

**Martha Alvarez, MMC**

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**From:** Felicia Villarreal <felicia@northmanhattanbeach.org>  
**Sent:** Tuesday, March 1, 2022 10:07 PM  
**To:** List - City Council  
**Cc:** Carrie Tai, AICP; erin@cafe-wild.com; Libby Bretthauer; Steve S. Charelian  
**Subject:** [EXTERNAL] Just a clarification on my comments.

**EXTERNAL EMAIL:** Do not click links or open attachments unless you trust the sender and know the content is safe.

Hello Everyone,

I just wanted to clarify a couple of things with regard to my comments. I was trying to be quick.

Using Cafe Wild as an example. Businesses in NMB are nowhere near capacity yet and most are truly small business owners. Cafe Wild is now paying \$3.00/square foot for the sidewalk, \$3.00/square foot for the deck and rent. The deck and sidewalk fees are now equal to 50% of their initial rent cost.

They had sidewalk tables prior to Covid and they did not pay a fee for that usage. So they are adapting to increasing these expenses. All these fees, even if small, are impactful for a small business in NMB. I totally respect the fees to cover the city's costs.

I don't want anyone to feel I was being ungrateful for the kindness afforded to restaurants in NMB for the dining decks and everything else.

I am doing my best to start giving NMB a voice. They haven't had a very strong voice and NMB is different from other areas in Manhattan Beach.

I am just asking when fees will come up in the future, you consider the volume of business and the amount of foot traffic in NMB vs. other areas in Manhattan Beach. 😊

Thank you so much.

Respectfully,

Felicia Villarreal

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Felicia Villarreal  
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## Martha Alvarez, MMC

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**From:** Gary McAulay <gary.mcaulay@gmail.com>  
**Sent:** Tuesday, March 1, 2022 4:39 PM  
**To:** List - City Council; City Manager  
**Subject:** [EXTERNAL] comments on tonight's agenda

**EXTERNAL EMAIL:** Do not click links or open attachments unless you trust the sender and know the content is safe.

Hello Council

Re tonight's meeting, I'll be brief:

### Street Dining

The sooner these encroachments are closed down, the better. The restaurants are proving the obvious: give them an inch, they'll take a mile. An emergency concession to aid restaurants is becoming a naked land grab of insanely expensive and rare public property for private commercial gain, to the detriment of open space, parking, overcrowding, etc. You've read my previous emails. Return the public land to the public. Downtown MB deserves to be more than one giant food court.

### Gascon

Yes, recall! The DA's policies are ruining Los Angeles.

### Storybook

I generally support Eagle projects. One question I have, though, is what are the stories being considered? How are they being selected, and who has final selection authority?

Respectfully,

Gary

Gary D. McAulay

## Martha Alvarez, MMC

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**From:** Christine A.Norvell <christineanorvell@me.com>  
**Sent:** Tuesday, March 1, 2022 4:42 PM  
**To:** City Clerk  
**Subject:** [EXTERNAL] Recall Gascon

**EXTERNAL EMAIL:** Do not click links or open attachments unless you trust the sender and know the content is safe.

To Manhattan Beach City Council,

I respectfully implore you to unanimously, as a UNITED Manhattan Beach City Council, endorse the GASCON RECALL CAMPAIGN.

*Christine A. Norvell, Ph.D.*

[christineanorvell@mac.com](mailto:christineanorvell@mac.com)

[www.ChristieNorvell.com](http://www.ChristieNorvell.com)

740 Manhattan Beach Blvd., Apt. F  
Manhattan Beach, CA 90266

cell 310.291.0833

## Martha Alvarez, MMC

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**From:** Neil Leventhal <nl@lma-web.com>  
**Sent:** Tuesday, March 1, 2022 5:01 PM  
**To:** List - City Council  
**Cc:** Carrie Tai, AICP; City Clerk; Bruce Moe  
**Subject:** [EXTERNAL] OPPOSE | Agenda Item #13 | Request to Discuss Occupancy Limits for Businesses in the COVID-19 Outdoor Dining and Business Use Program

**EXTERNAL EMAIL:** Do not click links or open attachments unless you trust the sender and know the content is safe.

Mayor, Council and Staff,

Per the staff report:

"Additional restaurant activity would generate additional patrons, incrementally increasing demand (and related costs) for public services, such as more frequent refuse pick-up, public infrastructure maintenance, and public safety resources."

**"Business owners ...agree(d) to this in order to begin operating outdoor dining...The temporary ABC authorization imposes the same operating conditions for both the indoor and expanded outdoor licensed premises."**

"Staff has confirmed that **several restaurants are exceeding their occupancy limits on a regular basis** and have subsequently been issued administrative citations. In total, 19 citations have been issued, with some businesses receiving multiple violations."

**"Expansion of capacity beyond 100% pre-COVID-19 capacity is the functional equivalent of a square footage increase, constituting an expansion of use (requiring a Use Permit). In the Coastal zone, this also constitutes an increase in the intensity of land use (requiring a Coastal Development Permit). As mentioned above, Use Permit and Coastal Development Permits are subject to CEQA."**

Included below are my comments addressing this issue at the February 15 City Council meeting. They remain relevant.

There is no reasonable justification for this "request," or for this discussion. As to the argument that restaurants are paying "market rate" for the outdoor space, so they are entitled to use it as they see fit, they have chosen to do so with the express agreement to limit overall capacity — and \$3/ft is not remotely a fair market rate for ocean view patio space.

Please bring this chapter to an end.

Sincerely,

Neil Leventhal

128 13th St.  
Manhattan Beach, CA

On Feb 15, 2022, at 4:48 PM, Neil Leventhal <[nl@lma-web.com](mailto:nl@lma-web.com)> wrote:

Mayor, Council and Staff,

With all due respect - are you kidding?

Somehow, the idea of empathy and support of restaurants to mitigate the financial impact of an emergency has now evolved to a belief that the raison d'etere of Manhattan Beach is the enrichment of restaurants, and their inherent right to sublimate all aspects of fairness, balance, community impact, health & safety, parking, zoning, CUPs, ADA accessibility, ABC regulation, coastal regulation and environmental impact.

Outdoor dining can be nice, but it does not require the abandonment of every other consideration, including reasonable constraints on the volume of traffic and visitors downtown, nor does it require that the public right of way be converted to private use without, at minimum, offsetting the impact, and absorbing the cost.

Under current circumstances, restaurants are not suffering - they're celebrating!

Business people advocating for their own benefit is certainly understandable. As leaders, representatives and decision makers, your considerations and motivations are hopefully more complex. The idea of expanding restaurant capacity, for no justifiable reason, is simply preposterous. The intensity and urgency of this effort, with the long term work plan already underway, is simply not warranted or responsible.

Sincerely,

Neil Leventhal

128 13th St.  
Manhattan Beach,CA

## Martha Alvarez, MMC

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**From:** jburtonmb@gmail.com  
**Sent:** Tuesday, March 1, 2022 5:23 PM  
**To:** City Clerk  
**Subject:** [EXTERNAL] FW: Opposition to Statutory and Categorical Exemptions for CEQA Review - Outdoor Dining Decks  
**Attachments:** CEQA Analysis\_JB.pdf

**EXTERNAL EMAIL:** Do not click links or open attachments unless you trust the sender and know the content is safe.

For the public record on Agenda Item No. 13 – General Business -

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**From:** [jburtonmb@gmail.com](mailto:jburtonmb@gmail.com) <[jburtonmb@gmail.com](mailto:jburtonmb@gmail.com)>  
**Sent:** Tuesday, March 1, 2022 4:47 PM  
**To:** City Manager Moe <[bmoe@manhattanbeach.gov](mailto:bmoe@manhattanbeach.gov)>; City Attorney Barrow <[qbarrow@manhattanbeach.gov](mailto:qbarrow@manhattanbeach.gov)>; Director Carrie Tai <[ctai@manhattanbeach.gov](mailto:ctai@manhattanbeach.gov)>  
**Cc:** Richard Montgomery <[rmontgomery@manhattanbeach.gov](mailto:rmontgomery@manhattanbeach.gov)>; Suzanne Hadley <[shadley@manhattanbeach.gov](mailto:shadley@manhattanbeach.gov)>; Joe Franklin <[jfranklin@manhattanbeach.gov](mailto:jfranklin@manhattanbeach.gov)>; Steve Napolitano <[snapolitano@manhattanbeach.gov](mailto:snapolitano@manhattanbeach.gov)>; Mayor Hildy Stern <[hstern@manhattanbeach.gov](mailto:hstern@manhattanbeach.gov)>  
**Subject:** Opposition to Statutory and Categorical Exemptions for CEQA Review - Outdoor Dining Decks

City Manager Moe, Attorney Barrow and Director Tai –

Please submit the attached **Opposition to Statutory and Categorical Exemptions for CEQA Review - Outdoor Dining Decks** in the public record for General Business Item No. 13 – Discussion of Dining Outdoor Dining Occupancy.... In tonight's meeting.

Jim Burton

# OPPOSITION TO CITY OF MANHATTAN BEACH STAFF FINDINGS THAT OUTDOOR DINING DECKS AND THE ENCROACHMENT PERMITS AUTHORIZING THEM ARE EXEMPT FROM CEQA REVIEW

## I. FACTS

When City of Manhattan Beach staff presented their June 3, 2020 Supplement Staff Report seeking Council discussion and input regarding outdoor dining decks, the Environmental Review section of that report summarily dismissed CEQA review requirements based on Statutory Exemption pursuant to California Code of Regulations § 15061(b)(3), and a determination was made that there is no possibility that the activity may have a significant effect on the environment.

City Council approved outdoor dining decks in the public right of way on June 10, 2020 before the City, acting as lead agency on the encroachment permits for the outdoor dining decks project, conducted any CEQA review. This approval was for temporary encroachment permits to last for three months. This approval has been extended five times and the current end date is attached to the end date of the State of Emergency; as long as Governor Newsom continuously extends the State of Emergency, the temporary encroachment permits for outdoor dining decks will continue, unless City Council revises their current policies.

Restaurants and representative DBPA leadership are now seeking an increase in occupancy limits for their outdoor dining decks. City Staff have prepared another report recommending City Council discuss and provide direction on existing occupancy limits. The Environmental Review section indicates permits for outdoor dining decks were reviewed for compliance with CEQA and it is determined that if City Council directs staff to pursue an increase in occupancy allowances for restaurants with encroachment permits for outdoor dining decks, the activity could be deemed 1) statutorily exempt from CEQA pursuant to § 15269(c) *Specific actions necessary to prevent or mitigate an emergency*, as it constitutes a specific action to mitigate an emergency; and 2) categorically exempt pursuant to § 15304(e) *Minor Alterations to Land*, and § 15311(c) *Accessory Structures*, due to its temporary nature with no permanent changes to the right-of-way. Then, the Staff Report summarily dismissed the need for environmental review.

## II. ISSUES

A. In the absence of a public hearing, is the City's staff declaration in the June 3, 2020 Supplemental Staff Report claiming statutory exemption from CEQA review for the outdoor dining deck program, qualify for authorized CEQA exemption?

B. Could the statutory and categorical exemptions identified in the Environmental Review section of the Staff Report set for City Council agenda discussion on March 1, 2022 be deemed qualifying exemptions for CEQA review when pursuing an increase in occupancy allowances for restaurants with encroachment permits for outdoor dining decks?

### **III. RULE**

#### **A. Article 5 Review for Exemption.**

1. California Code of Regulations § 15061

(a) Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA.

(b) A project is exempt from CEQA if:

(3) The activity is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

#### **B. Article 14 Initial Study.**

1. California Code of Regulations § 15063

(a) Following preliminary review, the lead agency shall conduct an initial study determine if the project may have a significant effect on the environment. If the lead agency can determine that an EIR will clearly be required for the project, an initial study is not required but may still be desirable.

#### **C. Article 18 Statutory Exemptions.**

1. California Code of Regulations § 15260. General.

This article describes the exemptions from CEQA granted by the Legislature. The exemptions take several forms. Some exemptions are complete exemptions from CEQA. Other exemptions apply to only part of the requirements of CEQA, and still other exemptions apply only to the timing of CEQA compliance.

2. California Code of Regulations § 15269. Emergency Projects.



The following emergency projects are exempt from the requirements of CEQA.

(c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term, but this exclusion does not apply (i) if the anticipated period of time to conduct an environmental review of such a long-term project would create a risk to public health, safety or welfare, or (ii) if activities (such as fire or catastrophic risk mitigation or modifications to improve facility integrity) are proposed for existing facilities in response to an emergency at a similar existing facility.

#### **D. Article 19 Categorical Exemptions.**

1. § 15300. Categorical Exemptions.

Section 21084 of the Public Resources Code requires these guidelines to include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA. In response to that mandate, the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents.

2. § 15300.2. Exceptions.

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

3. § 15304. Minor Alterations to Land.

Class 4 consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes. Examples include but are not limited to:

(e) Minor temporary use of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc.

4. § 15311. Accessory Structures.

Class 11 consists of construction, or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to:

(c) Placement of seasonal or temporary use items such as lifeguard towers, mobile food units, portable restrooms, or similar items in generally the same locations from time to time in publicly owned parks, stadiums, or other facilities designed for public use.

## **E. Government Code**

1. § 65102 Local Planning

A legislative body may establish for its planning agency any rules, procedures, or standards which do not conflict with state or federal laws.

## **F. Manhattan Beach Municipal Code Chapter 3.08**

1. § 3.08.010 Purposes

The declared purposes of this chapter are to provide for the preparation and carrying out of plans for the protection of persons and property within this City in the event of an emergency; the direction of the emergency organization; and the coordination of the emergency functions of this City with all other public agencies, corporations, organizations and affected private persons.

## **G. Proposition 65 Warnings Office of Environmental Health Hazard Assessment**

1. CalEPA Office of Environmental Health Hazard Assessment (OEHHA)

The OEHHA issued a Gasoline Engine Exhaust Prop 65 Warning in March 2019. Exposure occurs by breathing air containing gasoline engine exhaust. Sources include gasoline-powered cars and trucks...and other machinery. Exposure also occurs from contact with the sooty residue of gasoline engine exhaust, which can be absorbed through the skin or unintentionally ingested. This residue can settle on surfaces and stick to dust particles. Do not stand or allow your children to stand next to operating engines. Distance yourself from the source of the exhaust. Exposure to gasoline engine exhaust can cause cancer, birth defects and reproductive harm

2. <https://www.p65warnings.ca.gov/fact-sheets/gasoline-engine-exhaust>

#### **IV. APPLICATION**

##### **A. General Application**

1. With narrow exceptions, CEQA requires an EIR whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment. (§ 21100 [state agencies]; § 21151 [local agencies]; Guidelines, § 15002, subd. (f)(1)). "Project" means, among other things, "[a]ctivities directly undertaken by any public agency." (§ 21065, subd. (a)). "'Significant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment." (§ 21068; see also Guidelines, § 15002, subd. (g)). The Legislature has made clear that an EIR is "an informational document" and that "[t]he purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (§ 21061; Guidelines, § 15003, subds. (b)(e)).

2. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. (People v. County of Kern (1974) 39 Cal.App.3d 830, 842; 115 Cal.Rptr. 67; Guidelines, § 15003, subd. (e)). The EIR process protects not only the environment but also informed self-government.

3. "If a project is categorically exempt and does not fall within an exception, it is not subject to CEQA requirements and may be implemented without any CEQA compliance whatsoever." (*County of Amador v. El Dorado County Water Agency* (199) 76 Cal.App.4th 931; 91 Cal.Rptr.2d 66). But if a project is not exempt, the agency must then "decide whether the project may have a significant environmental effect." (*Bay Area Air*, supra, 62 Cal.4th 382).

4. "Finally, if the project may have a significant effect on the environment, the agency must proceed to the third step of the process and prepare an environmental impact report (EIR)." (§§ 21080, subd. (d), 21082.2, subd. (d), 21100, subd. (a), 21151, subd. (a)).

5. These provisions are reinforced by the Guideline standards for determining whether a project "may" have a significant effect. These standards provide that if the agency finds that there is "no substantial evidence" that the project may have a significant effect, it must prepare a negative declaration (Guidelines, § 15064, subd. (g)(2)), whereas if there is a fair argument that the project may have a significant effect even though there is also substantial evidence that it will not have a significant effect, the agency *shall* prepare an EIR. (Guidelines, § 15064, subd. (g)(1)). Further, "If there is a disagreement between experts over the significance of an effect ... the lead agency shall treat the effect as significant...." (Guidelines, § 15064, subd. (h)(2)).

## **B. Statutory Exemption**

1. There is no factual evaluation of the outdoor dining deck environmental concerns on the record, and if there was, it would contemplate the dangers associated with building dining decks for people to sit in the roadway and breathe automobile exhaust and ingest gasoline engine soot. "The statutory exemption codified in California Code of Regulations § 15061 Review for Exemptions, authorizes exemption from CEQA review if the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. But this exemption can only be relied upon if factual evaluation of the agency's proposed activity reveals that it applies." (*Davidon Homes v. City of San Jose*, supra, 54 Cal.App.4th 114, 62 Cal.Rptr.2d 612).

2. The City never cited any evidence supporting "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment". Instead, the City merely invoked the common sense exemption codified in California Code of Regulations § 15061(b)(3). An agency's duty to provide such factual support "is all the more important where the record shows, as it does here, that opponents of the project have raised arguments regarding possible significant environmental impacts." (*Id.*, at p. 117, 62 Cal.Rptr.2d 612).

3. The City claimed a statutory exemption but had no public hearings, and the record demonstrates the City never considered possible environmental impacts before reaching their decision. "[T]he agency's exemption determination must [rely on] evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision." (*Id.*, at p. 117, 62 Cal.Rptr.2d 612).

4. The City was required by law to consider possible environmental effects, or supporting its decision with substantial evidence. "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (*Pub. Resources Code*, § 21168.5; *Western States Petroleum Assn. V. Superior Court* (1995) 9 Cal.4th 559, 573; 38 Cal.Rptr.2d 139, 888 P.2d 1268).

5. The City didn't provide support for its statutory exemption finding; the record is void of any factual or legal evidence whatsoever. "In the case of the common sense exemption, however, the agency's exemption determination is not supported by an implied finding by the Resources Agency that the project will not have a significant environmental impact. Without the benefit of such an implied finding, the agency must itself provide the support for its decision before the burden shifts to the challenger. Imposing the burden on members of the public in the first instance to prove a possibility for substantial adverse environmental impact would frustrate CEQA's fundamental purpose of ensuring that government officials "make decisions with environmental consequences in mind." (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283; 118 Cal.Rptr. 249, 529 P.2d 1017).

6. The City's staff reports of June 3, 2020, and the report preceding the scheduled March 1, 2022 Council meeting, have not provided any evidence that an environmental review was conducted, nor was the public provided the opportunity for a hearing to voice comments and express their concerns about the environmental effects the

outdoor dining decks could cause. "There is no indication that any preliminary environmental review was conducted before the exemption decision was made. The agency produced no evidence to support its decision and we find no mention of CEQA in the various staff reports. A determination which has the effect of dispensing with further environmental review at the earliest possible stage requires something more. We conclude the agency's exemption determination must be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision." (*Davidon Homes v. City of San Jose*, supra, 54 Cal.App.4th 114, 62 Cal.Rptr.2d 612).

7. The City never provided any evidence supporting an exemption determination for CEQA review was made. "As we have discussed, however, it was not appellant's burden to produce substantial evidence here, in the absence of any evidence produced by the city supporting its exemption determination. Moreover, the showing required of a party challenging an exemption under Guidelines § 15061, subdivision (b)(3) is slight, since that exemption requires the agency to be *certain* that there is *no possibility* the project may cause significant environmental impacts. If legitimate questions can be raised about whether the project might have a significant impact and there is any dispute about the possibility of such an impact, the agency cannot find with certainty that a project is exempt. (*Id.*, at p. 117, 62 Cal.Rptr.2d 612).

8. CEQA is not confined to the immediate effects of an agency's decisions but should be applied whenever physical changes to the environment are a reasonably foreseeable result of the activity. (*Guidelines*, § 15378, subd. (a); *Bozung v. Local Agency Formation Com.*, supra, 13 Cal.3d 281-284; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 395, 253 Cal.Rptr. 426, 764 P.2d 278).

### **C. Categorical Exemptions**

#### **1. Exceptions.**

The categorical exemptions identified by the Staff Report in preparation for City Council agenda discussion on March 1, 2022, include: § 15304(e) *Minor Alterations to Land*, and § 15311(c) *Accessory Structures*. These CEQA exemptions have applicable CEQA exceptions rendering the exemptions non-applicable.

#### **2. Location Exception to Categorical Exemptions**

Projects are considered by their location when evaluating if there is an exception precluding exemption from CEQA review. A project that ordinarily has an insignificant impact on the environment (restaurants seating people inside, away from automobile exhaust), may in a particularly sensitive environment (seating people in the roadway adjacent to automobile exhaust), be significant (breathing airborne automobile exhaust and eating and drinking the sooty residue of gasoline engine exhaust). Situations like these apply in all instances, and are excepted from Class 4 categorical exemptions from CEQA review.

### 3. Cumulative Impact Exception to Categorical Exemptions

Projects are considered by their cumulative impact when evaluating if there is an exception precluding exemption from CEQA review. All exemptions are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time, is significant. Outdoor dining decks attract a robust crowd; faithful customers frequent the same locations on a regular basis. The temporary encroachment permits were approved on June 10, 2020 for three months. The end date for the encroachment permits was scheduled to terminate in September 2020. The end date has been extended five (5) times and is currently affixed to the termination date for the State of Emergency, which could continue on in perpetuity.

### 4. Significant Effect Exception to Categorical Exemptions

A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. It is an unusual circumstance that local officials would abuse their authority and issue an emergency order and approve an encroachment permit for restaurants to construct outdoor dining decks in the roadway, where restaurant patrons would be subject to, and in close proximity of, airborne automobile exhaust and the sooty residue of gasoline engine exhaust while they eat and drink. CalEPA's Office of Health Hazard Assessment warned us about the dangers associated with automobile exhaust in March 2019— exposure to gasoline engine exhaust can cause cancer, birth defects and reproductive harm; see CalEPA's OHHA Prop 65 Gasoline Engine Exhaust Warning. This warning and the underlying scientific evidence supporting it, creates a reasonable possibility that the activity (constructing outdoor dining decks in the roadway) will have a significant effect on the environment (where people will now be sitting for lengthy periods of time, eating and drinking adjacent to the roadway).

5. The City never established that the dining deck project is in a categorical exempt class, it merely declared it without any evidence on the record; no public hearings, no Negative Declaration, no acknowledgment that there is a reasonable possibility that the outdoor dining deck project will have a significant effect on the environment. "In categorical exemption cases, where the agency establishes that the project is within an exempt class, the burden shifts to the party challenging the exemption to show that the project is not exempt because it falls within one of the exceptions listed in Guidelines § 15300.2. The most commonly raised exception is subdivision (c) of § 15300.2, which provides that an activity which would otherwise be categorically exempt is not exempt if there are "unusual circumstances" which create a "reasonable possibility" that the activity will have a significant effect on the environment. A challenger must therefore produce substantial evidence showing a reasonable possibility of adverse environmental impact sufficient to remove the project from the categorically exempt class." (*Ukiah*, supra, 2 Cal.App.4th 728; *Dehne v. County of Santa Clara*, supra, 115 Cal.App.3d 844; *City of Pasadena v. State of California*, supra, 14 Cal.App.4th 810; *Centinela Hospital Assn. v. City of Inglewood* (1990) 225 Cal.App.3d 1586, 1601; 275 Cal.Rptr. 901).

6. The City never conducted any environmental review and there is no record providing any evidence to suggest there is a basis for any exemption from CEQA review. "In both of these cases, as well as other categorical exemption cases relied upon in the city's brief, the agency first conducted an environmental review and based its determination that the project was categorically exempt on evidence in the record. It is appropriate under such circumstances for the burden to shift to a challenger seeking to establish one of the exceptions to produce substantial evidence to support "a reasonable possibility" that the project will have a significant effect on the environment." (Guidelines, § 15300.2, subd. (c); *Davidon Homes v. City of San Jose*, supra, 54 Cal.App.4th 114, 62 Cal.Rptr.2d 612).

## **V. CONCLUSION**

The statutory and categorical exemptions identified in the Environmental Review section of the Staff Reports dated June 3, 2020, and in preparation for City Council agenda discussion on March 1, 2022, cannot be deemed qualifying exemptions for CEQA review. Legitimate questions can be raised about whether the project might have a significant impact and therefore, the City cannot find with certainty that a project is exempt from CEQA review. The City is required by law to proceed with CEQA review because a reasonable possibility based on



scientific evidence has been presented on the record that the project will have a significant effect on the environment. The reasonable possibility now on the record is not an exhaustive list of all CEQA concerns; the full extent of public concern will arise when the City conducts proper public hearings as required by law.

The City invoking Chapter 3.08 Emergency Authorities doesn't circumvent CEQA review since local authorities only have authority to establish for its planning agency any rules, procedures, or standards which do not conflict with state or federal laws. The City is duty-bound to State CEQA laws, codified in the California Code of Regulations and the Public Resources Code.

There is no substantial evidence in the record to support the city's determination that Emergency Order No. 10 authorizing the relaxation of use permit conditions pertaining to restaurant floor plan areas and configuration to allow outdoor dining and service of alcohol in approved expansion areas in the public right of way, public property, and private property to accommodate social distancing requirements required by state and county protocols to limit the spread of COVID-19 was exempt from CEQA review. By determining the ordinance to be exempt under Guidelines codified in § 15061, subdivision (b)(3), without considering possible environmental effects or supporting its decision with substantial evidence, the city failed to proceed in a manner required by law. The city therefore abused its discretion (Pub. Resources Code § 21168.5). The same defects exist for the newly considered categorical exemptions being submitted for Council discussion and review on March 1, 2022, 1) § 15304(e) *Minor Alterations to Land*, and 2) § 15311(c) *Accessory Structures*. These categorical exemptions are nullified by 1) Location, 2) Cumulative Impact, and 3) Significant Effect exceptions.

While the City revisits exemption from CEQA to a certainty, that no possibility of significant environmental impacts may result from what CalEPA's Office of Health Hazard Assessment warned us about in March 2019—exposure to gasoline engine exhaust causing cancer, birth defects and reproductive harm—they should also contemplate proceeding to the next tier of environmental review and consider conducting an initial study pursuant to California Code of Regulations outlined in Guidelines § 15063, unless the City can determine that an EIR will clearly be required for the project, in which case, an initial study is not required but may still be desirable.

## Martha Alvarez, MMC

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**From:** Heather K. <heathergothitched@yahoo.com>  
**Sent:** Tuesday, March 1, 2022 5:47 PM  
**To:** List - City Council; City Clerk; Bruce Moe  
**Subject:** [EXTERNAL] pubic comments

**EXTERNAL EMAIL:** Do not click links or open attachments unless you trust the sender and know the content is safe.

Please publicly denounce LA County District Attorney George Gascon and his policies and join in the growing list of cities who have voted No Confidence in him just as you did as a City Council during the first recall attempt. Removing him from office will save lives. #MakeCrimeIllegalAgain

I would also like to express my concerns briefly on the events of last Sunday. I witnessed many misdemeanors at the park located at 2600 Highland Ave. Thankfully, nobody was injured (to my knowledge), but that cannot be the measure of a successful event. Rules were not followed but more importantly, they were ignored by our police department. This does not send a good message to the community. I felt very unsafe as my car was swarmed by bike riders near Live Oak Park when they overtook one or both lanes of traffic and we were let through by these hooligans only when they allowed it. They yelled obscenities at us and were very aggressive and intimidating.

The police were called, the police were informed of these things, yet the police had their hands tied and did not enforce. Their reason was that it was dangerous to upset a group of hundreds of drunk people and used their discretion to leave it alone but allowed it to happen from the onset at the direction of somebody higher up. (Do we even have a Police Chief since Chief Abell retired? Is Bruce Moe the acting Police Chief? Who is running the department?)

This is a family-friendly beach city... Please do not let it turn into what Venice Beach has become.

Love always,  
Heather