

## Martha Alvarez

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**From:** Don <dmcphersonla@gmail.com>  
**Sent:** Monday, February 17, 2020 10:34 PM  
**To:** Nancy Hersman; Suzanne Hadley; Hildy Stern; Richard Montgomery; Steve Napolitano;  
List - City Council  
**Cc:** Bruce Moe; Liza Tamura  
**Subject:** Opposition to Resolution No. 20-0020  
**Attachments:** 200218-McP-CC-Reso20.0020-Opposition-Compiled-min.pdf

Nancy Hersman, Mayor  
City Council  
City of Manhattan Beach

Via Email: [citycouncil@citymb.info](mailto:citycouncil@citymb.info)

Subject: Opposition to Proposed 900 Club Entitlements, 18 February 2020

Mayor Hersman and Councilmembers,

As summarized in the attached letter, Coastal Defender opposes Resolution No. 20-0020, for these reasons:

- The Municipal Code straightforwardly provides that initial decisionmaking authority for issuance of a use permit is vested solely in the Planning Commission. The city council may consider an application to modify use-permit entitlements only in an appeal;
- The applicant has submitted incomplete plans, which preclude determination of occupancy and analysis of the exit system for life safety;
- The city withheld notice of the February 18 hearing from Coastal Defender President Donald McPherson, while distributing it to 10<sup>th</sup> St neighbors; and,
- Since the 2014 use-permit hearings, according to plans in the administrative record, the applicant has bootlegged major structural modifications in the downstairs bar, without building or health permits. These modifications moved the bar from the upper level into the use area adjacent to Manhattan Ave and installed a wall between the stairwell and downstairs bar, possibly impacting life safety. Without an approved building permit, these modifications have rendered the A-2 occupancy use nonconforming, which precludes the city council from increasing entitlements.

These findings are supported by concurrence in principal, from: 1) Attorney Beverly Palmer; 2) Former Fire Marshal Robert Rowe; and, 3) Architect Michael Rendler, as documented in their attached expert opinions.

Consequently, the city council must revoke Resolution Nos. 18-0075 and 19-0075 and must deny all increases in entitlements, as proposed by Resolution No. 20-0020.

Thanks for considering Coastal Defender's substantial evidence, supported by expert opinions.

Don McPherson  
President, Coastal Defender  
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dmcphersonla@gmail.com

Nancy Hersman, Mayor  
City Council  
City of Manhattan Beach

Via Email: [CityCouncil@citymb.info](mailto:CityCouncil@citymb.info)

Subject: Opposition to Proposed 900 Club Entitlements, 18 February 2020

Mayor Hersman and Councilmembers,

Coastal Defender, an IRS 501(c)(4) nonprofit corporation [SOS# 3310804], opposes the proposed increases in entitlements for the 900 Club included in the proposed Resolution No. 20-0020, for these reasons:

- The Municipal Code straightforwardly provides that initial decisionmaking authority for issuance of a use permit is vested solely in the Planning Commission. The city council may consider an application to modify use-permit entitlements only in an appeal. [Exhibit 1 & 2, Attorney Beverly Palmer letter];
- The applicant has submitted incomplete plans, which preclude determination of occupancy and analysis of the exit system. [Exhibit 3, former Fire Marshal Robert Rowe letter and Exhibit 4, Architect Michael Rendler letter];
- The city withheld notice of the February 18 hearing from Coastal Defender President Donald McPherson, while distributing it to 10<sup>th</sup> St neighbors. [Exhibit 5]; and,
- Since the 2014 use-permit hearings, according to plans in the administrative record, the applicant has bootlegged major structural modifications in the downstairs bar, without a building permit. [Exhibit 6<sup>1</sup>] These modifications moved the bar into the use area adjacent to Manhattan Ave and installed a wall between the stairwell and downstairs bar. Without an approved building permit, the modifications have rendered the A-2 occupancy use nonconforming. [Exhibit 7] Per MBMC §10.68.030 (C), *“No nonconforming use shall be enlarged or extended in such a way as to occupy any part of the structure or site, or another structure or site which it did not occupy on the effective date of the ordinance codified in this title...”*

## **DISCUSSION**

The following briefly summarizes the findings above.

### **City council lacks authority to increase entitlements.**

Repealing Resolution No. 18-0075 restores Resolution No. 14-0063 [“Reso 14-0063”] as the baseline use permit. Condition 20 in Reso 14-0063 authorized the planning commission [“PC”] to conduct a one-time review 900 Club regarding compliance. On 9 December 2015, the PC conducted said review hearing and concluded the premises in compliance. Consequently, that ended public hearings on Resolution No. 14-0063, the current use permit. New entitlements require an entirely new permitting process. Reso 18-0075 is dead.

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<sup>1</sup> Administrative Record, p. AR2464, *McPherson et. al. v. City of Manhattan Beach [BS 174550]*

Reso No. 14-0063 does not authorize the city council to unilaterally approve new entitlements. Per Exhibit 1, only the PC has the authority to consider an application for use expansion. The city council may consider the matter, only if the PC decision appealed.

Furthermore, the 900 Club has not filed an application for increased entitlements, so the use-permit process that the council will conduct on February 18 lacks one of the most fundamental of documents. The Court ruled that the application for Reso No 18-0075 lacked required plans, making it incomplete. For the permitting process now conducted by the city council, they do not even have an application, much less one merely incomplete.

Per Exhibit 1, in the February 18 public hearing, the city council must also revoke Resolution No. 19-0075, approved on 3 September 2019. Reso 18-0075 authorized a one-time review by the council of compliance with the use permit. During that review process, the council approved three entitlements, Conditions 1, 3 and 4 in Reso 19-0075. Revocation of Reso 18-0075 automatically revokes the three new entitlements in Reso 19-0075.

**New plans inadequate to determine occupancy and life safety.**

Both former Fire Marshal Robert Rowe [Exhibit 3] and Architect Michael Rendler [Exhibit 4] concur in principal with the following four findings, regarding incompleteness in the project plans. Mr. Rendler conducted an inspection of the premises on February 15.

- 1) Without moveable seating and tables being shown in the plans, it not possible to determine occupancy or conduct an exit analysis;
- 2) Being open at top and bottom, the stairwell does not qualify for one-hour protection. The plans do not show sprinklers there. Additionally, the 2<sup>nd</sup> intermediate landing fronting on Manhattan Ave does not provide the required 44-inch deep landing, as determined by visual inspection of the plans. Also, the plans do not dimension the width of the stairs or the distance between handrails, so it not possible to determine whether the stairway 44 inches wide, with 35-inch clearance between handrails. Exhibit 8 shows a CorelDraw analysis of the stairs, which indicates their dimensions not compliant. Based on these factors, the stairway does not constitute a protected exit from the top floor;
- 3) The plans do not provide elevations, so it not possible to determine whether the upstairs club constitutes the 1<sup>st</sup> or the 2<sup>nd</sup> floor above grade. Visual inspection of the exterior discloses that the downstairs bar constitutes the 1<sup>st</sup> floor, because its periphery above grade. Therefore, the upstairs A-2 occupancy requires two exits, but it only has only one compliant exit, namely the 9<sup>th</sup> St backdoor. Even if the upstairs club constitutes the 1<sup>st</sup> floor, which it does not, the occupancy load cannot exceed 49 with only a single exit. Although structural nonconformities may be grandfathered, operational nonconformities, such as occupancy load, may not be grandfathered; and,
- 4) The downstairs bathrooms located off the 1<sup>st</sup> intermediate landing of the stairway constitute an A-2 occupancy use by bar patrons. Because the stairway not a complying exit, these bathrooms have no protected exit.

**City withheld public hearing notice from Donald McPherson.**

For the 900 Club hearing on 2 July 2019, Exhibit 5 shows that staff mailed the public hearing notice for Donald McPherson to 213 10<sup>th</sup> St, rather than to the address on the Los Angeles County tax rolls. In violation of MBMC §10.84.040(B)(1).

For the current February 18 hearing, staff completely withheld the public hearing notice from McPherson. Several 10<sup>th</sup> St neighbors have emailed they received their notices.

**900 Club bootleg modifications to downstairs bar renders use noncompliant.**

During 2014, the city conducted public hearings to increase 900 Club entitlements, primarily permitting a disc jockey to play music in the downstairs bar. Exhibit 6 provides the plan for downstairs bar, in the administrative record, showing the bar located at the east end of the room and no wall separating the bar from the stairwell.

The current plans show the bar moved to the southwest corner of the of the 1<sup>st</sup> floor and a wall with a nonconforming door<sup>2</sup> separating the downstairs bar from the stairway. Consequently, since the 2014 hearings, 900 Club has made these bootleg modifications without a building permit or a permit from the LA County Department of Health.

A review of building permits on file at city hall for the premises discloses that no building permit exists for these bootleg modifications to the downstairs bar. [Exhibit 7] Consequently, 900 Club has moved an A-2 occupancy into areas where it did not previously exist, thereby making the use nonconforming. As such, it cannot “*be enlarged or extended*” as proposed in Reso 20-0020

Presumably, the municipal code also does not permit expansion of use for premises operating without valid building or health permits.

**Conclusions.**

The city council must revoke Resolution Nos. 18-0075 and 19-0075, but deny any change in use from the current use permit in effect, Resolution 14-0063.

Thanks for considering my substantial evidence in opposition to Resolution No. 20-0020,

Don McPherson

President, Coastal Defender

Owner, 1001 Bayview Dr.

1014 1<sup>st</sup> St, Manhattan Beach CA 90266

Cell: 310 487 0383

[dmcphersonla@gmail.com](mailto:dmcphersonla@gmail.com)

cc. City Manager, City Clerk, via email

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<sup>2</sup> *Ibid*, p. AR0184

## STRUMWASSER &amp; WOOCHELLP

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SENIOR COUNSEL

† Admitted to practice in Washington

February 17, 2020

***Via electronic mail and hand delivery***Manhattan Beach City Council  
1400 Highland Avenue  
Manhattan Beach, CA 90266

Re: February 18, 2020 Agenda Item 10: 900 Club Expanded Hours

To the Honorable City Council of the City of Manhattan Beach:

This firm is counsel for Don McPherson and Coastal Defender, Petitioners in the lawsuit *McPherson v. City of Manhattan Beach* (Los Angeles Superior Court case no. BS174550). As set forth in the staff report, on January 28, 2020, the Los Angeles Superior Court concluded that the Council had illegally approved the 2018 expansion of hours because the Council did not have before it the legally-required floor plans of the 900 Club and the Downstairs Bar for it to have approved the requested expansion of use and special events.

While the Court made clear that Resolution 18-0075 needed to be rescinded, the Court did not grant the Council carte blanche to disregard the proper process for approval of a *new* use permit amendment. The Court explained that the City may not disregard the requirements of the Municipal Code and its generally applicable procedures when considering a use permit amendment. Yet the City is again poised to violate the process outlined in the Municipal Code in its haste to once again approve the 900 Club's request for additional late-night operating hours.

In its ruling, the Court observed that under the Municipal Code, a use permit amendment is considered in the same manner as an application for a new permit. (M.B.M.C., chapter 10.84, § 10.84.100.) The Municipal Code straightforwardly provides that initial decisionmaking authority for issuance of a use permit is vested solely in the Planning Commission: "The Planning Commission shall approve, conditionally approve, or disapprove applications for use permits, variances and site development permits." (M.B.M.C., chapter 10.84, § 10.84.020, subd. B.) The City Council serves as an appellate body for the decision of the Planning Commission. (*Id.*, subd. C.)

The Municipal Code makes further clear that it is the Planning Commission, not the Council, that must conduct the public hearing: "Public Hearing. The Planning Commission shall conduct the public hearing and hear testimony for and against the application." (M.B.M.C., chapter 10.84, § 10.84.050, subd. A.) The Planning Commission then recommends to the Council whether it should approve, conditionally approve, or deny the use permit at issue. (*Id.* at

Chloe Hackert  
February 17, 2020  
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subd. B.) In 2018, the Planning Commission in fact denied the requested additional hours, after holding the initial public hearing and continuing it over two subsequent meetings. The Council's effort to shortcut the process here deprives the public and decision makers to the process to which they are due under the Code.

Not only is the Council improperly usurping the role of the Planning Commission that is established in the Municipal Code, it is also improperly bootstrapping the provisions of Resolution 19-0075 into the proceedings. Resolution 19-0075 was enacted pursuant to the review process created by the improperly adopted Resolution 18-0075. Because Resolution 18-0075 must be vacated, Resolution 19-0075 is of no continued force. The review provision in Resolution 18-0075 was never properly adopted, so nothing the subsequent Resolution 19-0075 that is premised on the existence of Resolution 18-0075 is valid either.

The Council should not compound the error it made when approving Resolution 18-0075. It must follow the Municipal Code and allow the process to take place in the specified manner, beginning with a properly noticed hearing held by the Planning Commission.

Yours very truly,

Beverly Grossman Palmer

STRUMWASSER & WOOCHEER LLP

## STRUMWASSER &amp; WOOCHELLP

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[WWW.STRUMWOOCHELL.COM](http://WWW.STRUMWOOCHELL.COM)ANDREA SHERIDAN ORDIN  
SENIOR COUNSEL

July 29, 2019

Manhattan Beach City Council  
1400 Highland Avenue  
Manhattan Beach, CA 90266**Re: August 6, 2019 900 Club Agenda Item**

To the Honorable City Council of the City of Manhattan Beach:

We write on behalf of Don McPherson and Coastal Defender regarding the City Council's review of the 900 Club and the 900 Club's request for additional hours and the revocation of certain conditions imposed just one year ago in City Council Resolution 18-0075. The 900 Club's request for any additional privileges should by no means be granted at this time. The City Council should instead initiate proceedings to revoke the 900 Club's permit entirely. The record before the City reveals that this business consistently refuses to adhere to the requirements placed upon it by the City and is a continuing source of disturbance for the neighborhood.

To begin with, the procedure that the Council has followed to consider the requested additional hours and permit modification is improper in several respects. First, the City Council is not the proper body to consider permit modification. Manhattan Beach Municipal Code chapter 10.84 regarding use permits makes clear that the Planning Commission must review such permits in the first instance. The applicant's request for extended hours and relief from the conditions of the permit is also directed (properly) at the Planning Commission. If the City Council considers any changes to the permit it must proceed through the Planning Commission, as it has done in the past.

Second, notice was not properly provided of the City Council's July 2 action and has not been provided in the interim. Manhattan Beach Municipal Code section 10.84.040 requires notice to property owners within 500 feet of the premises at the address "shown on the last equalized property tax assessment role or the records of the County Assessor, Tax Collector, or the City's contractor for such records." The notice for the July 2 hearing was not provided to the address of record with the Los Angeles County tax assessor for Dr. McPherson, but was rather sent to Dr. McPherson at a location on Bayview which is *not* the mailing address for the property owner.

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In addition to the improper procedure, the current request is deficient in several critical respects. It lacks plans as required by Manhattan Beach Municipal Code 10.84.030(A). Per the record, the City last approved plans for the property in 1997. Since then, changes have been made to the layout of the premises that must be reviewed to ensure compliance with building code and life/safety requirements. In apparent violation of state and city codes, however, it appears that for the 900 Club, the City approved Resolutions 14-0063 and 18-0075, without having accurate plans per Manhattan Beach Municipal Code 10.84.030(A).

Finally, as the Council is certainly aware, Resolution 18-0075 is the subject of pending litigation in the Los Angeles Superior Court, *McPherson v. City of Manhattan Beach* (BS174550). A critical issue in that litigation is whether the City was legally authorized to expand entitlements when it was acknowledged by the City that the business was not in compliance with legal requirements of the zoning code.

The identical issue would be presented if the Council acts to modify the permit on August 6. As Planning Director Jester testified on July 2:

“So, staff has been monitoring the club for compliance with the conditions during the past year. We’ve done a number of inspections, and we’ve been in contact with the police department and our code enforcement staff to evaluate where the club is in compliance with the conditions. There are several pages in your staff report that go into detail about each condition of approval of the 2018, as well as the 2014, conditions related to hours off... of operation, access, the windows being closed, their entertainment permits, um, floor plans, which then they could set the occupancy limit. Signage, noise mitigation to be installed on the site. Having a manager and employee handbook, a recording of a covenant. Having a licensed, bonded, certified security guard on site. The use of the back door and the storage and utility room. The, uh, amplified sound background music and noise. Their entertainment permit and their special events, uh, some additional noise mitigation measures that were to be installed within 45 days. Policing the surrounding area to make sure there's not any noise impacts, and other impacts to the surrounding area. And the access code and inspections for the fire and police department.

“So, if you look at your report, you'll see that, sort of in a nutshell, the applicant has not been in compliance with any of these conditions, or only in partial compliance with the conditions. . . .

“So, in conclusion, the applicant has not complied with the majority of the conditions in the 2018 or the 2014 resolution. The police department has responded to several complaints that are violations of the conditions related to noise, after-hours operation and such. And staff does have concerns about



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super... sup... about future compliance... and modification of the current conditions. We would not recommend granting the applicant's request at this time due to the outstanding issues. If those issues are resolved, we think it's something the... the council could consider in the future.”

Not only does this finding plainly disqualify the 900 Club from receiving additional privileges or being relieved of existing requirements, it instead compels the conclusion that the City Council should initiate proceedings to *revoke* the permit. Staff reports that six complaints were received by the Manhattan Beach police department regarding excessive noise at the premises. This is not reflective of a good operator who is adhering to existing requirements.

Because the evidence presented to the City Council indicates that the 900 Club is not complying with Resolution 18-0075, the Council should modify Resolution 18-0075 pursuant to Manhattan Beach Municipal Code 10.104.030, to eliminate the additional privileges afforded to the 900 Club in that action (increased closing time on Thursday and increased special events). The protective modifications in Resolution 18-0075 should remain in effect, of course, as long as the business continues to operate.

If the Council does decide to modify the conditions of Resolution 18-0075 by granting additional privileges and revoking requirements intended to protect the neighborhood, Dr. McPherson and Coastal Defender will be required to seek leave from the Court to file a Supplemental Petition to bring this additional illegal expansion of authority into the existing litigation.

Yours very truly,  
STRUMWASSER & WOOCHELL LLP



Beverly Grossman Palmer

cc: *via email only*

Ginetta Giovinco (ggiovinco@rwglaw.com)  
Sherri Bonstelle (sbonstelle@jmbm.com)

**From:** [Robert Rowe](#)  
**To:** [Don](#)  
**Subject:** RE: Michael Rendler's Inspection  
**Date:** Monday, 17 February, 2020 08:08:12

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Don,

I concur with all of the items listed.

1. The plans do not reflect the furnishings I observed on the 1st or the 2nd floor the evening of May 26th, 2018. In order to accurately calculate the occupant load you have to include all furnishings.
2. The building is not sprinklered. I recommend that you cite the specific provision of the building code to support your argument. The stairwell needs to be evaluated by the City of Manhattan Beach Building and Safety Division and official report provided to confirm that it is in strict compliance with the applicable sections of the California Building Code you cite prior to moving forward on the project. The public has a right to know.
3. I am in agreement with your comment regarding the submittal of elevation plans. With regard to code compliance of the buildings exiting system, again, the specific code building code section needs to be cited in your argument. It will then be the City of Manhattan Beach Building and Safety Division's responsibility to ensure the public that exiting system is or will be in strict compliance with the building code.
4. See my responses above regarding full compliance with the Building Code.

Hope this helped.

Robert

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** Don <dmcphersonla@gmail.com>  
**Date:** 2/17/20 7:19 AM (GMT-08:00)  
**To:** Robert Rowe <Robertrowe@pyrocop.com>  
**Subject:** Michael Rendler's Inspection

Yesterday, based on Michael's inspection, we agreed on the findings below. I would greatly appreciate any opinion you can provide, regarding deficiencies in the attached plans for determining compliance with the fire code.

Our findings:

- 1) Without moveable seating shown in the plans, it not possible to determine occupancy or conduct an exit analysis;

2) Being open at top and bottom, the stairwell does not provide one-hour protection. The plans do not show sprinklers there. Additionally, the 2<sup>nd</sup> intermediate landing fronting on Manhattan Ave does not provide the required 44-inch deep landing. Also, the plans do not dimension the width of the stairs or the distance between handrails, so it not possible to determine whether the stairway 44 inches wide, with 37-inch clearance between handrails. Based on these factors, the stairway does not constitute a protected exit from the top floor.

3) The plans do not provide elevations, so it not possible to determine whether the upstairs club constitutes the 1<sup>st</sup> or the 2<sup>nd</sup> floor above grade. Visual inspection of the exterior discloses that the downstairs bar constitutes the 1<sup>st</sup> floor, because its periphery above grade. Therefore, the upstairs A-2 occupancy requires two exits, but it only has only one compliant exit, namely the 9<sup>th</sup> St backdoor. Even if the upstairs club constitutes the 1<sup>st</sup> floor, which it does not, the occupancy load cannot exceed 49 with only a single exit. Although structural nonconformities may be grandfathered, operational nonconformities, such as occupancy load may not be grandfathered; and,

4) The downstairs bathrooms located off the 1<sup>st</sup> intermediate landing of the stairway constitute an A-2 occupancy use by bar patrons. Because the stairway not a complying exit, these bathrooms have no protected exit.

If possible, please provide your comments today or tomorrow.

Thanks,

Don McPherson

1014 1st St, Manhattan Beach CA 90266

Cell: 310 487 0383

[dmcphersonla@gmail.com](mailto:dmcphersonla@gmail.com)

## Who is Pyrocop?

**Robert Rowe**, Owner and President of Pyrocop, Inc., began his career in the fire service in 1980 with the Hughes Aircraft Company Fire Department. It was here he gained extensive knowledge in structural firefighting, crash rescue operations, hazardous materials response, fire prevention and fire protection systems designed specifically to protect military projects under contract with the United States government.

In 1985 he was promoted to Captain and upon receiving State certification as a Hazardous Materials Specialist, headed up the departments newly formed Hazardous Materials Response Team. Robert was also assigned as the departments Fire Marshal where his knowledge of the Fire and Building Codes as well as the NFPA (National Fire Protection Association) Standards truly began to develop. This assignment required specialized training in the fire prevention discipline which equipped him with the expertise to participate in companywide insurance audits conducted by various high-risk insurance carriers.

In 1989, Robert was hired by the City of Downey as a Hazardous Materials Specialist. His responsibilities included the management and enforcement of local, state and federal regulations at all of the City's reporting facilities including those who handled extremely hazardous substances. This responsibility also included hazardous waste investigations and response to hazardous materials release emergencies.

In 1993, Robert was promoted to Deputy Fire Marshal where he the fire prevention division under the direction of the Fire Chief. In addition to the Hazardous Materials Program, his responsibilities included fire investigation, fire/life safety inspections, plan review, code interpretation, code enforcement and the training of fire department personnel and city staff. Robert is an instructor for the National Code Services Association and has traveled throughout the western states conducting courses on high piled storage, flammable and combustible liquids, fire code certification and advanced plan review. His experience, knowledge and practical application of both the fire and building codes has been critical in the development of major projects within the Los Angeles Area.

As Downey's Deputy Fire Marshal, Robert supervised the Fire Investigation Division. He is a Certified **Fire Investigator** (CFI) through the International Association of Arson Investigators, a Certified Fire and Explosion Investigator (CFEI) as well as a Certified Fire Investigator Instructor through the National Association of **Fire Investigator** and a licensed Private Investigator in the State of California. To date, Robert has investigated over 1100 fires throughout his career and has qualified as an expert witness in both civil and criminal court. He is a member in good standing of the California Conference of Arson Investigators, International Association of Arson Investigators and the National Association of Fire Investigators. Robert has also served as past president of the Area E Arson Task Force, which includes Downey, Montebello, Compton, Santa Fe Springs and Long Beach and has worked with the Task Force and various local, State and Federal law enforcement agencies on numerous fires and special investigations. During his tenure as Deputy Fire Marshal, Robert was also deputized, under Alcohol, Tobacco and Firearms as a United States Marshal Special Deputy.

During his career, Robert served as President of the Los Angeles Area Fire Marshals Association, member of the Western Fire Chief's Uniform Fire Code Development and Interpretation Committee and member of the NFPA 1/Uniform Fire Code Technical Committee. In 2003, he was also appointed as member of both the California State Fire Marshal's Fire/Life Safety Advisory

Board and California Building Standards Commissions Plumbing Electrical, Mechanical and Energy Advisory Committee in the capacity of Fire Official.

Robert currently holds the position of Executive Director for the Fire Sprinkler Advisory Board of Southern California and currently serves on the State Fire Marshal's Automatic Extinguishing Systems Advisory Committee.

Robert has accumulated over 3000 hours of specialized training in Fire Prevention, Hazardous Materials, Fire Investigation and Public Education through various State and community college programs, the Office of the State Fire Marshal and the National Fire Academy.

## About Us

PYROCOP, Inc. has proven successes, based on years of experience working with numerous jurisdictions throughout the country by carefully reviewing and properly applying the provisions of building and fire codes and other industry standards. We take pride in our ability to effectively communicate with code enforcement officials to achieve a successful outcome for our clients.

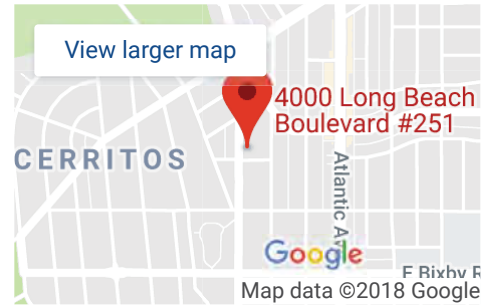
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**Warning:** mysql\_query(): Access denied for user 'root'@'localhost' (using password: NO) in `/home/pyrocopc/public_html/wp-content/themes/te_child/footer.php` on line 57

**Warning:** mysql\_query(): A link to the server could not be established in `/home/pyrocopc/public_html/wp-content/themes/te_child/footer.php` on line 57

**Warning:** mysql\_num\_rows() expects parameter 1 to be resource, boolean given in `/home/pyrocopc/public_html/wp-content/themes/te_child/footer.php` on line 58

## Contact Us



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## Statement of Fact 2 17 2020

To: Coastal Defender

Regarding Building Records, As Built Records, and Record Documents and 900 Club Conditional Use Permit

It is important to define the differences between these terms and how they are used for a conditional use permit. Clearly no "New Construction" can be in violation of current adopted International Building Code Standards. This project, 900 Club modification of Conditional Use Permit, has had many elements of the Current Building Code ignored or Grandfathered in. As these issues are addressed with current code requirements the Building Department is making judgement regarding the public safety issues of the facility.

Record Documents: These documents were submitted to City February 10<sup>th</sup> 2020 and I reviewed them February 14<sup>th</sup> 2020. I revisited site February 15<sup>th</sup>, to verify there had been no changes in Construction to the site, since my last visit to the 900 Club March 25<sup>th</sup> 2018. As I stated to City Council previously, they should take a close look at the exit solution with winding stairs from second story to first story. The Record Documents are stamped approved based on Fire Department field inspection. Regarding Building Permit number it is stamped NA Not applicable.

Record Documents are documents prepared by Owners to understand what is visible and can be dimensioned regarding an existing structure. These documents do not include the complete "Occupancy USE" information needed to do a Occupancy Load analysis and exit analysis. Placement of Chairs, tables will allow an accurate quantity count of users based on Occupancy use. This documentation is needed for Alcohol Serving Licensing. This documentation will address clear paths of egress. These are not present in stamped drawing making it difficult to determine the actual exit width requirements and compliance.

As built documents are more detailed documents explaining the difference between Permitted Documents and how the building was actually built. Clearly the 900 Club building does not have "AS Built" documents with the numerous modifications the structure has had since it was first constructed as a Residence in 1970.

As "building use" changes over time using Conditional Use Permits, building departments and insurance companies can require additional modification to the building and its systems for public safety reasons. This is a gray area and the core of this STATEMENT OF FACT document.

Example: The exit way with "Stair Well" between first and second floor must restrict users from entering back into the lower floor Bar/Restaurant when exiting the upper floor as an exit path to the public way (Manhattan Avenue). This would require a separation (door) between lower floor and stair well. Patrons of the lower flower using this passage way to escape fire as secondary exit must not continue up the stairs but must exit out door onto Public Way on Manhattan Avenue.

This exit path should be documented and compliance with a clear exit scenario should be prepared and reviewed by the City of Manhattan Beach for public safety for Conditional Use Permit.

## Statement of Fact 2 17 2020

A proper set of "Construction Documents" showing current public safety issues with existing field conditions (Record Drawings) addressing both the upper floor "Two Exit" requirement; as well as lower floor exit requirement (two exits) would include, Lighting, Doors, Door Swing direction, sprinkler systems, fire rating of stair well (1 hr requirement), emergency lighting solution and all furniture layout. This set of Construction Documents would be part of the Conditional Use Permit and reviewed by both Planning Department and City Building and Safety Department as well as sign off from Fire Department. Currently it is not possible to evaluate what is existing "Stair design Compliance" Exterior wall construction (Fire Rating) with Record Documents submitted to City. These construction documents should be prepared and submitted for proper record of safety of the facility as stated in my initial testimony to City Council.

Michael Rendler AIA

Director

e7 Architecture Studio

**Michael James Rendler A.I.A. Architect**

1316 2<sup>nd</sup> Street Manhattan Beach, California 90266 (310) 406 5700

**Education**

Southern California Institute of Architecture (Sci-Arc), Bachelor of Architecture	1982
Southern California Institute of Architecture (Sci-Arc), Vico Marcote, Switzerland	1981
West Los Angeles College Art and Engineering	1976-1979
Loyola High School Graduate	1975

**Experience**

Greg Schneider Architect	1979-1983
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Manhattan Beach, Ca

Architectural Drafting, Project Management, Structural Engineering

Projects; 19 unit apartment building, 40 unit housing tract, 7,000 ft custom home

Computer Aide, Michael Rendler Owner	1983-1989
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Los Angeles, California

Computer Aide was incepted to deterritorialize architecture, enabling it to access every aspect of project completion. As paradigms are booted and wiped at an ever increasing rate, Computer Aide belives that it is only through the rapid and creative processing of information that the ideas inherent in these paradigms can be fully interfaced with architecture.

Glen Small A.I.A. Michael Rendler A.I.A.	1990-1993
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Santa Monica, Ca

Michael Rendler A.I.A. Educator/Architect	1994- Present
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Michael Rendler A.I.A. Instructor	1990-Present
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Los Angeles Community College District



Michael Rendler A.I.A. Director 1997-2002

Metropolitan Access Planning System

Workforce LA

Michael Rendler A.I.A. Founding Director 2003-Present

E7 Architecture Studio

**Projects: 1983**

Residential Addition for environmentally conscious family, Santa Cruz, Ca

Computer Center for Electrical Wholesale Distributor Hollywood, Ca

Design and Construction Contracting of 1500 sf addition to 1200 sf existing residence, maximizing view to Pacific Ocean Palos Verdes, Ca

Topographic Surveying, Design and Construction Documents Passive Solar House Red Rock Nevada

**1984**

Design and Construction of Outside China (Dim Sum Kitchen, Café, Patio) In existing Rudolph Schindler Complex Studio City

Interior design and construction of BLACK SALAD (Retail Clothing Store) on Melrose Avenue Los Angeles

Design and Fabrication of Stainless Steel and Rebar cashier's table for Vacationville (Retail Clothing store on Melrose Avenue) Los Angeles

**1985**

Construction Documents for Hollywood Center Studios Commissary , Kitchen Equipment Drawings

California Pizza Kitchen (Proof of Concept ) Design and Fabrication Drawings Los Angeles, Ca

Interior and Furniture (Proof of Concept) kinko's copy store Studio City, Ca

**1986**

Design for Masquerades ( Jewelry Store) in Farmers Market Los Angeles, Ca

(selected by Mayor of Los Angeles as model store for renovation of entire market)

Restoration of 2 duplexes (c. 1960) Manhattan Beach

**1987**

Design Construction Documents, Structural Engineering Venable Residence Venice, CA  
(Artist's Studio and Duplex)

Schematic Design and model for 10,000 sf Three Family Home Imo State, Nigeria

**1988**

Programming, Design and Construction Documents for 8 unit medium income apartment building  
Hollywood, CA

Structural Engineering on numerous residential and artistic projects for Gordon Polon and Company  
Santa Monica, CA

Design, Engineering, and Construction Documents for hillside home Glassell Park, CA

**1989**

Design Engineering and Construction Documents for Reconstruction of existing residence (c. 1960)  
Pacific Palasades, CA

**1990**

Design, Engineering, and Construction Documents for Second Story addition and remodel of existing kitchen,  
living room and powder bath Brentwood, CA

In Association with Glen Small A.I.A. Architect Palmdale Center for the Performing and Visual Arts Civic  
Theatre Palmdale, CA

Mixed Use Facility 4,000 sf Boardwalk Venice, CA

Custom Home 9,000 sf Belair, CA

**1998**

Design, Engineering, Design Development Custom Home  
Hermosa Beach, CA

**2000**

Design, Engineering, Design Development Custom Home Cardiff by the Sea, CA

**2005**

Renovation of Residence (c. 1950) Design, Construction Documents, Engineering, Construction and  
Fabrication Manhattan Beach

**Academics**

Instructor: Los Angeles Trade Technical College 1990-1998

Instructor: East Los Angeles College 1998-2003

**Special Academic Assignments**

Preparation of VATEA Grant for Architecture Department 1991

Faculty Development Courses in Computer Technology 1993

Course Development with East San Gabriel Regional Occupational Program in Architecture

Design under Tech Prep Grant 1994

Professional Development Course Design for Metro 1994

Co Chairman (Intergraph Task Force) LACCD District Wide Committee on Instructional Technology  
1995

Facilitator and Symposium Coordinator on CAD technology LACCD and LAUSD 2000

WorkSpace 2000 Concurrent Education 1996

Instructor Southwest College JPTA Project CAD Instructor 1996

Consultant Southwest College JPTA CIM (Computer integrated manufacturing)  
1996

Director MAPS (Metropolitan Access Planning System) Curriculum Design and Program Development  
with the Los Angeles Metropolitan Transportation Authority in Geographic Information Systems and  
Spatial Information Technology. Articulated with seven Schools in the LAUSD  
1996-2002

Faculty Development Project with Los Angeles Unified School District and Los Angeles Community  
College District in New Media Technology  
1997-2000

Collaboration with Unite LA, Workforce LA, LAUSD, LACCD Curriculum development courses at Los Angeles Trade Technical College in Geographic Information Systems

1998

Lecturer Advanced Computer Graphics; School of Design California State University Long Beach

1998-1999

### Awards

Bank of America Achievement Award Fine Arts	1975
Kaplan Award Scholastic Scholarship (Sci Arc)	1982
LA/AIA Interior Design Award (Black Salad)	1982
Recipient of Membership American Institute of Architecture	1992
Southern California Edison	
Faculty Advisor; Leading Edge Competition (2 <sup>nd</sup> Place)	1994
Recipient Certificate of Appreciation Metropolitan Transportation Authority	1995
Department of Education Federal Partnership Grant	1997
Recipient Technology Innovation Challenge Grant with LACCD & LAUSD	1997
Director MAPS ( Metropolitan Access Planning System)	1997
Board Member (Advisory Council VATEA )	
California Department of Correction and Rehabilitation	1997-2008
College Educator of the Year Award Metropolitan Transportation Authority	1999
Director e7 Architecture Studio	2003

### Publications:

Venable Residence

Progressive Architecture (December 1989)

Metropolitan (February 1990) Venable Residence Home of the year

The Moriyama Editors Studio World Residential Design no 07 JAPAN

Inside Magazine (June/July 1990) JAPAN

Los Angeles Trade Winds Newspaper "Saber es Pader" Exhibit Review LA Trade Tech Fish Bowl Gallery

### Exhibits

"Los Angeles Service Stations" Municipal Art Gallery, Los Angeles CA June to August 1994 "LA Semilla"

"Nature Walk" Fish Bowl Gallery, Los Angeles CA November 1995

Saber es Pader (Knowledge is Power) Fish Bowl Gallery, Los Angeles CA November 1996 (Student Work:  
China Twn, Little Tokyou and El Pueblo Historic Monument )

(A collaborative study with USC addressing Islands of Hope)

"Federation of Conferences" **Long Beach Convention Center November 1996** MAPS (Student Work using  
GIS to understand their environment)

"Siggraph" Los Angeles Convention Center, Los Angeles, CA July 1997 The Hood (Student work addressing  
syntropic and entropic relationships in their neighborhood using GIS Technology)

### Lectures on e7 Architecture Studio Geospatial Model built for Los Angeles Community College District

Technology in Architecture Practice TAP National Conference Los Angeles	Nov 2010
IOGDC International Open Government Data Conference Washington D.C.	July 2012
AASHE The Association for the Advancement of Sustainability in Higher Education Los Angeles	Oct 2012
Department of Homeland Security Headquarters, National Education Security Initiative (NESI) Washington D.C,	Dec 2012
GeoDesign Summit ESRI Headquarters Redland. CA	Jan 2013
Location Intelligence, Spatial and Graph User Conference ORACLE Washington D.C.	May 2013
NESI ( National Education Security Initiative) Briefing US Department of Justice LA CA	April 2013
2013 National Homeland Security Conference Los Angeles, CA	June 2013

[dmcphersonla@gmail.com](mailto:dmcphersonla@gmail.com)

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**Subject:** Unresolved Issues, August 6 900 Club Public Hearing

Mayor Nancy Hersman  
Manhattan Beach City Council  
City of Manhattan Beach

Via Personal Delivery and Email: [CityCouncil@citymb.info](mailto:CityCouncil@citymb.info)

Mayor Hersman and Councilmembers,

This letter raises issues regarding the continued 900 Club public-hearing on August 6, for reviewing compliance with the nightclub's use-permit modification, Resolution No. 18-0075. The attachment summarizes my issues.

Apologies for missing the July 2 hearing. The city mailed our notice to a vacant rental unit, rather than to the address on the Los Angeles County tax rolls. This violated Manhattan Beach Municipal Code ["MBMC"] §10.84.040(B)(1).

At the July 2 hearing, after public comment, the council did not discuss the agenda item. As result, no information exists regarding councilmember opinions whether the 900 Club complies with its use permit. For whatever the council decides at the August 6 hearing, councilmembers must address the following issues:

- Per municipal code, the city council may not consider the 900 Club request for increased hours;
- At the July 2 hearing, staff presented reasonable grounds for revoking or modifying the use permit;
- The public-hearing record does not disclose the Superior Court case of *Donald McPherson and Coastal Defender v. City of Manhattan Beach*, which challenges Resolution No. 18-0075;
- 900 Club operates with unapproved structural modifications to fire- and life-safety exits; and,
- Invoices totaling \$25,939 filed with the city by Mr. David Caskey, for 900 Club attorney fees.

Attorney Beverly Palmer has expressed her opinions regarding the July 2 hearing, in a separate letter to the city council, dated July 29.

Regrettably, neither Ms. Palmer nor I can attend your August 6 hearing, because of long-standing commitments at that time to our respective families.

Thanks for your consideration of my issues,

Don McPherson  
1014 1<sup>st</sup> St, Manhattan Beach CA 90266  
Cell: 310 487 0383  
[dmcphersonla@gmail.com](mailto:dmcphersonla@gmail.com)

Attachment via email only.

Distribution: City Clerk

Distribution via email only: 900 Club neighbors, Strumwasser & Woocher, Media

1 August 2019

Mayor Nancy Hersman  
Manhattan Beach City Council  
City of Manhattan Beach

Via Personal Delivery and Email: [CityCouncil@citymb.info](mailto:CityCouncil@citymb.info)

Mayor Hersman and Councilmembers,

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Apologies for missing the July 2 hearing. The city mailed our notice to a vacant rental unit, rather than to the address on the Los Angeles County tax rolls. This violated Manhattan Beach Municipal Code ["MBMC"] §10.84.040(B)(1). Please see Exhibits 1 and 2.

At the July 2 hearing, after public comment, the council did not discuss the agenda item. As result, no information exists regarding councilmember opinions whether the 900 Club complies with its use permit. For whatever the council decides at the August 6 hearing, councilmembers must address the following issues:

- Per code, the city council may not consider the 900 Club request for increased hours;
- At the July 2 hearing, staff presented grounds for revoking or modifying the use permit;
- The public-hearing record does not disclose the Superior Court case of *Donald McPherson and Coastal Defender v. City of Manhattan Beach*, which challenges Resolution No. 18-0075;
- 900 Club operates with unapproved structural modifications to fire- and life-safety exits; and,
- Invoices totaling \$25,939 filed with the city by Mr. David Caskey, for 900 Club attorney fees.

Attorney Beverly Palmer has expressed her opinions regarding the July 2 hearing, in a separate letter to the city council, dated July 29. [Exhibit 3]

#### **FACTS, OMISSIONS AND DEFICIENCIES REGARDING JULY 2 HEARING.**

The following issues substantiated in the July 2 transcript, Exhibit 4, and the record.

##### **1. City Council May Not Approve Requested Extended Hours.**

The July 29 letter from attorney Beverly Palmer to the city council cites municipal-code provisions that mandate any increase in property rights must initiate with the planning commission. No provision in the municipal code exists, for the city council to initiate the use-permit extensions proposed by 900 Club. Therefore, it improper for the council to consider the letter from Mr. David Rohrbacher to the planning commission, dated 30 May 2019, that requests modifications to Resolution No. 18-0075.

##### **2. City Testimony Established Grounds to Revoke or Modify the 900 Club Use Permit.**

Planning Manager Laurie Jester testified, "*So, in conclusion, the applicant has not complied with the majority of the conditions in the 2018 or the 2014 resolution.*" Based on this testimony that reasonable grounds exist, the city council may make the required findings for revocation or modification of the 900 Club use permit, pursuant to MBMC §10.104.030.

### **3. City Withholds Disclosure from the Public of *Coastal Defender v. MB*.**

During the 2018 use-permit hearings, city staff testified that the 900 Club operated in compliance with city and state law. The city council concurred and approved Resolution No. 18-0075, which extended property rights for the 900 Club.

On July 2, however, staff testified that grounds exist to revoke or modify the 900 Club use permit. Nothing has changed in the 900 Club operation that justifies this change of opinion.

It appears that staff now claims the 900 Club violates city and state law, in response to *Coastal Defender v. MB*, which the city withholds from public disclosure in the current hearings.

### **4. Building-Code Nonenforcement of Bootleg Structural-Modifications.**

Per the record, the approved building permit for 900 Club corresponds to that in effect since 1997, with plans prepared by architect Louis Tomaro. The city withheld those approved plans from the 2014 revocation hearings and again in the 2018 hearings.

At the 1 May 2018 appeal hearing, expert opinion established that the current building configuration includes unauthorized structural modifications to the fire- and life-safety exits.

These modifications also preclude restricting the downstairs-bar access to Manhattan Ave, rather than use of the 9<sup>th</sup> St door, which fronts on residences. Therefore, these bootleg structures obviate one of the most effective ways to mitigate noise disturbances.

The city nonenforcement of the building code constitutes a daily misdemeanor, subject to a \$1,000 fine and six months in jail for each count, applicable to both the city and 900 Club.

### **5. The 900 Club Filed Invoices with the City, Totaling \$25,939 for Attorney Fees**

Shortly before the 1 May 2018 appeal hearing, on behalf of the 900 Club, Mr. David Caskey filed with the city, invoices that totaled \$25,939 for attorney fees. [Exhibit 5] The 900 Club paid these fees to their attorney, Albro Lundy, for processing the application, which resulted in Resolution No. 18-0075.

Councilmembers must determine whether the city compensated the 900 Club for their attorney fees to process the application, and if so, for what reason the expenditure.

### **CONCLUSIONS.**

Per Ms. Palmer's letter, the city council may not consider the request by 900 Club for later closing times and relaxation of other conditions in Resolution No. 18-0075. Only the planning commission can initiate that action.

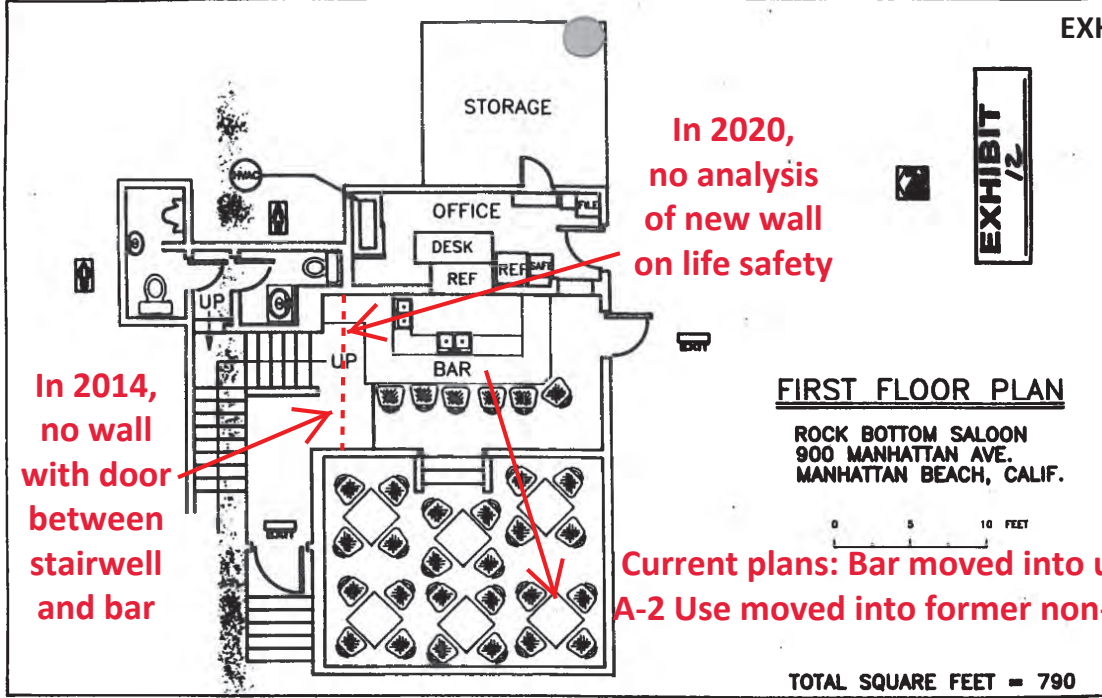
The city council may revoke or modify the 900 Club use permit, however, if they make the finding, "*That the terms or conditions of approval of the permit have been violated or that other laws or regulations have been violated;*" [MBMC §10.104.030(D)(2)]

Staff testimony at the July 2 hearing established that reasonable grounds exist for the city council to revoke or modify the 900 Club use permit.

Thanks for your consideration of my issues,  
Don McPherson  
1014 1<sup>st</sup> St, Manhattan Beach CA 90266  
Cell: 310 487 0383  
dmcphersonla@gmail.com



EXHIBIT MB.05



**EXHIBIT 5.  
 MAJOR STRUCTURAL MODIFICATIONS  
 WITHOUT A BUILDING PERMIT  
 MAKE THE A-2 OCCUPANCY USE NONCONFORMING**

**2014 Revocation Hearing  
 PC MTG 2/26/14**

**AR 2464** PC MTG 2/26/14  
 Page 18 of 77

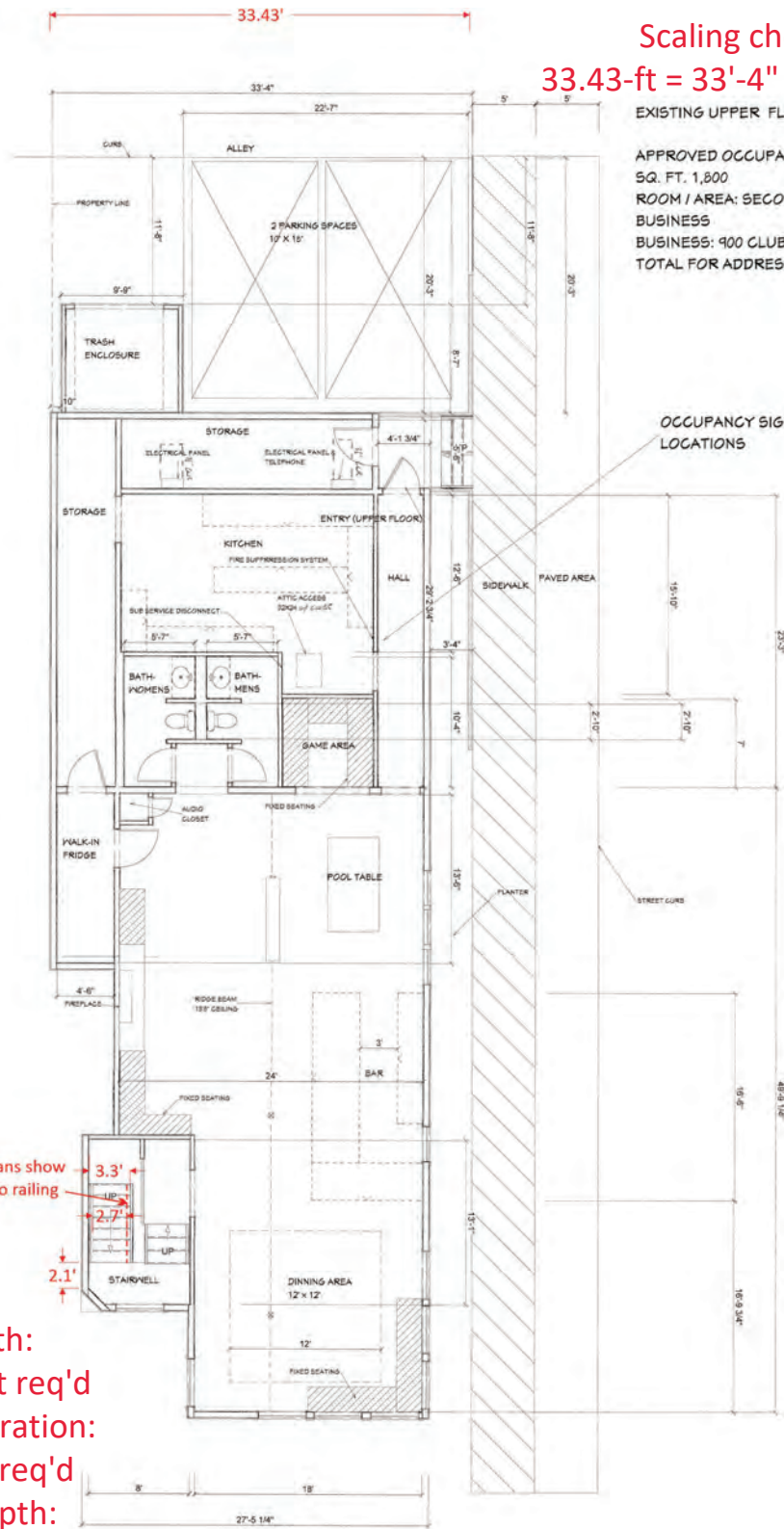
**NO 900 CLUB PERMITS ISSUED FOR  
MODIFICATIONS TO DOWNSTAIRS BAR**

13 February 2020 Display on Permit Computer, Manhattan Beach City Hall

Item	Date	Permit No.	Permit or Plan Name
1	11 Oct 2007	07-04725	Sign plans
2	22 Oct 2007	007-02161	Sign
3	9 Mar 2009	09-02161	Plumbing
4	29 Mar 2010	None	Plan Fiche <sup>1</sup>
5	6 Oct 2010	None	Permit Fiche
6	26 Aug 2013	13-01105	Building
7	26 Aug 2013	13-01105	Building plans [Fence]
8	4 Oct 2013	13-02157	Building
9	4 Oct 2013	13-02157	Building plans
10	12 Feb 2014	14-00367	Building [2 <sup>nd</sup> floor hand-drawn sketches]
11	12 Feb 2014	14-00367	Building plans
12	7 Sep 2016	None	Permit Fiche
13	7 Sep 2016	None	Permit Fiche
14	7 Sep 2016	None	Plan Fiche [Includes 2014 hearing plans]

'Fiche' = Microfiche film storage; not electronic

# EXHIBIT 8. STAIRWAY DIMENSIONS APPEAR NONCONFORMING



Scaling check:  
33.43-ft = 33'-4" dimension

EXISTING UPPER FLOOR

APPROVED OCCUPANT LOAD MAX: 92  
SQ. FT. 1,800  
ROOM / AREA: SECOND FLOOR  
BUSINESS  
BUSINESS: 900 CLUB  
TOTAL FOR ADDRESS: 123

OCCUPANCY SIGN  
LOCATIONS

Plans show  
no railing

Stair Width:  
3.3-ft vs 3.7-ft req'd  
Handrail Separation:  
2.7-ft vs 2.9 req'd  
Landing Depth:  
2.1-ft vs 3.7-ft req'd