

RESOLUTION NO. 18-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA DECLARING THE EXISTENCE AND ORDERING THE ABATEMENT OF A PUBLIC NUISANCE LOCATED AT 725 CYPRESS AVENUE, HERMOSA BEACH, CALIFORNIA 90254 (PARCEL NUMBER 4187-030-008)

The City Council of the City of Hermosa Beach does hereby find, order, and resolve as follows:

SECTION 1. This Resolution memorializes the City Council’s findings and order following a nuisance abatement proceeding initiated by City staff pursuant to Chapter 8.28 of the Hermosa Beach Municipal Code with respect to the operation of a CrossFit gym called CrossFit Horsepower located at 725 Cypress Avenue in the City.

SECTION 2.

A. CrossFit Horsepower

The property includes a single-story, 5,875 sq. ft. building that is zoned for light manufacturing (M1) on a 10,000 sq. ft. lot that neighbors a residential zone (R2) on Loma Drive, which is directly west of the gym. The property is owned by Jed Sanford and Dan Wells who began operating the business in September 2014. The business license application for CrossFit Horsepower Gym (“CHG”) describes the business as “fitness training.” CHG operates from approximately 6:00 a.m. to 8:00 p.m. on weekdays, approximately 8:00 a.m. to 12:00 p.m. on Saturdays and is closed on Sunday.

B. The CrossFit Workout

CrossFit is a high intensity workout that is a nontraditional approach to fitness. CrossFit describes itself as “maximizing the amount of work done in the shortest time.” According to its website, “[i]ntensity is essential for results and is measurable as worked divided by time—or power. The more work you do in less time, or the higher the power output, the more intense the effort.” These high power, intense workouts consist of heavy weights being lifted, pressed, and jerked from various height levels and ultimately dropped to the floor. Commonly, these workouts are done in classes, which can result in dozens of people dropping weights at the same time. As a result of this type of workout, high levels of noise and vibrations are common.

C. History of Complaints and Code Enforcement Efforts by the City

(1) Overview

In September 2014, CHG began operating at 725 Cypress Avenue in Hermosa Beach. Complaints from nearby residents to the City began approximately two months after CHG opened. Since then, the City has received regular complaints from nearby residents of noise (loud music) and vibrations resulting from the dropping of weights. The complainants have asserted that the noises and vibrations are unreasonably interfering with

their ability to enjoy the use of their home. These noises and vibrations are daily and occur throughout the day, often starting before 8:00 a.m. and continuing until after 6:00 p.m. Residents have described the noises and vibrations as feeling like “thunder” and an “earthquake,” rattling windows and picture frames, waking families up before 8:00 a.m., distracting residents working at home, and disturbing residents in their homes who are sick, injured, or relaxing.

Significant City resources have been expended since November 2014 to manage these complaints, including site inspections, informal sound and vibration tests, community meetings with residents, and meetings with the owners of CHG. While the frequency of complaints has varied over the last four years, attributable to efforts by CHG to reduce its impact on the neighborhood, nearby residents continue to complain that CHG’s normal daily business operation causes noise and vibrations that adversely affects the tranquil and peaceful use and enjoyment of their homes. The evidence in the record rules out the possibility of another source of the vibrations and noise being experienced by the complainants.

(2) November 2014 through May 2015

Between November 21, 2014 and May 18, 2015, there were approximately ninety-eight (98) separate email complaints by residents regarding loud music, weight noise, weight dropping, and vibrations.

Beginning on December 1, 2014, observations of CHG began by the City’s Code Enforcement. Between December 1, 2014 and February 2, 2015 numerous informal code enforcement inspections occurred as a result of the residents’ complaints.

On January 26, 2015, the City arranged an informal “weight dropping test” with the owners of CHG and some nearby residents. The test consisted of dropping rubber weights, which varied between eighty (80) pounds and three hundred fifty (350) pounds, from overhead. The testing confirmed that vibrations from weight dropping emanated from CHG.

Following the weight dropping test, a community meeting was held between twenty-two (22) residents and a Building Official at the Community Center. This meeting was to address resident complaints and discuss potential methods to resolve the problems.

On January 27, 2015, a meeting to discuss the residents’ complaints was held with both owners of the gym, the City Manager, the Community Development Director, Building Official and Code Enforcement Officer.

On January 28, 2015, the City sent a letter to the owners of CHG requesting the immediate prohibition of weight dropping and reduction of noise when exercising outside. The owners of CHG responded and agreed to prohibit the dropping of all metal weights, but confirmed that exercises requiring the dropping of weights would continue with rubber weights.

On February 11, 2015, the City emailed the owners of CHG notifying them of continued complaints and requested CHG take further steps to mitigate the vibrations, such as building an anechoic chamber or adding additional padding.

On February 26, 2015, the City sent a letter to the owners of CHG informing them that the matter was referred to the City Prosecutor. Due to the continued volume of complaints, it was determined that the City Prosecutor needed to conduct an official investigation. The City suggested to CHG different approaches to its weight dropping policy and requested CHG look into acoustic modifications of the building and flooring system.

(3) June 2016 through June 2017

On June 20, 2016, another community meeting was held with six (6) residents and the City Manager, Community Development Director, Economic Development Officer, City Prosecutor, and Code Enforcement.

Between July 12, 2016 and June 5, 2017, there were approximately nineteen (19) separate email complaints by residents regarding loud music, weight noise, weight dropping, and vibrations.

A Code Enforcement Investigation Report was generated by Code Enforcement Officer Justin Edson. Officer Edson documented complaints dating back to July 2016, regarding repeated excessive noise and vibration from CHG. It was documented that Officer Estela Hill issued a written and final warning to CHG for permitting patrons to run and exercise on public sidewalks.

On February 10, 2017, Officer Edson met with residents inside their home for approximately forty-five (45) minutes and reported experiencing the “thumping” and dropping of weights every few minutes. Officer Edson noted that after he experienced the “noise from inside the home we could easily understand the noise nuisance at intervals during the several classes per day.” He noted that the constant vibration could be seen to violate sections A, B, C, D, E, and F of the noise ordinance.

On March 17, 2017, Officer Edson notified the owners of CHG that after receiving complaints of weight dropping by residents, he arrived at the gym where he observed a class and heard the dropping of weights throughout the class.

On May 16, 2017, Officer Edson issued an administrative citation to CHG for permitting gym patrons to run on public sidewalks and use the parking lot for exercise.

On May 18, 2017, the City Prosecutor held another community meeting with six (6) residents.

(4) February 12, 2018 through June 26, 2018

Between February 12, 2018 and June 26, 2018, there were approximately fifty-eight (58) email complaints regarding loud music, weight noise, weight dropping, and vibrations.

On March 12, 2018, an informal sound test was performed at CHG by Code Enforcement Officer Stafford. Officer Stafford noted that there was no sound insulation in the ceiling or around the speakers. The test consisted of music turned up between 95%-100% of

maximum volume with CHG's doors opened and closed for five minute periods. Officer Stafford concluded that if the music was turned to full volume, it could be heard on Loma Drive regardless of whether the doors were open or closed. He stated that the music was not louder than the ambient noises coming from a neighborhood on a daily basis.

On April 23, 2018, another community meeting was held between nine (9) residents, the Community Development Director, the Quality of Life Prosecutor, and Code Enforcement Officers.

On April 27, 2018, after receiving a complaint from a resident, Officer Stafford responded immediately and entered the resident's home at approximately 5:30 p.m. Officer Stafford reported "instantly a variation in sound levels" than those experienced outside the home and noted that the "sound of the thumps would come and go repeatedly, and in my opinion, the noises heard from within the home was more intense and much clearer inside than the very faint noises heard from outside." Officer Stafford further noted that "the music and thumping sounds increased and almost seemed if the walls amplified the sound as if I was next to a bowling alley. I could easily understand the noise nuisance at intervals during the several classes per day."

On April 29, 2018, after receiving a complaint from a resident, Officer Stafford responded immediately to the home. Officer Stafford did not enter the home, but noted as he moved closer to the garage he "was surprised to hear the noise and thumps clearer and I could hear what sounds like the dropping of dumbbells." He noted "[a]gain, I can understand the disturbance it would cause on an early quiet Sunday morning."

On May 7, 2018, after receiving a complaint from a resident, Officer Stafford responded immediately to the home. He observed patrons running in the street and the music from the gym could be heard from approximately eighty-five (85) feet from the front doors of CHG. He entered the porch of the complaining resident, which was approximately fifteen (15) feet from CHG, and felt several "thumps" and vibrations every twenty (20) seconds and sounds from the dropping of weights.

On May 11, 2018, after receiving a complaint from a resident, Officer Stafford immediately responded. He reported that he was approximately eighty-five (85) feet from the entrance of CHG and he could hear music as well as the sound of weights dropping. He observed patrons running on the streets.

SECTION 3.

A. *California Government Code*

Government Code section 38771 provides that "[b]y ordinance the city legislative body may declare what constitutes a nuisance."

B. *Hermosa Beach Municipal Code ("HBMC")*

A public nuisance can be found under the Hermosa Beach Municipal Code as follows:

- (1) Violation of any provision of the Hermosa Beach Municipal Code. (HBMC section 1.04.050(C));
- (2) Actions adversely affecting the use or enjoyment of property. (HBMC section 8.28.020(b)(3)); and,
- (3) Conditions reasonably constituting a nuisance within the intent expressed in Chapter 8.28.010. (HBMC section 8.28.030).

SECTION 4. In view of the continuing, persistent complaints from the neighborhood of disturbances from CHG, and the failure of informal efforts to abate the problem, City Staff initiated these nuisance abatement proceedings pursuant to Chapter 8.28 of the Hermosa Beach Municipal Code.

SECTION 5. Pursuant to Section 8.28.070, the City Council on May 22, 2018 adopted a resolution of intent (Resolution No. 18-7133) to conduct a nuisance abatement hearing to consider the complaints against CHG. A public hearing was scheduled for July 10, 2018. The owners of CHG were present when Resolution No. 18-7133 was adopted and were duly informed of the date of the hearing. A nuisance abatement hearing was conducted by the City Council on July 10, 2018 and August 28, 2018, pursuant to HBMC section 8.28.070, where evidence and testimony was received and considered by the City Council.

A. *Due Process*

Due process for a nuisance abatement hearing requires (1) notice of the hearing; (2) a meaningful opportunity to be heard; and, (3) an independent tribunal. *Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 276; *Blinder, Robinson & Co. v. Tom* (1986) 181 Cal.App.3d 283, 295. Notice of the nuisance abatement hearing was provided to CHG on May 22, 2018. On June 25, 2018, counsel for CHG requested a continuance of the hearing. The request was denied because CHG was afforded seven (7) weeks' notice of the hearing in which to prepare. Later, that same counsel determined that a professional conflict of interest precluded him from representing CHG.

B. *Summary of Public Testimony*

Complainants testified at the July 10, 2018 hearing of the continuing disturbances emanating from CHG; the owners and patrons of CHG also provided public comments at the hearing. Written testimony was also received.

Residents living near the gym described CHG's activities as adversely affecting the use and enjoyment of their property. The residents' public testimony echoed the complaints documented in the hundreds of emails and several investigative reports.

Mark Hanna, who resides on Loma Drive, stated that issues with CHG began in late 2014 or early 2015. Mr. Hanna, who resides with his daughter, described the noises and vibrations as bothersome and stated the disturbances start early in the morning and continue late into the evening. Mr. Hanna has observed large groups of CHG patrons running and

using the public streets and sidewalks to exercise.

Mike Owen, who resides on Loma Drive, stated that issues with CHG began four years ago. Mr. Owen explained that his home shakes from the vibrations and stated his young children have been woken up because of the vibrations. Mr. Owen stated a common question in his home is whether the vibrations are an earthquake or weights dropping. Mr. Owen expressed concern that his property value is negatively affected because of CHG.

Tara Owen, who resides on Loma Drive with her two small children, stated the weight dropping feels like an earthquake in her home. Ms. Owen stated that her children have been woken up because of the vibrations. Ms. Owen stated that her husband works from home and has difficulty concentrating.

Larry Nakamura, who resides on Loma Drive, stated that prior to CHG opening its business, his family would rarely hear the nearby businesses. Mr. Nakamura stated that almost immediately upon CHG opening up for business his family experienced vibrations and noise. Mr. Nakamura expressed that it was very common to experience noise at 6:30 a.m., which occurred repeatedly three to five times a week. He described the noise as being loud enough to hear over his TV. He explained that the anticipation of the noise and vibrations causes a great deal of stress. Mr. Nakamura stated that he occasionally works from home and the noise and vibrations cause difficulty with concentration. Mr. Nakamura stated that on several occasions his family left their home for dinner to escape the noise and vibrations.

Becky Nakamura, who resides on Loma Drive, stated the constant noise and vibrations have been an issue since around August of 2014. Ms. Nakamura stated the issues have gotten worse since CHG expanded its hours of operation. Ms. Nakamura explained that since 2016, it is a regular occurrence to be woken up before 7:00 a.m. She described the noise as startling and stated it gives her anxiety. She stated that picture frames on her wall have rattled from the vibrations. Ms. Nakamura stated she occasionally works from home and it is frustrating to be disturbed by the noise and vibrations. She expressed that her family has left the home on weekends to escape the noise and vibrations.

Josh Ploude, who resides on Cyprus Avenue, stated he has experienced vibrations since CHG first opened up for business. Mr. Ploude stated that although he does not feel the vibrations anymore, he hears loud music when CHG's doors are open. Mr. Ploude also stated he can hear noise when the doors are closed. Mr. Ploude stated he hears the music begin at 6:30 a.m.

Liz Torres, who resides on Loma Drive, expressed that she experiences constant noise and vibrations. Ms. Torres stated the disturbances begin at 6:30 a.m. and continues throughout the day until 8:30 p.m. Ms. Torres provided that she works several jobs and therefore sleeps at irregular hours, which is difficult with the constant pounding of weights. Ms. Torres described having "PTSD" from the past three years of vibrations and noise.

Robert Walsh, who resides on Loma Drive, stated the noise and vibrations are clearly from dropping weights. Mr. Walsh expressed that he can hear and feel the weights being dropped. He stated he cannot work from home and the actions of CHG are adversely

affecting his life.

Bruce Burger, who resides on Loma Drive, expressed frustration that CHG only improves the noise and vibrations when enough complaints are made and the City takes action. Mr. Burger said that the previous conditions always return and the fix is never permanent. He read an email complaint he made on March 2, 2018 at 7:39 p.m. that described a particularly bad evening of weight dropping.

One of the coaches at CHG, Nomi Nilson, testified that she believed it was clear that the quality of life of local residents is being disrupted by the activities of CHG and its patrons as evidenced by the residents' complaints. She expressed that she could not imagine having to come home to disruptive noise and vibrations, or want to relax or take a nap only to be disrupted.

The owners for CHG were provided thirty (30) minutes to present their position opposing abatement. The owners explained that they had worked closely and amicably with the complaining residents to mitigate the disturbances, and had agreed to participate in formal testing of the noise and vibrations. The owners described the various mitigation efforts implemented by the gym, such as a policy against dropping weights, moving equipment to a different location within the gym, adding padding under the weights, and lowering the volume of music. The owners stated that they had never been issued a citation for a violation of an ordinance regarding the noise or vibrations. After their initial presentation, the owners for CHG were provided a five (5) minute rebuttal.

Numerous patrons of CHG testified in opposition to a nuisance finding and described the health benefits of CrossFit, the community and sense of welcome CHG provides, and the measures CHG has taken to ensure that noise and vibrations are minimized.

The hearing was continued to August 28, 2018 in order to allow CHG an opportunity to engage the services of an attorney to assist in the proceeding.

C. Three Grounds Were Raised That CHG Constitutes a Nuisance

(1) HBMC Section 1.04.050(C) – Violations of Any Ordinance of the Hermosa Beach Municipal Code

According to HBMC section 1.04.050(C), the City Council can deem a public nuisance “any condition caused or permitted to exist in violation of any of the provisions of this code shall be deemed a public nuisance.”

Four ordinances were identified that CHG routinely violates:

- (A) HBMC section 8.24.040(A) – Prohibited Placement of Speakers;
- (B) HBMC section 8.24.040(I) – Prohibited Noise Between 10:00 p.m. and 8:00 a.m.;
- (C) HBMC section 8.24.030 – Prohibited Vibrations; and,
- (D) HBMC section 17.28.030(b) – Prohibited Use of Public Sidewalks and Streets.

(A) HBMC Section 8.24.040(A) – Prohibited Placement of Speakers

HBMC section 8.24.040(A) prohibits the amplification of music or sound on private property through speakers such that “music is plainly audible on, an immediately adjacent public right of way.”

The City Council received and heard evidence and testimony that music was audible from the street by Code Enforcement Officer Stafford on several occasions, as well as numerous email noise complaints from residents living near CHG. Mr. Ploude spoke at the hearing that he can hear music and noise regardless of whether the door are open or closed.

(B) HBMC Section 8.24.040(I) – Prohibited Noise Between 10:00 p.m. and 8:00 a.m.

HBMC section 8.24.040(I) prohibits continuous, repeated or sustained noise from the premises of any commercial establishment which is adjacent to one or more residential dwelling units, between the hours of 10:00 p.m. and 8:00 a.m. that is plainly audible from the residential dwelling unit’s property line.

The City Council received and heard evidence and testimony of numerous residential complaints since 2014 regarding continuous and repeated loud noises occurring before 8:00 a.m. Many of the residents who testified at the hearing discussed frequent and continuous noises and music occurring before 7:00 a.m.

(C) HBMC Section 8.24.030 – Prohibited Vibrations

HBMC section 8.24.030 prohibits any person from making, permitting, or causing any noises, sounds, or vibrations that in view of the totality of the circumstances are so loud, prolonged and harsh as to be physically annoying to reasonable persons of ordinary sensitivity and to cause or contribute to the unreasonable discomfort of any persons within the vicinity. There are six factors to consider:

- a. The volume and intensity of the noise;
- b. Whether the noise is prolonged and continuous;
- c. How the noise contrasts with the ambient noise level;
- d. The proximity of the noise source to residential and commercial uses;
- e. The time of day; and,
- f. The anticipated duration of the noise.

The City Council received and heard evidence and testimony that CHG was causing vibrations that in view of the totality of the circumstances was physically annoying to reasonable persons of ordinary sensitivity and to cause or contribute to the unreasonable discomfort of any persons within the vicinity. The City Council reviewed the copious amounts of residential email complaints regarding vibrations, results from informal weight dropping tests, Code Enforcement investigations and reports, heard resident testimony, and viewed videos and images of CHG exercises. The vibrations were frequent, occurred throughout the day, and after began before 6:00 a.m. waking up and disturbing nearby residents. The continuous vibrations have resulted in residents leaving their homes to seek

refuge from the disturbances. The anticipation of the vibrations causes stress and anxiety for many of the nearby residents. The evidence proffered in light of the factors weighs against CHG and in favor of the complaining residents.

(D) HBMC Section 17.28.030(b) - Prohibited Use of Public Sidewalks and Streets

HBMC section 17.28.030(b) requires, for use in the M-1 zone, all uses be conducted wholly within a building.

The City Council received and heard evidence and testimony that patrons of CHG, as a part of their workout routine, use public sidewalks and streets to exercise. The City Council reviewed email complaints from residents, citations from Code Enforcement, written observations from Code Enforcement, as well as video and photographs. Additionally, residents testified at the hearing that they witnessed patrons using the streets to exercise.

(2) HBMC Section 8.28.020(b)(3) - Actions Adversely Affecting the Use or Enjoyment of Property

According to HBMC section 8.28.020(b)(3) actions affecting health are expressly declared to be nuisances, include harboring or permitting any premises or permitting individuals or groups using or visiting such premises in a manner which adversely affects the use or enjoyment of surrounding properties of uses thereof.

The City Council received and heard evidence and testimony of resident complaints which depict an adverse interference by CHG with the use and enjoyment of nearby residential properties. These complaints documented that the noise and vibration of CHG adversely interfere with residents' sleeping, recovering from injury or sickness, working from home, relaxing, homework, eating, and general enjoyment of the use of their property for multiple years. The adverse actions of CHG have resulted in residents experiencing stress, anxiety and frustration in the use of their own home.

(3) HBMC Section 8.28.030 - Conditions Reasonably Constituting a Nuisance Within the Intent Expressed in Chapter 8.28.010.

HBMC section 8.28.030 provides that in addition to all nuisances specifically enumerated in Section 8.28.020, this chapter shall apply to any and all conditions which reasonably constitute a nuisance within the intent expressed in Section 8.28.010.

According to the HBMC section 8.28.010, the purpose of the Nuisance Chapter is to:

[P]rotect the inhabitants of the City against all forms of nuisances, public or private . . . which is injurious to health, or detrimental to the public safety, morals or general welfare, or is indecent, or offensive to the senses or an obstruction to the free use of property to such an extent as to interfere with the comfortable enjoyment or life or property by the entire community or neighborhood, or by any considerable number of persons.

The City Council received and heard substantial evidence and testimony that CHG's excessive noise and vibrations violated the intent of the Nuisance Chapter. The hundreds of email complaints discussed the constant daily noise and vibrations that occur throughout the day, often beginning at 6:00 a.m. CHG's actions have adversely interfered with residents sleeping, recovering from injury or sickness, working from home, relaxing, homework, eating, and general enjoyment of the use of their property for years. The evidence revealed that residents have been adversely affected by CHG. Though CHG has taken some steps to reduce the disturbances, those steps have been inconsistent, temporary and ineffective.

Therefore, based upon all the evidence submitted, heard, and considered, the City Council finds that CHG constitutes a public nuisance under HBMC section 1.04.050(C); HBMC section 8.28.020(b)(3); and HBMC section 8.28.030.

SECTION 6. The City Council hereby orders that CHG abate the public nuisance by undertaking the following actions:

- (1) The following abatement measures shall be implemented immediately and permanently to allow continued operation of the business:
 - a. Any audio or music volumes shall be lowered so as to not be audible outside the premises;
 - b. Cease and desist any and all use of any public streets and sidewalks as part of an exercise class and/or routine;
 - c. Cease and desist business operations on Sunday; and,
 - d. Keep all windows and doors closed during all hours of operation.
- (2) The following abatement measures shall be implemented immediately, and shall continue permanently, unless and until abatement measure number (3) is implemented to the satisfaction of the City (once the City is satisfied CHG can submit an operational plan for a reconsideration of hours of operation and specific details of all equipment and weights to be used in fitness activities):
 - a. Cease and desist operation of business before 8:00 a.m. and after 6:00 p.m.; and,
 - b. Cease and desist the use of any and all free weights, including dumbbells, barbells, and kettle balls.
- (3) Sound and vibration proofing of the building and equipment used in CrossFit training activities shall be installed to the satisfaction of the City that eliminates all perceptible off-site vibration and sounds from any and all activities of the gym. The City will retain an acoustics and vibration expert who will determine what sound and vibration proofing measures will be necessary to meet this standard. The expert will further inspect and verify the acoustic and vibration proofing measures installed by CHG to ensure the measures provided herein have been properly implemented on the premises. The cost of retaining the acoustics and vibration expert will be borne by CrossFit Horsepower through a re-imbursement agreement with the City.

If the owners of CHG do not comply with the orders contained in this Resolution, the Director of Finance is ordered to revoke CHG's Business License and order its business

operation to cease.

The City Council further orders CHG to pay the City's nuisance abatement costs, pursuant to HBMC section 8.28.080, the amount of which will be determined at a future hearing.

SECTION 7.

The Mayor shall sign and the City Clerk shall attest to the passage and adoption of this Resolution and enter it into the book of original resolutions. This Resolution will become effective immediately upon adoption.

The City Clerk shall serve this Resolution upon the owners of 725 Cypress Avenue, pursuant to section 8.28.070(E).

The City Clerk shall serve the notice and itemized report of all costs of abatement of the nuisance fifteen (15) days before the report is submitted to the City Council for confirmation at hearing, pursuant to section 8.28.080(A).

PASSED, APPROVED AND ADOPTED this ____ day of August 2018.

PRESIDENT of the City Council and MAYOR of the City of Hermosa Beach, California

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney