

**CITY OF CARMEL-BY-THE-SEA  
PLANNING COMMISSION**

**PLANNING COMMISSION RESOLUTION NO. 2020-XX-PC**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARMEL-BY-THE-SEA  
APPROVING A USE PERMIT FOR THE ESTABLISHMENT OF A NEW FULL-LINE RESTAURANT,  
GYPSY MOON CAFÉ, IN AN EXISTING COMMERCIAL SPACE LOCATED ON MISSION STREET, 3  
SW OF 5<sup>TH</sup> AVENUE (APN 010-132-002)**

WHEREAS, John Gehrman (“Applicant”) submitted an application requesting approval of a Use Permit (“UP 20-260, Gypsy Moon Café”) described herein (“Application”); and

WHEREAS, the application has been submitted for the property located on Mission Street, 3 SW of 5<sup>th</sup> Avenue in the Service Commercial (SC) Zoning District (Block 57, Lot 5); and

WHEREAS, the Application was deemed complete on October 15, 2020; and

WHEREAS, the Applicant is requesting to establish a new full line restaurant, called the Gypsy Moon Café, in an existing commercial space located in the Service Commercial (SC) Zoning District in accordance with Chapter(s) 17.14.040.I and D, 17.14.220.D, 17.64.010 and 17.64.020 of the Carmel Municipal Code, which requires approval of a Use Permit by the Planning Commission; and

WHEREAS, a Coastal Development Permit is not required in accordance with CMC 17.52.090.

WHEREAS, the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., “CEQA”), together with State Guidelines (14 California Code Regulations §§ 15000, et seq., the “CEQA Guidelines”) and City Environmental Regulations (CMC 17.60) require that certain projects be reviewed for environmental impacts and that environmental documents be prepared; and

WHEREAS, pursuant to CEQA regulations, the Application is categorically exempt under Section 15301 (Class 1), Existing Facilities; and

WHEREAS, notice of the public hearing was published in compliance with State law (California Government Code 65091), as well as hand-delivery of the public notice by the Applicant to each property owner within a 100-foot radius of the project site indicating the date and time of the public hearing; and

WHEREAS, on November 10, 2020, the Planning Commission held a public hearing to receive public testimony regarding the Application, including without limitation, information provided to the Planning Commission by City staff and public testimony on the Use Permit in

accordance with Chapter(s) 17.14.040.I and D, 17.14.220.D, 17.64.010 and 17.64.020 of the Carmel Municipal Code; and

WHEREAS, this Resolution and its findings are made based upon evidence presented to the Commission at the November 10, 2020 hearing date including, without limitation, the staff report submitted by the Community Planning and Building Department; and

WHEREAS, the Planning Commission did hear and consider all said reports, recommendations and testimony herein above set forth and used their independent judgement to evaluate the project; and

WHEREAS, the facts set forth in the recitals are true and correct and are incorporated herein by reference.

NOW THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Carmel-By-The-Sea does hereby make the following findings and determinations regarding the Use Permit:

<b>FINDINGS REQUIRED FOR COMMERCIAL USE PERMIT APPROVAL (CMC 17.64.010 and 17.64.020)</b>		
For each of the required use permit findings listed below, staff has indicated whether the submitted plans support adoption of the findings. For all findings checked "no" the staff report discusses the issues to facilitate the Planning Commission decision-making. Findings checked "yes" may or may not be discussed in the report depending on the issues.		
<b>General Findings Required for All Use Permits (CMC 17.64.010)</b>	<b>YES</b>	<b>NO</b>
1. The proposed use is not in conflict with the City's General Plan.	✓	
2. The proposed project, as conditioned, will comply with all zoning standards applicable to the use and zoning district.	✓	
3. The granting of the Use Permit will not set a precedent for the approval of similar uses whose incremental effect will be detrimental to the City, or will be in conflict with the General Plan.	✓	
4. The proposed project will not make excessive demands on the provision of public services, including water supply, sewer capacity, energy supply, communication facilities, police protection, street capacity and fire protection.	✓	
5. The proposed project will not be injurious to public health, safety or welfare and provides adequate ingress and egress.	✓	
6. The proposed project will be compatible with surrounding land uses and will not conflict with the purpose established for the district within which it will be located.	✓	
7. The proposed project will not generate adverse impacts affecting health, safety, or welfare of neighboring properties or uses.	✓	
<b>General Findings Required for Commercial Use Permits (CMC 17.64.020):</b>		
8. The proposed use will not conflict with the City's goal of achieving and maintaining a balanced mix of uses that serve the needs of both local and nonlocal populations.	✓	

9. The proposed use will provide adequate ingress and egress to and from the proposed location.	✓	
10. The capacity of surrounding streets is adequate to serve the automobile and delivery truck traffic generated by the proposed use.	✓	

BE IT FURTHER RESOLVED that the Planning Commission of the City of Carmel-by-the-Sea does hereby APPROVE the Use Permit (UP 20-260) for the establishment of a new full-line restaurant in an existing commercial space located on Mission Street, 3 SW of 5<sup>th</sup> Avenue (APN 010-132-002), subject to the following Conditions of Approval:

CONDITIONS OF APPROVAL		
No.	Standard Conditions for Full-Line Restaurants (CMC 17.14.040.D)	
1.	<b>Authorization.</b> This approval of Use Permit (UP 20-260) authorizes: 1) The establishment of a new full-line restaurant, serving breakfast, lunch and dinner called Gypsy Moon Café, that will have 106 interior seats consisting of: 79 interior seats in the front main Dining Room #1 and 27 interior seats in the rear Dining Room #2. In addition to the 106 interior seats, Gypsy Moon Café will also have 30 exterior seats consisting of 22 exterior seats in the south, glass roofed patio and 8 exterior seats in the southeast front patio. Hours of operation are from 7:30 am to 10:00 pm for both interior and exterior seating. Gypsy Moon Café will be established in an existing Service Commercial (SC) Zoning District located on Mission Street, 3 SW of 5 <sup>th</sup> Avenue, as depicted in the seating plan and menu prepared by John Gehrman and dated received by Community Planning & Building on October 15, 2020 unless modified by the conditions of approval contained herein.	✓
2.	<b>Sale of Nonfood Merchandise.</b> The sale of nonfood merchandise directly related to the use may be allowed if it is determined to be incidental to the full-line restaurant. The display of nonfood merchandise shall be ancillary to the full-line restaurant.	✓
3.	<b>Closed Storage of Trash.</b> Adequate facilities shall be provided on-site for the closed storage of trash and garbage generated by the full-line restaurant. The on-site storage shall be designed so that the area can be cleaned and the refuse removed without creating a public nuisance and without being placed on the sidewalks or other public ways. If the method of cooking used will generate hot ashes, a storage facility and disposal method shall first be approved by the Fire Department. <ul style="list-style-type: none"> <li>a. The trash storage area shall be designed and maintained to prevent storm water contamination by loose trash and debris.</li> <li>b. All drainage from adjoining roofs and pavement shall be diverted around the trash area to minimize water flow through the storage area.</li> <li>c. The trash storage area shall be maintained in a screened or walled area to prevent off-site transport of trash.</li> </ul>	✓

4.	<b>Public Restroom.</b> At least one restroom shall be available for use by both sexes within, or conveniently adjacent to, the specific business premises and on the same property on which the full-line restaurant is located. The restroom shall comply with all provisions of the California Building and Plumbing Codes as to the required size, location and accessibility standards, and shall be available for use by both the employees and patrons of the business.	✓
5.	<b>Alcoholic Beverage Sales.</b> Any sale of alcoholic beverages shall be subordinate to the primary use.	✓
6.	<b>Formula and Fast Food Establishments Not Permitted.</b> The restaurant shall not operate as a "Drive-in, Formula Food or Fast Food" establishment as defined in CMC Section 17.70.	✓
7.	<b>Alcoholic Beverage Service.</b> Substantially all foods from the standard menu shall be available for purchase during the hours that alcoholic beverages are being served.	✓
8.	<b>Percentage of Seating Allowed at a Bar.</b> No more than 20% of the seating is permitted at a bar or in a separate bar room.	✓
9.	<b>Counter Service Not Permitted.</b> Customers shall be provided with individual menus while seated at a table or counter.	✓
10.	<b>Seating Capacity Must Comply with Building and Fire Codes.</b> Maximum seating capacity shall not exceed the standards in the California Building and Fire Codes or the number of seats approved by this Use Permit, whichever is less. The seating capacity shall be posted on the premises at all times.	✓
11.	<p><b>Food Sold for Consumption off Premise.</b> Food sold for consumption off the premises shall be incidental to the primary use. Such food shall be placed in covered containers or wrapping.</p> <p>a. Except as provided in CMC Sections 8.68.070 and 8.68.080, no restaurant shall provide prepared food to its customers in CFC-processed food packaging or polystyrene foam food packaging, nor shall any restaurant purchase, obtain, keep, sell, distribute, provide to customers or otherwise use in its business any CFC-processed food packaging or polystyrene foam food packaging. The restaurant shall comply with all other requirements in CMC Section 8.68.</p>	✓
<b>Use Permit Special Conditions</b>		
12.	<b>Permitted Hours of Operation.</b> Permitted hours of operation are from 7:30 am to 10:00 pm for all restaurant seating, including outdoor seating. No new customers shall be accepted into the restaurant after 10:00 p.m.	✓
13.	<b>Permitted Interior and Exterior Seating.</b> The restaurant is permitted a maximum of 106 interior seats consisting of: 79 interior seats in the front main Dining Room #1 and 27 interior seats in the rear Dining Room #2. In addition to the 106 interior seats, Gypsy Moon Café will also have 30 exterior seats consisting of 22 exterior seats in the south, glass roofed patio and 8 exterior seats in the southeast front	✓

	patio. The number of interior seats may be reduced to comply with Building and Fire Code requirements.	
14.	<b>Water Units.</b> Approval of this application does not permit an increase in water use on the project site without adequate supply. Should the Monterey Peninsula Water Management District determine that adequate water is not available for this site, this permit will be scheduled for reconsideration and appropriate findings prepared for review and adoption by the Planning Commission.	✓
15.	<b>Monterey County Health Department Permits.</b> The applicant shall obtain all necessary permits from the Monterey County Health Department prior to building permit issuance.	✓
16.	<b>Consistency with Approved Application and Seating Plan.</b> The use shall be conducted in a manner consistent with the seating plan, presentations and statements submitted in the application and at the public hearing, and any change in the use which would alter the findings or conditions adopted as part of this permit shall require approval of a new Use Permit by the City.	✓
17.	<b>Use Permit Must be Initiated within 6 Months.</b> This Use Permit shall become void and in no further force or effect if the use is not initiated within six (6) months of the issuance of the Certificate of Occupancy from the Building Official.	✓
18.	<b>Violation of the Terms of this Use Permit.</b> Violations of the terms of this Use Permit or other ordinances of the City may constitute grounds for revocation of this Use Permit and the associated business license by the Planning Commission.	✓
19.	<b>Summary Sheet of Use Permit Must be Posted on the Premises.</b> A summary sheet of basic Use Permit requirements (allowed days, allowed hours, special mitigations) shall be posted on the premises or shall be available upon request by any enforcement officer of the City.	✓
<b>General Conditions</b>		
20.	<b>Hold Harmless Statement.</b> The applicant agrees, at its sole expense, to defend, indemnify, and hold harmless the City, its public officials, officers, employees, and assigns, from any liability; and shall reimburse the City for any expense incurred, resulting from, or in connection with any project approvals. This includes any appeal, claim, suit, or other legal proceeding, to attack, set aside, void, or annul any project approval. The City shall promptly notify the applicant of any legal proceeding, and shall cooperate fully in the defense. The City may, at its sole discretion, participate in any such legal action, but participation shall not relieve the applicant of any obligation under this condition. Should any party bring any legal action in connection with this project, the Superior Court of the County of Monterey, California, shall be the situs and have jurisdiction for the resolution of all such actions by the parties hereto.	✓

PASSED, ACCEPTED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF CARMEL-BY-THE-SEA this 10TH DAY OF NOVEMBER, 2020 BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

\_\_\_\_\_  
Michael LePage  
Chair

\_\_\_\_\_  
Margi Perotti  
Planning Commission Secretary

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Property Owner Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

***Once signed, please return the original to the project Planner at the Community Planning and Building Department.***