

A ZONING AND PERMITTING ISSUE IN THE CITY OF SANTA BARBARA

SUMMARY

The 2021 Santa Barbara County Grand Jury investigated a citizen complaint regarding a food processing company in the City of Santa Barbara. The complaint alleged the Company had caused nuisance [noise, odor, and traffic] and zoning issues that the City of Santa Barbara Community Development Department, the City Attorney, and the City Council failed to address. The Jury found: (1) the Building Permit of the Company allowed modification of an existing business facility into a food processing operation in property zoned Commercial-Manufacturing (C-M); (2) local residents contended that the Company's food processing operations should not have been permitted in zone C-M and have complained about those operations to the present day; (3) the City issued and then failed to enforce a stop operations order against the Company; (4) the City sought to ensure that the Company had taken adequate measures to mitigate the nuisances declared by the complainants; (5) the mitigation measures taken by the Company, approved by the City, did not satisfy the complaints of the affected local residents; and (6) the Santa Barbara City Council never held a public hearing on the complaints and inquiries from residents affected by food processing operations of the Company at the Location.

The Jury recommends that the Santa Barbara City Council: (1) hold public hearings on any zoning, permitting, or Certificate of Occupancy decision, whether involving interior or exterior renovations for any project, that may lead to "obnoxious or offensive" operations; (2) commission a report clarifying the zoning and permitting status of business operations in the C-M zone; (3) commission a report clarifying the status of mitigation measures taken with regard to the food processing operations of the Company; (4) commission a review of the documentation and archiving of zoning and permitting decisions, and the City's manner of communicating them to the broad public; and (5) promulgate revised City procedures for managing zoning and code enforcement cases, including those for putting complaints about such cases on the Council's agenda and reporting to residents on the decisions taken by City authorities.

INTRODUCTION

In January 2013, the Santa Barbara City Community Development Department (CDD) received plans for building renovations with interior alteration to include a new refrigerated processing area, freezer, and cooler at a property on the east side of Santa Barbara. Following the CDD's review, the City approved a building permit for the facility in early 2014. Following complaints by local residents¹ about noise, odor, and traffic around the facility, the City opened a Code Enforcement Case in 2014. The Company that operated the business at this location responded positively in mitigating the code violations in the areas of traffic noise, odor, and machine noise. Despite the efforts by the Company, the City Attorney issued a "cease and desist" order in mid-2015, on the grounds that the zoning (Commercial Manufacturing [C-M] at City Address A and Retail Commercial [C-2] at City Address B) did not allow the current operations being conducted.

¹ We use "complainants" and "local residents" interchangeably in this report.

The complainants alleged that no definitive action has been taken to enforce this order or to mitigate the nuisances alleged to have been caused by the Company. Local residents sought a Grand Jury investigation of: (1) the integrity of the zoning and permitting processes for the business activities at City Address A and City Address B (hereafter collectively referred to as “Location”); (2) the integrity of the enforcement of City orders against noise and odor nuisances; and (3) the denial of CDD and City Council requests for public hearings on their complaints.

The Santa Barbara County Grand Jury (Jury) believed an investigation into the concerns of local residents was justified.

METHODOLOGY

The Jury received documents (80 pages) from the complainants and interviewed a complainant. The Jury interviewed an employee of the local Company and Santa Barbara City officials, as well as reading publicly available documents on the City website and, following a Public Records Act (PRA) request to the City, read material (200 pages) provided by the City in response to that PRA request. A PRA request to the CDD generated another 46 pages of documents.

CHRONOLOGY AND OBSERVATIONS

What is the zoning of the Company’s Location?

The complaint refers to the following City of Santa Barbara zoning designations.²

- C-2 Retail Commercial
- C-M Commercial Manufacturing
- H-C Harbor Commercial
- O-C Ocean-oriented Commercial
- OM-1 Ocean-oriented Light Manufacturing

Title 28 (Zoning-Coastal) of the City of Santa Barbara Municipal Code³ specifically allows certain wholesale or food processing businesses in OM-1 (Ocean-oriented light manufacturing), in OC (Ocean-oriented commercial zone) or in HC (Harbor commercial) zones. Title 30 (Zoning-Inland) neither specifically allows nor specifically forbids those food processing businesses in a C-M zone or a C-2 zone.

The City issued an initial Certificate of Occupancy for a small business at City Address A in 1965. A building permit for renovation of the existing small business at City Address A was issued in 2014 for zone C-M and no change of zoning was required. The adjacent Company parcel at City Address B is zoned C-2. The Municipal Code allowed a CDD official to properly state in a message to a City Council member in 2015, that food products manufacturing is a listed allowed use in the C-M zone provided that the manufacturing operations are not “obnoxious or offensive” (see Appendix 1 for details on C-M and other zones) for reasons of noise, odor, and other disturbances.

² <http://qcode.us/codes/santabarbara/> See Appendix 1

³ Title 28 of the Municipal Code of the City of Santa Barbara covers “Zoning-Coastal”; Title 30 covers “Zoning-Inland.”

The City Attorney had been handling the nuisance complaints since September 2015. The City Attorney later in 2018 wrote to a member of City Council to say that scheduling the complainants' request for a Council hearing would not be useful. The City Attorney stated in the same email that the issue of the zoning depends upon whether the Planning Division of the CDD made a mistake allowing the processing in the CM and C-2 zones. The Council member replied to the City Attorney that the complainant would be informed that this was not a matter for the City Council.

What were the permitting procedures for the Company?

The City issued a Certificate of Occupancy for a business at City Address A in 1965 on what appears to have been the site of a private residence. The Certificate of Occupancy states that the City zone is C-2. City records for a building permit, issued in 1991, show that the existing use of the structure at City Address A had been for the office of a small business. A building permit, issued in 2006 for electrical work at City Address A, states that the zone was C-M.

The process to approve a building permit for work to allow food processing by the Company at the Location began in 2013. The purpose of the building permit was interior alteration to include a new refrigerated processing area, freezer, and cooler. The permitting procedure did not require a new Certificate of Occupancy, a change in zoning, or review by the Planning Commission because the renovation only involved interior work.

The City of Santa Barbara Community Development Department (CDD) managed the permitting process. A City Engineer in the CDD did an initial review of the building proposal in early 2013. According to public correspondence from representatives of the Company, the Planning Division of the CDD approved the plans in 2014. The CDD issued a building permit in early 2014, for zone C-M. Judging from the dates of citizen complaints about noise and odor from the City Address A site, the Company began operations at the site in mid-September 2014.

The City Waterfront Director wrote to the Harbor Commission in July 2014, stating the site would be the new location for all the company's work trucks, warehousing and processing activities.⁴

What was the role of the City of Santa Barbara Planning Commission at the Location?

The Planning Commission was not involved in the permitting or zoning, nor in any subsequent City actions with respect to the Company at the Location. The Jury learned that the Company's operations at the Location were never an agenda item or discussed at the Planning Commission's meetings from 2012 to the present. The Planning Commission was not involved because the renovations done at those addresses, as allowed under a City building permit, did not involve exterior work.

What have been local residents' complaints against the Company?

The complaints are:

- Complaints to the Community Development Department in: April 2014; September 2014; November 2014; protest at the CDD office in July 2015; February 2018;

⁴ As discussed before the Harbor Commission.

https://www.santabarbaraca.gov/SBdocuments/Advisory_Groups/Planning_Commission/Archive/2014_Archives/03_Staff_Reports/2014_08_21_August_21_2014_Item%20III.B_5-Year_Review_of_Uses_in_the_Harbor_Commercial_Zone_Staff_Memorandum.pdf

- Correspondence with the City Attorney in: January 2015; October 2016;
- Correspondence with the City Administrator in: November 2016; December 2016;
- Correspondence with the City Council from 2015 through March 2021; notable is a request in 2018 to put the grievances of local residents on the Council Agenda, which was not done;
- Letter to the Attorney General of the State of California; the Attorney General's Office replied on June 9, 2017, informing local residents that their complaints should be directed to the County Grand Jury or to a private lawyer; and
- Exchanges with the Mayor of the City of Santa Barbara (several times in 2018).

How have City authorities and the Company responded to the complaints?

After numerous complaints by local residents about the Company, the CDD opened a Nuisance Enforcement Investigation in September 2014, in response to residents' concerns about noise from refrigeration units close to the property line, loud noise from trucks, and odors. The Company was subsequently ordered to build a trash enclosure and sound barrier as part of measures to remedy violations identified in the enforcement case. After several exchanges about the sound issue with the CDD, the City Architectural Board of Review approved plans for the trash enclosure and sound barrier. The trash enclosure and sound measures were taken in compliance with the City's order to address the noise from the Company; however, it was not to a level acceptable to the complainants. Their effects on odors are unclear. Local residents continued to complain about odors until July 2015. The next entry (September 2015) in the enforcement case file noted the enforcement case was at the City Attorney's Office and the CDD was waiting to hear from the City Attorney before further pursuing the enforcement case.

The Jury learned that the City Attorney informed the Company that the Locations in question were zoned C-M and C-2.⁵ The Jury further learned that the City Attorney's Office had concluded that the type of processing at the Locations is not an allowed use in either the C-M zone or the C-2 zone. In July 2015, the City Attorney therefore ordered the Company to stop operations at the Location.

The City Attorney's "cease-and-desist" letter launched wide-ranging exchanges. An initial reply from the Company stated "food products manufacturing" is an allowed use in the C-M zone district. The Company further stated that the building permit issued for the Location identified a refrigerated area at the facility which would be needed for the type of food processing in question.

Following correspondence between the City Attorney and representatives of the Company, the Jury learned of further developments:

- The Company argued that its activities are food products manufacturing, which is expressly permitted in the C-M zone where the Company is located.
- The Company planned to reduce machinery noise by building an enclosure.
- The Company is aware of odor complaints made to the Air Pollution Control District (APCD)⁶

⁵ The Jury also learned that City officials had determined the Company to be a "Food Products Manufacturing" operation "which is a listed allowed use in the C-M zone."

⁶ The nuisance enforcement case file shows that representatives of the Company knew of odor complaints made to the CDD.

and has been responsive to those complaints.

- Concerning residents' complaints about traffic noise, the Company agreed to reduce working hours to 7 AM-7 PM.
- A second⁷ code enforcement case against the Company involved noise from machinery units operating day and night in excess of the noise levels specified in SBMC 9.16.070 Mechanical Equipment.

Negotiations of a draft Settlement Agreement between the City Attorney and representatives of the Company took place between July 2015 and August 2016. A settlement agreement meeting took place in August 2015, between the City Attorney and representatives of the Company. Representatives of the Company then wrote a draft zoning enforcement agreement between the Company and the City."

The Jury learned that the City Attorney and representatives of the Company had drafted a Settlement Agreement in November 2015. In February 2016, local residents contacted the City Attorney saying they did not accept the agreement with the Company and preferred that "the city pursue enforcing the zoning code with a cease operations to the Company." Additional exchanges among the Company, the City Attorney, and local residents did not lead to the Settlement Agreement, which remains unsigned to the present day.

Local residents wrote to the Director of the CDD in February 2018 to ask for a public hearing to revoke the Certificate of Occupancy permit of the Company at City Address A. The Director for the CDD forwarded the residents' request to the City Attorney.

The Jury learned the Company has cooperated with every nuisance enforcement case brought by the City, has made good faith efforts (such as changing working hours to reduce traffic noise) to mitigate the alleged nuisances, has invested in mitigation measures (such as building a trash enclosure and sound barrier, which were reviewed and approved by City authorities), and has met with City officials and with local residents to discuss the complaints.

The Jury notes that the many communications on this matter, among City officials at various levels, and between local residents and City officials, are not always clear and are not always easy to find without significant effort in searching the City archives.

How did the City Council respond to residents' complaints about the Company?

Local residents have complained to City Council members on many occasions. There have been numerous exchanges of emails between residents and Council members since 2014. In June 2018, residents requested to a City Council member that their concerns be placed on the Council's agenda; the Council did not honor that request. As recently as March 2021, residents again sought unsuccessfully to have their concerns placed on the Council's agenda. Despite the refusal of the Council to place the residents' complaints on the Council's agenda, the residents, Mayor, and some Council members have met at various times and places from late 2014 through July 2018 in order to come to a compromise. These meetings have not satisfied residents' complaints.

How were the complainants and the public notified of City responses to the complaints in this investigation?

⁷ Three other code enforcement cases at the Location were not relevant to the Jurys investigation.

The City authorities notify complainants and the general public in several ways. In the matter of the Company, the City authorities have notified the complainants through correspondence from City authorities (the Office of the City Attorney, the City Council, the Office of the Mayor, officials of the Community Development Department in the Planning Division and in the Code Enforcement Division).

They have further informed the public through publicly available documents, such as the code enforcement documents and the minutes of various City institutions, notably those of the City Council, the Planning Commission, and the Architectural Review Board. Code enforcement documents can be searched online at <https://www.santabarbaraca.gov/services/planning/cdprd.asp>.

What have the complainants said about the effects of the activities of the Company?

The complainants contend that they have suffered health-related problems owing to the operations of the Company. One complainant, who lives in the area near the Company, complains of headaches caused by noise and odor.

Other neighbors contend that they have suffered economic losses. One had to leave work early on occasion because of odors from the Company. Noise, especially from the Company mechanical units, was said to have led to tenant turnover in at least one neighborhood business.

For more than seven years, several individual complainants have expressed health and economic concerns regarding the Company operations.

CONCLUSION

In 2014, the City of Santa Barbara issued a Building Permit for a food processing facility at the Location. The work consisted of interior renovations to build cold processing and storage structures. That site at City Address A is in a C-M zone, which is one in which the type of food processing at the Location is neither prohibited nor specifically allowed. City CDD officials interpreted the City's C-M zoning as allowing food processing because it allows food product manufacturing subject to avoidance of "obnoxious or offensive" disturbances. Some local residents disagree about the interpretation of the C-M zoning and have subsequently complained of noise, food odor, and traffic nuisances created by the food processing operations and have argued that the facility is in a zone where food processing is not allowed. Despite costly measures taken by the Company to comply with notices of code enforcement sent by the City, residents' complaints continue about the nuisances from the Location. Efforts in 2015 and 2016 to reach a settlement between the City Attorney and representatives of the Company never materialized because of opposition from the affected residents. Several offices of the City of Santa Barbara – the Community Development Department, the City Administrator, the City Attorney, the City Council, the Office of the Mayor – have responded to these complaints, but the 2021 Santa Barbara County Grand Jury found that those responses have not completely eliminated the nuisances to the local residents' satisfaction.

FINDINGS AND RECOMMENDATIONS

Finding 1

The City of Santa Barbara Community Development Department issued a Building Permit in 2014 for interior renovations of the Company's facilities at the Location without review by the City of Santa Barbara Planning Commission since such a review was not required.

Recommendation 1

That the City Council of Santa Barbara direct the City of Santa Barbara Planning Commission to hold a public hearing on any zoning, permitting, or Certificate of Occupancy decision, whether involving interior or exterior renovations for any project, that may lead to "obnoxious or offensive" operations in any zone.

Finding 2

Residents contended in 2014 that the Company's food processing operations in zone C-M should not have been permitted in zone C-M and have maintained that opinion to the present day.

Recommendation 2

That the Santa Barbara City Council direct the City of Santa Barbara Community Development Department to issue a report to the Santa Barbara City Council clarifying the uses that are allowed by the City Code's land use regulations for the C-M zone.

Finding 3

Following renovations at the Location, which made the Company operational, neighboring residents have complained about machinery noise, odor, and traffic noise from those operations from mid-2014 to the present day.

Recommendation 3a

That the Santa Barbara City Council direct the City of Santa Barbara Community Development Department to issue a report to the Santa Barbara City Council reviewing the status of mitigation measures taken with regard to the food processing operations of the Company at the Location.

Recommendation 3b

That the Santa Barbara City Council direct the City Community Development Department to review the documentation and archiving of its zoning and permitting decisions and its manner of communicating with the public, appointed officials, and elected officials with the purpose of making those decisions more complete, clearer, and more accessible to the general public and to City officials at all levels.

Finding 4

The City Attorney of the City of Santa Barbara issued a "cease-and-desist" order to the Company, in July 2015, following citizens' complaints about the Company and having concluded that the Company's specific type of food processing is not allowed in the C-M or C-2 zones.

Finding 5

Following negotiations between the City Attorney of the City of Santa Barbara and representatives of the Company, those parties drafted a “Settlement Agreement” to mitigate the claimed nuisances – machine noise, traffic noise, and food odor – which recognized that the parties have differing interpretations of the Santa Barbara City Code with respect to zones C-M and C-2 and allowed the Company to continue operations at Location.

Finding 6

The Santa Barbara City Council never held a public hearing on the complaints and inquiries from residents affected by food processing operations of the Company at the Location.

Recommendation 6

That the Santa Barbara City Council direct the City Administrator to promulgate revised procedures for managing zoning and code enforcement cases, including procedures for putting complaints about such cases on the Council’s agenda and reporting to residents on the decisions taken by City authorities.

REQUEST FOR RESPONSE

Pursuant to *California Penal Code Section 933 and 933.05*, the Santa Barbara County Grand Jury requests each entity or individual named below to respond to the enumerated findings and recommendations within the specified statutory time limit:

Responses to Findings shall be either:

- Agree
- Disagree wholly
- Disagree partially with an explanation

Responses to Recommendations shall be one of the following:

- Has been implemented, with brief summary of implementation actions taken
- Will be implemented, with an implementation schedule
- Requires further analysis, with analysis completion date of no more than six months after the issuance of the report
- Will not be implemented, with an explanation of why

The City Council of Santa Barbara – 90 days

- Findings 1, 2, 3, 4, 5, and 6
- Recommendations 1, 2, 3a, 3b, and 6

APPENDIX 1

ZONES FOR BUSINESS ACTIVITIES IN THE CITY OF SANTA BARBARA

Section 30.05.10 of the City of Santa Barbara Municipal Code shows current zones and previous zones at <http://qcode.us/codes/santabarbara/>. This Report refers to the old zone names because the RFI and the responses refer to the old zone names.

C-2 (old); C-G Commercial General (new). The C-2 zone is applied to land that is appropriate for retail business and commercial needs including stores, shops, and offices supplying commodities or performing services for the residents of the surrounding community. C-2 (now C-G) does not include the types of food processing done by the local Company.

C-M Commercial Manufacturing (old); M-C Manufacturing Commercial (new). This zone seeks to provide a desirable living environment by preserving and protecting surrounding residential land uses. in terms of light, air and visual amenities. “Any of the following uses, provided that such operations, manufacturing, processing or treatment of products are not obnoxious or offensive by reason of emission of odor, dust, gas, fumes, smoke, liquids, wastes, noise, vibrations, disturbances or other similar causes which may impose hazard to life or property.” A list of 30 uses is given including (#16) “Food products manufacturing.”

H-C Harbor Commercial (old); CO-H Coastal Oriented Harbor (new). “The Coastal-Oriented Harbor (CO-H) Zone strives to maintain the harbor as primarily a working harbor with visitor-serving and coastal-related uses secondary to coastal-dependent uses, and that Stearns Wharf will consist of a mixture of visitor-serving, and coastal-dependent and coastal-related uses. In addition, this zone is intended to preserve and protect the coastal environment in terms of light, air, and visual amenities.”

OC Ocean-Oriented Commercial (old); CO-CAR Coastal Oriented, Commercial Arts and Recreation (new). “The Coastal-Oriented Commercial, Arts, and Recreation (CO-CAR) Zone strives to achieve balanced use of the City’s Waterfront and maintain the small scale, local character that is unique to the Waterfront area. Land uses shall be encouraged in this zone that maintain and enhance the desirability of the Waterfront as a place to work, visit, and live. This zone is intended to foster a vital, mixed-use neighborhood and preserve and protect the coastal environment in terms of light, air, and visual amenities. Land classified in the CO-CAR Zone may also be classified in the Coastal-Oriented Hotel and Visitor-Serving (CO-HV) Zone.”

OM-1 Ocean-Oriented Light Manufacturing (old); CO-MI Coastal-Oriented Manufacturing Industrial (new). “The Coastal-Oriented Manufacturing Industrial (CO-MI) Zone strives to provide for appropriate coastal-dependent and coastal-related industrial uses in close proximity to the Harbor/Wharf Complex. The zone encourages the establishment of coastal-oriented industrial uses in keeping with the policies of the California Coastal Act and the City’s Local Coastal Plan.”