

MEMORANDUM

DATE: OCTOBER 2, 2023

TO: CHAIR NATHAN MACEK
AND MEMBERS OF THE PLANNING COMMISSION

FROM: KARL W. MORITZ, DIRECTOR
DEPARTMENT OF PLANNING & ZONING

SUBJECT: DOCKET ITEM #5 – SUP #2023-00060
2000 MOUNT VERNON AVENUE –
EVENING STAR CAFÉ AND HIFI TEX-MEX BBQ

In this memorandum, and at the request of Planning Commissioners during the briefings, staff shares the Alex 311 complaints received between March 2 and September 25, 2023, relating to smoke, odors, and noise, for the commercial operations at 2000 Mount Vernon Avenue. A brief discussion on the City staff enforcement to date in response to the complaints on [smoke impacts on health and safety](#) follows.

1. Complaints

The 14 smoke and odors complaints as of October 2 are associated with the two outdoor commercial smokers, which are not eligible for SUP consideration, given the zone use limitations Section 4-107(A) and (E) of the Zoning Ordinance. Noise complaints are included in this list. Four of the five noise complaints were related to outdoor live entertainment, though no noise violation citations have been issued. These complaints and the dates on which they occurred are itemized below:

- March 2, 2023 (Complaint – Smoke & Odor): Alex 311 request was received complaining of large amounts of smoke coming from smokers located behind Evening Star.
- April 10, 2023 (Complaint – Smoke & Odor): Alex 311 request was received complaining that the outdoor smoker in use by the restaurant is causing noxious smoke.
- April 14, 2023 (Complaint – Smoke & Odor): Video sent to Planning & Zoning showing smoker in use and asking for enforcement.
- May 4, 2023 (Complaint – Smoke & Odor): Video sent to Planning & Zoning showing smoker in use and asking for enforcement. Report of smoke entering a neighboring home.
- May 11, 2023 (Complaint – Smoke & Odor): Video of smoker and indicating toxic fumes sent to Planning & Zoning staff. Complainant requested enforcement. Complainant informed to log complaints through Alex 311.

- June 7, 2023 (Complaint – Smoke & Odor): Alex 311 request received asking for enforcement regarding the ongoing use of the smokers.
- June 14, 2023 (Complaint – Smoke & Odor): Alex 311 request receive complaining about smokers. Complainant inquiring if Evening Star has permit for outdoor cooking.
- June 17, 2023 (Complaint – Smoke & Odor): Alex 311 request sent to Health Department. Complainant indicated they have a newborn and are concerned about environmental exposure of smoke coming from a smoker to newborns and other infants. Complainant indicated that smoke from the smoker is entering their home and they cannot spend more than 15 minutes outside without coughing.
- June 17, 2023 (Complaint – Noise): Alex 311 request received complaining of a loud party taking place outdoors at Evening Star after 11 p.m.
- June 23, 2023 (Complaint – Smoke & Odor): Alex 311 request received by Fire Department asking for enforcement relating to smokers. Complainant indicated that smoke from the smokers is entering their apartment and apartments of two other neighbors.
- June 27, 2023 (Complaint – Smoke & Odor): Alex 311 complaint received by T&ES relaying concerns of the long-term health effects of secondhand smoke exposure to smoke from food smokers.
- June 30, 2023 (Complaint – Smoke & Odor): Alex 311 request received asking when smoker will be removed. Reported that smoke is still an issue.
- August 2, 2023 (Complaint – Noise): Alex 311 request received by T&ES complaining of loud live entertainment taking place.
- August 3, 2023 (Complaint – Smoke & Odor): Alex 311 request was received complaining of smoke coming from the smokers behind Evening Star.
- August 24, 2023 (Complaint – Noise): Alex 311 request received by T&ES complaining of loud live entertainment taking place.
- August 30, 2023 (Complaint – Noise): T&ES staff received phone call compliant relating to loud music at Evening Star restaurant. Staff visited the site and observed live entertainment being conducted in the outdoor dining area.
- September 15, 2023 - (Complaint – Smoke & Odor): Alex 311 request was received complaining of smoke coming from the smokers behind Evening Star.
- September 19, 2023 - (Complaint – Noise): Alex 311 request received by T&ES complaining of loud live entertainment taking place.
- September 25, 2023 - (Complaint – Smoke & Odor): Alex 311 request was received complaining of smoke coming from the smokers behind Evening Star.

2. Staff Enforcement

In response to the Alex 311 complaints, the Department of Planning and Zoning issued 12 citations, as of October 2, for violation of Section 4-107(A) and (E) and calling for the removal of the smokers. The smokers remain in use. The Fire Marshall provided the applicant with a verbal warning during an August 22 site visit that several violations of the Fire Code had to be addressed. That followed with the issuance of violation notices. As currently configured and used, the outdoor smokers are in violation of the Fire Code due to the location within 10 feet of combustible construction (a wood fence), the use of a flammable tent erected overhead, and not having a permit. The Fire Department requested that the owner propose a plan to eliminate the violations, which was due on September 29.

3. Public comment on SUP Request

As of October 2, staff has received a total of 30 letters of public comment regarding the request with 18 voicing their support for the request and 12 voicing their opposition. Those in opposition, all cited the smokers as causing negative impacts. The Del Ray Citizens Association (DRCA) submitted a letter, stating support for the SUP requests. Although not pertinent to the SUP review, the association offered this opinion on the smokers:

“The DRCA does not support the location of the smokers adjacent to the residence and recommends relocating them to another area of the property. The commercial use of smokers should meet the same criteria for commercial kitchen exhaust.”