



**City Council Meeting, May 5, 2020  
Agenda Item No. D2**

**TO:** Honorable Mayor and Members of the City Council

**THROUGH:** Bruce Moe, City Manager

**FROM:** Carrie Tai, A.I.C.P, Community Development Director

**SUBJECT:** May 5, 2020 City Council Meeting, Public Hearing re: MB Post

**DATE:** May 5, 2020

**SUPPLEMENTAL REPORT**

**BACKGROUND**

Agenda Item D2 on the May 5, 2020 City Council agenda is a public hearing to consider the request by MB Post to:

1. Expand into the adjacent space, formerly occupied by another restaurant (Subway), including the enclosure of Subway's 148 square-foot patio; and
2. Increase operating hours.

Yesterday afternoon (May 4), Coastal Defender President Don McPherson and Vice President James Quilliam, and its attorney Beverly Grossman Palmer (collectively "Appellant" hereinafter), submitted correspondence to the City that has been distributed to the Council and to the public. Mr. McPherson apologized for the "lateness of this report" claiming that he did not receive "complete project plans" for the proposal or the list of Downtown alcohol premises until April 30. Yesterday's email also states, "the report comprises only two pages, so should not take much time to peruse." For the record: MB Post's project plans were attached to the Planning Commission staff report dated March 11, 2020; the submittal by Mr. McPherson is 16 pages long (not two pages) and includes a "Noise Analysis" dated May 3, 2020; and, as explained in the staff report, the list of other restaurants in the Downtown area is not relevant to whether the request at the subject site is appropriate for the proposed location. Today, at 12:33 p.m., Mr. McPherson has submitted another email in this matter reducing his proposed conditions of approval of the expansion from five to four.

**DISCUSSION**

The primary complaint raised by the Appellant is focused on potential noise that they claim, without any substantial evidence, will interfere with residents' peace and quiet. Based upon the revised conditions of approval proposed by Mr. McPherson today, it appears that they are

not opposed to the expansion, but are concerned about extending closing hours and potential noise generated by the expansion, but that is not entirely clear. Appellant also presents additional arguments, some of which we address below. As described more fully below, I, in my professional capacity as a certified and licensed member of the American Institute of Certified Planners and expert on the California Environmental Quality Act (CEQA), find no merit in any of their arguments. In particular as shown below: (1) contrary to the arguments made by Ms. Grossman, the project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to State CEQA Guidelines (14 Cal. Code Regs.) Section 15301 (Existing Facilities); and (2) the “Noise Analysis” admittedly is not based upon any actual field measurements at the site, but is a “prediction” based upon “past experiences of amplified music playback and patron (speech) noise levels in [other] restaurants [in other locations] with a full bar with similar density of occupancy to that proposed.”

**CEQA: A CATEGORICAL EXEMPTION IS APPROPRIATE HERE, AND THE EXCEPTIONS TO CATEGORICAL EXEMPTIONS-CUMULATIVE IMPACTS AND UNUSUAL CIRCUMSTANCES-DO NOT APPLY HERE**

### 1. Categorical Exemption

Staff has determined that there is a “negligible” expansion of use associated with the Project, as that phrase is used in CEQA. This limited expansion is specifically the type of expansion contemplated by CEQA to be exempt under Guidelines Section 15301, which provides that categorical exemptions are appropriate for projects such as “the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.” For instance, CEQA provides that a categorical exemption is appropriate for the following examples:

- Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances; and
- Additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less.

Even projects known as “in-fill development projects” that involve actual new construction of structures in communities like Manhattan Beach are exempt from CEQA. By contrast, with the exception of the 148 square-foot patio area, the proposed expansion is entirely within the footprint of the existing restaurant and the adjacent vacant restaurant, and is not the construction of a new building. A categorical exemption is appropriate for the proposed project, as the expansion is less than 50 percent of the floor area of the current restaurant and is less than 2,500 square feet.

The purported noise impacts analysis prepared by Steve Rogers Acoustics, LLC is based solely on conjecture, speculation, and supposition, offers only general conclusions that are not site specific, does not provide any baseline noise analysis, does not account for any noise attenuation features of the site, assumes (without any basis for doing so) that the Project will not comply with applicable conditions of approval, and rests its conclusions on speculative future conditions. The Project’s conditions of approval require the restaurant’s windows facing Manhattan Avenue to be closed no later than 10:00 p.m. every day in order to minimize any noise generated by the restaurant. There is no evidence that the applicant is

not in compliance with the City's Noise Ordinance or any credible evidence that the applicant will not comply with the project's conditions of approval.

## 2. Exceptions to Categorical Exemptions Are Not Applicable Here

Staff has further determined that there are no applicable exceptions under CEQA Guidelines that would apply and would render inapplicable a CEQA categorical exemption.

### A. No Cumulative Impacts

Appellant's attorney contends that the City's approval of the expanded use, including increased hours of operation, will cause adverse cumulative impacts by setting a "precedent" for other restaurants and comparable establishments in Manhattan Beach to request similar increases in their operating hours.

There is no reasonable possibility that the Project will result in potential adverse cumulative impacts, including noise. Appellant's speculation that the Project will result in cumulative noise impacts is unsupported. In general, the concept of cumulative impacts is where, in connection with CEQA review, the public agency has to consider other projects in the pipeline or are reasonably foreseeable. For instance, for the Village Mall project, the City considered the cumulative impacts on traffic, noise, parking supply, etc. that would arise from a number of projects that were reasonably foreseeable, including projects in the City of El Segundo. Here, by contrast, Appellant has -- without any evidence to support its conjecture -- offered a list of 19 other restaurants with closing hours before 1:00 a.m. that could apply for a use permit amendment for later hours. Such a theory would necessarily be predicated upon the following conjecture: one or more of the 19 restaurants would apply for later closing hours; the City would approve some or all of the requests; the City would not impose any noise mitigation conditions; noise would emanate from the other restaurants; and such additional noise would combine with the potential noise from MB Post to "significantly impact the quiet nighttime environment." As noted in the staff report, allowing one restaurant to close later does not set any precedence, because each project is considered on its own merits, based upon compatibility issues with its neighborhood.

There is also no reasonable or foreseeable possibility that the Project will result in potential adverse cumulative impacts, including noise. There are currently no other applications pending from restaurants in the City for later operating hours. The City's decision to extend the operating hours at the applicant's restaurant does not establish any precedent for a similar extension at any other restaurant. If another restaurant applies for a similar extension in its operating hours, the City must consider whether the proposed operating hours would be compatible with the surrounding uses *at that location*.

Thus, no substantial evidence has been presented to support the argument that the project may result in cumulative impacts.

The Project's conditions of approval will minimize noise generated by the restaurant by requiring the restaurant's windows facing Manhattan Avenue to be closed no later than 10:00 p.m. every day. In addition, the conditions prohibit live music and require restaurant management -- rather than patrons or any other party -- to control the volume of any background music. Finally, the conditions provide that noise emanating from the property shall be within the limitations prescribed by the City Noise Ordinance and shall not create a nuisance to nearby property owners.

## B. No Unusual Circumstances

Appellant's attorney also contends that the expanded use presents "unusual circumstances that are not typically found in similar projects subject to the exemption" due to the expansion of MB Post into the space of another "type" of restaurant and additional operating hours.

There is no reasonable possibility that the Project will create a significant impact on the environment based on unusual circumstances. Specifically, the expansion of the existing restaurant into an adjacent restaurant space in an urbanized, commercial area will not substantially modify the nature or use of the combined restaurant space or any adjacent properties. Further, the expanded restaurant would continue to be surrounded by compatible uses, including other restaurants, retail establishments, and public parking. These negligible changes to an existing use are typical of the projects contemplated by CEQA to be exempt under Guidelines Section 15301. Indeed, the circumstances here -- a restaurant expanding into an adjacent restaurant space in an established neighborhood with a number of restaurants -- are not unusual in any significant way. Based upon my experience, full service restaurants have routinely taken over the space of other, non-full service restaurants. In my experience, an example of an unusual circumstance that would require additional CEQA beyond the review required by a categorical exemption is when a non-conforming restaurant, normally exempt from CEQA, wants to expand but is located in a single-family residential zone.

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