



City of Manhattan Beach
Central Cashiering
1400 Highland Ave
Manhattan Beach, CA 90266
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Welcome to the City of Manhattan Beach

004769-0002 Josh G. 09/22/2020 02:46PM

PROFILES

Payment Tran Code:
MASTER APPLICATION
(0099)

Description: 1131
MANHATTAN AVE

2021 Item: 0099

MASTER APPLICATION
(0099)

500.00

100-3704

500.00C

500.00

Subtotal

500.00

Total

500.00

CHECK

500.00

Check Number 4891

Change due

0.00

Paid by: DONALD MC PHERSON

Thank you for your payment!
www.citymb.info

CUSTOMER COPY



MASTER APPLICATION FORM

CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT

Office Use Only

Date Submitted:
Received By:
F&G Check Submitted:

CITY CLERK'S OFFICE
MANHATTAN BEACH, CA

2020 SEP 22 AM 11:14

RECEIVED

1131 Manhattan Ave, Manhattan Beach CA 90266 ["Nando"]

Project Address

Not listed in PC Staff Report, Dated 9 September 2020

Legal Description

CD Downtown Commercial District

General Plan Designation

CD III
Zoning Designation Area District

For projects requiring a Coastal Development Permit, select one of the following determinations¹:

Project located in Appeal Jurisdiction

☐ Major Development (Public Hearing required)

☐ Minor Development (Public Hearing, if requested)

Project not located in Appeal Jurisdiction

☒ Public Hearing Required (due to UP, Var, ME, etc)

☐ No Public Hearing Required

Submitted Application (check all that apply)

<input checked="" type="checkbox"/> Appeal to PC/PPIC/BBA/CC	4225	<input type="checkbox"/> Use Permit (Residential)	4330
<input type="checkbox"/> Coastal Development Permit	4341	<input type="checkbox"/> Use Permit (Commercial)	4330
<input type="checkbox"/> Continuance	4343	<input type="checkbox"/> Use Permit Amendment	4332
<input type="checkbox"/> Cultural Landmark	4336	<input type="checkbox"/> Variance	4331
<input type="checkbox"/> Environmental Assessment	4225	<input type="checkbox"/> Park/Rec Quimby Fee	4425
<input type="checkbox"/> Minor Exception	4333	<input type="checkbox"/> Pre-application meeting	4425
<input type="checkbox"/> Subdivision (Map Deposit)	4300	<input type="checkbox"/> Public Hearing Notice	4339
<input type="checkbox"/> Subdivision (Tentative Map)	4334	<input type="checkbox"/> Lot Merger/Adjust./\$15 rec. fee-4225	
<input type="checkbox"/> Subdivision (Final)	4334	<input type="checkbox"/> Zoning Business Review	4337
<input type="checkbox"/> Subdivision (Lot Line Adjust.)	4335	<input type="checkbox"/> Zoning Report	4340
<input type="checkbox"/> Telecom (New or Renewed)	4338	<input type="checkbox"/> Other	

Fee Summary: (See fees on reverse side)

Total Amount: \$ _____ (less Pre-Application Fee if applied within past 3 months)

Receipt Number: _____ Date Paid: _____ Cashier: _____

Applicant(s)/Appellant(s) Information

Donald McPherson

Name

1014 1st St, Manhattan Beach, CA 90266

Mailing Address

Resident owning Downtown income property

Applicant(s)/Appellant(s) Relationship to Property

Donald McPherson

Cell: 310 487 0383, dmcphersonla@gmail.com

Contact Person (include relation to applicant/appellant)

Phone number / email

1014 1st St, Manhattan Beach, CA 90266

Address

Cell: 310 487 0383, dmcphersonla@gmail.com

Applicant(s)/Appellant(s) Signature

Phone number./email

Complete Project Description- including any demolition (attach additional pages as necessary)

1) Appeal of Nando Use Permit Amendment, Reso. No. PC 20-XX, 9 September 2020

2) Please see the attached summary for a description of the appeal.

¹ An Application for a Coastal Development Permit shall be made prior to, or concurrent with, an application for any other permit or approvals required for the project by the City of Manhattan Beach Municipal Code. (Continued on reverse)

APPELLANT AFFIDAVIT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I, Donald McPherson, being duly sworn,
depose and say that I am the appellant involved in this application and that
the foregoing statements and answers herein contained and the information herewith submitted
are in all respects true and correct to the best of my/our knowledge and belief(s).

Signature of appellant

Donald McPherson
Print Name

1014 1st St, Manhattan Beach, CA 90266
Mailing Address

Cell: 310 487 0383, dmcpersonla@gmail.com
Telephone/email

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 20____
by _____, proved to me
on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature see attached CA Jurat
Notary Public

SEAL

CITY CLERK'S OFFICE
MANHATTAN BEACH, CA

2020 SEP 22 AM 11:14




RECEIVED

Fee Schedule Summary

Below are the fees typically associated with the corresponding applications. Additional fees not shown on this sheet may apply – refer to current City Fee Resolution (contact the Planning Division for assistance.) Fees are subject to annual adjustment.

Submitted Application (circle applicable fees, apply total to Fee Summary on application)

Coastal Development Permit

Public hearing – no other discretionary approval required: \$ 4,727 
Public hearing – other discretionary approvals required: 2,083 
No public hearing required – administrative: 1,287 

Use Permit

Use Permit: \$ 6,207 
Master Use Permit: 9,578 
Master Use Permit Amendment: 4,972 
Master Use Permit Conversion: 4,564 



Variance

Filing Fee: \$ 6,001 

Minor Exception


Without notice: \$ 1,434
With notice: 1,929 

Subdivision

Certificate of Compliance: \$ 1,604
Final Parcel Map + mapping deposit: 520
Final Tract Map + mapping deposit: 720
Mapping Deposit (paid with Final Map application): 500
Merger of Parcels or Lot Line Adjustment: 1,119
Quimby (Parks & Recreation) fee (per unit/lot): 1,817
Tentative Parcel Map (4 or less lots / units) No Public Hearing: 1,291
Tentative Parcel Map (4 or less lots / units) Public Hearing: 3,511 
Tentative Tract Map (5 or more lots / units): 4,007 

Environmental Review (contact Planning Division for applicable fee)

Environmental Assessment (no Initial Study prepared): \$ 215
Environmental Assessment (if Initial Study is prepared): 3,040
Fish and Game/CEQA Exemption County Clerk Posting Fee²: 75

 Public Hearing Notice applies to all projects with public hearings and covers the City's costs of envelopes, postage and handling the mailing of public notices. Add this to filing fees above, as applicable: \$ 70

²Make a separate \$75 check payable to LA County Clerk, (DO NOT PUT DATE ON CHECK)

California Jurat Certificate

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

S.S.

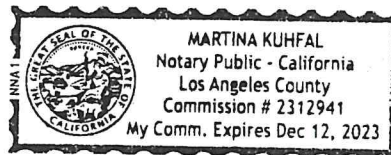
Subscribed and sworn to (or affirmed) before me on this 11th day of Sept,
Month

20 20, by Donald McPherson and
Name of Signer (1)

n/a, proved to me on the basis of
Name of Signer (2)

satisfactory evidence to be the person(s) who appeared before me.

[Signature]
Signature of Notary Public



For other required information (Notary Name, Commission No. etc.)

Seal

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this jurat to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The certificate is attached to a document titled/for the purpose of

appellant affidavit

containing 1 pages, and dated _____

Additional Information

Method of Affiant Identification

Proved to me on the basis of satisfactory evidence:

☒ form(s) of identification ☐ credible witness(es)

Caley Drive Etc.
Notarial event is detailed in notary journal on:

Page # 53 Entry # 3

Notary contact: 310 374 4420

Other

☐ Affiant(s) Thumbprint(s) ☐ Describe: _____

APPEAL OF NANDO TYPE-47 LICENSE APPROVAL, PLANNING COMMISSION. 9 SEP 2020

Coastal Defender opposes intensifying alcohol service in Manhattan Beach, without conditions to offset impacts on nearby residents. Coastal Defender is a non-profit public-benefit corporation operating to protect the quality of life in the City of Manhattan Beach.

In exchange for permitting Nando full-alcohol service, the city council should condition the use permit, to require that when applying to the ABC for the new Type-47 license, the applicant includes retaining the current closing hours of 11 PM Sun-Thu and 12 AM Fri-Sat.

This condition does not impact the applicant's entitlements but will preclude increasing operating hours in the future, which will impact nearby residents. It understood that the applicant does not request an extension of operating hours.

Exhibit 1 illustrates the proximity of north Manhattan Ave eating & drinking places to many residences. The staff report fails to disclose this substantial evidence that intensified alcohol service may have a significant effect on the environment, primarily noise disturbances at residences adjoining parking lots used by Nando patrons.

Applicable Standards for Environmental Review.

Regulations for the Department of Alcohol Beverage Control ["ABC"] provide a standard to evaluate environmental effects, as well as to prohibit issuance of a new license if,

"(b) The parking lot or parking area which is maintained for the benefit of patrons of the premises, or operated in conjunction with the premises, is located within 100 feet of a residence." [Cal. Code of Regs., tit. 4, § 61.4]

Clearly, many residences lie within 100 feet of off-street parking lots used by Nando patrons.

The Department may grant a license, however,

"where the applicant establishes that the operation of the business would not interfere with the quiet enjoyment of the property by residents." [ibid]

Neither the city nor the applicant has conducted an environmental review, so the above provision does not apply. Consequently, by approving a Type-47 license for Nando, the city will violate ABC regulations.

Staff has declared the project categorically exempt from CEQA, but that exemption invalid because it fails to consider,

"the cumulative impact of successive projects of the same type in the same place, over time is significant." [Cal. Code Regs., tit. 14, § 15300.2(b).]

A glance at Exhibit 1 reveals that the recent intensification of alcohol service on north Manhattan Ave constitutes a substantial cumulative impact, from Nando now, MB Post in May and Tacolicious in 2019.

This appeal incorporates all evidence of cumulative impact presented in Exhibit 2, Verified Petition for Writ of Mandate [MB Post, 1142 & 1144 Manhattan Ave].

Parking-Lot Noise Disturbance Analysis.

Eating and drinking places in the Downtown northwest corner have the unusual circumstance that the nearest parking lots directly adjoin or intrude into residential zones.

For analyzing this situation, the noise ordinance provides no numerical standards for Lot 2 and the pier parking adjacent to residences. Therefore, the subjective standards in the municipal

APPEAL OF NANDO TYPE-47 LICENSE APPROVAL, PLANNING COMMISSION. 9 SEP 2020

code apply. For example, neither the city nor the applicant have evaluated noise disturbances by inebriated persons in the city and pier parking lots, regarding,

"The proximity of the noise to residential sleeping facilities." [MBMC § 5.48.140(A)]

For environmental review of the Nando project parking, the analysis of raised or loud voices, slammed car doors and engine noise requires consideration of twelve factors, such as noise level, background noise, density of inhabitation, and proximity to bedrooms. [*ibid*]

To analyze potential disturbances, it reasonable to assume that the exterior loudness standards in the noise ordinance provide a numerical proxy for the subjective standards. For Nando parking, adjacent to residential zoning and during 10 AM to midnight, this corresponds to 65 dB loudness for any length of time. [MBMC § 5.48.160, Table 5] Impulsive noise, such as shouts, screams, laughter and slammed car doors, may not exceed 60 dB at residential property lines. [MBMC § 5.48.160(C).

Coastal Defender believes Nando patrons in Lot 2 and the pier parking will create noise disturbances, per the subjective standards in the noise ordinance.

Conclusions.

The Nando application fails to comply with the subjective standards in the noise ordinance, in terms of cumulative impacts from successive projects, as required by the California Environmental Quality Act.

Furthermore, the project does not comply with ABC regulations for a new alcohol license, because of the many residences that lie within 100-feet of parking lots used by Nando patrons.

In exchange for permitting Nando full-alcohol service, the city council should require the applicant to include in the new Type-47 alcohol license, the current closing hours of 11 PM Sun-Thu and 12 AM Fri-Sat.

EXHIBIT 1.

SUBSTANTIAL EVIDENCE OF NANDO SIGNIFICANT IMPACTS ON NEARBY RESIDENCES

- <>100-foot proximity of residences to off-street parking lots used by Nando patrons precludes a Type-47 license
- <>Cumulative impacts of alcohol-service intensification requires environmental review

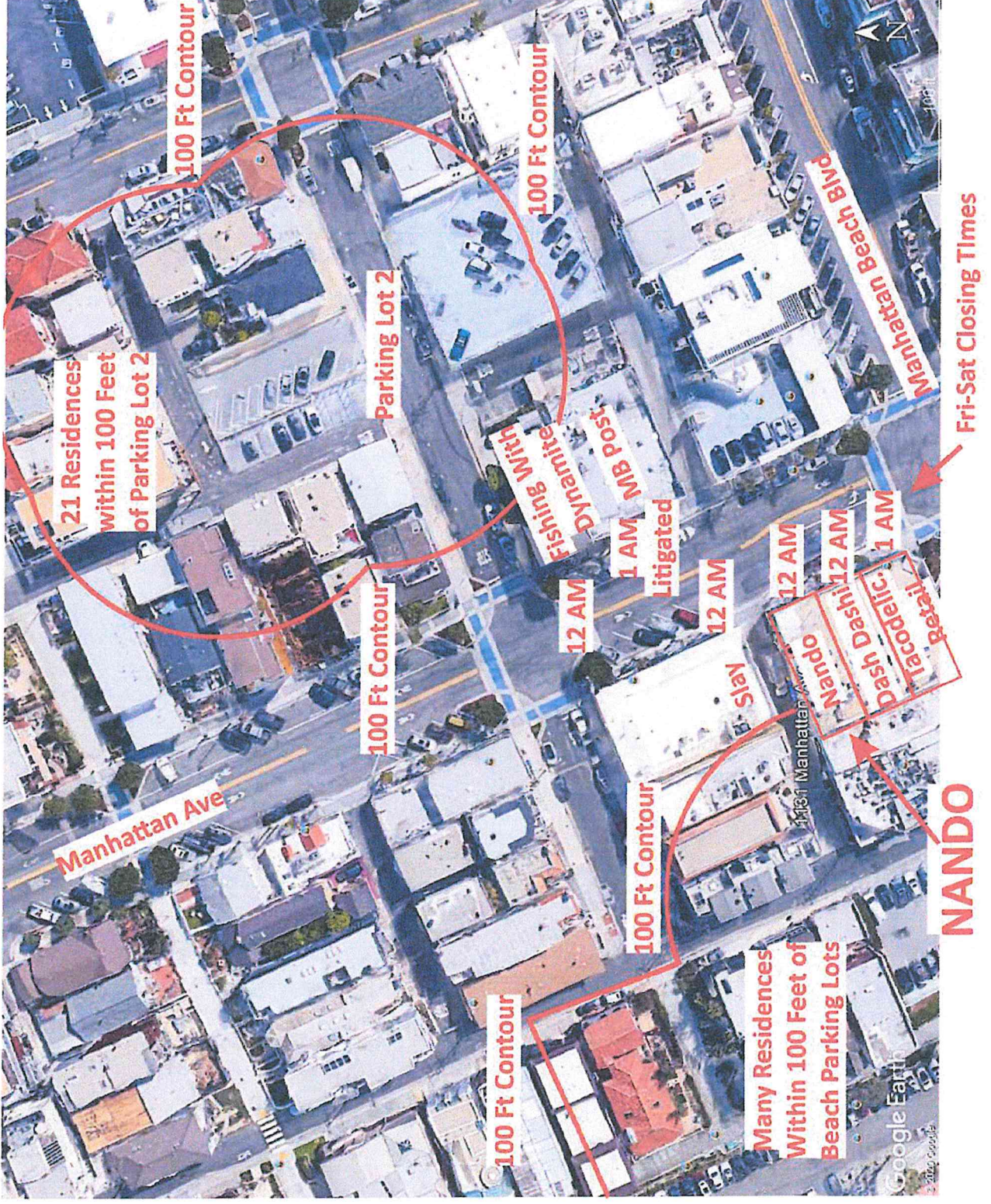


EXHIBIT 2. MB POST VERIFIED PETITION

FREDRIC D. WOOCHEER (SBN 96689)
BEVERLY GROSSMAN PALMER (SBN 234004)
DALE K. LARSON (SBN 266165)
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Facsimile: (310) 319-0156
E-mail: bpalmer@strumwooch.com

*Attorneys for Petitioners and Plaintiffs
Donald McPherson and Coastal Defender*

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

DONALD McPHERSON; and COASTAL
DEFENDER, a nonprofit organization,

Petitioners/Plaintiffs,

v.

CITY OF MANHATTAN BEACH;
MANHATTAN BEACH CITY COUNCIL; and
DOES 1 to 100, inclusive,

Respondents/Defendants.

SIMMS RESTAURANT GROUP

Real Party In Interest.

Case No.:

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

(California Environmental Quality Act ("CEQA"),
Pub. Res. Code § 21000, et seq., Gov. Code, §§
6250 & 65009; Code Civ. Proc., §§ 525, 1060, 1085,
1094.5)

CALIFORNIA ENVIRONMENTAL QUALITY ACT CASE

PRINTED ON RECYCLED PAPER

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. Petitioners and Plaintiffs Donald McPherson and Coastal Defender (“Petitioners”) bring this lawsuit to challenge Respondents and Defendants City of Manhattan Beach (“the City’s”) and Manhattan Beach City Council’s (“City Council’s”) (collectively, “Respondents”) May 14, 2020 approval permitting Real Party in Interest Simms Restaurant Group (“Real Party” or “RPI”) to expand the alcohol use at their MB Post restaurant into the former non-alcohol serving Subway, adjacent on the north and to increase the hours of operation of the combined eating and drinking places until 1 AM, a deviation from most similar businesses in the City of Manhattan Beach. MB Post and the former Subway (“Premises”) are respectively located at 1142 and 1144 Manhattan Avenue, within 100 feet of numerous residential buildings in downtown Manhattan Beach. Respondents based their decision to approve the expansion on their stated belief that the restaurant owner is a responsible operator and personally reliable, not on an evaluation of the possible environmental impacts of the significant expansion. Respondents did not consider the likelihood that a future owner can and will operate the combined premises more as a nightclub.

2. Respondents could not have based their approval on an evaluation of environmental impacts of the expansion, because the City did not undertake any examination of the possible environmental impact. Instead, over the objections of Petitioners and other members of public, including residential neighbors of the two restaurant parcels, Respondents relied upon a Class 1 categorical exemption from the California Environmental Quality Act (“CEQA”). Petitioners objected to the use of this exemption, both because expansion of the facility does satisfy the requirement of the Class 1 exemption of a “negligible” expansion of use. Moreover, even if the exemption were found to apply, the unusual circumstances of MB Post, including its location within close proximity to residential buildings, its unusually late hours for the location and type of premise in the City, and the predicted impacts of night time noise at nearby residences, as established by expert analysis.

3. In addition, the Manhattan Beach Municipal Code requires that a City make a finding that a new or expanded proposed use complies with the City’s performance standards, which include the noise ordinance. Petitioners’ expert noise evaluation demonstrates that the premises will substantially violate the noise ordinance.

4. Petitioners seek a writ of mandate to set aside Resolution 20-0049 because it was approved without proper environmental review and is contrary to the Manhattan Beach Municipal Code; injunctive relief to prevent Respondents or Real Parties from operating in reliance upon the defective and illegal approvals, and a determination from this Court that Respondents failed to comply with the CEQA and Manhattan Beach Municipal Code in approving the expanded hours and additional special events for the Premises.

5. Additionally, Petitioners seek a writ of mandate to enforce their right to records under the California Public Records Act, Government Code section 6250, *et seq.* (“CPRA”), and the California Constitution, Article I, section 3. Petitioners have requested on several occasions that the City provide documents within the City’s files that are relevant to the approvals in question and have received no response, even after informing the City that they would seek judicial relief for the City’s failure to respond.

PARTIES

6. Petitioner and Plaintiff DONALD MCPHERSON is a resident and taxpayer of the City of Manhattan Beach. Dr. McPherson owns a residence in the Downtown area and is personally impacted by intensified late-night operations of eating and drinking places there. Dr. McPherson participated in proceedings before the Manhattan Beach City Council, and appealed the determination of the Planning Commission to the City Council.

7. Petitioner and Plaintiff COASTAL DEFENDER is a non-profit public benefit corporation operating to protect the quality of life in the City of Manhattan Beach.

8. Respondent and Defendant CITY OF MANHATTAN BEACH is a charter city and the governmental entity serving the people of the City of Manhattan Beach, in which the Premises is located. The City is a “local agency” as defined by Government Code § 6252, subdivision (a), and is therefore subject to the CPRA.

9. Respondent and Defendant MANHATTAN BEACH CITY COUNCIL is the five-member elected body that represents the citizens of Manhattan Beach. The Council was the final decision-making body that approved the expansion of use for the Premises.

10. Respondents and Defendants DOES 1 through 100 are or were the agents, employees, contractors, and/or entities acting under the authority of each other respondent or real party in interest, and each performed acts on which this action is based within the cause and scope of such agency and/or employment. Petitioners do not know the true names and capacities, whether individual, corporate, or otherwise, of DOES 1 through 100, inclusive, and therefore sue said respondents and defendants under fictitious names. Petitioners will amend their Petition and Complaint to show their true names and capacities when they have been ascertained.

11. Real Party in Interest SIMMS RESTAURANT GROUP is the applicant listed on the Notice of Exemption

12. Real Parties in Interest ROES 1 through 100 are or were the agents, employees, contractors, and/or entities acting under the authority of each other respondent or real party in interest, and each performed acts on which this action is based within the cause and scope of such agency and/or employment. Petitioners do not know the true names and capacities, whether individual, corporate, or otherwise, of real parties in interest ROES 1 through 100, inclusive, and therefore sue said real parties in interest under fictitious names. Petitioners will amend their Petition and Complaint to show their true names and capacities when they have been ascertained.

VENUE

13. This Court has original jurisdiction over this matter pursuant to article VI, section 10 of the California Constitution, sections 1085 and 1094.5 of the Code of Civil Procedure, Government Code sections 6258 and 6259, and Public Resources Code section 21168.5.

14. Venue is proper in the County of Los Angeles pursuant to Code of Civil Procedure section 394 in that Respondents/Defendants are government entities and/or agents of the City of Manhattan Beach, which is located in Los Angeles County.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. As set forth in paragraph 6 above, Petitioners participated during the approval process, providing both oral and written comments sufficient to apprise the City and Council of their concerns regarding the expansion of use. Petitioners further incorporate the comments, both oral and written, made during the Project approval process by other members of the public.

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STATEMENT OF FACTS

16. MB Post and the former Subway are located at 1142 and 1144 Manhattan Avenue in the City of Manhattan Beach, respectively. The former Subway currently does not have an alcohol license. It is operated by Real Party in Interest Simms Restaurant Group, which also operates other restaurants in the City of Manhattan Beach. This includes Fishing with Dynamite located 1148 Manhattan Avenue, adjacent on the north to the former Subway. Consequently, the Simms Group operates three adjoining eating and drinking places, adjacent to residences 100 feet away.

17. MB Post operates pursuant to a Use Permit Amendment issued in 1999, City Council Resolution No. 5513. Resolution No. 5513 allows MB Post to offer full alcohol service, food service, and limited entertainment. The approved hours of operation for pursuant to Resolution No. 5513 MB Post were 11:00 a.m. to 11:00 p.m. Monday through Wednesday, 11:00 a.m. to 12:00 a.m., Thursday through Friday, and 7:00 a.m. to 12:00 a.m. on Saturdays, and 7:00 a.m. to 11:00 p.m. on Sundays.

18. Next to MB Post at 1144 Manhattan Avenue, a Subway restaurant had operated in a 1,447 square foot space. This space was authorized for use as a restaurant by Board of Zoning Adjustment Resolution 82-41, which authorized a "restaurant, juice bar, and deli service." No alcohol consumption was allowed by BZA Resolution No. 82-41. At the time of the application at issue, the space was vacant.

19. Real Party in Interest applied to the City for an amendment to the existing Use Permit Amendment that had been authorized by Resolution No. 5513, seeking approval to expand its existing 3,283 square-foot restaurant into the adjacent 1,447 square-foot neighboring building. In addition, Real Party in Interest requires to partially enclose a 148 square-foot area in front of the Subway, increasing the total square footage of the restaurant to 4,878 square feet. Per BZA Resolution No. 82-41, this area formerly unused.

20. Renovations in the application include openable windows facing Manhattan Avenue in the "Atrium Dining Area" and "Lounge Area," eliminating the French doors that open onto Manhattan Avenue.

1 21. Real Party in Interest also requested to expand its operating hours in connection with its
2 new, larger restaurant. The request was to open at 6:00 a.m. daily, and to extend closing time to 1:00
3 a.m. on Thursday through Saturday.

4 22. On March 11, 2020, the Planning Commission considered Real Party's request. During
5 the public comment period, four residents testified of their concern that the proposed restaurant's floor
6 plan would allow the restaurant to operate more as a bar than a restaurant, and that additional noise
7 associated with the extra hour of alcohol service would create a neighborhood disturbance.

8 23. The Planning Commission supported the proposed amendment, and specifically praised
9 the applicant's history of responsible operations. The Planning Commission placed certain conditions
10 on the application, including the requirement that windows facing Manhattan Avenue be closed no later
11 than 10:00 p.m. every day, and to cease selling alcoholic beverages at 12:00 a.m. Thursday through
12 Saturday. The Planning Commission required staff to report to the Planning Commission a year after
13 commencement of operations at the expanded restaurant.

14 24. Petitioner McPherson and James Quilliam, who are President and Vice President of
15 Coastal Defender, along with Coastal Defender itself, appealed the Planning Commission's decision to
16 the Manhattan Beach City Council on March 24, 2020.

17 25. The appeal questioned how the project's use of open windows would not result in a
18 violation of the City's noise ordinance, and that the location of this business within 100 feet of residents
19 would interfere with the quiet enjoyment of the property by residents. The appeal raised issues with the
20 lack of environmental review. The appeal pointed out that the French doors of MB Post are welded shut
21 so the change to operable windows would significantly increase the transmission of noise from the
22 premises. The appeal requested that the business's hours of operation be limited to midnight, seven
23 days a week, that all windows and the south door be closed at 10:00 p.m., and that glazing sound-
24 attenuation be required to reduce noise transmission.

25 26. On May 5, 2020, the City Council held a public hearing to consider the appeal and
26 conduct a de novo review of the Use Permit Amendment application. At the hearing, in addition to the
27 testimony and comments from the applicants and the appellants, over 30 people spoke in support of the
28

1 project and approximately 12 people spoke in opposition, primarily with concerns regarding the
2 proposed one hour extension to closing time on Thursday, Friday, and Saturday nights.

3 27. Petitioner submitted testimony from Steve Rogers Acoustics, LLC along with analysis
4 from Petitioners and their counsel in support of the appeal. Steve Rogers Acoustics conducted a noise
5 impact analysis of the proposal. The analysis concluded that exterior noise levels from the facility with
6 windows open during hours prior to 10 p.m. would significantly exceeds the City's exterior noise
7 standards, including at the nearby residential uses. Even without factoring in amplified music, patron's
8 voices would exceed the noise thresholds with the windows open at certain locations. The analysis
9 concluded "[o]n all counts, we conclude that operation noise from the restaurant would very likely be in
10 clear violation of the noise regulations in the [Manhattan Beach Municipal Code] and would therefore
11 constitute a significant impact on the surrounding uses."

12 28. Petitioners submitted comments noting that the request for extended operating hours
13 would be used as a basis for other similar restaurants to seek extensions to operate after midnight.
14 Petitioners also objected to the failure to require physical mitigation measures for noise impacts,
15 including sound blocking windows and a double-door entrance vestibule. Petitioners noted that of the
16 35 restaurants permitted to serve alcohol in the downtown area, 19 have closing hours of midnight or
17 earlier. Since 2002, no Use Permit Amendment had increased operating hours, although some
18 businesses with older use permits were permitted to keep their hours past midnight.

19 29. Counsel for Petitioners presented testimony regarding compliance with CEQA and the
20 Manhattan Beach Municipal Code. Counsel explained that a CEQA exemption was improper, both
21 because the project did not qualify for the categorical exemption, and that even if it did, exceptions to
22 the categorical exemption applied.

23 30. The City Council deliberated regarding the appeal. Many of the Councilmembers
24 commented favorably on the application because they held a high opinion of the operator. One
25 Councilmember objected: "I'm against expanding the closing hour to 1AM . . . and here's why . . . it
26 does bother me a little bit that much of the argument has been, that these particular owners can handle
27 this provision responsibly. . . . I don't think the character of the applicant . . . should be the primary
28 driver... It kills me to not be supportive of a responsible business owner, but to me it's not the character

1 of the applicant, it's the precedent it sets for our beach community going forward." At the end of the
2 public hearing, Council moved to instruct staff to prepare a resolution adopting the conditions proposed
3 by the Planning Commission, except that the one year review would be conducted by the City Council,
4 not the Planning Commission.

5 31. On May 14, 2020, Resolution 20-0049 was adopted on the consent calendar by the City
6 Council.

7 32. A Notice of Exemption was posted on May 14, 2020, with the Los Angeles County
8 Clerk. The Notice of Exemption stated that it applied to a "Use Permit Amendment for an Existing
9 Restaurant with Full Alcohol Service (Manhattan Beach Post) to Allow an Expansion of the Use into an
10 Adjacent Vacant Restaurant Space (Formerly Subway) and an Extension of Operating Hours at 1142
11 and 1144 Manhattan Avenue."

12 33. The Notice of Exemption stated that CEQA Guidelines section 15301, the existing
13 facilities exemption, was the basis of the project's CEQA exemption. The Notice contended that "[t]he
14 expansion is less than 50 percent of the floor area of the current restaurant and is less than 2,500 square
15 feet, and thus fits within the language of Section 15301." Moreover, "[e]xpanding operating hours does
16 not entail construction, expansion, or addition."

17 34. The Notice of Exemption states that there are not exceptions to the categorical
18 exemption, including on the basis of cumulative impact or unusual circumstances. The notice contends
19 that the extension of hours would not set any precedent for any other business in the neighborhood, and
20 that the expansion of the restaurant was not unusual in an urbanized commercial area.

21 35. The California Judicial Council adopted Emergency Rule 9 in response to the COVID-19
22 pandemic on April 6, 2020, suspending all statutes of limitations for 90 days until after the Governor has
23 lifted the state of emergency related to the pandemic. Subsequently, on May 29, 2020, Emergency Rule
24 9 was amended to state that in cases with statutes of limitation of 180 days or less, the statutes of
25 limitation are "tolled from April 6, 2020, until August 3, 2020."

26 36. This action is filed within 35 days of August 3, 2020.
27
28

FIRST CAUSE OF ACTION
Violation of California Environmental Quality Act
(Public Resources Code, § 21000 et seq; Code of Civ. Proc., § 1094.5)

37. Petitioners incorporate by reference all the allegations contained in the previous paragraphs as though fully set forth herein.

38. CEQA requires environmental review and analysis prior to the approval of discretionary projects by state agencies. The Legislature has declared that CEQA supports numerous state policies for “the maintenance of a quality environment for the people of this state now and in the future. . . .” (Pub. Resources Code, § 21000, subd. (a).) “It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.” (*Id.*, subd. (g).) Long-term protection of the environment is a fundamental criterion of CEQA. (Pub. Resources Code, § 21001, subd. (g).)

39. The basic purposes of CEQA are to inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities, identify ways that environmental damage can be avoided or significantly reduced, prevent such damage by the imposition of mitigation measures or the adoption of alternative activities that avoid such damage, and disclosure to the public of the reasons for approving an activity with significant, unmitigable environmental effect. (CEQA Guidelines, Cal. Code Regs., tit. 14, § 15002(a).)

40. CEQA defines “project” as any activity which may cause either a direct physical change or a reasonably foreseeable indirect change in the environment, and which involves the issuance by one or more public agencies of a lease, permit, license, certificate, or other entitlement for use. (Pub. Resources Code, § 21065.) CEQA applies to all discretionary projects proposed to be carried out or approved by public agencies. (Pub. Resources Code, § 20180.)

41. CEQA identifies certain classes of projects, called categorical exemptions, which are exempt from the provisions of CEQA. (Public Resources Code, § 21084, subd. (a); Cal. Code Regs., tit. 14, §§ 15300, 15354.)

1 42. Exemptions to CEQA are narrowly construed and “[e]xemption categories are not to be
2 expanded beyond the reasonable scope of their statutory language.” (*Mountain Lion Foundation v. Fish*
3 *& Game Com.* (1976) 16 Cal.4th 105, 125.) A reviewing court must “scrupulously enforce all
4 legislatively mandated CEQA requirements.” (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52
5 Cal.3d 553, 564.)

6 43. In addition to the limitation that categorical exemptions be narrowly construed, CEQA
7 also provides several exceptions to categorical exemptions. One is that an exemption is inapplicable
8 “when the cumulative impact of successive projects of the same type in the same place, over time is
9 significant.” (Cal. Code Regs., tit. 14, § 15300.2(b).)

10 44. Another exception to the categorical exemption is that an exemption “shall not be used
11 for an activity where there is a reasonable possibility that the activity will have a significant effect on
12 the environment due to unusual circumstances.” (Cal. Code Regs., tit. 14, § 15300.2(c).) The
13 requirements for this exception are satisfied if a party objecting to a categorical exemption establishes
14 *either* that “the project has some feature that distinguishes it from others in the exempt class, such as its
15 size or location[;]” or presents “evidence that the project will have a significant environmental effect.”
16 (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105.)

17 45. If an agency determines that a project is exempt, it must file a Notice of Exemption
18 setting forth for the public the basis of a claimed exemption. (Cal. Code Regs., tit. 14, § 15062.) If a
19 project is not found to be exempt, the agency may prepare an Initial Study to determine if the project
20 may have a significant effect on the environment. (Cal. Code Regs., tit. 14, § 15063.) If there is
21 substantial evidence that *any* aspect of a project may cause a significant effect on the environment, the
22 agency must prepare an EIR analyzing the potential impacts, individually and cumulatively, of the
23 project on the environment.

24 46. The City relied upon the CEQA categorical exemption for existing facilities (Cal. Code
25 Regs., tit. 14, § 15301.) “Class 1 consists to the operation, repair, maintenance, permitting, leasing,
26 licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or
27 topographical features, involving negligible or no expansion of existing or former use. . . . The key
28 consideration is whether the project involves negligible or no expansion of use.”

1 47. The regulations provide examples of projects that would fit within the Class 1 exemption,
2 including “interior or exterior alterations involving such things as interior partitions, plumbing, and
3 electrical conveyances,” “subdivision of existing commercial or industrial building where no physical
4 changes occur which are not otherwise exempt,” and “additions to existing structures provided that the
5 addition will not result in an increase of more than . . . 50 percent of the floor area of the structures
6 before the addition or 2,500 square feet, whichever is less; or 10,000 square feet [in specific
7 circumstances].”

8 48. The project does not meet the requirements for the Class 1 categorical exemption because
9 it involves a significant expansion of use. The conversion of a fast-food restaurant without an alcohol
10 license to a part of a late-night full-service alcohol serving premises, with later hours of operation than
11 previously authorized, constitutes a significant change in use.

12 49. In addition, the project falls within both the cumulative effects and the unusual
13 circumstances exceptions.

14 50. The project is one of many restaurants in the City that operate with a closing hour of
15 midnight or earlier and which have a license to serve alcohol. Allowing operation until 1:00 a.m. at all
16 such restaurants would significantly increase noise volumes over the baseline of noise at the 1:00 a.m.
17 hour. Real Party in Interest itself owns a neighboring restaurant, Fishing with Dynamite. The project
18 represents the leading edge of efforts to open additional restaurants into late night hours. If each project
19 is viewed individually, perhaps its impacts would seem more limited, but viewed together, the impacts
20 will magnify.

21 51. The project also falls within the exception for unusual circumstances. Petitioners
22 presented evidence that the volume of noise from the project would exceed the City’s noise threshold in
23 several respects, thereby creating a significant environmental impact. The project also is unusual in the
24 context of the City of Manhattan Beach for its proximity to residential uses and its late hours of
25 operation.

26 52. For these reasons, the City Council’s reliance upon the Class 1 categorical exemption to
27 CEQA was improper and Resolution 20-0049, the approval that relies upon this exemption, is invalid.
28

1 53. Petitioners have exhausted their administrative remedies by appealing the approval of the
2 Planning Commission to the City Council, and by raising these arguments to the City Council.

3 54. Petitioners have notified the City of their intent to sue the City for violation of CEQA. A
4 true and correct copy of Petitioners' September 3, 2020 letter is attached as Exhibit A hereto.

5 55. Petitioners have notified the Attorney General of this lawsuit. A true and correct copy of
6 Petitioners' notification to the Attorney General is attached as Exhibit B hereto.

7 56. Petitioners have timely commenced this action within 35 days of August 3, 2020, as
8 provided by Emergency Rule 9.

9 57. Petitioners have a direct and beneficial interest in the action herein and have exhausted
10 all other available remedies.

11 58. Petitioners have a beneficial right to Respondents' performance of their respective duties
12 based on Petitioners' interest in maintaining and improving the quality of the urban infrastructure in the
13 City, as well as the interest of Petitioners' members in improving quality of life in their own city.

14 59. Respondents' actions in approving the expanded hours and use have caused and threatens
15 to cause Petitioners irreparable and substantial harm.

16 60. Petitioners have no plain, speedy, and adequate remedy at law, in that unless this Court
17 enjoins the Real Parties, they will operate for extended hours and generate additional noise without
18 environmental review and mitigation required by CEQA. No amount of monetary damages or other
19 legal remedy can adequately compensate Petitioners for the irreparable harm that Petitioners, their
20 members, and the residents of the City of Manhattan Beach will suffer from the violations of law
21 described herein.

22 **SECOND CAUSE OF ACTION**
23 **Violation of Manhattan Beach Municipal Code**
 (Code of Civ. Proc., § 1094.5)

24 61. Petitioners incorporate by reference all of the allegations of the previous paragraphs as
25 though fully set forth herein.

26 62. Manhattan Beach Municipal Code section 10.84.100 provides that a request for changes
27 in the conditions governing a use permit is reviewed in the same manner as a request for a new use
28

1 permit. Accordingly, Respondents were required to make the findings specified in Manhattan Beach
2 Municipal Code section 10.84.060:

3 "1. The proposed location of the use is in accord with the objectives of this title
4 and the purposes of the district in which the site is located;

5 2. The proposed location of the use and the proposed conditions under which it
6 would be operated or maintained will be consistent with the General Plan; will
7 not be detrimental to the public health, safety or welfare of persons residing or
8 working on the proposed project site or in or adjacent to the neighborhood of
9 such use; and will not be detrimental to properties or improvements in the
10 vicinity or to the general welfare of the city;

11 3. The proposed use will comply with the provisions of this title, including any
12 specific condition required for the proposed use in the district in which it would
13 be located; and

14 4. The proposed use will not adversely impact nor be adversely impacted by
15 nearby properties. Potential impacts are related but not necessarily limited to:
16 traffic, parking, noise, vibration, odors, resident security and personal safety,
17 and aesthetics, or create demands exceeding the capacity of public services and
18 facilities which cannot be mitigated."

19 63. Manhattan Beach Municipal Code section 10.68.030, subdivision (h), provides that "[n]o
20 use which fails to meet the performance standards of section 10.60.120 shall be enlarged or extended, or
21 shall have equipment that results in failure to meet required conditions replaced unless the enlargement,
22 extension, or replacement will result in elimination of nonconformity with required conditions."

23 64. Manhattan Beach Municipal Code section 10.60.120, subdivision (a) provides that "All
24 uses and activities shall comply with the provision of the Manhattan Beach Noise Regulations (Chapter
25 5.48 of this Code)."

26 65. Chapter 5.48 explains that "[i]n order to control unnecessary, excessive, and annoying
27 noise in the City of Manhattan Beach, it is hereby declared to be the policy of the City to prohibit such
28 noise generated from or by all sources as specified in this ordinance." Moreover:

"It shall be the policy of the City to maintain and preserve the quiet atmosphere of the City, to
implement programs aimed at retaining ambient noise levels throughout the City, and to mitigate
noise conflicts. It is determined that certain noise levels are detrimental to the public health,
welfare and safety, and are contrary to the public interest. Therefore, creating, maintaining,
causing, or allowing to be created, caused, or maintained, any noise in a manner prohibited by

1 the provisions of this chapter is a public nuisance and shall be punishable as such.” (M.B.M.C.
2 5.48.010.)

3 66. The City’s Noise Ordinance does not limit its regulation of noise to certain types of
4 sound, but rather defines noise broadly as “an unwanted sound which is generally random in nature.”
5 (M.B.M.C. 5.48.020.) A “noise disturbance” is “any noise which, as judged by a City employee or
6 contractor that annoys or disturbs a reasonable person or exceeds the standards set forth in this chapter.”
7 Petitioners’ expert testified that the operations of the business will exceed the standards set forth in the
8 Municipal Code in several respects. The City conducted no analysis of its own of the noise impacts.

9 67. In spite of the evidence of non-compliance, Respondents granted additional hours and
10 expanded use, contrary to the provisions of the Municipal Code.

11 68. Under Government Code section 65009, an action that seeks “to attack, review, set aside,
12 void, or annul any decision on the matters listed in Sections 65901 and 65903, or to determine the
13 reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or
14 any other permit” must be filed and served within 90 days of the local government’s action. This action
15 is timely filed within 90 days of August 3, 2020, as required by Emergency Rule 9.

16 69. Petitioners have a direct and beneficial interest in the action herein and have exhausted
17 all other available remedies.

18 70. Petitioners have a beneficial right to Respondents’ performance of their respective duties
19 based on Petitioners’ interest in maintaining and improving the quality of the urban infrastructure in the
20 City, as well as the interest of Petitioners’ members in improving quality of life in their own city.

21 71. Respondents’ actions in approving the expanded hours and use at the Premises has
22 caused and threatens to cause Petitioners irreparable and substantial harm.

23 72. Petitioners have no plain, speedy, and adequate remedy at law, in that unless this Court
24 enjoins the Real Parties, they will operate for extended hours and hold additional Special Events in
25 reliance upon an invalidly expanded Conditional Use Permit. No amount of monetary damages or other
26 legal remedy can adequately compensate Petitioners for the irreparable harm that Petitioners, their
27 members, and the residents of the City of Manhattan Beach will suffer from the violations of law
28 described herein.

THIRD CAUSE OF ACTION
Violation of CPRA (as to Respondent City of Manhattan Beach)
(Government Code, § 6258; Code of Civil Procedure, § 1085)

73. Petitioners incorporate by reference all of the allegations of the previous paragraphs, as though fully set forth herein.

74. On May 26, 2020, Petitioner McPherson submitted a request to Manhattan Beach City Clerk Liza Tamura for a document staff referred to during the May 5, 2020 appeal hearing for MB Post, which was identified by staff as a “supplemental report.”

75. On June, 9, 2020, Petitioner McPherson requested a response to his May 26, 2020 request. Petitioner McPherson submitted a request on the same date to City Clerk Tamura seeking “all use-permit resolutions” for the MB Post property, “dating to when a U.S. Post Office occupied the site.” The request specifically identified Resolution CC 513, dated October 19, 1999.

76. Petitioner McPherson received no response to either request.

77. On August 10, 2020, counsel for Petitioner emailed Ms. Tamura, forwarding the two prior requests from Petitioner McPherson and requesting a response. No response has been provided as of September 2, 2020.

78. Under the CPRA, “public records” includes any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

79. The CPRA defines “local agency” as “a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

80. Under the CPRA, “writing” means any handwriting, typewriting, printing, photostating, photographing, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

1 81. Government Code section 6253, subdivision (b) provides, in pertinent part, that: "Except
2 with respect to public records exempt from disclosure by express provisions of law, each state or local
3 agency, upon a request for a copy of records that reasonably describes an identifiable record or records,
4 shall make the records promptly available to any person upon payment of fees covering direct costs of
5 duplication, or a statutory fee if applicable."

6 82. All records sought by Petitioner McPherson were prepared, owned, used, or retained by
7 the City, and are, therefore, deemed to be public records pursuant to Government Code section 6252,
8 subdivision (e).

9 83. Government Code section 6253, subdivision (c) requires that "[e]ach agency, upon a
10 request for a copy of records, shall within 10 days from receipt of the request, determine whether the
11 request, in whole or in part, seeks copies of disclosable public records in the possession of the agency
12 and shall promptly notify the person making the request of the determination and the reasons therefor."

13 84. Although Government Code section 6253, subdivision (c) allows the 10 days to be
14 extended under certain circumstances, subdivision (d) clarifies that "[n]othing in this chapter shall be
15 construed to permit an agency to delay or obstruct the inspection or copying of public records."

16 85. The People of the State of California have elevated the right to open government to one
17 protected by their State Constitution. The California Constitution, Article I, Section 3, Paragraphs (a)-
18 (b) states:

19 The people have the right to instruct their representatives, petition government for redress of
20 grievances, and assemble freely to consult for the common good.

21 The people have the right of access to information concerning the conduct of the people's
22 business, and therefore, the meetings of public bodies and the writings of public officials and
23 agencies shall be open to public scrutiny.

24 A state, court rule, or other authority, including those in effect on the effective date of this
25 subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly
26 construed if it limits the right of access.

27 86. The City has failed to respond as required by the CPRA.

28 87. Petitioners have exhausted their administrative remedies. Petitioner McPherson has

1 requested copies of disclosable public records and information from the City, but the City has not
2 responded to repeated requests. The only plain, speedy, and adequate remedy left to Petitioner is the
3 relief provided by Government Code section 6258.

4 88. Government Code section 6258 provides that “[a]ny person may institute proceedings
5 for injunctive or declarative or writ of mandate in any court of competent jurisdiction to enforce his or
6 her right to inspect or to receive a copy of any public record or class of public records under this
7 chapter.

8 89. Government Code section 6259 provides that “[w]henever it is made to appear by
9 verified petition to the superior court of the county where the records or some part thereof are situated
10 that certain public records are being improperly withheld from a member of the public, the court shall
11 order to the officer or person charged with withholding the records to disclose the public record or
12 show cause why he or she should not do so. The court shall decide the case after examining the record
13 in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the
14 parties and any oral argument and additional evidence as the court may allow.”

15 90. The City has a ministerial duty to perform according to the laws of the State of
16 California, including the CPRA.

17 91. Petitioner has an interest in having the laws executed and public duties enforced, and
18 therefore, has a beneficial interest in the outcome of the proceedings.

19 92. Petitioner has a clear, present, and legal right to the City’s performance of its ministerial
20 duties, as required by the CPRA.

21 93. The City has a present legal duty and present ability to perform its ministerial duties, as
22 required by the CPRA.

23 94. The City has failed to perform its ministerial duties as required by the CPRA,

24 95. Through this action to enforce the CPRA, Petitioner seeks no greater relief than would
25 be afforded to any other member of the public.

26 96. Therefore, this Court should find that the records and information requested by
27 Petitioner are disclosable public records and that the City has violated the CPRA by refusing to release
28

1 these records, and should order the City to immediately release unredacted copies of all responsive
2 public records.

3 **FOURTH CAUSE OF ACTION**
4 **Declaratory Relief**
5 **(Code of Civ. Proc., § 1060)**

6 97. Petitioners incorporate by reference all of the allegations of the previous paragraphs, as
7 though fully set forth herein.

8 98. A dispute has arisen between Petitioners and Respondents, in that Petitioners believe
9 and contend, for the reasons set forth above, that Respondents' actions as set forth above were unlawful
10 and invalid. Petitioners are informed and believe, and on that basis contend, that Respondents contend
11 in all respects to the contrary.

12 99. Petitioners contend that a Class 1 categorical exemption was improper and that the
13 project should not have been approved under the Manhattan Beach Municipal Code because of its noise
14 impacts. Petitioners are informed and believe that in response to Petitioners having identified these
15 issues for Respondents, Respondents have disagreed with Petitioners' contentions.

16 100. Petitioners contend that the City has not complied with the CPRA by failing to respond
17 to Petitioner McPherson's request for identifiable records. Petitioners are informed and believe that in
18 response to Petitioners having identified this issue for Respondents, that Respondents have disagreed
19 with Petitioners' contentions.

20 101. A judicial declaration as to the legality of Respondents' actions, as set forth above, is
21 therefore necessary and appropriate to determine the respective rights and duties of the parties.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Petitioners pray for relief as follows:

24 1. As to the First Cause of Action, that this Court issue a peremptory writ of mandate
25 commanding Respondents to rescind Resolution 20-0049 for failure to comply CEQA; and that this
26 Court issue a temporary restraining order, preliminary injunction, administrative stay, and permanent
27 injunction enjoining Respondents and Real Parties from operating pursuant to the expanded use and
28 hours granted in Resolution 20-0049;

1 2. As to the Second Cause of Action, that this Court issue a peremptory writ of mandate
2 commanding Respondents to rescind Resolution 20-0049 for failure to comply with the requirements of
3 the Municipal Code; and that this Court issue a temporary restraining order, preliminary injunction,
4 administrative stay, and permanent injunction enjoining Respondents and Real Parties from operating
5 pursuant to the expanded use and hours granted in Resolution 20-0049;

6 3. As to the Third Cause of Action, that this Court issue a writ of mandate ordering
7 Respondent City of Manhattan Beach to perform as required by the California Public Records Act and
8 to immediately release the requested records to Petitioners.

9 4. As to the Fourth Cause of Action, that this Court issue declaratory relief that Resolution
10 20-0049 improperly expanded the entitlement to use the premises because Respondents failed to comply
11 with CEQA and the Municipal Code, and that Respondents have failed to comply with the CPRA by
12 failing to respond to Petitioner McPherson's request for records, and that the records requested are
13 public record that are not exempt from disclosure;

14 5. That this Court award Petitioners costs and attorneys' fees pursuant to Code of Civil
15 Procedure section 1021.5, Government Code section 6259, or other applicable law; and

16 6. That this Court grant Petitioners such other, different, or further relief as the Court may
17 deem just and proper.

18
19 Dated: September 4, 2020

Respectfully submitted,

STRUMWASSER & WOOCHELL LLP

Fredric D. Woocher

Beverly Grossman Palmer

22
23 By: 
24 Beverly Grossman Palmer

Attorneys for Petitioners

Donald McPherson and Coastal Defender

VERIFICATION

I, Donald McPherson, declare:

I am Petitioner in the above captioned action. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief and know the contents thereof. Said contents are known to me to be true except those matters alleged on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of September, 2020 at Manhattan Beach, California.


Donald McPherson

VERIFICATION

I, Donald McPherson, declare:

I am President of Petitioner Coastal Defender in the above captioned action. I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief and know the contents thereof. Said contents are known to me to be true except those matters alleged on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of September, 2020 at Manhattan Beach, California.


Donald McPherson

EXHIBIT A

STRUMWASSER & WOOCHELL LLP

ATTORNEYS AT LAW

10940 WILSHIRE BOULEVARD, SUITE 2000
LOS ANGELES, CALIFORNIA 90024

FREDRIC D. WOOCHELL
MICHAEL J. STRUMWASSER
BRYCE A. GEE
BEVERLY GROSSMAN PALMER
DALE K. LARSON
CAROLINE C. CHIAPPETTI
JULIA G. MICHEL †

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WWW.STRUMWOOCHELL.COM

ANDREA SHERIDAN ORDIN
SENIOR COUNSEL

† Admitted to practice in Washington

September 3, 2020

Liza Tamura, City Clerk
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

Via email to ltamura@citymb.info

Re: Notice of Intent to Commence CEQA Action
McPherson v. City of Manhattan Beach

Dear Ms. Tamura:

This is to inform you, as an agent for the City of Manhattan Beach, (the "City") and the Manhattan Beach City Council (the "City Council"), that Donald McPherson and Coastal Defender ("Petitioners") will be filing suit against the City and the City Council to challenge the May 14, 2020 action of the City to approve Resolution 20-0049, expanding hours and premises for MB Post restaurant, pursuant to an exemption from the California Environmental Quality Act ("CEQA").

Please take notice under section 21167.5 of the Public Resources Code that Petitioners intend to include a cause of action under the provisions of the CEQA against the City and the City Council. The lawsuit will challenge, among other things, the City's reliance on an exemption from CEQA as improper.

Sincerely,



Beverly Grossman Palmer

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Re: *McPherson and Coastal Defender v. City of Manhattan Beach et al.*

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10940 Wilshire Boulevard, Suite 2000, Los Angeles, California 90024.

On **SEPTEMBER 3, 2020**, I served the document(s) described as **LETTER DATED SEPTEMBER 3, 2020 RE NOTICE OF INTENT TO COMMENCE CEQA ACTION** on all appropriate parties in this action, as listed below, by the method stated.

Liza Tamura, City Clerk
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

☒ If electronic-mail service is indicated, by causing a true copy to be sent via electronic transmission from Strumwasser & Woocher LLP's computer network in Portable Document Format (PDF) this date to the email address(es) stated, to the attention of the person(s) named.

☐ If overnight service is indicated, by placing this date for collection by sending true copies in sealed envelopes, addressed to each person as indicated, pursuant to Code of Civil Procedure, section 1013(d). I am readily familiar with this firm's practice of collecting and processing correspondence. Under that practice, it would be deposited with an overnight service in Los Angeles County on that same day with an active account number shown for payment, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **September 4, 2020**, at Santa Monica, California.


Beverly Grossman Palmer

EXHIBIT B

STRUMWASSER & WOOCHELL LLP

ATTORNEYS AT LAW

10940 WILSHIRE BOULEVARD, SUITE 2000
LOS ANGELES, CALIFORNIA 90024

FREDRIC D. WOOCHELL
MICHAEL J. STRUMWASSER
BRYCE A. GEE
BEVERLY GROSSMAN PALMER
DALE K. LARSON
CAROLINE C. CHIAPPETTI
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FACSIMILE: (310) 319-0156
WWW.STRUMWOOCHELL.COM

ANDREA SHERIDAN ORDIN
SENIOR COUNSEL

† Admitted to practice in Washington

September 4, 2020

Xavier Becerra
Attorney General
Office of the Attorney General
1300 I Street
Sacramento, California 95814

Re: Notice of Intent to Commence CEQA Action
McPherson v. City of Manhattan Beach

Dear Attorney General:

Pursuant to Public Resources section 21167.5 and Code of Civil Procedure section 388, Petitioners Donald McPherson and Coastal Defender ("Petitioners") hereby gives notice that on September 4, 2020, a verified petition for writ of mandate and complaint will be filed against Defendants and Respondents, the City of Manhattan Beach, and the Manhattan Beach City Council (collectively "the City") in Los Angeles Superior Court, Stanley Mosk Courthouse. The action challenges the City's approval of a resolution allowing a restaurant to significantly expand its operations, hours, and alcohol service pursuant to an exemption from the California Environmental Quality Act.

A copy of the Verified Petition for Writ of Mandate and Complaint for Injunctive Relief is attached to this notice.

Sincerely,



Beverly Grossman Palmer

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Re: *McPherson and Coastal Defender v. City of Manhattan Beach et al.*

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10940 Wilshire Boulevard, Suite 2000, Los Angeles, California 90024.

On **SEPTEMBER 4, 2020**, I served the document(s) described as **LETTER DATED SEPTEMBER 4, 2020 RE NOTICE OF INTENT TO COMMENCE CEQA ACTION** on all appropriate parties in this action, as listed below, by the method stated.

Xavier Becerra Attorney General
Office of the Attorney General
1300 I Street
Sacramento, California 95814

☒ If U.S. Mail service is indicated, by placing this date for collection for mailing true copies in sealed envelopes, first-class postage prepaid, addressed to each person as indicated, pursuant to Code of Civil Procedure section 1013a(3). I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in the affidavit.

☐ If overnight service is indicated, by placing this date for collection by sending true copies in sealed envelopes, addressed to each person as indicated, pursuant to Code of Civil Procedure, section 1013(d). I am readily familiar with this firm's practice of collecting and processing correspondence. Under that practice, it would be deposited with an overnight service in Los Angeles County on that same day with an active account number shown for payment, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **September 4, 2020**, at Santa Monica, California.


Beverly Grossman Palmer