



City of Costa Mesa

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

Item #: 24-037

Meeting Date: 02/20/2024

TITLE: "THE 12" GYM NOISE STUDY

DEPARTMENT: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/ COMMUNITY IMPROVEMENT DIVISION

PRESENTED BY: FIDEL GAMBOA, COMMUNITY IMPROVEMENT DIVISION MANAGER

CONTACT INFORMATION: FIDEL GAMBOA, COMMUNITY IMPROVEMENT DIVISION MANAGER, (714) 754-5625

RECOMMENDATION:

Staff recommends the City Council receive and file the noise study report prepared by Sound Media Fusion related to resident concerns regarding potential noise ordinance violations from business operations at "The 12" gym, located at 140 East 17th Street, Suite B, in Costa Mesa.

BACKGROUND:

Over the course of the past two calendar years, a resident has submitted approximately 105 noise complaints to the Costa Mesa Police Department (CMPD) as well as approximately 15 complaints to Code Enforcement. In general, the complaint is that noise associated with daily scheduled gym class operations at the "The 12" gym disturbs the peace and quiet of the residents both inside and outside of their homes located within "The Palms" mobile home park, located at 140 Cabrillo Street. The resident resides within the Park approximately 220 feet north of the rear of gym building.

"The Palms" mobile home park was developed in the early 1960's with 28 mobile homes. The Mobile Home park has a General Plan Land Use designation of "Neighborhood Commercial" and a zoning classification of "Commercial Limited" (CL). Pursuant to the General Plan Land Use Element, the "Neighborhood Commercial" Land Use District "is intended to "serve convenience shopping and service needs of local residents". The Land Use Element also indicates that appropriate uses in this District "should be among the least intense of the commercial uses". Pursuant to the City's Zoning Code - Section 13-30, "mobile home parks" are a "prohibited use" in the "Commercial Limited" zoning district; therefore, the subject mobile home park is considered by the City's Zoning Code to be a "nonconforming use". Pursuant to the Costa Mesa Municipal Code (CMMC) Section 13-202, a "nonconforming use" is defined as "an existing and legally established use which is located in a district where it is no longer permitted by this Zoning Code.

The 12 Gym is located at 140 East 17th Street. The site is approximately 1.5 acres in size and contains an approximate 20,000 square-foot, two unit, building and a surface parking lot. The property is a "street to street" lot with frontage on both Cabrillo Street and 17th Street. Direct vehicular access is

taken from 17th Street, with a second indirect vehicular access obtained from Fullerton Avenue through a neighboring property located at 1721 Fullerton Avenue.

The Gym property has a General Plan land use designation of “General Commercial” and a zoning designation of “General Commercial” (C2). Pursuant to the General Plan Land Use Element, the “General Commercial” Land Use District “is intended to permit a wide range of commercial uses that serve both local and regional needs. These areas should have exposure and access to major transportation routes since significant traffic can be generated”. The Land Use Element also indicates that appropriate uses in this District include “retail stores, theaters, restaurants, hotels and motels, and automobile sales and service establishments”. Pursuant to the Zoning Code, the “General Commercial” Zoning District is “intended to provide for those uses which offer a wide range of goods and services which are generally less compatible with more sensitive land uses of a residential or institutional nature”.

The 12 Gym Permitting History

Prior to 1992, the Gym site was operated as a lumberyard. 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 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 (COA) that were required by the City included:

- 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 studio 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) application to convert existing gym space (office and retail area within the gym) to offer yoga and spin classes. This permit approved the removal of the previous valet/offsite parking requirement based on operating conditions and an empirical parking analysis, which demonstrated that the on-site parking is sufficient to satisfy the parking demand for the gym and its fitness classes. 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. Although not included as a condition of approval, there was mention in the parking analysis of this report that the Gym operates Monday through Friday from 5AM to 10PM and Saturdays and Sundays from 7AM to 7PM.

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 application 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.

ANALYSIS:

Noise Standards and Protocols

Costa Mesa Municipal Code Chapter 13, Noise Control, states that the purpose of noise control regulations is to "prohibit unnecessary, excessive and annoying noises from all sources subject to its police power. At certain levels, noises are detrimental to the health, comfort, safety, peace and enjoyment and welfare of the citizenry and in the public interest shall be regulated and systematically proscribed". The CMMC identifies and regulates qualitative nuisance noise criteria as well as quantitative interior and exterior noise criteria. These criteria apply to residential property and under certain circumstances, churches, schools and hospitals.

Qualitative Noise Criteria

Qualitative noise criteria are listed under CMMC Section 13-283. This section utilizes a "reasonable person" standard and states:

"It is unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area, regardless of whether the noise level exceeds the standards specified in section 13-280, Exterior noise standards, and section 13-281..." For example, a police officer may issue a misdemeanor citation for a violation of CMMC 13-283 to a motorist who is playing extremely loud music with their windows down while driving on a small residential street at 2:00 A.M. In order to issue a citation, the officer must determine that the noise that is the basis for the issuance of the citation is noise that a reasonable person with normal sensitivities would find uncomfortable or annoying. The same determination can be made by a code enforcement officer.

Quantitative Noise Criteria

As further described below, quantitative noise criteria are listed under CMMC Section 13-280 (Exterior Noise Standards) and 13-281 (Interior Noise Standards), and involve the measurement and analysis of decibel (dB) noise readings:

Section 13-280 - Exterior Noise Criteria	
dB	Hours
55 dB	7 A.M. - 11 P.M.
50 dB	11 P.M. - 7 A.M.

“(b) It is unlawful for any person at any location within the city to create any noise, or to allow the creation of any noise on property owned, leased, occupied, or otherwise controlled by such person, when the foregoing causes the noise level, when measured on any other residential property, either within or outside the city, to exceed:

- (1) The noise standard for a cumulative period of more than thirty (30) minutes in any hour;*
- (2) The noise standard plus five (5) dB(A) for a cumulative period of more than fifteen (15) minutes in any hour;*
- (3) The noise standard plus ten (10) dB(A) for a cumulative period of more than five (5) minutes in any hour;*
- (4) The noise standard plus fifteen (15) dB(A) for a cumulative period of more than one (1) minute in any hour; or*
- (5) The noise standard plus twenty (20) dB(A) for any period of time.”*

Section 13-281 - Interior Noise Criteria	
<u>dB</u>	<u>Hours</u>
55 dB	7 A.M. - 11 P.M.
45 dB	11 P.M. – 7 A.M.

“(b) It is unlawful for any person at any location within the city to create any noise, or to allow the creation of any noise on property owned, leased, occupied, or otherwise controlled by such person, when the foregoing causes the noise level when measured within any other dwelling unit on any residential property, either within or outside the city, to exceed:

- (1) *The interior noise standard for a cumulative period of more than five (5) minutes in any hour;*
- (2) *The interior noise standard plus five (5) dB(A) for a cumulative period of more than one (1) minute in any hour; or*
- (3) *The interior noise standard plus ten (10) dB(A) for any period of time.”*

Both of these sections are subject to the following measurement protocols under 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.
- b) Exterior measurements: The location selected for measuring exterior noise levels shall be at any point on the affected property.
- c) Interior measurements: Interior noise measurements shall be made within the affected dwelling unit. The measurement shall be made at a point at least four (4) feet from the wall, ceiling, or floor nearest the alleged offensive noise source and may be made with the windows of the affected unit open.

Lastly, pursuant to CMMC Sections 13-280(c) and 13-281(c), if interior and exterior quantitative noise standards are exceeded by ambient noise levels, the maximum allowable noise levels shall be increased to reflect the maximum ambient noise level.

Community Improvement and CMPD Investigation

Based on response to the residents complaints, both the Costa Mesa Police Department (CMPD) and Code Enforcement staff have responded on multiple occasions to investigate the concerns. Code Enforcement staff have visited the site on more than 40 occasions, including conducting unannounced site visits, and utilizing a hand-held sound meter device to evaluate noise at the exterior of Gym, as well as inside the residence (with their permission). Staff have also reviewed and considered noise recordings from a cell phone app submitted by the resident. Additionally, staff reached out to other residents at “The Palms” mobile home park in an effort to better understand and document any observations or activity that would cause a noise ordinance violation and or be considered loud and unreasonable noise. Lastly, staff has reached out to the owner/operator of the Gym and discussed the complaints and good neighbor practices (discussed further below in this report under “Outreach Efforts”).

During its multiple site visits, staff did not identify any activity that sustained a noise measurement that violated the CMMC’s noise regulations. Code Enforcement staff also did not witness any conditions that would constitute a loud, unnecessary noise. When visiting the site, Code Enforcement staff sometimes did not hear music or other noise emanating from the gym at all, and sometimes heard music only at a very low level. In addition, on one early morning occasion both CMPD and Code Enforcement staff were separately investigating the same noise complaint. During this site visit, staff

determined independently and collectively that their investigation could not substantiate the noise complaint. It is also important to note that during the monitoring inside of the residence, staff did not hear or register on its sound equipment any noise emanating from the Gym, and the Gym was in full operation.

As previously indicated, the Costa Mesa Police Department have responded to noise complaints at this site and visited the site multiple times and did not find any significant or unreasonable activity onsite that was outside of what one would consider normal commercial center operations, or that otherwise constituted unusual or unreasonable noise.

As a result of the investigative actions by the Costa Mesa Police Department and the City's Code Enforcement Division, staff were unable to support the claims being made by the resident. Therefore, a letter dated November 21, 2022 was sent to the resident indicating the results of staff's investigation, and that the Code Enforcement case would be closed.

Outreach Efforts

Although CMPD and Code Enforcement staff were unable to substantiate the complaint(s), staff continued efforts to address the concern by conducting outreach to both the business owner and the other residents of "The Palms" mobile home park. Development Services staff spoke with the business owner/operator of "The 12" gym about the noise concerns and discussed implementing certain good neighbor practices that could help to alleviate the issue. As a result, the business owner/operator voluntarily made operational changes to address the issue. Staff was shown sound dampening modifications that the business owner had installed in the "work-out" area. In addition, the business owner stated that he 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 are not a City and/or State requirement). CMPD also spoke with the business owner/operator and reiterated the importance of implementing the aforementioned good neighbor practices.

Lastly, Code Enforcement staff visited "The Palms" mobile home park to enquire about surrounding noise concerns. The staff Mobile Home Park visit was prompted by a petition that was provided to staff by the resident. The petition was signed by residents of six units located within the Mobile Home Park. In general, aside from the resident and their spouse, none of the other residents who signed the petition indicated noise concerns for the Gym during on-site discussions with staff. One resident indicated that he has lived at the Park for over 16 years and although he regularly hears noise coming from the Gym, it did not annoy him.

Sound Media Fusion Noise Study Report Findings

Although staff's measurements and findings did not demonstrate a violation of the City's noise ordinance, in response to the residents continued complaints (including commenting at numerous City Planning Commission and City Council meetings), staff opted to retain a noise expert to conduct an independent investigation. The City contracted the services of Sound Media Fusion, led by Mr. Gary Hardesty, a sound engineer and noise expert. Mr. Hardesty conducted the sound study over a period of seven days, starting on December 3rd and ending on December 9th. Each day the study was conducted in conjunction with the Gym's scheduled hours of operation. In addition, Mr. Hardesty was asked to conduct any and all measurements he deemed necessary to study Gym's daily operations.

On December 28, 2023, Mr. Hardesty provided the completed noise report. The report summarizes noise characteristics, how sound is measured, the City's noise ordinance standards, and the report's findings including daily conclusions and notes with detailed measurement data provided as an attachment to the report. Mr. Hardesty's observations and findings are similar to those of the Police and Code staff's findings. In general, the Report finds that the Gym is operating in compliance with the City's noise ordinance for each day measured and states that "overall noise in this area is typical for a mixed-use commercial/residential area". Please refer to the attached noise findings report. Mr. Hardesty will provide a presentation of his report and findings at the City Council meeting.

ALTERNATIVES:

There are no alternatives as this noise report review is for informational purposes and for City Council consideration.

FISCAL REVIEW:

Staff is not recommending any fiscal actions associated with the noise report review.

LEGAL REVIEW:

The City Attorney's Office has reviewed and approved this staff report as to form.

CITY COUNCIL GOALS AND PRIORITIES:

This item is administrative in nature.

CONCLUSION:

Staff (including both the Code Enforcement Department and City's Police Department) have thoroughly investigated the noise conditions at "The 12" gym, and on numerous occasions visited the site. Further, staff has compared the noise standards in the Municipal Code (both qualitative and quantitative noise requirements) and determined that the Gym is operating in compliance with the City's Noise Control Ordinance. Additionally, based on the professionally prepared noise report that included a seven-day study, there is no evidence of noise ordinance violations in regard to the operations of "The 12" gym.