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OFFICE OF THE CITY MANAGER

NO. LTC # *230-2014*

LETTER TO COMMISSION

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: July 8, 2014

SUBJECT: Public Discussions on Noise – Community Meetings

A handwritten signature in black ink, appearing to read 'J. Morales', written over the 'FROM' line.

This Letter to Commission (LTC) provides a synopsis of a number of public discussions that took place beginning in February 2014 through April 2014 regarding noise. Initially, Commission Resolution No. 2013-28272 adopted the recommendation of the Finance and Citywide Projects Committee to establish working groups to identify and implement procedures and monitoring guidelines to address the recommendations of the Crowe Horwath Performance and Operational Audit (Audit). The Audit identified the implementation of procedures and monitoring guidelines as a priority and touched on various topics including that noise-related violations are extremely important to the City and specifically, the recommendation and review of the City's noise violation policy to include process review and consideration in establishing a decibel threshold.

The City Commission gave further consideration to the establishment of the Working Group on Noise at its February 12, 2014 City Commission meeting due to their desire to provide opportunities for the public to give input at town hall meetings as to the matters to be addressed. As such, the Working Group on Noise was abolished (Commission Resolution 2014-28503) and the community meetings were held to provide opportunities for citizen input.

The meetings took place with the active participation of area residents, community activists, and other stakeholders such as business owners and operators involved in the entertainment and tourism industries, and representatives from a number of City Departments, including the Police, Code Compliance (Code), Parking and Planning Departments. The meetings were co-chaired by Vice-Mayor Mickey Steinberg, Commissioner Joy Malakoff, and Assistant City Manager Joe Jimenez.

I. SCHEDULE

There were four (4) separate community meetings where a myriad of noise-related topics and issues of concern were raised and discussed by residents and business owners. The table below provides the date of the meeting, the location and a summary of the topics of discussion.

Meeting Date	Time	Location	Topic Summary
02/07/2014	12:30-2 PM	City Manager's Small Conference Room	Establishing Priorities. Discussion on current procedures and guidelines. Discussion on standard to gauge noise and noise dispositions.
03/27/2014	12-2 PM	City Manager's Large Conference Room	Code Compliance - Current process, Administrative Guidelines, Validity Rates, Use of Technology, Comparative Data and Staffing. Police: Noise from Vehicles. Legal options. City Attorney; Current noise standard grounded on Federal case law (<i>DA Mortgage vs. City of Miami Beach</i>). Technology and Legal Precedence, <i>Key West vs. Catalano</i> case law.
04/10/2014	12-2 PM	Parking Department Conference Room	Planning Dept: Discussion on Rooftop Ordinance, Outdoor Speakers, Certificates of Use/Appropriateness Public: Proposal of 100 ft "plainly audible" Rule.
04/24/2014	12-2 PM	City Manager's Large Conference Room	Police / Code Compliance – Continued coordination. Special Master: Discussion on appeal process.

II. TOPICS OF DISCUSSION

During the initial February 7, 2014 meeting, there were multiple issues raised including whether the current noise assessment process provided measurable and clear standards. Another topic which brought animated discussion was the noise validity rates. Regarding the first topic, staff from the City Attorney's Office established that the City does have a noise benchmark which is a "reasonable person's standard", which was established by the City and upheld by the U.S. Court of Appeals for the Eleventh Circuit. *DA Mortgage, Inc. v. City of Miami Beach*, 486 F.3d 1254, 1262 (11th Cir. 2007). This case not only asserted the ordinance to be content-neutral (in that it did not inhibit others from their rights of free expression), it affirmed its constitutionality and provided substantive due process. Other topics raised during the February meeting included noise emanating from vehicles from loud music and from revving and/or throttling engines, response from Police Officers and legal and enforcement considerations.

During the March 27, 2014 meeting, Code presented on current process, operating procedures and requirements as adopted in the 2008 Noise Administrative Guidelines and City Ordinance. Discussion items included noise validity rates, the consideration and possible use of technology in the way of decibel readers or similar instruments in determining noise violations, response time by Code Compliance Officers (CCOs), and staffing challenges given the extensive variety of assignments and wide range of responsibilities assigned to Code. Staff from the City Attorney's Office discussed legal precedence and case law at Florida's Second District Court of Appeals regarding noise emanating from wheeled conveyances and moving vehicles. As it relates to the use of technology and decibel readers, the City Attorney's Office discussed how, despite technological advances, noise readers and/or decibel readers have proven rather difficult to apply, while our current noise ordinance, as adopted, has been constitutionally upheld in Federal court.

Another topic discussed during the second meeting was the validity rate for noise complaints in the City of Miami Beach, particularly the assumption from members of the general public that the validity rate is too low and correlation and contributing factors thereto. During this meeting discussion was had about the City of Miami Beach being unique in terms of its mixed zoning, proximity of entertainment industry businesses to residences and the significant increase in transient population on a day to day basis. Another challenge identified was outdoor food and alcoholic beverage businesses with music speakers which adversely affect residents. One potential solution suggested is to restrict noise levels through conditional use permits (CUP) issued by the Planning Department during the licensing process.

A separate topic and item of discussion was the use of Code's radio transmissions in an open format which allows for the possible monitoring of radio communications by scanners or smart phone applications, particularly noise-related complaints and assignments for enforcement. The potential interception of these radio transmissions may have an effect on the integrity of the response and derail the effectiveness of addressing noise complaints.

During the third meeting, which took place on April 10, 2014, several community activists recommended the expansion of the "100 foot plainly audible" section of the code which applies exclusively to amplified music between the hours of 11 PM to 7 AM, to be in effect at all times. The recommendation was to have the following section of the Code to be in effect at all times.

[CMB Code, Sec. 46-152 (b) - The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such manner as to be plainly audible at a distance of 100 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section].

Furthermore, the recommendation by a number of area residents was to apply the "100 foot plainly audible" clause to any type of noise, 24 hours per day, seven (7) days of the week. Several business leaders, owners and operators were vehemently opposed to the amendment of that provision of the ordinance at all times, expressing the adverse impact of such legislation on the City's tourism and entertainment industries.

Other issues raised by area residents during this third meeting were methods to improve regulations and better control of noise through conditional use permits (CUPs) and similar restrictions regulating location and music volume of indoor and outdoor speakers. An example of such regulation which has been identified to be quite effective is the "roof-top"/entertainment ordinance which prohibits certain types of uses [(e.g. pawnshops, dance halls and entertainment establishments) within certain geographic areas of the City (e.g. South of Fifth Street – Section 142-693(c)].

During the fourth and final meeting held on April 24, 2014, several other noise-related issues were raised, including but not limited to amplified music levels coming from "boom boxes" and moving vehicles, and muffler noise from sports vehicles, motorcycles and marine vessels. The discussion also included noise cases before the Special Master, the ease of obtaining a continuance and evidentiary challenges of this process. Other members of the public questioned whether there were sufficient Special Masters and City Clerks to address the large caseload for noise and other code violations.

III. CONCLUSION

Miami Beach is a dynamic community and a world tourist destination. One of the City's primary goals is to ensure a balance between the variety of activities that make our City an exciting place to live, work and play while protecting our residents' quality of life.

Though many points of view were candidly discussed, there was no specific outcome from the meetings. City administration understands the concerns raised by both residents and industry members whether valid or perceived. One interesting fact is that the majority of noise complaints (more than 60%) are from within residentially zoned areas (e.g. single-family homes, condominiums, etc.). Among the various discussion items affirmed by City administration, was the continuation of procedural training, particularly for Police and Code, in an effort to maintain equity and uniform processes; particularly as it relates to the method to address noise

complaints. In that vein, both Code and Police place staff training as a top priority for both departments, and include in their curriculum Customer Service, Ethics, and Diversity Training.

As it relates to the use and future application of technology regarding noise, there are a number of initiatives that should yield additional positive results. Among them are a plan to purchase radios that are not in an open radio frequency format having an encrypted communication channel and the use of web-based software that will replace the antiquated database currently utilized by Code, Building, Public Works and Planning Departments. A real-time / web-based software is a critical component in improving the communication exchange between departments and overall service delivery.

It is interesting to note that, during this same time period, the Community Satisfaction Survey was conducted, during which 1,851 residents were surveyed. Of those surveyed, 31% said there was too much noise. When asked to identify the specific reason, vehicle traffic was the number one cause at 34% and construction was number two at 12%. These obviously pose very different issues than noise generated by clubs or special events. Interestingly, only 1% identified lack of code enforcement as the reason. Staff welcomes any direction as to how to move forward.

JLM/JMJ/HC/RSA

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