

From: Jonathan Shibley [mailto:jonathanshibley@verizon.net]

Sent: Tuesday, June 6, 2023 11:00 AM

To: CityClerk <CityClerk@longbeach.gov>

Subject: OBJECTIONS TO ITEMS 23-0585 AND 23-0586, INCLUSIVE ON AGENDA for June 6, 2023 @ 5:00 P.M>

-EXTERNAL-

Jonathan G. Shibley, who owns property within those areas in which a change from District 1 to District 2 as provided for by LBMC **8.80.160 Noise District Map Proposed OBJECTS** to the proposed changes and some existing provisions on the following grounds:

1. The proceedings in general on the ground that the City has failed and refused to give adequate notice to property owners whose interests will be affected by the proposed noise element in a manner which comports with at least minimal due process. Discussion: Notwithstanding the recitals in this document of "extensive public outreach efforts..." I certainly have not been notified of any of this. Minimal due process requires at least service by U.S. mail of ten (10) days' notice to the affected person's address of record in property tax rolls. The failure and refusal to do so may constitute a TAKING within the meaning of the 5th Amendment of the U.S. Constitution and corresponding provision of the California Constitution;

2. Provisions of LBMC 8.80.280 on the ground that it is vague, ambiguous and uncertain. Discussion: Just what is meant by "occasional outdoor and indoor gatherings..." Does this mean functions put on by the City, functions allowed by permit or general get-togethers which might occur in residential areas. "Occasional" is particularly troubling. Does this mean once a week, once a month, twice a years, etc. etc. Does "gatherings" include the loud parties that occur from time to time in the City? Can my next door neighbor set up a discotheque in his backyard that emits 1000 watts per channel out of the speakers? Such is not uncommon in some neighborhoods and some of these disturbances appear loud at distances exceeding 400 feet. This is not a standard which is definite and certain;

3. Proposed Noise District Map Provided for by LBMC 8.80.160 is barely legible and does not clearly set forth the areas in which changes are proposed. In

that it appears to change the area between the east side of Long Beach Boulevard and Atlantic Avenue between 20th Street and Hill Street on the ground that said area is neither mixed use nor primarily commercial. On the contrary, those areas are almost exclusively residential which is a matter of common knowledge and not reasonably subject to dispute;

4. Objects to the fact that the noise ordinance only applies to noise created by a mechanical or electrical device of some sort. It does not apply to gathers which include yelling, screaming or loud talking. As noise coming from a LOUD MOUTH is no less deleterious than noise coming from a LOUDSPEAKER, there is NO RATIONAL BASIS for this. On its webpage the Health Department implies that these disturbances are too transitory to be monitored. To be sure, many are. Nonetheless, there are gatherings that occur with sufficient regularity and duration to be monitored. For example, I had a neighbor who every Friday night between the hours of midnight and 3:00 A.M. would have such gatherings on his front porch. **Rather than summarily excluding these noise disturbances, the City should provide for sound discretion.** Those which are in fact too transitory should be excluded. However, Noise Control should assume jurisdiction over those which occur with sufficient regularity and duration to lend themselves to monitoring; and,

5. Measurements are locked in to using an A-Weighted Network. This standard which was developed in the 1930s when most people did not have sound systems with powerful subwoofers, **is based on the false assumption that most people cannot clearly sense low frequency sound.** On the contrary most people can hear low frequency sound and it is most irritating. Even when one cannot hear it, one can feel it. Moreover, low frequency sound has the ability to travel long distances and to penetrate the thickest of walls. It is very difficult to shield against. A more reasonable approach would be to allow discretion to the person monitoring to use either a C weighted network or, case of subwoofers Z or no weighting which passes sound as it really is. For peer reviewed scientific articles on this issue you are referred to <https://www.mdpi.com/2076-3417/10/15/5205> The **Multidisciplinary Digital Publishing Institute (MDPI)** is a concern which publishes open access reviewed journal articles on many scientific subjects. For discussion on who they are please refer to Wikipedia's article on them which can be found here: <https://en.wikipedia.org/wiki/MDPI>

The aforesaid article is a review of several studies on the deleterious effects of low frequency noise. Besides its audio effects it also has non-audio facts Basically, A-weighting discriminates against low frequencies. 100 unweighted decibels of 30 Hz sound will show up on an A-weighted meter of something like between 40 and 50 dB(A). This may not be a violation under the noise ordinance **but it can still put one in the hospital** if exposure is long enough. A discussion of weighted noise meters can be found here:

<https://www.noisemeters.com/help/faq/frequency-weighting/>

Conclusion: The objecting party has no doubt that it would be easy to prove that some of the noise to which the City now desires to give a wide pass constitutes a nuisance as that term is defined by California Civil Code § 3479. Of course, such litigation would involve the use of expert witnesses and be much more expensive in a private civil action than if it were handled by the City. For example, much of the noise the City considers harmless is nonetheless capable of disrupting the sleep of the average person. Sleep is not a luxury but rather a medical necessity. Because of the total lack of notice I have not been able to adequately prepare but when this comes up for review in a year I may very well want to put on expert testimony at the hearing to controvert the contentions in this new Noise element