

**CITY OF MANHATTAN BEACH  
[DRAFT] PLANNING COMMISSION  
MINUTES OF REGULAR MEETING  
JANUARY 24, 2018**

(DRAFT)

A Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 24<sup>th</sup> day of January, 2018, at the hour of 6:00 p.m., in the City Council Chambers, at 1400 Highland Avenue, in said City.

**1. ROLL CALL**

Present: Burkhalter, Fournier, Morton, Seville-Jones, Chairperson Apostol  
Absent: None  
Others Present: Anne McIntosh, Director of Community Development  
Laurie Jester, Planning Manager  
Eric Haaland, Associate Planner  
Angelica Ochoa, Associate Planner  
Jason Masters, Assistant Planner  
Erik Zandvliet, Traffic Engineer  
Michael Estrada, Assistant City Attorney  
Rosemary Lackow, Recording Secretary

**2. AUDIENCE PARTICIPATION (3-minute limit) – None**

**3. APPROVAL OF THE MINUTES**

01/24/18-1. Regular meeting – October 25, 2017

It was moved and seconded (Seville-Jones/Morton) to approve the minutes of 10/25/17 with no changes.

Roll Call:

AYES: Burkhalter, Morton, Seville-Jones, Chairperson Apostol  
NOES: None  
ABSENT: None  
ABSTAIN: Fournier

**4. GENERAL BUSINESS**

01/24/18-2 Introduction and Presentation of the Final Environmental Impact Report Analyzing Multiple Office Building Projects Proposed for Both Manhattan Beach and Hermosa Beach, including Projects Located at 305 and 330 South Sepulveda Boulevard in Manhattan Beach (Skechers USA)

Chair Apostol announced the item, and subsequently he and Commissioner Seville-Jones recused themselves from participating in the item due to potential conflicts of interest and they left the chambers.

Community Development Director McIntosh introduced new Commissioner Stewart Fournier and explained he will be acting as Chair just for the first item as he is taking over the position that was vacated when former Vice-Chair Ortmann's resigned and the Chair is recusing. She gave a brief overview of the EIR and timetable for public hearings, emphasizing that this meeting is not required by CEQA.

Commissioner Fournier assumed the Chair and welcomed everyone. Before proceeding he noted the sudden passing of Dr. Lester Silverman, beloved downtown optometrist and community leader, who served on City Commissions such as the PPIC and Library Commission and did tremendous work for the community. The Chair called for a moment of quiet in his memory.

Commissioner Fournier explained that he is familiar with the Skechers project. He advised further that this is not a public hearing but rather a presentation geared toward helping the Commission and public

understand the EIR that has been prepared pursuant to CEQA. Public comment is welcomed in the interest of fact-finding.

Assistant City Attorney Estrada emphasized that discussion should relate only to the EIR presentation.

Associate Planner Eric Haaland noted several late correspondences received and gave an oral report, introducing the presentation. He gave a brief background and description of the project, what is being proposed in both Hermosa Beach and Manhattan Beach as well as the history of the project proposal which in this city, requires a Use Permit and a Use Permit Amendment. He noted that a public hearing will be scheduled before the Planning Commission on February 14. The recommended action of the Commission tonight is to receive the presentation, ask questions, and accept comments.

#### EIR Consultant Presentation

**Joe Power**, Rincon Consultants, is the EIR consultant under contract with the City of Hermosa Beach. Hermosa Beach is the “Lead Agency” and Manhattan Beach is a “Responsible Agency” under CEQA. Key topics covered by Mr. Power included: CEQA Purposes and Joint EIR process; Project Sites and Overview of Entitlements Requested; EIR significant impacts and issues affecting Manhattan Beach (e.g. noise, loading, traffic); Mitigations; Project Alternatives; Public Comment letters (15 total) and Corrections to the EIR. Mr. Power explained that the EIR at this point is considered a “Hearing Final EIR” but ultimately a “Final EIR-FEIR” will be completed that may include errata’s after the hearings.

**Mr. Power** went over in detail two areas of significant unavoidable impacts (noise, transportation/traffic). He noted the analysis approach was to do a site-specific review of each of the three project components, with a focus on impacts to neighboring properties, including both temporary construction impacts as well as long term operational impacts. The project components were evaluated in combination with other planned and pending developments, cumulatively.

He explained how a conclusion is reached that a significant traffic impact will occur using baseline and future conditions with the project. A total of 3 intersections are projected to have “significant impacts” but the recommended package of mitigations for traffic will be a combination of physical improvements, as well as operational (e.g. Transportation Demand Management program), that focus more on overall traffic flow, not on individual intersections. He described the loading and trash pickup that would occur on Boundary Place.

The first hearing will be in Hermosa Beach on their entitlements next week. In advance of the hearings, proposed draft findings will be prepared for consideration by the planning commissions in the hearings for both cities. Mr. Power displayed photo simulations and elevation drawings of the project components. In explaining project alternatives, Mr. Power noted that feasibility for an alternative has to be looked at based on the stated project description and its objectives.

#### Commission Inquiries

Commissioner Fournier invited questions from the Commission. The following information was exchanged:

Q. What is being loaded on the loading docks on Boundary Place in Manhattan Beach and what will be the impact based on the dock location? (Morton)

A. The assumption is that it will be mainly shoes and normal office supply deliveries but no significant impact is expected because the trucks will come off SR 1 and straight into the building to do loading and come out straight back to SR 1 without needing to go west into the residential area. The no significant impact conclusion is based on proposed left turn restrictions, and the fact that a signal is not being recommended on Duncan. (Power)

Development Director McIntosh noted that this type of issue should be footnoted for discussion in the public hearings, as it also relates to the project operation under the Use Permits.

Q. Is the arrow shown on the floor plans for 350 Sepulveda inaccurate? (Burkhalter)

A. Yes, this is inaccurate, and will be noted as an “errata” in the EIR and confirmed that both the loading dock and trash pickup will be on the south side of the building on Boundary Place. (Power)

Q. Why is Hermosa the Lead Agency? Is this a common protocol? (Fournier)

A. Because impacts do not recognize boundaries, it made sense to have a single EIR, and it also made sense for Hermosa to be the lead because the project originated solely in that city before expanded to Manhattan. Further the largest component (the Design Center) will be in Hermosa. That said, no project decisions are made in the EIR; although impacts are common to both, each city will make its own decision through the public hearing process. The preparation of a dual EIR and the process being followed is common in other cities under similar circumstances (McIntosh).

Q. What public notification was done in Manhattan Beach of the EIR, and scoping meetings? (Fournier)

A. A combination of individual and published noticing was done. Hermosa Beach notified individual owners within a radius of 1,000 feet from the overall project, while Manhattan Beach published a newspaper ad for the Manhattan Beach general public. (Haaland). This arrangement is contemplated by CEQA and is commonly followed; both cities must certify the EIR and must make decisions on the respective applications, making findings applicable to each city. The staff from both cities, however coordinated on traffic analysis and impact mitigation. (Assistant City Attorney Estrada/McIntosh)

Q. Why are mitigations for signals at the three intersections on SR 1 as well as at Manhattan Beach Boulevard) not being recommended? (Fournier)

A. Upon being studied by Fehr and Peers (traffic consultant) and reviewed by the City of Manhattan Beach Traffic Engineer, which included micro-simulations for both cities, it was decided that an overall package that looked at traffic flow would be a better solution and which included a combination of physical improvements as well as implementing a TDM program (Power).

Q. Please confirm accuracy of the charts on pages 294 and 298 – have they been changed? (Fournier).

A. Page 294 charts didn't change because that related to existing conditions. And on page 298 - these are for neighborhood street segments, and nothing for these has changed. (Power),

Q. Explain Page 301, Table 4-12 – this is confusing as to the projections for traffic. (Fournier)

A. What's being shown is the future condition in 2020 (when project would be built) without project (baseline) and then added into it is the project traffic. The difference between these is the project traffic impact. It was noted also that with the packet of proposed mitigations, the target traffic trip reduction is increased from 5% to 7% (Power)

Q. Please clarify "lag time" between the start of the project in the two cities.

A. The applicant doesn't think the projects will be starting at the same time, it is now expected that the lag time has been shortened to 3 months.

Q. Please clarify lane closures for excavation trucks for the project in Manhattan Beach. (Fournier)

A. The work will be done daily before peak traffic hours (before 3 pm). Also the trucks will be radio controlled so only those trucks that can fit adjoining to the project will be present at a time. (Power/Zandvliet)

Q. There will be a lot of shoring - will there be extreme pounding when steel beams are being installed? (Fournier)

A. As Manhattan Beach does not allow "pile driving", only drilling, it is assumed that such noise would not occur. (McIntosh/Power)

Q. How many employees are there in the existing Skechers building? (Fournier)

A. There are 250 employees in the existing 330 Sepulveda building. (Lisa Kranitz, Skechers Attorney)

Q. As to views, has there been a line-of-sight analysis from Chabela Drive to determine if views would be impacted for any future second stories on that street?

A. Generally views impacts are primarily a CEQA issue for public views so this would not be a significant impact under CEQA. (Power)

## PUBLIC COMMENTS

**Jacqueline Zuanich-Ferrell**, 1018 Duncan Avenue, expressed concern regarding a proposed new driveway on Duncan Avenue, noting that the residential street beyond the project to the west has no sidewalk and she expects there will be a large number of employees exiting the driveway at the end of the day, which may

endanger children and pedestrians. Can a physical barrier be installed to enhance safety?

**Julie Nemeth**, Longfellow and Duncan Place, noted concerns about trucks (deliveries and trash) on Boundary Place, particularly whether there is enough maneuvering room for the trucks for these activities due to the narrowness of the alley. She feels the southbound SR1 turn to westbound Duncan Place is very tight and there may also be traffic safety impacts to the preschool;

**Carol Ecker**, resident at Duncan/Dianthus corner, was also concerned about the blind corner at SR1/Duncan Place and inquired, out of concern for pedestrian safety, whether existing signs “No 3-ton Trucks” will be effectively enforced or monitored.

There being no further persons wishing to speak, Commissioner Fournier closed public comment.

#### STAFF DIRECTION

Community Development Director McIntosh noted that, in advance of the February 14 public hearing, staff will research issues and inquiries that have been raised and such will be addressed in the Staff Report for the hearing.

Commissioner Fournier called for a brief recess at 7:15 pm; the meeting reconvened at 7:20 p.m. Chairperson Apostol and Commissioner Seville-Jones rejoined the Commission.

### 5. PUBLIC HEARING

- 01/24/18-3. Consideration of a Master Use Permit Amendment to Modify the Existing Uses Located at 451 Manhattan Beach Boulevard, Metlox. LLC)

Chair Apostol resumed the Chair, announced the public hearing and invited staff to present the staff report.

Associate Planner Angelica Ochoa gave an oral report with accompanying slides that focused on: the project description and application, a modification of a multiple use “Master Use Permit- MUP”. Ms. Ochoa described 4 changes requested for possible future tenants: 1) addition of one new restaurant to an existing restaurant space to total three restaurants; 2) change in use of second story hair salon (personal service) to add restaurant space for Petros (indoor and outdoor dining); 3) change from approved retail (Waterleaf – 2 spaces) from restaurant use (indoor and outdoor dining), including conversion of Waterleaf Morningside Drive space from retail to service commercial space of bank, yoga studio or hair salon; and 4) to add a provision in the MUP that would allow the City Manager to administratively approve future modifications to conditions 25 through 32 of the governing Council approved resolution. Ms. Ochoa after reviewing the findings that must be made concluded with the staff recommendation: to conduct the public hearing review of the Master Use Permit amendment and direct staff to prepare a Resolution that would modify new conditions as appropriate. Specifically, modify existing Resolution No. 5770 to allow: More than the existing two full service restaurants (Nicks and Petros) and increase the maximum restaurant square footage; and modification of the existing personal service use on the second floor to provide for a restaurant area to be integrated with Petros restaurant with an outdoor patio; and lastly to allow the Waterleaf space (containing two tenant spaces) to be converted to restaurant uses with an outdoor patio, or one space adjacent to Morningside Drive to personal service or personal improvement service use. The Staff recommendation does not include granting the applicant’s request for a bank on Morningside in the Waterleaf space or to give the City Manager authority to approve future use changes administratively in lieu of processing use permit amendments.

Staff responded to questions as follows: 1) Staff is not aware of any other Use Permit that allows the City Manager to administratively approve use changes regulated by the Permit and no noise analysis was done by the applicant however Staff believes that new noise impacts could be mitigated by imposing appropriate conditions, such as limiting hours of operation, events, amplified sound and monitoring complaints (Seville-Jones); While Staff believes that a bank use would not be consistent with the approved Downtown Specific Plan (DTSP), Staff believes that to have outdoor dining at the second level would be consistent with the intent of the DTSP based on public comments received during the DTSP and because of Metlox’s unusual location and site characteristics and because the second floor dining patio in question would not be oriented towards residential uses or a major public street. In addition, the DTSP has not yet been certified by the Coastal Commission and as such cannot be enforced by the City (Morton); additional conditions limiting the requested upper outdoor dining patios are needed, even though the special site characteristic warrant their approval

because there are some kinds of uses on such patios that are assumed to be undesirable, such as extremely late hour closing such as 2:00 a.m. and having live music or entertainment (Seville-Jones); it was clarified that 2<sup>nd</sup> floor outdoor dining is prohibited outright (not allowed through a Use Permit) but only in the DTSP area and this request was filed prior to the final approval by Council of the DTSP (Apostol).

In a brief discussion regarding the DTSP, Commissioner Morton noted that he interprets that this request for second story outdoor dining is inconsistent with the Council approved DTSP and doesn't feel he has the authority to approve that portion of this request. Commissioner Apostol noted that while he agrees with Commissioner Morton's interpretation, he also doesn't recall that this situation was contemplated during the DTSP discussion, where an outdoor second story dining patio faces inward to a private plaza away from residential uses.

Chair Apostol invited the applicant to address the Commission. Speaking limits were established at 10 minutes for the applicant and 3 minutes for all other speakers.

**Jonathon Tolkin**, applicant and managing member of Metlox, LLC and developer of the project, noted the project chronology (selected as development partner in 1998; approved MUP and Ground Lease 2002 and operation started 2005), so the center is now 12 years old. He believes the goal of the MUP and lease was to have flexibility in the permitted uses to ensure its appeal and vibrancy over time with a successful city/developer partnership. He believes the Ground Lease provides for change in the permitted uses. But other factors that call for flexibility are the evolution in retail both with public taste and consumption patterns and experiences at the plaza in terms of tenant space turnovers and vacancies. One space for example, had been vacant for 14 months and given the time it takes to process permit modifications, he believes that having flexibility would help to avoid such long periods of vacancy. Flexibility is warranted also because the new uses requested would be consistent with the zoning code. In the case of Nick's, this would be a response to the public demand for smaller, more intimate dining. In closing he asked that the proposed amendments be accommodated in the MUP to administratively allow use changes (by the City Manager or Director of Community Development) and he is in agreement that any conditions can be added that would control undesirable conditions.

#### PUBLIC HEARING

Chair Apostol opened the public hearing, reminding that speakers are limited to 3 minutes.

**Nate Hubbard**, resident, at the corner of 13<sup>th</sup> and Ardmore, supports changing space to restaurant, but does not support dining patios outdoor at the second story due to possible noise impacts.

**Martha Andreani**, downtown resident, urged that the Commission not approve 1) outdoor second floor/rooftop dining in that this would be against the DTSP, agreed on collaboratively and forwarded to the Coastal Commission; and not approve 2) changing the use permit to allow the City Manager to approve use changes that otherwise would require a public hearing. She does support flexibility for changing retail to restaurant space but with public input.

**Karol Wahlberg**, resident, is strongly against and shocked at the idea of allowing second story outdoor dining especially given the history of noise issues at the plaza's hotel. She believes that the small town local feel is now lost. She also is strongly against City Manager authority to approve uses.

**Don McPherson**, 1014 1<sup>st</sup> Street, is not in support of the application, contending that this application, per CEQA is not categorically exempt in that it is not a "non-negligible" change to the use permit and he thinks the concept of allowing the City Manager authority in modifying the Permit may be in violation to the Municipal Code.

**William Victor**, resident, does not support the application in that he disagrees that the City Manager should be given the authority to make land use decisions, and he does not believe that the request is consistent with the DTSP.

**Jonathan Tolkin**, in rebuttal, clarified that the proposal is not to have rooftop outdoor dining, and the DTSP does not prohibit outdoor dining but rather at the second floor. He reiterated that the application was submitted prior to the approval of the DTSP and the Plan is not yet fully approved. He noted that any outdoor use, not just

dining, has the potential to result in noise or other nuisances and doesn't believe that the elevation of a dining patio is the deciding factor in whether noise impacts will result. To preclude nuisances from developing, conditions can be added to the MUP; and should a problem still arise, then the right to have an outdoor dining use can be pulled. Concluding, the ability to have second story outdoor dining is worthwhile and nuisances can be guarded against.

Chair Apostol closed the public hearing and invited the Commission to discuss the application.

#### COMMISSION DISCUSSION

Commissioner Morton, while broadly supporting the applicant's goals and acknowledging that some commercial areas need more restraints, he firmly believes that the requests for second story outdoor dining patios and a bank are not allowed in the DTSP, and would not approve those uses on that basis. He notes the Police Department's concerns and also does not support the request to grant authority to the City Manager. Other than those three aspects, he supports the application.

Commissioner Fournier noted the success of Metlox so far but believes the central concern remains which is the potential for noise impacts to surrounding residents. Perhaps an acoustical analysis might be able to suggest some physical mitigations because, even though the patios may face inward to the open plaza, and there are buildings that may act as buffers, there may be reverberation off the buildings towards homes. He does not support the grant of administrative authority to the City Manager to approve use changes.

Commissioner Seville-Jones emphasized that although the applicant applied prior to the City Council approval of the DTSP, the Plan approved by Council represents what the community wants. She expressed that she: does not advocate going down a path of allowing second floor outdoor dining and then having to find ways to abate problems; is strongly against the City Manager having new authority to approve changes in uses; agrees with fellow Commissioners that there not be a bank, consistent with the DTSP; regarding splitting restaurants, she is concerned that this would be an intensification and require more parking, particularly that impacts may occur if several tenants change all at once. She would rather see changes happen incrementally, maybe only allow one space to convert. She inquired as to whether the existing MUP limits alcohol service in the restaurants.

Upon being informed by Director McIntosh that, under the current MUP all restaurants have the right to serve alcohol, subject to securing an ABC license, Commissioner Seville-Jones stated that she might be interested in adding a condition to this application that would tweak the alcohol regulation, such as placing a cap on the square footage of restaurant use that can serve alcohol. This might alleviate her concerns about increasing restaurant uses.

Director McIntosh suggested that, if this is the consensus of the Commission, Staff could come back with alternatives for regulating alcohol service within the Center's restaurants that could be applied as new project conditions.

In response to an inquiries from Commissioner Burkhalter: 1) Director McIntosh stated that a retail use outside the Metlox boundaries could not convert to a restaurant without going through the use permit approval process; and 2) Director McIntosh explained that zoning rules in effect when a project application is "deemed complete" apply and Assistant City Attorney Estrada elaborated further that, after the deemed complete point is passed, under the doctrine of vested rights, if the zoning rules are changed, then the owner must also perform "substantial work" and incur substantial expenses in order to maintain the right to build out and operate the project under the old rules.

Commissioner Burkhalter expressed that: 1) regarding the "rooftop dining": he believes that there are acoustical engineers who can recommend mitigation measures and, while these may be feasible, solutions can get very technical. He doesn't think the Commission can give good guidance to staff on that, and even if such measures were to be identified he doubts that this would really change the public perception about Metlox and its potential for noise problems; 2) regarding the bank notwithstanding the DTSP, he doesn't believe it would synergistically work well for Metlox; 3) regarding other uses: he recognizes that retail centers are moving more toward food (restaurant) uses and this is an economic reality; he recognizes that flexibility is needed and must be responsibly managed and that was a key element in developing Metlox.

Chair Apostol expressed that: 1) regarding more restaurants: times change and flexibility is needed and if this

doesn't happen, the center will suffer; he is not as much concerned that the Beehive and Waterleaf spaces may convert at the same time to restaurants - based on his experience, he would leave the conversion timing to the operators; 2) regarding outdoor dining: he has a personal preference for outdoor dining, but he believes that in the DTSP this issue was worked extensively and he does not believe he can support this request in that it goes against the spirit of that Plan. Should the City Council want to consider granting an exception to this site in the future he would support that but based on the existing Plan he cannot support the second floor outdoor dining; regarding granting more authority to staff: he opposes this idea believes that the change in uses is something that the public would want to discuss.

The Chair invited additional comments: Commissioner Seville-Jones stated that she hopes that Council will not make an exception with the outdoor dining prohibition in the DTSP, because in the past uses were approved (e.g. the hotel pool and courtyard) and though noise was expected to be buffered, it still became a problem. And, in giving direction tonight, she is not sure she can support an amendment that does not include a condition that requires transitional conversion to more restaurants.

Commissioner Morton acknowledged Commissioner Seville-Jones concerns but agrees with the Chair and does not believe it necessary to impose a transitional approach. He supports the application with the exception of the items that he feels are inconsistent with the Council approved DTSP (bank conversion and allowance for second floor outdoor dining) and the request to grant authority for the City Manager to approve changes in the uses in the center.

Director McIntosh suggested that the staff could prepare for the Commission's consideration a chart that shows the maximum square footage that could be allocated to specific categories of uses (financial institutions not included) and require that there be a mix of these uses at all times, but not necessarily limit the square footage or locations. This could act as a guide and while providing flexibility, but not losing a mix of desired uses.

The consensus (excepting Commissioner Seville-Jones who felt this may be a good tool to manage the site) was that the suggested guide was not desired in the MUP because the owner needs more flexibility.

Commissioner Seville feels very uneasy about the intensification of this center, given parking concerns, and questioned why the urgency to make such a big change and she would probably vote "no" without knowing more about impacts to parking while doubling the amount of restaurant space permitted.

#### COMMISSION ACTION

A motion was made (Morton/Burkhalter) to adopt the staff recommendation with the exception of not allowing outdoor dining on the second floor dining. The effect of the motion was clarified to permit: modifications for the two full service restaurants (Nicks and Petros) to allow more than two restaurants and an increase in overall restaurant square footage; conversion of retail use (Waterleaf/Beehive) to restaurant, personal service or personal improvement use; and modification of the personal service use (Kasai Hair Salon) to restaurant associated with Petros; and that no restaurant would be allowed to have an outdoor dining patio on the second floor and no portion of the existing Waterleaf retail space could be converted to service commercial, such as a bank, and the request for the MUP to include a provision that would allow the City Manager or other staff member to have authority to approve use changes, is not approved.

Commissioner Fournier stated he felt it was too cumbersome to require the owner to come before the Commission with every restaurant conversion and he would like to see an acoustic study and possible noise mitigations. Planning Manager Jester explained that this project is within the DTSP area and, and after that Plan has final Coastal Commission approval, unless a restaurant had an upper level outdoor dining patio that was "grandfathered in" no tenant could request approval of such - the DTSP would need to be amended with additional application to the Coastal Commission.

Assistant City Attorney clarified that the effect of the motion is that this would give direction to staff to prepare a Resolution reflecting the specific modifications to the site MUP regarding approved uses in the center which can be fine-tuned prior to being adopted.

Roll Call:

AYES: Burkhalter, Fournier, Morton, Chairperson Apostol  
NOES: Seville-Jones  
ABSENT: None

ABSTAIN: None

01/24/18-4. Proposed Amendments to the Use Permit for the 900 Club for a Change in Hours of Operation and Changes to the Entertainment Permit Requirements, for an Existing Restaurant/Bar at 900 Manhattan Avenue (900 Club and Downstairs Bar)

Chair Apostol announced the public hearing and invited staff to present the staff report.

Director McIntosh advised that the numbering of the Staff Report should be 1-26, not 1-268 pages and she noted late comments received and advised that the Commissioners disclose their receipt of materials and reading or viewing of such, including photos, emails, video clips, etc. All Commissioners disclosed their receipt of such and that they looked at or read all items.

Assistant Jason Masters gave the Staff Report with aid of slides. The topics covered included: the project site details, neighboring and nearby uses, use permit history and City Council approval (Res. 14-0063 and COA's), proposed amendments to the Use Permit, public notification and comments received and the Staff recommendation to: conduct the public hearing, review the proposed amendments and direct Staff to prepare a Resolution for review and approval at a future meeting.

Chair Apostol invited the Commission to ask questions of staff.

In response to Commission questions Assistant Planner Masters informed that: **1)** Staff is not clear on the number of Entertainment Events that have been held at the 900 Club since the last Use Permit (UP) approval because required notification has not occurred and recommends that the Commission ask the applicant to explain why an increase from 18-24 annually for such events should be granted (Morton); **2)** Staff recommends that notification be required to nearby residents and City departments including the MBPD Watch Commander. The PD recommendation is that there be no changes in the conditions and obligations of the business but the planning staff advises that the PD input should be taken to mean not so much that it is recommending **against** the application, as much as they are not recommending **for** it. Staff advises that the Commission look at all aspects of the operation, Police safety as well as land use related issues, and then weigh all input (Morton); **3)** there are a few other restaurants in the downtown that are allowed to stay open till 2:00 a.m. (Arthur J's, Ercole's, Hennessey's, MB Pizzeria, Sharks Cove and Shellback) but the 900 Club has never had an explicit Use Permit allowed closing time as late as 2:00 a.m. (only as late as 1:30 a.m.) – rather in 2014 the Use Permit had a condition that established a time limit for a bar “last call”. The applicant is now asking that “last call” be allowed as late as 1:30 not 12:30 a.m. (Fournier); **4)** since land use rights “run with the land” all of the existing businesses mentioned with late closing hours are older. The Planning Commission has not approved any UPs in the last 5-10 years with a 2:00 a.m. closing and only one (Shark's Cove) in the last 20 years (Seville-Jones).

There being no further questions, Chair Apostol invited the applicant to address the Commission.

**Albro Lundy**, attorney representing the 900 Club owner, provided some background and emphasized that their request is to get back their full operating hours that were lost in the 2014 review, and their original entitlement dates back to 1995. They have operated with the assumption that if they installed all mitigation measures (which costed \$73,000) and addressed complaint issues - that longer hours would again be possible. He also emphasized that the business is a private club and its clientele is mainly local and many are families and at the 2015 One-Year Use Permit review there was no opposing public input. He acknowledged that noise can escape if windows or a door inadvertently is opened so this can be an issue but this has happened on very few occasions.

**Dave Rohrbacher**, business owner/operator, vows to try every day to make his business a good member of the community. He feels that he has made significant progress and his business provides “a little bit of heaven” for its 642 members fitting the demographics of 40 – 80 years old.

**Mr. Rohrbacher** fielded questions from the Commission.

**Mr. Rohrbacher** assumed responsibility for not communicating with the City as strictly required, explaining that he thought he only needed to notify the City when live entertainment was provided for groups with greater than 50 attending. The limit of 18 Entertainment Events imposed in 2014 was a decrease from 150 previously and so at this time they would like to increase to 24 Entertainment Events. He clarified that within the last 2



years, they have had about 18 Entertainment Events per year. He had misunderstood that if he had live entertainment typically for less than 40 people that that would be incidental to the “club” operation and typically the club operation has minimal music like on Friday’s for a couple of hours. He has found that many neighbors do not want to have him knock on their door to notify of something so minimal. Previously, when 150 Events were allowed, they were actually having about 24 per year so this is what they want to get back as being permitted in the Use Permit. Where he may have become indifferent is when he had light entertainment such as acoustic music and with 40 or fewer persons, the event was more just like “a night at 900”.

At the Commission’s request, Director McIntosh provided information as to the definition of an Entertainment Permit noting that there are 2 categories: “Special events” (gatherings of more than 50 persons with a contract for exclusive use of the second floor) and “Entertainment” where entertainment such as music, performers or amplified sound whether or not live or recorded (but not background recorded music) is provided and there could be more or less than 50 persons attending. Currently the 900 Club Use Permit allows 6 “Special Event” and 18 “Entertainment Events”. Both require the owner to notify the City as well as the neighbors. Assistant Planner Masters provided more detailed clarifications. An example of a Special Event would be where a party has rented the Club for a Bar Mitzvah or wedding where more than 50 are attending and they may or may not provide live or other entertainment and as stated, the 900 Club currently can have 6 of these per year. However an Entertainment Event (18/year allowed) could have less than 50 people but with entertainment (broadly defined in the Muni Code) such as a comedian, a band, or a deejay, however 10 people present with a radio playing is NOT an Entertainment Event.

To further clarify, Mr. Masters explained that in a situation where there are 10 persons present, but the radio is cranked way up, this still would qualify as “Entertainment Event” subject to enforcement of the number of allowed Events.

There being no further questions of staff, Chair Apostol opened the public hearing and invited input noting that there is a 3-minute speaking limit.

#### PUBLIC HEARING

The following testified **in favor** of granting the UP amendment:

**Chad Eppeneer**, 9<sup>th</sup> and Bayview, club member and living Downtown he expects noises and has two young kids, and he believes 900 should be able get more hours back. He is also the block captain.

**Denise Eppeneer (spelling?)**, same address, echoed Chad’s supportive comments.

**Brad Sherman**, neighbor of 900 Club and the previous speakers, states that the business has a “family atmosphere” and is an important part of the community.

**Tony Barberi**, resides at 729 33<sup>rd</sup> Street now, but for 12 years lived in the 400 block of 9<sup>th</sup> Street, are Club members, have five children and enjoy being able to get away to the club and enjoy a “date night”; noting it is not typically packed, nor loud.

**Holly Barberi**, who also resides at 729 33<sup>rd</sup> Street, added that they strongly support giving back 3 hours per week to the Club and noted that when they attend at a late hour, they always use the front door on Manhattan Avenue. It is quiet and there are always friends you know there.

**Michael Zislis**, business owner and resident, has known the owner for 27 years, and believes that sound mitigation can be effective, and this business has done all required mitigations and deserves the chance to regain their lost hours, which is really minimal (3 total) and the current “last call” condition is unusually stringent and difficult especially as it’s so difficult to operate a business.

**Chandra Shaw**, 512 4<sup>th</sup> Street, past president of Downtown Business and Professional Association when 900 Club went through the Use Permit Revocation process in 2014, and is also an owner of a downtown business. She believes the Club is a strong member of the community, they invested a lot in mitigation, have a clean record and urges that it be allowed to regain lost operating hours.

**Chris Page**, 900 Highland Ave. and the youngest 900 Club member, is also a local business owner, believes that the request is a minimal increase and the use is worth supporting. Crime is not an issue with this

application.

**Rick Buckley**, 228 8<sup>th</sup> Street, believes there is a lot of confusion in understanding what is “Live Entertainment” vs. Special Events, and what needs to be regulated.

**David Bohnert**, 621 MB Boulevard, is in the entertainment business and is a Club member who brings clients to the Club and thinks the owner is doing a great job, it is a family place.

**Dawn Leffler**, employee for 12 years at 900 Club, and city resident is speaking for all of the 18 staff; stated that having to have such an early last call negatively impacts the staff as revenue is lost.

The following persons spoke regarding **specific issues or against** the application:

**Martha Andreani**, life-long downtown resident, believes some “clean up” is needed in the Use Permit, and it should be recognized that there are two businesses - the upstairs club which is private and the downstairs bar which is open to the public. She lives within 500 feet of the Club and has heard noise mainly coming from the downstairs bar. She opposes the extension of the regular operation hours and supports only extension in the number of special and entertainment events because this location is at the south edge of the downtown commercial district and very close to residential.

**Don McPherson**, 1014 1<sup>st</sup> Street, supports removing the “last call” provision and also believes that staff has erroneously classified this application under CEQA as a “Class I” categorical exemption in that this is a “non-negligible” project and therefore requires CEQA analysis. He also believes it a significant fact that the City has not approved a new bar since 1990 and he urges that the Commission not open up the bar operating hours as this may serve as an invitation to other new alcohol service uses.

**William Victor**, resident and owner of property within 500 feet of the Club, believes that the staff report contains errors and believes that even though noise buffers have been installed, the windows are still able to be opened which can cause noise to escape. The community does not want party houses or businesses, it is a bad noisy place and believes that the input from the Police should be interpreted as opposed to the application.

**Rosanna Libertucci**, 200 block of 9<sup>th</sup>, cited a neighbor’s comments that legitimate noise complaints from neighbors have been made and gone unresolved, and as of today she received information from the Police Department that it has responded to 11 noise complaints at the Club coming from the downstairs bar. She cited a neighbor’s video clip that has been submitted. She has a good relationship in working with the owner, but the downstairs remains a problem in that the door is often open and often people congregate there. The upstairs and back door has seen a big improvement.

**Mark Tuccinardi**, 55 year resident, has experience operating restaurant with nightclubs and entertainment and is not opposed to the owner making a profit but believes the Club is in violation of its CUP by not filing notifications; agrees that the downstairs bar is the main problem and cited 7 letters including from a full block away that oppose the application and video clip evidence. He indicated comments that as soon as the Police leave the front door on Manhattan Avenue is reopened. The downstairs is the main nuisance source at this time, the upstairs if OK.

Seeing no one wishing to speak, Chair Apostol closed the public hearing and invited the Commission to discuss the application.

#### COMMISSION DISCUSSION

**Commissioner Seville-Jones** led off, noting that one important issue is that the upstairs is very different from downstairs which seems to be the source of many problems.

Staff informed that the Use Permit can contain separate operational requirements for both areas but currently the operational conditions including hours pertain to the entire building and business.

**Commissioner Fournier** recalled the 2014 hearing which he attended and was saddened by its divisiveness and the lack of follow-up since. He believes the Police input is very important and feels the Watch Commander is very experienced but doesn’t want to fight civil battles. He is concerned about inaccuracies and that he feels residents seem afraid to lodge complaints and he questions whether conditions have really

improved since 2014. Most disturbing is hearing that after lodging a complaint there is no response.

**Commissioner Seville-Jones** agrees that there has been significant testimony about the uses being different upstairs vs. downstairs and she has also heard that the owner has done a better job but she feels it is necessary to address the downstairs area issues (not sure what specific solutions are) and also is concerned that extending the operating hours simply to 2:00 a.m. would set a risky precedent. She advocates keeping the 1:00 a.m. closing but deleting the “last call” provision for upstairs.

**Commissioner Burkhalter** would like to see the “last call” provision eliminated and is struck by the vitriol expressed for the downstairs bar. He would like to explore having different requirements for the upstairs/downstairs and believes that mitigations would at this point more likely be operational not physical changes.

**Commissioner Morton** stated that Mr. Rohrbacher is a solid member of the community. There does not appear to be support for extending the hours, per se, but he would be in favor of clarifying and addressing the entertainment and obligations for the business more clearly, and he has concern regarding the input from the Police. The Club needs to notify all of entertainment and events. He would like to explore restoring some use but without extending the hours beyond what it has been historically – keep the hours the same as before but apply a more even standard with undue restrictions.

**Chair Apostol** thanked everyone who participated and can appreciation all the comments with sensitivity to the residents who have problems. He believes that the decision on this should strive to be fair and equal for all. He believes it a good point that the existing 2:00 a.m. closings for alcohol establishments were set 20 years ago; favors repealing the “last call” provision in that he believes such a limit is best left to the proprietor and because he believes that the owner had made a very positive effort there should be consideration for restoring the hours of operation to what it was in 2014.

Staff clarified: 1) if a site has significant problems, an Entertainment or Special Event Permit can be denied administratively – the Use Permit doesn’t guarantee it will be approved; 2) Prior to 2014, like in 1994 they needed only approval for Special Events in accordance with the standard Municipal Code regulations that regulate entertainment. After 2014 special neighbor notification was required to the Police, Community Development Department and neighbors within a prescribed distance and a specific number events were allowed; 3) all restrictions in the 2014 Use Permit apply to the entire building, but the special entertainment provisions apply only upstairs (dancing, e.g. is not allowed downstairs).

**Commissioner Seville-Jones** feels strongly that the downstairs has not been addressed and she suggests that perhaps the residents and the owner could meet and discuss what can be done to improve the downstairs. She feels that this helped in the case of the Shade Hotel and can here too as long as folks meet in good faith to come up with solutions.

Director McIntosh advised that it would be reasonable to continue this item to allow the residents and owner to meet to discuss issues with the downstairs. After further discussion she suggested deleting the last sentence in condition one, Resolution 14-0063 pertaining to the “last call” provision.

Commissioner Morton stated he supports allowing up to 24 events and removing the “last call” provision.

#### COMMISSION ACTION

It was moved and seconded (Morton/Apostol) to direct Staff to prepare a revised Use Permit Resolution that would revise the conditions in existing Resolution 14-0063 including deletion of the last sentence in condition one pertaining to “last call” and that would provide for an increase in the number of permitted events with entertainment from 18 to 24, as appropriate in the conditions.

Discussion followed on the motion.

Commissioner Seville-Jones stated she would vote “no” on the motion because it is missing an opportunity for neighbors and the owner to come up with an agreed on solution for controlling the downstairs. Commissioner Fournier would like to see the owner (who now owns the downstairs while he didn’t in 2014) come up with some way of addressing the downstairs and have the action of the Commission continued.

Director McIntosh pointed out that as long as the item is being continued, then further revisions to the resolution are possible both to the upstairs and downstairs. It is recommended however that if more information or testimony is needed then, it would be appropriate to reopen the public hearing to allow more testimony and additional noticing may be required. This would also not preclude more discussion and conditions for the upstairs.

There was a call for the question and a vote was taken on the pending motion as originally stated:

Roll Call:

AYES: Morton, Chairperson Apostol  
NOES: Burkhalter, Fournier, Seville-Jones  
ABSENT: None  
ABSTAIN: None

The motion having failed, a new motion was made and seconded (Seville-Jones/Fournier) to reopen and continue the public hearing to February 28<sup>th</sup> and with direction to Staff to work with the applicant who is to work with the neighbors, to explore possible solutions for addressing impacts emanating from the downstairs as well as upstairs and that Staff to bring back a draft Resolution that would delete the provision for “last call” as in condition one of Resolution 14-0063 and expand the number of events with entertainment from 18 to 24.

Roll Call:

AYES: Burkhalter, Fournier, Morton, Seville-Jones, Chairperson Apostol  
NOES: None  
ABSENT: None  
ABSTAIN: None

Director McIntosh announced that the motion has carried.

5. **DIRECTOR'S ITEMS** – None
6. **PLANNING COMMISSION ITEMS** – None
7. **TENTATIVE AGENDA** – February 14, 2018
  - a. Skechers Public Hearing
  - b. Metlox Resolution
8. **ADJOURNMENT** – The meeting was adjourned at 10:36 P.M. to Wednesday, February 14, 2018 at 6:00 P.M. in the City Council Chambers, City Hall, 1400 Highland Avenue.

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ROSEMARY LACKOW  
Recording Secretary

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GEORGE APOSTOL  
Chairperson

ATTEST:

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ANNE MCINTOSH  
Community Development Director