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LETTER TO COMMISSION

TO: Mayor Matti H. Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: January 30, 2008

SUBJECT: Noise Enforcement Report for the Period of March 19, 2006 to September 29, 2007

This Letter to Commission provides a status report on the enforcement and implementation of the noise ordinance that was adopted by commission action on March 8, 2006 and was implemented on March 18, 2006. The ordinance was subsequently amended in June and July, 2006 to provide further clarification, and to further address construction noise and residential noise.

BACKGROUND:

As you may recall, among other things, the Noise Ordinance:

- Incorporated section 21-28 of the County Code relating to noise. In essence, any noise that is "unnecessary and excessive is prohibited". Subsequent to the adoption of our ordinance, the County Code's (and now City's) threshold for what is noise, as well as the City's ability to use that threshold for enforcement, were both upheld by the United States Court of Appeals, Eleventh Circuit.
- Established a warning system prior to violations being issued. Verbal warnings may now only be issued if the violation is not the result of a complaint but, rather, is observed during a Code Compliance Officer's patrol. While the Commission initially approved a process that allowed three written warnings prior to the issuance of a violation that carries a fine, the Commission subsequently amended the ordinance to reduce (from three to one) this requirement for single family home districts;
- Clarified and established parameters for construction noise;
- Established a fine and penalty system that addresses habitual offenders and violations of the noise ordinance when the noise emanates from an illegal, commercial use of a single family home;
- Provided for a "rolling" period for warnings to be reset (12 months) and for the fine schedule to be reset after (18 months); and
- Provided due process for violators through an established appeals process.

IMPLEMENTATION:

During the course of the last eighteen months, the Neighborhood Services Department Code Compliance Division has been primarily responsible for responding to noise complaints. Code Compliance staff received initial and refresher training during this time to ensure consistency in the application of the ordinance requirements (four formal training sessions on 3/14/06, 3/22/06, 4/11/07 and 5/30/07, and an additional refresher course combined with other training). This training includes the approaches to be taken in evaluating whether the noise meets the threshold for a violation.

In addition, the Code Compliance Division adapted existing computer software to assist them in tracking noise complaints, and provide them with immediate access to historical information. This is essential as our administrative process requires that all complaints,

whether valid or not, be documented. Immediately after the approval of the ordinance, an additional query function was added to our on-line services tools on our web site, permitting residents and businesses to research any code complaints at an address, including noise complaints. As a result, residents are able to track the outcome of any noise complaint (e.g. whether valid or not) and, if valid, the violation issued (e.g. written warning, violation).

Noise cases are opened by Code Compliance officers during their patrols or in response to complaints received. These complaints may be called directly to the Code Compliance Division officers, or are routed through the non-emergency operators at Police. The dispatcher contacts the on-duty Code Administrator, who then assigns the call to an available Code Officer. Code Compliance Division staff provides coverage until 6:30 a.m. from Thursdays to Sundays, typically the busiest nights in the City. Night coverage extends to 1:00 a.m. Monday to Wednesday to monitor specific problem locations, or on extended hours, as needed. Police respond to calls on those days/hours when Code staff is not available. Schedules are enhanced to address specific needs that may include problem areas and special events.

A Code Compliance officer will, upon arriving to a location that has been the subject of a complaint, assess the level of noise from the point of origin of the complaint. In other words, if a complaint has been called in from a specific location, then the Code Compliance officer will go to that location to assess the level of noise and determine if there is a violation. If the complaint was anonymous, then the Code Compliance officer will assess noise from various locations surrounding the area for which the noise complaint was called in. There are occasions when a complaint is called in about a specific location and the Code Compliance officer arrives and determines that the excessive noise is actually emanating from an adjacent or other location.

It should be noted that the majority of noise violation cases are opened by our teams that work the evening hours. The Code Compliance officers that work our night schedule are experienced staff well-versed in the noise ordinance; three of the four have an average of 12 years as Code officers and two have been Acting Code Administrators.

COMPLAINT/VIOLATION HISTORY:

For the reporting period of March 18, 2006, to September 29, 2007, the Division opened a total of **4,091** noise violation cases. All but 79 of these cases were opened as a result of a complaint. These 79 cases were the product of noise cases that were opened as a result of a Code Compliance officer witnessing a violation while on patrol.

A total of **75%** of all noise complaints received (3,060) were deemed "not valid." This means that the noise level witnessed by the Code Compliance officer when they responded to the complaint did not meet the threshold for a noise violation as defined in Chapter 46 of the Miami Beach City Code. This does not mean, necessarily, that a valid noise violation was occurring when the complaint was called; however, since the violation must be witnessed by the Code Compliance officer, it is possible that on some of these occasions the offending noise may have been reduced or stopped by the time that Code Compliance officers arrived.

Of the valid cases **(1031)**, they break down as follows:

Type of Valid Case	Number
Verbal Warning issued (no complaint received; proactive patrol by code)	79
Written Warning issued	834
Violation issued	118

Attachments A – F provide a detailed breakdown of the noise cases opened each quarter for the first eighteen months of implementation of the noise ordinance. This includes a breakdown of cases opened by location type (e.g. hotels, clubs, retail establishments and

residential properties). Attachment G is a cumulative total of the violations during this eighteen month period, also broken down by type. Of note:

- 81% of all valid noise cases resulted in a written warning being issued; only 11% resulted in a violation with a fine;
- The largest percentage of valid noise cases opened (69.1%) was for noise violations in residential properties. The next highest percentage of valid noise cases was for clubs, bars and/or restaurants (19.2%), followed by Hotels (8.6%).

Attachments A – F also provide a breakdown of the number of locations that have received multiple violations. Only one commercial location reached the threshold of violations based on this ordinance during the first year of implementation. Officials from the Code Compliance Division of the Neighborhood Services Department met and worked closely with the management of this business to assist them in developing a plan to reduce noise issues at their location. Several suggestions have been implemented and our Code Compliance staff continues to work together with the business in monitoring events for noise issues.

Attachment H provides a side-by-side breakdown of violations by quarter, by type. As you will note, with the exception of the second quarter after implementation when the number of noise cases decreased significantly, the total number of noise cases opened has reduced steadily.

NOISE VIOLATIONS DURING MAJOR EVENT PERIODS:

During the discussions on the noise ordinance, the issue of noise during major event periods was frequently mentioned. As you know, the City is the location for more than a half dozen "regular" major event periods each year, with almost a dozen on busier years. Many major event periods, such as the Miami International Boat Show, are typically not noise producing major event periods, while other major event periods (i.e. New Year's Eve, Winter Music Conference, etc.), typically are. (It is also important to note the difference between a major event period and a special event permit. Special Event Permits are issued for purposes of permitting time-limited, special uses at non-residential locations. Examples include a live concert on the beach, Volleypalloza at Lummus Park, or a marathon that runs through the City. The issuance of a Special Event Permit does not waive the provisions of the City's noise ordinance; the requirement for compliance with the noise ordinance is specifically listed on each Special Event Permit. Special Event Permits may or may not be issued during a Major Event Period).

A review has been conducted of the impact of the implementation of the new noise ordinance during major event periods, particularly those that tend to be noise producing events. During the period covered for this report there were eleven major event periods. The following details the enforcement history during these times:

Winter Music Conference 2006

The Code Compliance Division opened a total of 209 noise cases between 3/22/06 and 3/28/06. Of the 209 cases, 119 (or 57%) were found to be invalid (no warning or violation issued). The valid cases (90) are broken down as follows: 25 verbal warnings issued (25 commercial); 54 written warnings issued (40 commercial, 14 residential); and 11 violations issued (1 residential, 10 commercial).

Memorial Day 2006

The Code Compliance Division received a total of 84 complaints between 5/25/06 and 5/29/06. Of the 84 complaints received, 62 (or 74%) were found to be invalid. The valid cases (22) are broken down as follows: one verbal warning (commercial); 20 written warnings (8 commercial, 12 residential); and 1 violation (commercial).

Fourth of July 2006
The Code Compliance Division received a total of 24 complaints, of which 16 or 66% were found invalid. The remaining eight complaints (residential) were valid and resulted in written warnings. There were no violations issued during this major event weekend.

Labor Day 2006
The Code Compliance Division received a total of 29 complaints, of which 21 or (72%) were invalid. The remaining 8 complaints (residential) were valid and required written warnings. There were no violations issued during this major event weekend.

Veterans Day 2006
The Code Compliance Division received a total of 28 complaints, of which 19 or (68%) were found to be invalid. The remaining nine valid complaints resulted in seven written warnings (residential) and two violations (residential).

New Year's Eve 2006/07
The Code Compliance Division received a total of 53 complaints between 12/31/06 and 1/1/07. Of the 53 complaints received, 40 (or 75%) were found to be invalid. The remaining 13 valid complaints resulted in 11 written warning notices (5 commercial, 6 residential), and 2 violations (1 commercial, 1 residential).

Super Bowl 2007
The Code Compliance Division received a total of 53 complaints between 1/31/07 and 2/4/07. Of the 53 complaints received, 40 (or 75%) were found to be invalid. The remaining 13 valid complaints resulted in 10 written warnings (2 commercial, 8 residential), and 3 violations (3 commercial).

Winter Music Conference 2007
The Code Compliance Division opened a total of 151 cases between 3/20/07 and 3/25/07. Of the 151 cases opened, 119 (or 79%) were invalid (not a violation). The remaining 32 valid cases were broken downs as follows: 16 verbal warnings issued (13 commercial, 3 residential); 14 written warnings issued (1 commercial, 13 residential); and 2 violations issued (commercial).

Memorial Day Weekend 2007
The Code Compliance Division received a total of 62 complaints and issued three verbal warnings while on patrol between 5/24/07 and 5/29/07. Of the 62 complaints received, 49 (or 79%) were found to be invalid. The valid cases (16) are broken down as follows: verbal warning (3 commercial); written warnings (7 commercial, 6 residential).

Fourth of July 2007
The Code Compliance Division received a total of 8 complaints, of which 5 or 63% were found invalid. The remaining three complaints (1 residential, 2 commercial) were valid and resulted in written warnings.

Labor Day 2007
The Code Compliance Division received a total of 28 complaints, of which 26 or (93%) were invalid. The remaining two complaints (1 residential, 1 commercial) were valid and required written warnings.

It is important to note that the majority of noise complaints were deemed invalid, even during major event periods.

APPEALS PROCESS:
The ordinance provides for an appeals process if a violation is issued. Initially, the Chief Special Master chose to personally hear all, or the majority of, noise cases. Of the 118 violations issued during the first eighteen months of implementation, 78 cases were appealed, of which 71 have been heard by the Special Master on appeal. The outcome of the appeals is as follows:

- 58 cases in favor of the City (82%)
- 13 cases in favor of the applicant

It should be noted that the level of successful adjudication was possible based on the strength of the evidence presented by staff (Code and Legal). Several of the initial cases found in favor of the appellant were the product of language in the original ordinance; that language was corrected with the amendments to the ordinance.

CONCLUSION:
The information gathered through this period reflects that the majority of complaints received were invalid at the time of inspection. As previously explained, this may occur because the Code Compliance officer must witness the violation in order to take any enforcement action; the noise level at the time the officers arrive may not be sufficient to meet the threshold of noise, per our ordinance. It is important to note that, in those circumstances, Code Compliance officers will typically advise the residence/business that, while no violation will be issued, a complaint was received for that location and that they should monitor their noise levels accordingly. Our Code staff reports that most businesses/residences are cooperative when approached in these circumstances.

As reflected above and on the attachments, the majority of valid noise cases are for excessive noise in residential areas. This is consistent with the experience prior to amending the noise ordinance. However, it should be noted that Code staff has received complaints from residents regarding the limited number of written warnings afforded to them, as compared to businesses.

The attachments also reflect a consistent reduction in the number of noise cases opened as the enforcement of the ordinance has continued.

The noise ordinance provisions were intended to, among other things; assist in reducing the incidences of excessive and unreasonably loud noises, while ensuring uniform and consistent enforcement of the ordinance. The Administration is confident that, with consistent training and the utilization of clear parameters, the ordinance has, in fact, resulted in the objective enforcement of the noise ordinance.

Should you have any additional questions or concerns, please do not hesitate to contact my office.

Attachments

ATTACHMENT A

Noise Ordinance Valid Case History

03/18/06-06/18/06

Valid Cases by Location Type (with Percent of Total)

Location type	Verbal Warnings		Written Warnings		Violations		Valid Totals	
	Number	% Of Total	Number	% Of Total	Number	% Of Total	Number	% Of Total
Clubs/Bars/Restaurants	14	39%	31	14%	3	14%	48	17%
Hotels	11	31%	36	16%	11	52%	58	21%
Retail	4	11%	4	2%	0	0%	8	3%
Residential	7	19%	151	68%	7	34%	165	59%
Totals	36	100%	222	100%	21	100%	279	100%

Breakdown -# of Locations w/ Multiple Violations (by Location type)

Location type	1 Vio	2 Vio	3 Vio	4+ Vio
Clubs/Bars/Restaurants	3	0	0	0
Hotels	3	1	2	0
Retail	0	0	0	0
Residential	3	2		0

ATTACHMENT B

Noise Ordinance Valid Case History

6/19/06-9/19/06

Valid Cases by Location Type (with Percent of Total)

Location type	Verbal Warnings		Written Warnings		Violations		Valid Totals	
	Number	% Of Total	Number	% Of Total	Number	% Of Total	Number	% Of Total
Clubs/Bars/Restaurants	0	0	16	21%	4	40%	20	22%
Hotels	0	0	1	1%	0	0	1	1%
Retail	0	0	0	0	0	0	0	0
Residential	3	100%	60	78%	6	60%	69	77%
Totals	3	100%	77	100%	10	100%	90	100%

Breakdown -# of Locations w/ Multiple Violations (by Location type)

Location type	1 Vio	2 Vio	3 Vio	4+ Vio
Clubs/Bars/Restaurants	2	1	0	0
Hotels	0	0	0	0
Retail	0	0	0	0
Residential	3	0	1	0

ATTACHMENT C

Noise Ordinance Valid Case History

09/20/06-12/19/06

Valid Cases by Location Type (with Percent of Total)

Location type	Verbal Warnings		Written Warnings		Violations		Valid Totals	
	Number	% Of Total	Number	% Of Total	Number	% Of Total	Number	% Of Total
Clubs/Bars/Restaurants	0	0%	20	11%	5	17%	25	12%
Hotels	0	0%	5	3%	4	13%	9	4%
Retail	3	75%	11	6%	0	0%	14	7%
Residential	1	25%	141	80%	21	70%	163	77%
Totals	4	100%	177	100%	30	100%	211	100%

Breakdown -# of Locations w/ Multiple Violations (by Location type)

Location type	1 Vio	2 Vio	3 Vio	4+ Vio
Clubs/Bars/Restaurants	3	1	0	0
Hotels	2	1	0	0
Retail	0	0	0	0
Residential	12	1	0	1*

*seven violations issued to 1445 16th St

ATTACHMENT D

Noise Ordinance Valid Case History

12/20/06-03/19/07

Valid Cases by Location Type (with Percent of Total)

Location type	Verbal Warnings		Written Warnings		Violations		Valid Totals	
	Number	% Of Total	Number	% Of Total	Number	% Of Total	Number	% Of Total
Clubs/Bars/Restaurants	2	40%	19	12%	13	38%	34	17%
Hotels	1	20%	10	6%	3	9%	14	7%
Retail	1	20%	3	2%	1	3%	5	3%
Residential	2	20%	129	80%	17	50%	148	73%
Totals	6	100%	161	100%	34	100%	201	100%

Breakdown -# of Locations w/ Multiple Violations (by Location type)

Location type	1 Vio	2 Vio	3 Vio	4+ Vio
Clubs/Bars/Restaurants	3	1	0	2
Hotels	0	0	1	0
Retail	1	0	0	0
Residential	8	3	1	0

ATTACHMENT E

Noise Ordinance Valid Case History

03/20/07 - 06/19/07

Valid Cases by Location Type (with Percent of Total)

Location type	Verbal Warnings		Written Warnings		Violations		Valid Totals	
	Number	% Of Total	Number	% Of Total	Number	% Of Total	Number	% Of Total
Clubs/Bars/Restaurants	17	81.0%	21	20.0%	7	53.8%	45	32.4%
Hotels	2	9.5%	2	1.9%	0	0.0%	4	2.9%
Retail	0	0.0%	1	1.0%	0	0.0%	1	0.7%
Residential	2	9.5%	81	77.1%	6	46.2%	89	64.0%
Totals	21	100%	105	100%	13	100%	139	100%

Breakdown -# of Locations w/ Multiple Violations (by Location type)

Location type	1 Vio	2 Vio	3 Vio	4+ Vio
Clubs/Bars/Restaurants	7	0	0	0
Hotels	0	0	0	0
Retail	0	0	0	0
Residential	6	0	0	0

ATTACHMENT F

Noise Ordinance Valid Case History

6/20/07 - 9/29/07

Valid Cases by Location Type (with Percent of Total)

Location type	Verbal Warnings		Written Warnings		Violations		Valid Totals	
	Number	% Of Total	Number	% Of Total	Number	% Of Total	Number	% Of Total
Clubs/Bars/Restaurants	9	100.0%	14	15.2%	3	30.0%	26	23.4%
Hotels	0	0.0%	3	3.3%	0	0.0%	3	2.7%
Retail	0	0.0%	4	4.3%	0	0.0%	4	3.6%
Residential	0	0.0%	71	77.2%	7	70.0%	78	70.3%
Totals	9	100%	92	100%	10	100%	111	100%

Breakdown -# of Locations w/ Multiple Violations (by Location type)

Location type	1 Vio	2 Vio	3 Vio	4+ Vio
Clubs/Bars/Restaurants	3	0	0	0
Hotels	0	0	0	0
Retail	0	0	0	0
Residential	7	0	0	0

ATTACHMENT G

Noise Ordinance Valid Case History

03/18/06-09/29/07

Valid Cases by Location Type (with Percent of Total)

Location type	Verbal Warnings		Written Warnings		Violations		Valid Totals	
	Number	% Of Total	Number	% Of Total	Number	% Of Total	Number	% Of Total
Clubs/Bars/Restaurants	42	53.2%	121	14.5%	35	29.7%	198	19.2%
Hotels	14	17.7%	57	6.8%	18	15.3%	89	8.6%
Retail	8	10.1%	23	2.8%	1	0.8%	32	3.1%
Residential	15	19.0%	633	75.9%	64	54.2%	712	69.1%
Totals	79	100%	834	100%	118	100%	1031	100%

Breakdown -# of Locations w/ Multiple Violations (by Location type)

Location type	1 Vio	2 Vio	3 Vio	4+ Vio
Clubs/Bars/Restaurants	21	3	0	2
Hotels	5	2	3	0
Retail	1	0	0	0
Residential	39	6	2	1*

*seven violations issued to 1445 16th St

ATTACHMENT H

Noise Ordinance Valid Case History

Total Valid Cases by Quarter, By Location Type

03/18/06-09/29/07

Location type	03/18/06-06/18/06	6/19/06-9/19/06	09/20/06-12/19/06	12/20/06-03/19/07	03/20/07 - 06/19/07	6/20/07 - 9/29/07	TOTALS
Clubs/Bars/Restaurants	48	20	25	34	45	26	**198**
Hotels	58	1	9	14	4	3	**89**
Retail	8	0	14	5	1	4	**32**
Residential	165	69	163	148	89	78	**712**
Totals	279	90	211	201	139	111	**1031**