

From: noreply@granicusideas.com <noreply@granicusideas.com>

Sent: Tuesday, August 28, 2018 3:16 PM

To: Ann Yang <anny@hermosabch.org>

Subject: New eComment for City Council Meeting (Closed Session - 6:00 PM and Regular Meeting - 7:00 PM)

New eComment for City Council Meeting (Closed Session - 6:00 PM and Regular Meeting - 7:00 PM)

Amy Noland submitted a new eComment.

Meeting: City Council Meeting (Closed Session - 6:00 PM and Regular Meeting - 7:00 PM)

Item: 5b) REPORT 18-0532 CONTINUED HEARING ON NUISANCE ABATEMENT OF PROPERTY AT 725 CYPRESS - CONSIDERATION OF MEASURES TO ABATE THE PUBLIC NUISANCE ACTIVITIES (Community Development Director Ken Robertson)

eComment: Attached please find a letter from Crockett & Associates on behalf of CHG.

[View and Analyze eComments](#)



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August 28, 2018

City Council of Hermosa Beach
1315 Valley Drive
Hermosa Beach, CA 90254

Re: Response To The Finding Of CrossFit Horsepower Gym as a Public Nuisance and Against Proposed Abatement Measures

Dear City Council Members:

We represent CrossFit Horsepower Gym ("CHG"). On July 10, 2018, this City Council, with two recusing councilmembers and a third abstaining, voted with less than a majority to declare CHG a public nuisance. A quorum is an implied requirement of City Ordinance 2.04.070(C). Without a quorum, the City Council lacked authority. *Price v. Tennant Cmty. Servs. Dist.*, 194 Cal. App. 3d 491, 497, 239 Cal. Rptr. 572, 576 (1987)

The City Council denied CHG's then-attorney a continuance. CHG's attorney said he had a conflict and could not argue. The City provided CHG only three business days to review the hundreds of pages of "evidence" to be used at the hearing. City staff never informed CHG prior to the hearing of the hearing format, manner or order of presentation of evidence, nor CHG's rights or opportunities at the hearing to defend itself, including cross-examination of city officials and other witnesses.

After declaring CHG a public nuisance, this Council continued the public hearing to its August 28, 2018, meeting to permit CHG to have legal counsel present prior to the City Council voting on the specific abatement measures to be imposed on CHG. The City informed CHG that its legal counsel would have 15 minutes for affirmative presentation, followed later by five minutes of rebuttal, with no ability to call or cross-examine city officials or other witnesses.

The City has discriminately targeted CHG's lawful business operations to appease a few politically-tied residents whose sole goal is to force the closure of CHG. The City's frequent code enforcement visits and threat of CHG being a public nuisance already interfere with CHG's relations with its gym members and with adding prospective gym members even though CHG is operating within the reasonably expected parameters of its business type.

Background

Prior to CHG's occupation of 725 Cypress Avenue, it had for 40-years been a paint and automobile body shop, and a junk yard. The business would have been filled with the sounds of pneumatic drills and compressors. CHG is informed and believes that all neighboring residential property owners purchased their properties with knowledge that 725 Cypress Avenue was industrially zoned.

Dan Wells, the now-famous face of CrossFit, ran a very successful CrossFit Horsepower Gym in Studio City and was looking to open another CrossFit gym in another nearby Southern California market. Despite the building's extremely poor condition, Dan recognized the potential improved use of the Cypress property and the value the gym could bring to Hermosa Beach residents.

In 2013, M-1 zoning did not include the use of a gym. At the February 18, 2014 City of Hermosa Beach City Council meeting, Dan and his business partners applied for a zoning change to M-1 to allow for the building to be used as a CrossFit gym/fitness club. In its report to the City Council, staff made the argument that allowing the new zoning addition was useful because the associated noises for the proposed use were consistent with the M-1 intent. The staff's recommendation to allow for the M-1 gym use was adopted by the City Council.

Relying on the zoning change approval, the parcel owner and the dozen gym business partners expended approximately \$670,000 to completely remodel the decrepit building, bring it up to code and outfit it for use as a CrossFit gym. The 5,600 square foot gym was (and is) fully enclosed with no speakers outdoors or placed in doors or windows.

CrossFit Horsepower Gym Hermosa Beach opened in August 2014 and was an immediate hit, regularly adding gym members mainly from Hermosa Beach, but also from neighboring communities.

In December 2014, three neighbors from Loma Drive began calling the City to complain about the gym, (1) Larry Nakamura. (who resides approximately five feet from the CHG property in a four-plex), (2) Robert W., and (3) Phil F./Alicia V. (who lived together). In that one month, these individuals made several complaints with 13 inspections by City code enforcement officials. The inspections came approximately every other day. The inspectors found no justification for the complaints and no citations were issued. The complaints came from occupants of neighboring properties that had constructed **encroaching physical structures** (retaining walls) that **attached** to the CHG parcel. A survey done of the 725 Cypress Avenue property revealed that the four-plex property is encroaching on the HCG premises.

In January 2015, City code enforcement checks of CHG continued with no findings of violations. Due to the nonstop visits from code enforcement officials, CHG owners offered to do a weight dropping test with City staff and residents there. On January 26, 2015, CHG owners dropped weights up to 300lbs with City staff listening in three nearby residents' houses. City Council received this report in their July 10, 2018 meeting materials. Individuals listening in the homes heard very little sound and some were not sure if they heard anything during the test.

On January 28, 2015, CHG received a letter from the City of Hermosa stating, "The weight drop test you graciously conducted confirmed that the disturbance was from your gym, but was basically an acceptable level of noise/vibration."

Unable to issue any citations in good faith, around this time, the City referred CHG for criminal prosecution as a public nuisance. Alarmed and fearing criminal prosecution, CHG owners felt compelled to agree to work on no weights being dropped and posted signs in their gym to that effect.

In March 2015, City prosecutors reached out to all nearby residents who had complained and asked for permission to have an acoustic expert leave a device on each of their properties to monitor the gym. **All residents refused to participate.** There has never been any acoustic testing. The criminal prosecution stalled for lack of evidence, but CHG owners were not notified that the criminal referral was no longer being actively pursued until recently.

Unable to cite or criminally charge CHG for any nuisance, on April 28, 2015, the City Manager told CHG City Council was considering amending the Hermosa Beach Municipal Code section 10.60.120 to lower the minimum threshold to find a nuisance. The amended code section would have prevented any "use, activity, or process" that produced "vibrations that are perceptible without instruments by a reasonable person at the property line of a site." After lengthy City Council discussion, the amendment failed, perhaps because it would have swept vehicles, rowdy children and large people moving rapidly into its definition.

In 2015, the City conducted at least ten code and law enforcement inspections of CHG based on 38 complaints from nine people. City officials found no violations and issued no citations. CHG owners believe the number of actual visits was more than twice that.

By 2016, still believing they were potentially subject to criminal prosecution for public nuisance, CHG owners felt compelled to implement numerous sound remediation measures, including using thicker mats, lowering the music volume, relocating equipment, and coaches warning members about dropping weights. CHG alerted City code enforcement officials that their residential neighbors were encroaching on their

property, but code enforcement officials took no action against the encroaching neighbors.

On June 20, 2016, the City held a community meeting without notice to CHG nor with any documents from the meeting. Only six residents came. By this time, Councilmember Stacey Armato was elected and had close ties to some of the complaining residents through personal friendships and working together for the successful “No on Oil” campaign, which heavily involved Loma Drive residents. Ms. Armato began directly communicating with City code enforcement officials calling CHG a nuisance. At this time, the City brought in a different code enforcement officer for inspections of CHG. Two complaints were received in 2016, both from Larry Nakamura, the nearest (encroaching) neighbor. No violations were found and no citations were issued.

Sometime that same year the City Council removed fitness clubs as a permissible M-1 zoning use.

On March 18, 2017, another community meeting was held about CHG without CHG’s knowledge. Councilmember Amato, the city prosecutor and six residents attended the meeting. In 2017, several police calls were made and no violations were found and no citations were issued. There were 25 hearsay complaints from four neighboring residents, the same residents who complained before.

On May 16, 2017, the City issued CHG a citation for allowing patrons to run on the sidewalk between CHG’s two parking lots **after** CHG received prior approval from the City Manager to do so. City staff acknowledged this prior permission again in a recent meeting with Messrs. Wells and Sanford.

In early 2018, the City of Hermosa Beach brought in a “quality of life” attorney whose purpose was to coach the handful of residents opposed to CHG about how to word and log their hearsay complaints to cobble together a record lacking any objective data to set up a City Council finding of CHG as a public nuisance. As a result, the City logged many new hearsay complaints in 2018 but only from 6 individuals.

After “loud music complaints” to the police, on March 21, 2018, CHG offered to do a music sound test with city officials. The staff findings were: “At 95% of full volume, no music heard on Loma or in parking lot of gym with doors closed. At 95% of full volume with doors open, no music heard on Loma, music heard in gym parking lot. At 100% volume with doors closed, very little sound on Loma, however not more than ambient noise from vehicles or other sounds of the neighborhood. With 100% and doors open, sound could be heard on Loma but not a significant difference between door open or closed. If a number was to be assigned to the volume, 10 being very loud and 1 being inaudible the sound level would be no higher than that of a 2. **It is our opinion that**

although you could hear the music you had to be listening for it, in all cases it was not louder than the ambient noises coming from a neighborhood on a daily basis” (emphasis added).

Despite finding no sound issues at the sound test, the City notified CHG that it intended to hold a hearing to decide whether CHG was a public nuisance providing no additional details. On multiple occasions since that date, CHG requested the City to participate in a joint sound and vibration study using acoustic experts to demonstrate that any sounds and vibration generated from the gym did not rise above the levels consistent with the M-1 zoning designation. The City refused.

In its four years of existence, CHG has received no citations for noise, vibrations or any other nuisance-related violations. At its peak, the gym served more than 200 members. Since the City targeted CHG and threatened to declare it a public nuisance, (a threat now carried out), generating substantial negative publicity, gym membership has dropped by almost half. Members leaving identified the City’s harassment of the gym as the reason, feeling unable to freely exercise. Other gyms in Hermosa Beach have received many more citations than CHG, including another CrossFit gym located only 0.4 miles away from CHG, but without the singularly focused treatment of literally hundreds of code enforcement visits and a declaration as a public nuisance.

Emails obtained from a Public Records Act request to the City of Hermosa Beach reveal Mayor Pro Tem Armato called the gym “terrible neighbors,” a nuisance on multiple occasions, and that the City was working on a plan to build a record against CHG. Several of those emails are attached as Exhibit A to this letter. Emails further reveal that the City of Hermosa Beach worked with a reporter from CBS to generate negative publicity about CHG. Emails concerning that discussion including three city councilmembers are attached as Exhibit B.

Complaints about the gym for all of 2018 come from only **eight** unique residences on Loma Drive. **Three of those residences are located on properties that a recent survey shows are encroaching on CHG’s parcel, having attached a retaining wall to the gym’s property.** All of the residences’ occupants took possession with constructive or actual notice that they were locating immediately next to industrial zoning that may generate noise and vibration far in excess of any verifiable levels from CHG. Occupants of these properties claiming to be severely impacted by CHG’s sound and vibrations refused to participate in formal sound and vibration studies when invited on multiple occasions by the City to do so. CHG enjoys a good relationship with the vast majority of its neighbors in the area as indicated in many e-comments to the City Council.

Along with numerous other onerous abatement requirements, City staff is recommending that CHG be forced to immediately stop use of any free weights or lose its business license. Additional recommended abatement measures, among others, include: (1) no

Sunday operations; (2) no operating on other days before 8:00 a.m. and after 6:00 p.m.; (3) requiring “[s]ound and vibration proofing of the building and equipment used in CrossFit training activities . . . **that eliminates all perceptible off-site vibration and sounds from any and all activities of the gym**” (emphasis added).

Due Process

“Although it is elementary that an owner of property has no constitutional right to maintain it as a public nuisance, it is equally elementary that he has a clear constitutional right to have it determined by due process whether in fact and law it is such a nuisance. As against this right, no ex parte declaration, however formal, by municipal authorities that it is a nuisance is final as against him.” (*Leppo v. City of Petaluma* (1971) 20 Cal.App.3d 711, 717 [97 Cal.Rptr. 840].)

Due process requires either “a judicial determination or a hearing before an administrative body in which [the property owner] had the opportunity to present evidence **and cross-examine the city’s witnesses**.” (*Ibid.*) Due process requires “a determination upon competent sworn testimony.” (*Ibid.*) The burden of proof lies with the city declaring a nuisance. (*Id.* at 718-19.) *See also People ex rel. Camil v. Buena Vista Cinema* (1976) 57 Cal.App.3d 497, 502 [129 Cal.Rptr. 315] citing *Leppo* with approval.)

“And an order of an administrative board **based upon incompetent hearsay evidence contravenes due process and cannot stand**” (emphasis added). (*Armistead v. Los Angeles* (1957) 152 Cal.App.2d 319, 324 [313 P.2d 127].) Due process also requires that the property have the right to counsel and to call witnesses. (*See People v. Gates* (1974) 41 Cal.App.3d 590, 602 [116 Cal.Rptr. 172].)

City of Costa Mesa v. Soffer (1992) 11 Cal.App.4th 378, 382, fn. 3 [13 Cal.Rptr.2d 735] agreed with *Leppo*’s holding that “it must be proven that property is a public nuisance before abatement can occur.” *Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 276 criticized *Leppo* and is cited by the City as setting a lower standard for due process that does not include judicial protections such as the ability to cross-examine witnesses under oath, subpoena power, or discovery. That case is distinguishable on the facts. *Mohilef* considered whether an ostrich and emu ranch was considered a public nuisance when it contained over 600 birds with “animal waste that generated an overwhelming odor which permeates the area.” (*Id.* at p. 278.) There were concerns that dried animal feces would become airborne and damage property or cause illness. Zoning administrators reported a relatively clean ranch which contrasted with letters from the community complaining about bird feathers and feces. The zoning administrator denied a request for judicial process and the Court of Appeal denied writ relief.

In denying the writ, the Court of Appeal considered four factors to determine the appropriate level of due process at an administrative hearing to abate a nuisance: “(1) the private interest that will be affected by the official action, (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, (3) the dignitary interest in informing individuals of the nature, grounds and consequences of the action and in enabling them to present their side of the story before a responsible governmental official, and (4) the governmental interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” (*Id.* at p. 287 citing *People v. Ramirez* (1979) 25 Cal.3d 260, 269.)

Weighing of the four factors detailed in *Mohilef* affirms the absence of due process for CHG.

Public Nuisance

“By ordinance the city legislative body may declare what constitutes a nuisance.” (Gov’t Code § 38771.) “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.” (Civ. Code § 3479.) “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). (Civ. Code § 3480.)

A “city’s designation of a nuisance does not necessarily make it so.” (*Net Connection Hayward, LLC v. City of Hayward* (N.D.Cal. July 18, 2013, No. C 13-1212 SC) 2013 U.S.Dist.LEXIS 100800, at *34 [quotation marks omitted].)

The “quality of life” attorney’s presentation at the City Council’s July 10, 2018, hearing comprehensively misapplied the city’s and state’s nuisance ordinances and statutes and misrepresented the facts to draw the unfounded conclusion that CHG had violated the nuisance laws when it had not.

Civil Code § 3480

Per the statute, at a minimum a public nuisance must affect “a considerable number of people” “at the same time.” (*Ibid.*) The quality of life attorney’s presentation and the supporting documents intentionally obscure the unique number of persons who had firsthand complaints about CHG’s activities. After first identifying complainants by their initials, later versions of the log book redacted all complainants’ unique identifiers. Over

the course of four years, it appears that there were less than ten complainants in any given year.

HBMC 1.04.050(C)

“[A]ny condition caused or permitted to exist in violation of any of the provisions of this code shall be deemed a public nuisance . . .” (*Ibid.*) To satisfy this nuisance statute, the quality of life attorney and City allege that CHG violated four ordinances: (i) HBMC § 8.24.040 (A), Prohibited Placement of Stereo Speakers; (ii) HBMC § 8.24.040 (I), Noise between 10:00 p.m. and 8:00 a.m.; (iii) HBMC § 8.24.030, Prohibited Vibrations; and (iv) HBMC § 17.28.030 (B), Prohibited use of public sidewalk and street. None satisfy.

1. *HBMC § 8.24.040 (A), Prohibited Placement of Stereo Speakers*

Specific prohibited noises. Notwithstanding any other provisions of this chapter, the following acts and the causing or permitting thereof are declared and deemed to be in violation of this chapter:

A. Placement of Stereo Speakers. The amplification of music or any other sound on private property, **through speakers located either (1) outdoors, or (2) in one (1) or more windows or doorways, when such speakers are directed towards**, and such music is plainly audible on, an immediately adjacent public right-of-way (emphasis added).

The quality of life attorney stated CHG violated this ordinance 12 times. CHG has no speakers located either outdoors or in one or more windows or doorways. The ordinance does not apply.

2. *HBMC § 8.24.040 (I)*

This ordinance prohibits “continuous, repeated or sustained noise from the premises of any commercial establishment which is adjacent to one or more residential dwelling units, including any outdoor area part of or under control of the establishment, 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.” (*Ibid.*) The quality of life attorney asserts three “violations” of this statute without any citations ever issued based on three e-mail complaints from Loma Drive on April 19, 2018; May 8, 2018; and June 19, 2018. Each of the three complaints are *prima facie* unsubstantiated hearsay. No scientifically measured sound testing data was taken by the City to provide evidence that this ordinance was violated. The City cannot support a finding that this ordinance was violated, particularly when two of the three complaints fail to identify whether the alleged noise was continuous, repeated or sustained.

3. *HBMC § 8.24.030, Prohibited Vibrations*

[N]o person shall make, permit to be made or cause to suffer 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** (emphasis added). (*Ibid.*)

When considering whether a noise, sound or vibration is unreasonable within the meaning of this section, the following factors shall be taken into consideration:

- A. The volume and intensity of the noise, particularly as it is experienced within a residence or place of business;
- 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. (HBMC § 8.24.030.)

Without any citations being issued to CHG, the quality of life attorney nevertheless asserts 169 violations of this ordinance over five calendar years based on individual hearsay complaints from adjacent Loma Drive residents and three reports from code enforcement officials who declined to cite CHG because they did not believe the ordinance was violated. Contrary to the attorney's assertions, the Loma Drive complainants are not of ordinary sensitivity. A recent survey of the CHG property identified that the retaining wall shared by several of these residents and attached to the CHG building encroaches on CHG's property. Naturally, encroaching structures will transmit vibrations. The survey also shows that the four-plex immediately behind the CHG building violates the R-2 zoning 5-foot setback requirement so that the four-plex is unlawfully too close to the CHG parcel and buildings. These residents' unlawful proximity and attachment to the CHG buildings cause them to be persons of extraordinary sensitivity, more likely to experience a disproportionate amount of vibration.

The City further provides no scientific, objective evidence or data to support the ordinance's reasonability factor test for vibrations. The residents who assert the vibrations are unreasonable refuse to participate in any sound or vibration studies to prove what they are saying is reasonable or accurate. The City again fails to meet its burden.

4. *HBMC § 17.28.030 (B), Prohibited use of public sidewalk and street*

The City's assertion that violation of this ordinance supports a declaration of public nuisance is incongruous. Chapter 17, in which this ordinance is found, is unrelated to the Chapter 8 nuisance ordinances required to underlie the finding of a public nuisance. The one citation HCG received for violating this section came following the City Manager expressly granting permission for HCG to use the public right of way for its patrons to run between the parking lots on its parcel. Leveraging this citation any further against CHG borders on sanctioning entrapment.

HBMC §§ 8.28.020(b)(3) and 8.28.030

The quality of life attorney cites the two statutes above to support the declaration of CHG as a public nuisance, the first stating a public nuisance for using a "premises in a manner which adversely affects the use or enjoyment of surrounding properties or uses thereof" (HBMC § 8.28.020(b)(3)) and the other relying on Hermosa Beach Municipal Code section 8.28.010, which parrots the language of Civil Code section 3480 requiring at a minimum a public nuisance must affect "a considerable number of people."

As discussed *supra*, the CHG's activities are not negatively impacting a considerable number of people with only a single digit number of unique complainants. The anecdotal hearsay complaints cited by the quality of life attorney further demonstrate unrealistic expectations and inappropriate residents' use, such as using the residence to conduct a law practice contrary to zoning restrictions, and complaints about hearing music or other sounds during the middle of the regular workday. The City's prior declaration of CHG as a public nuisance was legally unsupportable.

Inverse Condemnation

"To prevail on its inverse condemnation claim, [Plaintiff] had to show that the City's actions (1) did not substantially advance a legitimate public purpose; or (2) denied it economically viable use of its property." (*Del Monte Dunes v. City of Monterey* (9th Cir. 1995) 95 F.3d 1422, 1428 (citing *Nollan v. Calif. Coastal Comm'n* (1987) 483 U.S. 825, 834, 97 L.Ed. 2d 677, 107 S.Ct. 3141); *see also* Cal. Const. Art. I, § 19.) "The United States Supreme Court has declared that a compensable regulatory taking can occur when a regulation goes " 'too far,' " but stops short of denying all economically viable use." (*Avenida San Juan P'ship v. City of San Clemente*, 201 Cal. App. 4th 1256, 1272 [135 Cal. Rptr. 3d 570].) "Whether a regulation goes 'too far' is tested under what has been called the "*Penn Central* factors" approach. Our own Supreme Court has noted that there are three core factors: (1) the economic effect on the landowner; (2) the extent of the regulation's interference with investment-backed expectations; and (3) the character of the governmental action." (*Ibid.*) A minor *Penn Central* factor is whether the "subject parcel was singled out for unequal treatment." (*Id.* at p. 1273.) Attorneys' fees and

reasonable costs, including expert witness fees, are generally granted if the plaintiff prevails in inverse condemnation. (Code Civ. Proc. § 336.)

In arbitrarily targeting CHG for its legitimate and permitted use of its property, the City has not substantially advanced a legitimate public purpose. Gym members, the majority of whom are Hermosa Beach residents, have been deprived of the ability to exercise freely without interference and suffered less than the fully paid benefit they expected when signing up as gym members. Potential new members have been effectively discouraged from joining the gym while it hangs under the cloud of government intervention. A small number of politically connected individuals have been allowed to act under color of law to harass CHG owners and patrons. Hundreds of code enforcement visits, threats of criminal prosecution, a negative publicity campaign and ultimately a declaration of CHG as a public nuisance with proposed abatement measures intended to deprive CHG of its ability to function as an ongoing business concern highlight the illegitimate use of government power. The City of Hermosa Beach has done all of this without a single citation related to a nuisance ordinance being issued to CHG and without the City obtaining or providing any scientific evidence to prove that any sound or vibration originating from CHG is unreasonable or inappropriate.

City staff is recommending that CHG be forced to immediately stop use of any free weights or lose its business license. Additional recommended abatement measures, among others, include: (1) no Sunday operations; (2) no operating on other days before 8:00 a.m. and after 6:00 p.m.; (3) requiring “[s]ound and vibration proofing of the building and equipment used in CrossFit training activities . . . **that eliminates all perceptible off-site vibration and sounds from any and all activities of the gym**” (emphasis added).

The recommended abatement measures go far beyond legal nuisance standards and effectively prevent CHG from operating as a going concern. Due to the unreasonable expectations of residential neighbors with encroaching proximity and attachment to the CHG building, associated heightened sensitivity, and powerful political connections, it is unclear that the property will be usable for any purpose for which it is zoned. The proposed abatement measures completely frustrate the investment-backed expectations of the parcel owner and CHG investors. No broader public purpose is served and the City’s involvement is detrimental to everyone concerned other than just certain immediate neighbors on a single block of Loma Drive. CHG investors and the parcel owner relied on the City Council’s amendment of the M-1 zone for use as a gym and expended nearly \$700,000 collectively to establish a thriving business that the City Council now seeks to take away. It cannot be without appropriate compensation. (*See FlightCar, Inc. v. City of Millbrae* (N.D.Cal. June 16, 2014, No. C 13-5802) 2014 U.S.Dist.LEXIS 81688, at *36-37 (upholding alleged vested property interest in City-revoked conditional use permit on an inverse condemnation claim).)

Equal Protection

“To establish its equal protection claim in this case, Plaintiff must establish that Defendant intentionally, and without rational basis, treated [Plaintiff] differently from others similarly situated.” (*Net Connection Hayward, LLC v. City of Hayward* (N.D.Cal. July 18, 2013, No. C 13-1212 SC) 2013 U.S.Dist.LEXIS 100800, at *37-38 [quotation marks omitted].) The City has arbitrarily targeted without rational basis CHG among the several gyms and other businesses in Hermosa Beach. All or nearly all of the other gyms have been cited for code violations in far greater number than CHG’s lone citation for running in the public right of way. The City has conducted hundreds of baseless code enforcement visits, threatened criminal prosecution, orchestrated a negative publicity campaign and ultimately declared CHG a public nuisance with draconian abatement measures that will have the practical effect of shutting down the business, all to appease some friends of City Councilmembers. The right of equal protection under the Fourteenth Amendment to the Constitution and 42 U.S.C.S. § 1983 “does apply to the power of a city to regulate the use of land.” (*Vari-Build, Inc. v. Reno* (D.Nev. Sept. 18, 1984) 596 F.Supp. 673, 679, 1984 U.S.Dist.LEXIS 23527, at *13 (citing *Kinzli v. City of Santa Cruz* (N.D.Cal. 1982) 539 F.Supp. 887, 894).) The City of Hermosa Beach has violated CHG’s right to equal protection.

Damages

In anticipation of the August 28, 2018, meeting, CHG asked forensic accountant Ted Phelps to provide an inverse condemnation value for CHG. Although he has much more work to do to finalize his opinion, he reports that the fair value of CHG’s business as of December 31, 2016 is \$1,360,000.

CONCLUSION

CHG respectfully requests that the City reverse its declaration of CHG as a public nuisance, immediately cease and desist forever all attempts at restricting CHG’s lawful operation of its business, and allow it to operate as it did when the gym was first opened. Otherwise, CHG requests for itself and on behalf of the parcel owner, full compensation for the regulatory taking of CHG, interference with CHG’s contractual relations with gym members and potential future gym members, lost profits, recovery of invested costs, including costs and attorney’s fees, and loss of use of the parcel for its zoned purposes.

Very truly yours,



Robert D. Crockett
Crockett & Associates

EXHIBIT A

> Subject: Re: Gym Noise

>

> Hi Stacey,

>

> I'm so frustrated, it's now 10:20pm and there is still noise from the gym weights. We can see someone inside the gym from our roof deck.

>

> Becky

>

> Sent from my iPad

>

>> On Mar 2, 2018, at 7:29 PM, Rebecca Nakamura <beckynak@verizon.net> wrote:

>>

>> Hi again Stacey - just wanted to inform you that tonight the pounding from the gym has been so bad the my house is shaking at times. It's about 7:30pm and it's been going on for at least an hour.

>>

>> Becky

>>

>> Sent from my iPad

>>

>>> On Feb 16, 2018, at 7:02 PM, Rebecca Nakamura <beckynak@verizon.net> wrote:

>>>

>>> Thank you Stacey!

>>>

>>> Sent from my iPhone

>>>

>>>> On Feb 16, 2018, at 7:20 AM, Mayor Pro Tem Stacey Armato <sarmato@hermosabch.org> wrote:

>>>>

>>>> Thank you, Becky. We are building the record and this information is helpful. I'm sorry they continue to be terrible neighbors.

>>>>

>>>> Sent from my iPhone

>>>>

>>>>> On Feb 16, 2018, at 7:07 AM, Rebecca Nakamura <beckynak@verizon.net> wrote:

>>>>>

>>>>> Hermosa code enforcement -

>>>>>

>>>>> I was out of town most of the month of January, however since I've been back, the cross fit gym on Cypress has still consistently been very loud starting at 6:30am. Most days this includes both music and some sort of thumping. Today, I don't hear the music, but the thumping is loud.

>>>>>

>>>>> Becky Nakamura

>>>>>

>>>>> Sent from my iPad

>>>>>

>>>

>>

>

To: Mayor Pro Tem Stacey Armato[sarmato@hermosabch.org]
From: robert walsh
Sent: Thur 4/5/2018 3:21:42 PM
Subject: Re: gym

Hi Stacy,
Thank you so much for your quick response. I am happy to hear that you are working on it. As you know, this has been an issue since the gym first opened. I look forward to it finally being resolved.

Thanks,
Robert

On Apr 5, 2018, at 11:38 AM, Mayor Pro Tem Stacey Armato
<sarmato@hermosabch.org> wrote:

Thank you, Robert. I'm so sorry for the continued nuisance. We are working on things on our end and will be in touch as soon as we know next steps.

Thanks,
Stacey

Stacey Armato
Mayor Pro Tem
Hermosa Beach, CA
310-709-8177 (cell)
sarmato@hermosabch.org
www.hermosabch.org
<image001.jpg>

From: robert walsh [mailto:rwalsh473@gmail.com]
Sent: Wednesday, April 04, 2018 5:46 PM
To: Mayor Pro Tem Stacey Armato <sarmato@hermosabch.org>; Councilmember Hany Fangary <hfangary@hermosabch.org>; drmarycampbell@gmail.com
Cc: larrynak <larrynak@verizon.net>; Michael Binder <binder@altitudeaviation.com>; Mike Owen <mikeowennyc@gmail.com>
Subject: Re: gym

Hi All,

Please note that at 6:30 pm there is loud banging coming from the Cross fit gym on Cypress. I am trying to get some work done and this disturbance is really annoying.

Please help us get some peace in our Hermosa Beach homes.

Thank you,
Robert Walsh

From: Councilmember Stacey Armato
Sent: Sunday, January 15, 2017 11:36:23 AM
To: Laurence Nakamura
Cc: Justin Edson; John Jalili
Subject: Re: Gym

Thank you, Larry. I've now received multiple complaints in the last five minutes.

Copying our city manager so he is aware of the continued, unacceptable nuisance as we work on next steps.

Stacey

Sent from my iPhone

> On Jan 15, 2017, at 11:28 AM, Laurence Nakamura <larrynak@verizon.net> wrote:

>

>

> Stacey particularly heavy today (Sunday 11:10- current)

>

> Laurence Nakamura LEED AP

To: Robert Walsh[rwalsh473@gmail.com]
From: Mayor Pro Tem Stacey Armato
Sent: Thur 4/19/2018 12:42:13 PM
Subject: RE: gym

Hi, Robert.

This really is such a slow process, made even more painful by the constant nuisance you all have to deal with on a daily basis.

Thank you for your patience.

Stacey

Stacey Armato
Mayor Pro Tem
Hermosa Beach, CA
310-709-8177 (cell)
sarmato@hermosabch.org
www.hermosabch.org



From: Robert Walsh [mailto:rwalsh473@gmail.com]
Sent: Thursday, April 19, 2018 1:23 PM
To: Councilmember Hany Fangary <hfangary@hermosabch.org>
Cc: Mayor Pro Tem Stacey Armato <sarmato@hermosabch.org>; larrynak <larrynak@verizon.net>; Michael Binder <binder@altitudeaviation.com>; Mike Owen <mikeowennyc@gmail.com>
Subject: Re: gym

We really appreciate your support in resolving this unnecessary nuisance Hany.

Regards,
Robert

On Apr 19, 2018, at 12:51 PM, Councilmember Hany Fangary <hfangary@hermosabch.org> wrote:

Robert, thanks for your input, I appreciate it. We're still working on this.

<image001.jpg>

Hany S. Fangary
Councilmember, Hermosa Beach
1315 Valley Drive
Hermosa Beach, CA 90254
Phone: 424-235-0857
hfangary@hermosabch.org
www.hermosabch.org

On Jul 12, 2016, at 3:28 PM, Laurence Nakamura <larrynak@verizon.net> wrote:

Hi Stacy

Let me check with the neighbors who attended the meeting. My thoughts are that since the gym already is aware that there have been more complaints about their operation the element of surprise is gone.

So to be fair to the large number of people on the original list who complained about the daily heard of runners we should probably attempt to have code enforcement enforce the code.

Can I get back to you soon?

Laurence Nakamura LEED AP

On Jul 12, 2016, at 12:25 PM, Councilmember Stacey Armato <sarmato@hermosabch.org> wrote:

Thanks for the update, Larry.

Might I share the video with Bob to have him follow up on that nuisance? He seemed very willing previously to issue a citation on that. Or, would you like us to put that off?

Thanks,
Stacey

Stacey Armato
City Councilmember
Hermosa Beach, CA
310-709-8177 (cell)
sarmato@hermosabch.org

From: Laurence Nakamura [<mailto:larrynak@verizon.net>]

Sent: Tuesday, July 12, 2016 7:45 AM

To: Councilmember Stacey Armato <sarmato@hermosabch.org>

Subject: Re: info

Hi Stacy overall it has been very quite with the exception of a day or so. reasonable enough to me. How ever there were two giant drops that were the house rattling kind. We don't get those as much but they are the most disturbing kind.

Also a different neighbor made a video I will send you a link. This neighbor is irritated by the use of public streets.

Also pretty much confirmed that the gym is aware we are monitoring.

To: Councilmember Justin Massey[jmassey@hermosabch.org]
From: Michael Binder
Sent: Wed 3/21/2018 10:33:41 AM
Subject: RE: Cross Fit on Cypress Avenue

I spoke with her about 30 minutes ago.

The noise and vibration with Cross Fit are not improving and just getting out of control.

I hope you guys don't give the Sanford brothers the keys to the city when they take over the community center!

We are looking to you guys to resolve this issue quickly.

I leave you with one thought and that is imagine you get to wake up to this tomorrow morning and then you get to look forward to it the next day.

From: Councilmember Justin Massey <jmassey@hermosabch.org>
Sent: Wednesday, March 21, 2018 10:25 AM
To: Michael Binder <binder@altitudeaviation.com>
Subject: Re: Cross Fit on Cypress Avenue

Binder - I spoke w Stacey, but can't discuss CrossFit w her because she's already spoken to Hany. I believe she was going to be in touch with you. Have you talked recently?

Justin Massey
Hermosa Beach City Council
(424) 262-1390 (voicemail)

From: Michael Binder <binder@altitudeaviation.com>
Sent: Wednesday, March 21, 2018 7:19:30 AM
To: Michael Binder; Jim Heenan; Mary Campbell; Councilmember Justin Massey; Mayor Jeff Duclos; Mayor Pro Tem Stacey Armato; Councilmember Hany Fangary
Subject: Re: Cross Fit on Cypress Avenue

Another morning and more weight dropping!

Please help solve this problem because this is not acceptable!!

Binder

> On Mar 17, 2018, at 11:43 AM, Michael Binder <binder@altitudeaviation.com> wrote:
>
> Council Members,
>
> As all of you are enjoying a beautiful St. Patrick's day parade I am home working with a client on the phone and dealing with the gym dropping weights and causing vibrations for the past hour.
>
> Once again this nuisance is not ACCEPTABLE!!!!
>

EXHIBIT B

Cc: Sigell, Lisa[L.Sigell@cbs.com]; Councilmember Hany Fangary[hfangary@hermosabch.org]; Mayor Jeff Duclos[jduclos@hermosabch.org]; laura@mecoy.net[laura@mecoy.net]; John Jalili[Jjalili@hermosabch.org]
To: Mayor Pro Tem Stacey Armato[sarmato@hermosabch.org]
From: Lisa Sigell
Sent: Fri 5/25/2018 9:44:49 AM
Subject: Re: Hi Lisa Sigell KCBS

Thank you so much !!!

On May 25, 2018, at 10:36 AM, Mayor Pro Tem Stacey Armato <sarmato@hermosabch.org> wrote:

Hi, Lisa.

Laura will be connecting with you on behalf of the City. She's copied here and will be in touch soon.

Stacey

Sent from my iPhone

On May 25, 2018, at 10:26 AM, Lisa Sigell <lsigell@gmail.com> wrote:

Thank you all again. [Lsigell@gmail.com](mailto:lsigell@gmail.com) I look forward to taking with one of you. :)

On May 25, 2018, at 9:59 AM, Sigell, Lisa <LSigell@cbs.com> wrote:

Hi Mayor and Councilmember Stacey, & Hany,

My name is Lisa Sigell I'm a reporter with KCBS doing the CrossFit story that you will hold a hearing on...I was wondering if one of you could call me to give me the best name of a resident to talk to and also if one of you could quickly talk about the what the hearing will be...

We are heading down there now and I would so appreciate your help as I don't really have a starting point and you are always so helpful. Please hit reply all as I get my Gmail not my CBS mail in the field of call me at 310-625-5373

Lisa Sigell

Lisa Sigell
KCBS/KCAL
4200 Radford Avenue
Studio City, CA 91604

3106255373 cell

To: Lisa Sigell[lsigell@gmail.com]
Cc: Sigell, Lisa[LSigell@cbs.com]; Councilmember Hany Fangary[hfangary@hermosabch.org]; Mayor Jeff Duclos[jduclos@hermosabch.org]; laura@mecoy.net[laura@mecoy.net]; John Jalili[Jjalili@hermosabch.org]
From: Mayor Pro Tem Stacey Armato
Sent: Fri 5/25/2018 9:36:44 AM
Subject: Re: Hi Lisa Sigell KCBS

Hi, Lisa.

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Stacey

Sent from my iPhone

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Lisa Sigell

Lisa Sigell
KCBS/KCAL
4200 Radford Avenue
Studio City, CA 91604

3106255373 cell

From: Lisa Sigell <lsigell@gmail.com>
Date: May 25, 2018 at 10:44:49 AM PDT
To: Mayor Pro Tem Stacey Armato <sarmato@hermosabch.org>
Cc: "Sigell, Lisa" <LSigell@cbs.com>, Councilmember Hany Fangary <hfangary@hermosabch.org>, Mayor Jeff Duclos <jduclos@hermosabch.org>, "laura@mecoy.net" <laura@mecoy.net>, John Jalili <Jjalili@hermosabch.org>
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To: Lisa Sigell[lsigell@gmail.com]; Sigell, Lisa[LSigell@cbs.com]
Cc: Councilmember Hany Fangary[hfangary@hermosabch.org]; Mayor Jeff Duclos[jduclos@hermosabch.org]; Laura Mecoy[laura@mecoy.net]
From: Mayor Pro Tem Stacey Armato
Sent: Fri 5/25/2018 10:18:25 AM
Subject: RE: Hi Lisa Sigell KCBS

Thank you, Lisa.

Laura will hit on these for you when she reaches out shortly.

It truly is a beautiful day to cover a story in Hermosa. The beach is gorgeous today, we have the farmer's market on 11th and Valley all afternoon, and lots of yummy lunch options throughout town. Enjoy! ☺

Stacey Armato
Mayor Pro Tem
Hermosa Beach, CA
310-709-8177 (cell)
sarmato@hermosabch.org
www.hermosabch.org



From: Lisa Sigell [mailto:lsigell@gmail.com]
Sent: Friday, May 25, 2018 11:05 AM
To: Sigell, Lisa <LSigell@cbs.com>
Cc: Mayor Pro Tem Stacey Armato <sarmato@hermosabch.org>; Councilmember Hany Fangary <hfangary@hermosabch.org>; Mayor Jeff Duclos <jduclos@hermosabch.org>
Subject: Re: Hi Lisa Sigell KCBS

Hi. Thank you all for your help. Is there a way someone can call me so I can get a little insight into this..and tell you my questions for City like The challenges you face by not being able to witness , how long has this been going on , etc. Just for background information this really is a neighbor versus business story and it seems you all are doing your absolute best to deal with it but it's hard if you can't but witness things so I just wanted to see if somebody could call me just so I make sure I get everything absolutely right you, you are the best ! have a great weekend for those I will not meet today.. Ryan from the easy reader send me a list of complaints from this year but I was wondering if you guys have a stack of complaints or anything else you wanted to give me to add to the story. Excited to spend the day in your beautiful city today.
On May 25, 2018, at 9:59 AM, Sigell, Lisa <LSigell@cbs.com> wrote:

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Lisa Sigell

Lisa Sigell
KCBS/KCAL
4200 Radford Avenue
Studio City, CA 91604

3106255373 cell

To: 'Lisa Sigell'[lsigell@gmail.com]
Cc: Mayor Pro Tem Stacey Armato[sarmato@hermosabch.org]
From: Laura Mecoy
Sent: Fri 5/25/2018 1:05:20 PM
Subject: RE: Email.

Hi there:

Also in response to your questions:

1. Does someone with the City have to witness the noise and nuisance problems for the City to take any action?
No.
2. If the City does find that Crossfit is a public nuisance, what are the next steps, i.e. can the City shut them down or require some other remedial actions?

The City can impose conditions to eliminate the nuisance problems; shutting down the business would be a last resort. This is a land use compatibility issue; the goal is to modify behavior to achieve compatibility.

Laura Mecoy

-----Original Message-----

From: Laura Mecoy [mailto:laura@mecoy.net]
Sent: Friday, May 25, 2018 2:01 PM
To: 'Lisa Sigell' <lsigell@gmail.com>
Cc: 'sarmato@hermosabch.org' <sarmato@hermosabch.org>
Subject: RE: Email.

http://hermosabeach.legistar1.com/hermosabeach/meetings/2018/5/1160_A_City_Council_18-05-22_Adjourned_Meeting_Agenda.pdf

-----Original Message-----

From: Lisa Sigell [mailto:lsigell@gmail.com]
Sent: Friday, May 25, 2018 1:57 PM
To: laura@mecoy.net
Cc: sarmato@hermosabch.org
Subject: Email.

Thank you for helping us. I have not received email if it came to my Cbs address I won't receive them here would you mind sending to this address. Thank you. And thank you for all you have done to help. You are a great team.

Cc: Mayor Pro Tem Stacey Armato[sarmato@hermosabch.org]; Councilmember Hany Fangary[hfangary@hermosabch.org]; Mayor Jeff Duclos[jduclos@hermosabch.org]
To: Sigell, Lisa[LSigell@cbs.com]
From: Lisa Sigell
Sent: Fri 5/25/2018 10:04:55 AM
Subject: Re: Hi Lisa Sigell KCBS

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To: Mayor Pro Tem Stacey Armato[sarmato@hermosabch.org]; lsigell@gmail.com[lsigell@gmail.com]; Councilmember Hany Fangary[hfangary@hermosabch.org]; Mayor Jeff Duclos[jduclos@hermosabch.org]
From: Sigell, Lisa
Sent: Fri 5/25/2018 8:59:40 AM
Subject: Hi Lisa Sigell KCBS

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