

**NOISE IN THE CITY OF MIAMI BEACH:  
HISTORICAL ANALYSIS, LEGAL DEFENSIBILITY,  
AND EMERGING ISSUES**

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**CODE ENFORCEMENT PROFESSIONAL LEGAL PAPER**

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## **I. ABSTRACT**

In the City of Miami Beach, as may be the case in other metropolitan cities in the State of Florida and the U.S., noise is a challenging issue that impacts both residents and businesses alike. While some residents assert that Code's noise validity rates are unacceptably low, paradoxically, business owners and operators in the entertainment and hospitality industries believe that the City of Miami Beach issues far too many noise violations and is not business friendly.

This analysis will address this apparent paradox and will provide historical data including noise-related trends, patterns, and other relevant noise-related information within the City of Miami Beach. The analysis will also seek to identify emerging issues that other municipalities may be experiencing, including the incorporation of technology to the code enforcement process. Lastly, the analysis will evaluate the current municipal ordinance at the City of Miami Beach to ensure legal defensibility and explore options regarding the incorporation of technology in the noise assessment practice.

This topic and experience gained by Miami Beach in addressing noise may be of value to other municipalities in the State of Florida as they may be experiencing similar challenges: whether dealing with a demanding business industry whose interest is in direct conflict with that of area residents, or developing processes to allow for input from area residents, businesses and other stakeholders, or the inclusion of technology into Code's day-to-day activities. In that vein, the City of Miami Beach provides a petri-dish to other Code Enforcement agencies to assess and learn from, as it attempts to reconcile all the aforementioned interests while increasing transparency, improving service delivery, and enhancing the public trust in local government.

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## II. INTRODUCTION

In the City of Miami Beach, noise is a challenging environmental issue that impacts both residents and businesses. As may be the case in other municipalities, noise is generally an undesirable outcome of densely populated metropolitan areas that have mixed-use zoning, defined as medium to high density residential and commercial properties co-existing side-by-side (Ian Grant, Business Geography). As a world-class tourist destination, the City of Miami Beach (the "City") is challenged with balancing a high volume transient / tourist population, accompanied by thriving entertainment and hospitality industries while protecting the quality of life of its residents.

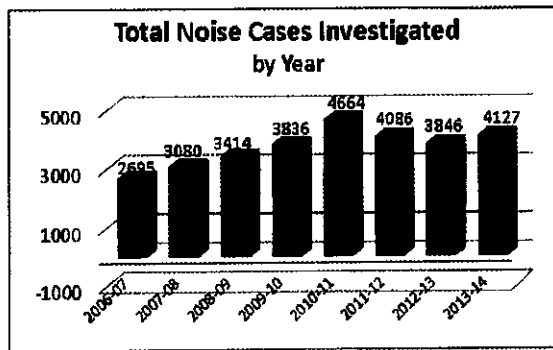
In Miami Beach, noise is a focal point where both residents and businesses intersect. The challenge for the City is reconciling opposing and contrasting views: While some residents assert that the enforcement agencies "must be deaf and rarely find noise complaints valid" (Dr. Morris Sunshine, City of Miami Beach, Neighborhood & Community Affairs Committee, January 2012); paradoxically, some business owners and operators believe that the City is too restrictive, issues far too many noise violations, and is not business friendly. (Roman Jones, Opium Group; Discussion on Noise, City of Miami Beach, February 2014). Some businesses even claim that overzealous Code Compliance Officers ("CCOs") over-regulate their enterprise and jeopardize their ability to operate a successful business. In an effort to address all these issues and identify a balancing point, in early 2014, the City organized a number of public meetings to obtain input from area residents and business owners to determine if the current noise ordinance and enforcement process needed to be amended as well as discuss the potential incorporation of technology as part of the noise assessment process.

According to Article IV, Section 46-152 of the Code of Ordinances of the City of Miami Beach, a noise violation is identified as any noise that is deemed to be “*excessive, unusual, unreasonable, and unnecessary*” any time of the day and at the time of arrival by a CCO or a Police Officer (“PD”). The City’s Noise Ordinance requires that a “Written Warning” be issued for the first valid noise complaint, and a \$250 fine for the second valid noise complaint within the preceding 12 months. However, the fines quickly escalate to \$1,000 for the third valid noise violation, increasing to \$5,000 per violation for the sixth and subsequent noise violations.

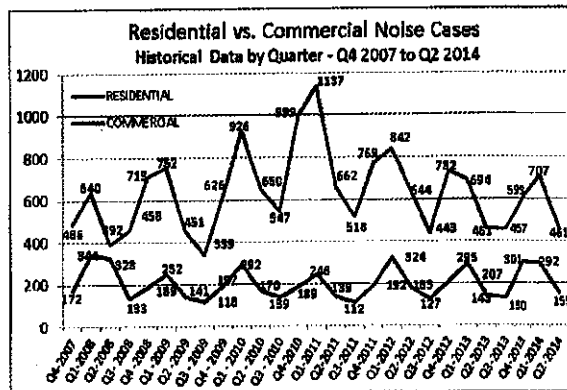
In an effort to be responsive to both residents and businesses and specifically as it relates to noise complaints, the City provides a phone number that is accessible and answered 24-hours a day / 7 days a week / 365 days of the year (305-604-CITY). All noise complaints are assigned a case number requiring a response and outcome by either Code or Police. Despite this process, some residents believe that Code is not responsive, finds too few noise complaints valid; and that the entertainment industry is running amok, abuse the system and adversely impact the resident’s quality of live through excessive noise. Some of these detractors have been proponents of using noise meters and other recording devices to provide “substantive evidence of violative noise levels” and show “Code’s ineptitude and inexcusable low number of noise violations”. (Dr. Morris Sunshine, Discussion on Noise, Feb. 2014). This group of residents stipulate that with the advent of technology, decibel readers are small, accurate, easy operate and no longer large contraptions that require constant calibration. Thus, this group requested that the City seriously consider amending its ordinance and current practice to incorporate noise meters as part of their noise assessment process.

### III. NOISE ANALYSIS

A historical review of noise cases reflects that in Fiscal Year (FY) 2006-07, the City opened 2,695 noise cases. Since then, noise cases have gradually increased to a peak of 4,664 noise cases per fiscal year (FY 2010-11), leveling off to approximately 4,000 thousand cases per year. In FY 2013-14, Code investigated a total of 4,127 noise cases, 53.1% higher than the figure recorded in FY 2006-07. The chart below reflects this gradual increase in the number of noise investigations by year.



Further analysis reflects that contrary to the assertion of some area residents that noise from commercial establishments “go unabated” and are “going through the roof”, the majority of noise complaints identified within the City are residential in nature. A historical analysis reflects that nearly two-thirds of all noise cases within the City take place in residential properties. The chart below clearly reflects this phenomenon by quarters, beginning in the Fourth Quarter (Q4) of 2007 (*Permits Plus Database, CMB*).



This historical trend is also supported through data reflected in the City's 2013-14 Noise Annual Report; where for the period between July 1, 2013 through June 30, 2014, there were a total of 3,484 noise cases addressed by the City, of which nearly two-thirds of the noise cases (2,226 – 63.9%) took place in residentially zoned areas. The table below provides a breakdown by type of location.

<b>BREAKDOWN OF TOTAL CASES BY TYPE</b> July 2013 – June 2014		
RESIDENTIAL	2,226	63.9%
COMMERCIAL	847	24.3%
OTHER	411	11.8%
<b>TOTAL</b>	<b>3,484</b>	<b>100.0%</b>

As it relates to the type of noise, data analysis from the City's *Permits Plus Database*, reflects that the highest incidence of noise complaints is identified as "loud music." Historically, loud music has accounted for a range between 80% to 90% of the type of noise identified by complainants. However, this trend recently changed where directly related to a construction boom in South Florida, construction-related noise complaints have significantly increased accounting for approximately one-third of all the commercial noise cases. According to the City's Q4 2014 Noise Report, the highest incidence of noise complaints remained loud music (57.5%), followed by construction-related noise (32.5%); barking dogs (5%), and vehicle alarms (5%). As it relates to the day of the week, a historical analysis and data reflect that the largest volume of noise complaints take place on Saturdays (20-25%), followed closely by Sundays (18-20%), and then Fridays (16%-18%). These three days account for more than 50% of the number of noise-related incidents and complaints during the entire week.

Another important variable measured in the City is response time by Code Compliance staff after a noise complaint is received. Data obtained from the City's Parking Department / Dispatch reflects the time a noise complaint is received through (305) 604-CITY, the time the complaint is assigned, and the CCO arrival time to the specific location. Data analysis obtained from the 2013-14 Annual Noise Report reflects that the average response time for valid commercial noise violations was 14 minutes, 39 seconds; while the non-valid commercial noise cases took 29 minutes, 26 seconds. This difference of nearly 15 minutes between valid and non-valid commercial noise cases reflects a direct correlation between response time and validity rates. It is important to denote that this correlation is not observed in residential locations, where the difference between valid and invalid cases was less than three (3) minutes. The table below provides the average response times, by type of establishment for the period beginning in July 2013 through June 2014.

Average Time for Code Officer to Arrive July 1, 2013 – June 30, 2014					
Number of Cases*	Establishment Type	Average Time to Officer's Arrival	Status	Number of Cases*	Average Time from Call Received by Dispatch to Code Officer's Arrival
3,208	Residential	0:25:89	VALID	424	0:23:55
			NON-VALID	1,649	0:26:50
	Commercial	0:26:57	VALID	129	0:14:39
			NON-VALID	638	0:29:26
	Other	0:21:91	VALID	68	0:21:35
			NON-VALID	300	0:22:04
All Cases	0:25:55	VALID	621	0:21:45	
		NON-VALID	2,587	0:26:53	

\*Average Time Calculated using only those cases with valid time data for both "Time Call Received by Dispatch" and "Time of Arrival by Code Compliance Officer" – PERMITS PLUS.

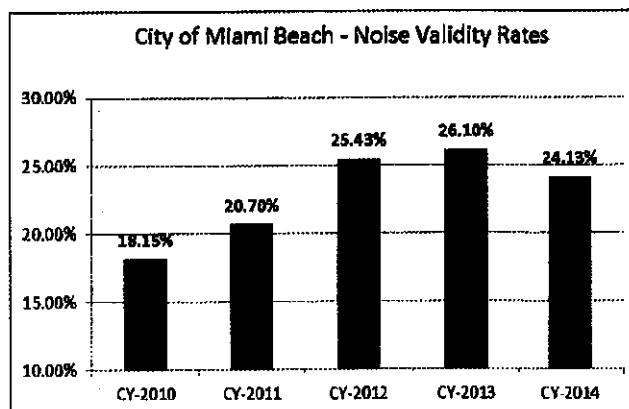
Further analysis of the 2,587 invalid cases for the above referenced time period, reflects the following reasons for the non-valid noise outcome:



- 1,186 cases (45.8%), there was “no noise identified upon arrival” by the CCO.
- 1,091 cases (42.1%), “music / noise were found to be neither loud nor excessive”.
- 131 cases (5.1%), “music was not plainly audible at 100 feet” (11 PM through 7 AM).
- 57 (2.2%) cases, unable to access property; and
- 122 (4.7%) cases had multiple issues (including but not limited to “not a code issue”, “no information”, “non-existent address”, and/or “incomplete data”).

Based on this analysis, 87.9% of the invalid noise complaints and investigations are explained in that either the CCO did not hear any noise upon arrival or, that the noise level failed to meet the threshold of being “excessive, unusual, unreasonable or unnecessary.” Based on the response time difference between commercial valid and not valid noise complaints, it can be inferred that response time is an important and key variable in determining whether a noise complaint is determined to be valid or not.

As it relates to noise validity rates, data obtained from the City's *Permits Plus Database* reflects that for the past five (5) years, beginning on Calendar Year 2010, noise validity rates have gradually increased from 18.2% to approximately 25%; meaning that approximately one of every four cases is deemed valid and meets the threshold of being excessive, unusual, and unnecessary at the time of arrival by either a Code Compliance Officer or a Police Officer. This phenomenon is illustrated in the chart immediately below:



Notwithstanding the increase in the validity rates over the past few years, some residents and pundits argue that the noise validity rates remain far too low (Frank Del Vecchio, Discussion on Noise. January 2014). This assertion is made without any supporting empirical data, only the perspective that if there is a complaint, then it should be valid.

There are a number of hypotheses that may explain the current noise validity rates at the City as well as the increase of noise complaints over the past few years. One scenario is simply that if response time by CCO or PD improves, consequently validity rates will also improve. Thus, the timely response to noise complaint is of utmost importance. Another hypothesis is that the steady increase in the number of noise complaints is not necessarily as a result of a collective increase in noise within the City but rather an increased public awareness regarding the City's noise ordinance. In other words, the City is not necessarily noisier, but the residents may have a lower tolerance and know that the City will respond to any and all noise complaints. Another hypothesis is the ease of accessibility in contacting the City to file a complaint. This awareness has been augmented through marketing efforts amid various media outlets including but not limited to the City's Web-site, Municipal Government Cable and TV Channels (MBTV), printed media such as MB Magazine, and ongoing educational and community outreach efforts.

Ease of access to the City may be a contributing factor to the increase in noise cases as noise complaints can be made easily and anonymously without having to provide a name and by simply calling 305 604-CITY 24 hours per day, 7 days per week. Data reflects that there is a large percentage of times (42.1%) where the noise fails to

meet the validity threshold at the time of arrival by the CCO, and another large portion (45.8%), where no noise was identified upon arrival. The Administration has raised concerns regarding the potential number of frivolous calls made by complainants, and that the request for service may be generated due to neighbor disputes, or where the complainant simply prefers not to deal with a belligerent neighbor, adjoining business or alleged violator, but rather make a call to Code who will respond without having to record or disclose any information.

It is also of interest that a correlational analysis for the period of July 2013 through June 2014 reflects that there is a higher probability of a noise complaint to be deemed valid (32%) when the complainant provides their contact information *versus* when the complainant remains anonymous (21%) (2013-14 - City of Miami Beach Annual Noise Report). Thus, one quick method to raise the City's noise validity rate is to require callers to provide identification and contact information. The Administration has previously raised this issue but at this time elected officials have reflected that they rather maintain the process status quo. (Discussion on Noise). Hosted by Vice-Mayor Joy Malakoff, Meeting #4, Parking Department, February 2014.)

#### **IV. LEGAL PERSPECTIVE**

Research reflects that in the early 1980s, the City of Miami Beach had an ordinance that addressed noise through the use of a decibel reader; but in 2003, and predominantly due to legal and constitutional concerns, the City repealed its ordinance and adopted Miami-Dade County's (Section 21-28 – Miami Dade County Ordinance). The research also reflects that three years later, the City re-wrote and passed its own ordinance using the County's as its structural foundation. Five (5) years later, in 2011,

the City made additional administrative amendments to the ordinance to reflect its current status.

In early 2014, the City held various monthly meetings with the public, business owners and business operators to discuss noise concerns. During those meetings, there were allegations and statements raised from both residents and business representatives that the current Noise Ordinance was too vague and failed to provide a “clear standard” in determining how a noise complaint was deemed valid and how it met the threshold of being “excessive, unusual, and / or unnecessary.” Ironically, and in the same venue, while some residents claimed that the ordinance was too soft and vague, some business owners and operators curiously claimed that the ordinance was also vague, but too harsh. Members of both groups requested the consideration and adoption of a decibel-based ordinance in an effort (as they stipulated), “to add clarity to the vague standard that the City uses.” (Discussion on Noise. Hosted by Vice-Mayor Joy Malakoff. Meeting #4, February 2014).

This assertion of vagueness is unfounded and inaccurate, as in May 18, 2007, the United States Court of Appeals for the Eleventh Circuit [United States Court of Appeals Court Case No. 05-12540, D.C. Docket No. 03-20684-CV-JEM, DA Mortgage, Inc. (Plaintiff), AND 136 Collins Avenue L.C. (Plaintiff-Appellant) versus City of Miami Beach] affirmed in its legal decision that the County’s ordinance adopted by the City “provides a presumptive standard for determining whether a noise is unnecessary or excessive, and that the ordinance is well grounded in the ‘reasonable person standards’.” (Reasonable Person’s Standard. Wikipedia–Free Internet Encyclopedia. <http://en.wikipedia.org/wiki/Reasonable>). In law, a “reasonable person” and/or a “reasonable man” is a composite of a community’s perspective and judgment as to how a typical member of that community should

behave. Other legal sources reflect that “a reasonable man” means an “ordinary person of either sex, not exceptionally excitable, but possessed of self-control and entitled to expect his/her fellow citizens to behave in a similar fashion as themselves.” (DPP versus Camplin “Ordinary person.” A.C. 705, England, 1978). The “reasonable person” is an established concept of common law and holds that each person owes a duty to behave as a rational and judicious person would under similar circumstances.

Before the lawsuit was filed at the United States District Court for the Southern District, the two companies in question, D.A. Mortgage, Inc., and 136 Collins Avenue, L.L.C., had filed a nine-count complaint before the 11<sup>th</sup> Judicial Circuit (State Court) claiming that the noise violations issued by the City violated their First Amendment rights to free speech and their Fourteenth Amendment rights to due process. In March 2003, the State Circuit Court ruled in favor of the City, reflecting that the ordinance was constitutional and upheld the noise violations issued by the City. Not satisfied with the verdict, and rather than appeal before the 3<sup>rd</sup> District Court of Appeals of the State of Florida, the plaintiffs proceeded to file an appeal in Federal Court. (United States Court of Appeals for the Southern District – Eleventh Circuit, No. 05-12540, D.C. Docket No. 03-20684).

During the judicial process, there were multiple issues raised by both plaintiffs, including that the ordinance was not content-neutral, that it did not contain permissible time, place and manner restrictions on speech, and that the ordinance itself was too broad and vague. Curiously, this latter issue is the similar contention made by some of the area residents and other critics. At the end of a lengthy judicial process, the U.S. Court of Appeals determined that:

“... the (City's noise) ordinance regulates sound volume according to a standard that addresses the needs of two different audiences – a nuisance standard for involuntary listeners and a public health standard

for voluntary listeners. It prohibits the use or operation of sound equipment such as radios, phonographs and televisions in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitant, or at any time with louder volume than is necessary for convenient hearing." (United States Court of Appeals – Eleventh Circuit, No. 05-12540, D.C. Docket No. 03-20684).

The decision of the Federal Court went further and reflected that the City's Noise ordinance was constitutional on three specific grounds:

- (1) That the ordinance is content-neutral and contains permissible time, place and manner restrictions;
- (2) That the ordinance provides a clear standard and fair notice on what conduct is acceptable; and
- (3) The ordinance does not impose a restraint on speech or impose criminal penalties.

The Court also went further to explain that the "reasonable person's standard" is flexible to allow both voluntary listeners to hear sound at a level that matches their particular preference and volume level; whether at a club, or people gathered to watch *Andrea Bocelli* or *The Voice* on television. Thus, it is the City's position that despite not using decibel readers or noise measuring devices, the reasonable person's standard' has passed all constitutional tests, has been tried, tested, and upheld at Federal Court, and provides a solid foundation for the city's noise ordinance to operate.

## V. TECHNOLOGY AND OTHER OPTIONS

Having passed the legal test at one of the highest courts in the land is a key factor in that the City clearly prefers to continue to enforce its noise ordinance without changing it to a decibel-based system. Notwithstanding, the City recognizes that there have been major advances in technology, and that technology has had an impact on every single industry in the past two decades, particularly the public sector.

With this understanding and being mindful of the expectations from residents and businesses, City Elected Officials have chosen to pursue technology-based options that were not available until recently. To that effect, on June 2014, the City Commission instructed the Administration to review and pursue the implementation of Body Cameras or Portable Video Recorders (PVRs) for PD, Code and other departments such as Fire, Building and Parking Enforcement. Less than three (3) months later, on September 2014, the City began the process to purchase wearable body cameras for the use by PD and Code. The impetus for the use of the body-cameras or PVRs is to have greater accountability to the City residents and visitors.

The operation of the equipment is scheduled to be launched in early 2015, and the selected equipment seems to balance simplicity and performance, provides wide-angle lens, has multiple body mounting options, and has a single button to record digital evidence. Currently, Standard Operating Procedures (SOPs) are currently being developed by each participating departments with the oversight of the Legal Department. One the key and determining issues in the purchase of the PVRs manufactured by Taser, is that the recording process is inaccessible by the Police or CCO, that the downloaded files and data are automatically uploaded and stored in a separate site, and the film and data cannot be accessed or tampered by staff, only by higher administration with the appropriate clearance protocols.

As it relates to noise complaints, the existing standard will remain in effect; however, the recorded event will serve as additional and supplemental evidence to support or reject the findings. The City's goal is to have the ability to retain a highly defensible and established legal precedent on the application of a "reasonable person's

standard” to determine if the noise is deemed “excessive, unusual, or unnecessary”, while using technology as supplementary evidence. The City has made accountability one of the cornerstones of its internal process, and providing additional support evidence of its findings through the use of technology and the use of Portable Video Recorders / Body Cameras appears to provide that balance.

## **VI. CONCLUSION**

The City of Miami Beach’s Code Compliance Department’s core mission is “to protect the public health, safety, welfare; and improve the quality of life for the City’s residents, business owners and visitors through the consistent and equitable application of City Codes and Ordinances.” One of the most important issues for the residents and business owners is environmental noise; and as important is how the City addresses it. Thus, the “equitable and consistent” application of the ordinance is absolutely crucial to the success and transparency of the organization.

The Code Compliance Department in the City of Miami Beach is tasked with addressing a wide variety of code-related issues: from Sanitation, to Marine Violations, to Zoning, Property Maintenance, Minimum Housing, Biohazardous and City Code. However, noise is one specific type of violation that elevates the passions on both sides of the aisle; and paradoxically, both residents and business owners believe that Code staff favors one over the other.

In an effort to address all violations in an equitable and transparent manner, the City held multiple public discussions on noise beginning in January 2014 and ending on March 2014. The goal was to accept input from area residents and businesses, educate constituents on process and discuss technology as a tool and conduit to improve



performance and provide transparency. Throughout those meetings, the City made it abundantly clear that from a legal perspective, that the City has a fundamentally robust and constitutionally tested standard of proof grounded on the 'reasonable person's standard' and that a change to a decibel based noise threshold was not an option.

Based on a myriad of factors including the general perception by some city residents, critics and former elected officials regarding previous poor performance by Code, members of the public requested that the City considered changing its noise assessment to include decibel-based process. The Code Compliance Department has been addressing staff accountability issues through the implementation of a series of internal changes and procedural amendments including but not limited to the dismissal of former staff members, the cross-referencing Daily Activity Reports with vehicular geographic positioning systems (GPS) to ensure reporting accuracy and determine the whereabouts of any CCO at any time, the restructuring of the department and the redeployment of staff in accordance to recommendations made by independent consultants (Crowe-Horwath, CMB Performance and Operational Audit, July, 2013).

Notwithstanding these changes, and in an effort to provide full transparency while maintaining legal strength and defensibility, the City Commission and City Manager have chosen to supplement the noise process by adding the ability to record code violations through the use of PVRs. Placing budgetary constraints aside, the decision to add tamper-proof video recordings to the Code Compliance process, and specifically to supplement the body of evidence of how a noise complaint is deemed valid, creates a win-win situation whereby the assessment process and standard remains intact, it remains constitutionally sound, and uses technology to supplement its findings.

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