CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

Wendy Simao
140 Cabrillo Street, Space #3
Costa Mesa CA 92627

11/21/2022

Ms. Simao,

This letter serves as a determination of the City's findings regarding your submitted concerns(s) of violations of the Costa Mesa Municipal Code (CMMC) being carried out by "The 12 Costa Mesa", a weight training gym/fitness use, located at 140 East 17th Street in the C2 (General Business District) zone. Your concerns specifically address excessive noise, violations of approved land use entitlements and overall operation of a general nuisance to the public.

City records show that you have submitted concerns to both the Costa Mesa Police Department (CMPD) as well as the Code Enforcement Division under the Economic and Development Services Department. The CMPD records show that over the past two calendar years, police dispatch has received approximately 105 complaint calls for noise emanating from the "The 12 Costa Mesa". The Code Enforcement Division has received approximately twelve to fifteen similar complaints. Similar complaints were also received as public comments during Planning Commission and City Council meetings.

As a response to the complaints submitted to police dispatch, CMPD personnel responded to the location to investigate and determine if a violation/crime was occurring. A review by CMPD administration determined that police field personnel did not identify any activity that generated noise that disturbed the peace and or was a crime.

As a response to the complaints submitted to the Code Enforcement Division, staff conducted an in-depth investigation of potential Municipal Code violations. Staff's investigation was comprised of unannounced site visits during timeframes where exercise sessions were being held. This included a site visit inside your residence in an attempt to capture the noise generated by the gym.

During these site visits staff conducted noise level measurements, as prescribed by CMMC's noise regulations sections 13-280 - Exterior noise standards, 13-281 - Interior noise standards and 13-283 - Loud, unnecessary noise. These measurements were taken utilizing hand held sound level meter equipment as required by:

CMMC Section 13-284. Noise level measurement.

> *(a) Any noise level measurement shall be performed using a sound level meter meeting American National Standard Institute's Standard S1.4-1971 for Type 1 or Type 2 sound level meters or an instrument and the associated recording and analyzing equipment which will provide equivalent data.*

During these site visits, staff did not identify any activity that sustained a noise measurement as prescribed under the CMMC's noise regulations to cause a violation. Similarly as determined by

the CMPD's investigation, Code Enforcement staff also did not witness any conditions that would constitute a "loud, unnecessary noise" under the CMMC. On at least one early morning occasion both CMPD and Code Enforcement staff were separately investigating the same noise complaint. As staff came across each other in the field, they determined independently and collectively that their investigation could not substantiate the complaint. It is also important to note that during the monitoring inside of your residence, staff did not hear and register any noise emanating from the gym although the gym was in full operation. At that time, you stated that you concurred with staff's findings and mentioned that you were concerned about hearing the gym's noise while outside on your patio.

Staff's investigation into the sound levels also included a review of documentation that you submitted to the City. This documentation consisted of several pages of what appeared to be screen capture shots of a cell phone sound reading application. The documents do not contain contextual information that would allow the City to definitively tie the readings to a particular noise source and do not identify sustained noise levels that would be a violation of the City's noise regulations. Lastly, noise level measurements from a cell phone application do not meet the criteria as specified in CMMC Section 13-284 listed above. As such, they are very helpful as initial information, it is important that staff use measurements taken by instruments specified in the Municipal Code for purposes of their investigation and identifying any violations.

Lastly, staff reached out to approximately twenty-eight of your neighbors in the same mobile home park. Those who spoke with us stated that in general, the area is noisy due to the proximity to commercial businesses and general street/ambient noise, but no one directly identified any noise coming from the gym operations.

Aside from the multiple site visits conducted, staff also reviewed the applicable land use entitlements to determine if the fitness use was operating outside of what they are allowed by right and/or outside of approvals granted through prior land use applications. In 1992, the subject building was converted from a lumberyard to a fitness use pursuant to application PA-92-46 and RA-92-07. At that time, the City's Redevelopment Agency and the Planning Commission approved a "health club" with valet and offsite parking. There were no required permit conditions of PA-92-46 and RA-92-07 relating to noise and no conditions relating to hours of operation. Critical operational conditions of approval that were required included the following:

- COA No. 2 – Free valet service
- COA No. 4 – Restriction of group aerobic classes to prevent potential parking impacts (this restriction was based on parking only and was subsequently amended in the below mentioned 2002 entitlement based on a specific parking analysis).
- COA No. 5 – Screening of parking
- COA No. 6 – 80 members with 24 staff maximum in the establishment;
- COA No. 7 – Lighting requirements; and
- COA No. 9 – Building signage requirements.

In 2002, the fitness use applied for Application No. ZA-02-29 to amend the previously approved Application No. PA 92-46 and the City's Zoning Administrator approved a Minor Conditional Use Permit (MCUP) to convert existing gym space (office and retail area within the gym) to offer yoga and spin classes. This permit approved the proposed group fitness classes and removed the previous valet/offsite parking requirement based on operating conditions and an empirical parking analysis, which showed the use has sufficient parking available for the gym and its fitness classes. Although not included as a condition of approval, there was mention in the parking analysis of this report that the use operated Monday through Friday from 5AM to 10PM and Saturdays and Sundays from 7AM to 7PM. This approval carried forward the previous conditions of approval, with the exception of the modifications to parking and fitness classes. No other changes to conditions were included.

Lastly, in 2019, the gym applied for Application No. ZA-18-59 for the approval of an MCUP to amend their use application for the operation of a new juice bar located in the gym that was previously occupied by storage. The City's Zoning Administrator approved this use on March 8, 2019. This approval was focused on the operational aspects of the Juice bar and generally did not modify any other operating requirements or conditions of the existing gym use or its fitness classes.

The Minor Conditional Use Permit approval for the juice bar described the juice bar's operating hours as being the same as the gym hours. The hours listed reflected the gym hours of operation at the time of application but neither the description in the juice bar's land use application, staff report, or conditions of approval restrict the gym's hours of operation. Rather, the description of the hours of operation required that the juice bar could not operate independently of the gym operations.

Although CMPD and Code Enforcement staff did not find evidence of a Municipal Code violation, staff have continued their efforts to address your concerns by conducting outreach to both the business owner and your neighbors. In speaking with the business owner about your concerns, the business owner/operator voluntarily made some operational changes to address the issue. Staff was shown sound dampening modifications that the business owner has installed in the work out area. In addition, the business owner asked the gym staff to keep the exterior pedestrian door at the rear of the building closed during classes and to lower the volume of music played during fitness classes. (These operational measures were encouraged by City staff but are not a City and/or State requirement).

Staff has completed its investigation without finding evidence of a violation of the CMMC and or any activity that may be construed as a public nuisance; therefore the City is officially closing this case.

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DEVELOPMENT SERVICES DEPARTMENT

If you have any questions, please feel free to call the case officer, Andy Godinez at (714) 754-5209 and or by email at andy.godinez@costamesaca.gov

Sincerely,

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