

Case File Number DET220087-A01

February 4, 2026

Location:	3320 Grand Avenue
Assessor's Parcel Number:	011 083603300
Proposal:	Appeal of a Zoning Manager Determination that the business is a Full-Service Restaurant Commercial Activity and is 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.
Applicant:	Chris Rachal/Mimosa 2 Oakland (510) 314-9658
Phone Number:	510-763-7016
Owner:	Crawfordscharchmidt LLC
Appellant	C. Telson
Case File Number:	DET220087-A01
Original Case File Number:	DET220087
Planning Permits Required:	None required if Determination is upheld.
General Plan:	Neighborhood Center Mixed Use
Zoning:	Neighborhood Commercial - 2 / S-13 Combining Zones
Environmental Determination:	Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines Section 15306, Information collection
Historic Status:	Potentially Designated Historic Property; Oakland Cultural Heritage Survey Rating: Fd2; Grand Avenue Area of Secondary Importance
City Council district:	2
Status:	Approved by the Zoning Manager
Staff Recommendation:	Deny appeal based on the Determination Letter
Finality of Decision:	This decision is final and is not appealable further.
For further information:	Contact Case Planner Jana Wismer at (341) 203-1653 or by email at jwismer@interwestgrp.com

SUMMARY

On April 12, 2022, the Project Applicant at the above address submitted an Appeal (DET220087) of a Bureau of Building Notice of Violation related to Major Zoning Violations (Case File 2106266) (**Attachment A and Attachment B**) for the business Mimosa on Grand or Mimosa 2 (M2) located at 3320 Grand Avenue. The Notice of Violation included the following Violations:

1. 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
2. Operation of an Alcoholic Beverage Sales Commercial Activity in a Zoning CN-2) where such activity is not Permitted without a Conditional Use Permit.

Appeals of Major Zoning Violations require a Determination from the Zoning Manager, which is appealable to the Planning Commission.

On August 10, 2022, the Zoning Manager determined (**Attachment C**), 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. However, the business is subject to the Performance Standards in Planning Code Section 17.120, including applicable noise standards, at all times during business operation.

On August 22, 2022, a timely Appeal (DET220087-A01) was filed of the Zoning Manager's Determination by C. Telson (Appellant), representing the Grand Avenue Neighbors (**Attachment D**). The basis of the Appeal is that the Appellant disagrees with the Determination that M2 is a Full-Service Restaurant. Appellant claims M2 is complying with the requirements to operate as a restaurant. Appellant further claims that M2's business operations reflect a bar/club and have negative impacts on the neighborhood. The Appellant's specific arguments are discussed and responded to in detail in the *Basis of the Appeals* section of the report below, along with City staff's response to each argument.

Per Section 17.132.020 of the City of Oakland Planning Code, the Appellant must state where an error or abuse of discretion was made by the Zoning Manager or where the Zoning Manager's decision is not supported by evidence in the record. As detailed in this report, the Appellant has not demonstrated an error or abuse in discretion by the Zoning Manager.

Therefore, staff recommends the Planning Commission deny the Appeal, thereby upholding the Zoning Manager's Determination.

BACKGROUND

Permit History

Previously, the property was an Administrative Commercial Activity and Consultative and Financial Commercial Activity.

On August 26, 2015, a Zoning Clearance was granted for a Full-Service Restaurant Commercial Activity (under ZC151950 for E.W. Trapps). The Zoning Clearance later noted on April 12, 2018, that the 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 (M2) after a determination was made that it was a Full-Service Restaurant (under ZC210534).

Compliant History

In 2021, the City received a complaint regarding a possible unpermitted cabaret and loud noise at M2. A code enforcement officer conducted a total of seven (7) site visits at various days and times of operation. The visits concluded that M2 would need to obtain a sound permit for the two small speakers within the parklet, or remove them. In addition, the City Administrator sent a letter on November 17, 2021 with a determination of an unpermitted cabaret use at this location.

On January 20, 2022, Code Enforcement Services inspected M2 and confirmed that there were violations of the Oakland Municipal Code. On March 22, 2022, a Notice of Violation was issued to the property owner, Crawfordscharschmidt LLC for: 1) 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 2) Operation of an Alcoholic Beverage Sales Commercial Activity in a Zoning CN-2) where such activity is not Permitted without a Conditional Use Permit at M2 (**Attachment A**).

Determination Application

Chris Rachal, the owner of M2, submitted a timely appeal on April 12, 2022 (**Attachment B**) of the Notice of Violation. 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.

On August 10, 2022 a Zoning Manager Determination (**Attachment C**) was issued concluding that M2 is a Full-Service Restaurant Commercial Activity and not a Group Assembly Commercial Activity or an Alcoholic Beverage Sales

Commercial Activity. However, the business is subject to the Performance Standards in Planning Code Section 17.120, including applicable noise standards, at all times during business operation.

PROPERTY AND NEIGHBORHOOD DESCRIPTION

The site is a 5,384 square-foot restaurant fronting on Grand Avenue in the Grand Lake District. The restaurant contains a full-service bar on one side, a wall lined with booth seating, and high tables and chairs down the center of the restaurant.

The street is lined with small business shops and eateries. To the rear of the property are multi-unit residential homes.

BUSINESS DESCRIPTION

M2 is open on Thursday from 5 p.m. to 12 a.m., Friday from 5 p.m. to 1:30 a.m., Saturday from 7:00 p.m. to 1:30 a.m., and Sunday from noon to five , serving brunch per their website (hours differ only slightly from the original Notice of Violation appeal). The establishment provides food and beverage service to patrons who sit at tables and pay after eating. The establishment does not have a service counter where orders for food and drinks are received and are paid for up front prior to providing it 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 menu has an assortment of food available from salads, appetizers, seafood and meat dishes, and desserts. The restaurant does have bar seating.

Building permits were approved for establishment of a full kitchen with suitable cooking equipment. According to M2's owner, the business employs an executive chef, two sous chefs, and two-line cooks along with hostesses and servers.

Outside disc jockeys (DJs) and in-house personnel provide music. There is no dance floor space. All the tables are fixed in place and non-movable. Documentation has also been provided in the record related to events such as ticket sales and flyers, 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. A parklet is also located in front of the business.

GENERAL PLAN ANALYSIS

The site is in the Neighborhood Center Mixed Use classification under the General Plan's Land Use and Transportation Element (LUTE). The intent of the LUTE's Neighborhood Center Mixed Use classification is: "to identify, create, maintain and enhance mixed use neighborhood commercial centers. These centers are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking place, personal and business services, and small scale educational, cultural, or entertainment uses." The LUTE contains the following Neighborhood Objective: "Provide for healthy, vital, and accessible commercial areas that help meet local consumer needs in the neighborhoods."

ZONING ANALYSIS

The proposal is in the Neighborhood Commercial – 2 (CN-2) Zone. The CN-2 Zone is intended to enhance the character of established neighborhood commercial centers that have a compact, vibrant pedestrian environment. M2 provides a place for food, drinks, music, and gatherings within the Grand Lake District. Therefore, the proposal

is consistent with the intent of the District.

Land Use Activity

M2 falls under the Full-Service Restaurant Commercial Activity use classification in Chapter 17.10 of the Planning Code. The establishment also contains accessory elements that involve alcohol sales. 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.” As described in the Zoning Manager’s Determination letter (**Attachment C**), M2’s principal activity is a Full-Service Restaurant Commercial Activity as it exhibits the characteristics of this Activity.

ENVIRONMENTAL DETERMINATION

The project is Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines Section 15306, Information collection.

BASIS OF THE APPEAL

On August 22, 2022, the Appellant representing the Grand Avenue neighbors filed a timely appeal of the Zoning Manager Determination (**Attachment D**). The basis of the Appeal (DET220087-A01) is that the Appellant disagrees with the Determination that M2 is a Full-Service Restaurant and are not complying with the requirements to operate as restaurant. The operations reflect a bar/club and have negative impacts on the neighborhood.

The Appellant raises several issues and questions identified and discussed below. These were included in the Zoning Manager’s Determination letter. These issues are grouped into the categories listed below for convenience which is why the numbering appears to be out of sequence. The Appellant’s arguments are identified as “notes” verbatim from the appellant’s submitted document:

The following is a summary of the Appeal allegations **in bold type**, with the exact language found in **Attachment C**. Staff’s response to each point is in normal type.

Activity Classification

Note #1: How was the overall nature of the activities decided? How M2 market themselves, hours of operations, and overall operations reflects their primary use is a bar/nightclub and secondary purpose is to serve food.

Staff Response: 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). Before a Zoning Clearance is issued, the planner reviews the information provided prior to a determination being reached; a copy of this Zoning Clearance is included as Attachment E. In addition, staff used evidence submitted by the applicant in their appeal of the Notice of Violation and information collected by the Zoning Inspection Division to confirm that the activities at M2 have not changed.

As noted in the Determination letter, staff reviewed the characteristics of the business, the land use Activity definitions in the Planning Code including accessory uses, the cabaret definition in the Municipal Code.

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.

M2 provides a full menu of food and beverages. Patrons are seated, are served at tables and pay after eating. Alcoholic Beverages are accessory to the restaurant. M2 meets all these characteristics.

It is not a cabaret or nightclub. The establishment is not charging a cover charge for entertainment, and there is not dance floor. The tables are not movable.

It is not solely an Alcoholic Beverage Sales Activity as a full-service menu is being served to patrons.

Note #2: Then why was their alcohol sales not considered the principal activity?

Staff Response: The Appellant is referring to a section in the Zoning Manager's Determination letter stating, "...when an establishment has the characteristic of Alcoholic Beverage Sales then that shall be considered to not be accessory but its own principal activity." Under OMC 17.10.300 Alcoholic Beverage Sales Commercial Activities, this activity is defined as, "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." Alcoholic Beverage Sales Commercial Activity is not considered to be M2's principal activity because it was determined under ZC210534 that the principal activity is a Full-Service Restaurant. Under Alcoholic Beverage Sales Commercial Activity, a Full-Service Restaurant is excluded.

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 available to order. Their promotional flyers correctly advertise their activities on Sunday as a "day party."

Staff Response: 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 brunch per their website. Patrons are not required upon entering to order food but could only decide to order drinks. This does not make this an Alcoholic Beverage Sales Commercial Activity. The Definitions section of the Planning Code does not require that the business be open every day for lunch nor outline the specific hours of lunch. The Planning Code does not prohibit businesses from using the term party in marketing, the definition of a cabaret does not include that term, and using it does not negate the fact that the business has all the characteristics of a Full-Service Restaurant.

Note #4: Refer to Exhibit B on their social media their food is described as "shareable bites" not as meals.

Staff Response: What the business markets their food options as is not regulated by the Planning Code. Per the menu there is clearly a variety of offerings including salads, sides, appetizers, main courses like steak and rack of lamb chops, as well as several dessert options.

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.

Staff Response: People are not required to order food as part of the definition of a Full-Service Restaurant, only that food per provided along with the beverages. The definition also notes that table service must be provided. What their patrons choose to order, and whether they sit or stand does not change the activity determination of M2.M2's operations meet the definition of a Full-Service Restaurant.

Note #6: Exhibit C, note their most populated hours vs when their kitchen closes.

Staff Response: See staff response under Note #3.

Note #7: Exhibit D, E F – see video evidence and m2's social media description of their business.

Staff Response: See staff response under Note #3. Furthermore, staff has conducted several on-site inspections of M2's operations prior to the determination of a Full-Service Restaurant as their principal activity.

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).

Staff Response: These documents provided in the record are 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.

Note #10: Exhibit D, E, F - videos after 11pm, dancing is happening and thus permitted, and alcohol is served.

Staff Response: See staff response under Note #3. As previously mentioned, there is no dance floor and the table are not moveable. Patrons may occasionally get up from their table or their space next to the bar and dance to music being played, but it is not a principal activity. Additionally, there is not a restriction on alcohol being served after 11pm.

Note #15: Again, refer to Exhibit F, G, and H.

Staff Response: See staff response under Note #9.

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?

Staff Response: See staff response under Note #10.

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.

Staff Response: The establishment is a Full-Service Restaurant Commercial Activity, with accessory elements that involve alcohol sales. See staff response under Note #2.

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?

Staff Response: See staff response under Note #1.

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.

Staff Response: See staff response under Note #5.

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.

Staff Response: Section 5.12.10 of the Oakland Municipal Code defines cabaret to 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." 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 a 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. Finally, pursuant to Oakland Planning Code Section 17.10.380 a cabaret is determined to be a Group Assembly Commercial Activity. Per the Determination letter the use is not a Group Assembly Commercial Activity but a Full-Service Restaurant Commercial Activity. Per Planning Code Section 17.10.050, when a single establishment exhibits more such principal activities within the same major class of activities (in this case Commercial Activities for Full-Service Restaurant , Alcoholic Beverage Sales or Group

Assembly) the activity shall be classified based on the description of which most closely portrays the principal activities. In this case, again, that was determined to be a Full-Service Restaurant with accessory Alcoholic Beverage Sales per Planning Code Section 17.103.030.

Note #22: Exhibit J - bottle service menu, full bottles of hard alcohol available.

Staff Response: The establishment is a Full-Service Restaurant Commercial Activity, with accessory elements that involve alcohol sales. 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.

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.

Staff Response: See staff response under Note #9.

Note #25: EXHIBIT G,H,I,N please note their advertisements focus on promoting “day parties” not food items.

Staff Response: See staff response under Note #9.

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.

Staff Response: See staff response under Note #21. Per the Applicant, 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 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.

Noise Requirements and Complaints

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.

Staff Response: A code enforcement officer conducted a total of seven site visits at various times of operation. Staff have taken noise measurements and compared those measurements to the City’s Noise Performance Standards and the Noise Ordinance. It was concluded from these visits 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. Code Enforcement has not cited the business for noise.

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.

Staff Response: See staff response under Note #8.

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.

Staff Response: See staff response under Note #8.

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 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.

Staff Response: See staff response under Note #8.

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. 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.

Staff Response: See staff response under Note #8.

Requested Clarifications

Note #11: Please share evidence used for determination that they are a full service restaurant.

Staff Response: See staff response under Note #1.

Note #12: Is it possible to offer the dates and times that the city staff conducted their field investigation?

Staff Response: A code enforcement officer conducted a total of seven (7) site visits at various times of operation on October 1, 2021 (visit at 1:52pm), October 16, 2021 (visits at 8:27pm and 9:55pm), November 29, 2021 (visit at 11am), and December 3, 2021 (visits at 7:21pm and 11:08pm) and December 4, 2021 (visit at 12:01am). A summary of these visits are included as Attachment B of the Zoning Manager's Determination letter.

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?

Staff Response: See staff response under Note #21. Furthermore, the notice was sent on November 17, 2021 . An Appeal (DET220087) was filed challenging the need for a cabaret permit. The August 2022 Zoning Determination overruled the Notice of Violation as the use was determined to be a Full-Service Restaurant Commercial Activity and not a Group Assembly Commercial Activity.

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.

Staff Response: The City can put restrictions on Alcoholic Beverage Sales Commercial Activities as part of a Conditional Use Permit process. However, Full-Service Restaurant Commercial Activities are outright permitted, and the City cannot apply conditions of approval. Again, it has been determined that this is a Full-Service Restaurant Commercial Activity.

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.

Staff Response: See staff response under Note #12.

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.

Staff Response: Please submit any code enforcement concerns to this website: <https://www.oaklandca.gov/Planning-Building/Code-Enforcement-Services>. All inquiries are documented and followed through. The enforcement officer has a decibel reader to help determine when noise levels exceed allowed levels in the City's Noise Performance Standards and the Noise Ordinance. The Noise Element will be updated in Phase 2 of the General Plan Update. Please review the current Noise Element of the General Plan here: <https://www.oaklandca.gov/Planning-Building/General-Plan-Neighborhood-Plans/City-of-Oakland-Current-General-Plan-Elements/Noise-Element>. The Noise Element aims to minimize the adverse effects of noise pollution on public health while promoting a high quality of life for residents. Residents are welcome and encouraged to provide their input.

CONCLUSION

As addressed in the *Basis of Appeal* section of this report, staff believes the operations occurring inside M2 have not changed from the time the Zoning Clearance was granted, and the Zoning Manager's Determination was sent. The City is aware of noise complaints within the neighborhood and will continue to monitor to ensure businesses are in compliance with the city's noise ordinance. No additional evidence has been provided that would change the Zoning Manager's determination that this is a Full-Service Restaurant Commercial Activities. Staff relied on the business characteristics, Staff site visits, staff review of plans and other materials, the Planning Code, and the Municipal Code in making this determination.

The Appellant provides no evidence that the Zoning Manager abused his discretion or made an error not supported by substantial evidence. Therefore, staff recommends denial of the Appeal.

RECOMMENDATIONS:

1. Affirm staff's environmental determination.
2. Deny the appeal.

Prepared by:



Jana Wismer
Contract Planner

Reviewed by:



Robert Merkamp, Zoning Manager
Bureau of Planning

Approved for forwarding to the Planning Commission:



Ed Manasse, Deputy Director
Bureau of Planning

ATTACHMENTS:

- A. March 22, 2022 Notice of Violation
- B. April 11, 2022, Notice of Violation Appeal by Applicant
- C. August 10, 2022, Zoning Manager's Determination
- D. August 22, 2022, Appeal of Zoning Manager Determination with exhibits
- E. July 27, 2021, Zoning Clearance