

MINUTES OF THE CITIZENS CODE ENFORCEMENT BOARD
HEARING
HELD AT 4:30 P.M. – APRIL 19, 2011
CITY COMMISSION CHAMBERS, CITY HALL,
210 SAMS AVE, NEW SMYRNA BEACH, FLORIDA

- I. The Hearing of April 19, 2011, was called to order at 4:30 p.m. Answering to roll call were:

John Shelby (Chairman)
Michael Slayton (Vice Chair)
Beverly Palmer
Megan Badgley
Pat Arvidson

Also present were Code Enforcement Officer Barbara Bobelak, Assistant City Attorney Greg McDole, Chief Building Official Michael Knotek and Permit & License Technician Dorlisa Pogany. Katharine Cooley arrived at 4:35 PM.

II. **DISCLOSURE OF EX PARTE COMMUNICATIONS:**

Members of the Citizens Code Enforcement Board were asked to please disclose, for the record, the substance of any ex parte communications that occurred prior to this public hearing.

Mr. Shelby stated that there were none.

III. **APPROVAL OF MINUTES**

March 15, 2011

Mr. Slayton made a motion to approve the minutes of the March 15, 2011 hearing as written; seconded by Ms. Badgley. Motion passed on roll call vote 5-0.

IV. **SWEARING OF CITY STAFF**

Barbara Jo Bobelak, Code Enforcement Officer, was sworn in for testimony.

V. **OLD BUSINESS:**

None

VI. NEW BUSINESS:

C2011-0167

Clancy's Cantina

301 Flagler Ave SERVED

Permitting or causing to be permitted rubbish, sweepings, debris, trash, and waste material to be placed upon the streets, alleys, curbing or sidewalks causing a menace to traffic, either vehicular or pedestrian, and endangering the proper operation of the city's sewer or drainage system from the subject property in violation of §66.36. (6) of the City Code of Ordinance.

Matthew Clancy was present and sworn in for testimony.

Mr. Shelby asked Mr. Clancy if he was in agreement with the evidence presented on the violations.

Mr. Clancy stated he was not in agreement as he met with Officer Bobelak and David Hall to discuss the issues and made the necessary corrections. Mr. Clancy requested to see the evidence the violation was based upon.

Officer Bobelak testified there is video showing the violation which was played for the Board Members and Mr. Clancy.

David Hall, Public Works was sworn in for testimony.

Discussion ensued among Staff, Board Members and Mr. Clancy regarding what is being blown into the storm drainage system; what the Ordinance specifically states about endangering the proper operation of storm drainage; other businesses blowing sand into roadways and how often street sweeper works on Flagler Avenue.

Mr. Shelby asked Staff for a recommendation.

Officer Bobelak stated the City requests that no trash be blown into the streets or storm drains.

Discussion ensued among Staff and Board Members regarding the responsibility of business owners to contain trash and debris on their property; how City is handling other business owners blowing trash into streets and how the other business owners clean their property.

Officer Bobelak stated that Staff requests the Board find Clancy's Cantina in compliance.

Ms. Arvidson made a motion to find case C2011-0167 currently in compliance, Mr. Clancy to continue to make necessary corrections and failure to do so will require

appearance before the Board at a later date; second by Ms. Palmer. Motion carried unanimously upon roll call 6-0.

**C2011-0199: McCharacter's Music Café & Sports Bar SERVED
2004 N. Dixie Freeway**

- A) Permitting or causing to be permitted sound producing devices to be used in such a manner the sound produced by such devices is plainly audible from neighboring properties zoned for residential use at a distance in excess of 25 feet from the property line in violation of §38.73.(1) of the City Code of Ordinances.
- B) Permitting or causing to be permitted the use of loudspeaker, loudspeaker system or similar devices between the hours of 10:00 p.m. and 10:00 a.m. on weekends in violation of §38.73.(2) of the City Code of Ordinances.
- C) Permitting or causing to be permitted music to be played in such a manner that it was plainly audible while standing within the boundary limits of an adjacent or neighboring property zoned for residential use in violation of §38.73.(12) of the City Code of Ordinances.

(1) Incident Report #: 201010-0405
Officer J.D. Shaffer (1120)
10/24/2010 00:49 Sun.

(2) Incident Report #: 201010-0490
Officer R. J. Claudio (1215)
10/30/2010 00:08 Sat.

(3) Incident Report #: 201010-0507
Officer M. D. Severance (1215)
10/30/2010 22:59 Sat.

(4) Incident Report #: 201101-0182
Officer J.D. Shaffer (1120)
01/15/2011 19:54 Sat.

(5) Incident Report #: 2011-03-0341
Officer B. Holcomb (1169)
03/19/2011 21:50 Sat.

Jason Temple, General Manager of McCharacter's Palm Coast and Jason Sabo, Manager of McCharacter's New Smyrna were present and sworn in for testimony.

Mr. Shelby asked Mr. Temple and Mr. Sabo if they were in agreement with the evidence presented on the violations.

Mr. Sabo stated they were in agreement that the noise could be audible over their property line.

Mr. Shelby asked Mr. Sabo what actions they will take to come into compliance and keep the noise level down.

Mr. Sabo stated he has been in contact with Officer Bobelak and is currently working to make some changes such as the relocation of a stage to be positioned away from the targeted area, purchased a noise meter, stopped the bands playing on the big stage and limited the hours of operation for the bands.

Discussion ensued among the Board, Mr. Sabo and Mr. Temple regarding the loud volume of the bands, complaints filed with the Police Department and the changes to the restaurant format.

Mr. Shelby asked Staff for a recommendation.

Officer Bobelak stated that Staff requests the Board find McCharacter's in compliance and Mr. Sabo has agreed to meet with Staff to discuss any changes necessary including changes to the City Ordinance.

Tom Valley, resident at 134 Mangrove Estates Drive, was present and sworn in for testimony.

Mr. Valley stated that this has been an ongoing problem and made an affidavit against McCharacter's in which he stands behind the comments made in the affidavit. Mr. Valley further stated he wants the City Ordinance enforced and to eliminate the noise.

Discussion ensued among the Board Members, Mr. Valley and Mr. Temple regarding the lengthy process to resolve the issues, how to bring McCharacter's into compliance, if decibel levels have been measured, pointed out the same issues for businesses on Flagler Avenue and McCharacter's will have an open discussion with neighbors.

Mr. Slayton made a motion to find case C2011-0199 in compliance, meet with Staff to make necessary corrections, work with the community and failure to do so will require appearance before the Board at a later date; seconded by Ms. Arvidson. Motion passed upon roll call 5-1 with Ms. Cooley dissenting.

VII. REPEAT BUSINESS:

VIII. ADJOURNMENT:

Ms. Arvidson made the motion to adjourn; seconded by Mr. Slayton. All agreed and the hearing adjourned at 5:18 P.M.