



Staff Report

File #: REPORT 18-0419, Version: 1

Honorable Mayor and Members of the Hermosa Beach City Council Regular Meeting of July 10, 2018

NUISANCE ABATEMENT OF PROPERTY AT 725 CYPRESS

(Community Development Director Ken Robertson)

Recommended Action:

It is recommended that City Council adopt the attached resolution declaring the activities at Crossfit Horsepower (725 Cypress Avenue) constitute a public nuisance and ordering abatement.

Background:

Crossfit Horsepower is a gym in a light manufacturing zone (M1) on Cypress Avenue that neighbors a residential zone (R2) on Loma Drive, which is directly west of the gym. Crossfit Horsepower opened in September of 2014. Since November of 2014, residents from Loma Drive have reported prohibited noises, vibrations, and use of the public right of way coming from Crossfit Horsepower every year. In 2014 to 2015, there were at least 98 e-mail complaints. (Exhibit 3.) In 2016 to 2017, there were at least 19 e-mail complaints. (Exhibit 2.) In 2018, there have been at least 58 e-mail complaints. (Exhibit 1.)

On January 20, 2015, Building Official Bob Rollins and Building Inspector Frank Valles went to the south parking lot of the Crossfit Horsepower gym and felt two faint thumps at the foundation wall. (Exhibit 3, p. 21.) Looking through the window on the south side, they observed a class in progress and a couple that clearly just finished using weights. The entire class then came outside for a couple of laps around the parking lot. (Exhibit 3, p. 21.)

On January 26, 2015, a weight drop test was conducted at the gym while representatives of the City stayed at four residences on Loma Drive and 8th Street. (Exhibit 3, p. 2.) The two gym owners and an employee dropped rubber weights weighing between 80 and 350 pounds. (Exhibit 3, p. 2.) The weights were dropped from above their heads simultaneously and sequentially. (Exhibit 3, p. 2.) All the neighbors that participated in the test reported that the vibrations caused by the test were similar to, but less intense than the vibrations that disturb them. (Exhibit 3, p. 2.)

That same day, a community meeting was held with 22 residents and Building Official at the Community Center to discuss the issues and find methods to resolve the problems. (Exhibit 3, p. 118.) On January 27, 2018, a meeting was held with both owners of the gym, the City Manager at the time, the Community Development Director, Building Official and Code Enforcement Officer. (Exhibit 3, p. 118.) As a result of that meeting, a letter was issued by the Building Official to the owners of the Crossfit Horsepower gym, requesting that the gym immediately prohibit and strictly enforce the dropping of weights, post "No Weight Dropping" signs, and ensure that any outdoor

activities are conducted with respect for the neighbors. (Exhibit 3, pp. 126-127.)

On February 11, 2015, Bob Rollins emailed the owners of the gym, notifying them of the continued complaints about vibrations and requested the gym to take additional mitigating steps such as building an anechoic chamber or adding more padding. (Exhibit 3, pp. 134.) Rollins included in the email advice from another building expert:

The noise impacts with the weights could be [mitigated] possibly by building a separate floor with a passive isolation system (rubber isolators) on top of the existing floor and not connected to the exterior walls. The exterior walls should be isolated with a separate wall (not connected) with an air gap and sound insulation to reduce the noise through the existing wall. The ceilings should also be insulated with sound batts. The building is built on sand which transmits vibrations (noise impacts). The best way to describe the noise impact problem is that the building is a big bass drum (concrete and concrete masonry unit blocks) and needs to be designed as [an] anechoic chamber.

(Exhibit 3, pp. 134.) The gym owners responded in refusing to take those steps, but stated they “will remain open to any reasonable request that does not further negatively impact our ability to run our business.” (Exhibit 3, 135-136.)

Another community meeting was held on June 20, 2016 with six residents, the City Manager at the time, Community Development Director, Economic Development Officer, City Prosecutor and Code Enforcement.

On February 10, 2017, Code Enforcement Officer Justin Edson and Officer Verduzco went into a residence on Loma Drive for 45 minutes and heard “thumping” or dropping of weights every few minutes. (Exhibit 2, p. 2.) On the week of March 13, 2017, the City Manager met with residents. (Exhibit 2, p. 36.) On May 16, 2017, Officer Edson issued Crossfit Horsepower a citation (Exhibit 2, p. 43.) for allowing patrons to run on the sidewalk after being given two warnings, which was documented by a video. On May 18, 2017, Councilmember Stacey Armato and the City Prosecutor held another community meeting with approximately six residents.

On March 12, 2018, Code Enforcement Officers Jim Heenan and Meah Stafford conducted a sound test with the Crossfit Horsepower gym. (Exhibit 1, p. 5.) During the course of the test, it was observed that music could be heard on Loma Drive if the doors of the gym were open or if the volume was turned to full volume with either doors open or closed. (Exhibit 1, pp. 5-6.)

On April 23, 2018, another community meeting was held with nine residents, the Community Development Director, the Quality of Life Prosecutor and Code Enforcement Officers. (Exhibit 1, pp. 6-7.)

On April 27, 2018, Officer Stafford entered a residence on Loma Drive and instantly heard faint noises and some high intense thumps along with vibrations that were more intense and clearer than the vibrations felt outside. (Exhibit 1, p. 7.) She compared the vibrations to those of a bowling alley. (Exhibit 1, p. 7.)

On April 29, 2018, Officer Stafford heard several faint thumping sounds along the cinder block wall of the gym. She entered one of the resident’s garage and heard the thumps more clearly and heard

what she believed to be dumbbells dropping. (Exhibit 1, p. 7.)

On May 7, 2018, Officer Stafford felt several thumps and vibrations every 20 seconds from the front porch of one of the residences on Loma Drive, about 15 feet away from the gym. (Exhibit 1, p. 8.) At the same time, she heard moderate sounds from the dropping of the weights and dumbbells from within the gym. (Exhibit 1, p. 8.)

On May 11, 2018, Officer Stafford felt faint thumps and moderate vibration against the cinder block wall as well as witnessed runners going in and out of the gym. (Exhibit 1, p. 9.)

On May 22, 2018, the City Council determined that there was sufficient evidence of a public nuisance on the subject property to set a public hearing to determine whether the activities at Crossfit Horsepower constitute a public nuisance and whether abatement proceedings should be initiated. (Exhibit 5.) The City Council set the public hearing for July 10, 2018 pursuant to the abatement procedures outlined in Section 8.28.070 of the Hermosa Beach Municipal Code.

Analysis:

The Quality of Life Prosecutor has advised using the Nuisance Abatement procedures outlined in Chapter 8.28 of the Hermosa Beach Municipal Code (HBMC), as summarized below:

1. Precise identification of violations and solutions.
2. Setting the matter for public hearing by the City Council.
3. Conducting the hearing, consideration of evidence submitted, and decision by Council.
4. Implementation of the Council decision regarding abatement, e.g. cease use of any weights at the location.
5. Recovery of City costs to abate the nuisance. (Including all staff time and out of pocket expenses.)

We are presently at Step 3 of the process, conducting the hearing to determine whether a public nuisance exist and whether abatement is necessary.

HBMC Section 1.04.050, subdivision (C) states, "Violations Deemed To Be a Public Nuisance. In addition to the penalties hereinabove provided, any condition caused or permitted to exist in violation of any of the provisions of this code shall be deemed a public nuisance..." The Horsepower Crossfit gym has been in express violation of the City's Municipal Code on several occasions.

The gym has violated three provisions in the Noise Control chapter. HBMC Section 8.24.120 also states, "Operation or Maintenance of Other Machinery. The operation or maintenance of any device, instrument, equipment, vehicle or machinery in violation of any provisions of this chapter...shall be deemed and is declared to be a public nuisance..."

HBMC Section 8.24.040 states, "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:"

Subdivision (A) prohibits: "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.” Officer Stafford’s report states that on March 12, 2018, a sound test was conducted at the gym in which music was heard from Loma Drive and Cypress Avenue if the doors of the gym were open and/or the volume was turned up to 100%. (Exhibit 1, p. 5.) Officer Stafford heard music from the streets of Loma Drive and Cypress Avenue on March 30, 2018, April 23, 2018, May 7, 2018, and May 11, 2018. (Exhibit 1, pp. 6-9.) Officer Stafford states that she could hear the music from as far as 85 feet from the front doors of the gym. In addition, the complaint log reflects complaints of music on March 11, 2018, March 30, 2018, and May 1, 2018. In 2017, there were five complaints of loud music from residents on Loma Drive. (Exhibit 1, pp. 1-3.) These are all violations of subdivision (A) of HBMC Section 8.24.040.

Subdivision (I) prohibits: “Commercial establishments adjacent to residential property. Notwithstanding any provision of this code to the contrary, 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 the 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.” The complaint log in Officer Stafford’s report (Exhibit 1, pp. 1-3.) reflects complaints of music prior to 8:00 a.m. on April 19, 2018, May 8, 2018, and June 19, 2018, all violations of subdivisions (I) of HBMC Section 8.24.040.

HBMC Section 8.24.030 states:

Prohibited noises--General standard.

Unless otherwise permitted in this chapter, no 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. 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.

On January 20, 2015, Building Official Rollins and Building Inspector Valles experienced two faint thumps at the foundation wall during a class, and personally observed a couple who had clearly just finished using weights. (Exhibit 3, p. 21.) That same month, City officials conducted a weight test that demonstrated that vibrations from **rubber** weights caused vibrations in the residences. (Exhibit 3, p. 2.) On February 2, 2015, one of the residents on Loma Drive was home ill unable to sleep due to the constant dropping of weights. (Exhibit 3, pp. 27-28.) That resident walked over to the Crossfit Horsepower gym and took video of patrons dropping weights in the gym. (Exhibit 3, p. 27.) Rollins, Edson and Stafford have all experienced the vibrations at different times throughout the past four years. In 2018, Officer Stafford felt the vibrations on multiple occasions as she could hear weights

being dropped at the same time. (Exhibit 1.)

All six factors are present, demonstrating that the vibrations are unreasonable within the meaning of HBMC Section 8.24.030. With regards to Factor A, all the attached e-mails show that the residents experience vibrations in their homes at varying levels of intensity, but most e-mails state that the vibrations are often equivalent to an “earthquake,” “jarring shock waves,” “pounding,” “massive shocks,” “banging noise,” and “violent shakes.” As to Factor B, the logs and e-mails show that the vibrations are felt throughout the day, sometimes in short intervals and other times throughout an entire hour or two hours, and sometimes more. The number of complaints show that the vibrations are continuous. Under Factor C, the logs and e-mails state that the vibrations are loud, often louder than household appliances and are “booming like fireworks.” (Exhibit 1, p. 2, 3, 23.) Residents have stated that the vibrations are more distinct than normal construction or any of the noise that have come from other commercial establishments on Cypress Street prior to the gym opening in 2014. (Exhibit 3, p. 15.) In terms of Factor D, the gym is directly adjacent to homes, and the vibrations have affected the entire 700 block of Loma Drive on both sides of the street, the residents on 8th Street, and some residents on the 600 block of Loma Drive. To demonstrate Factor E, Officer Stafford’s report shows a graph of the time of day the complaints in 2018. (Exhibit 1, p. 4.) The emails and logs show varying times throughout the day from early morning to about eight to nine in the evening. The vibrations often wake up the residents first thing in the morning, prevents them from working at home or concentrating throughout the day, and bothers them in the evening. To address Factor F, at this time, the vibrations are anticipated to continue unless the City Council takes action. Based on the totality of circumstances, the vibrations are so loud, prolonged and harsh as to be physically annoying to the reasonable residents of Loma Drive who are of ordinary sensitivity. The vibrations cause and contribute to the unreasonable discomfort of several residents. Therefore, the gym is in violation of HBMC Section 8.24.030.

In addition, the Horsepower Crossfit gym is in violation of a zoning ordinance. HBMC Section 17.28.030, subdivision (B) states, “Enclosures. All uses [in the M-1 zone] shall be conducted wholly within a building enclosed on all sides.” Officer Stafford’s report states that she observed several patrons from Crossfit Horsepower running out of the front door and around the block on April 23, 2018. (Exhibit 1, pp. 6-7.) On May 7, 2018 Officer Stafford witnessed patrons running in the street and then returning to the gym, which is documented with two photos. (Exhibit 1, p. 8.) On May 11, 2018, Officer Stafford observed several patron runners coming out of the front door of the gym, which is documented with a photo. (Exhibit 1, p. 9.) The complaint log reflects reports of members running on the streets on April 30, 2018 and May 1, 2018. (Exhibit 1, pp. 2-3.) Residents sent videos of runners on the street entering and exiting the gym on May 5, 2018 and May 22, 2018. (Exhibit 1, pp. 16, 22.) In 2017, Code Enforcement issued Crossfit Horsepower a citation for allowing patrons to run on the sidewalk after being given two warnings, which was documented by a video. (Exhibit 2, p. 43.) Code enforcement nearly issued a citation in 2016, but after speaking to the owner, Code Enforcement voided the citation, noting that it would be the first and final warning. (Exhibit 2, p. 12.) These are all violations of HBMC Section 17.28.030, subdivision (B),

The City Council should deem the activities at the Crossfit Horsepower a public nuisance pursuant to HBMC Section 1.04.050, subdivision (C) and Section 8.24.120 because the gym is in clear violation of the above City provisions and ordinances.

The City Council could also find the activities are a public nuisance under the Nuisance Chapter of the Municipal Code. HBMC Section 8.28.020, subdivision (B)(3) expressly declares the following to

be a nuisance: “Actions Damaging the Use or Enjoyment of Property. 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 or uses thereof.” HBMC Section 8.28.030 states, “Nuisance generally. 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.” HBMC Section 2.28.010 states, “The intent of the city council in adopting this chapter and the purpose thereof is to protect the inhabitants of the city against all forms of nuisances, public or private, not specifically prohibited by state law, growing out of any action, activity, condition, circumstances, or situation permitted to exist within the city and caused or produced by any person...or by any mechanical or other contrivance, and 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 of life or property by the entire community or neighborhood, or by any considerable number of persons.**”

The activities of the Crossfit Horsepower gym adversely affects the use and enjoyment of the properties on Loma Drive and 8th Street. Neighboring residents are unable to concentrate, are woken up early in the morning, have to leave their homes to get away from the noise, and have actually moved and relocated due to the vibrations. (Exhibit 3, p. 51.) Their comfortable enjoyment of their lives and properties is constantly obstructed by the vibrations and noise coming from the gym. Therefore, the City Council must find that the activities coming from the gym are a public nuisance.

Staff recommends that City Council consider formal action to abate the nuisance since these conditions have been ongoing since 2014. Abatement consists either of ceasing all use of weights at the property or other remedies City Council finds appropriate.

In addition, 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**

For the same arguments made above, the City Council has the authority to revoke or suspend the business license of Crossfit Horsepower because the gym has obstructed the peace of neighboring

residents, the gym has violated several provisions of the municipal code and ordinances of the city, and the business has been conducted to be a public nuisance. HBMC Section 5.04.270 states, "From and after the revocation or suspension of said license by the city council, such license shall be null and void and no business shall be conducted or operated in any manner during any period of license revocation or suspension."

The City Council must find that any of the above conditions apply to the subject property. If the City Council orders initiation of abatement proceedings, the following is a summary of the procedures required under Chapter 8.28:

1. Resolution of Intent to Conduct Hearing. On May 22, 2018, the City Council declared, by resolution, its intent to conduct a public hearing to determine whether a public nuisance exists on the property. (Exhibit 5.)
2. Posting of Notice of Hearing. On June 25, 201, the Director of Community Development caused to be posted on the premises a certified copy of the attached resolution and at least two notices of the time and place of hearing before the council. (Exhibit 5.) The above documents were also sent directly to the property owner's address of record via certified mail on June 21, 2018. (Exhibit 5.)
3. Hearing by City Council. Unless the nuisance has already been abated, the City Council will consider all relevant evidence, including, but not limited to, testimony from owners, witnesses, parties interested and staff reports relative to the matter. Upon the conclusion of the hearing, the Council may determine whether the premises constitute a nuisance. If the Council determines that the premises constitute a nuisance, it may order the nuisance abated within a reasonable time.
4. 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."
5. 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.
6. 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.

7. 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. (Attachment 6.)

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.

Attachments:

1. Resolution XX-XXXX
2. June 22, 2018 Letter from Baker, Burton & Lundy
3. 2014-15 City Report, E-mails and Log
4. 2016-17 City Report, E-mails and Log
5. 2018 City Report and E-mails
6. Business License
7. Notice of Hearing to Abate Nuisance, Resolution 18-7133 and Photos of Posting
8. Abatement Costs
9. Written Communication received May 29, 2018 - July 4, 2018

Respectfully Submitted by: Joy Abaquin, Deputy City Prosecutor

Concur: Ken Robertson, Community Development Director

Approve: John Jalili, Interim City Manager