

**CITY OF MANHATTAN BEACH
[DRAFT] PLANNING COMMISSION
MINUTES OF REGULAR MEETING
FEBRUARY 28, 2018**

(DRAFT)

A Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 28th day of February, 2018, at the hour of 6:01 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 (20 min late)
Laurie Jester, Planning Manager
Ted Faturos, Assistant Planner
Jason Masters, Assistant Planner
Andrew Contreras, Assistant City Attorney
Rosemary Lackow, Recording Secretary

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

3. APPROVAL OF THE MINUTES – Continued to March 14, 2018.

02/28/18-1. Regular meeting – February 14, 2018

4. PUBLIC HEARING

02/28/18-2. Consideration of Amendments to the Municipal Code and Local Coastal Program (LCP)
Related to Residential Condominium Standards

Chair Apostol announced the public hearing. **Planning Manager Laurie Jester** gave introductory remarks, explaining that the applicant is Chris Carey, an owner of an existing “two on a lot” detached condominium that he wants to improve. Per code, staff referred this request to the City Council which, on October 16, 2016, directed the Planning Commission to schedule a public hearing to consider amending the Municipal Code and Local Coastal Program (LCP). The regulations being considered are residential condominium standards that require that condominiums consisting of 2 units on a single lot be of approximately the same size and age, and other related regulations. Since application submittal, staff has spent much time researching the background to the existing rules. Procedurally, the Commission will conduct a public hearing, accept input and adopt a Resolution, recommending changes to the code which ultimately will be, upon approval of the City Council, taking on the form of an Ordinance.

Assistant Planner Ted Faturos gave a detailed report with accompanying slides that focused on: 1) the nature of the requested code amendment (primarily issues related to the “same size and age rule”); 2) history and purpose of the subject rule; 3) examples of condominium buildings affected; 4) history of condominium standards and staff conclusion that the “same age” rule is obsolete and does not provide a public benefit; 5) proposed wording: to eliminate same age and modify same size rules; 6) other proposed changes relating to required storage, enclosed trash areas, location of air conditioning (AC) equipment, use permit review requirements, and neighbor notification. Mr. Faturos concluded with the staff recommendation that the Commission hold the public hearing, and, subject to input, adopt a Resolution recommending that the City Council approve the subject request to amend the condominiums standards. He also noted a typo in the transmitted draft Resolution in Section 1(A) in that the date of the hearing should read February 28th, 2018.

In response to questions, **Mr. Faturos** provided the following information: Assistant City Attorney Contreras stated that he doesn’t believe there is a legal complication in the staff proposal that provides applicants can comply with one of two options for receiving private clearance for a proposed condo plan (either HOA approval or proof of notification to neighbor) (Fournier); Assistant Planner Faturos stated that about 20 square feet maximum is estimated to be needed to be reserved to locate AC units and there is no

requirement that all units in a project share the same architectural style (Seville-Jones) and that when one unit is modified, the combination of the floor area cannot exceed 100% of what is allowed for the total project (in its research staff found that at most a single condo took up a maximum 52% of allowed floor area), and staff prefers that the AC location standard be more vague for flexibility (Burkhalter).

Brief discussion focused on the proposed maximum 55% of BFA for either of two units and it was agreed that, as the breakdown would be approved through the HOA, the Commission understood the proposed 55% maximum.

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

Chris Carey, purchased his unit and then found the codes greatly affected his plan, which he found to be illogical. He has spent two years researching this and is anxious to move forward and is waiting for this matter to be concluded. Chair Apostol invited the public to give input.

PUBLIC HEARING

Martha Andreani, lifelong resident, noted that in the past “lot splits” were not allowed out of concern that this increases density. Condominiums then came along which she feels is a form of a “lot split”. She suggested a split of 50/50, not 45/55 percentage of floor area to mitigate increased density. She is in support of clarifying how parking, trash, and ACAC units will be handled.

There being no other speakers, **Chair Apostol** closed the public hearing and invited discussion.

COMMISSION DISCUSSION

Commissioner Morton stated his support for the staff Resolution, understanding how these code sections have become obsolete. He has no suggestions to modify the draft Resolution.

Commissioner Burkhalter asked and Mr. Fatusos responded that in the applicant’s, case, and anticipating others, all new or significantly improved (over 50%) units will be required to conform to code in all ways therefore will be upgraded.

Commissioner Fournier stated he shares Ms. Andreani’s concern but understands the context and history and is very comfortable with all the proposed changes. He thanked Mr. Carey, acknowledging his long wait and research. He strongly supports and has nothing to add to the draft resolution.

Commissioner Seville-Jones stated she supports and understands that there are many who will benefit and she complimented staff and clarified that the process of developing a condominium is not a “lot split”. She sees that perhaps the only reason there might be to maintain the “same age” requirement in the code is an argument that by doing so, the units might look more similar which may help maintain aesthetics of the project. But, since the city does not currently require that units look similar when being permitted, she doesn’t think this is a reason to keep the same age requirement.

Chair Apostol noted agreement with all that’s been said and supports the staff proposal and especially addressing things like where air conditioning units will be located.

ACTION

It was moved and seconded (Morton/Burkhalter) to ADOPT THE DRAFT RESOLUTION with only correction of the typo in Section I.A, approving a recommendation that the City Council approve and adopt amendments to MBMC 10.52.110 and LCP A.52.110 related to residential condominiums.

Roll Call:

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

Planning Manager Jester announced that this item will be scheduled for a future City Council public hearing because this is an Amendment to the Municipal Code and the LCP. The action will

be for the City Council to adopt Ordinances. Once approved by Council, the Local Coastal Program amendments will be forwarded to the California Coastal Commission to be finalized after which they will be in effect.

02/28/18-3. 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 this public hearing was continued from January 24, 2018. The staff recommendation is for the Commission to conduct the continued hearing, accept additional testimony, and direct staff to prepare a resolution, approving with or without additional conditions.

Director McIntosh made brief remarks and then Assistant Planner Jason Masters gave the staff report with a slide presentation. He updated the Commission as to meetings held since January including one between staff and business owner, then with staff, the business owner and residents, and most recently (today) with the Police Department (“PD”) at which enforcement at this business was discussed. Mr. Masters distributed a late comment received from resident Mark Tuccinardi.

Mr. Masters outlined the background, issues, and possible conditions as noted in the written staff report. The staff recommendation is to approve the application with changes in the conditions including removal of the “last call” provision, an increase from 18 to 24 in annual Entertainment Permit events and consideration of additional conditions addressing the downstairs bar such as: a requirement for an on-site manager present at all times; the requirement to make a list of all UP and other conditions which would be incorporated into a handbook and physically provided on the premises; a prohibition of the use of the 9th Street door except for emergencies and for ADA access, after hours or permanently; requirement to hire an acoustical engineer to look at possibly adding sound buffering to ceiling and walls; required closure of all windows during nighttime; possible further limit in occupancy; possible earlier closing time; continued prohibition of amplified entertainment; continue the requirement for a security guard to be stationed on 9th Street for late events and lastly, to consider requiring a one-year review.

Director McIntosh informed that Sgt. Knickerbocker, MBPD, was present at a meeting she attended today. Summarizing a memo she received today, in the last 12 months (February 2017 - February 2018) MBPD has received a total of 9 documented requests for service specifically at 900 Club, and of these, no citations or arrests were deemed necessary.

The Commission directed questions to Sgt. Knickerbocker, who distributed copies of the PD memo.

Sgt. Knickerbocker responded to Commission inquiries. To Commissioner Morton, he explained that out of about 30-40 calls, 9 were specifically related to noise or issues being discussed tonight. He stated he didn’t know the specifics on what was meant by “business was advised” as stated in complaints 7 and 8 and further elaborated that the PD’s view is that their primary role is to determine whether the activity generating the complaint arises to a crime being committed. He doesn’t feel the 900 Club is operating as a “nuisance”, but also this is not his or the PD’s expertise. Sgt. Knickerbocker stated he is aware that the calls do however, seem to reflect openings of old wounds for the residents.

Commissioner Seville-Jones noted that there were at least two incidents where the report seemed to verify very loud music and correction was directed by the PD.

Sgt. Knickerbocker confirmed that the department triages their calls and the memo does not necessarily reflect all calls received about the 900 Club. However, he stated that the Department does respond to all calls received. Sgt. Knickerbocker described how the Department’s visit to the site may be conducted, and how criminal and safety calls are given priority.

To **Commissioner Seville-Jones, Sgt. Knickerbocker** responded that 900 Club does get more calls than other downtown businesses, but noted that this location is considered “hot”, meaning that it has issues that have a long history. Further, he stated that the fact that this business generates more calls than others doesn’t necessarily mean that it deserves more calls than other downtowns businesses.

Director McIntosh informed that in speaking with PD, she learned that the Department feels that the existing conditions mitigate concerns, including the “last call” provision. The PD clarified that the intent of the “last call” requirement is to preclude a large number of bar patrons from exiting to the public sidewalk at about the same time, which could lessen impacts to neighbors.

Director McIntosh noted it is valid to have different concerns for the upstairs vs. downstairs areas. A main issue is that the side door on 9th Street is often propped open and strong diligence is required by the operator to make sure windows or doors are closed. She noted PD input, that since the 2014 review, smoking has been prohibited and it may be useful to include a reference to this in the conditions.

Director McIntosh reminded of the nature of the application submitted by the business owner, which is the subject of this hearing: request to amend an existing UP such that the conditions of approval be amended to allow an increase in hours by one hour on Thursday nights (to 1:00 a.m.) and to Friday and Saturdays nights by one hour (to 2:00 a.m.) as well as some changes to the Entertainment Permit including 1) elimination of the neighbor notification requirement; and 2) an increase from 18 to 24 events annually that require an Entertainment Permit. Lastly 900 Club requests to perform notification to the PD and Community Development Departments only (not also to neighbors).

Commissioner Seville-Jones asked for clarification for the process of a UP review if there is evidence of the Use Permit being violated, to which Ms. McIntosh stated that, per Section 10.104.04 of the Municipal Code, the Planning Commission, Community Development or the City Council can initiate a public hearing to consider revoking the UP if there is evidence that the UP is being violated. That is a different procedure from this, which is a UP amendment initiated by the business owner.

Brief discussion followed about occupancy requirements. Staff informed that the calculation and posting of maximum occupancy is required under the purview of the Fire Department. The occupancy limit in the downstairs is 31; it was learned that permanent posting of this limit has not occurred in the downstairs area.

The Commission directed questions to staff. **Mr. Masters** noted that the existing conditions require a “state licensed, bonded and certified security guard” who, among other tasks, shall monitor the doors and direct customers as they exit not to loiter on 9th Street as they wait for their rides.

Chair Apostol invited the applicant to provide input.

Albro Lundy, attorney for 900 Club commented: 1) the occupancy limit sign is now posted downstairs; 2) they have always had a security guard, but he’s not sure if he is bonded, but his main job is to control the occupancy; 3) he doesn’t believe a MBPD officer has ever been inside the building; and 4) the primary issue for the owner is this is a commercial business in a commercial zone and their objective is to recover hours they had that were taken away in 2014 and he feels should legitimately be given back.

The Commission directed questions to **Mr. Lundy**.

Commissioner Seville-Jones commented based on evidence (open door and windows, lack of compliance with Entertainment Permit, e.g.), it seems that the owner is not taking responsibility as he should. She emphasized that the main issue is noise.

Mr. Lundy indicated he did not have a chance to review new evidence. *A copy was handed to him to*

review. He explained that the front door on Manhattan is the entry to the Club upstairs and the side door, the entry and exit for the downstairs bar. He reiterated that the owner is interested in restoring rights lost in 2014 and the owner believes that he has done what is needed to get that back. The owner is willing to address noise problems ongoing, but he believes that a main issue is that there is a small number of people not getting along and there are also some objectors who don't live in the area. Those who live close should have a reasonable expectation that there will be more noise next to a commercial site than in a solely residential area.

Dave Rohrbacher stated he would take ownership of whatever is his responsibility, but he is surprised because the last meeting is the first time he heard that the downstairs is a noise problem. He immediately called a staff meeting and ordered thicker blinds, and now they close the windows at 10 pm and let the side door be open only a little and he believes this is helping. He has spent \$80k mainly on the windows. The downstairs only is 216 square feet and can hold 31 people. The windows are triple paned and patrons are directed downhill, not uphill, when they leave. He is aware of the no smoking Ordinance. He will continue working on monitoring the downstairs, including having a new doorman and new blinds. He understood that the downstairs door has not been required to be shut, but would be willing to shut that and have a doorman.

There was discussion with **Mr. Albro** after he was able to review the new information. **Mr. Rohrbacher** indicated that he could install a self-closing device on the side and rear door, but doesn't see a problem if the front door is not kept completely shut. **Mr. Albro** commented that the doors must be shut only when music is playing.

Mr. Rohrbacher clarified that he did not want to have separate conditions including hours of operation, applying to the up and down stairs; he wants all conditions to apply to the entire building. After some discussion about options including keeping the midnight last call provision, the **Chair** asked that the applicant clarify his preference regarding last call and closing hour; **Mr. Rohrbacher** indicated he wants to eliminate the last call (would stop serving drinks about 15-20 minutes prior to closing) which will effectively let them stay open an hour later as they did in the past. He feels there should be some flexibility as to when to stop serving liquor due to the nature of his business, especially the club portion.

PUBLIC HEARING

The Chair invited public comments.

Rick Buckley, 228 8th Street, feels that there may be only 1 or 2 callers with complaints and wonders if some calls are being coordinated. He feels it would be helpful if they could tell where the majority of complaints are coming from, i.e. within or outside the immediate neighborhood.

Martha Andreani, longtime resident, feels the neighbors and the business can get along. While it may be tricky for the owner to operate the two businesses as one Use Permit, it should be simple for the City to enforce the Use Permit. She feels it's necessary to talk about the past. Residents reported that disturbances have decreased for the Club, but since the downstairs became a bar run by the same operator as upstairs, it seems like noise problems went downstairs. She doesn't endorse giving additional allowances until the business can show after a one-year review that they are operating in compliance.

Don McPherson; 1014 1st Street, owns 1001 Bayview Drive, believes there are reasonable grounds for the city to set a hearing for Use Permit modification or revocation. He has three issues to be considered in a modification/revocation hearing: 1) the ground floor bar needs physical separation for acoustical reasons as noise travels down the stairwell; 2) the annual entertainment permit (EP) is a violation and the EP can be modified with additional restrictions and 3) staff should bring forward a new proposed 900 Club Resolution during the public hearing. He believes the hours should not be increased but left as they currently are. If you take out the whole sentence for last call, he thinks this will be a problem as this will leave the PD no standard for "closing time".

Karol Wahlberg, doesn't live Downtown anymore and she respects the fact that someone is trying to do a business, but believes that the owner of the bar is pushing the envelope of his business and the nearby residents are suffering and potentially having property value taken from them.

Rosanna Libertucci, 200 block of 9th Street, is perplexed that staff seemed more interested in protecting residents across from Metlox from upstairs dining noise compared to this case. She has double paned windows, but cannot keep them open at night regularly. To add more late hours, means she will be up later, but she has not complained and does not want to put the owner out of business. She has worked with Code Enforcement Officer Jackie Harris, and the Community Development Department, and has understood in the past that until 5 p.m. enforcement is through Jackie, but after 5 p.m., it's the PD. She feels leadership is needed for consistent enforcement of the UP.

Jacki May, long-time resident at 10th and Highland, came to show that the nearby residents care. Even though she has partial deafness, she can hear noise from commercial establishments and has traced noise coming from 900 Club but is not sure if it was from up or downstairs. She believes it would be a simple matter to have a last call time limit as well as a later closing time. She is against extending the operating hours.

Denise Ardondo Epeneter (spelling unknown), lives across the street and loves where she lives; attended the residents/owner meeting but feels everyone was coming up with problems, but no solutions. She supports the business owner who she feels is willing to do things to make people happy. She would like the neighbors to agree on what needs to be done and simply give the list to the owner to make changes.

Mr. Dave Bohnert, 621 MBB, feels there is a lot of information available, but it should be a simple matter to go through the Use Permit and check off conditions, whether complying or not; believes that there is consistent violation. He is concerned that he is hearing that there is no Use Permit enforcement after 5:00 p.m. He believes that this unique location adjoining to residential should be taken into account.

Chad Epeneter; 817 ½ Bayview, believes a lot of good points have been made which can all be justified. He believes that the addition of the one hour is very important and it's not unreasonable that there are different Use Permit conditions for different bars in town. He supports giving back the one hour.

William Victor, property owner since 1977 or so on 9th Street, loves the small town family lifestyle. Never bargained for a dance hall. He likes solutions. He believes that this owner has a long history of not following the UP. There shouldn't be live entertainment unless noise, which is horrendous, can be solved. Advocates giving the owner another year to comply and, until then, keep the existing conditions with no increase in entertainment permits or hours.

Chandra Shaw, 512 4th Street, has a business in Metlox, believes things need to be kept in perspective without getting personal. She supports the staff recommendation as being very fair and believes that the owner should be allowed to fix the downstairs noise issue and then everyone should move on.

There being no further speakers, **Chair Apostol** closed the public hearing.

COMMISSION DISCUSSION

The Commission focused first on recalling discussion from January, including possibly eliminating the last call, but keeping the same hours, increasing the annual Entertainment Events to 24, and adding more conditions to mitigate noise.

Commissioner Fournier commented that a great asset of the community is its “live and let live” feeling, but it’s up to the Commission to provide leadership because, based on the staff report it appears that residents and the owner were not able to arrive at solutions. He went through the 10 staff proposed bulleted additional conditions and stated he was ok with: the onsite manager (#1), provision to employees of conditions (#2), access limits on the 9th Street door, with consensus (#3), hire an acoustical engineer (#4); window closing times, with consensus (#5); impose an earlier closing time, interpreted as keeping the same, without increasing (#7); Continue prohibiting amplified music (#8); providing a security guard (#9); and the one-year review (#10).

He has concerns and would like to discuss limiting occupancy (#6), and whether to keep the last call provision (he leans toward eliminating) (#6)

Commissioner Seville-Jones stated she is generally ok with the proposed conditions, but has concerns for compliance based on testimony, that adding more operational conditions as opposed to physical, will result in improvement. She is troubled by evidence from various sources regarding problems with amplified music noise, failure to obtain permits and notify, and having open doors and windows. She is trying to balance the complaints with positive input. She feels getting rid of the last call will give them an additional property right, but would not increase the entertainment permit events until at least one year is shown of compliance. She feels comparison with Metlox is not fair, because this situation is an established business that has some existing rights, where at Metlox that was about a future restaurant that does not yet exist.

Commissioner Burkhalter stated he believes points made are good and he thinks most or all of the proposed conditions will be an improvement. He believes that this is a well and long established issue and there will always be some supporting and some not supporting a late night use at this location. He thinks there are some bigger issues such as management by the City of after hour UP enforcement and also how to deal with impacts caused by the ride-hailing industry. He is uncomfortable about playing the role of designer of physical mitigations, but likes the idea of having a self-closing device for the doors. As to the number of special events he feels that following procedures (getting permits and notification) may be more critical than the requested increase but generally feels like the resolution should be a compromise.

Commissioner Morton provided input that there’s been improvement over the last 4 years. He likes increasing entertainment permits to 24 in recognition of efforts made.

Director McIntosh clarified that the front door is nonconforming to fire code and not reliable as access for the downstairs bar.

Discussion focused on the downstairs, its access and entertainment held. **Director McIntosh** noted that sometimes a DJ is used and it should be discussed what constitutes “background music” which is allowed.

Commissioner Morton suggested based on this info, deleting bullet #3 because the 9th Street door is the main access to the downstairs bar.

Discussion continued on the side door and how to control noise. The consensus was that the 9th Street door should be allowed to remain as there are no viable options and the door has existed for many years.

Chair Apostol called for consensus on revised conditions to be put into the Use Permit. After discussion, it was agreed to direct staff to only include the following as revised conditions (and not apply bullets 3, 4, 6, and 7):

- 1) From pg. one of the Staff report, item 1: remove the “last call” provision
- 2) From pg. one of Staff report, item 2: increase the number of entertainment permit events from 18 to 24

- 3) From pg. two of Staff Report, bullet 1: provision for an on-site manager at all times
- 4) From pg. two of Staff Report, bullet 2: provide list of conditions in an employee handbook
- 5) From pg. two of Staff Report, bullet 5: require downstairs windows and door to be shut after 10:00 p.m. and install self-closing device on 9th street door.
- 6) From pg. two of Staff Report: bullets 8, 9, 10 (prohibiting amplified entertainment, requiring a guard, and requiring a one-year review) as stated in the staff report
- 7) New condition: owner to post some “No Smoking” signs in the businesses, citing MBMC, and requesting that patrons be respectful of neighbors.

The above consensus was reached based on the following considerations: there are significant physical limitations that limit options regarding access to the 9th Street door; regarding noise, the main issue was loudness, not the source of the sound; that the violations of the Entertainment Permits are procedural, and the City’s noise Ordinance still has enforcement authority; regarding outdoor smoking: it’s appropriate to encourage proper behavior, but the owner should not be held responsible for his patrons once they leave the building; The best approach is to contain noise when noise is an issue in the late hours and it is unfair to not allow fresh ventilation during daytime hours; and having a one-year review at a public hearing will give the neighbors a chance again to give input.

After discussion about how to measure noise, **Chair Apostol** called for the question.

ACTION

It was moved and seconded (Morton/Fournier) to DIRECT STAFF to prepare and return a draft Resolution that APPROVES the subject application and modifies the Use Permit at 900 Manhattan Avenue with conditions (as stated above).

Roll Call:

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

Planning Manager Jester announced that the motion has carried. A draft Resolution will be brought back for Commission review and adoption at the next meeting on March 14, 2018.

5. DIRECTOR’S ITEMS - None

6. PLANNING COMMISSION ITEMS

Commissioner Seville-Jones suggested that at times when there are no scheduled items, the meeting time could be used for workshops or brainstorming. She’d like to see information on how other cities enforce UP enforcement such as involvement by the Police Department.

Commissioner Burkhalter noted that the hearings have raised issues about trends such retail changing to restaurant, service and entertainment use, the increase in ride hailing, which are skyrocketing. Perhaps this can be included in a study session.

Commissioner Morton added that another issue that is on the horizon, which has potential implication to the Sepulveda corridor, is the potential effect of autonomous cars. **Planning Manager Jester** noted that these items have come up in the Sepulveda Initiatives Meetings and this will be brought to the Commission in the spring.

It was noted by the City Attorney that the Sepulveda meetings are open, and **Planning Manager Jester** indicated that she will forward that information to the Commission.

7. TENTATIVE AGENDA – March 14

- a. Skechers continued public hearing.
- b. Mobility Plan Update public hearing.
- c. 900 Club draft Resolution.

8. ADJOURNMENT - The meeting was adjourned at 9:18 P.M. to Wednesday, March 14, 2018 at 6:00 P.M. in the City Council Chambers, City Hall, 1400 Highland Avenue.

ROSEMARY LACKOW
Recording Secretary

GEORGE APOSTOL
Chairperson

ATTEST:

ANNE MCINTOSH
Community Development Director