said that she is not certain if it matters whether the panels that are used are transparent, as they would basically only be lowered during nighttime hours.

Commissioner Lesser said that he would suggest allowing the applicant some discretion, as they have not yet come up with a design for enclosing the terrace.

Commissioner Seville-Jones commented that her concern is that having panels to enclose the terrace would basically be creating an additional room rather than having the terrace open to the rest of the Metlox plaza.

The Commissioners agreed to keep the wording of the first part of Condition 11 as written. They agreed to revise the last sentence of Condition 11 to read: “. . . If the terrace has drapes or other decorative features to ~~enclose~~ enclose the area, they may only be closed during special events, when raining, or for shade.”

The Commissioners agreed to add clarification for the last four sentences of Condition 12 would apply after 9:00 p.m.

The Commissioners agreed to revise the second sentence of Condition 14 to read: “After 9:00 p.m. Friday, Saturday, New Years Eve, and Sundays before Memorial and Labor Day, and any day if the entry/exit queue is greater than 5 people for more than ~~40~~ 15 minutes both corridor walls (adjacent to the courtyard and the lobby bar) shall remain closed for the rest of the night. . .”

Commissioner Paralusz said that she would not support adding the applicant’s requested language for Condition 15 to include DJ’s with amplified sound being used on the house system only on the skydeck, as she feels it would be more appropriate to be addressed in the Entertainment Permit rather than in the Use Permit.

The Commissioners agreed to keep the language of Condition 15 as written.

The Commissioners agreed to delete the condition regarding penthouse restrictions as recommended by staff.

The Commissioners agreed to change the wording of the second sentence of Condition 16 to read: “For any length of time, except for ~~Oktoberfest~~, the one function referenced in Condition 10, the noise may not dominate the background ambient noise, as defined in the MBMC noise regulations . . .”

The Commissioners agreed to delete Condition 18 regarding limiting dancing to the 15’-20’ area in the Zinc lounge and for special events and functions on the skydeck and in the courtyard.

The Commissioners agreed to revise Condition 20 to read: “Resident Notification- The hotel shall e-mail to residents who sign up, the schedule of special events and functions sent to the City excluding client identification.”

The Commissioners agreed to change the first sentence of staff’s revised wording of Condition 23 to read: “Noise Compliance Verification- The privileges within this Use Permit for extension of hours of operation, ~~an increase to 125 people for special events and functions without administrative approval, and a full public food service~~, shall only be granted after the installation of the mitigation measures, implementation of the improvements and modifications to the operations of the facility.”

Regarding Condition 24, Commissioner Seville-Jones said that she would not support allowing the skydeck to remain open on New Years Eve. She indicated that she does not support intensification of the use of the skydeck. She commented that the question is whether adding hours on the skydeck on New Years Eve would increase the level of noise that already is occurring downtown.

Vice-Chairperson Paralusz indicated that she has a concern with discriminating against the applicant by not allowing them to have later hours on New Years Eve when other businesses are permitted to apply for Temporary Use Permits to remain open. She pointed out that approval of the Temporary Use Permit still is under the discretion of staff.

Commissioner Seville-Jones said that she agrees with Vice-Chairperson Paralusz that allowing for the Temporary Use Permit for businesses to remain open on New Years Eve is a policy of the City Council that should apply to the applicant as well.

Vice-Chairperson Paralusz commented that she would not object to allowing the service of alcohol to end 20 minutes before closing time for the skydeck to be consistent with closing for the other areas of the hotel. She pointed out that that the hours of operation for the deck would not be increased by allowing alcohol service up to 20 minutes before closing.

Commissioner Seville-Jones pointed out that people are louder when they are drinking. She said that continuing alcohol service on the skydeck up to 20 minutes before closing would prolong the time that people are drinking and making noise on the deck rather than returning into the hotel.

Commissioner Lesser commented that he would like to have consistency by allowing alcohol service up to 20 minutes before closing on the skydeck; however, he is most sensitive regarding the impact that the noise from the skydeck has on the neighbors. He pointed out that the current condition requires alcohol service to end 60 minutes before closing time. He said that he would want the neighbors to feel that they are receiving relief from the existing noise impacts. He said that he would support keeping the requirement that alcohol service end 60 minutes before closing on the skydeck.

Commissioner Seville-Jones suggested editing Note 2 as suggested by the neighbors to read: “Skydeck closes at 10:00 p.m. ~~without exception. No one except staff permitted on the skydeck after 10:00 p.m. including~~ with the only exception being New Years Eve.”

Acting Director Jester said that she is not certain that the language is necessary, unless it is added for clarification.

Vice-Chairperson Paralusz said that she would be concerned with specifying New Years Eve as the only exception, as it could discriminate against the applicant if the City Council were to allow extended hours for other holidays with Temporary Permits in the future.

Commissioner Seville-Jones pointed out that the skydeck specifically has an early closing time because it does disturb the neighbors, which is not the case for other venues in town.

Vice-Chairperson Paralusz and Commissioner Lesser commented that they would support not including Note 2.

Commissioner Lesser said that it is a note which repeats language that is already in the draft Resolution and could be possibly overriding the actions of a future City Council.

The Commissioners decided to retain Note 1 to Condition 24 to read: “New Years Eve closed for all venues as ~~permitted~~ regulated by MBMC-currently 1:00 a.m.”

The Commissioners decided to not include the language of Note 2 as suggested by the residents for Condition 24.

In response to the concern of the neighbors regarding occupancy limits in Condition 26, Acting Director Jester indicated that the occupancy limits would not be reduced from the numbers included in the draft Resolution. She said that Condition 26 establishes the maximum occupancy limits within the Use Permit which would provide protection for the neighbors.

The Commissioners agreed to keep the language of Condition 26.

The Commissioners agreed to change the language of Condition 29 to read: “~~Valet-~~ The Shade valet service shall relocate away from the Shade east or south entrances after 9:00 p.m. on Fridays, Saturdays, Sundays before Memorial Day and Labor Day, New Years Eve, and after special events and functions any day of the week. ~~The podium shall be located so that it has no line of sight to residences. . . .~~”

The Commissioners decided to retain the existing language for Condition 30.

The Commissioners agreed to change the wording of Condition 31 to read: “Entry Exit Queue- The hotel shall locate the entry and exit queue at the west side of the building as required in Condition ~~XXX~~ 32, but the queue shall not extend past the south or north sides of the building.”

The Commissioners agreed to modify the language of the second paragraph of Condition 32 to read: “On Sunday through Thursday, if more than five patrons are waiting for more than ~~40~~ 15 minutes to enter, staff shall establish the queue at the west side of the building for the rest of the night.”

Acting Director Jester commented that staff felt it would be more appropriate for guests of special events to leave out of the west exit, as there typically are a large number of people exiting events at one time. She commented that it is also appropriate for people attending special events to access the drop off area on 13<sup>th</sup> Street and Morningside Drive.

Commissioner Lesser pointed out, however, that some special events may be so small as to not warrant requiring the guests to exit out of the west side. He said he would not object to having the requirement to exit from the west apply after 9:00 p.m. as suggested by the applicant.

Vice-Chairperson Paralusz commented that she would support leaving the language of the first sentence as written. She indicated that the intent is that people attending larger special events would exit out of the west side.

The Commissioners agreed to leave the language of the first sentence of the first paragraph of Condition 32 as written.

The Commissioners agreed to change the wording of Condition 33 to read: “Staff Parking- The hotel shall ~~ensure~~ instruct ~~that~~ their employees, contract employees, contractors servicing events, and all others providing services to the hotel ~~shall~~ not to park on the public streets east of Valley Drive, in the residential areas or in Parking Lot 8 (the lot in the median of Valley and Ardmore). . . .”

The Commissioners agreed to adopt staff's suggested language for Condition 38 to read: "Any marketing and promotion of the facility will be first and foremost as a hotel use. The availability of the hotel for special events and functions shall not be marketed as the primary use. The hotel website may have pages that describe various venues, including costs and availability, but may not advertise pool parties."

Commissioner Lesser commented that the suggested language for Condition 39 by the neighbors may go too far in not allowing any advertising of the bar even as a secondary use.

Commissioner Seville- Jones indicated that there is a question as to whether advertising should be permitted for the bar, skydeck or terrace as independent drinking establishments from the hotel use.

Vice-Chairperson Paralusz commented that the different venues are part of the hotel as a single entity. She indicated that she has a concern with the first sentence of Condition 39 as suggested by the neighbors that all hotel marketing, advertising and promotions shall be limited to attracting potential hotel guests and event planners. She asked whether having a page describing the Zinc bar on the hotel's website would be considered as advertising it as a separate attraction, which would be prohibited with the neighbor's suggested language of Condition 39.

Commissioner Seville-Jones indicated that her concern is with the hotel advertising the bar as a separate attraction from the hotel rooms, which is against the intent of the original concept for the hotel. She said that she feels like the original intent is being changed by allowing advertising specifically for the bar.

Commissioner Lesser said that he is concerned with limiting the ability of the hotel to market the features which they offer. He indicated that Condition 39 is also intending to address happy hour. He said, however, that he does understand the concern of Commissioner Seville-Jones that the language of the rest of the draft Resolution does not address advertising for the separate venues.

Acting Director Jester commented that her interpretation from the language suggested by the neighbors for Condition 39 is that it would prohibit an advertisement from being placed in the Daily Breeze to encourage people to hold their weddings on the skydeck.

Vice-Chairperson Paralusz commented that she agrees with Commissioner Lesser that she would not want to further limit the ability of the applicant to advertise when they would already be limited to the other restrictions of the Use Permit.

Acting Director Jester said that she believes the advertising would be self regulating because overnight hotel guests would be driven away if the level of activity at the hotel generates too much noise.

Commissioner Lesser said that he understands the concern expressed by Commissioner Seville-Jones regarding the hotel becoming more of a bar with a hotel attached; however, he is concerned with the applicant being restricted from being able to advertise the features they offer as part of the hotel. He said that he would hope that the general concept of any marketing for the facility would be primarily as a hotel use.

The Commissioners agreed to revise staff's suggested language of Condition 39 to read: "The hotel shall not advertise, market, or promote drink or "happy hour" type of specials. The Zinc Bar/lounge, terrace and skydeck will not be exclusively marketed to the general public as

separate hospitality attractions. Primary advertising and marketing shall be for the hotel, food and special events. Marketing and promotion for the bar and functions shall be secondary.”

The Commissioners agreed to staff’s proposed wording for Condition 40 to read: “The hotel may post drink or food menus or signage outside of the hotel, with the exception of no posting of any drink or “happy hour” type of specials.”

Commissioner Lesser said that he would like for a revised version of the draft Resolution to be brought back to the Commission with the changes that have been discussed.

Commissioner Seville-Jones stated that she would also like to see the language of the final version as has been revised. She indicated that there would be a benefit to people responding back to the Commission at the next hearing regarding the revised language, and she wants to be certain that they have had an opportunity to view the final document. She commented that she is also sensitive to the fact that the findings were not made available to the public until the afternoon before this hearing.

Acting Director Jester said that she feels that the Commission has now heard the input from the neighbors and applicant and has made their decision regarding the language. She said that she would have a concern with bringing the item back for further discussion at another hearing.

Vice-Chairperson Paralusz reopened the public hearing, and asked the applicant and neighbor representative to respond to any concerns they had regarding the Commission’s changes to the Resolution.

**Mr. Zislis** said that he is concerned with the revised language to Condition 15 that would prohibit a DJ on the skydeck. He suggested that the wording of Condition 15 be revised to state “All amplified music and DJ’s for special events shall use the house system only. No ~~DJ’s or~~ live amplified music is permitted.” He said that he is willing to give up having live entertainment on the skydeck, but prohibiting a DJ would eliminate the ability to have weddings on the deck. He commented that he would like the ability to have alcohol service on the deck up to 20 minutes before closing, which could be reviewable by **Mr. Hubbard** or staff to determine if there is an impact.

Commissioner Seville-Jones said that she would not object to allowing a DJ to use the house sound system on the skydeck until 9:00 p.m.

Vice-Chairperson Paralusz indicated that she also would not object to allowing a DJ to use the house system on the skydeck until 9:00 p.m.

**Mr. Zislis** commented that he has a concern that the words “nor disturb the neighboring residents” in the second sentence of Condition 16 is very subjective.

The Commissioners agreed to modify the second sentence of Condition 16 to read: “For any length of time, except for the function referenced in Condition 10, the noise may not dominate the background ambient noise ~~as defined in the MBMC noise regulations~~ nor disturb the surrounding residents as defined in the MBMC noise regulations.”

**Mr. Zislis** suggested incorporating barriers that could be lowered to surround the terrace without enclosing the top portion. He indicated that the top could then be enclosed later if it was necessary.



Commissioner Seville-Jones said that she would support eliminating the requirement that the terrace to be fully enclosed if the applicant can arrive at a design with the top open that would mitigate sound to the same extent as if it were enclosed. The Commission and staff discussed various options for enclosing the terrace and complying with the Behrens noise mitigation study. The consensus was that the enclosure needs to comply with the noise mitigation standards for a fully enclosed terrace, and the top portion of the terrace will not be left open.

Acting Director Jester said that the panels for the terrace could be installed without the top portion of the walls, and it could be fully enclosed later if it is determined that it does not meet the requirements for sound mitigation for a fully enclosed area.

**Mr. Hubbard** commented that they are requesting that the terrace be fully enclosed. He stated that they would not object to DJ's using the house sound system on the skydeck for weddings only. The Commission agreed with this revision to Condition 15. He said that they are requesting alcohol service end at 9:00 p.m. on the skydeck rather than 20 minutes before closing. He commented that he would request that closing hours for the skydeck be restricted to 10:00 p.m. every night of the year including New Years Eve. He commented that the hotel is unique from other establishments in town that are permitted to apply for a Temporary Use Permit to operate until 1:00 a.m. on New Years Eve because of its impact to the neighbors.

**Mr. Zislis** indicated that he would agree to fully enclose the terrace.

Acting Director Jester said that the item could be scheduled for the City Council for their meeting of August 3, 2010, when **Mr. Hubbard** has returned from being out of town.

In response to a question from Commissioner Seville-Jones, **Mr. Hubbard** said that he would prefer that the final document come back before the Commission for a vote when there are four Commissioners present.

**Mr. Zislis** said that he would request that the Commission vote on the issue now and that it be moved forward to the City Council after **Mr. Hubbard** returns to town at the end of July.

**Mr. Zislis** commented that he believes the intent of Condition 32 is that people exit out of the west side of the building after 9:00 p.m. and requested that the intent also be clarified in the language for special events and functions.

Vice-Chairperson Paralusz suggested changing the wording of the first sentence of Condition 32 to read: "West entry-exit- After 9:00 p.m. on Friday, Saturday, Sundays before Memorial Day and Labor Day, New Years Eve, and after 9:00 p.m. for special events and functions, everyone except registered hotel guests and disabled shall use the west door . . ."

Vice Chairperson Paralusz closed the public hearing.

Commissioner Lesser indicated that the Commissioners usually have a more complete document before final approval. He said, however, that he is confident that staff can integrate the changes that have been made to the draft Resolution by the Commissioners. He also pointed out that the final document would be available for review by the public before it is considered by the City Council.

Commissioner Seville-Jones said that she feels like the Commission should have the full document with all of the revisions before final approval. She commented that many changes have been made, and the findings were only available the afternoon of the hearing. She said that she would also welcome any additional participation of the public to the extent that they

may not have received notice of the hearing or have had an opportunity to fully review the material. She indicated that she would also welcome the comments of Commissioner Andreani.

Vice-Chairperson Paralusz indicated that she feels the Commission has come to an agreement on the language of the draft Resolution, and she has confidence that staff will make the appropriate changes. She pointed out that the agenda for the meeting was on the City's website. She also stated that any members of the public who want to provide additional input will have the opportunity before the City Council. She commented that she would like for the Council to review the project rather than just approve it on their consent calendar. She indicated that she feels the Commission has completed their review, and she feels the item is ready to move forward.

Acting Director Jester indicated that an option would be for the item to be brought back to the Commission for final review as a business item rather than as a public hearing.

A motion was MADE and SECONDED (Lesser/Seville-Jones) to direct staff to prepare a revised draft Resolution to be brought back to the Commission for review as a business item at the July 28, 2010, meeting.

AYES: Lesser, Paralusz, Seville-Jones,  
NOES: None.  
ABSENT: Andreani  
ABSTAIN: Chairman Fasola

**E. DIRECTORS ITEMS**

**F. PLANNING COMMISSION ITEMS**

**G. TENTATIVE AGENDA July 14, 2010**

1. "Green" Code Amendments
2. Izaka-Ya, 1133 Highland Avenue- Use Permit Amendment

**H. ADJOURNMENT**

The meeting was adjourned at 12:15 a.m. to Wednesday, July 14, 2010, in the City Council Chambers, City Hall, 1400 Highland Avenue

SARAH BOESCHEN  
Recording Secretary

ATTEST:

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LAURIE JESTER  
Acting Community Development Director