



CITY OF OAKLAND
APPEAL FORM
FOR DECISION TO PLANNING COMMISSION, CITY
COUNCIL OR HEARING OFFICER

PROJECT INFORMATION

Case No. of Appealed Project: Case File No. DET220087; Complaint No. 2106266; 3320 Grand Avenue; APN: 011 083603300
Project Address of Appealed Project: 3320 grand ave
Assigned Case Planner/City Staff: Robert Merkamp

APPELLANT INFORMATION:

Printed Name: C. Telson Phone Number: (510) 227-8169
Mailing Address: 741 Walker Ave Alternate Contact Number: (510) 485-9536
City/Zip Code 94610 Representing: grand ave residents
Email: grandaveoakland@gmail.com

An appeal is hereby submitted on:

☒ **AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)**

YOU MUST INDICATE ALL THAT APPLY:

- ☐ Approving an application on an Administrative Decision
- ☐ Denying an application for an Administrative Decision
- ☒ Administrative Determination or Interpretation by the Zoning Administrator
- ☒ Other (please specify) _____

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

- ☐ Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- ☐ Determination of General Plan Conformity (OPC Sec. 17.01.080)
- ☐ Design Review (OPC Sec. 17.136.080)
- ☐ Small Project Design Review (OPC Sec. 17.136.130)
- ☐ Minor Conditional Use Permit (OPC Sec. 17.134.060)
- ☐ Minor Variance (OPC Sec. 17.148.060)
- ☐ Tentative Parcel Map (OMC Section 16.304.100)
- ☐ Certain Environmental Determinations (OPC Sec. 17.158.220)
- ☐ Creek Protection Permit (OMC Sec. 13.16.450)
- ☐ Creek Determination (OMC Sec. 13.16.460)
- ☐ City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
- ☐ Hearing Officer's revocation/impose or amend conditions (OPC Sec. 17.152.150 &/or 17.156.160)
- ☒ Other (please specify) notice of violation was appealed, we disagree with the determination overturning the original notice of violation.

(Continued on reverse)

(Continued)

- ☐ **A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL)** ☐ Granting an application to: **OR** ☐ Denying an application to:

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

- ☐ Major Conditional Use Permit (OPC Sec. 17.134.070)
- ☐ Major Variance (OPC Sec. 17.148.070)
- ☐ Design Review (OPC Sec. 17.136.090)
- ☐ Tentative Map (OMC Sec. 16.32.090)
- ☐ Planned Unit Development (OPC Sec. 17.140.070)
- ☐ Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- ☐ Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- ☐ Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- ☐ Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- ☐ Other (please specify) _____

FOR ANY APPEAL: An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision. The appeal must be accompanied by the required fee pursuant to the City's Master Fee Schedule.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

The appeal is based on the following: *(Attach additional sheets as needed.)*

M2 is not complying with requirements to operate as a restaurant. Their operations reflect a bar/ club and the negative impacts on the neighborhood are what are seen when a bar/club is operating in near residents. See "appeal arguments and annotations" document and exhibits A-P.

Supporting Evidence or Documents Attached. *(The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.*

(Continued on reverse)

(Continued)

C. Telson

*Signature of Appellant or Representative of
Appealing Organization*

8/22/22

Date

TO BE COMPLETED BY STAFF BASED ON APPEAL TYPE AND APPLICABLE FEE

APPEAL FEE: \$ _____

Fees are subject to change without prior notice. The fees charged will be those that are in effect at the time of application submittal. All fees are due at submittal of application.

Below For Staff Use Only

Date/Time Received Stamp Below:

Cashier's Receipt Stamp Below:



CITY OF OAKLAND
BUREAU OF PLANNING - ZONING DIVISION
250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612-2031
Phone: 510-238-3911 Fax: 510-238-4730

Sent Via Email

August 10, 2022

Chris Rachal
Mimosa 2 Oakland
3320 Grand Avenue
Oakland, CA 94610
mimosa2oakland@gmail.com

Zoning Manager's Determination (Appeal of Major Zoning Violation Code Enforcement)

RE: Case File No. DET220087; Complaint No. 2106266; 3320 Grand Avenue; APN: 011 083603300

Dear Chris Rachal,

This letter is in response to your appeal of a City of Oakland Notice of Violation (*Attachment A*), dated April 11, 2022 and filed on April 12, 2022 on behalf of Crawfordscharchmidt LLC.

The Notice of Violation (*Attachment B*) was sent to Crawfordscharchmidt LLC on March 22, 2022. Specifically, the Notice of Violation noted:

- “Operation of a Group Assembly Commercial Activity in a Zoning District (CN-2) where such activity is not Permitted without a Conditional Use Permit, and
- “Operation of an Alcoholic Beverage Sales Commercial Activity in a Zoning CN-2) where such activity is not Permitted without a Conditional Use Permit.”

Per the City of Oakland Code Enforcement Service's Appeal form, appeals of Notice of Violations regarding unpermitted activities, changes of use, expansions of non-conforming uses, etc. are considered Appeals of Major Zoning Violations and require a Determination from the Zoning Manager, which is appealable to the Planning Commission.

Staff reviewed the documents you submitted as part of your appeal as well as Code Enforcement documents and the permit history. The City has determined, based on the evidence, that:

The business is a Full-Service Restaurant Commercial Activity and not a Group Assembly Commercial Activity or an Alcoholic Beverage Sales Commercial Activity but is subject to the Performance Standards in Planning Code Section 17.120 including noise at all times during business operation.

The City's Determination is based on the following:

Land Use Activities Background

Oakland Planning Code Section 17.10.010 (Title, purpose, and applicability) states that “The provisions of this Chapter shall be known as the Use Classifications. The purpose of these provisions is to classify uses into a number of specially defined types on the basis of common functional characteristics and similar compatibility with other uses, thereby providing a basis for regulation of uses in accordance with criteria which are directly

relevant to the public interest.”

Oakland Planning Code Section 17.10.050.C (Classification of combinations of principal activities and Classification of Different Activities within Same Major Class, Conducted by Single Establishment) states that “If principal activities conducted on a single lot by a single establishment, management, or institution resemble two or more different activity types within the same major class (in this case Commercial Activities) of activities, all such principal activities shall be classified in the activity type within said class the description of which type most closely portrays the overall nature of such activities.”

However, this section goes on to note that when an establishment has the characteristic of Alcoholic Beverage Sales then that shall be considered to not be accessory but its own principal activity. The Planning Code goes on to further define Residential, Civic, Commercial, and Industrial Activities. Specifically, the activities most relevant to the Determination include:

Section 17.10.260 (General description of Commercial Activities) states that “Commercial Activities include the distribution and sale or rental of goods; the provision of services other than those classified as Civic Activities; and the administrative and research operations of private, profit-oriented firms, other than public utility firms.”

Land Use Activities Analysis

When reviewing a new land use activity for a parcel, staff must make a determination regarding the Activity classification the use best resembles. In this instance, staff evaluated the following Definitions and Commercial Activities as part of the Zoning Determination with key important characteristics underlined.

- **17.09.040 Definitions.**

"Alcoholic beverage" means alcohol, spirits, liquor, wine, beer, or any liquid or solid containing alcohol, spirits, wine, or beer, which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

"Full-service restaurant" means a place that is regularly and in a bona fide manner used and kept open for the serving of at least lunch and dinner to guests for compensation; and that has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals. The sale or service of sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or snack foods shall not constitute a full-service restaurant. Also, see Sections 17.10.272 and 17.156.070.

- **17.10.272 Full-Service Restaurant Commercial Activities.**

Full-Service Restaurant Commercial Activities include the provision of food or beverage services to patrons who order and are served while seated (table service), and pay after eating. Only a minor proportion, if any, of the food is sold for consumption off-premises. These restaurants have kitchens that contain equipment suitable for cooking an assortment of foods; and may include service of liquor, beer and/or wine, subject to the standards in Section 17.103.030. Also, see Section 17.156.070 for definitions of a Full-Service Restaurant in relation to the Deemed Approved Beverage Sale regulations. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040. (Emphasis added.)

- **17.10.274 Limited-Service Restaurant and Cafe Commercial Activities.**

Limited-Service Restaurant and Cafe Commercial Activities include the provision of food or beverage services to patrons that generally order and pay at a service counter before eating. Food and beverages may be served in disposable containers and may be consumed on the premises or taken out. Seating for on-premises consumption is usually available and table service may or may not be provided. These restaurant(s) may include service of beer and/or wine, subject to the standards in Section 17.103.030. Examples of these activities include, but are not limited to, cafes and restaurants that do not fall under Section 17.10.272 Full-

Service Restaurant Commercial Activities, or Section 17.10.280 Fast-food Restaurant Commercial Activities. Also, see Section 17.156.070 for definition of a Limited-Service Restaurant or Café in relation to the Deemed Approved Alcoholic Beverage Sale regulations. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040. (Emphasis added.)

- 17.10.300 Alcoholic Beverage Sales Commercial Activities.

Alcoholic Beverage Sales Commercial Activities include the retail sale, for on- or off-premises consumption, of liquor, beer, wine, or other alcoholic beverages, but exclude Full-Service Restaurants, Limited-Service Restaurants and Cafes, and alcoholic beverage manufacturers that comply with their respective definition in Sections 17.10.272, 10.10.274, and 17.103.030. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040. (Emphasis added.)

- 17.10.380 Group Assembly Commercial Activities.

Group Assembly Commercial Activities include the provision of instructional, amusement, and other services of a similar nature to group assemblages of people. This classification does not include any activity classified in Section 17.10.160 Community Assembly Civic Activities, Section 17.10.170 Recreational Assembly Civic Activities, or Section 17.10.180 Community Education Civic Activities. Examples of activities in this classification include, but are not limited to, the following:

- Cabarets, night clubs, dance halls, adult entertainment, and pool halls. (Emphasis added.)

This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

- 17.156 Deemed Approved Alcoholic Beverage Sale Regulations.

17.156.010 Title, purpose, and applicability. The provisions of this Chapter shall be known as the title and scope of the Deemed Approved Alcoholic Beverage Sale Regulations. The purpose of these provisions is to specify the title, purposes, and applicability of the Deemed Approved Alcoholic Beverage Sale regulations and to require conformity to said regulations.

17.156.030 Purpose of Deemed Approved Alcoholic Beverage Sale regulations. The general purposes of the Deemed Approved Alcoholic Beverage Sale regulations are to protect and promote the public health, safety, comfort, convenience, prosperity, and general welfare by requiring that Alcoholic Beverage Sales Commercial Activities that were Legal Nonconforming Activities immediately prior to the effective date of the Deemed Approved Alcoholic Beverage Sale regulations comply with the Deemed Approved performance standards at Article III of this Chapter and to achieve the following objectives.....

- 5.12.10 of the Oakland Municipal Code

"Cabaret" shall be construed to include any place where the general public is admitted, for a fee, entertainment is provided, and alcohol is served. A place that does not charge for admission but where the general public is admitted, alcohol is served, dancing is permitted, and the venue operates past 11:00 p.m. shall also be construed as a cabaret. (Emphasis added.)

Property History

Based on the City microfiche records, the property was a real estate office since at least 1978. The property received a Zoning Clearance on September 29, 2005, for an Administrative Commercial Activity for an office for a clerical support of a real estate office (ZC052841). A Zoning clearance was also granted in August and again in November of 2010 for a Consultative and Financial Commercial Activity (ZC101923 and ZC102431). On August 26, 2015, a Zoning Clearance was granted for a Full-Service Restaurant Commercial Activity (ZC151950 for E.W. Trapps). The Zoning Clearance later noted on April 12, 2018 that Zoning Counter Manager was consulted, and the site was acceptable for an on-site beer manufacturing use for on-site consumption with a Type 41 Alcohol Beverage Control License. On July 27, 2021, a Zoning Clearance was granted for Mimosa on Grand after a determination was made that it was a Full-Service Restaurant (ZC210534).

Staff Analysis

Staff concluded, based upon the evidence submitted by the Appellant and collected by the Zoning Inspection Division, the City Administrator's office, the Planning Code, and staff's classification of similar activities on other lots that:

- The use does not fall under the Deemed Approved Alcoholic Beverage Sale Regulations. The Deemed Approved Regulations were adopted in 1993 (Ordinance 11624 C.M.S.) to regulate properties that had previously included the sale of alcohol and would become legal non-conforming with the new regulations. Deemed Approved status does not apply to properties that became alcohol serving establishments after 1993. In those cases, the new regulations would apply. The property is not listed on the City's Deemed Approved Alcoholic Beverage Sale List and was previously an office and real estate office. As such, none of the definitions, criteria, requirements or performance standards for Deemed Approved Alcohol Beverage Sale Regulations apply to Mimosa on Grand.
- The use is not a Limited-Service Restaurant and Cafe Commercial Activity. The establishment does not have a service counter where orders for food and drink orders are received and food and beverages are paid for up front prior to providing to the customer. Food and beverages are not sold in disposable containers and food is generally not taken out for consumption off-site as it is plated.
- The use is not a "Cabaret" as defined in the Municipal Code. The City Administrator's Municipal Code Enforcement Officer has determined that the establishment does not meet the definition. Specifically, the establishment is not charging a cover charge for entertainment, and there is not dance floor. While outside disc jockeys (DJs) and in-house personnel do provide music, this is no different any other music heard in a restaurant, and staff does not distinguish between types of music that may be provided as part of a restaurant experience. Furthermore, there is no dance floor space. Since all the tables are fixed in place and non-movable, staff recognizes that the space cannot be converted into a dance floor as one would expect in a restaurant converted to a typical night club (*Attachment C*).
- The use is not a Group Assembly Commercial Activity as the City Administrator's Municipal Code Enforcement Officer has determined that the establishment does not operate as a Cabaret. There is no other characteristic that is primary to the operation that would result in this being classified as Group Assembly as opposed to the Full-Service Restaurant activity.

In sum, the establishment is a Full-Service Restaurant Commercial Activity, with accessory elements that involve alcohol sales.

The business clearly exhibits the physical characteristics of a Full-Service Restaurant Commercial Activity. The business is open from noon to five on Sunday serving brunch¹ per their website. The Definitions section of the Planning Code² does not require that the business be open everyday for lunch nor outline the specific hours of lunch. Furthermore, per the Definition section and Full-Service Restaurant Commercial Activity definition in Section 17.10.272, the establishment provides food and beverage service to patrons who sit at tables and pay after eating. The restaurant does have bar seating but this is not entirely indicative of a solely Alcohol Beverage Sales Activity. Food is rarely taken out for off-site consumption. Meals are plated. Building permits were approved for establishment of a full kitchen with suitable cooking equipment, meaning the kitchen does not consist solely of a microwave or a hotplate (B1504779, M1601647, and P1602430)³. The menu has an assortment of food available

¹ <https://tableagent.com/san-francisco/mimosa-two/table-search/>

² It should be noted that the Definition of a Full-Service Restaurant in Section 17.09 seems to be a relic from the previous Planning Code when restaurants were included as a General Food Sales Activity. Full-Service Restaurant Commercial Activities became a separate Activity in own activity around 2010 with the Citywide Zoning Code Updates.

³ Appeal document photos also show the full kitchen facilities.

from salads, appetizers, seafood and meat dishes, and desserts. In other words, the restaurant has a full menu, not just sandwiches or snack food (like chips or nuts).

Per the Appeal, the business employs an executive chef, two sous chefs, and two line cooks along with hostesses and servers. Finally, Full-Service Restaurant Commercial Activities are permitted to have alcohol including beer, liquor, champagne and wine as accessory to the restaurant per Planning Code Section 17.103.030(B)(1)(c). Thus, the mere fact that alcohol is served does not prohibit it from being classified as a Full-Service Restaurant.

The business also clearly exhibits some characteristics of an Alcoholic Beverage Sales Commercial Activity, while not fitting squarely within the type of use we generally see classified under this activity category. The business clearly is selling alcohol as described on their website, drinks menu, “bottle service” description and other marketing materials such the website and flyers which note “restaurant and champagne lounge”, champagne bar and eatery”, “Champagne Bar”, “Nightclub”, and “Cocktail retreat”, “Small Plates”, Restaurant, Nightclub, Nightlife Attire”, “Limited Dining Menu”, etc.

Documentation has also been provided in the record related to events, ticket sales, flyers that seem more like those distributed for club event, reservations which note a number of hours available for a table, a dress code, dark lighting, roped off sections of the seating, low table seating, and hours of operation and when the food is served. Superficially, it seems that the business is a Full-Service Restaurant Commercial Activity, with some limited qualities that may lend one to believe they are an Alcoholic Beverage Sales Commercial Activity.

However, the Planning Code Section related to an Alcoholic Beverage Sales Commercial Activity does not specifically address the characteristics noted above. While most typical “restaurants” don’t advertise as having “bottle service”, they do have often have a cocktail menu, wine/champagne list, and after dinner drinks and ordering a “bottle” would not be unusual especially for a larger party.

According to the Applicant, the “events” and ticket sales are similar to a restaurant hosting a private party or sponsoring an event and are intended to get attendance at the restaurant and ensure patrons have seats similar to a reservation. There is no prohibition in the Planning Code on charging for such events. Furthermore, these “events” usually occur during holidays or once a month. Flyers are intended as marketing and branding for the restaurant and to draw customers into the restaurant by possibly being circulated through social groups. Again, there are no Planning Code restrictions on marketing materials, a set time-frame for a dinner reservation, having a dress code, special seating areas, table height, lighting or hours of operation. Per the Appellant, on evenings when the establishment is open until 1:30 am, the kitchen is open until 12 am. This is also typical of a restaurant when the the kitchen will close at a certain time, but the business is still open for customers to finish their meals and or drinks. Finally, staff has never asked for receipts pertaining to sales related to restaurants and even if we did the alcohol service would largely cost more than the meal.

Documentation has also been provided regarding excess noise both during the day and into the evening. Code Enforcement and the City Administrator’s Municipal Code Enforcement Officer have visited the site multiple times during various times of operation. Staff have taken noise measurements and compared those measurements to the City’s Noise Performance Standards and the Noise Ordinance. Staff found that the business had not exceeded the City’s Performance Standard requirements in several instances. On other site visits, staff could not confirm whether the source of the noise was Mimosa on Grand or another establishment as there are several businesses with parklets on this stretch of Grand Avenue and a cabaret/bar is located only several doors down the street. Oakland Police Department personnel have also been to the site and citations were issued (Attachment D). However, this issue in and of itself does not determine the land use activity. These are on-going standards, and all businesses must continue to meet the decibel levels, otherwise enforcement and citations will continue to take place. Thus, there are already protections in place to protect the public health, safety and welfare from any potential noise impacts.

Staff has concluded that the business is operating as a Full-Service Restaurant and a Conditional Use Permit is not required, based on the facts that the business: (1) has a full kitchen with kitchen staff and substantial menu; (2) serves food plated at tables for largely the entire time the business is open; and (3) is

permitted to operate as a Full-Service Restaurant Commercial Activity under the Planning Code while allowing the service of alcohol as accessory to the restaurant. As to this last consideration, we note that most Full-Service Restaurants in the City serve alcohol as accessory to the restaurant. We find no persuasive evidence why staff should treat this business any differently.

Further, it appears from the evidence that the neighbors to this business feel impacted by noise. In response to this issue staff recognizes that: (1) the City's Noise Performance Standards protect residents from noise impacts and (2) there are several other businesses along Grand Avenue that are contributing to any perceived noise impacts -- to hold this business singularly accountable would appear to result in unfair and disparate treatment of one business. Given the above, staff will continue to monitor the noise levels in this area of Grand Avenue, and issue any enforcement notices on any business who is found to exceed the City's Noise Performance Standards.

The Zoning Manager's Determination regarding an Appeal of Major Zoning Violation Code Enforcement as well as the exception made under Planning Code Section 17.33.050 and Table 17.33.03 Limitation 9 do not require public notice.

If you, or any interested party, seeks to challenge this decision, an appeal **must** be filed by no later than ten (10) calendar days from the date of this letter, by **4:00 p.m. on August 22, 2022**. An appeal shall be on a form provided by the Bureau of Planning of the Planning and Building Department, and submitted via email to: (1) **Robert Merkamp, Zoning Manager**, at Rmerkamp@oaklandca.gov, and (2) Catherine Payne, Development Planning Manager, at Cpayne@oaklandca.gov. The appeal form is available online at <https://www.oaklandca.gov/documents/appeal-application-form>. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or decision-making body or wherein the decision is not supported by substantial evidence. Applicable appeal fees in the amount of **\$2,476.31** in accordance with the City of Oakland Master Fee Schedule must be paid within five (5) calendar days (**August 29, 2022**) of filing the appeal.

If the fifth (5th) calendar day falls on a weekend or City holiday, appellant will have until the end of the following City business day to pay the appeal fee. Failure to timely appeal (or to timely pay all appeal fees) will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the close of the previously noticed public comment period on the matter. For further information, see the attached Interim City Administrator Emergency Order No. 3 and Interim Procedures for Appeals of City Planning Bureau Decisions for Development Projects (**Attachment E**).

If you have further questions regarding this matter, please contact me at (510) 381-5312 or rmerkamp@oaklandca.gov.

Sincerely,



Robert Merkamp
Zoning Manager

Attachments:

- A. Appeal Documents
- B. Notice of Violation

- C. Floor Plan Photo
- D. OPD citations
- E. Interim City Administrator Emergency Order No. 3 and Interim Procedures for Appeals of City Planning Bureau Decisions for Development Projects.

cc: William Gilchrist, PBD Director wgilchrist@oaklandca.gov
Ed Manasse, PBD Deputy Director emanasse@oaklandca.gov
Ricardo Salas, City Administrator's Office rsalas@oaklandca.gov
Chris Candell, Code Enforcement ccandell@oaklandca.gov
Jennifer Sena, OPD JJSena@oaklandca.gov
Katrina Johnson, ABC Katrina.Johnson@abc.ca.gov
grandaveoakland@gmail.com

M2 appeal arguments and annotations

Below notes are associated with the annotations included in the “Appeal and Arguments and Annotations” document.

Note 1:

How was the overall nature of the activities decided? How M2 markets themselves, hours of operations, and over all operations reflects their primary use is a bar/nightclub and secondary purpose is to serve food.

Note 2:

Then why was their alcohol sales not considered the principal activity?

Note 3:

Refer to Exhibit A - M2 does not serve lunch on Friday or Saturday, only on Sunday when they host “day parties” see videos of “brunch” where no one is eating despite food being available to order. Their promotional flyers correctly advertise their activities on Sunday as a “day party”.

Note 4:

Refer to Exhibit B on their social media their food is described as “sharable bites” not as meals.

Note 5 :

Please clarify, if people are not ordering food and instead only alcohol does that conflict with the definition? Please see exhibits A, D, E, F there is no one in those videos that are eating meals and clearly in D, E, F many people are not seated.

Note 6 :

Exhibit C, note their most populated hours vs when their kitchen closes.

Note 7:

Exhibit D, E F- see video evidence and m2’s social media description of their business.

Note 8 :

EXHIBIT L, M, O, P - The key difference is the volume and the hours that this music is played, is audible from more than 50 feet away, in residential homes, and during the hours when the Oakland noise ordinance requires a reasonable level of quiet. The music from M2 is far louder than others like Almond and Oak which cannot be heard in neighboring homes. Additionally, we have found M2 to be more disruptive than the libertine as evidenced in exhibits L,M,O,P.

Note 9:

Exhibit G, H, I - ticket sales for general admission, event with ticket sales 5/29/22, 7/2/22, 8/7/22. These events included alcohol sales and live music (entertainment).

Note 10:

Exhibit D, E, F - videos after 11pm, dancing is happening and thus permitted, and alcohol is served.

Note 11:

Please share evidence used for determination that they are a full service restaurant.

Note 12:

Is it possible to offer the dates and times that the city staff conducted their field investigation?

Note 13:

Exhibit N -In November 2021, m2 got a courtesy notice that they needed a license to operate a cabaret. Why were they previously found to need a cabaret license but this determination says otherwise?

Note 14:

EXHIBIT L, M, O, P - The key difference is the volume and the hours that this music is played, is audible from more than 50 feet away, in residential homes, and during the hours when the Oakland noise ordinance requires a reasonable level of quiet. The music from M2 is far louder than others like Almond and Oak which cannot be heard in any ones home.

Note 15:

Again, refer to Exhibit F, G, and H.

Note 16:

Again, please refer to Exhibit D,E,F, people tend to dance in spaces throughout the venue, please clarify a dance floor is not required but dancing being permitted in the venue is the criteria correct?

Note 17:

From what we observe, M2's operations is not primarily food service, they are a low percent food service operation and high percentage alcohol sales business. Their intention is to operated a bar/ nightclub but meet the minimum criteria for food sales on paper to avoid liquor license restrictions and cabaret license restrictions which would protect the peace in the neighborhood.

Note 18:

Exhibit C - Friday and Saturday evenings are the concerns and when we see the nightclub/ bar activities. According to online resources m2, is most populated on Friday and Saturday nights, not Sunday. This means most of their business is not when they offer brunch. Additionally see Exhibit A which reflects their "brunch" operations. Can someone explain how it was decided that full service restaurant was the primary use when a majority of their business happens after the kitchen is closed?

Note 19:

Again refer to Exhibit A, it is very rare that even during their "brunch hours" when the kitchen is open that people are eating meals.

Note 20:

Can the city put restrictions on these alcoholic beverage sales commercial activities? The public notice that went out to residents for M2's liquor license for a restaurant (type 47) before they opened did not mention any of these conditions and it is not reasonable for neighbors to expect these operations from a full service restaurant.

Note 21:

Again refer to Exhibit G, H I - which describe the events they are hosting as "day parties"

Exhibit K - on m2's facebook, they describe themselves as a "DANCE and nightclub" highlighting that the "dance description is missing. The fact that they describe themselves as a "dance and night club along with the ticket sales for events should be enough to prove they are operating as a cabaret.

Note 22:

Exhibit J - bottle service menu, full bottles of hard alcohol available.

Note 23:

Exhibit G, H, I - the ticket sales were for the general public advertisement and for individual tickets (reflects general assembly/ cabaret), these flyers did not promote group reservations. Additionally, some of the ticket sales note that the "cover charge" will change the day of the event which means that they are going to charge admissions at the door for walk in customers which does not support their claim that these tickets were to reserve seating.

Note 24:

It feels like the note about these events occurring monthly or during holidays is meant to diminish the impact on residents. Please note that it was not ideal to have M2 music blasting at our homes on Christmas (holiday) or when their events were hosted during the work week or the weekend events happened to align with when weekend shift work is required meaning that we were kept up on a Friday evening when we were required to be at work Saturday morning. Large events where alcohol is served are often highly disruptive. For residents who live here during all

months and holidays cumulatively this is disruptive and the frequency is not acceptable.

Note 25:

EXHIBIT G,H,I,N please note their advertisements focus on promoting “day parties” not food items.

Note 26:

Exhibit C -information regarding most popular times for the business is online, most people arrive at midnight when the kitchen closes and food service is over. It is also common for the kitchen to stop accepting orders for a grace period before the kitchen closes to allow for cooking time. If the time that they stop taking orders is early than the kitchen close time it even further highlights that the majority of people come to patron this business outside of food service hours.

Note 27:

Please confirm the dates and times the field investigation happened, we have only seen staff come out before 10pm when the cabaret functions of the business have not started.

Note 28:

- Exhibit L video comparing M2 noise to the libertine noise. You can hear M2’s music over the Libertine music despite being filmed closer to the libertine.
- Exhibit M - all businesses, including the libertine were closed the noise is from M2.
- Please also see Exhibit O and P.
- We have many videos recorded more than 50 feet away and M2’s music is audible.
- Additionally, please note that the impact of noise on residents will depend on the location of their home in proximity to M2 or the Libertine. Residents who live closer to M2 are more impacted by their noise. Neighbors on Valley Vista, Grand and Walker have noticed increased noise after M2 opened. We lived in the neighborhood before when M2 was not here but the Libertine was operating and there was not nearly as much noise. Please compare noise complaints from before M2 was located at 3320 grand and after.
- Also, M2’s skylight in their roof was broken for a considerable amount of time which meant that their noise was not contained.
- Additionally, we videos that clearly show M2 is the source of the noise, we asked to meet with planning to share this information before they made their

determination, no response was offered regarding our meeting request the staffer never responded.

Note 29:

It has been very difficult to get OPD or the city to document the concerns or provide enforcement. Please note, that automatic noise enforcement tools would be appreciated and a plan on how to mitigate the noise issues and a plan to enforce.

Note 30:

M2 was new as of August 2021, we did not experience this level of noise with the businesses here before. M2 is the only new business on this block opened past 10pm.

Note 31:

- Exhibit L, M, O, P
- Exhibit L and see “please note section below” - see video comparing M2 music to libertine music. Additionally please confirm if staff conducted investigations on Friday or Saturday around 1AM. If the investigation was conducted anytime before midnight the results of the investigation are not accurate because M2, like other nightclubs does not really start their operations until after midnight.
- Exhibit M - M2 is the only business open when that video was recorded. This was already shared with the city so we do not understand why the city still has doubts about the source of the noise.
- Exhibit O and P show the impact that M2 has on the residents, please note that you can also see the libertine in the videos and there is little activity there.
- We have videos of the audible music in residential homes and the video traces the source of the noise all the way to M2, we have not shared those videos with the city via email because we were instructed not to share recordings that show the locations of people’s homes. For this reason we asked to meet with city staff to provide this evidence. City staff did not respond to our meeting request. Several of these videos make it clear that in cases concerning homes closer to M2 they are the source of the noise.
- We support noise enforcement for ALL business not just M2, we would appreciate businesses installing decibel measuring devices that create a record of the noise so the city can check as needed that the noise level is

compliant. Additionally, please note that there are police reports documenting the noise from M2 was audible more than 50 feet away.

- PLEASE NOTE, for a long time M2 was operating with their roof skylight broken, meaning there were not windows creating a sound barrier, during this time was when M2 was the loudest, this concern was shared with the city. M2 continued to operate with their skylight broken which created significantly more noise.