

Dionne Bearden

From: Richard Spicer <[REDACTED]@[REDACTED].org>
Sent: Thursday, October 21, 2021 1:31 PM
To: PlanningCommissioners
Subject: RE Application 2002-05 (SPR20-003) St. Anthony HS

-EXTERNAL-

To Whom It May Concern,

I am writing in support of the St. Anthony High School Athletic Field Renovation Project at 4832 Clark Avenue, Application 2002-05 (SPR20-003). The existing athletic complex is over seventy years old and renovation is greatly needed to bring the facility up to modern standards and to provide a safer space for student athletes to practice and compete. A renovated facility would also benefit the local community by providing practice and competition space for local recreational and club teams. St. Anthony High School has been an outstanding member of the Long Beach community for over 100 years, and its graduates have served as local business leaders, civic leaders, and church leaders. Approval of the project will help St. Anthony continue to form future Long Beach servant leaders.

Sincerely,

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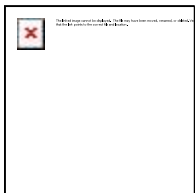
Richard A. Spicer, MS Ed

Assistant Principal of Student Affairs

St. Anthony High School
620 Olive Avenue • Long Beach, CA 90802 • [\(562\) 435-4496](tel:(562)435-4496)

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"Educating Minds and Nurturing Hearts Since 1920."



Dionne Bearden

From: Bob Kelton <[REDACTED]>
Sent: Wednesday, October 20, 2021 4:46 PM
To: PlanningCommissioners
Subject: SAFE Comments on Proposed Amendments to the Noise Element
Attachments: 2021-07-19 CLP Letter to City Council of the City of Long Beach Re SAFE Concerns of Excessive Noise.PDF; 2021-10-21 SAFE Letter to LB Planning Commission 1.pdf

-EXTERNAL-

Planning Commissioners,

Please find attached comments from Safe Acoustics For Everyone (SAFE) on the proposed changes to the Noise Element. SAFE is a downtown neighborhood non-profit that is concerned about the many unacceptable proposed changes to the General Plan's Noise Element. Let me know if you have questions.

Regards,

Bob Kelton
President, SAFE
Bob.Kelton@gmail.com
[REDACTED]

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AND SRI LANKA

July 19, 2021

VIA E-MAIL AND U.S. MAIL

City Council of the City of Long Beach
411 West Ocean Boulevard
Long Beach CA 90802

Re: Concerns with City of Long Beach's Authorization of Excessive Noise Conditions and Events

Dear City Council Members:

I represent a group of residents of the City of Long Beach ("City") who have organized themselves into a non-profit neighborhood group, Safe Acoustics for Everyone, or SAFE. SAFE has retained me to help its members address and attempt to limit and restrain the City's prior and ongoing violations of State and local laws and creation of a public and private nuisances through the City's previous approval and permitting of frequent loud and high volume concerts and other events along the City's waterfront, in close proximity to the homes and residences of the members of SAFE. SAFE has related concerns with and objections to the proposed General Plan's Noise Element and proposed amendments to the City's Noise Ordinance. SAFE believes the proposed amended versions of the Noise Element and the Noise Ordinance would result in further violations of State and local laws, creation of further public and private nuisances, and cause further harm to members of SAFE and other residents of the City.

Through this letter SAFE demands that the City (1) cease and desist permitting and authorization of loud, high volume outdoor concerts and other events, (2) make changes to the Noise Element and Noise Ordinance which comply with established laws and standards for noise, and which provide sufficient protection to residents of the City, and (3) adopt standards and procedures to avoid or to immediately address future excessive noise events and occurrence in the vicinity of the homes and residences of SAFE members. If the City does not adequately address SAFE's concerns and continues to authorize high volume concerts and events near the

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homes of SAFE residents, SAFE will seek appropriate legal relief, and may additionally assert claims for damages against the City.

1. Factual Background

The members of SAFE live on or in the vicinity of East Ocean Boulevard, close to several venues in the City used for outdoor concerts and special events. The City has authorized and permitted a number of events in the vicinity of the homes and residences of the members of SAFE which have produced and resulted in excessive and disruptive noise, foul language, and damage and harm to the members of SAFE.

The sound and noise from City approved outdoor concerts and events has frequently exceeded established and mandated levels, and reached unreasonable and harmful levels. Noise level readings measured at residences at 488, 700 and 850 East Ocean Boulevard in the City have frequently exceeded the established noise limits within “District One” of the City of 50 dB from 7:00 a.m. to 10:00 p.m. and 45 dB from 10:00 p.m. to 7:00 a.m., and within District Two of the City of 60 dB from 7:00 a.m. to 10:00 p.m. and 55 dB from 10:00 p.m. to 7:00 a.m. (Long Beach Municipal Code (“LBMC”) § 8.80.160.) Concerts and events have produced additional noise prior to and after the concert or event from the setting up and taking down of equipment, structures and materials.

There are seven high-density, high-rise residential buildings on East Ocean Boulevard that house several thousand people. Approximately half the residential units in those buildings face the City’s outdoor concert venues. Many of the residents in the buildings are senior citizens, and some have medical conditions, such as diabetes and heart disease. Some of the residents spend all or most of their time at home.

The City has failed to stop or limit excessive noise, including excessive bass noise and loud music, from outdoor entertainment events. The noise reaches the homes of SAFE residents at levels that far exceed authorized and appropriate levels.

The City has previously ignored the requirement in the current City Noise Ordinance that only “occasional” events are allowed or authorized within the City to exceed established noise levels. (LBMC § 8.80.280.) The City instead allowed excessive noise events to take place on the waterfront on a frequent and almost weekly basis.

On February 10, 2019, for example, measured sound levels at residences at 850 East Ocean Boulevard from the “One Love Cali Reggae Fest” at Queen Mary Events Park reached a peak of 108 dB at 7:00 p.m., with an average noise level in the 80 to 90 dB range.

On April 5, 2019, noise levels from the Formula Drift Pro Championship at Shoreline Drive reached similar levels in excess of 90 dB at residences along East Ocean Boulevard.

The following weekend, measured sound levels from the Long Beach Grand Prix at Shoreline Drive reached 104 dB at 8:18 a.m. on April 12, 2019 at the residences along East Ocean Boulevard, and then maintained similar sound levels throughout the day. Sound levels eventually peaked at 109 dB at 8:57 p.m. Noise at similar levels reached the residences along East Ocean Boulevard from the Grand Prix throughout the day on April 13 and 14, 2019.

On May 3, 4 and 5, 2019, noise from the Just Like Heaven music festival at Queen Mary Park consistently exceeded authorized noise levels at residences along East Ocean Boulevard, with peak levels reaching in excess of 100 db.

On May 17 and 18, 2019, noise levels from the Lesbian and Gay Pride celebration exceeded authorized levels at residences along East Ocean Boulevard, with peak levels reaching in excess of 98 dB. Noise levels continued to exceed authorized levels in the days following the event through efforts to take down equipment and materials from the event.

On June 2, 2019, noise levels from the Dia de San Juan Festival at Rainbow Lagoon exceeded authorized levels at residences along East Ocean Boulevard, with peak levels reaching in excess of 86 dB.

On June 13, 14, 15 and 16, 2019, noise levels from the DEW Tour at Rainbow Lagoon exceeded authorized levels at residences along East Ocean Boulevard, with peak levels reaching in excess of 90 dB.

Additional events along the waterfront caused noise levels to exceed authorized levels at residences along East Ocean Boulevard on August 9, 10, and 11, 2019, August 17, 2019, and September 7 and 9, 2019. The City also approved events which produced excessive sound levels on October 2, 13, 15, and 26, 2019, and on November 2, 2019. City approved excessive noise events continued into 2020, through corporate related events on January 17 and 25, 2020, and the Reggae Fest concert on January 8 and 9, 2020.

Events which exceeded authorized noise levels also occurred in 2018, and in prior years, with similar frequency. In 2018, over the course of 26 days, between March 20 and October 7, people living in the downtown area along East Ocean Boulevard were exposed in their homes to excessive amplified sounds from outdoor entertainment, often up to 12 hours each day, often several days in a row.

Excessive noise from these outdoor events caused direct physical, emotional and economic harm to members of SAFE. Members of SAFE experienced prolonged loss of sleep and other interruptions and disruptions of their daily lives and the comfort and enjoyment of their homes. The members of SAFE also experienced breathing problems, stress, loss of sleep and other medical conditions as a result of the excessive noise events. They had to move out of their homes for extended periods of time.

Recognized studies and health reports have demonstrated that prolonged exposure to noise louder than 75 dB and noise that disrupts sleep have serious negative health consequences, including increased blood pressure, increased heart rate, vasoconstriction, changes in respiration, and cardiac arrhythmia. As indicated, noise levels from City approved events frequently and routinely exceeded 75 dB, including at night.

The members of SAFE have raised their concerns regarding the excessive noise from City approved events with representatives and officials of the City on a number of occasions. The City, however, failed to take any action to address or alleviate those concerns and complaints, and failed to restrain or limit excessive noise events along the waterfront. The City instead continued to permit and allow frequent outdoor events and concerts which produce unreasonable, excessive and illegal noise levels.

2 Proposed Amendments to the Noise Element and the Noise Ordinance

In addition to failing to comply with State statutes and polices, and its own ordinances, the City has recently indicated it intends to amend the Noise Element of the City's General Plan to further authorize and perpetuate the unreasonable and excessive noise events within the City.

The proposed changes to the Noise Element and Noise Ordinance would exacerbate and increase the harmful impacts of excessive noise events. The proposed changes are also contrary to State noise reduction laws, and would necessarily and inevitably lead to further violations of State law on the part of the City, and further damage and harm to its citizens, including to members of SAFE.

Members of SAFE submitted comments to the City regarding the Initial Study for the change in the Noise Element of the General Plan and have otherwise participated in the public process for the amendment to the General Plan.

The Second draft of the proposed Noise Element does not address comments from SAFE members' or other resident contained in the second draft Appendix. The second draft of the proposed Noise Element acknowledges the minimum noise levels for health and safety standards but removes the established baseline levels in the current plan. SAFE objects to the removal of these baselines.

SAFE will continue to participate in any additional comment process so that it can object to and challenge any attempt by the City to use the change in the General Plan to continue to authorize and permit excessive and unreasonable noise levels and events in the vicinity of the homes and residences of the members of SAFE.

3. The City has Violated and Will Continue to Violate State Noise Reduction Laws

The City violated State law, including provisions of the Health and Safety Code, through its previous permitting of frequent events and concerts that produced excessive and unreasonable noise levels. The members of SAFE are concerned that the City will resume and continue to issue permits for excessive noise events, in violation of State and local laws, as the City and the State move beyond the current pandemic restrictions and start to authorize and allow larger public events and gatherings.

Pursuant to Health and Safety Code Section 46000(f), “All Californians are entitled to a peaceful and quiet environment without the intrusion of noise which may be hazardous to their health or welfare.” The State of California has determined that “Excessive noise is a serious hazard to the public health and welfare” and “Exposure to certain levels of noise can result in physiological, psychological, and economic damage.” (Health and Safety Code §§ 46000(a) and (b).) Pursuant to Health and Safety Code Sections 46000(e) and (g), “The State of California has a responsibility to protect the health and welfare of its citizens by the control, prevention, and abatement of noise,” and “It is the policy of the state to provide an environment for all Californians free from noise that jeopardizes their health or welfare.”

Health and Safety Code Section 46022 defines the type of noise prohibited by the State of California as “excessive undesirable sound, including that produced by persons, pets and livestock, industrial equipment, construction, motor vehicles, boats, aircraft, home appliances, electric motors, combustion engines, and any other noise-producing objects.” The State of California has also recognized and endorsed “the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in the Civil Code or for relief against any noise pollution.” (Health and Safety Code § 46001(e).)

Health and Safety Code Section 118825 further provides, in part: “The Legislature, recognizing the growing problem of noise pollution throughout the state and that we are daily assaulted with increased noise from advancing technology, machines, vehicles, and human clamor, declares that excessive noise must be considered a degradation of our environment and a health hazard to our citizens.”

SAFE recognizes that the Section 8.80.280 of the LBMC currently exempts certain “occasional” gatherings and “shows and sporting events,” from compliance with the City’s noise prevention ordinances, “provided said events are conducted pursuant to a permit or license or other entitlement issued by the City relative to the staging of said events.” That ordinance, however, does not insulate or immunize the City from liability for violating State noise laws.

The LBMC’s current authorization of “occasional” excessive noise events does not supersede or invalidate State noise prevention laws, or the authority that prohibits nuisances. In general, local ordinances that conflict with State law are not valid or enforceable. (*City of*

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Oakland v. Superior Court (1996) 45 Cal.App.4th 740, 760; see also *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 290 [local legislation in conflict with general law is void].)

Pursuant to Health and Safety Code Sections 46001(a) and (b), cities and counties are authorized to adopt regulations that impose “further conditions, restrictions, or limitations” on noise levels, and to exercise their authority to “declare, prohibit, and abate” noise which constitutes or results in a nuisance. “It is also well settled that in the exercise of its police powers, a municipality may enact ordinances the object of which is to abate or prevent nuisances.” (*Thain v. Palo Alto* (1962) 207 Cal.App.2d 173, 187.)

Cities and counties, however, are not authorized to adopt regulations or ordinances which conflict with State noise reduction statutes, or which reduce, limit or eliminate State mandated regulation of excessive noise levels. Although cities have authority to prevent or abate nuisances (*People v. Johnson* (1954) 129 Cal.App.2d 1, 6), cities do not have the authority to allow or condone a nuisance that is expressly prohibited by state law. The City accordingly cannot authorize or condone noise that jeopardizes the “health and welfare” of City residents. (See Health and Safety Code § 46000(g).) The City additionally cannot adopt ordinances which prevent City residents from seeking relief “against any noise pollution” through a nuisance action. (Health and Safety Code § 46001(e).)

The City has accordingly violated the policies and express requirements of Health and Safety Code Section 46000, and related statutes, through the permitting of frequent outdoor events and concerts that produce excessive and unreasonable noise levels.

The fact that the City operates under a charter rather than the general law governing cities does not authorize the City to adopt ordinances which conflict with state laws. (*O’Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1075-1976.) The Court of Appeal recently confirmed, for example, in *Marquez v. City of Long Beach* (2019) 32 Cal.App.5th 552, 570, that a City ordinance setting subminimum wages for certain City employees was invalid because it conflicted with the State’s minimum wage requirements.

State or local permitting or licensing of events or activities does not authorize the recipient of the permit or license to conduct or create a nuisance. (See *Anderson v. Souza* (1952) 38 Cal.2d 825, 838 [holding that a license granted by a state aeronautics commission for the operation of an airport does not confer upon the proprietor thereof the right to operate it in such a manner as to constitute a private nuisance]; see also *Gelfand v. O’Haver* (1948) 33 Cal.2d 218, 221 [upholding an injunction to restrain a properly licensed music studio from operating the business so as to create unreasonable and excessive noise and vibrations which interfered with the neighbors’ use and enjoyment of their property].)

Similarly, in *Greater Westchester Homeowners Association v. Los Angeles* (1979) 26 Cal.3d 86, the court held that a city could be liable for nuisance based on noise generated by the arrival and departure of jet aircraft from an airport, and such liability was not precluded by

federal preemption of control of aviation noise. The court therein explained that the city, and not the federal government, chose the location of the airport and elected to expand the facility with knowledge of the residential character of the area, and there was no reason in law or policy why the nuisance remedy provided by Civil Code Section 3479 should not be applied to protect the owners and occupants of the affected property.

4. The City has Created, Authorized and is Liable for Nuisance Conditions

In addition to violating Health and Safety Code Section 46000, the City's permitting and authorization of outdoor events that produce excessive noise levels created and resulted in a private and public nuisance.

A nuisance is, among other things, anything that is "injurious to health, ... 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." (Civil Code § 3479; *Mendez v. Rancho Valencia Resort Partners* (2016) 3 Cal.App.5th 248, 261.) "A nuisance may be public, private, or both. A private nuisance interferes with an individual's use of his or her property; a public nuisance is a private nuisance that affects an entire neighborhood." (*Mendez*, 3 Cal.App.5th at 261-262.)

Noise which unreasonably interferes with neighbors' comfortable enjoyment of life and property constitutes a nuisance. (*People v. Mason* (1981) 124 Cal.App.3d 348, 353-354 [holding that excessive noise which caused neighbors to experience "extreme discomfort and annoyance," "affected their ability to sleep," and otherwise created discomfort and obstructed the free use of the neighbors' property so as to interfere with the comfortable enjoyment of life and property constituted a nuisance]; see also *Vowinckel v. N. Clark & Sons* (1932) 216 Cal. 156, 159 [holding that a plaintiff was entitled to enjoin the operation of a factory which "cause[d] great vibration and noise disturbing to the peace and quiet of the plaintiff and his household, and together with the flares resulting therefrom, prevent[ed] the plaintiff from the comfortable use and enjoyment of his property and are offensive to the senses of persons living upon the property of the plaintiff"].)

California courts have frequently enjoined and awarded damages for excessive noise that creates or constitutes a nuisance. In *Anderson v. Souza*, *supra*, for example, the court held that the operation of a properly licensed airport could create a nuisance, and be subject to an injunction, where operation of the airport produced excessive and unnecessary noise. (See also *Wilson v. Interlake Steel Co.* (1982) 32 Cal.3d 229, 232 [[holding that excessive noise from steel fabricating plant adjacent to residences of retirees constituted a nuisance]; *Morton v. Superior Court* (1954) 124 Cal.App.2d 577, 586 [holding that plaintiffs were not entitled to completely enjoin the operation of a rock quarry, but were entitled to an injunction to prevent excessive noise, dust, emissions and traffic]; *Wilms v. Hand* (1951) 101 Cal.App.2d 811 [holding that a trial court did not abuse its discretion in issuing a preliminary injunction to prevent dogs in dog hospital from "annoying and disturbing the peace and comfort" of plaintiffs, owners of neighboring motel].)

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The actions of the City in authorizing and allowing frequent excessive noise events created both a private and public nuisance.

The members of SAFE will be entitled to bring an action against the City for private nuisance if the City continues to interfere with their use and enjoyment of their property. The invasion of their interest in the use and enjoyment of their property has been substantial, has caused them to suffer substantial damage, and the City's actions have been unreasonable in that such actions are of "a nature, duration or amount as to constitute unreasonable interference with the use and enjoyment of the land." (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 938; *See also*)

The City's prior actions also created a "public nuisance" because the excessive and unreasonable noise authorized by the City affected an entire community and neighborhood, and a considerable number of persons, even though the extent of the annoyance or damage inflicted upon individuals may have been unequal. (*Adams v. MHC Colony Park L.P.* (2014) 224 Cal.App.4th 601, 610; Civil Code § 3480) "[I]t is possible for a nuisance to be public and, from the perspective of individuals who suffer an interference with their use and enjoyment of land, to be private as well." (*Adams*, 224 Cal.App.4th at 610.)

The City's previous permitting of excessive noise events in the City also constituted a nuisance "per se" pursuant to Health and Safety Code Section 46000, as the State has declared that excessive noise necessarily and automatically constitutes a nuisance. The State of California has also recognized and endorsed "the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in the Civil Code or for relief against any noise pollution." (Health and Safety Code § 46001(e).)

A nuisance per se is any activity or conduct that is declared by statute or ordinance to be a nuisance. It arises when a legislative body with appropriate jurisdiction, in the exercise of the police power, expressly declares a particular activity to be a nuisance. (*People ex rel. Trutanich v. Joseph* (2012) 204 Cal.App.4th 1512, 1524.) "[T]o rephrase the rule, to be considered a nuisance per se the object, substance, activity or circumstance at issue must be expressly declared to be a nuisance by its very existence by some applicable law." (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1206–1207.) "[W]here the law expressly declares something to be a nuisance, then no inquiry beyond its existence need be made" (*Beck*, 44 Cal.App.4th at 1207.) "Nuisances per se are so regarded because no proof is required, beyond the actual fact of their existence, to establish the nuisance." (*Id.*)

A nuisance per se may be enjoined without evidence of the activity's injurious nature or harmful effect. (*People ex rel. Dept. of Transportation v. Outdoor Media Group* (1993) 13 Cal.App.4th 1067, 1076.) The only issues for the court's resolution are whether (i) the activity occurred and (ii) the statute declaring it to be a nuisance is valid. (*Id.*) "No fact beyond the fact of the actual existence of the nuisance is required." (*City of Costa Mesa v. Soffer* (1992) 11 Cal.App.4th 378, 385.) In declaring conduct to be a nuisance, the legislative body has already

determined that such conduct is harmful. [I]t would be an usurpation of the legislative power for a court to arbitrarily deny enforcement merely because in its independent judgment the danger caused by a violation was not significant. (*City of Bakersfield v. Miller* (1966) 64 Cal.2d 93, 100.)

The members of SAFE have also suffered substantial personal and financial damage as a result of the actions of the City in authorizing and approving the excessive noise events. The members of SAFE would be entitled to seek and obtain damages against the City if the actions of the City continue to adversely affect their use and enjoyment of their homes. (*Lew v. Superior Court* (1993) 20 Cal.App.4th 866, 873.) The members of SAFE may seek damages based on the discomfort and annoyance they have suffered a direct result of the City's invasion of their property, even if they have not suffered any physical injuries. (*Kornoff v. Kingsburg Cotton Oil Co.* (1955) 45 Cal.2d 265, 272; see also *Herzog v. Grasso* (1953) 41 Cal.2d 219, 225 [“Once a cause of action for trespass or nuisance is established, an occupant of land may recover damages for annoyance and discomfort that would naturally ensue therefrom.”].)

5. The City Violated the Long Beach Municipal Code

In addition to violating California law, and creating a public and private nuisance, the City has violated its own Municipal Code through its authorization of frequent and ongoing high volume events and concerts in the vicinity of the homes and residences of SAFE members. Specifically, the City has violated its own noise standards, and has violated and ignored the requirement that only “occasional” excessive noise events are allowed or authorized to exceed established noise levels.

LBMC Section 8.80.010(B) states:

“It is determined that certain noise levels and vibrations are detrimental to the public health, welfare and safety, and are contrary to the public interest. Therefore, the City Council does ordain and declare that creating, maintaining, causing or allowing to be created, caused or maintained, any noise or vibration in a manner prohibited by or not in conformity with the provisions of this Chapter is a public nuisance and shall be punishable as such.”

LBMC Section 8.80.130 states that “it is unlawful for any person to willfully make or continue, or cause to be made or continued, a loud, unnecessary or unusual noise which disturbs the peace and quiet of any neighborhood or which causes any discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.” Section 8.80.190 states: “No person shall unnecessarily make, continue or cause to be made or continued, any noise disturbance.”

The City failed to follow or comply with those policies and requirements. The City instead allowed excessive noise events to take place on and around the waterfront not on an “occasional” basis, pursuant to LBMC Section 8.80.280, but on an almost weekly basis. LBMC

Section 8.80.280, moreover, does not negate the fact that loud and excessive noise from concerts and public events along the waterfront still constitute and result in an actionable public and private nuisance, and has still caused damage to the health and welfare of City residents, including the members of SAFE.

LBMC Section 8.80.280 additionally does not exempt or authorize “after hours” noise. Instead, pursuant to LBMC Section 8.80.200, use and operation of a loudspeaker, loading and unloading materials and equipment, and creation of excessive vibrations are expressly prohibited between the hours of ten p.m. and seven a.m. (LBMC §§ 8.80.200 (B) (E) and (G).) Members of SAFE, as indicated, have experienced frequent loud noises from concerts and special events well after 10:00 p.m., typically as a result of loading and unloading, and construction and deconstruction, of equipment and materials for the events and concerts, in direct violation of the Municipal Code.

6. Conclusion

The members of SAFE have a right to the peaceful and quiet enjoyment of their homes and residences without the intrusion of noise which is hazardous to their health and welfare. The City must take appropriate action to prevent further damage and harm to the members of SAFE, and to other residents of the City, from illegal and improper excessive noise along the waterfront.

SAFE accordingly demands that the City agree to:

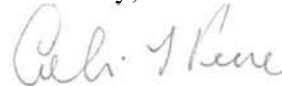
- (1) Stop violating state law and the LBMC by permitting frequent and regular events with excessive and improper noise levels;
- (2) Stop permitted events from setting up and taking down event facilities between 10:00 p.m. and 7 a.m.;
- (3) Establish monitoring and compliance procedures to immediately shut down events that produce excessive noise; and
- (4) Update and amend the Noise Element of the General Plan to strengthen and increase, **and not decrease**, protections from and limitations on excessive noise within the City, including through concerts and events along the waterfront.

If the City fails to agree to these demands, SAFE reserves the right to seek appropriate relief in court against the City for the City’s violations of state law and the Municipal Code, and creation of a nuisance. In addition to seeking to prevent and bar future excessive noise events and nuisances, the members of SAFE may seek appropriate compensatory damages as a result of the actions of the City, as set forth herein, including damages arising from harm to the health and wellbeing of the members of SAFE.

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Counsel for SAFE and members of SAFE are also interested in meeting with representatives of the City to discuss these issues and to explore specific options and remedies for addressing the City's violation of state and local laws, and creation of a nuisance through the excessive noise events. In the meantime, if the City has any questions regarding these matters, please do not hesitate to give me a call.

Sincerely,



Colin L. Pearce

CLP:bah

Safe Acoustics For Everyone SAFE

October 20, 2021

VIA EMAIL TO planningcommissioners@longbeach.gov

Chair and Planning Commissioners
City of Long Beach
411 West Ocean Boulevard
Long Beach CA 90802

Re: Comments, Testimony and Objections to Proposed General Plan Noise Element and associated amendments to the Noise Ordinance, and Environmental Impact Report

Dear Planning Commissioners:

The following comments and testimony are submitted on behalf of Safe Acoustics for Everyone, or SAFE, a non-profit neighborhood group made up of residents of the City of Long Beach (“City”). SAFE was formed to limit and restrain the City’s prior and ongoing violations of State and local laws and creation of a public and private nuisances through the City’s previous approval and permitting of frequent loud and high volume concerts and other events along the City’s waterfront, in close proximity to the homes and residences of the members of SAFE.

SAFE has significant concerns with and objections to the proposed General Plan Noise Element and proposed amendments to the City’s Noise Ordinance, which matters the Planning Commission will consider at its October 21, 2021 meeting. SAFE believes the proposed amended versions of the Noise Element and the Noise Ordinance would violate State and local laws, create public and private nuisances, and cause substantial physical and economic harm to members of SAFE and other residents of the City.

1. Background

The members of SAFE live on or in the vicinity of East Ocean Boulevard, close to several venues in the City used for outdoor concerts and special events. The City has authorized and permitted a number of events in the vicinity of the homes and residences of the members of SAFE which have produced and resulted in excessive and disruptive noise, foul language, and damage and harm to the members of SAFE.

The sound and noise from City approved outdoor concerts and events has frequently exceeded established and mandated levels, and reached unreasonable and harmful levels. Noise level readings measured at residences at 488, 700 and 850 East Ocean Boulevard in the City have frequently exceeded the established noise limits within “District One” of the City of 50 dB from 7:00 a.m. to 10:00 p.m. and 45 dB from 10:00 p.m. to 7:00 a.m., and within District Two of

the City of 60 dB from 7:00 a.m. to 10:00 p.m. and 55 dB from 10:00 p.m. to 7:00 a.m. (Long Beach Municipal Code (“LBMC”) § 8.80.160.) Concerts and events have produced additional noise prior to and after the concert or event from the setting up and taking down of equipment, structures and materials.

There are seven high-density, high-rise residential buildings on East Ocean Boulevard that house several thousand people. Approximately half the residential units in those buildings face the City’s outdoor concert venues. Many of the residents in the buildings are senior citizens, and some have medical conditions, such as diabetes and heart disease. Some of the residents spend all or most of their time at home.

The City has failed to stop or limit excessive noise, including excessive bass noise and loud music, from outdoor entertainment events. The noise reaches the homes of SAFE residents at levels that far exceed authorized and appropriate levels.

Members of SAFE previously submitted a letter to the City from its attorney to raise concerns with regard to the City’s potential resumption of outdoor concerts and events, and excessive noise events, in violation of State and local laws, as the City and the State move beyond the current pandemic restrictions and start to authorize and allow larger public events and gatherings. SAFE resubmits the comments and letter from its attorney with these additional comments from SAFE, and copy of the July 19, 2021 letter is attached hereto as Exhibit A.

Members of SAFE submitted comments to the City regarding the Initial Study for the change in the Noise Element of the General Plan and have otherwise participated in the public process for the amendment to the General Plan.

2. Objection to Proposed Amendments to the Noise Element and the Noise Ordinance

The proposed changes to the Noise Element and Noise Ordinance would exacerbate and increase the occurrence of excessive noise events in the City, and would cause substantial harm to members of SAFE. The proposed changes are contrary to State noise reduction laws, and would necessarily and inevitably lead to further violations of State law on the part of the City, and further damage and harm to its citizens, including to members of SAFE. The proposed Noise Element further does not address or account for previous comments from SAFE members or other residents.

The proposed Noise Element would violate State law, including provisions of the Health and Safety Code, and would result in the permitting and authorization of events and concerts that produced excessive and unreasonable noise levels. The proposed Noise Element would not regulate, limit or mitigate excessive noise events, but would instead authorize and allow the City to approve and authorize repeated, consistent and ongoing special event entertainment along the waterfront which would violate State law, and produce excessive noise which is harmful to the health and welfare of members of SAFE, and other City residents.

The proposed Noise Element would violate instead of accomplishing the “four general goals” of the Noise Element, as the proposed changes to the Noise Element would be directly contrary to the goal and objective of a healthy, livable community, would not result in an “equitable distribution of noise;” would exacerbate and increase exposures to excessive noise by City residents, and would impede, rather than promote, “elements necessary for a dynamic, growing City.”

The Noise Element is not consistent with all other General Plan elements, policies and strategies, as the Noise Element fails to attempt to provide protection for land uses, as identified in the Land Use Element, from excessive noise. The Noise Element also fails to identify potential and anticipated noise sources and fails to establish programs to avoid or mitigate noise impacts.

The Noise Element and proposed Noise Ordinance must require noise level standards and enforcement of noise standards for all outdoor amplified special events, whether defined as “temporary” or permanent and ongoing. Minimization of noise emissions from all government controlled or sanctioned activities should be a priority. Local noise reduction programs need to address the problems specific to each community, with the ultimate goals being the reduction of complaint frequency and the provision of a healthful noise environment for all residents of the community.

Pursuant to Health and Safety Code Section 46000(f), “All Californians are entitled to a peaceful and quiet environment without the intrusion of noise which may be hazardous to their health or welfare.” The State of California has determined that “Excessive noise is a serious hazard to the public health and welfare” and “Exposure to certain levels of noise can result in physiological, psychological, and economic damage.” (Health and Safety Code §§ 46000(a) and (b).) Pursuant to Health and Safety Code Sections 46000(e) and (g), “The State of California has a responsibility to protect the health and welfare of its citizens by the control, prevention, and abatement of noise,” and “It is the policy of the state to provide an environment for all Californians free from noise that jeopardizes their health or welfare.”

Health and Safety Code Section 46022 defines the type of noise prohibited by the State of California as “excessive undesirable sound, including that produced by persons, pets and livestock, industrial equipment, construction, motor vehicles, boats, aircraft, home appliances, electric motors, combustion engines, and any other noise-producing objects.” The State of California has also recognized and endorsed “the right of any person to maintain at any time any appropriate action for relief against any private nuisance as defined in the Civil Code or for relief against any noise pollution.” (Health and Safety Code § 46001(e).)

Health and Safety Code Section 118825 further provides, in part: “The Legislature, recognizing the growing problem of noise pollution throughout the state and that we are daily assaulted with increased noise from advancing technology, machines, vehicles, and human

clamor, declares that excessive noise must be considered a degradation of our environment and a health hazard to our citizens.”

Cities and counties are not authorized to adopt regulations or ordinances which conflict with State noise reduction statutes, or which reduce, limit or eliminate State mandated regulation of excessive noise levels. The City, through the Noise Element, and through the permitting of frequent outdoor events and concerts that produce excessive and unreasonable noise levels, would violate the policies and express requirements of Health and Safety Code Section 46000, and related statutes.

3. Conclusion

The members of SAFE urge the City to amend the Noise Element of the General Plan and the Noise Ordinance to strengthen and increase, and not decrease, protections from and limitations on excessive noise within the City, including through concerts and events along the waterfront.

Sincerely,



Robert B. Kelton
President, SAFE
Bob.Kelton@gmail.com

Dionne Bearden

From: [REDACTED]
Sent: Thursday, October 21, 2021 1:48 PM
To: PlanningCommissioners
Subject: ST ANTHONY HIGH SCHOOL/CLARK FIELD PROPOSED RENOVATION

-EXTERNAL-

Planning Committee,
I fully support the proposed renovation and remodel of Clark Field. I have seen the plans and how they have changed during the years ensuring the best for their students and the surrounding neighborhood. Currently it is an eyesore and dangerous site. It has not changed much from the times I myself have attended athletic activities as a visiting opponent. I would think that the city as well as its governing body would support this endeavor for numerous reasons. This property has served the youth of the community well through out the years. I can only imagine with the continued guidance and management how many more of our future generations will reap the benefits.

Respectfully,
Ana Maria McCarty

Dionne Bearden

From: Lisa Durward <[REDACTED]>
Sent: Thursday, October 21, 2021 3:01 PM
To: PlanningCommissioners
Subject: St. Anthony Athletic Complex Renovation

-EXTERNAL-

Attn: Long Beach Planning Commission

I am writing to you today to express my full and enthusiastic support of the St. Anthony Athletic Complex Renovation. This project has been a long time coming and as a new St. Anthony parent of a student athlete, we couldn't be happier and excited for this new endeavor. This project was certainly one of many factors that contributed to us sending our child to St. Anthony's. The current field is not safe for our children, lacks curb appeal, and is in desperate need of being brought into the current century as many other fields in the district have done. It's encouraging to see this corner of Long Beach being revitalized. We hope this will provide St. Anthony with a fine legacy as it launches into it's second century of providing an outstanding college preparatory education for many, many residents of the city and its surrounding areas.

Sincerely,

Lisa Durward
St. Anthony parent (Freshman - Dylan Durward)

Sent from my iPhone

Dionne Bearden

From: Steven Chun <[REDACTED]>
Sent: Thursday, October 21, 2021 3:33 PM
To: PlanningCommissioners
Subject: Application 2002-05 (SPR20-003)

-EXTERNAL-

To Planning Commission

My name is Steven Chun and I live at [REDACTED], Long Beach CA 90808. My number is 56 [REDACTED]

I am writing in regards to the St Anthony High School project at Clark Field. In particular, I have the following questions:

During construction:

- What plans do they have for noise and dust mitigation. Do they plan to erect fencing and water the site to prevent dust? We get a lot of dust from their dirt track so I can just imagine how it would be with an entire site that is a dirt field during construction
- Will there be limits on construction times with respect to how early and late construction runs and if there will be continuous work on the weekends?

After construction:

- What noise mitigation features will the project include to help us neighbors tolerate noise from events being held.
 - For example, will there be trees or sound walls on the east and west sides of the project?
 - Will there be limits on operating hours for events such as events not starting earlier than 9 on weekends or past 10 or 11pm at night?
 - Will there be limits on the number of events held per week or at night?
 - Will there be limits on how early or late events that use amplified music, speakers? For example, in the past, there have been users who used speakers as early as 8am on the weekend.
- What will be the operating limits on the facility so that there is reasonable downtime for the neighborhood. What is the anticipated noise levels from the facility and how frequently are those noise levels expected to occur?
- Will there be an ongoing process to include neighborhood feedback in proposed operations of the facility?
- Will there be proper maintenance of the facility and security? In the past, there have been little kids throwing pieces of asphalt across the flood control channel into my backyard. I'd like that to not happen again.

Thanks in advance for letting me address my concerns. I realize I live near a park, but the proposed scale of this facility could represent a significant increase in the number of events and noise level in the neighborhood at all hours. And, given the cost of the facility, I suspect the school will want to rent it out as much as possible to recover their costs, so I am concerned with how the facility will be used in the future.

Steven Chun