

August 18, 2021 City Council Meeting

Supplemental Staff Report and Resolution for
Agenda Item No. 4C



Supplemental City Council Staff Report

DATE: August 18, 2021

Public Hearing

AGENDA ITEM NO: Agenda Item 4C

TO: Honorable Mayor and Members of the City Council
FROM: Karl H. Berger, City Attorney
SUBJECT: Resolution Modifying Conditional Use Permit (CU-19-13) as to Business Hours for Operating a Retail Eating Establishment located at 1970 South Atlantic Boulevard.

EXECUTIVE SUMMARY:

This is a Supplemental staff report for Agenda Item 4C. On August 17, 2021, I was alerted that the application for the modification to CU-19-13 identified CEQA Guidelines § 15061(b)(3) as the basis for considering this matter. A copy of the application is attached.

After reviewing the application, it appears that the requested environmental assessment is appropriate. It should have been utilized in both the staff report and draft resolution accompanying Agenda Item No. 4C.

Accordingly, please consider the requested modification of business hours per CEQA Guidelines § 15061(b)(3) which states that

“[a] project is exempt from CEQA if ... [t]he 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.”

Section 4 of the draft resolution was changed to reference this CEQA Guideline section and is attached to this Supplemental Staff Report. There are no other changes to the draft resolution.

The recommendations of the existing Staff Report remain the same.

ATTACHMENTS:

1. Environment Information from the Applicant
2. Amended draft resolution for Agenda Item No. 4C

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ATTACHMENT 1

Environment Information from the Applicant



CITY OF MONTEREY PARK ENVIRONMENTAL INFORMATION

1. Name and address of developer or project sponsor: Raising Cane's Restaurants, LLC
Contact: Kristen Roberts, Senior Property Development Manager – 6800 Bishop Road, Plano TX
75024
2. Address of project: 1970 South Atlantic Boulevard
3. Assessor's parcel numbers: 5266-002-032, 033, & 034
4. List and describe any other related permits and other public approvals required for this project including those required by city, regional, state, or federal agencies: Conditional Use Modification Permit, Administrative Use Permit, Building Permit and associated Agency approvals, Grading Permit, Lot Line Adjustment Application
5. Site size: 17,863 sq. ft. Size of all structures on the site: 1,790 sq. ft.
6. Number of floors of construction: 1
7. Amount of on-site parking provided: 18
8. Approximate construction period: 6 months (September 2021 – March 2022)
9. Anticipated incremental development: N/A
10. If residential, include the number of units, schedule of unit sizes, range of sale prices or rents, and type of household size expected: N/A
11. If commercial, indicate the type, whether neighborhood, city or regionally oriented, square footage of sales area and loading facilities: 1,790 SF
12. If industrial, indicate the type, estimated employment per shift and loading facilities: N/A
13. If institutional, indicate the major function, estimated employment per shift, estimated occupancy, loading facilities, and community benefits to be derived from the project: N/A

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Case Numbers

CUP-21-05

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**CITY OF MONTEREY PARK
COMMUNITY DEVELOPMENT DEPARTMENT**



CITY OF MONTEREY PARK ENVIRONMENTAL INFORMATION

Would the proposal:

- 14. Change existing features of lakes or hills, or substantial alteration of ground contours? Yes No
- 15. Change scenic views or vistas from existing residential areas or public lands or roads? Yes No
- 16. Change pattern, scale or character of general area of project? Yes No
- 17. Generate significant amounts of solid waste or litter? Yes No
- 18. Change dust, ash, smoke, fumes or odors in vicinity? Yes No
- 19. Change lake, stream or ground water quality or quantity, or alteration of existing drainage patterns? Yes No
- 20. Substantially change existing noise or vibration levels in the vicinity? Yes No
- 21. Identify the site on filled land or on a slope of 10 percent or more? Yes No
- 22. Generate disposal of potentially hazardous materials, such as toxic substances, flammables or explosives? Yes No
- 23. Substantially change in demand for municipal services? (police, fire, water, sewage, etc.) Yes No
- 24. Substantially increase fossil fuel consumption? (electricity, oil, gas, etc.) Yes No
- 25. Be in relationship to a larger project or series of projects? Yes No

On a separate sheet, explain all items checked "yes" above

- 26. Describe on a separate sheet of paper the project site as it exists before the project, including information on topography, soil stability, plants and animals, and any cultural, historical or scenic aspects. (A summary statement will suffice.) Describe any existing structures on the site, and the use of the structures. Photos will be accepted as supplemental attachments to the above stated information.
- 27. Describe on a separate sheet of paper the surrounding properties, including information on plants and animals and any cultural, historical or scenic aspects (a summary statement will suffice). Indicate the type of land use (residential, commercial, etc.), intensity of land use (single-family, apartment houses, shops, department stores, etc.), and scale of development (height, frontage width, setback, rear yard, etc.). Photos will be accepted as supplemental attachments to the above stated information.

CERTIFICATION

I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for this initial evaluation to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

Signature: *KM Roberts*

Date: 7/13/2021

The City Planning Commission approved a conditional use permit—CUP-19-13—allowing the construction of a new retail eating establishment with a drive-through on the Project site in May, 2020. Following an appeal, the City Council approved the CUP in September 2020. In the CUP's conditions of approval, the City required the applicant to obtain further approval from the City for the drive-through site plans, including the setbacks, parking areas, and drive-through aisles ensuring compliance with the City Municipal Code. The Project entails obtaining that prescribed approval as well as a requested modification of the CUP's conditions of approval to allow for business hours of operation of 9:00 a.m. to 1:00 a.m. Monday through Sunday (from the current 9:00 a.m. to 10:00 p.m. Monday through Sunday).

26. The Project site is comprised of three consolidated parcels totaling 17,863 SF that will be merged into one parcel through a separate lot line adjustment application. The site is currently vacant. Photos of the existing site have been provided supplemental to this application. The applicant has already obtained CUP-19-13 for a drive-through restaurant with drive-through service and exterior patio dining only. Based on initial studies prepared and provided with this application, there are no known issues with soil stability, plants, animals, or any cultural, historical or scenic aspects. The proposed building area will be 1,790 SF, equating to roughly 10 percent of the lot area.

27. Properties located to the north and south of the project site include other one-story commercial building. The project site is bound to the west by South Atlantic Boulevard (a principal arterial street) and one-story commercial buildings. Properties to the west, south, and north are zoned S-C (Shopping Center), with which the proposed project would be a compatible use. The properties to the east are single family dwellings (zoned R-1, Single Family Residential), however separated from a 20' wide public alley and a large slope above the project site. It is not anticipated that the proposed project will have a significant impact on those uses.

The project site is designated Commercial (C) in the Monterey Park General Plan. The applicant has already obtained CUP-19-13 for constructing a new retail eating establishment with a drive-through.

ENVIRONMENTAL CLEARANCE

The applicant proposes, as further detailed below, that the appropriate environmental clearance for the Project is an exemption from the provisions of the California Environmental Quality Act under the common sense exemption set forth in State CEQA Guidelines section 15061(b)(3).

The Project is exempt from CEQA under the common sense exemption set forth in State CEQA Guidelines section 15061(b)(3), as it can be seen with certainty that there is no possibility that the Project may have a significant effect on the environment. The City Planning Commission approved a conditional use permit ("CUP") for a retail eating establishment with a drive-through as illustrated on specific site plans, with business operating hours of 9:00 a.m. to 1:00 a.m. Monday through Sunday, located at the Project site within the commercial corridor of South Atlantic Boulevard in May 2020 ("PC Approved Project"). The PC Approved Project is consistent with other existing restaurants along the commercial corridor operating in a similar fashion. Examples include:

McDonald's (950 W. Floral Dr.) – Open 24 hours

Carl's Jr. (1231 Avenida Cesar Chavez) – Open 24 hours

Taco Bell (1214 Avenida Cesar Chavez) – Su – Wed: 7 am – 1 am, Th – Sa: 7 am – 2 am

In support of its approval, the City Planning Commission found that there was competent and substantial evidence that the PC Approved Project would not have a significant effect on the environment. The PC Approved project was appealed to the City Council. On appeal, the City Council modified the business operating hours, denied the appeal and upheld the findings, including specifically as to the CEQA

determination, made by the City Planning Commission for the PC Approved Project. The Project consists of only a return to the business operating hours to that in the PC Approved Project and as required by the approved CUP, confirmation that the Project's setbacks and aisles as previously approved are in compliance with current applicable requirements. As such, there are no changes to the PC Approved Project; and accordingly, given the consistency of the Project with the PC Approved Project, the conclusion of no significant effect on the environment made for the PC Approved Project remains valid and continues to apply to the Project. Additionally, the Project will comply with all relevant standard federal, state, and local regulatory requirements regarding protection of the environment and all relevant conditions of approval adopted for the currently approved CUP. Therefore, because competent and substantial evidence exists in the record that the activity will not have a significant effect on the environment, the common sense exemption applies and no further evaluation under CEQA is required.

Additionally, the PC Approved Project appellants have submitted a letter to the City Council, a copy of which is attached hereto as Exhibit A, expressing that they have no objection to the AUP application or the modification of the approved CUP to restore the business hours of operation to 9:00 am to 1:00 am Monday through Sunday.

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ATTACHMENT 2
Amended draft resolution for Agenda Item No. 3C

RESOLUTION NO.

**A RESOLUTION MODIFYING CONDITIONAL USE PERMIT (CU-19-13)
AS TO BUSINESS HOURS FOR OPERATING A RETAIL EATING
ESTABLISHMENT WITH A DRIVE-THROUGH LOCATED AT 1970
SOUTH ATLANTIC BOULEVARD.**

The City Council of the City of Monterey Park does resolve as follows:

SECTION 1: The City Council finds and declares that:

- A. On July 22, 2020, Kristen Roberts on behalf of Raising Cane's ("Applicant") submitted an application, pursuant to Monterey Park Municipal Code ("MPMC") § 21.32.020 seeking to modify the business hours approved via a conditional use permit (CU-19-13) for a retail eating establishment with a drive-through located at 1970 South Atlantic Boulevard ("Project");
- B. The Project was reviewed by the City Planner for, in part, consistency with the General Plan and conformity with the Monterey Park Municipal Code ("MPMC");
- C. In addition, the City reviewed the Project's environmental impacts under the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*, "CEQA") and the regulations promulgated thereunder (14 California Code of Regulations §§ 15000, *et seq.*, the "CEQA Guidelines");
- D. The City Planner completed review and scheduled a public hearing regarding the Project before the City Council for August 18, 2021. Notice of the public hearing was posted and mailed as required by the MPMC;
- E. On August 18, 2021, the City Council opened the public hearing to receive public testimony and other evidence regarding the proposed Project including, without limitation, information provided to the City Council by City staff and public testimony, and representatives of the Applicant; and
- F. This Resolution and its findings are made based upon the testimony and evidence presented to the Council at its August 18, 2021 public hearing including, without limitation, the staff report submitted by the City Planner.

SECTION 2: *Planning Agency.* Pursuant to MPMC § 2.56.020(D), the City Council will act as the Monterey Park Planning Agency for purposes of this Resolution.

SECTION 3: *Factual Findings and Conclusions.* The factual findings and conclusions set forth in Section 2 of Resolution No. 12194, adopted on September 2, 2020, for CU-19-13 are incorporated by reference.

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SECTION 4: *Environmental Assessment.* Modifying the Project's business hours was reviewed pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000, et seq.; "CEQA") and the regulations promulgated thereunder (14 California Code of Regulations §§ 15000, et seq.; the "CEQA Guidelines"). The proposed action is exempt from review under CEQA pursuant to CEQA Guidelines § 15061(b)(3) because this Resolution is only extends the business hours for the Project to reconcile them with surrounding commercial uses that are substantially similar to the Project. It can be seen with certainty that there is no possibility that such action may have a significant effect on the environment.

SECTION 5: *Conditional Use Permit Findings.* Unless otherwise provided below, the Conditional Use Permit Findings set forth in Section of Resolution No. 12194 are incorporated by reference. For the modification to business hours, the City Council finds as follows:

- A. Resolution No. 12194 changed Condition No. 11 of the Conditions of Approval approved by Planning Commission Resolution No. 01-20, as adopted on May 12, 2020 which regulates business hours for the retail restaurant;
- B. As noted in the record, the City Council made that modification in response to public testimony that objected to the times of restaurant operations; and
- C. The administrative record now demonstrates that all objections were withdrawn. Consequently, the City Council believes it is in the public interest to allow the retail restaurant to operate in accordance with the business hours it originally requested in 2019.

SECTION 6: *Approval.* Section 5(A) of Resolution No. 12194 is repealed. Accordingly, Condition No. 11 for CU-19-13 is modified to read as follows: "The business hours of operation will be Monday through Sunday 9:00 a.m. to 1:00 a.m." There are no other changes to Resolution No. 12194.

SECTION 7: *Reliance on Record.* Each and every one of the findings and determinations in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the project. The findings and determinations constitute the independent findings and determinations of the City Council in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 8: *Limitations.* The City Council's analysis and evaluation of the project is based on the best information currently available. It is inevitable that in evaluating a project that absolute and perfect knowledge of all possible aspects of the project will not exist. One of the major limitations on analysis of the project is the City Council's lack of knowledge of future events. In all instances, best efforts have been made to form accurate assumptions. Somewhat related to this are the limitations on the City's ability to solve what are in effect regional, state, and national problems and issues. The City must work within the political

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framework within which it exists and with the limitations inherent in that framework.

SECTION 9: *Summaries of Information.* All summaries of information in the findings, which precede this section, are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

SECTION 10: *Severability.* If any part of this Resolution or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provision or application and, to this end, the provisions of this Resolution are severable.

SECTION 11: *Electronic Signatures.* This Resolution may be executed with electronic signatures in accordance with Government Code §16.5. Such electronic signatures will be treated in all respects as having the same effect as an original signature.

SECTION 12: *Recordation.* The Mayor, or presiding officer, is authorized to sign this Resolution signifying its adoption by the City Council of the City of Monterey Park and the City Clerk, or his duly appointed deputy, may attest thereto.

SECTION 13: *Effective Date.* This Resolution will become effective immediately upon adoption and will remain effective unless repealed or superseded.

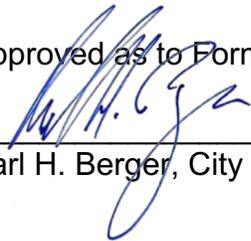
PASSED AND ADOPTED this 18th day of August, 2021

Yvonne Yiu, Mayor

Attest:

Vincent D. Chang, City Clerk

Approved as to Form:



Karl H. Berger, City Attorney

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STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF MONTEREY PARK)

I, VINCENT D. CHANG, City Clerk of the City of Monterey Park, California, do hereby certify that the foregoing Resolution No. _____ was duly adopted by the City Council of the City of Monterey Park at a Regular Meeting held on the 18th day of August 2021, by the following vote of the Council:

AYES:
NOES:
ABSTAIN:
ABSENT:

Dated this 18th day of August 2021

Vincent D. Chang, City Clerk