



Legislation Details (With Text)

File #: REPORT 18-0532 **Version:** 1 **Name:**
Type: Action Item **Status:** Public Hearing
File created: 8/23/2018 **In control:** City Council
On agenda: 8/28/2018 **Final action:**
Title: CONTINUED HEARING ON NUISANCE ABATEMENT
OF PROPERTY AT 725 CYPRESS - CONSIDERATION OF
MEASURES TO ABATE THE PUBLIC NUISANCE ACTIVITIES
(Community Development Director Ken Robertson)

Sponsors:

Indexes:

Code sections:

Attachments: 1. 1. July 10, 2018 Meeting Agenda Packet, 2. 2. Resolution XX, 3. 3. PowerPoint Presentation of July 10, 2018, 4. 4. SUPPLEMENTAL eComment from Daniel Nguyen (submitted 8-27-18 at 1:42pm).pdf, 5. 5. SUPPLEMENTAL Letter from Baker Burton Lundy (added 8-27-18 at 5:00pm).pdf, 6. 6. SUPPLEMENTAL eComment from Jon Starr (submitted 8-28-18 at 9:17am).pdf, 7. 7. SUPPLEMENTAL eComment from Amy Noland and letter from Crockett & Associates on behalf of CHG (submitted 8-28-18 at 3:16pm).pdf, 8. 8. SUPPLEMENTAL Emails from Residents from 07-12-18 to 08-21-18 (added 8-28-18 at 6:30pm).pdf

Date	Ver.	Action By	Action	Result
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Honorable Mayor and Members of the Hermosa Beach City Council Regular Meeting of August 28, 2018

CONTINUED HEARING ON NUISANCE ABATEMENT OF PROPERTY AT 725 CYPRESS - CONSIDERATION OF MEASURES TO ABATE THE PUBLIC NUISANCE ACTIVITIES (Community Development Director Ken Robertson)

Recommended Action:

It is recommended that City Council:

1. Take limited testimony from persons who did not speak at the July 10 hearing; and
2. Adopt the attached resolution declaring the activities at Crossfit Horsepower (725 Cypress Avenue) constitute a public nuisance and ordering abatement and setting forth the abatement measures.

Background:

On July 10, 2018 City Council conducted a hearing to consider whether the activities at Crossfit Horsepower constitute a public nuisance. Refer to **Attachment 1** for meeting information. Based on the long history of complaints and code enforcement reports and extensive public testimony the Council voted 2-0-1 (Fangary abstaining) to declare that the activities constitute a public nuisance.

Council continued the hearing to allow consideration of further testimony from any persons that were unable to attend, in specific response to Crossfit Horsepower's representation that its attorney was unable to attend. Council further directed staff to return with a resolution to memorialize its decision to declare the activities a nuisance and to recommend appropriate measures to abate the nuisance.

Please refer to the July 10, 2018 staff report for further background

CONDUCT OF THE HEARING

Staff recommends that since Crossfit Horsepower did not have legal representation at the July 10 hearing, that up to 15 minutes be given to its attorney, and that testimony otherwise be limited to 3 minutes per any other speaker **that did not participate in the July 10 meeting**, and further allow the Crossfit attorney a five minute rebuttal. Council deliberation and action would follow.

Analysis

Staff recommends that City Council take formal action by adoption of the attached resolution to abate the nuisance since these conditions have been ongoing since 2014, and continue with complaints received as recent as August 23. As set forth in the resolution, abatement consists of both operational and physical changes.

Staff has met with the business owners of Crossfit Horsepower to discuss possible measures that would be agreeable and feasible for the business to abate the nuisance activities. At this time, the business owners have not formally proposed any measures to abate the nuisance, although they have indicated a willingness to work with the City to find solutions.

Complaints from neighboring residents about the business have continued, summarized as follows. This shows that the nuisance is continuing, and likely will continue unless formal measures are imposed on the business, or if the business is closed.

07/12/2018	Thursday	9:45-10a	LN	3-4 low frequency noises from the gym
07/17/2018	Tuesday	6:45am	RN	weight noise starting at about 6:45am
07/17/2018	Tuesday	7:50am/9:31-9:40a	LT	loud drop/series of drops totaling 20
07/19/2018	Thursday	7:57pm	LT	very loud drops of weight from the gym
07/21/2018	Saturday	10:56am	LT	heard and felt a series of drops from the gym - about eight drops
07/28/2018	Saturday	9:50am	LT	Lots of pounding from the gym. Could still feel and hear over water running in bathroom and TV on.
07/31/2018	Tuesday	10:55am	LT	clear and heavy series of drops coming from the gym right now
07/31/2018	Tuesday	10:50am-11:15am	LN	weight noise from the gym
08/07/2018	Tuesday	8am	LN	noise from weight activity coming from the gym
08/08/2018	Wednesday	9:20a - 9:53a	LT	loud pounding coming from the gym
08/08/2018	Wednesday	10:24a	LN	more noise from the gym activity
08/16/2018	Thursday	8:30	LT	music and pounding bass from the gym is very loud and disturbing
08/16/2018	Thursday	9:52am	LT	random and loud wall-shaking weight drops
08/21/2018	Tuesday	6:40am	LN	weight noise and music starting
08/23/2018	Thursday	7:30am	RH	loud music playing two mornings in a row (yesterday and today) and I heard weight dropping last week

Pursuant to Section 8.28 of the Municipal Code

1. Resolution of Abatement. The City Council's decision shall be by resolution containing the informal findings of the Council upon which such determination of nuisance is based, shall order the abatement of the nuisance, shall describe the needed corrections and/or repairs necessary to abate the nuisance, and shall contain the time within which the nuisance is to be abated. Any property owner shall have the right to have the nuisance, as declared, abated, provided the same is completed prior to the expiration of the period of time set forth in said resolution. The time set for abatement, upon good cause shown, may be extended for a reasonable time by the Council. City Council will also need to make findings that, per Section 1.04.040 of the Municipal Code: "any condition caused or permitted to exist in violation of any of the provisions of this code shall be deemed a public nuisance and may be summarily abated by the city, and each day such condition continues shall be regarded as a new and separate offense."
2. Final Notice. Upon expiration of the time specified for abatement, the City Attorney shall notify the owner of the affected premises, by registered or certified mail, of such expiration and inform the owner that such abatement must be completed or a further appeal made to the City Council within ten days from the date of mailing.
3. City Abatement. If the nuisance is not abated within the time set forth in the resolution ordering abatement, or such later date as may be determined by the City Council, the City Attorney shall notify the Director of Community Development that the abatement proceedings were legally conducted and are concluded, whereupon the Director is empowered to cause the nuisance to be abated by city forces or private contract. Upon obtaining an abatement warrant, the Director of Community Development is expressly authorized under this Chapter to enter

upon the premises for the purpose of abating such nuisance in the manner herein provided.

4. Recovery of City Costs. The Chapter goes on to detail the procedures for recovering the City's costs for abating the nuisance, including staff time and out of pocket expenses.

Furthermore, pursuant to Section 8.28.110 of the Municipal Code, the City Council may also direct the City Attorney to commence a civil action to abate a nuisance as an alternative or in conjunction with the abatement proceedings.

In addition, as previously noted the City Council may order revocation or suspension of the business license. (Exhibit 4.) HBMC Section 5.04.260 states:

Any license issued under the provisions of this title is issued and used by all parties receiving or using the same subject to the express condition that the city council may revoke or suspend the license or impose new conditions in any of the followings instances:

- A. Where the city council finds and determines that **the preservation of the public health, safety and peace demand revocation of such license or permit**;
- B. Where the **licensee or permittee has violated any provisions of this code, any ordinance of the city** or any other provision of law;
- C. Where a permit or license has been granted on false or fraudulent evidence, testimony or application;
- D. Where the licensee or permittee has violated the terms and provisions of such license or permit;
- E. Where the licensee has conducted the business in an immoral or disorderly manner, or **has failed to exercise reasonable efforts** to maintain order among the customers and patrons and **to prevent violation of law or ordinance** by them; or
- F. **The business has been conducted to be a public nuisance**

Attachments:

- 1. July 10, 2018 Meeting Agenda Packet
- 2. Resolution XX
- 3. PowerPoint Presentation of July 10, 2018

Respectfully Submitted by: Ken Robertson, Community Development Director

Concur: Joy Abaquin, City Prosecutor

Concur: Michael Jenkins, City Attorney

Approve: John Jalili, Interim City Manager