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**RESOLUTION NO. 03-6317**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT, UPON RECONSIDERATION, AND AS AMENDED, TO ALLOW ON-SALE GENERAL ALCOHOL, AND LIVE ENTERTAINMENT IN CONJUNCTION WITH A RESTAURANT, AT 73 PIER AVENUE, AND LEGALLY DESCRIBED AS LOT 27, BLOCK 13 HERMOSA BEACH TRACT**

**SECTION 1.** An application was filed by "Mediterraneo" restaurant, represented by Louis Skelton, seeking an amendment to a Conditional Use Permit to allow on-sale general alcohol, and alterations to an existing restaurant with live entertainment.

**SECTION 2.** The Planning Commission conducted a duly noticed public hearing to consider the application to amend the Conditional Use Permit on October 21, 2003, at which testimony and evidence, both written and oral, was presented to and considered by the Planning Commission. Based on the evidence considered at the hearing, the Planning Commission approved the request subject to conditions as set forth in P.C. Resolution 03-57.

**SECTION 3.** On October 28, 2003, the City Council, pursuant to Section 2.52.040, initiated review and reconsideration of the decision of the Planning Commission.

**SECTION 4.** The City Council conducted a duly notice public hearing to review and reconsider the decision of the Planning Commission on December 9, 2003, at which the record of the decision of the Planning Commission and testimony and evidence, both written and oral, was presented to and considered by the City Council.

**SECTION 5.** Based on evidence received at the public hearing, and the record of decision of the Planning Commission, the City Council makes the following factual findings:

1. The current Conditional Use Permit (CUP) granted in 1994 was approved for on-sale beer and wine in conjunction with a brewpub and restaurant, and was amended in 1997 for live entertainment. The proposed amendment is to allow general alcohol sales, and to convert the space to a full-service sit down restaurant including the removal of the brewing tanks and the

1 manufacturing of beer on the premises. With its limited scope of alterations, the proposal does not  
2 significantly alter the existing and approved primary use as a restaurant and proposes to continue  
3 the live entertainment as non-amplified to provide background acoustic music, and does not  
4 substantially alter the seating layout, bar area, stage location and other features of the business.

5 2. The site is located in the downtown district, which has several similar restaurants with  
6 on-sale general alcohol and live entertainment.

7 3. The site is zoned C-2 allowing the existing on-sale alcohol use with a Conditional Use  
8 Permit.

9 **SECTION 6.** Based on the foregoing factual findings, the City Council makes the  
10 following findings pertaining to the application to amend the Conditional Use Permit:

11 1. The site is zoned C-2, and the continued operation of the restaurant with the proposed  
12 modifications is suitable for the proposed location.

13 2. The imposition of conditions as required by this resolution to address noise concerns  
14 relative to the current requirements of the noise ordinance and to address nuisance concerns will  
15 mitigate any negative impacts on, and will improve its compatibility with, nearby residential or  
16 commercial properties within the downtown district.

17 3. This project is Categorical Exempt pursuant to 15301, Class 1 of the California  
18 Environmental Quality Act Guidelines, minor alterations to existing private structures.

19 **SECTION 7.** Based on the foregoing, the City Council sustains the decision of the  
20 Planning Commission, with some condition changes regarding operating hours, and hereby  
21 approves the requested amendment to the Conditional Use Permit, subject to the following  
22 Conditions of Approval, which supersede the conditions contained in P.C. Resolutions 03-57, 94-  
23 27 and 97-43:

24 1. Interior and exterior building alterations and the continued use and operation of the  
25 restaurant shall be substantially consistent with the plans submitted and reviewed by the Planning  
26 Commission on October 21, 2003.

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1           2.       The hours of operation shall be limited to between 7:00 A.M. and 12:00 Midnight  
2 daily, except on New Year's Eve when the operating hours shall be limited to 7:00 A.M. and 2:00  
3 A.M.

4           3.       The hours for live entertainment shall be limited to the hours between 7:00 PM to  
5 1:15 AM.

6           4.       Double pane windows or solid doors shall be provided on all openings to the  
7 outside.

8           5.       Live entertainment shall be limited to background non-amplified acoustic music  
9 such as a piano, guitar, violin, etc.

10          6.       If entertainment is to include amplified musical instruments an acoustical study  
11 shall be prepared by an acoustical engineer, including proposed sound dampening features to baffle  
12 and direct sound away from the entrance/exit and window areas to ensure compliance with the  
13 noise ordinance. Said study and sound dampening features shall be reviewed and approved by the  
14 Community Development Director prior to the issuance of building permits and shall be  
15 implemented in the building prior to occupancy.

16           A.       The acoustical study shall be based on the worst-case scenario, or on a sound  
17 level that will not be exceeded at any given time.

18           B.       Management shall be responsible for the music/entertainment volume levels.

19           C.       During the performance of any live entertainment, the exterior doors and  
20 windows shall remain closed.

21           D.       The air conditioning system shall be of an adequate capacity to air condition  
22 the restaurant.

23           E.       All exterior doors shall have self-closing hardware.

24          7.       No live entertainment or amplified music, audio, television or speakers of any kind  
25 shall be permitted in the outside seating areas.

26          8.       The establishment shall not adversely affect the welfare of the residents, and/or  
27 commercial establishments nearby.

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1           9.     The business shall provide adequate staffing and management and supervisory  
2 techniques to prevent loitering, unruliness, and boisterous activities of the patrons both inside and  
3 outside the business and in nearby public areas.

4           10.    The Police Chief shall determine if a continuing police problem exists, and may  
5 authorize the presence of a police approved doorman and/or security personnel to eliminate the  
6 problem, and/or shall submit a report to the Planning Commission, which will automatically  
7 initiate a review of this conditional use permit by the Commission.

8           11.    - The exterior of all the premises shall be maintained in a neat and clean manner, and  
9 maintained free of graffiti at all times.

10          12.    Any changes to the interior layout which would alter the primary function of the  
11 business as a restaurant shall be subject to review and approval by the Planning Commission. The  
12 project and operation of the business shall comply with all applicable requirements of the  
13 Municipal Code.

14          13.    The project and operation of the business shall comply with all applicable  
15 requirements of the Municipal Code.

16          14.    Noise emanating from the property shall be within the limitations prescribed by the  
17 city's noise ordinance and shall not create a nuisance to surrounding residential neighborhoods,  
18 and/or commercial establishments. Noise emanating from the property shall be monitored to verify  
19 compliance with the noise ordinance in response to any complaints.

20          15.    The Planning Commission shall review the operation of the restaurant for  
21 compliance with conditions of approval and compliance with the Noise Ordinance 6 months from  
22 the opening of the new restaurant, and in response to any complaints thereafter.

23          16.    The Conditional Use Permit shall become null and void if not executed within two  
24 years of the date of the approval of this Resolution.

25          17.    The owner shall comply with requirements of the encroachment permit for use of  
26 the public right-of-way.

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1           **SECTION 8.** This grant shall not be effective for any purposes until the permittee and the  
2 owners of the property involved have filed with the office of the Planning Division of the  
3 Community Development Department their affidavits stating that they are aware of, and agree to  
4 accept, all of the conditions of this grant.

5           The Conditional Use Permit Amendment shall be recorded, and proof of recordation shall  
6 be submitted to the Community Development Department prior to the issuance of a building  
7 permit.

8           Each of the above conditions is separately enforced, and if one of the conditions of  
9 approval is found to be invalid by a court of law, all the other conditions shall remain valid and  
10 enforceable.

11           Permittee shall defend, indemnify and hold harmless the City, its agents, officers, and  
12 employees from any claim, action, or proceeding against the City or its agents, officers, or  
13 employee to attack, set aside, void or annul this permit approval, which action is brought within the  
14 applicable time period of Government Code. The City shall promptly notify the permittee of any  
15 claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to  
16 promptly notify the permittee of any claim, action or proceeding, or if the City fails to cooperate  
17 fully in the defense, the permittee shall no thereafter be responsible to defend, indemnify, or hold  
18 harmless the City.

19           The permittee shall reimburse the City for any court and attorney's fees which the City may  
20 be required to pay as a result of any claim or action brought against the City because of this grant.  
21 Although the permittee is the real party in interest in an action, the City may, at its sole discretion,  
22 participate at its own expense in the defense of the action, but such participation shall not relieve  
23 the permittee of any obligation under this condition.

24           The subject property shall be developed, maintained and operated in full compliance with  
25 the conditions of this grant and any law, statute, ordinance or other regulation applicable to any  
26 development or activity on the subject property. Failure of the permittee to cease any development  
27 or activity not in full compliance shall be a violation of these conditions.

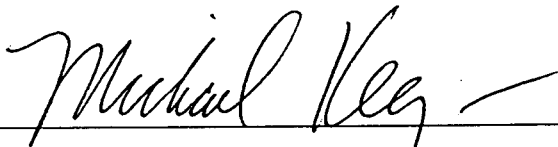
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1 The Planning Commission may review this Conditional Use Permit and may amend the  
2 subject conditions or impose any new conditions if deemed necessary to mitigate detrimental  
3 effects on the neighborhood resulting from the subject use.

4 **SECTION 9.** Pursuant to the Code of Civil Procedure Section 1094.6, any legal challenge  
5 to the decision of the Planning Commission, after a formal appeal to the City Council, must be  
6 made within 90 days after the final decision by the City Council.

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**PASSED, APPROVED and ADOPTED** this 9<sup>th</sup> day of December 2003.



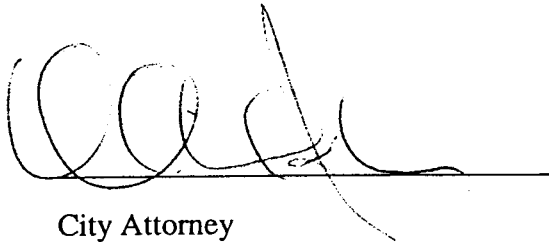
**PRESIDENT** of the City Council and **MAYOR** of the City of Hermosa Beach, California

**ATTEST:**

**APPROVED AS TO FORM:**



City Clerk



City Attorney

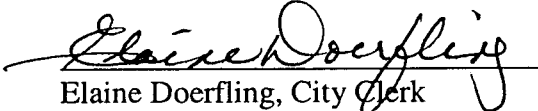
STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
CITY OF HERMOSA BEACH

I, Elaine Doerfling, City Clerk of the City of Hermosa Beach, California, do hereby certify that the foregoing Resolution No. 03-6317 was duly and regularly passed, approved and adopted by the City Council of the City of Hermosa Beach at a Regular Meeting of said Council at the regular place thereof on December 9, 2003.

The vote was as follows:

AYES:           Reviczky, Yoon, Mayor Keegan  
NOES:           Edgerton  
ABSTAIN:       None  
ABSENT:        Tucker

Dated:           January 13, 2004

  
Elaine Doerfling, City Clerk