



# City of Santa Barbara

Office of the City Attorney

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## Via First Class Mail

Honorable Gustavo Lavayen, Presiding Judge  
Santa Barbara County Superior Court  
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Santa Maria, California 93454

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RE: Response to Santa Barbara County Grand Jury December 20, 2021 Report:  
Zoning and Permitting Issue in the City of Santa Barbara

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Honorable Judge Lavayen:

I have been asked to prepare this response because the subject matter arises largely from operations in this office. This response was approved by the Santa Barbara City Council on March 15, 2022.

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For the sake of accuracy in our response, and based upon the Grand Jury's description of the matter, our responses assume this report is focused upon the Santa Barbara Fish Market, located at 528 N. Quarantina Street in Santa Barbara.

## **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.

## **Response to Finding 1**

Agree.

## **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.

### **Response to Recommendation 1**

Will not be implemented. Building permits are ministerial, meaning they are issued without the exercise of substantial discretion by City officials. Recommendation 1 would require a public hearing on every building permit or other land use entitlement, thus converting those processes into discretionary, quasi-judicial hearings. Santa Barbara processes literally thousands of such permits annually. Implementing the recommendation would cost millions of dollars, even if lawful. There are extensive areas of state law preemption that prevent the City from complying with the recommendation, even if it were sound policy.

Equally important, the recommendation misunderstands the nature and purpose of the City's authority to identify and abate public nuisances. Civil Code Section 3479 defines private "nuisance" as follows:

Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

Civil Code Section 3480 defines "public nuisance" as follows:

A public nuisance is one which affects at the same time *an entire community or neighborhood, or any considerable number of persons*, although the extent of the annoyance or damage inflicted upon individuals may be unequal. (Emphasis added.)

Accordingly, equating "obnoxious or offensive operations in any zone" to public nuisance overstates the boundaries of the City's police power to abate public nuisances in two ways. First, under Section 3479 the City must show "interference with the comfortable enjoyment of life or property." That a use may be obnoxious or offensive, therefore, is only part of the analysis.

Second, under Section 3480, the nuisance impact must be widespread and far-reaching in its impact, i.e., affecting an "entire community or neighborhood, or any considerable number of persons." Evidence presented to the Grand Jury showed that only a handful of Santa Barbara residents are impacted by the Fish Market's operations. And even as to those few but important residents, the evidence presented showed that the complaints made were sporadic and inconsistent, even after the City Attorney established a specific complaint email hotline for the Fish Market.

The Grand Jury Report further neglects to report that the City Attorney Investigator and Assistant City Prosecutor have made numerous site visits to the Santa Barbara Fish

Market in response to complaints. To date, we have been unable to document any offensive or obnoxious conditions at the site, much less nuisance conditions. Nonetheless, we remain ready and willing to respond to complaints.

### **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.

### **Response to Finding 2**

Agree.

### **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.

### **Response to Recommendation 2**

Will not be implemented. Santa Barbara Municipal Code Section 28.69.030 explicitly defines the permitted uses in the (former) C-M zone. It is impossible to anticipate changes in the nature of commercial operations over the life of a commercial building, so the Santa Barbara Municipal Code authorizes the Community Development Director to determine and document "substantially similar" uses on a case-by-case basis, when facts are available. It would not be possible to create a new list of permitted uses without specific information about the uses in question.

On the substantive question whether the Santa Barbara Fish Market is operating lawfully, while the City Attorney disagreed for reasons beyond the scope of this response, City Community Development staff did not act unreasonably in their interpretation that "food products manufacturing," allowed in the C-M zone, encompassed the operations of the Santa Barbara Fish Market.

Finally, it should be reasonably expected that persons who choose to reside in a commercial or manufacturing area may experience the inconveniences of commercial or manufacturing uses. The City does not condone or encourage use conflicts or nuisance activities, but such conflicts are unavoidable when a person chooses to reside in an area zoned for intensive business use. The (former) C-M zone allowed intensive uses such as automobile body shops, cement products manufacturing, draying and truck yards or terminals, and tire retreading. These commercial and manufacturing uses tend to create far greater impacts in the immediate vicinity. Indeed, this is why zoning, in general, tends to segregate uses based upon their intensity. The C-M allowed:

1. Automobile body shop.
2. Automobile paint shop.
3. Bakery goods manufacturing.
4. Boat building and repairing and machine shop.
5. Building contractor and material storage.
6. Cabinet shop.
7. Canvas and canvas products manufacturing.
8. Car wash.
9. Cement products manufacturing.
10. Cleaning and dyeing.
11. Clothing products manufacturing.
12. Draying and truck yard or terminal.
13. Electronics products manufacturing.
14. Emergency Shelters in compliance with Chapter 28.79.
15. Equipment and trailer rental and storage.
16. Food products manufacturing.
17. House moving.
18. Laundry.
19. Lumber yard.
20. Machine shop.
21. Plating works.
22. Produce warehouse.
23. Research and development establishment and related administrative operations.
24. Rug cleaning.
25. Sheet metal shop.
26. Sign manufacturing.
27. Storage warehouse.
28. Tire retreading.
29. Veterinary hospital.

### **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.

### **Response to Finding 3**

Agree.

### **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.

**Response to Recommendation 3a**

Will not be implemented. The situation described does not constitute a public nuisance warranting action. The City Attorney, however, remains willing to investigate and undertake abatement efforts when nuisance complaints can be supported with substantial evidence of an actionable public nuisance.

**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.

**Response to Recommendation 3b**

Will not be implemented. The recommendation is not fact-based. The situation described does not reveal any evidence of a transparency or recordkeeping issue.

**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.

**Response to Finding 4**

Disagree partially. The City Attorney issued a letter on June 15, 2015. (Attachment 1; July 10, 2015 Letter from City Attorney to Santa Barbara Fish Market.) The letter is not, and was not intended to be, an enforceable “order.”

**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.



**Response to Finding 5**

Agree.

**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.

**Response to Finding 6**

Disagree partially. It is accurate that a noticed public hearing has not been conducted by the City Council on this matter. However, residents have appeared at City Council meetings and been heard so as to respect the rights of the community to petition the Council for redress of any grievance.

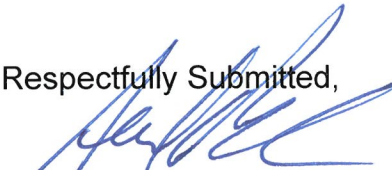
**Recommendation 6**

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.

**Response to Recommendation 6**

Will not be implemented. The City Administrator has independently directed continuous improvements in all City processes, so City Council action is unnecessary. It is not feasible to place every code enforcement complaint on the Council's agenda due to the volume of City business interactions with the community. The City Prosecutor currently provides an enforcement update to the City Council on a semi-annual basis, typically twice yearly. Moreover, any two Council members may cause such a complaint to be placed on the Council agenda, should they deem that action necessary or desirable.

Respectfully Submitted,



Ariel Pierre Calonne  
City Attorney/City Prosecutor

APC/apc

cc: Santa Barbara County Grand Jury (Via Email Only: [sbcgj@sbcourts.org](mailto:sbcgj@sbcourts.org))