

22 August 2022

Mayor Steve Napolitano
City of Manhattan Beach

Via Email: citycouncil@citymb.info

Subject: Appeal of Arthur J Project to the City Council

Mayor Napolitano and Councilmembers,

This letter shall serve as an appeal to the city council by MB Coastal of the approval by the planning commission for the Arthur J expansion, dated 10 August 2022.

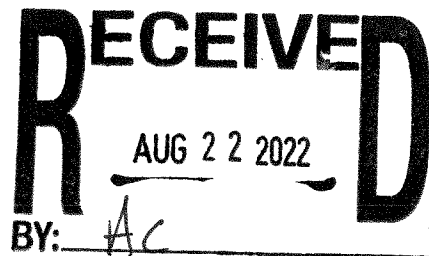
The appeal based on the following grounds summarized in the attachment:

- The city unlawfully claims the project exempt from a coastal permit appealable to the Coastal Commission;
- The increase in occupancy from the expansion will increase parking demand by an estimated 19 spaces, thereby impacting coastal access;
- The 30% increase in eat & drink area requires environmental review; and
- Arthur J appears to commit a misdemeanor each day with eat & drink encroachments in the public right of way that increase parking demand, thereby impacting coastal access.

Thanks for considering my appeal,

Donald McPherson, President
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Distribution: B. Moe, L. Tamura, M. Alvarez, C. Tai, T. Mirzakhania, A. Chavira



MB COASTAL APPEAL APPLICATION OPPOSING ARTHUR J EXPANSION

MB Coastal, a California nonprofit corporation, appeals the Arthur J expansion to the city council, based on the following grounds:

- 1) The city exempts the project from a coastal permit, whereas the Local Coastal Program prohibits exemptions for any project that changes intensity or use. The project with its changes in intensity and use appealable to the Coastal Commission;
- 2) The expansion will increase occupancy by 42 patrons and five staff, thereby increasing parking demand that will impact coastal access. Located in the Downtown CD Zone, Arthur J has no parking requirement;
- 3) The increase in eat & drink floor area of 30% mandates a cumulative environmental review; and,
- 4) The Arthur J eat and drink encroachments into the public right of way violate Penal Code Section § 370. The city may not expand a premises that violates the Local Coastal Program and the Penal Code.

Grounds 1. LCP Requires A Coastal Permit Appealable to the Coastal Commission.

The Arthur J expansion violates the Local Coastal Program ["LCP"] by increasing occupancy, which in turn, increases demand on already saturated parking facilities, thereby impacting coastal access.

On 25 March 2022, Community Development Director Carrie Tai prematurely filed a notice with the Coastal Commission that the project exempt from a coastal permit. Her claim based on the LCP objective standard that the Downtown premises exempt from parking requirements, per LCP § A.64.050(A)(1)¹.

That provision immaterial. Per the staff report, the Arthur J expansion into 901 Manhattan Ave increases occupancy, thereby parking demand that will impact coastal access.²

Ms. Tai's exemption filing conflicts with the Local Coastal Program. It states that exemptions not permitted for, "*Any improvement to a structure that changes the intensity or use of the structure.*" [LCP A.96.050(B)(1)] The Arthur J expansion will increase occupancy and closing hours of the former dry cleaner, while the use will change to more intensive eating and drinking with alcohol service.

Ms. Tai filed the city misleading notice of coastal permit exemption prior to review by the planning commission and the city council, thereby usurping their authority.

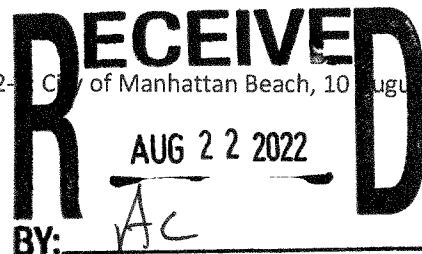
As result, the city has deliberately withheld the above LCP exception to a coastal permit exemption from both the Coastal Commission and the public. This misrepresentation of material fact invalidates approval of the Arthur J project by the planning commission.

Grounds 2 & 3. The Occupancy Increase Corresponds to a 19 Parking Space Deficit.

Per above, Downtown businesses do not have parking requirements, but per the staff report, the expansion results in an occupancy increase. This will increase parking demand that will impact coastal access. Staff does not acknowledge the latter effect. [Ibid.]

¹ Staff Report, p. 41; Planning Commission Agenda Item 08/10/22- City of Manhattan Beach, 10 August 2022

² Ibid.; pp. 4 & 35



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Per the staff report, the expansion area equals 1,141 sq-ft versus 3,756 for the baseline, so the 30% increase qualifies for an environmental review, by exceeding the 10% threshold requirement for a cumulative analysis dating back to the current use permit, City Council Resolution No. 4108, dated 3 January 1984

For eat and drink use, the LCP specifies parking requirements in terms of service area, not occupancy. To estimate the parking demand from increased occupancy, it is necessary to use the parking ordinance LCP § A.64.030 for estimation of spaces required. Based on eat & drink areas cited above, the Arthur J expansion will increase parking demand by 19 additional spaces.

Grounds 4. Eat& Drink Right of Way Encroachments Violate the Penal Code.

Early in the pandemic, the Department of Alcoholic Beverage Control ["ABC"] issued relief measures, 18 in all, to lessen economic impacts on license holders. Specifically, eat & drink places could expand alcohol service on to the adjacent public right of way and on to unlicensed outdoor areas belonging to the premises. State executive orders for the pandemic do not address this issue. Compliance with state law and city zoning not required.

All ABC measures related to alcohol service on unlicensed outdoor areas lapsed as of 1 January 2022. Consequently, eat & drink encroachments on the public right of way must now comply with ABC and Coastal Commission regulations, as well as with state and city codes.

Late in 2021, the state legislature approved two measures that permit alcohol service outdoors, until applicants can obtain amendments to their ABC licenses, Senate Bill 314 and Assembly Bill 61. These bills do not permit violations of ABC and Coastal Commission regulations, nor of state and city codes.

AB-61 does recognize that local jurisdictions may need to reduce parking requirements to enable the new outdoor eat & drink uses. In local coastal programs, however, the Coastal Commission has jurisdiction over parking, not city councils. It takes a year or more to get on Coastal's calendar. AB-61 lapses January 2024 and SB-314 lapses July 2024. MB City and premises owners have not yet started the alcohol license permitting processes.

Any person who unlawfully blocks the public right of way commits a misdemeanor, per Penal Code PEN-370. Such action also constitutes grounds for denial of an ABC license. Presumably, if a license holder unlawfully blocks the public right of way, that violates ABC regulations, a misdemeanor.

Clearly, Arthur J appears to operate in violation of PEN-370, and if so, the city may not expand that unlawful use.

Conclusions. Arthur J Expansion Unlawful.

- The city unlawfully claims the project exempt from a coastal permit appealable to the Coastal Commission;
- The increase in occupancy from the expansion will increase parking demand by an estimated 19 spaces, thereby impacting coastal access;
- The 30% increase in eat & drink area requires environmental review; and
- Arthur J appears to commit a misdemeanor each day with eat & drink encroachments in the public right of way that increase parking demand, thereby impacting coastal access.

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