

RESOLUTION NO. 10-59

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DENYING APPEAL NO. 10-002, APPROVING CONDITIONAL USE PERMIT NO. 09-009 AND JOINT USE PARKING AGREEMENT NO. 10-001 TO PERMIT THE MALIBU INN RESTAURANT WITH LIVE ENTERTAINMENT WHICH WILL SERVE LIQUOR, OPERATE BETWEEN THE HOURS OF 7:00 A.M. AND 2:00 A.M., AND HAVE A MAXIMUM RESTAURANT SEATING CAPACITY OF 94 PATRONS, A MAXIMUM CAPACITY OF 340 PATRONS FOR ENTERTAINMENT EVENTS AND 565 SQUARE FEET OF RETAIL SPACE AT THE 8,960 SQUARE FOOT COMMERCIAL BUILDING; INCLUDING A JOINT USE PARKING AGREEMENT FOR REQUIRED PARKING SPACES TO BE LOCATED ON THE ADJACENT PROPERTY IN THE COMMERCIAL VISITOR SERVING-1 ZONING DISTRICT LOCATED AT 22969 PACIFIC COAST HIGHWAY (HAKIM)

THE CITY COUNCIL OF THE CITY OF MALIBU DOES HEREBY FIND, ORDER AND RESOLVE AS FOLLOWS:

Section 1. Recitals.

A. The building which houses the Malibu Inn was constructed in 1950 and the adjacent lot has historically provided parking. The use has operated under multiple owners for more than 50 years at the current location.

B. On June 3, 2008, Over the Counter Permit (OC) No. 08-102 was issued to re-open the 565 square foot retail space for the tenant Sabotage.

C. Due to a change in ownership of the subject property, the business closed in December 2008 and the restaurant and entertainment venue use ceased.

D. On May 26, 2009, breakfast and lunch service at the restaurant resumed. Currently, the Malibu Inn typically closes around mid-afternoon / early evening, after patrons have finished lunch.

E. On December 3, 2009, Conditional Use Permit (CUP) No. 09-009 and Joint Use Parking Agreement (JUPA) No. 10-001 was submitted to the Planning Division by Elizabeth Peterson. The application was routed to the City Environmental Health Administrator, the Los Angeles County Fire Department (LACFD) and the Los Angeles County Sheriff's Department (LACSD) for review.

F. On January 12, 2010, a Courtesy Notice of Proposed Project was mailed to all property owners and occupants within a 500 foot radius of the subject property.

G. On May 26, 2010, the application was deemed complete for processing.

H. On July 8, 2010, a Notice of Planning Commission Public Hearing was published in a

newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500 foot radius of the subject property.

I. On August 3, 2010, at the request of the applicant, the public hearing was continued to the September 7, 2010 Regular Planning Commission meeting.

J. On September 7, 2010, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the agenda report, public testimony and all related information. At the conclusion of the hearing, the Planning Commission adopted Resolution No. 10-79 approving CUP No. 09-009 and JUPA No. 10-001.

K. On September 16, 2010, Appeal No. 10-002 was filed by Klaus Obermeyer (property owner at 23006 Pacific Coast Highway) and Robert J. Allan (property owner at 23018 Pacific Coast Highway).

L. On September 27, 2010, in accordance with Malibu Municipal Code (M.M.C.) Section 17.04.220(C), the appellants submitted additional information related to the appeal before the 10 day deadline.

M. On October 12, 2010, the appeal was deemed complete by staff.

N. On October 28, 2010, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all interested parties, regional, state and federal agencies, local libraries and media, and the California Coastal Commission (CCC).

O. On November 22, 2010, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

### Section 2. Appeal of Action.

The appellants appealed Planning Commission Resolution No. 10-79, contending that the proposed conditional use permit is not consistent with various sections of the M.M.C. as well as the General Plan. Additional information submitted with the appeal includes numerous statements in support of the appeal. Planning Division staff prepared an extensive agenda report responding to each of the appellant's contentions. The City Council concurs with the findings and conclusions of staff as set forth in the report and adopts staff's analysis, findings, and conclusions as though fully set forth herein.

### Section 3. Conditional Use Permit Approval and Findings.

Pursuant to M.M.C. Section 17.66.080, the City Council may approve, deny and/or modify an

application for a CUP in whole or in part, with or without conditions, provided that it makes all of the following findings of fact. The City Council hereby makes the following findings of fact to approve CUP No. 09-009.

*CUP Finding 1. The proposed use is one that is conditionally permitted within the subject zone and complies with the intent of all of the applicable provisions of Title 17 of the Malibu Municipal Code.*

A restaurant with an interior capacity in excess of 125 people, a nightclub and a bar are all conditionally permitted uses in the Commercial Visitor Serving-1 (CV-1) zoning district. The existing commercial structure includes a total interior square footage of 8,960 square feet, with a service area that totals 2,474 square feet (comprised of 1,184 square foot interior service area which includes the bar, a 751 square foot service area on the outdoor patio which includes a bar and a 539 square foot service area in the banquet room). The project has been conditioned to comply with all applicable provisions of the M.M.C.

*CUP Finding 2. The proposed use would not impair the integrity and character of the zoning district in which it is located.*

The proposed use is a commercial use on commercially zoned property and therefore, would not impair the integrity and character of the CV-1 zoning district. The Malibu Inn has occupied the subject property for several decades and is located within a long strip of commercial properties located on the landward side of Pacific Coast Highway, east of the Pier. Furthermore, the proposed project will conditionally permit the previously operating restaurant and therefore is not anticipated to result in a change from the existing conditions within the zoning district. Finally, the use previously had a California Department of Alcohol Beverage Control (ABC) Liquor Licenses and operated as a restaurant with a bar and live entertainment.

*CUP Finding 3. The subject site is physically suitable for the type of land use being proposed.*

The project site contains existing commercial development. The proposed tenant improvements consist of a minor interior remodel only and no exterior changes are included in the project scope. The business has operated on the subject property since the 1950s. A total of 53 parking spaces are required for the proposed use. There are 22 parking spaces that exist onsite and the property owner has agreed to a joint use parking agreement to provide for the remaining 31 spaces to be located on the adjacent property that he also owns. The parking spaces will be provided for the use of the patrons and employees of the Malibu Inn. Therefore, the site is physically suitable for the use being proposed.

*CUP Finding 4. The proposed use is compatible with the land uses presently on the subject property and in the surrounding neighborhood.*

The Malibu Inn has operated at the subject property since the 1950s. It closed briefly at the end of 2008 due to the sale of the property. The property is surrounded by both commercial, open space and

residential uses. There is a mix of commercial, office and retail uses in the immediate vicinity of the site. There are very few residences located within close proximity to the subject property.

The property owner has agreed to a condition of approval which will prohibit live entertainment on the exterior patio. In addition, further conditions of approval which limit noise from the patio have been included for this project in compliance with the M.M.C. Noise Ordinance. Furthermore, conditions of approval have been included to require that the property owner notify the City Code Enforcement Officer and the Los Angeles County Sheriff's Department no less than three days prior to a large entertainment event (defined as any event with 100 or more persons in attendance) and to provide security personnel onsite seven days a week from 9:00 p.m. to closing to ensure that noisy and rowdy patrons leaving the establishment will not adversely affect the welfare of neighborhood residents.

A Security Plan which was submitted to the Planning Commission on September 7, 2010 details a listing of goals which include:

- Creation of a safe and secure environment within the Malibu Inn for all patrons;
- Provision of a level of control and safety for all arriving and departing guests;
- Mitigation of any noise or inappropriate conduct directed at the immediate neighbors and leaseholds by patrons upon entry or departure; and
- Diffusion of all situations as they occur.

The Security Plan demonstrates an understanding of neighbor concerns and strives to address these concerns through the following actions:

- Full disclosure and cooperation with law enforcement personnel and other City officials;
- Requirement that security personnel wear easily identifiable uniforms and identification badges at all times;
- Provision of one security guard per 50 patrons, with security staff being present at all times the venue is hosting dancing or live entertainment;
- Includes a detailed listing of responsibilities that each security guard will have – including stationary, roving and patio guards;
- Security guards will take part in the following training programs: 1) Licensee Education on Alcohol and Drugs (L.E.A.D) which is put on by the Department of Alcoholic Beverage Control; 2) proper cueing to lessen the impact of foot traffic and traffic flow for motor vehicles; 3) emergency preparedness including all safety devices present onsite and emergency escape routes; and 4) Standard First Aid provided through the Red Cross.

Finally, the Planning Commission, at its September 7, 2010 meeting, added an additional condition of approval which set a limit on live entertainment events not to exceed two large events and eight small events per month. The provisions included in the Security Plan are specifically intended to allow the proposed use to be compatible with adjacent neighbors. With the incorporation of all the aforementioned conditions of approval, this proposed use is compatible with the land uses in the surrounding neighborhood.

*CUP Finding 5. The proposed use would be compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located.*

The proposed use is compatible with existing and future land uses within the zoning district and the general area in which the proposed use is to be located in that the surrounding land uses are comprised of a wide range of commercial uses including restaurants, retail uses, medical and professional offices, as well as public open space to the south. The only vacant property in the immediate vicinity (22959 Pacific Coast Highway) is owned by the subject property owner and is zoned for commercial development.

*CUP Finding 6. There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety and the project does not affect solar access or adversely impact existing public and private views, as defined by the staff.*

Existing utilities will serve the proposed project. The LACFD reviewed the CUP and issued a conditional approval on February 18, 2010. Some of the conditions require that applicant test existing fire hydrants and submit plans to the Fire Prevention Engineering Department.

In order to confirm conformance with percolation test requirements as outlined in the Malibu Plumbing Code (MPC), Ensitu Engineering Inc. oversaw flow testing at the subject property. The testing required isolation of the front, east and west leachfields prior to beginning the test. On the first day of the test, a license soils engineer introduced 6,497 gallons of water to the three dispersal fields in order to pre-soak the leachfields prior to performing water absorption measurements on the three following consecutive days. On each of the following three consecutive days, the soils engineer introduced an additional 6,497 gallons of water to the three fields. A final additional test was performed on the fifth day. Using the allocations of restaurant / retail and entertainment flows outlined in the MPC, the water was metered according to the proportion of total absorption area contributed by each leachfield.

After a five day testing period, Ensitu determined the following: 1) the existing grease interceptor capacity is sized to accommodate a full day's flow, rather than the code required minimum; 2) the site is currently served by two 3,000 gallon septic tanks (providing storage for 6,000 gallons total), which meet the required septic tank capacity of 5,998 gallons; and 3) the absorption area of the existing leachfields is 3,360 square feet and the existing seepage pits will be abandoned. The existing leachfield size exceeds the minimum required effective absorption area which is 3,187 square feet. As a result of the testing, Ensitu concluded that the OWTS is acceptable for the use proposed. The City Environmental Health Administrator reviewed the CUP and Ensitu's report and determined that the existing onsite wastewater treatment system (OWTS) is adequate for the proposed use.

As conditioned, the proposed conditional use permit would limit the hours of operation from 7:00 a.m. to 2:00 a.m. daily. No changes to the exterior of the existing structure are proposed, so no

impacts to solar access or public or private views will occur. The existing commercial structure at 22969 Pacific Coast Highway will not change under this application, and therefore, will not adversely impact existing public and private views.

*CUP Finding 7. There would be adequate provisions for public access to serve the subject proposal.*

No change to the site or circulation plan for the existing commercial property is proposed by this CUP. Upon completion of the construction of the commercial building on the adjacent parcel to the east, parking will be accommodated in accordance with the joint use parking agreement. The proposed use will have adequate parking for public access and will not obstruct public traffic circulation. It is anticipated that the reopening of the previously existing use would not substantially impact public access or circulation.

*CUP Finding 8. The proposed use is consistent with the goals, objectives, policies, and general land uses of the General Plan.*

The use is a conditionally permitted commercial use in the CV-1 zoning district. The General Plan defines the CV zone as providing for visitor serving uses which serve visitors and residents such as hotels and restaurants which respect the rural character and natural environmental setting. Visitor serving uses shall be consistent with compatible accessory uses, shall protect the surrounding properties, shall ensure safe traffic circulation and shall promote economically viable visitor serving areas of the City. The proposed project meets the goals of the following land use policies of the General Plan:

Land Use Policy 3.1.1:                      The City shall ensure visitor serving and recreational uses are compatible with the natural resources and aesthetic values of the area.

Land Use Policy 3.2.1:                      The City shall permit the development of commercial recreational and visitor servicing facilities at suitable locations which provide convenient public access, adequate infrastructure, convenient parking and, when feasible, are located where existing low cost recreational uses will be enhanced.

Land Use Policy 4.4.1:                      The City shall encourage establishment and continued operation of small neighborhood and community serving businesses.

As such, the proposed project, as conditioned, is consistent with goals, objectives and policies of the General Plan.

*CUP Finding 9. The proposed project complies with all applicable requirements of state and local law.*

The proposed project will comply with all applicable requirements of State and local law and is conditioned to comply with any relevant approvals, permits and licenses from the City of Malibu and other related agencies such as the ABC and the Los Angeles County Sheriff's Department.

*CUP Finding 10. The proposed use would not be detrimental to the public interest, health, safety, convenience or welfare.*

The proposed project will reopen a previously existing restaurant and bar that provides live entertainment, which is a conditionally permitted use in a commercial zone. As stated in Finding 6, the LACFD has conditionally approved the CUP and set maximum occupancy for both dining and live entertainment events. In addition, the Los Angeles County Sheriff's Department issued a conditional approval of the CUP on May 13, 2010, specifically requiring that the property owner notify the department of all planned entertainment events. A condition is included in Section 7 of this resolution which requires that the property owner notify the City Code Enforcement Officer and the Los Angeles County Sheriff's Department no less than three days prior to a large entertainment event (defined as any event with 100 or more persons in attendance).

Furthermore, specific conditions have been included in Section 7 of this resolution which require: 1) training for bartenders and servers through the TIPS program (Training for Intervention Procedures) which is designed to prevent intoxication, underage drinking and drunk driving; 2) training for security personnel through the Licensee Education on Alcohol and Drugs (L.E.A.D) program which is put on by the Department of Alcoholic Beverage Control; 3) extensive conditions limiting noise during hours of operation; and 4) the provision of a detailed security plan to monitor patrons both within and outside of the Malibu Inn. All of these requirements are intended to maintain public health, safety and welfare.

Finally, the report generated in conjunction with the ABC application indicates that the current property owner has not been subject to any disciplinary infractions in the past with regard to a liquor license. As conditioned, the proposed use will not be detrimental to the public interest, health, safety, convenience or welfare.

*CUP Finding 11. If the project is located in an area determined by the City to be at risk from earth movement, flooding or liquefaction, there is clear and compelling evidence that the proposed development is not at risk from these hazards.*

The project will not be at risk from earth movement and flood hazards since the application only involves reopening a previously existing use within the existing commercial structure. The building footprint and envelope will not change; therefore, there is no new impact related to earth movement, flooding or liquefaction.

Section 4. Joint Use Parking Agreement Approval.

As stated in M.M.C. Section 17.48.050(A)(1), the decision making body may approve parking on a separate lot, via a Joint Use Parking Agreement, under the following conditions (which are set forth in M.M.C. Section 17.48.040). The agreement will be between 22959 Pacific Coast Highway and 22969 Pacific Coast Highway, which are under common ownership. A deed restriction shall be recorded on the title of each property reflecting the permanent reciprocal parking agreement. The City Council finds that the evidence in the record supports the three following conditions.

*JUPA Condition A. Up to one-half of the parking facilities required for a primarily daytime use may be used to meet the requirements of a primarily nighttime use and up to one-half of the parking facilities required for a primarily nighttime use may be used to meet the requirements of a primarily daytime use; provided, that such reciprocal parking arrangement shall comply with subsection C of this section.*

The proposed hours of operation for the subject use are from 7:00 a.m. to 2:00 a.m. The adjacent property at 22959 Pacific Coast Highway is undeveloped with the exception of the parking lot historically used to provide parking for the Malibu Inn. However, an application (CDP No. 09-67) for a commercial building for that site has been submitted to the Planning Division. The new commercial building design will incorporate the required parking for any proposed office / retail use as well as maintain the required parking for the Malibu Inn pursuant to the joint use parking agreement.

Although the commercial building is not expected to be approved in the near future, staff has anticipated parking impacts during the course of construction and provided conditions of approval to maintain required parking. Parking displaced during construction would be temporarily relocated to the commercial / office building located at 22761 Pacific Coast Highway since it is also owned by the same owner as the Malibu Inn.

Historically, the heaviest parking demand at the Malibu Inn is primarily evenings and weekends. Commercial development on the adjacent parcel is anticipated to be either office or retail with primarily daytime operating hours. In addition, the 31 spaces required for the Malibu Inn will be supplementary to the parking spaces required for the new commercial development, so the uses will not be in conflict. Therefore, the reciprocal parking arrangement will comply with JUPA Condition C.

*JUPA Condition B. The planning commission may reduce parking requirements for common parking facilities by up to 25 percent in shopping centers or other commercial areas where a parking lot with common access and joint use is provided.*

The property owner has not requested to reduce the required parking spaces. The reciprocal parking agreement will provide additional parking spaces in excess of what is required for the proposed use.



*JUPA Condition C. The parties concerned shall show that there is no substantial conflict in the principal operating hours of the building or uses for which the joint use is proposed and shall evidence agreement for such use by a proper legal instrument, to which the city is a party.*

The subject property owner owns the subject property and the other commercial property involved in the joint use parking agreement. The subject property will operate from 7:00 a.m. to 2:00 a.m. daily, with live entertainment events primarily being held in the evenings. The other property is proposed to be office / retail uses with principal operating hours during the daytime. There will be no substantial conflict in the principal operating hours for the two properties. Prior to the approval of any project on the adjacent lot, all code required parking will need to be provided. A legal agreement between the City and the property owner is required as a condition of approval. The agreement will contain requirements for an annual review by the Planning Manager with authority to modify the agreement as necessary to maintain onsite parking arrangements.

Section 5. City Council Action.

Based on the record as a whole, including but not limited to all written and oral testimony offered in connection with this matter, the City Council hereby denies Appeal No. 10-002 and approves Conditional Use Permit No. 09-009 and Joint Use Parking Agreement No. 10-001 to permit the operation of the Malibu Inn at 22969 Pacific Coast Highway, subject to the conditions set forth herein.

Section 6. Conditions of Approval.

Standard Conditions

1. The applicants and property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including (without limitation) any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.
2. This approval is to allow for the following:
  - a. Operation of a restaurant with live entertainment;
  - b. Maximum dining seating capacity of 94 patrons and maximum event capacity of 340 patrons;
  - c. Service of distilled liquor;
  - d. Interior improvements including:
    - i. Replacing existing flooring,
    - ii. Refinishing the bars,

- iii. Upgrading televisions,
    - iv. Changing furniture and lighting fixtures, and
    - v. Replacing windows with double pane soundproof glass; and
  - e. Joint use parking agreement between properties addressed as 22959 Pacific Coast Highway and 22969 Pacific Coast Highway.
3. Subsequent submittals for this project shall be in substantial compliance with plans on-file with the Planning Division. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
4. This permit and rights conferred in this approval shall not be effective until the property owner signs and returns the Acceptance of Conditions Affidavit accepting the conditions set forth herein. The applicant shall file this form with the Planning Division within 10 days of this decision and prior to issuance of any development permits.
5. This conditional use permit shall be reviewed on a semi-annual basis for the first year, and then on an annual basis thereafter, starting on November 22, 2010. At this time, the property owner shall provide evidence that the joint use parking agreement is still in effect. At least two weeks prior to the review date, the applicant shall pay the Planning Division staff site inspection fee in effect at the time of request for site inspection. A staff planner will conduct a site visit to verify compliance with the provisions set forth in this resolution. If necessary, the conditional use permit may be brought back to the Planning Commission for additional conditions to mitigate and/or prevent nuisances that were identified. Possible mitigation measures can include:
  - a. Modifying the hours of operation;
  - b. Restricting alcohol service;
  - c. Hiring additional security personnel;
  - d. Prohibiting music;
  - e. Installing noise mitigating measures / devices; or
  - f. Other measures deemed necessary by the Planning Commission.
6. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Manager upon written request of such interpretation.
7. All interior tenant improvements shall conform to requirements of the City of Malibu Environmental and Building Safety Division, City Environmental Health Administrator and City Public Works Department, as applicable. Notwithstanding this review, all required permits shall be secured.
8. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Manager, provided such changes achieve substantially the same results and the project is still in compliance with the M.M.C. Revised plans reflecting the minor changes and additional fees shall be required.

Site Specific Conditions

*Fire Department*

9. All applicable requirements of the Los Angeles County Fire Department Land Development Unit – Fire Prevention Division set forth in the review sheet dated February 18, 2010 shall apply.

*Environmental Health*

10. Except as specifically required by the conditions of approval, no renovation of the septic tank and drainfield system is required. The City Environmental Health Administrator's approval dated May 13, 2010, does not represent an expansion, modification or change in the type or intensity of use of the existing onsite wastewater treatment system.
11. The piping connections between the grease interceptor, septic tanks and distribution boxes shall be brought into conformance with the Malibu Plumbing Code (MPC). Prior to the authorization to operate the restaurant during dinner and/or nightclub hours, a piping plan shall be submitted for review and approval, and a final construction permit shall be submitted to the Environmental Health Administrator.
12. The subject Environmental Health approval pertains only to the use of the premises not to exceed 94 restaurant seats, 340 nightclub patrons and 565 square feet of retail space.

*Sheriff's Department*

13. The property owner shall be required to notify the Sheriff's Department (Malibu / Lost Hills Station) and the City of Malibu of any live entertainment event (including DJs) scheduled to take place within the Malibu Inn, especially pertaining to live bands, no less than three days prior to the event. If the property owner books a larger event (in excess of 100 attendees), the property owner shall discuss potential requirements for contracting for a law enforcement presence to handle any crowd and traffic control with the Sheriff's Department. Additionally, the plan shall include a contact phone number of an individual who will be available during entertainment events to address complaints.

*Joint Use Parking Agreement*

14. The property at 22959 Pacific Coast Highway shall serve as a donor site for no less than 31 parking spaces for the subject property at 22969 Pacific Coast Highway. A legal agreement (Joint Use and Common Parking Facilities Agreement) between the City and the property shall be required. The agreement shall be submitted to the City prior to the commencement of alcohol service and shall contain requirements for an annual review by the City Planning Manager with authority to modify the agreement as necessary to maintain onsite parking

arrangements. A deed restriction shall be recorded on the title of each property reflecting the permanent reciprocal parking agreement. Should the 31 offsite parking spaces at any point be provided elsewhere, the legal agreement shall be amended to reflect the new offsite parking location. The 31 parking spaces at 22959 Pacific Coast Highway may be reallocated to any future development on this site.

15. An amendment to the conditions set forth in the CUP shall be required if there is a proposed change to the joint use parking agreement.

### *Operations*

16. The approved hours of operation are from 7:00 a.m. to 12:00 a.m. on Sundays, Mondays, Tuesdays and Wednesdays and from 7:00 a.m. to 2:00 a.m. on Thursdays, Fridays and Saturdays, with the exception that the use may be open until 2:00 a.m. only on those Sundays when the following Monday is a federal holiday. Closure must be complete and all employees must vacate the premises no more than one hour after closing, daily. No after hours operation shall be permitted.
17. The approved hours for alcohol sales are from 7:00 a.m. to 11:00 p.m. on Sundays, Mondays, Tuesdays and Wednesdays and from 7:00 a.m. to 1:00 a.m. on Thursdays, Fridays and Saturdays, with the exception that alcohol may be served until 1:00 a.m. only on those Sundays when the following Monday is a federal holiday.
18. A maximum of 94 seats for dining are approved under this permit. The maximum interior and exterior occupancy for entertainment events is 340 patrons.
19. Live entertainment events shall be limited to a maximum of two large events (defined as events with 100 or more attendees) and eight small events (events with less than 100 attendees) per month.
20. Valet parking must be provided for all events with 100 or more attendees.
21. No exterior activity such as trash disposal, recycling pickup, delivery trucks or exterior maintenance is permitted onsite between the hours of 10:00 p.m. and 7:00 a.m. Additionally, bottles and glass containers shall not be emptied into outdoor trash or recycling bins between 10:00 p.m. and 7:00 a.m.
22. This CUP permits the sale of distilled spirits as well as beer and wine with a Type 47 License. The property owner / operator shall obtain all necessary approvals from the California Department of Alcohol Beverage Control. Once obtained, the applicant is required to provide to the Planning Division a copy of the ABC issued On-Premise Consumption License.

23. Prior to the start of employment, employees that serve alcohol shall undergo an alcohol training program such as TIPS (Training for Intervention Procedures), designed to prevent intoxication, underage drinking and drunk driving. Evidence of completion of this training shall be submitted to the Planning Division.
24. This CUP permits live entertainment and dancing. Once obtained, the applicant is required to provide to the Planning Division a copy of the Los Angeles County Sheriff's Department Entertainment License.
25. No live entertainment is permitted on the exterior patio at any time. Low level amplified music is permitted on the patio during the hours of 7:00 a.m. to 10:00 p.m., daily. Unnecessary and boisterous noise from the patio between the hours of 10:00 p.m. and 2:00 a.m. shall be prohibited.
26. Prior to the commencement of alcohol service, the property owner / operator shall install small signs in the interior of the business on or near the exit doors requesting that patrons not loiter outside and be courteous and quiet when leaving the building and parking areas.
27. All exterior doors shall remain closed when not being used for ingress/egress purposes. The property owner shall install self-closing door mechanisms on all exterior doors.
28. Noise emanating from the premises shall not be plainly audible at a distance of five feet of any residential dwelling unit between 10:00 p.m. and 7:00 a.m., as required by M.M.C. Section 8.24.050(L).
29. The property owner / operator (or designated representative) shall monitor the noise levels adjacent to nearby residences to check compliance with City noise regulations (i.e. the noise should not be plainly audible within five feet of any residential dwelling unit). If the property owner / operator (or designated representative) determines that the noise level exceeds City noise regulations, they shall immediately notify the musicians to reduce noise levels in compliance with City noise regulations.
30. The property owner / operator shall adhere to a "good neighbor" policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons' compliance with the City's noise and smoking regulations and any applicable conditions of approval for the subject use relating to parking, smoking, litter, noise, loitering, etc.
31. Pursuant to M.M.C. Section 9.34.020, smoking is prohibited in all outdoor dining areas located on private or public property, including the public right-of-way. Smoking is also prohibited within 20 feet of an outdoor dining area, except while actively passing by on the way to another destination.

32. Per M.M.C. Section 9.34.030, the property owner shall post and maintain “no smoking” signs in conspicuous locations within the outdoor dining area. All such signs shall: 1) be no greater than one square foot in size; 2) be prominently displayed; 3) clearly state “no smoking” and/or use the international “no smoking” symbol; and 4) reference M.M.C. Section 9.34.020.
33. Prior to commencement of alcohol service, a final security plan shall be submitted to the City Environmental and Community Development Department and the Los Angeles County Sheriff’s Department for review and approval. The plan shall address both physical and operational security issues and shall be no less stringent than the plan submitted to the City on September 7, 2010. Additionally, the plan shall include a contact phone number of an individual who will be available during entertainment events to address complaints. Evidence of the Sheriff’s Department approval of the plan shall be provided to the City.
34. The property owner / operator (or designated representative) shall regularly monitor the area outside of the restaurant to ensure peace and quiet. Security personnel shall be provided seven days a week from 9:00 p.m. to closing to ensure that noisy patrons leaving the establishment will not adversely affect the welfare of neighborhood residents.
35. At the close of business each day, the property owner / operator shall clean up any litter or any other items that were likely to have been left by patrons of the subject establishment found on the subject property or along the public right-of-way.
36. No sign shall be illuminated after 11:30 p.m., or close of business, whichever occurs last.
37. Any proposed structural changes to the existing signs shall require review for the requirements set forth in M.M.C. Chapter 17.52 (Signs).
38. Window or other signage visible from the public right-of-way that advertises beer or alcohol shall not be permitted.
39. No restaurant, food packager, retail food vendor, vendor or nonprofit food provider shall provide prepared food to its customers in any food packaging that utilizes expanded polystyrene. “Expanded polystyrene” means and includes blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form of polystyrene foam insulation) which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blow molding (extruded foam polystyrene). Expanded polystyrene is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and egg cartons.
40. The property owner / tenant shall comply with the requirements set forth in M.M.C. Chapter

9.28 (Ban on Plastic Shopping Bags). No retail establishment, restaurant, vendor or nonprofit vendor shall provide plastic bags or compostable bags to customers. This requirement applies to plastic or compostable bags provided at the point of sale for the purpose of carrying away goods.

41. A copy of the conditions of approval must be kept on the premises and presented to the Los Angeles County Sheriff's Department upon request.
42. Parking displaced during any future construction on 22959 Pacific Coast Highway shall be temporarily relocated to the commercial / office building located at 22761 Pacific Coast Highway since it is owned by the same property owner (Kambiz Hakim) as the Malibu Inn. If this situation changes, alternate offsite parking arrangements will need to be coordinated with the Planning Manager prior to building permit issuance for development at 22959 Pacific Coast Highway.
43. Within 60 days of the issuance of the conditional use permit, an after-the-fact building permit shall be obtained for the retaining wall along the hillside at the rear of the property (as identified in Building Permit No. 02-0233), which creates the area for the planter.

#### Fixed Conditions

44. The conditions under which this conditional use permit was approved may be modified by the City of Malibu without the consent of the property owner or operator if the Planning Commission finds that the use is creating a nuisance.
45. A conditional use permit that is valid and in effect, and was granted pursuant to the provisions of the Malibu Municipal Code shall run with the land and continue to be valid upon change of ownership of the land or any lawfully existing building or structure on the land.
46. Violation of any of the conditions of approval shall be cause for revocation of the conditional use permit and termination of all rights contained therein.
47. This conditional use permit shall become null and void with the demolition of the building.
48. The conditional use permit shall be reviewed by the Planning Manager for compliance with the conditions of approval and a report shall be presented to the Planning Commission no earlier than three months from the date of issuance.
49. If it has cause to believe that grounds for revocation or modification may exist, the Planning Commission shall hold a public hearing upon the question or modification or revocation of this conditional use permit granted under or pursuant to the provisions of M.M.C. Section 17.66.100(C). If a hearing is required, the City shall notify the property owner / operator

more of the following conditions exists:

- a. The conditional use permit was obtained in a fraudulent manner.
- b. The use for which the conditional use permit was granted has ceased or was suspended for at least six successive calendar months.
- c. One or more of the conditions found within this resolution have not been substantially met.

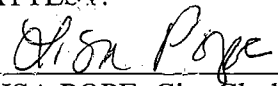
Section 7. Certification.

The City Clerk shall certify the adoption of this Resolution.

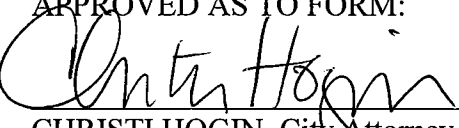
PASSED, APPROVED AND ADOPTED this 22<sup>nd</sup> day of November 2010.

  
\_\_\_\_\_  
JEFFERSON WAGNER, Mayor

ATTEST:

  
\_\_\_\_\_  
LISA POPE, City Clerk  
(seal)

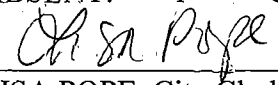
APPROVED AS TO FORM:

  
\_\_\_\_\_  
CHRISTI HOGIN, City Attorney

Any action challenging the final decision of the City made as a result of the public hearing on this application must be filed within the time limits set forth in Section 1.12.010 of the M.M.C. and Code of Civil Procedure. Any person wishing to challenge the above action in Superior Court may be limited to raising only those issues they or someone else raised at the public hearing, or in written correspondence delivered to the City of Malibu at or prior to the public hearing.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 10-59 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 22<sup>nd</sup> day of November, 2010, by the following vote:

AYES: 4 Councilmembers: Conley Ulich, La Monte, Rosenthal, Sibert  
NOES: 0  
ABSTAIN: 0  
ABSENT: 1 Councilmember: Wagner

  
\_\_\_\_\_  
LISA POPE, City Clerk  
(seal)