

Date: June 28, 2011

Item No. 18 & 19

File No. 11043

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Alicia Gamez against the Department of Public Health**
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Completed by: Chris Rustom

Date: June 24, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

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MEMORANDUM

TO: Sunshine Task Force
FROM: Jerry Threet
Deputy City Attorney
DATE: June 22, 2011
RE: *Complaint No. 11043, Alicia Gamez v. Department of Public Health*

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Alicia Gamez ("Complainant") alleges that, on multiple occasions between October 2010 and May 31, 2011, the Department of Public Health ("DPH") violated public records laws by failing to adequately respond to her requests for public documents. In addition, she alleges that DPH failed to follow public meetings laws for multiple meetings of the Noise Ordinance Task Force ("NOTF") from November, 2008 to present.

COMPLAINANT FILES COMPLAINT:

On May 31, 2011, Complainant filed this complaint against DPH, without specifying which specific provision(s) of the public meetings and public records laws were violated.

JURISDICTION

NOTF is a body created by DPH, as directed by section 2918 of the San Francisco Police Code. Section 67.3(d)(4) defines a "policy body" to include a "body [] created by the initiative of a policy body". Section 67.3(d)(3) defines a "policy body" to include a "body created by ordinance or resolution of the Board of Supervisors." Section 67.3(d)(6) defines a "policy body" to include an advisory committee consisting solely of employees of the City if it was established by ordinance. Because this advisory body was established pursuant to Police Code section 2918, it appears to be a policy body under the Ordinance. The Task Force therefore appears to have jurisdiction to adjudicate this complaint. DPH did not contest jurisdiction.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.6 governs the time and place for meetings of policy bodies
- Section 67.7 governs agenda requirements for regular meetings
- Section 67.7-1 governs public notice requirements for meetings
- Section 67.15 governs public testimony at meetings
- Section 67.16 governs minutes of meetings
- Section 67.21 governs the process for gaining access to public records.
- Section 67.22 governs the release of oral public information.
- Section 67.25 governs the immediacy of response.
- Section 67.26 governs the withholding of records.
- Section 67.27 governs written justifications for withholding of records

MEMORANDUM

TO: Sunshine Task Force
DATE: June 22, 2011
PAGE: 2
RE: Complaint No. 11043, Alicia Gamez v. Department of Public Health

Section 6250 et seq. of Cal. Gov't Code (PRA)

- Section 6253 governs time limits for responding to public records requests.

Section 54950 et seq. of the Cal. Gov't Code (BROWN ACT)

- Section 54953 governs the requirement that meetings be open and public.
- Section 54954 governs the time and place of regular meetings.
- Section 54954.2 governs posting of agendas.
- Section 54954.3 governs public testimony

ISSUES TO BE DETERMINED**Public Records/Public Information Complaint**

Complainant alleges that, on multiple occasions between October 2010 and May 31, 2011, DPH failed to adequately respond to her requests for public records. In support of these allegations, Complainant has offered a series of emails between herself and DPH staff that begin on April 19, 2011. She offers no evidence of any requests for public records prior to that time. Rather than a request for public records, the April 19, 2011 email from Complainant to Rajiv Bhatia and other DPH staff includes these questions, quoted below:

- Could you please let me know what your interpretation of the noise ordinance is?
- Could Mr. Rivard and Dr. Bhatia, please provide the origin or basis for finding a "mixed use" standard?
- But I would love to hear your and the department's basis for finding a "mixed use" category that gets the higher standard. Please do explain.
- Please explain your interpretation that allows the ambient to include other separate identifiable noise sources.
- In going over these prior emails, I noted that the Grub signed an agreement to take certain actions and to do so with proper permits. [] Can you please explain why the department has not enforced this agreement with Grub?
- Can you please confirm that my understanding of the Department's interpretation is correct?
- If my understanding of the Department's practice is not correct, could you please help me understand the Department's methods for measuring sound?
- Once you have explained the method and standards that the Department follows, could you please explain how the Department's practices observe (or enforce) the law?
- Finally, Can you please explain why the Department has not enforced the written agreement it received from Grub?

It appears that, in his April 21, 2011 email response to Complainant, Mr. Bhatia did not address most of all of these inquiries. On April 21, 2011, Complainant again wrote DPH by email, requesting no public records, but asking these questions, quoted below:

- explain your methods for arriving at the ambient level and how you treat separate identifiable sources of noise,

MEMORANDUM

TO: Sunshine Task Force
 DATE: June 22, 2011
 PAGE: 3
 RE: Complaint No. 11043, Alicia Gamez v. Department of Public Health

- explain your methods for arriving at the noise level and how [] you ensure that the noise tested is the noise causing the problems,
- explain how the methods applied conform to the code,
- explain your basis for applying the commercial standard to a property that the noise ordinance defines as residential,
- explain why the department has not enforced the agreement it required for Grub to open.

On May 2, 2011, Complainant again wrote DPH by email, requesting no public records, but stating that she still awaited answer to her previous questions and asking the following additional question: "Can you please respond as to each part of your department's procedures and how they relate to or depart from the Noise Ordinance? For example, you acknowledge that you disregard the Noise Ordinance's definition of residential property; please explain on what authority you." That same day, Mr. Bhatia responded by email to Complainant, providing written answers to some of her questions, as quoted below:

- We have consulted with the Office of the city attorney and have confirmed that our approach is abiding by the terms of the noise ordinance.
- Question 1/2: Staff use the noise measurement methods as specified in the ordinance. The ordinance is clear about these methods.
- Question 3: Grub has met the performance standards specified by the ordinance with a viable and acceptable set of methods. The Department is not proscriptive with regards to the methods, only the performance standards.

On May 2, 2011, Complainant again wrote DPH by email, this time directly requesting public records and alleging that she had previously done so. She also stated that DPH had failed to answer any of her previous question, and asked additional questions. Complainant repeatedly asked in this email for DPH's protocols that justified its approach in enforcing the "Noise Ordinance," which approach Complainant opined was contrary to the plain language of that ordinance. In addition, Complainant requested the following: "Please do send me the permit number for that work that your Department has supervised." On May 4, 2011, Mr. Bhatia responded to this email with this statement: "Your comments are noted. I will have no further responses."

Finally, Complainant filed an additional statement in support of her complaint on June 22, 2011, in which she stated "Evidence of these continuing violations is [DPH's] production on June 20, 2011, of a document titled 'Restaurant Noise Procedures'. This document should have been produced when requested in May 2011, even if only in draft form." It is unclear from Complainant's allegations which requests she alleges DPH still had provided no responses to at the time she filed her complaint, on May 31, 2011, or which requests she alleges remain unanswered at this time.

In its June 21, 2011 response to the complaint, DPH states that Complainant's earlier communications to DPH consisted of her statement of disagreement with DPH's interpretation of the Noise Ordinance and that it was only in later communications that Complainant actually requested that DPH "explain our interpretation of the law and provide a 'guidance document' or equivalent document to justify our noise measurement procedures." DPH further notes that its response "response has consistently been that the ordinance itself provides adequate specificity

MEMORANDUM

TO: Sunshine Task Force
DATE: June 22, 2011
PAGE: 4
RE: Complaint No. 11043, Alicia Gamez v. Department of Public Health

regarding the measurement of noise by noise professionals and no additional Department document (or other media) specifying the methods or procedures for noise measurement exists. Furthermore, these documents never have existed." It is unclear how DPH responds to Complainant's allegation that it produced a responsive document on June 21, 2011.

Public Meeting Complaints

In addition, Complainant alleges that DPH failed to follow public meetings laws for multiple meetings of the NOTF from November, 2008 to present. No further evidence of these alleged violations is provided by Complainant, although she further describes the alleged violation in her June 22, 2011 statement as "having stifled public comment for more than 2 years."

In its June 21, 2011 response, DPH conceded that it had failed to provide the public notice of these meetings required by law, as it had erroneously believed they were not subject to public meetings requirements. DPH further alleges that it "did post the agenda and minutes on the DPH website [and] never denied public access and members of the general public have attended meetings." It is unclear from this response whether members of the public were afforded an opportunity to provide public testimony, whether meeting agenda's complied with legal requirements for a public meeting, or whether the meetings otherwise conformed to the requirements of law for meetings of a policy body.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- When did Complainant first request public information in documentary form?
- Did DPH have any documents responsive to Complainant's public records/information requests?
- If so, when were such responsive documents first provided?
- How long would it have taken DPH to respond to Complainant's public information requests for which no documents were responsive?
- Did DPH respond to Complainant's public information requests for which no documents were responsive?
- Did DPH allow public comment on agenda items during meetings of the NOTF?
- How were these meetings conducted?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Did DPH's responses to Complainant's email inquiries comply with the requirements of Ordinance with regard to providing public records?
- Did DPH's responses to Complainant's email inquiries comply with legal requirements regarding providing public information in a non-documentary form?
- Did the meetings of the NOTF comply with the requirements of the Ordinance for meetings of a policy body?
- Has the Commission complied with the requirements of the Ordinance, the PRA and the Brown Act?

MEMORANDUM

TO: Sunshine Task Force
DATE: June 22, 2011
PAGE: 5
RE: Complaint No. 11043, Alicia Gamez v. Department of Public Health

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)**SEC. 67.7. AGENDA REQUIREMENTS; REGULAR MEETINGS.**

- (a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.
- (b) A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.
- (c) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.
- (d) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.
- (e) Notwithstanding subdivision (d), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:
- (1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.
 - (2) Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the

MEMORANDUM

TO: Sunshine Task Force
DATE: June 22, 2011
PAGE: 6
RE: Complaint No. 11043, Alicia Gamez v. Department of Public Health

need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was on an agenda posted pursuant to subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS;
ADMINISTRATIVE APPEALS.**

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A *custodian of a public record* shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(c) A *custodian of a public record* shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and

MEMORANDUM

TO: Sunshine Task Force
DATE: June 22, 2011
PAGE: 7
RE: Complaint No. 11043, Alicia Gamez v. Department of Public Health

within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.

(f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the *superior court* shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code

MEMORANDUM

TO: Sunshine Task Force
DATE: June 22, 2011
PAGE: 8
RE: Complaint No. 11043, Alicia Gamez v. Department of Public Health

Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(1) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and inseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

SEC. 67.22. RELEASE OF ORAL PUBLIC INFORMATION.

Release of oral public information shall be accomplished as follows:

- (a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this information.
- (b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.
- (c) No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.
- (d) Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion (1) is not represented as that of the department and does not misrepresent the department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty and confidentiality, interfere with the employee's performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee's interests in expressing that opinion. In adopting this subdivision, the Board of Supervisors intends merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees. Nothing in this section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.
- (e) Notwithstanding any other provisions of this ordinance, public employees shall not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public. Any public employee who is

MEMORANDUM

TO: Sunshine Task Force
DATE: June 22, 2011
PAGE: 9
RE: *Complaint No. 11043, Alicia Gamez v. Department of Public Health*

disciplined for disclosing public information or a public record shall have a cause of action against the City and the supervisor imposing the discipline.

SEC. 67.25. IMMEDIACY OF RESPONSE.

(a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.

(b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.

(c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester's purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.

(d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article.

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

MEMORANDUM

TO: Sunshine Task Force
DATE: June 22, 2011
PAGE: 10
RE: *Complaint No. 11043, Alicia Gamez v. Department of Public Health*

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**SECTION 6253**

- (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.
- (b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.
- (c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:
 - (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
 - (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
 - (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

MEMORANDUM

TO: Sunshine Task Force
DATE: June 22, 2011
PAGE: 11
RE: *Complaint No. 11043, Alicia Gamez v. Department of Public Health*

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

BROWN ACT (GOVT. CODE §§ 54950, ET SEQ.)**SECTION 54954.2. AGENDA; POSTING; ACTION ON OTHER MATTERS**

(a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.



SUNSHINE ORDINANCE TASK FORCE
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 http://www.sfgov.org/sunshine

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission Department of Public Health -Environmental Health

Name of individual contacted at Department or Commission Rajiv Bhatia; Tom Rivard

Alleged violation public records access 11/20/08; 2/19/09; 5/21/09; 10/21/09;
 Alleged violation of public meeting. Date of meeting 2/18/10; 7/15/10

Sunshine Ordinance Section _____
(If known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

see attached

Do you want a public hearing before the Sunshine Ordinance Task Force? yes no
 Do you also want a pre-hearing conference before the Complaint Committee? yes no

(Optional)¹
 Name Alicia Gamez Address █ Lapidge Street, SF CA 94110

Telephone No. 415-█-█ E-Mail Address █@yahoo.com

Date 5/31/2011 /Alicia Gamez/

I request confidentiality of my personal information. yes no

¹ NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).

Dear SOTF:

On multiple occasions between October 2010 and the present, I have requested documentation from the Department of Public Health – Environmental Health. I have made requests both to Dr. Rajiv Bhatia and to Mr. Tom Rivard.

On May 4, 2011, in response to a request for the production of documents and information, Dr. Bhatia responded with the following non-sequitur:

“Alicia:

Your comments are noted. I will have no further responses.

Rajiv”

I have hoped to avoid making formal complaints. With this desire in mind, I attempted to work through the Mayor’s office. I sent the email below to Joaquin Torres in the Mayor’s office. This email spells out many ways in which my request could be satisfied. The DPH-EH has also ignored the request, despite follow up by Mr. Torres.

In the process of investigating this problem, I discovered that the San Francisco Noise Ordinance Task Force has never held a meeting that conforms to the open meetings laws. Mr. Rivard is the head of this group. The group has been meeting since 2008. At no point has the public had any opportunity to know or observe the NOTF’s meetings or comment on any agenda item.

Dr. Bhatia and Mr. Rivard consistently refuse to allow anyone their rights under the Public Records Act, Brown Act, the Sunshine Ordinance or the Public Meetings law. This consistent course of action by the DPH-EH, Dr. Bhatia and Mr. Rivard is what now propels me to make a formal complaint to the Sunshine Ordinance Task Force.

Alicia Gamez

On May 6, 2011, at 6:45 PM, "Alicia Maria Gamez" <amgamez@yahoo.com> wrote:

Joaquin,

As we have discussed, I have requested a statement of policy and or procedures -- other than the Noise Ordinance itself -- that the Department of Public Health uses to implement the Noise Ordinance. This statement could be an email, memo, training manual, video, recording or any other kind of documentation in any format (or draft of such documentation) that does all or any part of the items described below:

- instructs an employee, a technician or anyone on how to take sound measurements,
- instructs an employee, a technician or anyone on how to calculate or derive the ambient and the noise levels,

- describes the standard to apply to certain situations,
- provides when a "deemed" ambient level applies -- this is a reference to the deemed level of 35 dBA for interior and 45 dBA for exterior that we discussed,
- Describes or clarifies what is commercial, residential and or "mixed-use",
- states a policy or procedure regarding the implementation of the Noise Ordinance,
- provides authority for the Department's interpretation of the Noise Ordinance, or
- otherwise describes or provides guidance on any part of the implementation of the Noise Ordinance.

These should be available under the Sunshine Act, Brown Act and Public Records Act. If the department refuses to produce information, the department must provide a basis for refusing to produce information.

As you mentioned to me, the Dr. Bhatia represented to you that the department finds fault with my consultant's report. They have not expressed that to me. Thus far, they have refused to provided any guidance on what procedure one would follow to produce a satisfactory report.

I would very much appreciate your help in securing this information.

Alicia

Full text and email thread of May 4 email from Rajiv Bhatia.

----- Forwarded Message -----

From: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>

To: Alicia Maria Gamez <amgamez@yahoo.com>

Cc: adam.taylor@sfgov.org; aragon@berkeley.edu; Derek Watry <dwatry@wiai.com>; Jimmy Pon <eggrollstick@yahoo.com>; Gillian.E.Gillett@sfgov.org; Gillian Gillett <Gillian.Gillett@sfgov.org>; gregg sass <gregg.sass@sfdph.org>; johnson.ojo@sfdph.org; Kenny Wong <Kenny.Wong@sfdph.org>; morningstar_v@yahoo.com; Priscilla Thorner <pristhorner@yahoo.com>; Regina Dick-Endrizzi <Regina.Dick-Endrizzi@sfgov.org>; Richard Lee <Richard.Lee@sfdph.org>; Scott Sanchez <Scott.Sanchez@sfgov.org>; scott wiener. <scott.weiner@yahoo.com>; Scott.Wiener@sfgov.org; stephen mungovan <Stephen.Mungovan@sfgov.org>; steven Keith <steven.keith@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>; Vivian Day <Vivian.Day@sfgov.org>

Sent: Wed, May 4, 2011 8:36:32 AM

Subject: Re: your three questions Noise status at Grub, 758 Valencia

Alicia:

Your comments are noted. I will have no further responses.

Rajiv

Alicia Maria

Gamez

<amgamez@yahoo.co

To

m>

Rajiv Bhatia

<Rajiv.Bhatia@sfdph.org>

05/02/2011 08:19

cc

PM

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<dwatry@wiai.com>, Jimmy Pon

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Gillian.E.Gillett@sfgov.org, gregg

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Gillian Gillett

<Gillian.Gillett@sfgov.org>,

aragon@berkeley.edu

Subject

Re: your three questions Noise

status at Grub, 758 Valencia

Dr. Bhatia,

Thank you for your response. Please note that you haven't responded to my questions posed on 4/19 and 4/21. Please review those emails again.

First: "allegations"

The statement that the work was performed with out a permit was not my allegation. It was an observation by the relevant inspector. Please do not confuse these things; further please do not characterize as an "allegation" what is actually an observation.

Here an excerpt of the text of the report from complaint #201121181:
"Restaurant equipment installed on roof over a residential unit. Equipment has no vibration or sound dampeners at the roof connection. Permit research shows no permits for this work. Plaster walls and ceiling below are badly cracked; addressed in NOV #201117761"

Dr. Bhatia, please notice, the Department of Building Inspection has issued a Notice of Violation ("NOV"); I have trouble squaring your statement that the work performed with permits with the NOV. If you look at the City's on-line permit tracking service shows no completed permits after 10/21/2010. You have observed that that Grub has done significant construction on the roof of the building since 10/21/2010. You say that your staff has found a permit for the work that your Department has supervised since 10/21/10. Please do send me the permit number for that work that your Department has supervised.

Second: "methods"

Again, you have not answered the questions that I so carefully posed and substantiated on 4/19 and 4/21.

If you have consulted with the City Attorney regarding your methods, this means that you have actually described your methods to someone. I have requested, but not received, this very description. I have only been able to infer the department's methods from the staff reports that you have seen and that I forwarded to you again on 4/19 and 4/21. Again, your department's methods should be public and readily available; your staffs' reports should match those methods.

The issue here is NOT that I do not "like" the result. Until my independent sound consultant uses the same methods that your department uses, my independent testing will show Grub to be in violation of the noise ordinance. Until we understand your department's methods, we cannot replicate them.

Dr. Bhatia, you are a Medical Doctor. You know that protocols must be clear if unrelated labs and practitioners are to arrive at consistent outcomes. I hope that you will help us all arrive at consistent outcomes by providing your department's protocols. Until your department provides the protocols, we have no choice but to rely on the text of the Noise

Ordinance; so relying, the outcome is that Grub is in violation of the Noise Ordinance.

So, I will again go through the issues:

You state: "Staff use the noise measurement methods as specified in the ordinance. The ordinance is clear about these methods."

I agree that the ordinance is clear. What isn't clear is how your department's practices (as described in your staffs' reports) conform to them. This is precisely the point on which I have repeatedly requested clarification. I have quoted to you the Noise Ordinance's very clear text for the residential standard, methods, ambient, noise level, etc. I have asked you to review your staffs' reports and to explain how these reports conform to the Ordinance. I have specifically asked you about very specific variations from the code in specific staff reports.

I will restate a few of the variations and resulting questions again here. Note, that I cite the Noise Ordinance as authority for my reading. It would be very helpful if you would provide such authority for yours.

1. You have specifically confirmed that the Department applies an 8 dBA "mixed use" standard. The residential standard in the Noise Ordinance allows 5 dBA above ambient. The definition of residential property includes residential units that are in commercial buildings. (See the definition of "Dwelling Unit" in Section 2901(c) and "Residential Property" in Section 2901(m)). I cannot find a reference in the Ordinance for a "mixed use" standard that is 8 dBA. While you acknowledge that you apply this "mixed-use" standard, you have not explained what you base this on, where the Noise Ordinance authorizes it, or what other authority does allow it. Please provide such authority, ideally a citation to a code section in the Noise Ordinance.

2. You have not explained your method for arriving at an "ambient" or "noise" level. In his reports, Mr. Rivard specifically observes that other identifiable sources of noise contribute to both the ambient and noise levels. The Noise Ordinance specifically provides that identifiable sources of noise are to be either silenced or the ambient level reduced to factor out those contributing factors. See Section 2901(a), last sentence. Please provide your authority for not factoring out the contributing sources or to test with them silent. A simple citation to Code will suffice.

3. You have not explained how the code supports taking an average of the ambient or and the noise level to establish the difference of the 5 dBA for residential or 8 dBA for Commercial. The Noise Ordinance is clear that the noise level is the maximum sound measured (Section 2901(g)), the ambient level is the lowest sound over a 10 minute measurement period (Section 2901(a)), and the allowable sound standard is the difference (5 dBA for

residential (Section 2909(a) and 8 dBA for commercial (Section 2909(b)). Recall, Mr. Mahli took an average of 20 points to derive the ambient and the noise levels. Averaging 20 points is a materially different result than taking the lowest and the maximum.

The Noise Ordinance provides for averaging only when making a measurement of "the inside noise level measurements" in Section 2902. When measuring outside noise and ambient levels, the Ordinance states "lowest" and "maximum", not averages. Can you please help me understand how your department's practice for averaging outside ambient and noise levels conforms to the Noise Ordinance? Or, where this averaging finds a basis? A simple citation to Code will suffice.

Finally, allow me to remind you Mr. Bhatia, that Mr. Rivard has specifically and clearly told me that he does not apply the Noise Ordinance. I will refresh your memory, Mr. Rivard said : "I wrote the ordinance. The noise ordinance is what I say it is. If its words say something different, it is still what I think it is because I wrote it." Thus far, this is the only explanation and authority that supports your department's practices.

I will look forward to receiving a description of your protocols, an explanation of how they conform to the Ordinance, or authority for not conforming to the Ordinance. I truly hope that you will respond substantively with an explanation that is better than, "the Noise Ordinance is what we say it is, because we say so."

Alicia
57 Lapidge Street
415-225-8738 cell

From: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>
To: Alicia Maria Gamez <amgamez@yahoo.com>
Cc: adam.taylor@sfgov.org; Derek Watry <dwatry@wiai.com>; Jimmy Pon <eggrollstick@yahoo.com>; Gillian.E.Gillett@sfgov.org; gregg sass <gregg.sass@sfdph.org>; johnson.ojo@sfdph.org; Kenny Wong <Kenny.Wong@sfdph.org>; morningstar_v@yahoo.com; Priscilla Thorner <pristhorner@yahoo.com>; Regina Dick-Endrizzi <Regina.Dick-Endrizzi@sfgov.org>; Richard Lee <Richard.Lee@sfdph.org>; Scott Sanchez <Scott.Sanchez@sfgov.org>; scott wiener. <scott.weiner@yahoo.com>; Scott.Wiener@sfgov.org; stephen mungovan <Stephen.Mungovan@sfgov.org>; steven Keith <steven.keith@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>; Vivian Day <Vivian.Day@sfgov.org>; Gillian Gillett <Gillian.Gillett@sfgov.org>; aragon@berkeley.edu
Sent: Mon, May 2, 2011 5:50:55 PM
Subject: your three questions Noise status at Grub, 758 Valencia

Ms. Gamez:

I feel that the Department has endeavored to provide clear answers to all of your questions. I hope these additional responses below provide the specificity you are requesting.

I understand that you do not like the findings and conclusions of our investigation, yet I feel the Department has been objective and the restaurant has been responsive and made substantial investments in the relocation and redesign of mechanical equipment. We have consulted with the Office of the city attorney and have confirmed that our approach is abiding by the terms of the noise ordinance.

Question 1/2: Staff use the noise measurement methods as specified in the ordinance. The ordinance is clear about these methods.

Question 3: Grub has met the performance standards specified by the ordinance with a viable and acceptable set of methods. The Department is not proscriptive with regards to the methods, only the performance standards.

For your information, we followed up and your allegation regarding the unpermitted work was not confirmed. The department of building inspection verified a valid permit for the work.

Rajiv

Alicia Maria
Gamez
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m> To
Rajiv Bhatia
<Rajiv.Bhatia@sfdph.org>
05/02/2011 05:16 cc
PM adam.taylor@sfgov.org, Derek Watry
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Subject

Re: Noise status at Grub, 758
Valencia

Dear Dr. Bhatia,

We are still waiting for your response to the questions posed again on
April 21, 2011, see email below.

Can you please respond as to each part of your department's procedures and
how they relate to or depart from the Noise Ordinance? For example, you
acknowledge that you disregard the Noise Ordinance's definition of
residential property; please explain on what authority you do so.

Please note that we are very interested in your response and eagerly await
it.

Best regards,

Alicia

From: Alicia Maria Gamez <amgamez@yahoo.com>
To: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>
Cc: adam.taylor@sfgov.org; Derek Watry <dwatry@wiai.com>; Jimmy Pon
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stephen mungovan <Stephen.Mungovan@sfgov.org>; johnson.ojo@sfdph.org

Sent: Thu, April 21, 2011 4:03:32 PM
Subject: Re: Noise status at Grub, 758 Valencia

Dear Dr. Bhatia,

Thank you for your note.

Your note does not respond to my requests and questions. I pose them here again for you:

1. Please explain the methodology by which DPH enforces noise ordinance; this includes how DPH arrives at the "ambient" and "noise" levels, and what the noise standards are;
2. Please explain how DPH's methodology relates to the noise ordinance; and

2. Why hasn't DPH enforced the agreement that Mr. Rivard required of Grub to get its permit.

The method by which you derive the ambient and noise levels will determine whether the difference is within limits provided by the noise ordinance. You asset data, which cannot be relied upon because you do not provide the method by which the data were derived. The information you provide does not account for whether other identifiable sounds were contributing to the ambient. Because we were not informed of your visit and were not present, we could not verify which or any of the machines that actually contribute to the noise level were running. While, I understand that you have provided numbers, I don't know what they represent. So, again, please explain your methods, measurements, inclusions and exclusions.

Thank you for confirming that you do apply a "commercial" standard of 8 dBA to the property, despite there being residential units in the building and despite the definition of residential property in the noise ordinance. The noise ordinance says it should be the residential standard of 5 dBA. So my question here is, where or how do you find a legal basis for applying a commercial standard of 8 dBA to a property that is residential as defined in the noise ordinance? Please explain.

I don't know why you might think that your statement will bring closure to the matter. You haven't addressed the problem. It is clear that the equipment at Grub continues to disrupt the lives of the people who live under and near it--to the extent now that it is cracking the plaster of the unit below. Do you believe that such a machine functions silently? Whatever work Grub has performed was without permit, not to code, and has not performed the work that Mr. Rivard required them to perform to abate the noise. Mr. Rivard required the agreement, as he states, precisely because Grub operates until and during the early morning. I have attached the agreement again here so that you may review it.

I wish you had informed me that your department would be taking new measurements. We could have had an independent consultant on hand to take

measurements that would corroborate, or not, the measurements of your staff. The fact that we were not informed and were not allowed to be present undermines the credibility of the results. Again, the measurements that the consultant takes are taken with a device that logs the data, with a time and date stamp, and makes a sound recording of the phenomena. Data measured and documented in this manner is far more reliable than data that is merely asserted. Finally, independent consultants must rely on the methods described by the noise ordinance to interpret data, since they cannot make up the law.

So, I will pose my requests again. Please:

1. explain your methods for arriving at the ambient level and how you treat separate identifiable sources of noise,
2. explain your methods for arriving at the noise level and how you ensure that the noise tested is the noise causing the problems,
3. explain how the methods applied conform to the code,
4. explain your basis for applying the commercial standard to a property that the noise ordinance defines as residential,
5. explain why the department has not enforced the agreement it required for Grub to open.

I will very much appreciate your response to these questions posed here and previously. Please be aware that with just a little cooperation from your office, I am sure that all relevant parties can be present when measurements are taken.

I have just spoken with Morningstar. She reports that she and her roommate are sick with exhaustion. They have not been able to sleep. Remember, the machines are directly over their residence. Morningstar states that no one notified her of DPH's visit. She asks how did you reach the roof? She states that Grub has no right to enter private areas to reach the roof without an emergency. She is supposed to be given at least 24 hour notice and to be asked permission. So she would like to know how your staff reached the roof. She states that even her landlord asks permission and gives 24 hours notice in non-emergency circumstances. Please explain.

Alicia Gamez
415-225-8738 cell

From: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>
To: Alicia Maria Gamez <amgamez@yahoo.com>
Cc: adam.taylor@sfgov.org; Derek Watry <dwatry@wial.com>; Jimmy Pon <eggrollstick@yahoo.com>; Gillian.E.Gillett@sfgov.org; gregg sass <gregg.sass@sfdph.org>; Kenny Wong <Kenny.Wong@sfdph.org>; morningstar_v@yahoo.com; Priscilla Thorner <pristhorner@yahoo.com>; Richard Lee <Richard.Lee@sfdph.org>; scott wiener. <scott.weiner@yahoo.com>; Scott.Wiener@sfgov.org; steven Keith <steven.keith@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>; Scott Sanchez <Scott.Sanchez@sfgov.org>; Vivian Day <Vivian.Day@sfgov.org>; Regina Dick-Endrizzi

<Regina.Dick-Endrizzi@sfgov.org>

Sent: Thu, April 21, 2011 2:47:35 PM

Subject: Noise status at Grub, 758 Valencia

Dear Ms. Gamez:

On the evening of Wednesday, April 20, 2010, DPH inspected the exhaust and supply ventilation systems at Grub. The equipment was judged by staff to be functioning normally and, subjectively, generated noise that was just audible when turned on. We measured the noise levels associated with the systems at Grub to be 51--52 dBA at the property plane associated with your dwelling. The many improvements made by Grub appear to have cumulatively resulted in the lower measured levels. Even relative to the minimum ambient level, which is fixed by the ordinance at 45 dBA, the mechanical ventilation system would comply with the Article 29 of the Police Code at any time of the day. DPH considers the restaurant use to be subject to the commercial standard in Section 2909(b).

As a precautionary measure, we intend to measure the noise level again in 3-6 months to assess whether the situation changes.

I hope this will bring closure to this matter. I am copying other city agency which may conduct related inspections of the property so they may be aware of our most recent findings.

Rajiv

Rajiv Bhatia, MD, MPH.
Director, Occupational & Environmental Health,
San Francisco Department of Public Health

Alicia Maria

Gamez

<amgamez@yahoo.co

To

m>

Rajiv Bhatia

<Rajiv.Bhatia@sfdph.org>

04/19/2011 07:14

cc

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Subject

Re: Fw: F/u Actions on Noise at
Grub, 758 Valencia

Dr. Bhatia,

Could you please let me know what your interpretation of the noise ordinance is? I have explained my understanding, which I arrived at by simply reading the noise ordinance. You have told me that you have a different interpretation. I would very much like to understand your interpretation and its basis.

To recap, here is my understanding of the code and of the Department's interpretation:

My understanding is quite simple. The noise ordinance provides a standard for residential property that allows 5 dBA above ambient (section 2909(a)(1)) and for commercial 8 dBA above ambient (Section 2909(b)). The noise ordinance provides that residential property means "any property that has at least one dwelling unit and has been approved for human habitation by the City and County of San Francisco." Section 2909(m). So, as applied to Grub, which is in the same property as Morningstar and Jacqueline's apartment, Grub is in a residential property. To get the noise level, Section 2901(g) says that you take the maximum continuous sound level. To get the Ambient sound level, Section 2901(a) says that you take the lowest repeating noise level with the noise source silent. If there are any, "by one or more individual identifiable sources of noise" that are affecting the ambient, Section 2901(a) says "determination of the ambient shall be accomplished with these separate identifiable noise sources silent or

otherwise removed or subtracted from the measured ambient sound level".

In short, the code says, factor out noise sources from the ambient. Take the lowest noise level, and the highest noise level, and if there are over 5 dBA difference and it's a residential property, the noise source is in violation of the ordinance.

Here is what I understand of the Department's understanding: Department applies the commercial noise standard to Grub based on the "use" defined by the planning department. Dr. Bhatia has so stated in a prior email (attached, Oct 19, 2010). Mr. Rivard so stated in his email of Oct. 15, 2010, "As you know Article 29 permits 8 dBA over the ambient in mixed use conditions." Could Mr. Rivard and Dr. Bhatia, please provide the origin or basis for finding a "mixed use" standard? The ordinance does not mention any mixed use standard. Recall, residential means "any property that has at least one dwelling unit and has been approved for human habitation by the City and County of San Francisco." Section 2909(m). Grub is in a property that has multiple dwelling units and a restaurant. Per the ordinance, Grub is in residential property. A plain reading of the code indicates that it should be subject to the 5 dBA standard. But I would love to hear your and the department's basis for finding a "mixed use" category that gets the higher standard. Please do explain.

The department does not factor out other noise sources in determining ambient. For example, Mr. Rivard's report on October 15, 2010 (which I include immediately below, in the attached PDF of Mr. Rivard's email, and Mr Rivard's Noise Survey Form), does not factor out ambient as is required by the definition of ambient in the code. Recall, section 2901(a) provides that if "a significant portion of the ambient is produced by one or more individual identifiable sources of noise that contribute cumulatively to the sound level... determination of the ambient shall be accomplished with these separate identifiable noise sources silent or otherwise removed or subtracted from the measured ambient sound level". Please explain your interpretation that allows the ambient to include other separate identifiable noise sources.

The department averages of the ambient and the noise levels before determining the difference in dBA. This methodology is reflected in Mr. Mahli's report, attached as a PDF to this email. (Mr. Mahli here also applies the the commercial standard of 8 dBA to Grub.) Section 2901(a) provides that ambient means the lowest sound level repeating itself during a minimum ten-minute period. Section 2901(g) provides that noise level means the maximum continuous sound level or repetitive peak sound level, produced by a source or group of sources. The noise ordinance specifies that the ambient is the lowest sound and the noise level is the maximum sound--not an average. But, I would love to understand where or how the department finds a basis for this methodology.

In going over these prior emails, I noted that the Grub signed an agreement

to take certain actions and to do so with proper permits. This Agreement is included below and in the attached PDF of Mr. Rivard's email.

Mr Rivard required that Grub take further measures: "Since Grub intends to operate into the early morning we are confronted with the possibility that the ambient noise level will decrease somewhat. For this reason I required Grub to agree to further mitigate noise impacts by constructing an additional sound barrier on the rooftop. Below you will find a written agreement that Grub will implement this condition after receiving necessary building permits."

Please note that Grub has not complied with its written agreement with the Department. It has not built the sound barrier. Further, the alterations that they have done were performed without permits--this is reflected by the notice of violation issued today (see attached PDF "758 Valencia Street - Department of Building Inspection 4-19.pdf"). I have attached a PDF of the Department of Building Inspection's notice of violation here. Can you please explain why the department has not enforced this agreement with Grub?

So this is all to ask:

Can you please confirm that my understanding of the Department's interpretation is correct?

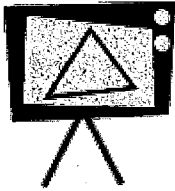
If my understanding of the Department's practice is not correct, could you please help me understand the Department's methods for measuring sound? Once you have explained the method and standards that the Department follows, could you please explain how the Department's practices observe (or enforce) the law?

Finally, Can you please explain why the Department has not enforced the written agreement it received from Grub?

Morningstar has drawn new attention to this problem. I am here just trying to understand what standard it is that the department is applying. I understand that the department states that there is no noise issue here. But the plaster in Morningstar's apartment is being cracked and broken by a machine that makes noise. Further, Grub has not performed on the agreement it made with the Department. I don't understand how the Department is claiming that Grub has complied or that there is no noise problem. The phenomenon is readily observed.

Please note, if you follow a plain reading of the noise ordinance, Grub has never been in compliance. I am forwarding to you again the noise reports that were professionally prepared, in the PDF titled, "Sound Reports - All".

Alicia



Eileen Shields/DPH/SFGOV
06/21/2011 06:26 AM

To SOTF/SOTF/SFGOV@SFGOV
cc Rajiv Bhatia/DPH/SFGOV@SFGOV, Tom
Rivard/DPH/SFGOV@SFGOV
bcc
Subject Re: Sunshine Complaint Received: 11043_Alicia Gamez v
Dept. of Public Health

Failure to provide documents

Between October 2010 and the present, Ms. Alicia Gamez communicated by email and phone with multiple staff of the Department of Public Health with complaints of noise from a business operation at 758 Valencia. Ms. Gamez also communicated many times with questions about San Francisco's noise control laws and their implementation. As demonstrated in the lengthy exchange between the Department staff and Ms. Gamez, in of her communications, Ms. Gamez voiced her disagreement with the Department's interpretation of noise standards under San Francisco Police Code. In later communications, she requested we explain our interpretation of the law and provide a "guidance document" or equivalent document to justify our noise measurement procedures. Our response has consistently been that the ordinance itself provides adequate specificity regarding the measurement of noise by noise professionals and no additional Department document (or other media) specifying the methods or procedures for noise measurement exists. Furthermore, these documents never have existed. We therefore deny this charge.

Failure to provide public notice for meetings of the City Agency Noise Task Force

SF Police Code Article 29, Section 2918 required the Director of Public Health to convene and coordinate an interdepartmental task force for the purpose of coordinating and evaluating enforcement of this Article and recommending to the Planning Department necessary changes in the General Plan to address, maintain, and improve the acoustical quality of the San Francisco environment. The noise task force is composed exclusively of the City employees and has met on seven occasions since 2008 to discuss and coordinate noise enforcement as a shared interdepartmental responsibility. The task force has discussed enforcement programs focused upon motor vehicle noise, garbage collection noise, backup truck alarms, construction noise at night, diesel electric generators, fire engines sirens noise reduction, restaurant noise guidelines, and necessary amendments for enforcement and implementation of the ordinance.

Unfortunately, because the meetings were intended for inter-departmental coordination and collaboration, the Department staff did not treat these meetings as public meetings. We did not publicly notice the meetings. We did post the agenda and minutes on the DPH website. We never denied public access and members of the general public have attended meetings. The Department acknowledges its failure under the requirements and will re-educate staff managing Board sanctioned group processes to uphold the intent and requirements of the Sunshine Act.

The next meeting of the Noise Task Force is scheduled for September 15, 2011. The meeting notification will be posted at the following locations at least 15 days prior to the meeting.

Website: <http://www.sfdph.org/dph/EH/Noise/NoiseTaskForce.asp>
Environmental Health public bulletin board in Room 210, 1390 Markets
Main Library, Government Documents Section.

Ms. Gamez has been notified by email of the time, date, and location of the meeting. Attached



please find a copy of the meeting notification for your review. Meeting Notice.doc

Also attached are a lengthy chronological document record of communications with Ms. Gamez from October to present (also submitted by Ms. Gamez in her complaint) and a document record from the inspection file for 758 Valencia that documents our noise measurements.



758 Valencia Complaint File.pdf emailGrubfinal.pdf

Meeting Notice: Noise Task Force
Thursday, September 15, 2011, 10AM to Noon
Room 278, City Hall

Agenda: Agenda for the meeting will be posted 72 hours in advance of the meeting. Agendas will be posted on the website, in the Main Library in the Government Documents Section and on the bulletin board at Environmental Health, 1390 Market Street, Suite 210.

Minutes: Minutes for the meeting will be posted on the task force website or may be requested by contacting Thomas Rivard.

Website: <http://www.sfdph.org/dph/EH/Noise/NoiseTaskForce.asp>

Contact: Thomas Rivard, SFDPH Representative to the Task Force, will serve as point of contact for task force. Individual requesting agendas, minutes or information regarding the task force may contact him at:

Thomas.Rivard@sfdph.org or

Environmental Health

1390 Market St., Suite 210

San Francisco, CA. 94102

Telephone # 415-252-3933

Disability Access: The hearing room is wheelchair accessible.

Chemical-Based Products: In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the

City to accommodate these individuals.

Cell phones, pagers and similar sound-producing electronic devices: The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE: Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact the Administrator by mail to: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at (415) 554-7724; by fax at (415) 554-7854; or by email at soft@sfgov.org.

Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from the Administrator or by printing Chapter 67 of the San Francisco Administrative Code from the Internet, at URL:
http://www.sfgov.org/site/sunshine_page.asp?id=34495

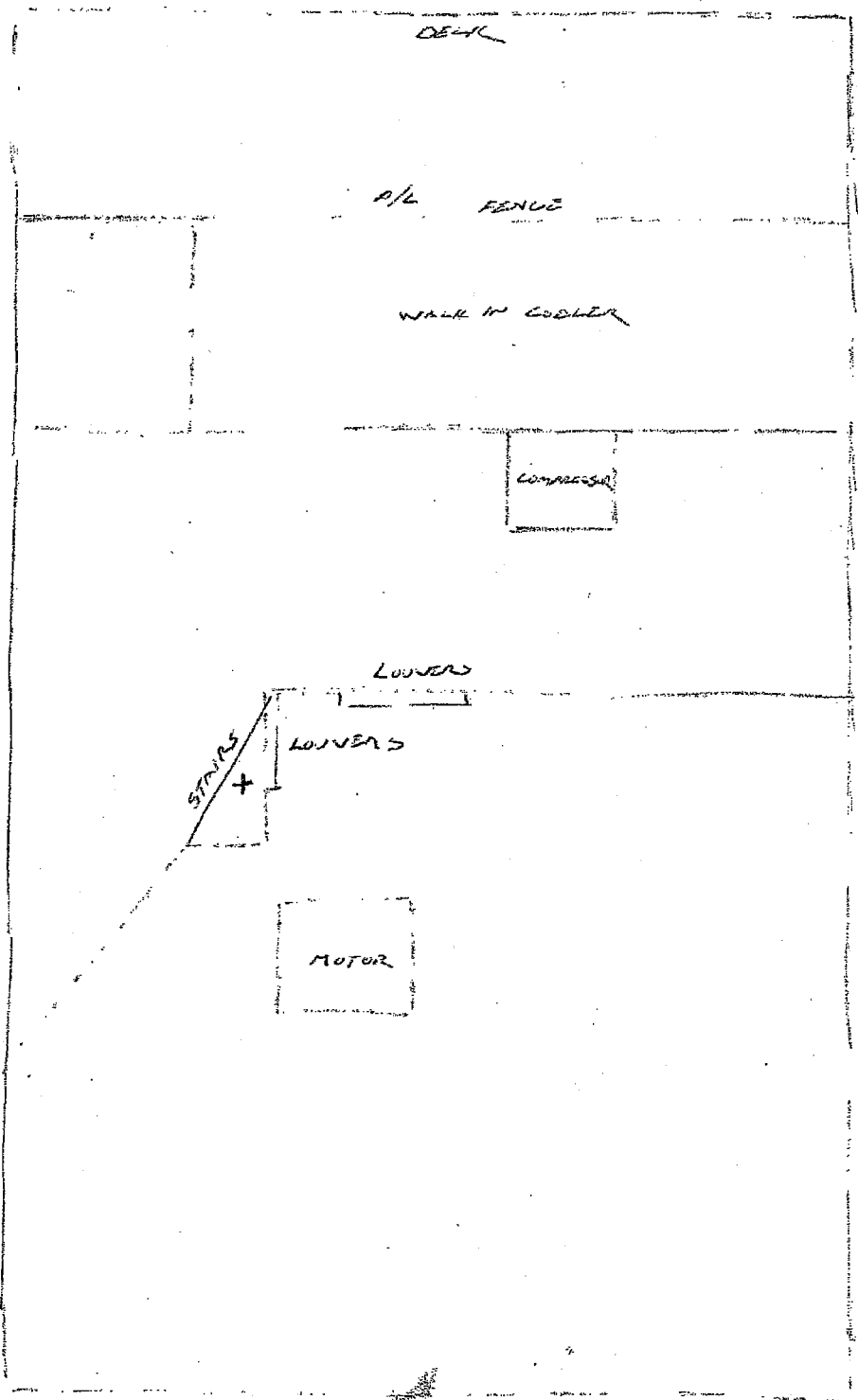
Lobbyist Registration & Reporting Requirements: Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Campaign & Governmental Conduct Code Sec. 2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Van Ness Avenue, Suite 3900, San

Francisco, CA 94102; telephone (415 581-2300) ; fax (415 581-2317); website:
[sfgov.org/ethics.](http://sfgov.org/ethics)

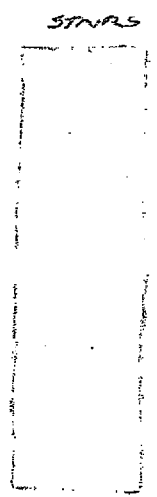
UPPER LEVEL A 49-50 N 57-58 (ALL UNITS)

LOWER LEVEL A 48 N 56.5 (ALL UNITS)

TIME: 10-1030 AM
DATE: 10/7/10
ROUGH SKETCH



TOP FLOOR
A - 48
N - 58.5
(ALL UNITS)



SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH
 BUREAU OF ENVIRONMENTAL HEALTH MANAGEMENT
 TELEPHONE NO: (415) 252-3800

NOISE SURVEY

Date: Oct 14, 2010

Time: 5:31 pm.

Sound Level Meter - Manufacturer Quest Model 1800 Cal Due Jan 2011

Sound Level Calibrator - Mfr. Quest Model QC 20 Cal Due Jan 2011

Pre - Calibration Reading 94.2 Standard 94

Post - Calibration Reading 94 Standard 94.1

Battery Check DK Slow yes A-weighted yes Wind Screen yes

extensure 10 ft. + 7 ft for arm & body

Noise Source	Measurement Location	Measurement	Ambient Level
<u>roof top ventilation w/ground makeup</u>	<u>line of site rear property plane</u>	<u>59.2</u>	<u>55.3</u>

Zoning: N/A

Remarks: _____

Inspector: Rivard

Additional Field Observations: ambient at limi of site 55.3 dBA with neighbors ventilation audible

vent system - roof

neighbor - chaya - 70 dBA @ 10ft

Grub - 67 dBA @ 10ft.

$$A = 3dBA = \text{add } 1.8 \text{ to } 70$$

$$71.8 - 67 = 4.8$$

attributable to combined levels

November 15, 2010

Dept. of Public Health

Attention: Mr. Tom Rivard

Regards: Grub (so called Noise issue)

Dear Mr. Rivard,

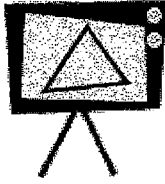
As we all are aware of the situation, at Grub (758 Valencia St), regarding the complaints you have been receiving from Alicia Gamez, and we would like get it done. According to 4 of your inspectors, we were in compliance to the noise ordinance and have been signed off 4 different times. Mrs. Gamez thinks otherwise. Her bullish ways of harassing the neighbors and your dept. to getting her way and only her way is not a standard way of getting situations like this cleared. We are working with your department to get this in compliance to what you require. We have contacted Mr. Lee Brenner of the Bay Area Noise Consultants to help us comply with whatever you ask of us to our ability and affordability. Mrs. Gamez might have a much higher standards and hearing than that of city ordinance, but it should not have to cost us a fortune to accommodate her and only herself. All this even after we have originally accommodated the city and passed. She has been pounding the neighbors with the same amount of emails and has become a nuisance to them; those are some of their own words. Back to our goals, we have placed a posting for our employees to remind them the back door is to be closed at 10pm. They were instructed to take out of trash, ONLY, after 10pm in a quit manner, no bottles or recycling bottles to be done in the evening after 10pm. The fact that she is saying staying up late is due to her trying to catch and film or record her obsession of us doing these things in the wee hours of the night, not due to the noise she hears. Mr. Brenner's first recommendation to cover the air ducts in the ceiling with their special covering is going to be our first project. This should be happening this week. Step 2 is the air ducts for the intake; we are designing a new cover that Mr. Brenner suggested. We are hoping that also will be done this week. Thirdly, the refrigeration compressor, even though is quite enough, if needed after the first few steps and new reading, we will be building a new cover Mr. Brenner gave us a rough drawing of what his company does, but from his past work says it costly about \$6 to \$7,000.00. This is very steep for an approximate 4X5 box, so he will be checking with his designers for other options that are not as costly. We will have him do a reading prior to completion so we can get below what is needed. We are hoping a 2 week time to complete if all material is available, just have to check. Al Baba who will be doing the work, will be inquiring on the roof if it requires a permit and will be rebuilding the wall to the U-shape you wanted us to do if needed. His only issue was the gap for the water to drain and not sit still on that section. Mr. Brenner has not gotten back to me today (Monday) to see where we stand after last Friday's ordeal. I will call him first thing Tuesday and see where we stand on going forward and supplying us with material. I will keep you posted tomorrow and time frame.

Thank You

George Nasrah

GRUB

758 Valencia St.



Kenny Wong/DPH/SFGOV

11/02/2010 02:00 PM

To theartofhospitality@gmail.com

cc Rajiv Bhatia/DPH/SFGOV@SFGOV, Richard
Lee/DPH/SFGOV@SFGOV, Tom
Rivard/DPH/SFGOV@SFGOV, Sharon

bcc

Subject Complaint of operational noise and structural noise from
Grub

Dear Mr Reese and ownership of Grub,

On Wednesday October 28th, we made a site visit to document Grub's procedure in minimizing operational noise and to obtain status on improving further improving the fixed sources from the restaurant. The procedures described by Grub appeared to be positive, but we are in receipt of a complaint which alleged avoidable noises between 10-29-10 and early morning 10-30-10 :

- 1) Grub operated with its rear door opened during the entire day and evening.
- 2) 11pm, they recycled numerous rounds of glass, smashing bottles
- 3) 12:30am, they broke down card board boxes and large Styrofoam containers
- 4) Grub ran the hood until 1:54AM. Typically they turn it off at 12:30 or 1am.
- 5) No improvement in operation or structural noise.

We want you to be aware of this continued alleged complaint. Please reiterate what you have done to address these operational noise problems and describe any new operational and structural noise procedures or improvements that were put into place after our October 28th.

I have been instructed to advise you that:

- 1) That our expectation of all permitted restaurants is that they take reasonable steps to minimize noise, particularly at night. In this case, the alleged late night outdoor cleaning activities, shouting, and refuse handling appear to be avoidable. Keeping the kitchen door closed is a reasonable, feasible step to limit noise pollution.
- 2) Each day that there is a complaint could be treated as a separate instance of a noise complaint
- 3) Repeated confirmed complaints of avoidable noise related to business operation without responsive actions as evidence of violations of conditions of the health permit.
- 4) That failure to take reasonable steps to resolve neighborhood noise issues may result in our suspending their permit.

Kenny Wong

10PM

E Cerrado El Puerto!!

ATTENTION ALL
EMPLOYEES
PLEASE !!

KEEP THIS DOOR
CLOSED AFTER 10 PM!!
CERRADO EL PUERTO
TODO LOS NOCHES
10PM!!

ATTENTION ALL STAFF

THERE WILL BE A MANDATORY BRUNCH TRAINING ON SATURDAY MARCH 12TH AT 10:00 A.M. WE WILL GO OVER ALL FOOD AND SERVICE. TASTING AND BEVERAGE SERVICE WILL BE COVERED. THIS SHOULD TAKE NO LONGER THAN 1 HOUR. BRUNCH IS SLATED TO OPEN MARCH 19TH GIVEN ANY UNFORSEEN DELAY.

THIS WILL BE A SOFT OPENING SO PLEASE DO NOT ADVERTISE IN ANY WAY THE OPENING DATE. YOUR RESPONSE UNTIL OPEN IS TO REMAINE BRUNCH IS COMING SOON.

THANK YOU

GRUB BACKUP	Monday
AM prep	Monday
Richard	Monday
Diego	Monday
Diana	Monday
Jesus	Monday
AM dish	Monday
Martin	Monday
Diana	Monday
Diana	Monday
PM prep/dish	Monday
Victor	Monday
Keesha	Monday
Jose	Monday
Marcos	Monday
PM line cook	Monday
Donner	Monday
Edgar	Monday
Benjamin	Monday
Edgar	Monday
Santiago	Monday
Bruno	Monday
Jose	Monday
Edgar	Monday
Santiago	Monday
Paula	Monday
Patty	Monday
Anna	Monday

GRUB BACKUP	Monday
AM prep	Monday
Richard	Monday
Diego	Monday
Diana	Monday
Jesus	Monday
AM dish	Monday
Martin	Monday
Diana	Monday
Diana	Monday
PM prep/dish	Monday
Victor	Monday
Keesha	Monday
Jose	Monday
Marcos	Monday
PM line cook	Monday
Donner	Monday
Edgar	Monday
Benjamin	Monday
Edgar	Monday
Santiago	Monday
Bruno	Monday
Jose	Monday
Edgar	Monday
Santiago	Monday
Paula	Monday
Patty	Monday
Anna	Monday

03/08/2011

Complaint Report for Location ID 58840 at 758 Valencia St

ComplaintID: 38788 Assigned to: Sharon Aguila
Date Entered: 11/2/2010 DBA: Grub
CrossStreet1: CrossStreet2: Address: 758 Valencia St Unit #:
Census: 207 Block: Lot: District: 5

Location Type: Restaurant, 1000 - 2000 sq' Notice Date: _____
Owner Name: Ussama Freij
Owner Phone: 415 999 7645 Billable Reinspection Date(s): _____
Owner Address: 931 B Geneva Ave DateAbated:
Contact Name: Eric Reese Abate Notes:
Contact Phone: 415 431 4782

Complaint Description:

Occurance between 10/29 & early 10/30. 1)Grub operated with its rear door opened during the entire day and evening. 2) They recycled numerous rounds of glass, smashing bottles. 3) 12:30 am, they broke down cardboard boxes and large styrofoam containers. 4) Grub ran the hood until 1:54 am. Typically they turn it off at 12:30 or 1 am. 5) No improvement in opration or structural noise.

Complaint Taken By: Nancy Thomas

Inspector/Investigator's Report

Date:

NOVEMBER 4, 2010 - AS INSTRUCTED BY PRINCIPAL WONG, A SITE VISIT WAS NOT CONDUCTED TO ADDRESS ALLEGED COMPLAINTS. HOWEVER, AN EMAIL WAS SENT TO GRUB OWNER(S) REGARDING ALLEGATIONS ON 11/02/10 BUT HAVE NOT RECEIVED A RESPONSE.

Complaint Notes Entered into EHD:

Complaint Report for Location ID 58840 at 758 Valencia St

ComplaintID: 38858 Assigned to: Sharon Aguilá
Date Entered: 11/8/2010 DBA: Grub
CrossStreet1: CrossStreet2: Address: 758 Valencia St Unit #:
Census: 207 Block: Lot: District: 5

Location Type: Restaurant, 1000 - 2000 sq' Notice Date: 11/9/10
Owner Name: Ussama Freij
Owner Phone: 415 999 7645 Billable Reinspection Date(s): N/A
Owner Address: 931 B Geneva Ave DateAbated:
Contact Name: Eric Reese Abate Notes:
Contact Phone: 415 431 4782

Complaint Description:

Noise caused by pouring glass recycling outdoors.

Complaint Taken By: Nancy Thomas

Inspector/Investigator's Report

Date:

11/09/10 Spoke with owner over the phone
and he stated that recycling of bottles
are not conducted at night ; recycle bin
is located inside the kitchen and brought
out the following business day

Complaint Notes Entered into EHD:

Complaint Report for Location ID 58840 at 758 Valencia St

ComplaintID: 38877 Assigned to: Sharon Aguila
Date Entered: 11/9/2010 DBA: Grub
CrossStreet1: CrossStreet2: Address: 758 Valencia St Unit #:
Census: 207 Block: Lot: District: 5

Location Type: Restaurant, 1000 - 2000 sq' Notice Date: 11/9/10
Owner Name: Ussama Freij
Owner Phone: 415 999 7645 Billable Reinspection Date(s): _____
Owner Address: 931 B Geneva Ave DateAbated:
Contact Name: Eric Reese Abate Notes:
Contact Phone: 415 431 4782

Complaint Description:

Grub pounding on trash cans in the early morning.

Complaint Taken By: Nancy Thomas

Inspector/Investigator's Report

Date: 11/9/10 Spoke w/owner and he stated
that the trash bin is located inside the
kitchen and brought out the next day

Complaint Notes Entered into EHD:

Complaint Report for Location ID 58840 at 758 Valencia St

ComplaintID: 38957 Assigned to: Sharon Aguila
Date Entered: 11/16/2010 DBA: Grub
CrossStreet1: CrossStreet2: Address: 758 Valencia St Unit #:
Census: 207 Block: Lot: District: 5

Location Type: Restaurant, 1000 - 2000 sq' Notice Date: 11/17/10
Owner Name: Ussama Freij Billable Reinspection Date(s): _____
Owner Phone: 415 999 7645
Owner Address: 931 B Geneva Ave Date Abated: _____
Contact Name: Eric Reese Abate Notes: _____
Contact Phone: 415 431 4782

Complaint Description:

They did not turn hood off. It ran all night.
11/15/10 email.

Complaint Taken By: Nancy Thomas

Inspector/Investigator's Report

Date:

Spoke with owner and stated that the
Hood is turned off when restaurant
closes

Complaint Notes Entered into EHD:

Complaint Report for Location ID 58840 at 758 Valencia St

ComplaintID: 38958 Assigned to: Sharon Aguila
Date Entered: 11/16/2010 DBA: Grub
CrossStreet1: CrossStreet2: Address: 758 Valencia St Unit #:
Census: 207 Block: Lot: District: 5

Location Type: Restaurant, 1000 - 2000 sq' Notice Date: 11/17/10
Owner Name: Ussama Freij Billable Reinspection Date(s): _____
Owner Phone: 415 999 7645
Owner Address: 931 B Geneva Ave DateAbated:
Contact Name: Eric Reese Abate Notes:
Contact Phone: 415 431 4782

Complaint Description:

Cannot sleep due to the machinery running. It is unbearable. 11/15/10 email.

Complaint Taken By: Nancy Thomas

Inspector/Investigator's Report

Date: Per owner, the hood is turned off
when the facility closes at night

Complaint Notes Entered into EHD:

Complaint Report for Location ID 58840 at 758 Valencia St

ComplaintID: 38959 Assigned to: Sharon Aguila
Date Entered: 11/16/2010 DBA: Grub
CrossStreet1: CrossStreet2: Address: 758 Valencia St Unit #:
Census: 207 Block: Lot: District: 5

Location Type: Restaurant, 1000 - 2000 sq' Notice Date: 11/17/10
Owner Name: Ussama Freij Billable Reinspection Date(s): _____
Owner Phone: 415 999 7645 DateAbated: _____
Owner Address: 931 B Geneva Ave Abate Notes: _____
Contact Name: Eric Reese
Contact Phone: 415 431 4782

Complaint Description:

Logging grub's recycling activities at 12:49 am. They are consistently operating with their rear door open. It is impossible to relax in my backyard or deck because of the constant din of kitchen noise. 11/14/10 email.

Complaint Taken By: Nancy Thomas

Inspector/Investigator's Report

Date: Per owner, employees are not allowed to go outside to the back unless food or wine is required from the walk-in cooler. There is also a sign on the rear door stating to keep door closed at 10 pm.

Complaint Notes Entered into EHD:

Complaint Report for Location ID 58840 at 758 Valencia St

ComplaintID: 39212 Assigned to: Sharon Aguila
Date Entered: 12/6/2010 DBA: Grub
CrossStreet1: CrossStreet2: Address: 758 Valencia St Unit #:
Census: 207 Block: Lot: District: 5

Location Type: Restaurant, 1000 - 2000 sq' Notice Date: 12/7/11
Owner Name: Ussama Freij
Owner Phone: 415 999 7645 Billable Reinspection Date(s): _____
Owner Address: 931 B Geneva Ave DateAbated:
Contact Name: Eric Reese Abate Notes:
Contact Phone: 415 431 4782

Complaint Description:

Grub left their machinery on. The hood is roaring away. Please note at 5 am. Please update with phone call.

Complaint Taken By: Nancy Thomas

Inspector/Investigator's Report

Date:

Per owner, the hood is turned off
when restaurant closes as stated
last month, 11/17/10.

Complaint Notes Entered into EHD:

Complaint Report for Location ID 58840 at 758 Valencia St

ComplaintID: 40151 Assigned to: Sharon Aguila
Date Entered: 2/23/2011 DBA: Grub
CrossStreet1: CrossStreet2: Address: 758 Valencia St Unit #:
Census: 207 Block: Lot: District: 5

Location Type: Restaurant, 1000 - 2000 sq' Notice Date: 03/01/11
Owner Name: Ussama Freij Billable Reinspection Date(s): N/A
Owner Phone: 415 999 7645
Owner Address: 931 B Geneva Ave DateAbated:
Contact Name: Eric Reese Abate Notes:
Contact Phone: 415 431 4782

Complaint Description:

Cleaning activity from Grub for the last three nights at approximately 12:30 am to 1:00 am has caused excessive noise.

Complaint Taken By: Nancy Thomas

Inspector/Investigator's Report

Date: 03/01/11
Contacted owner on 03/01/11 and informed him of the complaint; owner stated in a past conversation that a cleaning crew comes in the morning to do the cleaning of the restaurant and that there is no cleaning of the kitchen done at night. (cb)

Complaint Notes Entered into EHD: same as above

SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH
 BUREAU OF ENVIRONMENTAL HEALTH MANAGEMENT
 TELEPHONE NO: (415) 252-3800

NOISE SURVEY

Date: 4-4-2011

Time: ≈ 6³⁰ PM

Sound Level Meter - Manufacturer Quest Model QC-21800 Cal Due Jan 2011

Sound Level Calibrator - Mfr. Quest Model QC-20 Cal Due Jan 2011

Pre-Calibration Reading 93.7 Standard 94

Post-Calibration Reading 93.8 Standard 94

Battery Check OK Slow yes A-weighted yes Wind Screen yes

Noise Source	Measurement Location	Measurement	Ambient Level
roof top vent system Grubs	inside apt (morning star)	40-42 dBA	N/A

Zoning: _____

Remarks: noted perceptible vibration & rattle in duct

Inspector: Reward

Additional Field Observations:

letter sent to George Nasvab requesting improvements on 4-5-2011

SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH
BUREAU OF ENVIRONMENTAL HEALTH MANAGEMENT
TELEPHONE NO: (415) 252-3800

NOISE SURVEY

Date: 4-20-2011

Time: 6¹⁰ PM

Sound Level Meter - Manufacturer Quest Model 1800 Cal Due Jan 2011

Sound Level Calibrator - Mfgr. Quest Model QC 20 Cal Due Jan 2011

Pre - Calibration Reading 93.7 Standard 94

Post- Calibration Reading 93.7 Standard 94

Battery Check OK Slow yes A-weighted yes Wind Screen yes

Noise Source	Measurement Location	Measurement	Ambient Level
<u>Grub 758 Valencia's Roof top Vent</u>	<u>rear property plane</u>	<u>51-52 dBA</u>	<u>N/A (45mm^{dBA})</u>

Zoning: _____

Remarks: Chang - closed - no noise contribution

Inspector: Rivar

Additional Field Observations:

Boe Hayward/BOS/SFGOV

10/08/2010 02:44 PM

To

Mohanned Malhi/DPH/SFGOV@SFGOV, Eric
Mar/DPH/SFGOV@SFGOV

cc

rajiv.bhatia@sfgov.org

Subject

bj

ct

Sound readings for 758 Valencia (Grub)

Dear Mohanned and Eric,

Our office has begun to receive complaints about the level of noise for the new restaurant Grub, located at 758 Valencia Street.

Can you please let me know what you have found at this location and what options can be taken so that the neighbors are not kept awake and for the restaurant to continue its operation?

Thanks in advance for your immediate attention to this matter.

Thanks

Boe

Boe Hayward
Legislative Aide
Office of Supervisor Bevan Dufty
San Francisco Board of Supervisors
Office (415)554-6987 Fax (415)554-6909

**Mohanned
Malhi/DPH/SFGOV**

10/12/2010 07:00 PM

To

Alicia Maria Gamez <amgamez@yahoo.com>

cc

Alasdair Clements <alasdair.c@gocartours.com>, Boe Hayward <Boe.Hayward@sfgov.org>, Eric.Mar@sfdph.org, Fred Faloona <fredafal@yahoo.com>, Mohammed.Malhi@sfdph.org, Priscilla Thorner <pristhomer@yahoo.com>, Stephanie Cushing/DPH/SFGOV@SFGOV, Richard Lee/DPH/SFGOV@SFGOV, Patrick Fosdahl/DPH/SFGOV@SFGOV, Rajiv Bhatia/DPH/SFGOV@SFGOV, Eric Mar/DPH/SFGOV@SFGOV, Kenny Wong/DPH/SFGOV@SFGOV

Su

bje

ct

Re: 758 Valencia

Hi Alicia,

I do not know what Lapidge St. is zoned for but the planning Department will be able to answer that question for you. The noise ordinance does not distinguish between daytime and nighttime noise levels. Per Sec. 2909 (b) "No person shall produce or allow to be produced by any machine or device, music or entertainment or any combination of same, on commercial or industrial property over which the person has ownership or control, a noise level more than eight dBA above the local ambient at any point outside of the property plane." All fixed noise sources must be in the allowable range whether it is before 10 p.m. or after 10 p.m.

I will let you know what time I will be there on Thursday by tomorrow afternoon.

During today's inspection I took noise level measurements from two areas. The first noise level measurement (NLM) was taken on top of the walk-in cooler, located directly behind the restaurant. This area was the closest area I was able to access in regards to the property plane of the complainant. The ambient noise level for that particular NLM was found to be 54.4 dBA using 20 data points. The average of all data points was used to establish the ambient noise level. The NLM with all the noise sources operating sans the walk-in cooler's compressor, since it was not operational at the time, was found to be 61.2 dBA. This measurement was also established using 20 data points. The average of all data points was used for this measurement as well.

The second reading was taken from your deck located directly behind the walk-in cooler and restaurant. Since your deck is at a higher elevation and a greater distance from the noise sources the ambient noise level and the noise level with the noise sources operating did differ. The ambient noise level in this particular area was found to be 51.6 dBA with all noise sources off. The NLM with all noise sources on except the walk-in cooler's compressor was found to be 57.6 dBA. In each of these readings, 20 data points were documented and the average was used to establish the noise level.

These measurements show that this facility is currently in compliance with the current noise ordinance. I will be back out on Thursday to take another set of readings, once the device to minimize the noise being produced from the makeup air unit is installed. The walk-in cooler's compressor will also be operational at the time. This will allow me to provide a NLM with all the fixed noise sources in operation.

Sincerely,

Mohanned Malhi, R.E.H.S.
Senior Environmental Health Inspector
City and County of San Francisco
Department of Public Health
1390 Market St. Suite 210
San Francisco, CA 94102
www.sfdph.org/eh
Tel: (415) 252-3827
Fax: (415) 252-3842

Alicia Maria Gamez
<amgamez@yahoo.com>

10/13/2010 04:43 PM

Hello Stephanie, Mohanned and Tom,

I was able to find a consultant that has greater availability tomorrow. Nevertheless, I will need some notice before he can be here. Please do give me a heads up before you come over. Ideally, if you could let me know in the morning what time you expect to be over. The consultant is Derek Watry. His contact information is included here. He will be coming from across the bay, so we need some lead time for him to get here in time to coordinate this.

Also, I have business meetings that I have responsibilities to attend or timely cancel. I cannot reasonably clear my entire day. I would very much appreciate some lead time so that I can keep as many of my client meetings as possible. No one consulted with me, my neighbors, or any of the other affected people regarding the day or time of this. Giving us a heads up and a window of time when this will occur will be very helpful.

I really appreciate your help in having this be a collaborative process.

The consultant is :
Derek L. Watry

Principal

WILSON, IHRIG & ASSOCIATES, INC.

Acoustical Consultants

6000 Shellmound St., Suite 400

Emeryville, California 94608

Tel. (510) 658-6719

Fax (510) 652-4441

Cell (650) 740-1586

dwatry@wiai.com

Thank you,

Alicia

Alicia Gamez
415-225-8738 cell.

"Derek Watry"
<dwatry@wiai.com>

10/13/2010 03:57 PM

Hello Mohanned & Tom,

I have been asked by Alicia Gamez to make independent noise readings tomorrow while you are at Grub Restaurant.

I am not the person Ms. Gamez initially contacted, and am available anytime after 10:00 AM. That said, Ms. Gamez would prefer to have the measurements made between 10 AM and 10:45 AM or after 1:30 PM. In any case, I would appreciate it if you could call Ms. Gamez and/or me approximately 45 minutes before you arrive at Grub to allow me travel time.

Thank you. I look forward to seeing you tomorrow.

Derek L. Watry

Principal

WILSON, IHRIG & ASSOCIATES, INC.

Acoustical Consultants
6000 Shellmound St., Suite 400
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dwatry@wiai.com

Alicia Maria Gamez
<amgamez@yahoo.com>

10/16/2010 01:59 PM

Dear all,

Please note that it is 1am on Saturday morning. After returning from movies over an hour ago, I returned to discover that the owners of GRUB have again left their machinery on. They left the building and left all the fans, hoods, whatever, running. The noise is very loud. It is not possible to sleep with this racket.

Some of the owners and management at Grub had reach out to me and assured my that my peace in my home what exceedingly important to them. They asked me to stop contacting the city because they assured me that they would take care of problems. They even offered my personal favors -- as though making a gift to me will solve the problem. Tonight, upon discovering the noise, I called the contact numbers that I have been given. I asked that the machines be turned off, otherwise they will run *all night*. The single individual who answered informed me that the noise is my problem not his. He told me off.

It is not possible to sleep with the machine. It is unreasonable to expect neighbors to tolerate these noise levels 24 hours a day. It is not reasonable to expect neighbors to suffer due to their negligent business practices. This is the second time that they have left the machines on.

What can the neighbors reasonably do?

Is the city going to do anything about this ridiculous noise problem?

Alicia
415-225-8738

Alicia Maria Gamez
<amgamez@yahoo.com>

10/16/2010 04:48 AM

Dear everyone,

Priscilla - I am very sorry, though not surprised that you are up. Because I am up, I have been reading Article 29 of the San Francisco Municipal Code. This is the Article of the Municipal Code that governs noise regulation in San Francisco.

All - You may recall that in an earlier email, I asked Mohanned about how Lapidge Street is classified and how Grub is classified -- residential or commercial. Mohanned directed me to the planning department for the answer. Having read the code again, I find his response very surprising.

Article 29, Section 2901(m), makes clear that for the purposes of the Regulation of Noise, "Residential Property" means "any property that has at least one dwelling unit and has been approved for human habitation by the City and County of San Francisco." Section 2901(c) "Dwelling Unit" means "(1) a dwelling space consisting of essentially complete independent living facilities for one or more persons, including, for example, permanent provisions for living and sleeping; (2) a room in group housing, even if such room lacks private cooking facilities and private plumbing facilities, such as rooms in senior citizen housing, single room occupancy or residential hotels, dorms, hostels, or shelters; or, (3) a housekeeping room as defined in the Housing Code."

There is a residential flat upstairs from Grub. As Mohanned should have explained, for the purposes of noise regulation and under Article 29, Grub is Residential Property under the Noise Ordinance, because there is in each "least one dwelling unit" in the building. I don't know why Mohanned deferred to the Planning Department, but the applicable definition is right there in the Noise Ordinance.

Grub must conform to the limits in Section 2909, regarding NOISE LIMITS.

Because Grub is in a building that is Residential Property, Section 2909(a) provides the applicable noise limits. Section 2909(a)(1) provides in relevant part that "No person shall produce or allow to be produced by any machine, or device ... on residential property over which the person has ownership or control, a noise level more than **five** dBA above the ambient at any point outside of the property plane." (Emphasis added.)

So far Public Health has been applying the Section 2909(b) standard for Commercial And Industrial Property Noise Limits of "eight dBA above the local ambient". I don't see any basis for applying the Section 2909(b) standard to 758 Valencia of 8 dBA above the local ambient. I would love to understand why Public Health has been applying the Section 2909(b) standard to Residential Property.

Of course, I could not take noise readings tonight to establish an ambient level because Grub left their incredibly loud machines on. However, yesterday, the readings showed that the outdoor refrigerator ALONE produced a noise level more than 6dBA above the ambient on our side of the property plane. The refrigerator cycled on while I was taking readings and I observed the 6+ dBA jump. I watched the readings fall 6+ dBA when the refrigerator cycled off. This Noise Level (2901(g)) is in excess of the "five dBA above the ambient" allowed for Residential Property (2909(a)(1)). The Ambient is defined in Section 2901(a), as I previously described in an earlier email. You will also be interested to know that the refrigerator pushed the Noise Level to and above 51 dBA; therefore, Section 2901(a)'s limitation that "in no case shall the ambient be considered or determined to be less than ... Forty-five dBA" does not undermine the position that the refrigerator alone exceeds the allowable noise levels.

Of course, this is the refrigerator alone; the hood will add dBA to this reading and almost certainly push it over the allowable level for even a commercial property (even though Section 2909(b) is not the right standard). These readings are digitally recorded. I took the readings when Chaya was closed and its major machinery was silent. I followed the directions for taking readings provided in the Code, and I stood where Mohammed and Eric previously took readings. It being Thursday night, neighbors in an nearby building had guests and their voices were audible--I also observed this reflected by an increase in the dBA readings. The ambient level should be adjusted down because of the voices. The refrigerator was 6+ dBA in excess of the ambient that included the voices. Apart from these voices, I got a pretty good ambient reading because Chaya's "individual identifiable sources of noise that contribute cumulatively to the sound level" were mostly silent.

These are my observations of the readings and of the Code; but the appropriate findings that can be derived from this will be properly analyzed and formally presented by Wilson Ihrig. We, neighbors and homeowners, should take solace that objective, digitally recorded data will demonstrate that Grub is not complying with the applicable noise regulations provided by Article 29: Regulation of Noise of the San Francisco Municipal Code.

Finally, sadly, we also have positive confirmation that Grub's many pledges of making things right for the neighbors is merely talk. I call four and made contact with two of their representatives and owners. They have done nothing. As a result both Priscilla and I are sleepless. As I complete this email and send it to you, all of the machinery is loudly grinding away and flood lights are blazing at 4:48 AM, Saturday, October 16, 2010.

Alicia

Alicia Maria Gamez <amgamez@yahoo.com>
10/16/2010 01:59 PM

Just an update: The machinery is still running. It has not stopped at any point since last night.

From: Tom Rivard <Tom.Rivard@sfdph.org>

To: Alicia Maria Gamez <amgamez@yahoo.com>

Sent: Mon, October 18, 2010 1:35:09 PM

Subject: Fw: Grub, 758 Valencia

Alicia,

As you requested I have attached a copy of my email to staff regarding my findings at 758 Valencia,

Kenny Wong's telephone number is 252-3822. He is the supervisor for 758 Valencia.

Eric Mar's telephone number is 252-3861. He is the plan checker for this location. He would know if the location has received final approval.

Tom Rivard
Kenny and Eric,

Yesterday I received a call from Erik Reese that repairs to the rooftop ventilation system were completed. I inspected the work and the noise level from the vent system improved significantly. I proceeded to take property plane measurements with a remotely located microphone on an elevated pole system. (picture attached). At 5:30 pm 758 Valencia ventilation equipment was measured at 59.2 dBA and ambient was 55.3 dBA. Vent system for next door restaurant, Chaya, was operating throughout measurements and contributed to both the equipment noise level as well as the ambient. Chaya vent system could not be turned off because sampling was occurring during the dinner hour. However, I did collect an ambient without the Chaya vent system in operation earlier that day at about 11am and it was approximately 54 dBA. Evidence to date indicates that the Grub, 758 Valencia, mechanical equipment is performing at about 4-6 dBA above the ambient at the property plane depending upon conditions. As you know Article 29 permits 8 dBA over the ambient in mixed use conditions. It appears that Grub is in compliance at this time. Since Grub intends to operate into the early morning we are confronted with the possibility that the ambient noise level will decrease somewhat. For this reason I required Grub to agree to further mitigate noise impacts by constructing an additional sound barrier on the rooftop. Below you will find a written agreement that Grub will implement this condition after receiving necessary building permits. At this point I believe that it is reasonable to allow 758 Valencia to open conditional upon implementing barrier work in a timely fashion. Please have the district inspector contact me when barrier is complete and I will conduct a follow up investigation with Mohammed. Please call if you need any additional information.

(See attached file: IMG00018-20101014-1800.jpg)

To Whom it may concern:

From: Erik G Reese
Director of Operations: GRUB Restaurant 758 Valencia

Re: Inspector Tom Rivard

October 14th, 2010

Thank you all for all of your dedication and assistance in helping to resolve the issues, which have surfaced regarding our new restaurant. I want this issue to get resolved quickly and to everyone's satisfaction. I would like to let you know we at GRUB are going to go above and beyond what is necessary to become a harmonious part of our neighborhood and with our neighbors and the city. As of today at 5:30pm we passed our sound test, given by Inspector Rivard and I was there to assist him. Even though we passed our sound test, we are going to continue our due diligence and put an "L" shape plywood "sound deflector" on top of the roof by the motor to deflect any additional noise away from our backyard neighbors and direct it out over Valencia street, in addition we are going to build a 1 inch thick plywood box insulated with egg crate to soften the low mur of the intake manifold at the back of the building. We will apply for a building permit to do this and should have the permit within a week and the job should be completed in 3 weeks. In addition to having passed our sound test today it was discovered that the motor and hood on top of the building adjacent to ours, makes more noise at 10 feet away than ours does, as noted in inspector rivard's report. While all of this is important and needs to be evaluated, It is unfortunate that we have all had to put extra time and effort into this situation, I realize and respect that people need their serenity in their home environment, and like I said we will go above and beyond to find a solution as mentioned above. I just wish that this could have been resolved by people talking and respecting eachother instead of having to drag so many people into this situation and I hope to not waste valuable time. Once again thank all of you for your time and professionalism in helping us to resolve the issues. Please feel free to call/email me at anytime, if there is anything I can do for you and of course come on down to GRUB and have a great meal.

Sincerely,

Erik G Reese

714-742-3745

President MCG Inc.

Sent from my Verizon Wireless BlackBerry

----- Forwarded Message -----

From: Tom Rivard <Tom.Rivard@sfdph.org>

To: Alicia Maria Gamez <amgamez@yahoo.com>

Sent: Tue, October 19, 2010 10:58:28 AM

Subject: Re: Grub, 758 Valencia

Ms. Gamez

I am treating your email as a public record request. I provided you the summary email to staff. I am attaching the noise survey form/field notes. I have no other records to share.

(See attached file: noise survey form.pdf)

Tom Rivard

Alicia Maria Gamez <amgamez@yahoo.com>

10/19/2010 01:41 AM

Mr. Rivard,

I notice that the ambient and noise levels you cite lack a description of the data from which it was derived and the method used. Could you please provide this information? Also, did your Noise level take the maximum reading that included all of the noise sources at Grub: Hood, Refrigerator, Water heater and operating noise?

I will note that I have taken many, many ambient readings. 55 dBA is astonishingly high. Today, while I was taking ambient readings, the maximum reached was approximately 56 dBA and that reading occurred while the refrigerators at both Grub and Range were on, the HVAC at the Valencia auto body shop was running, workmen were active at Grub, and there was a jet going overhead -- but that isn't an ambient reading. All of those items are separate identifiable noise sources. When these separate identifiable noise source were silent (as required by the Code), the actual lowest repeating number was somewhere around 48, with 49 being a number that appeared frequently. I am very curious to know what your readings over the minimum 10 minute period were.

Looking forward to your response.

Alicia 415-225-8738

Alicia Maria Gamez <amgamez@yahoo.com>

10/19/2010 11:59 AM

Mr. Rivard,

Thank you for forwarding this report. I don't know the effect of treating this as a public record request, but I appreciate your forwarding it.

I maintain that 55dBA is an astonishingly high "ambient" reading.

Again, I took readings this morning and observed that the ambient was consistently in the range of 48-50. It only peaked in the 55 dBA range when the refrigerators at both Chaya and Grub were on and an airplane went overhead and a garbage pick up truck was generating a lot of noise. Again, when these separate identifiable noise sources are eliminated the ambient falls. Of course, my reading of the ambient does include general traffic noise, the general background noise of the city, etc that are do not have individually identifiable noise sources. My ambient reading excludes (as the code requires) those separate identifiable noise sources such as jets overhead, the garbage truck on the weekly round, the refrigerators at Chaya and Grub--that is, all separate and identifiable sources of noise.

I look forward to speaking with someone about the department's practices and their relation to the Noise Ordinance's requirements.

Alicia

From: Eric Mar <Eric.Mar@sfdph.org>

To: Alicia Maria Gamez <amgamez@yahoo.com>

Cc: Alasdair Clements <alasdair.c@gocartours.com>; April (neighbor) Berger <april@aprilberger.com>; Boe Hayward <Boe.Hayward@sfgov.org>; Fred Faloona <fredafal@yahoo.com>; Kenny Wong <Kenny.Wong@sfdph.org>; Mohanned Malhi <Mohanned.Malhi@sfdph.org>; Patrick Fosdahl <Patrick.Fosdahl@sfdph.org>; Priscilla Thorner <pristhorne@yahoo.com>; Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>; Richard Lee <Richard.Lee@sfdph.org>; Stephanie Cushing <Stephanie.Cushing@sfdph.org>; Tom Rivard <Tom.Rivard@sfdph.org>

Sent: Tue, October 19, 2010 2:44:54 PM

Subject: Re: 758 Valencia

Hi Alicia

After conducting his evaluation, DPH noise specialist, Tom Rivard, indicated that 758 Valencia Street, was in compliance with the noise ordinance. All health department construction requirements were completed and the job card was signed.

Eric Mar
SFDPH

Alicia Maria Gamez <amgamez@yahoo.com>
10/19/2010 02:55 PM

Eric,

How do I appeal this?

Alicia

From: Tom Rivard <Tom.Rivard@sfdph.org>

To: Alicia Maria Gamez <amgamez@yahoo.com>

Cc: Alasdair Clements <alasdair.c@gocartours.com>; April (neighbor) Berger <april@aprilberger.com>; Charles & Lynn <Charles@innerlightbooks.com>; Arik (neighbor) Cohen <Cohen@KW-engineering.com>; Darryl Cooper <darrylcooper@gmail.com>; Fred Faloona <fredafal@yahoo.com>; karen saha <karen_saha@yahoo.com>; tracy wong <ms_wongy@hotmail.com>; Priscilla Thorner <pristhorne@yahoo.com>; Pronoy Saha <pronoy2010@gmail.com>; Pronoy saha <pronoy_saha@yahoo.com>; Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>; Richard Lee <Richard.Lee@sfdph.org>; Stephanie Cushing <Stephanie.Cushing@sfdph.org>; Todd David <todd.david@sfgov.org>

Sent: Tue, October 19, 2010 3:16:18 PM

Subject: Re: Fw: Grub, 758 Valencia

Ms. Gamez,

Your best guidance is the ordinance itself.

Tom Rivard

From: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>

To: Alicia Maria Gamez <amgamez@yahoo.com>

Cc: Aife (neighbor) Radetsky <aife@radray.us>; Alasdair Clements <alasdair.c@gocartours.com>; Aleeta Van Runkle <aleeta.van.runkle@sfgov.org>; April (neighbor) Berger <april@aprilberger.com>; Charles & Lynn <Charles@innerlightbooks.com>; Cindy (neighbor) Icke <cindyacu@sbcglobal.net>; Arik (neighbor) Cohen <Cohen@KW-engineering.com>; Darryl Cooper <darrylcooper@gmail.com>; Fred Falona <fredafal@yahoo.com>; karen saha <karen_saha@yahoo.com>; Michael (neighbor) Radetsky <michael@radray.us>; Mary Lou Cooper <mloucooper@yahoo.com>; tracy wong <ms_wongy@hotmail.com>; Priscilla Thorner <pristhorne@yahoo.com>; Pronoy Saha <pronoy2010@gmail.com>; Pronoy saha <pronoy_saha@yahoo.com>; Richard Lee <Richard.Lee@sfdph.org>; Stephanie Cushing <Stephanie.Cushing@sfdph.org>; Neighbor <thinkpink45@yahoo.com>; Todd David <todd.david@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>

Sent: Tue, October 19, 2010 11:03:37 PM

Subject: Noise at Grub, 758 Valencia

Dear Ms Gamez:

I recognize that you are frustrated with what appears to be Departmental discretion in interpreting the law. I want you to know that the Department is sincerely committed to reducing noise in San Francisco and because of this, I welcome and appreciate your advocacy for noise protection even if it is criticism of our work.

There is some important history to the law that bears mentioning. Prior to our engagement with noise issues, San Francisco's noise laws had remained stagnant since 1974. In many communities, zoning based noise standards were unenforcable because of updates to zoning codes. We were the first agency to recognize that changes and growth in San Francisco was resulting in new residential-commercial noise conflicts. We advocated within the city family to change planning and building practices to increase noise prevention activities. In 2008, Supervisor Ammiano carried ordinance changes on our behalf to modernize noise standards. Advocating for these changes was not easy and there were few public constituencies supporting a noise reduction agenda at the time. The work is far from over; this was a new and innovative approach for san francisco and we recognized that it would require learning and adjustments. Through the BOS, noise task force, we have been continuing to address specific issues such as restaurant noise, nighttime entertainment, construction noise and motorcycles.

I will confirm that for the past two years, as a matter of practice, we have been differentiating the Section 2909 fixed noise source standards by primarily based on the approved "use" (residential or commercial). We are not being arbitrary. We will maintain that this distinction was the actual intent of the Board (note that we drafted the ordinance for Supervisor Ammiano) and the basis of agreement among multiple stakeholders. I understand now that the law failed to simultaneously define mixed-use property and commercial property creating ambiguity. Your literal reading and interpretation of the text of the law is understandable. This conflict between our practice and the text deserves to be discussed openly and may

require changes to the statute.

San Francisco has noise levels that are higher than what we would like as public health proponents. There are competing interests on both sides of this question -- the viability of mixed use planning and the need for quiet for residents. Our noise prevention work often results in challenges from those who are proponents of commercial activity in residential neighborhoods. Because we are balancing competing interests, monitoring and criticism of our interpretation and practice is needed and useful. Ultimately, it is the role of the Board to decide and weigh in on these trade-offs. You might consider asking a member of the Board of Supervisors to host discussions on this issue. We would support this course of action.

Please understand that we are squarely on the side of less noise pollution in San Francisco. In the short term, we will continue advise the restaurant in question to find ways to further reduce noise.

I sincerely encourage your continued engagement in this important policy issue.

Rajiv

Alicia Maria Gamez <amgamez@yahoo.com>
10/19/2010 04:59 PM

Mr. Rivard, Mr. Lee, and Mr. Bhatia,

Thank you for referring me back to the ordinance itself. It makes great reading, I recommend it to you as well.

As you are well aware, I have read the ordinance in detail. My concern is that your department's practices have no relation to the Ordinance. As a result, the residents of San Francisco are robbed of the protection of the laws that the Board of Supervisors have enacted. My neighbors and I are specific victims of this. Everyone who owns property adjacent to Valencia or any commercial district is directly and specifically harmed by your choice to mistake your opinion for the law.

I look forward to your reviewing the ordinance and observing the laws that you are encharged with carrying out. Remember, you don't get to make policy. That discretion belongs to the Board of Supervisors and the voters who elect them.

I will be evaluating what my options are to protect my own health and to act as a resident of a neighborhood under assault.

Alicia
Alicia Gamez
415-225-8738 cell

Alicia Maria Gamez <amgamez@yahoo.com>
10/20/2010 12:28 AM

Dear Dr. Bhatia,

I appreciate your response.

I also appreciate your candor in conceding that your department does not in fact conform its practice to the law. Mr. Rivard explained to me that he wrote the Ordinance. He explained that his understanding of what the Ordinance says should trump the language of the code, because he wrote the Code.

Having been a long-time resident of San Francisco, I know better than to give Mr. Rivard credit for the Ordinance. As you say, there were many stakeholders involved in drafting this law. No doubt there were many compromises made before the legislation was approved by the Supervisors. In the end, *this* law was passed. Not some other version. Those compromises and those agreements resulted in *valid law* your department is not enforcing. Instead, your department is giving effect to someone's perspective that has no legal basis. There were stakeholders at the table who contributed to a coherent Noise Ordinance, supported by a Declaration of Policy, and even supported by your website. Your website accurately states, "The rear yards of San Francisco often function as acoustical sanctuaries from the urban turmoil. It is important to protect them from the intrusion of new and unnecessary noise sources."

The interpretation of the Code that your department holds leads to absurd results. Your interpretation would allow a purely industrial site that is surrounded on all sides by industrial sites to produce NO MORE THAN 8 dBA at the property plane at any time of day. Per your interpretation, this same 8 dBA is appropriate for a mixed-use, high-density neighborhood. That is absurd. In contrast, the noise ordinance is coherent. The participants in the legislative process determined that virtually any sleeping facilities (a "housekeeping room") qualify property as Residential Property and get benefit of the 5 dBA residential standard. Mixed-use gets 5 dBA.

Why? The Declaration of Policy provides: "The World Health Organization and the U.S. Environmental Protection Agency have determined that persistent exposure to elevated levels of community noise is responsible for public health problems including, but not limited to: compromised speech, persistent annoyance, sleep disturbance, physiological and psychological stress, heart disease, high blood pressure, colitis, ulcers, depression, and feelings of helplessness."

The only discordant element of the Noise Ordinance is your department's failure to implement it. You are usurping the voices that actually contributed to the *law* with your unsubstantiated interpretations. There is no basis in this law for averaging to get the ambient or noise level. There is no basis in this law for applying a commercial standard to 758 Valencia Street. Nevertheless, your department is using the power of the state to act in defiance of law.

Your department's conduct does not display any of the "balancing" you reference. Your department contrived to deny me and my neighbors representation in the measuring of sound here. I was ready with a consultant on call to take independent measurements, if given a mere 15 or 20 minutes of notice. I trusted your department's representation to me that I would receive a call to allow me and my neighbors to represent our own interests. Instead of a call, I happened upon your team in full-flight, mostly done with their analysis. My consultant arrived only in time to stop Mr. Rivard on his way out. I took your department at its word, and you betrayed that trust. Later when Mr. Rivard returned and

took his final and completely unsubstantiated readings, I was in my home and had a sound measurement device ready to provide verification for my and my neighbors benefit. Instead, neither Mr. Rivard nor your department informed me of the measurement being taken. I am sure that it is no accident that Mr. Rivard did not record a data set to support his readings or that Mr. Rivard did not explain his method in arriving at the ambient and noise levels. The readings are not valid. Both Mohammed and Eric's readings reflected a much lower ambient level and both of them actually substantiated their data and methods to me. I am shocked that a public agency would rely on such a report as Mr. Rivard presents -- one that provides zero substantiation and zero description of method. This conduct is arbitrary and capricious.

I am now very familiar with both the subjective and objective sound levels at this property and at Grub. I can assure you that Mr. Rivard did not conduct his measurement in keeping with the law or any non-goal oriented method. The ambient in my back yard is NEVER 55 dBA. Mr. Rivard determined the Noise level at Grub to be 59 dBA. A dBA of 55 and above has been determined to be unhealthful by the World Health Organization according to your FAQ. But you are subjecting me and my neighbors to at least 59 dBA until 1am *EVERY, SINGLE DAY*. I can further assure you that Grub does not comply with either the 8 dBA commercial standard or the 5 dBA residential standard. If Mr. Rivard and the department had any confidence it would so conform, you would have had no qualms with having neighbors be present and take independent measurements. That Grub passed the noise test is purely a contrivance, regardless of the standard applied.

As a result, I and my neighbors are directly harmed. For example: On Friday and Saturday, I did not sleep. Since then, each time the cacophony they call a refrigerator grinds in to action, I wake up. I am exhausted. I am exhausted because you are not following the law, despite your mandate to protect health. Your own website says the law exists to protect my backyard acoustical sanctuary. You are acting with the power of the state but without any legal authority. When a law is clear on its face, one does not look to the intent of **one** of the drafters. Doing so betrays all of the other participants. This law is clear. The method of calculating the "Ambient" and the "Noise Level" are perfectly clear -- and bear no relation to the practice of your department. For the purposes of measuring noise levels, Grub is in a building with a residential unit; Grub is in a "Residential Property."

Let me say clearly, if San Francisco is noisier than you would like, then enforce the law as the Board of Supervisors intended. San Francisco will be quieter.

Let me further say, the problem is not mixed use. For example: Chaya's refrigerator creates between 2-3 dBA; in contrast, Grub's is between 6-9dBA -- alone. Chaya has not been a problem. This noise problem is specific to Grub; the reason there is a noise problem is because your department is does not enforce the law.

Finally, Mr. Rivard consistently spoke of the investment of Grub's owners. How is it that he disregards the investments of the residential property owners adjacent to this Grub? Why is a commercial investor's infusion of cash given more weight than a residential property owner's? Where in the code do you derive the authority to pick winners and losers?

I appreciate your response, however I would prefer that you deal with the facts at hand. Grub does not comply. Your department does not enforce or observe the law. Your department actively frustrated neighborhood efforts to represent ourselves where we saw that we had a stake in the process AND that your department would use its power to ramrod a law-less determination upon us.

The fight to get a good noise ordinance was won. Why aren't you enforcing it?

Alicia

From: Alicia Maria Gamez <amgamez@yahoo.com>

To: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>

Cc: Aife (neighbor) Radetsky <aife@radray.us>; Alasdair Clements <alasdair.c@gocartours.com>; Aleeta Van Runkle <aleeta.van.runkle@sfgov.org>; April (neighbor) Berger <april@aprilberger.com>; Charles & Lynn <Charles@innerlightbooks.com>; Cindy (neighbor) Icke <cindyacu@sbcglobal.net>; Arik (neighbor) Cohen <Cohen@KW-engineering.com>; Darryl Cooper <darrylscooper@gmail.com>; Eric Mar <Eric.Mar@sfdph.org>; Fred Faloona <fredafal@yahoo.com>; karen saha <karen_saha@yahoo.com>; Michael (neighbor) Radetsky <michael@radray.us>; Mary Lou Cooper <mloucooper@yahoo.com>; Mohammed Malhi <Mohammed.Malhi@sfdph.org>; tracy wong <ms_wongy@hotmail.com>; Pronoy Saha <pronoy2010@gmail.com>; Pronoy saha <pronoy_saha@yahoo.com>; Richard Lee <Richard.Lee@sfdph.org>; sarah wisby <sarahfran@mac.com>; Stephanie Cushing <Stephanie.Cushing@sfdph.org>; Neighbor <thinkpink45@yahoo.com>; Todd David <todd.david@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>; Priscilla Thorner <pristhorne@yahoo.com>; Cecilia Mangoba <Cecilia.Mangoba@sfgov.org>; Mike Farrah <Mike.Farrah@sfgov.org>; David (SF Supervisor) Campos <david.campos@sfgov.org>

Sent: Tue, October 26, 2010 3:28:07 PM

Subject: Re: Noise at Grub, 758 Valencia

Rajiv.

First, allow me to thank you, thank you, thank you for your response:

1. Regarding the sources of noise at Grub, there are at least three sources of noise: the ventilation, the refrigerator and the operations.

Ventilation: Please note, as I described in my email yesterday, the adjustment that Grub made to the hood has fallen "out of alignment". It is again operating more loudly and with a distinct rattle. A repair made to pass a City inspection should be a permanent fix. Right?

Refrigerator: Please note that Chaya's refrigerator makes 2-3 dBA of noise, Grub's refrigerator makes 6-9 dBA. The refrigerator at Grub alone exceeds the noise levels at night, much less in combination with the hood.

Operations: Grub did its clean up between 1am and 2am. This clean up included hosing down trash cans with a high pressure hose and recycling glass by pouring bottles into an outdoor bin. Both of these activities are incredibly loud. Please note, I have never noticed Chaya's clean up, recycling, or other operational activities. Chaya runs its restaurant in a very considerate and neighborly manner. Please further note, Enrique and one of the Grub owners had pledged to me, in person, weeks ago that they would plan their closing procedures to avoid this noise when Grub closes at 1 AM.

2. Regarding the period before mitigation is in effect: Is it not reasonable to ask the restaurant to either not operate or at the very least cease operations at 10pm until they have mitigated the noise problem. As someone who has lost lots of sleep, it seems a very reasonable compromise between the competing needs. Shouldn't they deal with the noise issues before they operate everyday until 1 am?

On Oct 14, Grub pledged to have the covering in place within three weeks, according to the agreement signed by Eric Reese on Oct 14 (included, below, as the first part of this email thread). In specific, Grub pledged to install "an 'L' shape plywood 'sound deflector' on top of the roof by the motor" and expected to have the job "completed in 3 weeks". Keeping the commitment made in that letter would mean the mitigation is scheduled in place within 12 days or so. Can't Grub close at least at 10pm until the mitigation is in place?

3. Regarding calling the police: Thank you for your suggestion. Grub's clean up occurred between 1 AM and 2 AM. I did complain to the police at about 1:15 AM today, Oct 26, 2010. The police arrived at about 2:20 AM, after all of the clean up was complete and apparently everyone gone. The CAD is #102990144--this is the documentation the police dispatcher was able to provide me.

Please note: I called the police only after I addressed Enrique, the chef, and asked him to do the noisy things in the morning; my request was disregarded. I will do as you suggest and call whenever there is excessive noise. Again, please recall, that Grub personally pledged to me that they would design operational systems to avoid this.

I look forward to Grub's ironing out its business and mechanical operations. It can be done: Chaya proves it.

Finally, please accept my deepest personal thanks for turning to this issue. I was up this morning at 8 AM after sleeping very little. I am exceptionally tired. I very much appreciate your constructive attention to resolving the problem in a manner that allows neighbors to enjoy their homes and Grub to have a successful business.

Alicia

Rajiv Bhatia/DPH/SFGOV

10/28/2010 04:33 PM

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Kenny Wong/DPH/SFGOV@SFGOV

Tom Rivard/DPH/SFGOV@SFGOV,
richard.lee@sfdph.org

758 valencia noise

Kenny,

can you give me a status

Did you call the owner and discuss the operational late night noise issues (recycling, outdoor cleaning)i've gotten reports that this is ongoing and we should be discouraging this for any permitted facility.

R

Alicia Maria Gamez <amgamez@yahoo.com>
10/28/2010 07:25 PM

Dear Rajiv,

Thank you for taking time to speak with me today.

There are two topics in this note: 1. Grub's operations are unchanged, 2. Analysis of the ambient sound level by Wilson Ihrig & Associates.

1. Grub's operations are unchanged

In your prior email, you stated that you are addressing the late night noise complaints from Grub operations as a new complaint. In our conversation today, you asked that I report to you each time that this continues to occur.

Today's report is that their operations are completely unchanged since your email on Tuesday, Oct 26. On Tuesday (Oct 26) and on Wednesday (Oct 27) nights (and the early mornings following), Grub again operated its kitchen with its back door open, used the back area as an extension of the kitchen, hosed down buckets and trash bins with high pressure hoses, and poured recycled glass into outdoor buckets in to the early morning. I did call the police at around midnight, but to my knowledge they never arrived. The dispatcher provided me with a CAD# 103010007.

To elaborate:

(1) Leaving the back door open allows all industrial kitchen noises to travel outside such that a constant din of pots, pans, dishes, glasses, etc clanking and crashing exists through out the operations from 10am until 2am when the restaurant is completely closed. Further, the kitchen employees shout above the din of their kitchen and these shouts travel out, during all operating hours from 10am - 1am the next day.

(2) The staff use the area outside of the back door as an extension of the kitchen and frequently shout back and forth when they are outside on their way back and forth to the giant refrigerator or to the trash cans, etc., during all operating hours. To be clear, people stand outside and yell back into the kitchen loudly enough to be heard in the kitchen over the racket in the kitchen between 10am and 1am the next day.

(3) At the end of the shift, the kitchen staff clean up and use high pressure hoses to wash down buckets and trash cans causing a tremendously loud sound and the staff pour recycling into out door bins causing an extremely loud sound of smashing glass. I was taking sound readings last night when they recycled the glass, so I have time-stamped documentary evidence of this. This occurs between 1am and 2 am.

2. Analysis of the ambient sound level by Wilson Ihrig & Associates.

When we spoke today you asked for facts. Attached please find the attached analysis from Wilson Ihrig & Associates. This letter provides an analysis of readings to determine the ambient sound level. The readings were taken with a device that creates a digital record of the data points received and makes an audio recording as well. The analysis provides that the ambient at night is below 45 dBA (therefore deemed to be 45) and the ambient during the day is no more than 48dBA or 49 dBA, though this should be adjusted downward 1 or 2 dBA to reflect certain individual identifiable sources of noise. These readings are consistent with the readings that Eric Mar gathered on his original site visit.

It was important to determine the ambient because There is no opportunity to derive an ambient now. Grub operates its machinery continuously between 10am and 1am. Further please note, there would have been more readings, but Grub ran its machinery continuously

for 2 days (the 16th and 17th) thereby interfering with collecting more information (not to mention sleep).

I will simply point out that Mr Rivard determined the Noise level to be 59 dBA. If this Noise level is accepted, Grub is operating at 11-13 dBA above ambient (59 noise compared with 46 to 48 ambient). I am now gathering more noise readings. My observations indicate that this differential remains the case. I have taken measurements from the deck of 57 Lapidge and from two locations at 760 Valencia street (the unit above Chaya). The preliminary noise readings indicate that Grub is operating far in excess of any legal standard.

Thank you,

Alicia Gamez
415-225-8738
57 Lapidge Street

From: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>

Cc: Aife (neighbor) Radetsky <aife@radray.us>; Alasdair Clements <alasdair.c@gocartours.com>; Aleeta Van Runkle <aleeta.van.runkle@sfgov.org>; Alicia Maria Gamez <amgamez@yahoo.com>; April (neighbor) Berger <april@aprilberger.com>; Charles & Lynn <Charles@innerlightbooks.com>; Cindy (neighbor) Icke <cindyacu@sbcglobal.net>; Arik (neighbor) Cohen <Cohen@KW-engineering.com>; Darryl Cooper <darrylscooper@gmail.com>; Eric Mar <Eric.Mar@sfdph.org>; Fred Faloon <fredafal@yahoo.com>; karen saha <karen_saha@yahoo.com>; Michael (neighbor) Radetsky <michael@radray.us>; Mary Lou Cooper <mloucooper@yahoo.com>; Mohanned Malhi <Mohanned.Malhi@sfdph.org>; tracy wong <ms_wongy@hotmail.com>; Pronoy Saha <pronoy2010@gmail.com>; Pronoy saha <pronoy_saha@yahoo.com>; Richard Lee <Richard.Lee@sfdph.org>; sarah wisby <sarahfran@mac.com>; Stephanie Cushing <Stephanie.Cushing@sfdph.org>; Neighbor <thinkpink45@yahoo.com>; Todd David <todd.david@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>; Priscilla Thorner <pristhorner@yahoo.com>; Cecilia Mangoba <Cecilia.Mangoba@sfgov.org>

Sent: Tue, October 26, 2010 2:35:22 PM

Subject: Re: Noise at Grub, 758 Valencia

All

Based on the recent emails from Grub neighbors, there are at least two sources of noise at issue -- one from mechanical ventilation and one related to restaurant operations.

Grub has proposed constructing a new enclosure around the ventilation (replacing a temporary enclosure) and this work is planned. I am assuming that Grub may need DBI approval and permits for a new rooftop construction so this may take several weeks to complete. DPH will be monitoring the work on the mechanical ventilation and will retest noise levels once the enclosure is built.

We will address the recently reported nighttime noise from late night operations and clean up as a separate and new complaint. We will aim to use our general restaurant permitting authority to motivate the restaurant to take reasonable steps to not make avoidable late night noise.

DPH is responsible primarily for enforcement of standards with regards to mechanical noise sources. For safety reasons, the police department

enforces human/ behavioral non-mechanical/ non-ventilation noise sources in cases like these and has officers that can verify the complaint in real time. Verification by the SFPD is helpful evidence for us. You might consider making a complaint to the PD the next time you observe nighttime noise resulting from business operation not related to mechanical equipment.

Rajiv

Priscilla Thorner
<pristhorner@yahoo.com>

To

10/25/2010 11:24 PM
Rajiv Bhatia
<Rajiv.Bhatia@sfdph.org>, Alicia
Maria Gamez <amgamez@yahoo.com>

Hi All-

Wow, so frustrating that it is almost 11 pm and the sound in the back is what would qualify as a dull roar in anyone's book. I invite the city employees that have deemed this to be an acceptable situation despite the fact that it is in violation of the noise ordinance to try to enjoy a meal on our back deck, which ironically, we just spent thousands of dollars renovating...

When I finally decided to take the plunge to purchase my first residence, I was very nervous about buying in the heart of this neighborhood but based on the fact that the current restaurant and auto shop located behind my potential home were not noisy at all, I felt confident that 55 Lapidge was a great place to spend the rest of my life. I have never had a yard in SF and really loved eating my meals out on the back deck, enjoying the fragrant jasmine. Now, I might as well not even have a yard...

This is over and above the fact that this noise continues on late into the night, making a restful night's sleep a thing of the past. I have never complained about anything in this neighborhood and realize that of course some noise is to be expected. This is not 'some noise'. It is a riotous din that creates a sensation of anxiety and disharmony in anyone that hears it.

Since the restaurant will be open 7 days a week until 1 am!!! and brunch on Saturday and Sunday, there will be ZERO relief from the constant din. In addition to the distress the constant noise presents, this is a direct diminishment of the value of my property. Are we expected to sit by and smile politely while the City cashes their checks from Grub?

I am very supportive of new businesses in the neighborhood and shop locally (Ruby, Dog Eared, Lucca's etc. rather than shopping big business). But this is not a case of keeping my neighborhood vital or benefiting the the greater good. There are more than enough restaurants in the Mission, in fact on the very same block.

What is it then, that allows the city to overlook the letter of the law? I would never have purchased this property if I had known this kind

of noise pollution was to be overlooked by my local government in their acknowledged disregard of the noise ordinance.

Good night, Dr. Bhatia, I hope that you will enjoy a good night's rest. I know that I will not...

Priscilla Thorner

From: Alicia Maria Gamez <amgamez@yahoo.com>
Subject: Re: Noise at Grub, 758 Valencia
To: "Rajiv Bhatia" <Rajiv.Bhatia@sfdph.org>
Cc: "Aife (neighbor) Radetsky" <aife@radray.us>, "Alasdair Clements" <alasdair.c@gocartours.com>, "Aleeta Van Runkle" <aleeta.van.runkle@sfgov.org>, "April (neighbor) Berger" <april@aprilberger.com>, "Charles & Lynn" <Charles@innerlightbooks.com>, "Cindy (neighbor) Icke" <cindyacu@sbcglobal.net>, "Arik (neighbor) Cohen" <Cohen@KW-engineering.com>, "Darryl Cooper" <darrylcooper@gmail.com>, "Fred Faloona" <fredafal@yahoo.com>, "karen saha" <karen_saha@yahoo.com>, "Michael (neighbor) Radetsky" <michael@radray.us>, "Mary Lou Cooper" <mloucooper@yahoo.com>, "tracy wong" <ms_wongy@hotmail.com>, "Priscilla Thorner" <pristhorner@yahoo.com>, "Pronoy Saha" <pronoy2010@gmail.com>, "Pronoy saha" <pronoy_saha@yahoo.com>, "Richard Lee" <Richard.Lee@sfdph.org>, "Stephanie Cushing" <Stephanie.Cushing@sfdph.org>, "Neighbor" <thinkpink45@yahoo.com>, "Todd David" <todd.david@sfgov.org>, "Tom Rivard" <Tom.Rivard@sfdph.org>, "sarah wisby" <sarahfran@mac.com>, "Eric Mar" <Eric.Mar@sfdph.org>, "Mohanned Malhi" <Mohanned.Malhi@sfdph.org>
Date: Monday, October 25, 2010, 3:47 PM

Hello Dr. Bhatia, Mr. Rivard, neighbors et al,

My neighbors have complained to me. I have asked them to direct their complaints to your department. Neighbors, contact numbers and email addresses to complain to are below.

This is an update and noise complaint.

Recap: You will recall that Grub made certain adjustments to its hood on approximately October 13 or 14. These adjustments reduced the RATTLING produced by the hood when it was in operation.

Update: Whatever band-aid that Grub applied has fallen off. The rattling is back to being as loud or louder than it was prior to Mr. Rivard's review on October 14.

Neighbors: to complain by phone, please call 252-3800.

To complain by email: email addresses are:

Richard Lee <Richard.Lee@sfdph.org>

Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>

Tom Rivard <Tom.Rivard@sfdph.org>

Mohanned Malhi <Mohanned.Malhi@sfdph.org>

Eric Mar <Eric.Mar@sfdph.org>

Alicia

From: Alicia Maria Gamez <amgamez@yahoo.com>
To: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>
Cc: Aife (neighbor) Radetsky <aife@radray.us>; Alasdair Clements <alasdair.c@gocartours.com>; Aleeta Van Runkle <aleeta.van.runkle@sfgov.org>; April (neighbor) Berger <april@aprilberger.com>; Charles & Lynn <Charles@innerlightbooks.com>; Cindy (neighbor) Icke <cindyacu@sbcglobal.net>; Arik (neighbor) Cohen <Cohen@KW-engineering.com>; Darryl Cooper <darrylcooper@gmail.com>; Fred Faloona <fredafal@yahoo.com>; karen saha <karen_saha@yahoo.com>; Michael (neighbor) Radetsky <michael@radray.us>; Mary Lou Cooper <mloucooper@yahoo.com>; tracy wong <ms_wongy@hotmail.com>; Priscilla Thorner <pristhorne@yahoo.com>; Pronoy Saha <pronoy2010@gmail.com>; Pronoy saha <pronoy_saha@yahoo.com>; Richard Lee <Richard.Lee@sfdph.org>; Stephanie Cushing <Stephanie.Cushing@sfdph.org>; Neighbor <thinkpink45@yahoo.com>; Todd David <todd.david@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>
Sent: Wed, October 20, 2010 12:28:14 AM
Subject: Re: Noise at Grub, 758 Valencia

Dear Dr. Bhatia,

I appreciate your response.

I also appreciate your candor in conceding that your department does not in fact conform its practice to the law. Mr. Rivard explained to me that he wrote the Ordinance. He explained that his understanding of what the Ordinance says should trump the language of the code, because he wrote the Code.

Having been a long-time resident of San Francisco, I know better than to give Mr. Rivard credit for the Ordinance. As you say, there were many stakeholders involved in drafting this law. No doubt there were many compromises made before the legislation was approved by the Supervisors. In the end, this law was passed. Not some other version. Those compromises and those agreements resulted in valid law your department is not enforcing. Instead, your department is giving effect to someone's perspective that has no legal basis. There were stakeholders at the table who contributed to a coherent Noise Ordinance, supported by a Declaration of Policy, and even supported by your website. Your website accurately states, "The rear yards of San Francisco often function as acoustical sanctuaries from the urban turmoil. It is important to protect them from the intrusion of new and unnecessary noise sources."

The interpretation of the Code that your department holds leads to absurd results. Your interpretation would allow a purely industrial site that is surrounded on all sides by industrial sites to produce NO MORE THAN 8 dBA at the property plane at any time of day. Per your interpretation, this same 8 dBA is appropriate for a mixed-use, high-density neighborhood. That is absurd. In contrast, the noise ordinance is coherent. The participants in the legislative process determined that virtually any sleeping facilities (a "housekeeping room")

qualify property as Residential Property and get benefit of the 5 dBA residential standard. Mixed-use gets 5 dBA.

Why? The Declaration of Policy provides: "The World Health Organization and the U.S. Environmental Protection Agency have determined that persistent exposure to elevated levels of community noise is responsible for public health problems including, but not limited to: compromised speech, persistent annoyance, sleep disturbance, physiological and psychological stress, heart disease, high blood pressure, colitis, ulcers, depression, and feelings of helplessness."

The only discordant element of the Noise Ordinance is your department's failure to implement it. You are usurping the voices that actually contributed to the law with your unsubstantiated interpretations. There is no basis in this law for averaging to get the ambient or noise level. There is no basis in this law for applying a commercial standard to 758 Valencia Street. Nevertheless, your department is using the power of the state to act in defiance of law.

Your department's conduct does not display any of the "balancing" you reference. Your department contrived to deny me and my neighbors representation in the measuring of sound here. I was ready with a consultant on call to take independent measurements, if given a mere 15 or 20 minutes of notice. I trusted your department's representation to me that I would receive a call to allow me and my neighbors to represent our own interests. Instead of a call, I happened upon your team in full-flight, mostly done with their analysis. My consultant arrived only in time to stop Mr. Rivard on his way out. I took your department at its word, and you betrayed that trust. Later when Mr. Rivard returned and took his final and completely unsubstantiated readings, I was in my home and had a sound measurement device ready to provide verification for my and my neighbors benefit. Instead, neither Mr. Rivard nor your department informed me of the measurement being taken. I am sure that it is no accident that Mr. Rivard did not record a data set to support his readings or that Mr. Rivard did not explain his method in arriving at the ambient and noise levels. The readings are not valid. Both Mohammed and Eric's readings reflected a much lower ambient level and both of them actually substantiated their data and methods to me. I am shocked that a public agency would rely on such a report as Mr. Rivard presents -- one that provides zero substantiation and zero description of method. This conduct is arbitrary and capricious.

I am now very familiar with both the subjective and objective sound levels at this property and at Grub. I can assure you that Mr. Rivard did not conduct his measurement in keeping with the law or any non-goal oriented method. The ambient in my back yard is NEVER 55 dBA. Mr. Rivard determined the Noise level at Grub to be 59 dBA. A dBA of 55 and above has been determined to be unhealthful by the World Health Organization according to your FAQ. But you are subjecting me and my neighbors to at least 59 dBA until 1am EVERY, SINGLE DAY. I can further assure you that Grub does not comply with either the 8 dBA commercial standard or the 5 dBA residential standard. If Mr. Rivard and

the department had any confidence it would so conform, you would have had no qualms with having neighbors be present and take independent measurements. That Grub passed the noise test is purely a contrivance, regardless of the standard applied.

As a result, I and my neighbors are directly harmed. For example: On Friday and Saturday, I did not sleep. Since then, each time the cacophony they call a refrigerator grinds in to action, I wake up. I am exhausted. I am exhausted because you are not following the law, despite your mandate to protect health. Your own website says the law exists to protect my backyard acoustical sanctuary. You are acting with the power of the state but without any legal authority. When a law is clear on its face, one does not look to the intent of one of the drafters. Doing so betrays all of the other participants. This law is clear. The method of calculating the "Ambient" and the "Noise Level" are perfectly clear -- and bear no relation to the practice of your department. For the purposes of measuring noise levels, Grub is in a building with a residential unit; Grub is in a "Residential Property."

Let me say clearly, if San Francisco is noisier than you would like, then enforce the law as the Board of Supervisors intended. San Francisco will be quieter.

Let me further say, the problem is not mixed use. For example: Chaya's refrigerator creates between 2-3 dBA; in contrast, Grub's is between 6-9dBA -- alone. Chaya has not been a problem. This noise problem is specific to Grub; the reason there is a noise problem is because your department is does not enforce the law.

Finally, Mr. Rivard consistently spoke of the investment of Grub's owners. How is it that he disregards the investments of the residential property owners adjacent to this Grub? Why is a commercial investor's infusion of cash given more weight than a residential property owner's? Where in the code do you derive the authority to pick winners and losers?

I appreciate your response, however I would prefer that you deal with the facts at hand. Grub does not comply. Your department does not enforce or observe the law. Your department actively frustrated neighborhood efforts to represent ourselves where we saw that we had a stake in the process AND that your department would use its power to ramrod a law-less determination upon us.

The fight to get a good noise ordinance was won. Why aren't you enforcing it?

Alicia

Alicia Maria Gamez
<amgamez@yahoo.com>

10/28/2010 07:25 PM

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Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>

"Aife \(\neighbor\) Radetsky" <aife@radray.us>, Alasdair Clements <alasdair.c@gocartours.com>, Aleeta Van Runkle <aleeta.van.runkle@sfgov.org>, "April \(\neighbor\) Berger" <april@aprilberger.com>, Charles & Lynn <Charles@innerlightbooks.com>, "Cindy \(\neighbor\) Icke" <cindyacu@sbcglobal.net>, "Arik \(\neighbor\) Cohen" <Cohen@KW-engineering.com>, Darryl Cooper <darrylscooper@gmail.com>, Eric Mar <Eric.Mar@sfdph.org>, Fred Faloona <fredafal@yahoo.com>, karen saha <karen_saha@yahoo.com>, "Michael \(\neighbor\) Radetsky" <michael@radray.us>, Mary Lou Cooper <mloucooper@yahoo.com>, Mohammed Malhi <Mohammed.Malhi@sfdph.org>, tracy wong <ms_wongy@hotmail.com>, Pronoy Saha <pronoy2010@gmail.com>, Pronoy saha <pronoy_saha@yahoo.com>, Richard Lee <Richard.Lee@sfdph.org>, sarah wisby <sarahfran@mac.com>, Stephanie Cushing <Stephanie.Cushing@sfdph.org>, Todd David <todd.david@sfgov.org>, Tom Rivard <Tom.Rivard@sfdph.org>, Priscilla Thorner <pristhorne@yahoo.com>, Cecilia Mangoba <Cecilia.Mangoba@sfgov.org>, Mike Farrah <Mike.Farrah@sfgov.org>, "David \(\SF Supervisor\) Campos" <david.campos@sfgov.org>

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Facts: re Noise at Grub, 758 Valencia

Dear Rajiv,

Thank you for taking time to speak with me today.

There are two topics in this note: 1. Grub's operations are unchanged, 2. Analysis of the ambient sound level by Wilson Ihrig & Associates.

1. Grub's operations are unchanged

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To elaborate:

(1) Leaving the back door open allows all industrial kitchen noises to travel outside such that a constant din of pots, pans, dishes, glasses, etc clanking and crashing exists through out the operations from 10am until 2am when the restaurant is completely closed. Further, the kitchen employees shout above the din of their kitchen and these shouts travel out, during all operating hours from 10am - 1am the next day.

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Thank you,

Alicia Gamez
415-225-8738
57 Lapidge Street

Rajiv Bhatia/DPH/SFGOV
10/28/2010 08:31 PM

Kenny--

Please log Ms Gamez's complaint below.

Please communicate this complaint and subsequent complaints promptly and directly to the Grub owner.

Please also request Grub management to prepare a written operations plan for staff to limit excessive noise at night.

Please advise Grub as to the following on my behalf

- 1) That our expectation of all permitted restaurants is that they take reasonable steps to minimize noise, particularly at night. In this case, the alleged late night outdoor cleaning activities, shouting, and refuse handling appear to be avoidable. I would consider keeping the kitchen door closed a reasonable, feasible step to limit noise pollution.
- 2) We will treat each day that there is a complaint as a separate instance of a noise complaint
- 3) That we will consider repeated confirmed complaints of avoidable noise related to business operation without responsive actions as evidence of violations of conditions of the health permit.
- 4) That failure to take reasonable steps to resolve neighborhood noise issues may result in our suspending their permit.

Tom-- please review the attached noise analysis.

Richard - I will be out of the country Nov 1-12, please f/u on this on my behalf during that time period

Thank you all.

Rajiv

Alicia Maria Gamez <amgamez@yahoo.com>
10/28/2010 08:47 PM

Rajiv,

Thank you.

Sincerely,

Alicia
&
(I'm sure) all neighbors.

From: Alicia Maria Gamez <amgamez@yahoo.com>

From: Alicia Maria Gamez <amgamez@yahoo.com>
To: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>; Kenny Wong <Kenny.Wong@sfdph.org>
Cc: Aife (neighbor) Radetsky <aife@radray.us>; Alasdair Clements <alasdair.c@gocartours.com>; Aleeta Van Runkle <aleeta.van.runkle@sfgov.org>; April (neighbor) Berger <april@aprilberger.com>; Cecilia Mangoba <Cecilia.Mangoba@sfgov.org>; Charles & Lynn <Charles@innerlightbooks.com>; Cindy (neighbor) Icke <cindyacu@sbcglobal.net>; Arik (neighbor) Cohen <Cohen@KW-engineering.com>; Darryl Cooper <darrylscooper@gmail.com>; David (SF Supervisor) Campos <david.campos@sfgov.org>; Eric Mar <Eric.Mar@sfdph.org>; Fred Faloona <fredafal@yahoo.com>; karen saha <karen_saha@yahoo.com>; Michael (neighbor) Radetsky <michael@radray.us>; Mike Farrah <Mike.Farrah@sfgov.org>; Mary Lou Cooper <mloucooper@yahoo.com>; Mohammed Malhi <Mohammed.Malhi@sfdph.org>; Tracy Wong <ms_wongy@hotmail.com>; Priscilla Thorner <pristhorne@yahoo.com>; Pronoy Saha <pronoy2010@gmail.com>; Pronoy saha <pronoy_saha@yahoo.com>; Richard Lee <Richard.Lee@sfdph.org>; Sarah Wisby <sarahfran@mac.com>; Stephanie Cushing <Stephanie.Cushing@sfdph.org>; Todd David <todd.david@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>
Sent: Fri, October 29, 2010 1:48:41 AM
Subject: Re: F/u Actions on Noise at Grub, 758 Valencia

Update for Oct 29, 2010:
Grub operated with its rear door closed during the evening - yay!
But they just woke me up with glass recycling. It is raining so didn't record the sound with the meter (don't want to damage the device in the rain).

Alicia

To: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>; Kenny Wong <Kenny.Wong@sfdph.org>
Cc: Aife (neighbor) Radetsky <aife@radray.us>; Alasdair Clements <alasdair.c@gocartours.com>; Aleeta Van Runkle <aleeta.van.runkle@sfgov.org>; April (neighbor) Berger <april@aprilberger.com>; Cecilia Mangoba <Cecilia.Mangoba@sfgov.org>; Charles & Lynn <Charles@innerlightbooks.com>; Cindy (neighbor) Icke <cindyacu@sbcglobal.net>; Arik (neighbor) Cohen <Cohen@KW-engineering.com>; Darryl Cooper <darrylscooper@gmail.com>; David (SF Supervisor) Campos <david.campos@sfgov.org>; Eric Mar <Eric.Mar@sfdph.org>; Fred Faloona <fredafal@yahoo.com>; karen saha <karen_saha@yahoo.com>; Michael (neighbor) Radetsky <michael@radray.us>; Mike Farrah <Mike.Farrah@sfgov.org>; Mary Lou Cooper <mloucooper@yahoo.com>; Mohammed Malhi <Mohammed.Malhi@sfdph.org>; Tracy Wong <ms_wongy@hotmail.com>; Priscilla Thorner <pristhorne@yahoo.com>; Pronoy Saha <pronoy2010@gmail.com>; Pronoy saha <pronoy_saha@yahoo.com>; Richard Lee <Richard.Lee@sfdph.org>; Sarah Wisby <sarahfran@mac.com>; Stephanie Cushing <Stephanie.Cushing@sfdph.org>; Todd David <todd.david@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>
Sent: Sat, October 30, 2010 3:30:37 PM
Subject: Re: F/u Actions on Noise at Grub, 758 Valencia

Mrs Bhatia and Wong,

Noise complaint and Update for the Evening of Oct 29 and early morning of Oct 30.

Grub operated with its rear door opened during the entire day and evening, despite the rain until approx 2am. (so much for that improvement.) Today, they have the door open and have had it opened since they started up this morning well before 9am (presumably for their brunch service). The hood came on and woke me up, but I simply couldn't bear to get up to log the time.

At approximately 11pm, they recycled numerous rounds of glass, smashing bottles. I called the police with a noise complaint: CAD # 103024003, Oct 29, 2010, 11:05PM. I did ask to speak with them when the police arrived. To my knowledge, the police never arrived.

At 12:30am, they broke down cardboard boxes and large Styrofoam containers (about 1.5 ft x 3ft, presumably for shipping seafood). The styrofoam was exceptionally loud as they popped and stomped it apart. I called the police again with a noise complaint: CAD # 103030116. I did ask to speak with them when the police arrived. To my knowledge, the police never arrived.

I did not take noise readings while it was raining to avoid ruining the equipment. I did take noise readings after about 1:30am when the rain had stopped.

Grub ran the hood until 1:54AM. Typically they turn it off at 12:30 or 1am. I was taking a noise reading at 1:54am. I observed that they turned the kitchen lights off, turned the hood off last, then closed the back door and leaving the outdoor floodlight on, all night. So the noise from the hood was extended longer into the night. I question whether it was necessary to run the hood after the kitchen closed.

Please note that members of management, not simply a clean up crew, were there until the lights and hood turned off. These people included Eric Reese, the manager, and Enrique Vives, the chef.

Grub put up what looks like a simple plywood board around the hood. It has not had a noticeable effect on the noise level. My preliminary observation is that the noise level at night remains in the 54-56 range: indicating that they are operating 9-11 dBA above the deemed ambient of 45 dBA, though in fact the differential is higher as the night time ambient is actually below 45.

Please note, Grub's mechanical noise levels and operational noise-making habits are unchanged since Mr. Bhatia's email of Thu, October 28, 2010 8:31:21 PM.

Alicia Gamez
415-225-8738

From: Alicia Maria Gamez <amgamez@yahoo.com>
To: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>; Kenny Wong <Kenny.Wong@sfdph.org>
Cc: Aife (neighbor) Radetsky <aife@radray.us>; Alasdair Clements <alasdair.c@gocartours.com>; Aleeta Van Runkle <aleeta.van.runkle@sfgov.org>; April (neighbor) Berger <april@aprilberger.com>; Cecilia Mangoba <Cecilia.Mangoba@sfgov.org>; Charles & Lynn <Charles@innerlightbooks.com>; Cindy (neighbor) Icke <cindyacu@sbcglobal.net>; Arik (neighbor) Cohen <Cohen@KW-engineering.com>; Darryl Cooper <darrylscooper@gmail.com>; David (SF Supervisor) Campos <david.campos@sfgov.org>; Eric Mar <Eric.Mar@sfdph.org>; Fred Faloona <fredafal@yahoo.com>; karen saha <karen_saha@yahoo.com>; Michael (neighbor) Radetsky <michael@radray.us>; Mike Farrah <Mike.Farrah@sfgov.org>; Mary Lou Cooper <mloucooper@yahoo.com>; Mohammed Malhi <Mohammed.Malhi@sfdph.org>; Tracy Wong <ms_wongy@hotmail.com>; Priscilla Thorner <pristhorner@yahoo.com>; Pronoy Saha <pronoy2010@gmail.com>; Pronoy saha <pronoy_saha@yahoo.com>; Richard Lee <Richard.Lee@sfdph.org>; Sarah Wisby <sarahfran@mac.com>; Stephanie Cushing <Stephanie.Cushing@sfdph.org>; Todd David <todd.david@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>
Sent: Tue, November 2, 2010 4:56:47 PM

Subject: Re: F/u Actions on Noise at Grub, 758 Valencia

Kenny,

Thank you for taking time to talk to me just now.

The website and language that I mentioned to you is here:

"The rear yards of San Francisco often function as acoustical sanctuaries from the urban turmoil. It is important to protect them from the intrusion of new and unnecessary noise sources. In order to protect and respond to the residents of San Francisco, the responsibility for noise control activities is assigned to various City Departments whose primary function most directly involves them in the noise source."

<http://www.sfdph.org/dph/EH/Noise/default.asp>

I am heartened that the department is taking steps to hold Grub accountable.

Update:

Because of the noise level in the city that was associated with Halloween and the Giant's victories, I'm not really going to complain about Grub's operational noise on the nights since Oct 30th. But I will provide the following update:

You informed me that Grub, as of last week, reported that they do their recycling indoors. Please note that I have observed and heard them pour glass outdoors since they made this representation.

You also informed me that Grub is supposed to be keeping its back door closed, not only for noise issues, but also to keep dust, flies and other food contaminants out of the kitchen. Please be informed that Grub only closes its kitchen door late at night. Since my last update on Saturday Oct 30, I have observed the door open all day from the moment they begin their operations until sometime around 11pm. They then open it again during clean up from 12:30 ish until clean up is finished. While we were on the phone, I informed you that the door was then currently open, and it is still open now. I have attached a photo taken on my phone. The image is not high quality, but you can plainly see the white door open and within you can make out the back of a restaurant worker who is dressed in white with a black apron tied at his or her back. I am also currently taking a noise reading. While I sit at my desk, in the front of my house typing this email, I can hear Grub workers shouting back and forth. In fact, as I edit the email, I can plainly hear Eric Reese's (the manager) voice above the racket. This should be documented in the recording that is logged along with the noise reading data. Again, I will draw a comparison with Chaya that I have never, and even still now that my awareness is raised, noticed Chaya's operations, clean up, recycling, daily preparations, etc.

One thing that you and I did not get a chance to discuss is the refrigerator. Can you please let me know what is being done to make the refrigerator quieter? It on its own produces 6-9 dBA, which is particularly disruptive when it cycles on and off at night. Please keep in mind that Chaya's refrigerator generates only 2-3 dBA, so a quieter fridge is possible.

Thank you again,

Alicia

From: Alicia Maria Gamez <amgamez@yahoo.com>

To: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>; Kenny Wong <Kenny.Wong@sfdph.org>

Cc: Aife (neighbor) Radetsky <aife@radray.us>; Alasdair Clements <alasdair.c@gocartours.com>; Aleeta Van Runkle <aleeta.van.runkle@sfgov.org>; April (neighbor) Berger <april@aprilberger.com>; Cecilia Mangoba <Cecilia.Mangoba@sfgov.org>; Charles & Lynn <Charles@innerlightbooks.com>; Cindy (neighbor) Icke <cindyacu@sbcglobal.net>; Arik (neighbor) Cohen <Cohen@KW-engineering.com>; Darryl Cooper <darrylscooper@gmail.com>; David (SF Supervisor) Campos <david.campos@sfgov.org>; Eric Mar <Eric.Mar@sfdph.org>; Fred Faloona <fredafal@yahoo.com>; karen saha <karen_saha@yahoo.com>; Michael (neighbor) Radetsky <michael@radray.us>; Mike Farrah <Mike.Farrah@sfgov.org>; Mary Lou Cooper <mloucooper@yahoo.com>; Mohammed Malhi <Mohammed.Malhi@sfdph.org>; Tracy Wong <ms_wongy@hotmail.com>; Priscilla Thorner <pristhorner@yahoo.com>; Pronoy Saha <pronoy2010@gmail.com>; Pronoy saha <pronoy_saha@yahoo.com>; Richard Lee <Richard.Lee@sfdph.org>; Sarah Wisby <sarahfran@mac.com>; Stephanie Cushing <Stephanie.Cushing@sfdph.org>; Todd David <todd.david@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>

Sent: Tue, November 2, 2010 10:45:57 PM

Subject: Re: F/u Actions on Noise at Grub, 758 Valencia

Kenny,

In response to your request for pictures of Grub operating with its rear door open, attached please find more photos of Grub w/ back door open at Nov 2, at 10:09pm & 10:24pm. The back door is sort of in the center (from right to left) of the image. In the "22:09" image, you can see an employee's leg stepping out onto an orange mat, next to a stainless steel table top. In the "22:24" image, you can see a person leaning on the stainless steel table.

They closed their door in the last few minutes, perhaps because they saw the flash of the camera. I used my partner's phone for these images, hence the time stamp and better quality.

I will try to take photos and send them along whenever I have the opportunity to do so.

Alicia

Alicia Maria Gamez
<amgamez@yahoo.com>

11/11/2010 01:16 AM

T
o

Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>, Kenny
Wong <Kenny.Wong@sfdph.org>

c
c

Aleeta Van Runkle
<aleeta.van.runkle@sfgov.org>, Cecilia Mangoba
<Cecilia.Mangoba@sfgov.org>, Darryl Cooper
<darrylscooper@gmail.com>, "David (SF
Supervisor) Campos"
<david.campos@sfgov.org>, Eric Mar
<Eric.Mar@sfdph.org>, Mike Farrah
<Mike.Farrah@sfgov.org>, Mohammed Malhi
<Mohammed.Malhi@sfdph.org>, Richard Lee
<Richard.Lee@sfdph.org>, Stephanie Cushing
<Stephanie.Cushing@sfdph.org>, Todd David
<todd.david@sfgov.org>, Tom Rivard
<Tom.Rivard@sfdph.org>, Darryl Cooper
<darrylscooper@gmail.com>

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CONFIDENTIAL re : F/u Actions on Noise at Grub,
758 Valencia

Please Note: this email is addressed only to city employees or officials and to one neighbor.

The neighbor, Darryl, lives upstairs from Grub. Darryl has given me permission to forward emails that he has written over the past several weeks complaining of and documenting noise complaints regarding Grub - the dates of the emails below are 10/27/10, 11/2/10, & 11/6/10.

Darryl is not a complainer but the noise in his home has become so unbearable that he has finally been motivated to allow me to forward these complaints to you. While we know that this information is all ultimately public information, to the extent possible, please respect Darryl's wish for discretion. The owners of Grub have already shouted abuse at me and Priscilla. We don't need to give them more targets for abuse.

Darryl's emails below document the unbearable noise level created by Grub. These emails document noise complaints from the fan (hood) and amplified music played at unreasonable levels in the restaurant until early in the morning. In addition, Darryl has described to me that the employee's shouting disturbs him, just as it does the rest of the neighbors.

I have not been sending daily updates as I was out of town for 3 days getting some much needed sleep. (PLEASE NOTE: I had to leave my home to get some sleep.)

I hope that the City will be doing something immediately about the unnecessary and ridiculous noise levels that Grub is generating. In addition to Darryl, there are other neighbors who have voiced complaints to me, but have not given me permission to relay the messages. It is becoming increasingly clear that Grub's physical plant is not compatible with operations after 10pm. There are neighbors on every side of Grub complaining. Most people are reluctant to complain openly for the very reasons that Priscilla and I experienced -- express, verbal abuse from the owners of Grub.

I hope that the city recognizes that this environment is only becoming more intense and unbearable for Grub's neighbors. I hope the city will intervene to bring Grub into compliance with the law.

Alicia Gamez

emails:

Wed, October 27, 2010 7:36:38 AM

Re: Noise at Grub, 758 Valencia

From: Darryl Cooper <darrylscooper@gmail.com>

To: Alicia Maria Gamez <amgamez@yahoo.com>

Alicia,

Thanks for all your updates, and your insistence! It's 2 nights now into opening and I was wondering if you know if there are exact hours to the noise ordinance in the city? My instinct tells me it's 10 pm but I don't know for sure.

I always sleep with earplugs but the noise from downstairs is quite noticeable when I get home in the evening (stereo, etc.), as well as the fan.

Hope you are getting rest.

Regards

Darryl Cooper

--

Darryl Cooper

756 A Valencia Street

San Francisco CA 94110

415.626.6524

Tue, November 2, 2010 10:18:30 PM

Re: F/u Actions on Noise at Grub, 758 Valencia

From: Darryl Cooper <darrylscooper@gmail.com>

To: Alicia Maria Gamez <amgamez@yahoo.com>

Hi Alicia,

Thanks for all your work on this. Is there an actual "quiet hour", by law in this city? I looked on the internet and got conflicting reports.

The noise from the music downstairs has ranged from muted to annoyingly thumping, muteable with earplugs, but it's hard to do any thinking, television, etc, when I get in from work (usually between 7-8 pm, depending on my rehearsal/class schedule". Usually I go to bed around 9:30 pm or a little later as I'm a really early riser. I will probably go down at some point and mention it to the manager,

But I'm afraid it will fall on deaf ears? Pardon the pun.

Hope you get some sleep,

Darryl

--

Darryl Cooper

756A Valencia St.

San Francisco, CA 94110

Sat, November 6, 2010 12:18:16 AM

Re: F/u Actions on Noise at Grub, 758 Valencia

From: Darryl Cooper <darrylscooper@gmail.com>

To: Alicia Maria Gamez <amgamez@yahoo.com>

Hi Alicia,

Normally, I am not up this late, but I woke up and couldn't go back to sleep. (It's now 10 past midnight).

I usually sleep with 'heavy noise' earplugs, so as to drown out the party noise, traffic, and talk from Valencia St. itself, which can be crazy on the weekends. But earlier this evening, even with a white noise fan on, the bass from the stereo From Grub was so loud that I had to turn the television up much more than normal to be able to hear comfortably the news.

Finally, I gave up and put in my earplugs at about 9pm so that I could do some reading to wind down and sleep.

I just took out my earplugs to see if the music from downstairs was still pulsing, and it indeed was. So I don't think the music Got turned down last night at all, ever.

It does not seem right that I should have to put in earplugs from the time Grub opens in the evening every night.

Hope you are getting sleep.

Thanks

Darryl

--

Darryl Cooper

756A Valencia St.

San Francisco, CA 94110

Re: F/u Actions on Noise at Grub, 758 Valencia

...

Tue, November 9, 2010 12:22:18 AM

Re: F/u Actions on Noise at Grub, 758 Valencia

Fro "amgamez@yahoo.com" <amgamez@yahoo.com>

m: ...

View Contact

To: Priscilla Thorner <pristhorner@yahoo.com>; Kenny Wong <Kenny.Wong@sfdph.org>

Cc: Todd David <Todd.David@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>; Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>; Fred Faloon <Fredafal@yahoo.com>

Good morning.

Please update your files to add to the list of noise issues: Grub pounding on trash cans in the early morning. Such as is occurring now. I surmise that there is something stuck in the can and they are pounding away on it to shake it out.

Sent via BlackBerry from T-Mobile

From: Priscilla Thorner <pristhorner@yahoo.com>

Date: Sat, 6 Nov 2010 02:02:18 -0700 (PDT)

To: Kenny Wong <Kenny.Wong@sfdph.org>

Cc: <todd.david@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>; Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>; Alicia Maria Gamez <amgamez@yahoo.com>; Fred Faloon <fredafal@yahoo.com>

Subject: Re: F/u Actions on Noise at Grub, 758 Valencia

Good morning-

Just logging in Grub's recycling and high pressure spraying in the back at 1:28 a.m. Too tired to get the noise meter. What does the restaurant next door do with their glass? I never noticed these sounds from them...

Best,

Priscilla

--- On **Fri, 11/5/10, Alicia Maria Gamez <amgamez@yahoo.com>** wrote:

From: Alicia Maria Gamez <amgamez@yahoo.com>

To: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>; Kenny Wong <Kenny.Wong@sfdph.org>

Cc: Aife (neighbor) Radetsky <aife@radray.us>; Alasdair Clements <alasdair.c@gocartours.com>; Aleeta Van Runkle <aleeta.van.runkle@sfgov.org>; April (neighbor) Berger <april@aprilberger.com>; Cecilia Mangoba <Cecilia.Mangoba@sfgov.org>; Charles & Lynn <Charles@innerlightbooks.com>; Cindy (neighbor) Icke <cindyacu@sbcglobal.net>; Arik (neighbor) Cohen <Cohen@KW-engineering.com>; Darryl Cooper <darrylcooper@gmail.com>; David (SF Supervisor) Campos <david.campos@sfgov.org>; Eric Mar <Eric.Mar@sfdph.org>; Fred Faloon <fredafal@yahoo.com>; karen saha <karen_saha@yahoo.com>; Michael (neighbor) Radetsky <michael@radray.us>; Mike Farrah <Mike.Farrah@sfgov.org>; Mary Lou Cooper <mloucooper@yahoo.com>; Mohanned Malhi <Mohanned.Malhi@sfdph.org>; Tracy Wong <ms_wongy@hotmail.com>; Priscilla Thorner <pristhorner@yahoo.com>; Pronoy Saha <pronoy2010@gmail.com>; Pronoy saha <pronoy_saha@yahoo.com>; Richard Lee <Richard.Lee@sfdph.org>; Sarah Wisby

<sarahfran@mac.com>; Stephanie Cushing <Stephanie.Cushing@sfdph.org>; Todd David <todd.david@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>

Sent: Fri, November 5, 2010 7:00:52 PM

Subject: Re: F/u Actions on Noise at Grub, 758 Valencia

Kenny,

During our conversation today, you asked me if Grub is still pouring the glass. I am sitting at my desk, and can tell you that, yes, they are currently still pouring the glass. They are doing it right now. and they are definitely not indoors.

Alicia

From: Alicia Maria Gamez <amgamez@yahoo.com>

To: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>; Kenny Wong <Kenny.Wong@sfdph.org>

Cc: Aife (neighbor) Radetsky <aife@radray.us>; Alasdair Clements <alasdair.c@gocartours.com>; Aleeta Van Runkle <aleeta.van.runkle@sfgov.org>; April (neighbor) Berger <april@aprilberger.com>; Cecilia Mangoba <Cecilia.Mangoba@sfgov.org>; Charles & Lynn <Charles@innerlightbooks.com>; Cindy (neighbor) Icke <cindyacu@sbcglobal.net>; Arik (neighbor) Cohen <Cohen@KW-engineering.com>; Darryl Cooper <darrylscooper@gmail.com>; David (SF Supervisor) Campos <david.campos@sfgov.org>; Eric Mar <Eric.Mar@sfdph.org>; Fred Faloona <fredafal@yahoo.com>; karen saha <karen_saha@yahoo.com>; Michael (neighbor) Radetsky <michael@radray.us>; Mike Farrah <Mike.Farrah@sfgov.org>; Mary Lou Cooper <mloucooper@yahoo.com>; Mohammed Malhi <Mohammed.Malhi@sfdph.org>; Tracy Wong <ms_wongy@hotmail.com>; Priscilla Thorner <pristhorne@yahoo.com>; Pronoy Saha <pronoy2010@gmail.com>; Pronoy saha <pronoy_saha@yahoo.com>; Richard Lee <Richard.Lee@sfdph.org>; Sarah Wisby <sarahfran@mac.com>; Stephanie Cushing <Stephanie.Cushing@sfdph.org>; Todd David <todd.david@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>

Sent: Fri, November 5, 2010 6:25:32 PM

Subject: Re: F/u Actions on Noise at Grub, 758 Valencia

Kenny,

I have attached three more pictures taken over the course of the day. As I have described before, every time I look, the back door is open.

Please note: they seem to be louder than before, more crashing, more clanking, more shouting. I suspect that they are expressing their anger at us.

Alicia

From: Alicia Maria Gamez <amgamez@yahoo.com>

To: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>; Kenny Wong <Kenny.Wong@sfdph.org>

Cc: Aife (neighbor) Radetsky <aife@radray.us>; Alasdair Clements <alasdair.c@gocartours.com>; Aleeta Van Runkle <aleeta.van.runkle@sfgov.org>; April (neighbor) Berger <april@aprilberger.com>; Cecilia Mangoba <Cecilia.Mangoba@sfgov.org>; Charles & Lynn <Charles@innerlightbooks.com>; Cindy (neighbor) Icke <cindyacu@sbcglobal.net>; Arik (neighbor) Cohen <Cohen@KW-engineering.com>; Darryl Cooper <darrylscooper@gmail.com>; David (SF Supervisor) Campos <david.campos@sfgov.org>; Eric Mar <Eric.Mar@sfdph.org>; Fred Faloona <fredafal@yahoo.com>; karen saha <karen_saha@yahoo.com>; Michael (neighbor) Radetsky <michael@radray.us>; Mike Farrah <Mike.Farrah@sfgov.org>; Mary Lou Cooper <mloucooper@yahoo.com>; Mohammed Malhi <Mohammed.Malhi@sfdph.org>; Tracy Wong <ms_wongy@hotmail.com>; Priscilla Thorner <pristhorne@yahoo.com>; Pronoy Saha <pronoy2010@gmail.com>; Pronoy saha

<pronoy_saha@yahoo.com>; Richard Lee <Richard.Lee@sfdph.org>; sarah wisby <sarahfran@mac.com>; Stephanie Cushing <Stephanie.Cushing@sfdph.org>; Todd David <todd.david@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>

Sent: Fri, November 5, 2010 1:01:42 AM

Subject: Re: F/u Actions on Noise at Grub, 758 Valencia

Kenny,

I can confirm Priscilla's note describing the verbal abuse from Grub. I was very disappointed to have that kind of hostility shouted at me followed by someone throwing glass. It is very ugly and menacing. Regarding the identity of the man who shouted at us, I think it is George. But as you may know the owners are brothers. I have met 3 of them. I think George and Marvin look a lot alike: I believe it was George. Please keep in mind that I am documenting their operations, noise levels and actions because Dr. Bhatia requested that I provide facts, or rather, evidence of facts. The photos and meter readings document the fact of grub's continued non-compliance.

In any case, I will look forward to receiving the operating plan that you said you require of Grub. I have attached a couple more photos, these further document that Grub operates with its rear door open. I wasn't home as much today; but again, every time I am home and glance out of my window, their door is open.

As I described above and below, they don't seem to be doing much to control the noise (such as when they shout abuse and intentionally break glass). As I was sitting here typing, I heard several loud crashes (I am at my desk, which is in the far opposite side of the house, with double-paned windows closed). I took the noise meter out and captured a series of loud crashes on the meter. Kenny, you may know that the sound meter takes a couple of minutes to boot up. The crashing lasted long enough for me to hear it, debate whether I should record it, get the meter, boot it up, take it out side, and still capture more crashing. It isn't brief, it lasts for a while. All of this happened after 12:40am on Nov 5.

I will further add, my meter readings indicate that grub's fixed machinery noise is 10+ dBA over the deemed ambient of 45 dBA (and in fact 13+ dBA over the true ambient), and this does not count the operating noise. What will the department be doing about this? I am compiling a pretty extensive record of their non-compliance.

I have been getting email complaints from other of Grub's neighbors. I have been asking them to send the complaints to you directly. I don't know whether they have done so. In any case, please be aware that many of Grub's neighbors continue to complain.

Alicia

Alicia Maria Gamez <amgamez@yahoo.com>

11/11/2010 01:53 PM

Dear Neighbors & City officials/Employees,

As some the neighbors on this list know, I was contacted by Lee Brenner on behalf of Grub. Mr. Brenner works in the sound area. He is someone who I spoke with weeks about about consulting on the Grub issue. For various reasons, including Mr. Brenner's schedule, I went with Mr. Watry at Wilson Ihrig.

Two days ago I was contacted by Mr. Brenner to discuss a conflict. He explained that Grub had contacted him to consult on the project. He explained that he was comfortable with the conflict of working with Grub. I let him know that I was not but that I would email the neighbors to let them know that he exists and perhaps he can work with neighbors. I did so email and received responses.

Today, Mr. Brenner called me back. I explained that I personally still am not comfortable but that other neighbors are interested in working with him and that I am happy to coordinate that. Mr. Brenner informed me that Grub had contacted to address only MY issue only and that I was not acting in good faith. He aggressively tried to position me as being the only person with problems and refusing to address my problems. I explained that I am not the only person who has problems with Grub and that addressing my problems alone will not address everyone's problems, though many do greatly overlap. I further explained that I am not comfortable with the idea that Grub is seeking to address only my problems and to leave the neighbors out in the cold. Mr. Brenner was at this point upset, attacked me as being uncooperative and hung up on me. (Please know that I had hints of Mr. Brenner's style when I originally contacted him. This is one of the reasons I chose to work with someone else.)

So, Officials at the City, please know that I did communicate with Mr. Brenner and to my neighbors. I offered to help him schedule times with those neighbors and even to be present at the meetings. He refused and he was quite aggressive and rude in the process.

Please know that I am not the only person complaining and that Grub's exclusive focus on me is not appropriate.

Alicia

Tue, November 9, 2010 12:22:18 AM
Re: F/u Actions on Noise at Grub, 758 Valencia

Tue, November 9, 2010 12:22:18 AM
Re: F/u Actions on Noise at Grub, 758 Valencia
Fro "amgamez@yahoo.com"

m:

To: Priscilla Thorner <pristhorner@yahoo.com>; Kenny Wong <Kenny.Wong@sfdph.org>
Cc: Todd David <Todd.David@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>; Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>; Fred Faloona <Fredafal@yahoo.com>

Good morning.

Please update your files to add to the list of noise issues: Grub pounding on trash cans in the early morning. Such as is occurring now. I surmise that there is something stuck in the can and they are pounding away on it to shake it out.

Sent via BlackBerry from T-Mobile

From: Priscilla Thorner <pristhorner@yahoo.com>
Date: Sat, 6 Nov 2010 02:02:18 -0700 (PDT)
To: Kenny Wong <Kenny.Wong@sfdph.org>

Cc: <todd.david@sfgov.org>; Tom Rivard<Tom.Rivard@sfdph.org>; Rajiv Bhatia<Rajiv.Bhatia@sfdph.org>; Alicia Maria Gamez<amgamez@yahoo.com>; Fred Faloota<fredafal@yahoo.com>

Subject: Re: F/u Actions on Noise at Grub, 758 Valencia

Good morning-

Just logging in Grub's recycling and high pressure spraying in the back at 1:28 a.m. Too tired to get the noise meter. What does the restaurant next door do with their glass? I never noticed these sounds from them...

Best,
Priscilla

<lee@bayareanoisecontrol.com>
11/16/2

Tom,

My recollection of our conversation yesterday was quite different, I'm sorry to say.

Yes, we have no formal contract, but I am on retainer and 'Grub' has paid me a fee so far, and another one re conversations with subject complainer neighbor pending, who I determined was not cooperative. She did not want me to visit her home, but her neighbors' homes, instead, to place me on her agenda, by garnering support for her claims from others, at Grub's expense to include others in her complaint. I felt this was not in "Good Faith" for all, to find a reasonable remedy. I ended my conversation with her on that note as I ascertained she was not cooperative to a remedy, in fact.

In my opinion, George is sincere, as he directed Al, in front of me, to get started to incorporate remedies under my guidance. He has already ordered special materials from me that he will be picking up at our S.S.F. warehouse. The initial fee included a few conversation and notes, along with a narrative, thereafter he is billed a min. of \$150 per hour, as they agreed. They will be calling upon me to review and to continue to design and guide them as needed the appropriate remedies as they go forward with the remedial steps, until George's goal of being within the 8 dB allowed of night time code. So, I feel your record, needed to be corrected to what I recall our conversation was, yesterday by phone. For your information, they paid already \$395 for initial visit of 2 hours, and owe me another \$150 for my time attempting to view the scene from the complainer location, to no avail. Al knows that any further details will also cost him per hour.

We serve the "underserved market" in Noise Control for the last 12 years for people and businesses who want a low cost remedy to design and then we stock specialty materials and are also a Lic. GC 916001, Soundproofing Remodelers, under previous names for 12 years. After an 8 year run in a pro-audio manufacturing co., an INC 500 firm, I cashed out in 1991 and applied my skills in Architectural applications, thereafter. This year alone, I've been to 6 conferences and trade shows just on acoustical applications and Noise Control issues. I learn from vendor engineers who make such specialty products. Loc Kwon and Helen Lam serve as my authorized Structural engineer and Architect as needed for permit documents and calculations, etc. They are on 5th St. in the City.

If I can be of any further help in clarifying this situation, please feel free to call on me.

Lee Brenner

Bay Area Noise Control
SoundProofing Remodelers
CA. Lic. 916001
Lee@BayAreaNoiseControl.com
www.BayAreaNoiseControl.com
Rated Best Contractor, '08, sfgate.com
As seen on HGTV
T: 415 386-3344; (800 4-less-dB)
F: 415 386-4623
C: 415 308-8989

From: vsbbco@aol.com [mailto:vsbbco@aol.com]
Sent: Tuesday, November 16, 2010 10:16 AM
To: Lee@bayareanoisecontrol.com
Subject: Fwd: Grub

Baba Builders Company
Residential, Commercial, Institutional
License #926374
P.O. Box 1430

San Bruno, CA. 94066

Office (650) 574-8275
Cell (415) 716-2398
Fax (415) 394-9789
E-Mail VSBBCO@aol.com

-----Original Message-----

From: Tom Rivard <Tom.Rivard@sfdph.org>
To: vsbbco <vsbbco@aol.com>; kodiakg <kodiakg@aol.com>
Cc: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>; Kenny Wong <Kenny.Wong@sfdph.org>; Richard Lee <Richard.Lee@sfdph.org>
Sent: Mon, Nov 15, 2010 12:53 pm
Subject: Re: Grub

Dear Al and George,

Spoke with Lee Brenner, Acoustical Consultant, today. Mr. Brenner says that he is not under contract with you at this time. I understood work was to start today. I assume it has not since you have no consultant, no plans, or permits. By copying him I am reporting to the director that there is no progress at this time. Since you do not have an acoustical consultant and do not have plans to submit to DPH or DBI all previous requests for extensions of time for compliance are denied.

Tom Rivard
Manager, Health Hazard Assessment Group
Department of Public Health
1390 Market St., Suite 210
San Francisco, CA., 94102
415-252-3933
FAX: 415-252-3818

vsbbco@aol.com

11/15/2010 05:42
PM

Tom.Rivard@sfdph.org

To

cc

Subject

Re: Grub

Hello Tom, we are working with Lee on the approach we are going to take I will keep you posted Thanks

Baba Builders Company
Residential, Commercial, Institutional
License #926374
P.O. Box 1430
San Bruno, CA. 94066

Office (650) 574-8275
Cell (415) 716-2398
Fax (415) 394-9789
E-Mail VSBBCO@aol.com

-----Original Message-----

From: Tom Rivard <Tom.Rivard@sfdph.org>
To: vsbbco <vsbbco@aol.com>
Sent: Fri, Nov 12, 2010 8:29 am
Subject: Grub

Al,

Here is my email. Please keep me posted on your progress and decisions regarding the noise issues.

Tom Rivard
Manager, Health Hazard Assessment Group
Department of Public Health
1390 Market St., Suite 210
San Francisco, CA., 94102
415-252-3933
FAX: 415-252-3818

Dr. Bhatia,

Thank you.

I hope that you will share or Grub with neighbors the specific commitments and timeframes so that we may also know what to expect from Grub.

We very much appreciate any help you and your department can offer.

Alicia

From: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>
To: Alicia Maria Gamez <amgamez@yahoo.com>

Cc: Aife (neighbor) Radetsky <aife@radray.us>; April (neighbor) Berger <april@aprilberger.com>; Charles & Lynn <Charles@innerlightbooks.com>; Cindy (neighbor) Icke <cindyacu@sbcglobal.net>; Arik (neighbor) Cohen <Cohen@KW-engineering.com>; Darryl Cooper <darrylcooper@gmail.com>; David (SF Supervisor) Campos <david.campos@sfgov.org>; Fred Faloona <Fredafal@yahoo.com>; Gal (lex) Cohen <gcohen1@gmail.com>; Jackie (lex) McLandrich <jackiemclandrich@gmail.com>; karen saha <karen_saha@yahoo.com>; Kenny Wong <Kenny.Wong@sfdph.org>; Michael (neighbor) Radetsky <michael@radray.us>; michelle (neighbor lex) riel <michelleriel@gmail.com>; Mike Farrah <Mike.Farrah@sfgov.org>; Mary Lou Cooper <mloucooper@yahoo.com>; tracy wong <ms_wongy@hotmail.com>; Priscilla Thorner <pristhorne@yahoo.com>; Pronoy Saha <pronoy2010@gmail.com>; Pronoy saha <pronoy_saha@yahoo.com>; Rachel (lex) Young <racheljo@gmail.com>; sarah (neighbor) wisby <sarahfran@mac.com>; Shelly (lex) Leung <shellyleung9@gmail.com>; Stephen (lex) McLandrich <smclandrich@gmail.com>; Todd David <Todd.David@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>

Sent: Tue, November 16, 2010 4:29:42 PM

Subject: Re: F/u Actions on Noise at Grub, 758 Valencia

Alicia

I discussed the situation with staff today.

The management has informed us that they are taking steps both to limit operational noise and to engineer and build acoustical insulation and modifications for the fixed noise sources.

We will be asking Grub to put into writing specific commitments and timeframes and then monitoring their progress. We will take measurements following installation of new sound control technology.

If we continue to receive evidence that Grub is not honoring the commitments, we will likely call the owner into a public hearing as a next step

Rajiv

Alicia Maria
Gamez

<amgamez@yahoo.co

To

m>

Rajiv Bhatia

<Rajiv.Bhatia@sfdph.org

11/15/2010 10:26

cc

AM

Todd David <Todd.David@sfgov.org> ,

Tom Rivard <Tom.Rivard@sfdph.org> ,

Kenny Wong <Kenny.Wong@sfdph.org> ,

Fred Faloona <Fredafal@yahoo.com> ,

Mike Farrah

<Mike.Farrah@sfgov.org>, Charles &
Lynn <Charles@innerlightbooks.com>,
Mary Lou Cooper
<mloucooper@yahoo.com>, tracy wong
<ms_wongy@hotmail.com>, "April
\(neighbor) Berger"
<april@aprilberger.com>, "Arik
\(neighbor) Cohen"
<Cohen@KW-engineering.com>, "Cindy
\(neighbor) Icke"
<cindyacu@sbcglobal.net>, "Aife
\(neighbor) Radetsky"
<aife@radray.us>, "Michael
\(neighbor) Radetsky"
<michael@radray.us>, Darryl Cooper
<darrylscooper@gmail.com>, "sarah
\(neighbor) wisby"
<sarahfran@mac.com>, karen saha
<karen_saha@yahoo.com>, Pronoy saha
<pronoy_saha@yahoo.com>, Pronoy
Saha <pronoy2010@gmail.com>,
Priscilla Thorner
<pristhorne@yahoo.com>, "Gal
\(lex) Cohen" <gcohen1@gmail.com>,
"Jackie \(\(lex) McLandrich"
<jackiemclandrich@gmail.com>,
"michelle \(\(neighbor lex) riel"
<michelleriel@gmail.com>, "Rachel
\(lex) Young"
<racheljo@gmail.com>, "Shelly
\(lex) Leung"
<shellyleung9@gmail.com>, "Stephen
\(lex) McLandrich"
<smclandrich@gmail.com>, "David
\(SF Supervisor) Campos"
<david.campos@sfgov.org>

Subject

Re: F/u Actions on Noise at Grub,
758 Valencia

Dr. Bhatia,

Now that you are back in the office, could we please urgently arrange a
time to discuss what will be done about Grub?

As Priscilla wrote early this morning at 12:47am, this situation is unbearable. We urgently request to speak with you. We urgently request that you take action to abate the nuisance that Grub presents. We neighbors have logged for you multiple noise complaints arising from their machinery and their operations. Have provided you with a rich log of facts on which to act. Given the variety of noise complaints from multiple neighbors on every side of Grub, it is clear that Grub's physical plant is not appropriate for their business model OR their LONG HOURS. Something has to be done. Grub is degrading the quality of housing and human health all around them.

You might be interested to know that a broad coalition of people are forming to fight the project at 777 Valencia. I have shared with our neighbors on Lexington the misery that has transpired due to Grub, which is much smaller than 777 Valencia project and which does not have 70 outdoor seats. I have cc'd some of the Lexington Street neighbors so that they can understand the struggle that we on Lapidge have. The neighbors on Lexington are trying to protect themselves and their homes from the disruption that we are fighting now.

Alicia
415-225-8738

From: Priscilla Thorner <pristhorner@yahoo.com>
To: Kenny Wong <Kenny.Wong@sfdph.org>; amgamez@yahoo.com
Cc: Todd David <Todd.David@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>;
Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>; Fred Faloona <Fredafal@yahoo.com>
Sent: Mon, November 15, 2010 12:47:17 AM
Subject: Re: F/u Actions on Noise at Grub, 758 Valencia

Hi Alicia-

Also cannot sleep due to the machinery running. Agreed that this restaurant has ruined any chance of enjoying this glorious weather in the back yard. If I were a tenant I would move out. What happens when I try to sell? What foolish person will pay good money to live behind this constant din?! This is truly unbearable!

Priscilla

--- On Sun, 11/14/10, amgamez@yahoo.com <amgamez@yahoo.com> wrote:

From: amgamez@yahoo.com <amgamez@yahoo.com>
Subject: Re: F/u Actions on Noise at Grub, 758 Valencia
To: "Priscilla Thorner" <pristhorner@yahoo.com>, "Kenny Wong" <Kenny.Wong@sfdph.org>
Cc: "Todd David" <Todd.David@sfgov.org>, "Tom Rivard" <Tom.Rivard@sfdph.org>, "Rajiv Bhatia" <Rajiv.Bhatia@sfdph.org>, "Fred Faloona" <Fredafal@yahoo.com>
Date: Sunday, November 14, 2010, 12:52 AM

Good morning,

Logging grub's recycling activities at 12.49 am.

Please also note. They are consistently operating with their rear door open. It is impossible to relax in my backyard or deck because of the constant din of kitchen noise.

Sent via BlackBerry from T-Mobile

From: Priscilla Thorner <pristhorner@yahoo.com>
Date: Sat, 6 Nov 2010 02:02:18 -0700 (PDT)
To: Kenny Wong<Kenny.Wong@sfdph.org>
Cc: <todd.david@sfgov.org>; Tom Rivard<Tom.Rivard@sfdph.org>; Rajiv Bhatia<Rajiv.Bhatia@sfdph.org>; Alicia Maria Gamez<amgamez@yahoo.com>; Fred Faloona<fredafal@yahoo.com>
Subject: Re: F/u Actions on Noise at Grub, 758 Valencia

Good morning-

Just logging in Grub's recycling and high pressure spraying in the back at 1:28 a.m. Too tired to get the noise meter. What does the restaurant next door do with their glass? I never noticed these sounds from them...

Best,
Priscilla

George <kodiakg@aol.com>
12/08/2010 08:06 AM

Morning Mr Rivard.

Just an update for you, vent duct in place to the roof and noise level is to none almost. Lines for the compressor are lined up to the roof just need electrical to be done on roof and then compressor. Weather permitting we should be done by Friday. The way it sounds now we will have no problem with noise. Now regarding hood being on, according to her, is a crock. My chef claims he personally shuts it down at nite and that morning he had to turn it on. Her fabrication of the truth is becoming annoying, this because your boss is not hearing both sides. Yes I can e-mail your dept 10 times day and get everyone jumping, but that not what we are. We are going to get this complete and to the level required by the noise ordnance. all we ask is that when we pass her complaints go un acknowledged and the harassment by her stopped.

Thanks for your patience
George nasrah

Sent from my iPhone

On Dec 6, 2010, at 8:51 AM, Tom Rivard <Tom.Rivard@sfdph.org> wrote:

>
> George,
>
> Here is another complaint regarding ventilation. We received your building
> permit from Bayside, thank you. Please send me a simple schedule for the
> completion of all work. It will help in responding to the complaints.
> Please make sure you employees remember to shut down the ventilation system

> at the end of the day.

>

>

>

>

>

> Dr. Bhatia,

>

> Please log an additional complaint, Grub left their machinery on. The hood
> is roaring away. Please, note that it is 5 am!

>

> I will very much appreciate an update on exactly what action the Department
> will be taking to control this ongoing and extreme

> violation of the noise

> ordinance. The code provides for fines. The hood generates noise far in
> excess of the code. It is absurd and abusive to allow them to run the
> machine 24 hours a day. The code is there to protect neighbors of bad
> actors. Please enforce the code.

>

> I would very much appreciate a telephone call from you or whomever you have
> charged with dealing with this.

>

> Alicia

> 415-225-8738

>

>

> Tom Rivard

> Manager, Health Hazard Assessment Group

> Department of Public Health

> 1390 Market St., Suite 210

> San Francisco, CA., 94102

> 415-252-3933

> FAX: 415-252-3818

>

> **Alicia Maria Gamez <amgamez@yahoo.com>**

12/15/2010 12:07 AM

Mr. Bhatia,

Attached please find the report from Wilson, Ihrig and Associates. This report formally evaluates of the noise levels / violations generated by Grub. Unfortunately, Grub's most egregious violations are not captured. Only the most constant and common violations are evaluated in the report.

Please note, I hear glass crashing every day. Everyday, Grub pounds recycling and garbage buckets. Uses high-pressure hoses to clean out garbage cans. Stomps down boxes. Rattles mop buckets. Seldom closes their rear door & allows kitchen racket to pollute the neighborhood. The sound meter captured data of noises at 65dBA. I have observed much higher readings that somehow were not preserved by the meter. Nevertheless, 65 dBA far exceeds any legal or reasonable noise level. Now that you have a second, formal report and hard evidence of the continuing violations, I hope that your department will act to enforce the noise ordinance.

It is remarkable that the city has allowed such an egregious violation to open and operate. The burden imposed on the residents surrounding Grub is plainly unconscionable. As you may know by now, at least one of the neighboring tenants has moved to escape the noise. The resident property owners around Grub have less mobility to escape the outrageous situation. The department's inaction is harming the neighbors. I am sure you can comprehend the impatience and fatigue.

By the way, on Monday, Dec 6, you stated that your "staff (kenny wong) [would] provide periodic updates." Please note that your staff has not provided any updates. I have made calls to get an update, but have been unable to contact your staff.

Alicia
415-225-8738

From: "amgamez@yahoo.com" <amgamez@yahoo.com>
To: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>
Cc: Aife (neighbor) Radetsky <aife@radray.us>; April (neighbor) Berger <april@aprilberger.com>; Charles & Lynn <Charles@innerlightbooks.com>; Cindy (neighbor) Icke <cindyacu@sbcglobal.net>; Arik (neighbor) Cohen <Cohen@KW-engineering.com>; Darryl Cooper <darrylscoper@gmail.com>; David (SF Supervisor) Campos <david.campos@sfgov.org>; Fred Faloona <Fredafal@yahoo.com>; Gal (lex) Cohen <gcohen1@gmail.com>; Jackie (lex) McLandrich <jackiemclandrich@gmail.com>; karen saha <karen_saha@yahoo.com>; Kenny Wong <Kenny.Wong@sfdph.org>; Michael (neighbor) Radetsky <michael@radray.us>; michelle (neighbor lex) riel <michelleriel@gmail.com>; Mike Farrah <Mike.Farrah@sfgov.org>; Mary Lou Cooper <mloucooper@yahoo.com>; tracy wong <ms_wongy@hotmail.com>; Priscilla Thorner <pristhorner@yahoo.com>; Pronoy Saha <pronoy2010@gmail.com>; Pronoy saha <pronoy_saha@yahoo.com>; Rachel (lex) Young <racheljo@gmail.com>; Sarah Wisby <sarahfran@mac.com>; Shelly (lex) Leung <shellyleung9@gmail.com>; Stephen (lex) McLandrich <smclandrich@gmail.com>; Todd David <Todd.David@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>
Sent: Fri, December 10, 2010 1:03:58 AM
Subject: Re: F/u Actions on Noise at Grub, 758 Valencia

Logging complaint. Buckets banging. Glass breaking. .
Sent via BlackBerry from T-Mobile

-----Original Message-----

From: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>
Date: Mon, 6 Dec 2010 11:08:22
To: Alicia Maria Gamez <amgamez@yahoo.com>
Cc: Aife (neighbor) Radetsky <aife@radray.us>; April (neighbor) Berger <april@aprilberger.com>; Charles & Lynn <Charles@innerlightbooks.com>; Cindy (neighbor) Icke <cindyacu@sbcglobal.net>; Arik (neighbor) Cohen <Cohen@KW-engineering.com>; Darryl Cooper <darrylscoper@gmail.com>; David (SF Supervisor) Campos <david.campos@sfgov.org>; Fred Faloona <Fredafal@yahoo.com>; Gal (lex) Cohen <gcohen1@gmail.com>; Jackie (lex) McLandrich <jackiemclandrich@gmail.com>; karen saha <karen_saha@yahoo.com>; Kenny Wong <Kenny.Wong@sfdph.org>; Michael (neighbor) Radetsky <michael@radray.us>; michelle (neighbor lex) riel <michelleriel@gmail.com>; Mike Farrah <Mike.Farrah@sfgov.org>; Mary Lou Cooper <mloucooper@yahoo.com>; tracy wong <ms_wongy@hotmail.com>; Priscilla Thorner <pristhorner@yahoo.com>; Pronoy Saha <pronoy2010@gmail.com>; Pronoy saha <pronoy_saha@yahoo.com>; Rachel (lex) Young <racheljo@gmail.com>; sarah (neighbor) wisby <sarahfran@mac.com>; Shelly (lex) Leung <shellyleung9@gmail.com>; Stephen (lex) McLandrich <smclandrich@gmail.com>; Todd David <Todd.David@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>
Subject: Re: F/u Actions on Noise at Grub, 758 Valencia

I understand that the ventilation system has been redesigned and will be reconstructed. There is a contractor and an approved permit for the work. I will ask staff (kenny wong) to provide you periodic updates.

rajiv

Alicia Maria
Gamez
<amgamez@yahoo.co>
m> Rajiv Bhatia
<Rajiv.Bhatia@sfdph.org>
12/06/2010 05:10 AM cc
"Aife \(\neighbor\) Radetsky"
<aife@radray.us>, "April
\(\neighbor\) Berger"
<april@aprilberger.com>, Charles &
Lynn <Charles@innerlightbooks.com>,
"Cindy \(\neighbor\) Icke"
<cindyacu@sbcglobal.net>, "Arik
\(\neighbor\) Cohen"
<Cohen@KW-engineering.com>, Darryl
Cooper <darrylscooper@gmail.com>,
"David \(\SF Supervisor\) Campos"
<david.campos@sfgov.org>, Fred
Faloona <Fredafal@yahoo.com>, "Gal
\(\lex\) Cohen" <gcohen1@gmail.com>,
"Jackie \(\lex\) McLandrich"
<jackiemclandrich@gmail.com>, karen
saha <karen_saha@yahoo.com>, Kenny
Wong <Kenny.Wong@sfdph.org>,
"Michael \(\neighbor\) Radetsky"
<michael@radray.us>, "michelle
\(\neighbor lex\) riel"
<michelleriel@gmail.com>, Mike
Farrah <Mike.Farrah@sfgov.org>,
Mary Lou Cooper
<mloucooper@yahoo.com>, tracy wong
<ms_wongy@hotmail.com>, Pronoy Saha
<pronoy2010@gmail.com>, Pronoy saha
<pronoy_saha@yahoo.com>, "Rachel
\(\lex\) Young"
<racheljo@gmail.com>, "sarah
\(\neighbor\) wisby"
<sarahfran@mac.com>, "Shelly
\(\lex\) Leung"
<shellyleung9@gmail.com>, "Stephen
\(\lex\) McLandrich"
<smclandrich@gmail.com>, Todd David
<Todd.David@sfgov.org>, Tom Rivard

<Tom.Rivard@sfdph.org>, Priscilla
Thorner <pristhorner@yahoo.com>

Subject

Re: F/u Actions on Noise at Grub,
758 Valencia

Dr. Bhatia,

Please log an additional complaint, Grub left their machinery on. The hood
is roaring away. Please, note that it is 5 am!

I will very much appreciate an update on exactly what action the Department
will be taking to control this ongoing and extreme violation of the noise
ordinance. The code provides for fines. The hood generates noise far in
excess of the code. It is absurd and abusive to allow them to run the
machine 24 hours a day. The code is there to protect neighbors of bad
actors. Please enforce the code.

I would very much appreciate a telephone call from you or whomever you have
charged with dealing with this.

Alicia
415-225-8738

From: Alicia Maria Gamez <amgamez@yahoo.com>
To: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>
Cc: Aife (neighbor) Radetsky <aife@radray.us>; April (neighbor) Berger
<april@aprilberger.com>; Charles & Lynn <Charles@innerlightbooks.com>;
Cindy (neighbor) Icke <cindyacu@sbcglobal.net>; Arik (neighbor) Cohen
<Cohen@KW-engineering.com>; Darryl Cooper <darrylcooper@gmail.com>; David
(SF Supervisor) Campos <david.campos@sfgov.org>; Fred Faloona
<Fredafal@yahoo.com>; Gal (lex) Cohen <gcohen1@gmail.com>; Jackie (lex)
McLandrich <jackiemclandrich@gmail.com>; karen saha <karen_saha@yahoo.com>;
Kenny Wong <Kenny.Wong@sfdph.org>; Michael (neighbor) Radetsky
<michael@radray.us>; michelle (neighbor lex) riel <michelleriel@gmail.com>;
Mike Farrah <Mike.Farrah@sfgov.org>; Mary Lou Cooper
<mloucooper@yahoo.com>; tracy wong <ms_wongy@hotmail.com>; Pronoy Saha
<pronoy2010@gmail.com>; Pronoy saha <pronoy_saha@yahoo.com>; Rachel (lex)
Young <racheljo@gmail.com>; sarah (neighbor) wisby <sarahfran@mac.com>;
Shelly (lex) Leung <shellyleung9@gmail.com>; Stephen (lex) McLandrich
<smclandrich@gmail.com>; Todd David <Todd.David@sfgov.org>; Tom Rivard
<Tom.Rivard@sfdph.org>; Priscilla Thorner <pristhorner@yahoo.com>
Sent: Mon, November 29, 2010 11:40:10 PM
Subject: Re: F/u Actions on Noise at Grub, 758 Valencia

Dr. Bhatia,

Grub is back at it: I was awakened by high pressure hoses and pounding on drum-like garbage cans. I captured the tail end of the noise on a noise meter. Though I missed the worst of it, the noise that I was able to capture registered upwards of 68 dBA (at that was not the noise level that woke me up).

Grub's fixed noise continues to operate at 10-13 dBA over ambient. These readings are as recent as this evening: that is, they are up-to-date. The clean up noise takes it to 25 dBA and greater over ambient. FYI: For only a few days have they operated with their rear door closed. Typically the door is open with the kitchen noise adding 2-3 dBA over an already excessive noise level. I suspect they have only closed the door when the cold required, not due to any attempt to minimize noise pollution.

I will very much appreciate an update on exactly what action the Department will be taking to control this ongoing and extreme violation of the noise ordinance.

Alicia

From: Priscilla Thorner <pristhorne@yahoo.com>
To: Alicia Maria Gamez <amgamez@yahoo.com>; Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>
Cc: Aife (neighbor) Radetsky <aife@radray.us>; April (neighbor) Berger <april@aprilberger.com>; Charles & Lynn <Charles@innerlightbooks.com>; Cindy (neighbor) Icke <cindyacu@sbcglobal.net>; Arik (neighbor) Cohen <Cohen@KW-engineering.com>; Darryl Cooper <darrylcooper@gmail.com>; David (SF Supervisor) Campos <david.campos@sfgov.org>; Fred Faloona <Fredafal@yahoo.com>; Gal (lex) Cohen <gcohen1@gmail.com>; Jackie (lex) McLandrich <jackiemclandrich@gmail.com>; karen saha <karen_saha@yahoo.com>; Kenny Wong <Kenny.Wong@sfdph.org>; Michael (neighbor) Radetsky <michael@radray.us>; michelle (neighbor lex) riel <michelleriel@gmail.com>; Mike Farrah <Mike.Farrah@sfgov.org>; Mary Lou Cooper <mloucooper@yahoo.com>; tracy wong <ms_wongy@hotmail.com>; Pronoy Saha <pronoy2010@gmail.com>; Pronoy saha <pronoy_saha@yahoo.com>; Rachel (lex) Young <racheljo@gmail.com>; sarah (neighbor) wisby <sarahfran@mac.com>; Shelly (lex) Leung <shellyleung9@gmail.com>; Stephen (lex) McLandrich <smclandrich@gmail.com>; Todd David <Todd.David@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>
Sent: Tue, November 16, 2010 10:51:11 PM
Subject: Re: F/u Actions on Noise at Grub, 758 Valencia

Heartfelt thanks from 55 as well!

--- On Tue, 11/16/10, Rajiv Bhatia <Rajiv.Bhatia@sfdph.org> wrote:

From: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>
Subject: Re: F/u Actions on Noise at Grub, 758 Valencia
To: "Alicia Maria Gamez" <amgamez@yahoo.com>
Cc: "Aife (neighbor) Radetsky" <aife@radray.us>, "April (neighbor) Berger" <april@aprilberger.com>

"Charles & Lynn" <Charles@innerlightbooks.com>, "Cindy (neighbor) Icke" <cindyacu@sbcglobal.net>, "Arik (neighbor) Cohen" <Cohen@KW-engineering.com>, "Darryl Cooper" <darrylscooper@gmail.com>, "David (SF Supervisor) Campos" <david.campos@sfgov.org>, "Fred Faloona" <Fredafal@yahoo.com>, "Gal (lex) Cohen" <gcohen1@gmail.com>, "Jackie (lex) McLandrich" <jackiemclandrich@gmail.com>, "karen saha" <karen_saha@yahoo.com>, "Kenny Wong" <Kenny.Wong@sfdph.org>, "Michael (neighbor) Radetsky" <michael@radray.us>, "michelle (neighbor lex) riel" <michelleriel@gmail.com>, "Mike Farrah" <Mike.Farrah@sfgov.org>, "Mary Lou Cooper" <mloucooper@yahoo.com>, "tracy wong" <ms_wongy@hotmail.com>, "Priscilla Thorne" <pristhorner@yahoo.com>, "Pronoy Saha" <pronoy2010@gmail.com>, "Pronoy saha" <pronoy_saha@yahoo.com>, "Rachel (lex) Young" <racheljo@gmail.com>, "sarah (neighbor) wisby" <sarahfran@mac.com>, "Shelly (lex) Leung" <shellyleung9@gmail.com>, "Stephen (lex) McLandrich" <smclandrich@gmail.com>, "Todd David" <Todd.David@sfgov.org>, "Tom Rivard" <Tom.Rivard@sfdph.org>

Date: Tuesday, November 16, 2010, 4:29 PM

<http://www.sfdph.org/dph/EH/Noise/default.asp>

I am heartened that the department is taking steps to hold Grub accountable.

Update:

Because of the noise level in the city that was associated with Halloween and the Giant's victories, I'm not really going to complain about Grub's operational noise on the nights since Oct 30th. But I will provide the following update:

You informed me that Grub, as of last week, reported that they do their recycling indoors. Please note that

I have observed and heard them pour glass outdoors since they made this representation.

You also informed me that Grub is supposed to be keeping its back door closed, not only for noise issues,

but also to keep dust, flies and other food contaminants out of the kitchen. Please be informed that Grub

only closes its kitchen door late at night. Since my last update on Saturday Oct 30, I have observed the door open all day from the moment they begin their operations until sometime around 11pm. They then

open

it again during clean up from 12:30 ish until clean up is finished. While we were on the phone, I informed

you that the door was then currently open, and it is still open now. I have attached a photo taken on my

phone. The image is not high quality, but you can plainly see the white door open and within you can make

out the back of a restaurant worker who is dressed in white with a black apron tied at his or her back. I am also currently taking a noise reading. While I sit at my desk, in the front of my house typing this email, I can hear Grub workers shouting back and forth. In fact, as I edit the email, I can plainly hear Eric Reese's (the manager) voice above the racket. This should be documented in the recording that is logged along with the noise reading data. Again, I will draw a comparison with Chaya that I have never, and even still now that my awareness is raised, noticed Chaya's operations, clean up, recycling, daily preparations, etc.

One thing that you and I did not get a chance to discuss is the refrigerator. Can you please let me know what is being done to make the refrigerator quieter? It on its own produces 6-9 dBA, which is particularly disruptive when it cycles on and off at night. Please keep in mind that Chaya's refrigerator generates only 2-3 dBA, so a quieter fridge is possible.

Thank you again,

Alicia

Alicia Maria Gamez <amgamez@yahoo.com>

12/17/2010 06:08 PM

Dear Dr Bhatia,

My sound professional has provided the attached letter and data in response to your request. I hope this is helpful in your enforcement efforts and that it produces significant and prompt relief from Grub's violations.

Please keep in mind that providing this data is not free; if you would like further information, please bear the costs in mind. While I hope that this additional information is helpful, I have more than proven (with lots of documentation) that Grub is and has always been in continuous violation of the law. Further, I am paying the costs of scientifically documenting evidence of Grub's non-compliance, and every one around Grub pays with the quiet enjoyment of their homes. Other neighbors have already abandoned the scene; I certainly would have done so if it were not a ruinous economic proposition.

I do hope that this information provides you with information necessary to enforce the noise ordinance. I hope that it helps produce a result for those of us who cannot abandon our homes to leave Grub alone in its noise pollution.

Alicia

Alicia Gamez
415-225-8738

From: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>
To: Alicia Maria Gamez <amgamez@yahoo.com>
Cc: Aife (neighbor) Radetsky <aife@radray.us>; April (neighbor) Berger <april@aprilberger.com>; Charles & Lynn <Charles@innerlightbooks.com>; Cindy (neighbor) Icke <cindyacu@sbcglobal.net>; Arik (neighbor) Cohen <Cohen@KW-engineering.com>; Darryl Cooper <darrylcooper@gmail.com>; David (SF Supervisor) Campos <david.campos@sfgov.org>; Fred Faloona <Fredafal@yahoo.com>; Gal (lex) Cohen <gcohen1@gmail.com>; Jackie (lex) McLandrich <jackiemclandrich@gmail.com>; karen saha <karen_saha@yahoo.com>; Kenny Wong <Kenny.Wong@sfdph.org>; Michael (neighbor) Radetsky <michael@radray.us>; michelle (neighbor lex) riel <michelleriel@gmail.com>; Mike Farrah <Mike.Farrah@sfgov.org>; Mary Lou Cooper <mloucooper@yahoo.com>; tracy wong <ms_wongy@hotmail.com>; Priscilla Thorner <pristhorne@yahoo.com>; Pronoy Saha <pronoy2010@gmail.com>; Pronoy saha <pronoy_saha@yahoo.com>; Rachel (lex) Young <racheljo@gmail.com>; Sarah Wisby <sarahfran@mac.com>; Shelly (lex) Leung <shellyleung9@gmail.com>; Stephen (lex) McLandrich <smclandrich@gmail.com>; Todd David <Todd.David@sfgov.org>; Tom Rivard <Tom.Rivard@sfdph.org>
Sent: Wed, December 15, 2010 5:59:58 AM
Subject: Re: F/u Actions on Noise at Grub, 758 Valencia

alicia

i read the report -- while this summary and interpretation is useful, i would like my staff to review the actual noise measurement logs referenced in the report to be able to understand the levels in relationship to activities and time of day and how levels have changed over time.

can you or the consultant please provide this to us

thank you

rajiv

Alicia Maria
Gamez
<amgamez@yahoo.co
m> To
Rajiv Bhatia
<Rajiv.Bhatia@sfdph.org>
12/15/2010 12:07 cc
AM "Aife (neighbor) Radetsky"
<aife@radray.us>, "April
(neighbor) Berger"
<april@aprilberger.com>, Charles &
Lynn <Charles@innerlightbooks.com>,
"Cindy (neighbor) Icke"
<cindyacu@sbcglobal.net>, "Arik
(neighbor) Cohen"
<Cohen@KW-engineering.com>, Darryl
Cooper <darrylcooper@gmail.com>,
"David (SF Supervisor) Campos"

<david.campos@sfgov.org>, Fred
Faloona <Fredafal@yahoo.com>, "Gal
\\(lex) Cohen" <gcohen1@gmail.com>,
"Jackie \\(lex) McLandrich"
<jackiemclandrich@gmail.com>, karen
saha <karen_saha@yahoo.com>, Kenny
Wong <Kenny.Wong@sfdph.org>,
"Michael \\(neighbor) Radetsky"
<michael@radray.us>, "michelle
\\(neighbor lex) riel"
<michellerie@gmail.com>, Mike
Farrah <Mike.Farrah@sfgov.org>,
Mary Lou Cooper
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Pronoy Saha <pronoy2010@gmail.com>,
Pronoy saha
<pronoy_saha@yahoo.com>, "Rachel
\\(lex) Young"
<racheljo@gmail.com>, Sarah Wisby
<sarahfran@mac.com>, "Shelly
\\(lex) Leung"
<shellyleung9@gmail.com>, "Stephen
\\(lex) McLandrich"
<smclandrich@gmail.com>, Todd David
<Todd.David@sfgov.org>, Tom Rivard
<Tom.Rivard@sfdph.org>

Subject

Re: F/u Actions on Noise at Grub,
758 Valencia

Mr. Bhatia,

Attached please find the report from Wilson, Ihrig and Associates. This report formally evaluates of the noise levels / violations generated by Grub. Unfortunately, Grub's most egregious violations are not captured. Only the most constant and common violations are evaluated in the report.

Please note, I hear glass crashing every day. Everyday, Grub pounds recycling and garbage buckets. Uses high-pressure hoses to clean out garbage cans. Stomps down boxes. Rattles mop buckets. Seldom closes their rear door & allows kitchen racket to pollute the neighborhood. The sound meter captured data of noises at 65dBA. I have observed much higher

readings that somehow were not preserved by the meter. Nevertheless, 65 dBA far exceeds any legal or reasonable noise level. Now that you have a second, formal report and hard evidence of the continuing violations, I hope that your department will act to enforce the noise ordinance.

It is remarkable that the city has allowed such an egregious violation to open and operate. The burden imposed on the residents surrounding Grub is plainly unconscionable. As you may know by now, at least one of the neighboring tenants has moved to escape the noise. The resident property owners around Grub have less mobility to escape the outrageous situation. The department's inaction is harming the neighbors. I am sure you can comprehend the impatience and fatigue.

By the way, on Monday, Dec 6, you stated that your "staff (kenny wong) [would] provide periodic updates." Please note that your staff has not provided any updates. I have made calls to get an update, but have been unable to contact your staff.

Alicia

Hi Mr. Rivard,
merry Christmas and a Happy New Year. We have completed the ventilation tower and have moved the compressor to the roof we feel it is to our best of our ability. We ask one thing though if you can come out and gives us a dry reading to make sure we are conforming so in the case we are still off so we can try to see what else se can do.

Thank You
George Narah

-----Original Message-----

From: Tom Rivard <Tom.Rivard@sfdph.org>
To: kodiakg <kodiakg@aol.com>
Sent: Thu, Dec 2, 2010 4:21 pm
Subject: timetable and permits

George,

The Department of Public Health supports the progress and effort you have made, however, as you know complaints continue and we need good documentation to justify giving you more time. Please provide me the following as soon as possible.

A simple letter stating you intend to relocate equipment to rooftop with a clear timetable. The timetable needs to be detailed. Please include the names of all contractors doing work. Call me if you want to discuss.

Here is an example.

Week 1- run electrical to roof and initiate sheet metal work
Week 2- run plumbing to roof and complete sheet metal work
Week 3- relocate compressor and make up air

January 1, 2011- all work complete
Permits for all planned work from DBI. Copies to be provided as soon as possible.

Tom Rivard
Manager, Health Hazard Assessment Group
Department of Public Health
1390 Market St., Suite 210
San Francisco, CA., 94102
415-252-3933
FAX: 415-252-3818

Alicia Maria Gamez <amgamez@yahoo.com>
02/11/2011 11:13 AM

So, do I understand correctly that you do not have documentation that demonstrates that they are in compliance, after receiving the reports and documentation that I provided to you demonstrating their lack of compliance with the code over a period of weeks (if not months)?

From: Tom Rivard <Tom.Rivard@sfdph.org>
To: Alicia Maria Gamez <amgamez@yahoo.com>
Cc: Kenny Wong <Kenny.Wong@sfdph.org>; Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>; Richard Lee <Richard.Lee@sfdph.org>
Sent: Fri, February 11, 2011 10:24:09 AM
Subject: Re: Fw: F/u Actions on Noise at Grub, 758 Valencia

Ms. Gamez,

There is no report. All actions were voluntary on the part of Grub and not part of an enforcement action.

Tom Rivard, MS, REHS
Manager, Health Hazard Assessment Group
Department of Public Health
Asst. Clinical Professor, UCSF
1390 Market St., Suite 210
San Francisco, CA., 94102
415-252-3933

Alicia Maria
Gamez
<amgamez@yahoo.co
m> To
Rajiv Bhatia
<Rajiv.Bhatia@sfdph.org>, Kenny

02/11/2011 10:10 AM Wong <Kenny.Wong@sfdph.org>
cc

Richard Lee
<Richard.Lee@sfdph.org>, Tom Rivard
<Tom.Rivard@sfdph.org>

Subject

Re: Fw: F/u Actions on Noise at
Grub, 758 Valencia

Mr. Bhatia and Mr. Wong,

Thank you for your emails.

You may recall that early in the process, I did make complaints to the Police Department. With the exception of a single night, the police did not respond to any of the complaints. There doesn't seem to be any place to register this sort of ongoing complaint with them. If you have advice as to how to log complaints with the department, I will appreciate hearing it.

Did Mr. Rivard conduct another sound evaluation? Is it possible to have that report? It would be helpful to know how he applied the code, determined ambient, whether the refrigerator was tested independently, etc.

Alicia

From: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>
To: Kenny Wong <Kenny.Wong@sfdph.org>
Cc: Alicia Maria Gamez <amgamez@yahoo.com>; Richard Lee <Richard.Lee@sfdph.org>; Tom Rivard <Tom.Rivard@sfdph.org>
Sent: Fri, February 11, 2011 8:44:08 AM
Subject: Re: Fw: F/u Actions on Noise at Grub, 758 Valencia

Ms. Gamez:

We will continue to be a conduit for communication to the restaurant owner.

However, I suggest that you also be formally logging your concerns with the police department as they have formal / legal responsibility for managing behavioral noise.

rajiv

Kenny
Wong/DPH/SFGOV

To
02/11/2011 08:34 AM Alicia Maria Gamez
<amgamez@yahoo.com>

cc

Rajiv Bhatia
<Rajiv.Bhatia@sfdph.org>, Richard
Lee/DPH/SFGOV@SFGOV, Tom
Rivard/DPH/SFGOV@SFGOV
Subject

Re: Fw: F/u Actions on Noise at
Grub, 758 Valencia(Document link:
Rajiv Bhatia)

Hello Ms. Gamez,

With respect to the structural changes made to the fixed equipment, Tom Rivard was monitoring the improvements by Grub and their contractor. He felt that they had done a good job with those changes.

With respect to your complaint of cleaning being done 3 consecutive nights causing excessive noise, a complaint was entered , and we will contact Grub about the complaints.

Kenny

From: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>
Subject: Re: F/u Actions on Noise at Grub, 758 Valencia
To: "Alicia Maria Gamez" <amgamez@yahoo.com>
Cc: "Aife (neighbor) Radetsky" <aife@radray.us>, "April (neighbor) Berger" <april@aprilberger.com>, "Charles & Lynn" <Charles@innerlightbooks.com>, "Cindy (neighbor) Icke" <cindyacu@sbcglobal.net>, "Arik (neighbor) Cohen" <Cohen@KW-engineering.com>, "Darryl Cooper" <darrylscooper@gmail.com>, "David (SF Supervisor) Campos" <david.campos@sfgov.org>, "Fred Faloona" <Fredafal@yahoo.com>, "Gal (lex) Cohen" <gcohen1@gmail.com>, "Jackie (lex) McLandrich" <jackiemclandrich@gmail.com>, "karen saha" <karen_saha@yahoo.com>, "Kenny Wong" <Kenny.Wong@sfdph.org>, "Michael (neighbor) Radetsky" <michael@radray.us>, "michelle (neighbor lex) riel" <michelleriel@gmail.com>, "Mike Farrah" <Mike.Farrah@sfgov.org>, "Mary Lou Cooper" <mloucooper@yahoo.com>, "tracy wong" <ms_wong@hotmail.com>, "Priscilla Thorne" <pristhorner@yahoo.com>, "Pronoy Saha" <pronoy2010@gmail.com>, "Pronoy saha" <pronoy_saha@yahoo.com>, "Rachel

(lex) Young" <racheljo@gmail.com>, "sarah (neighbor) wisby" <sarahfran@mac.com>, "Shelly (lex) Leung" <shellyleung9@gmail.com>, "Stephen (lex) McLandrich" <smclandrich@gmail.com>, "Todd David" <Todd.David@sfgov.org>, "Tom Rivard" <Tom.Rivard@sfdph.org>
Date: Tuesday, November 16, 2010, 4:29 PM

Alicia

I discussed the situation with staff today.

The management has informed us that they are taking steps both to limit operational noise and to engineer and build acoustical insulation and modifications for the fixed noise sources.

We will be asking Grub to put into writing specific commitments and timeframes and then monitoring their progress. We will take measurements following installation of new sound control technology.

If we continue to receive evidence that Grub is not honoring the commitments, we will likely call the owner into a public hearing as a next step

Rajiv

Dear Dr. Bhatia,

I am cc'ing in this email Morningstar Vancil and Adam Taylor, the aide to Supervisor Wiener.

In your the email dated November 16, 2010, 4:29 PM (below), you stated that if Grub is not honoring its commitments, you would hold public hearings as a next step. Today, you denied this. I don't know why you would. But nevertheless, here is your email in which you make the pledge. Certainly, a public hearing would be the most effective way of addressing Grub's noise issues, rather than asking me to look into other avenues and rather than blaming the Supervisor for not having resolved the issue some how. By the way, the issue is noise (I don't believe that code enforcement is the Supervisor's job).

Morningstar Vancil is the upstairs neighbor of Grub. She has been trying to work things out with Grub privately for months. She can tell you her own story.

Suffice it to say that Grub has never been in compliance with the requirements of the code. I have provided your office with ample evidence, at your request even raw data of sound readings. The evidence that I have provided you is documented with data, recordings and reports. In contrast to Mr. Rivard, who does not have data or reports to support his findings. He states so in this email thread.

Morningstar,

Please know that Dr. Bhatia, Mr. Rivard, and Mr. Wong are the individuals in the city who are responsible for enforcing the noise ordinance. They can be reached at the following addresses and numbers.

Rajiv Bhatia <Rajiv.Bhatia@sfdph.org> 252-3982

Kenny Wong <Kenny.Wong@sfdph.org> 252-3822

Tom Rivard <Tom.Rivard@sfdph.org>; 252-3933

Alicia

From: Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>

To: Alicia Maria Gamez <amgamez@yahoo.com>

Cc: adam.taylor@sfgov.org; Derek Watry <dwatry@wiai.com>; Jimmy Pon <eggrollstick@yahoo.com>; Kenny Wong <Kenny.Wong@sfdph.org>; morningstar_v@yahoo.com; Priscilla Thorner <pristhorne@yahoo.com>; Richard Lee <Richard.Lee@sfdph.org>; Tom Rivard <Tom.Rivard@sfdph.org>

Sent: Mon, March 28, 2011 3:05:26 PM

Subject: Re: Fw: F/u Actions on Noise at Grub, 758 Valencia

Ms Gamez:

I regret that you believe that the Department is not fulfilling its noise control responsibilities under the police code. I believe we are taking the appropriate steps to enforce city policy. As I stated over the phone, I believe this issue would best be addressed by having a neutral party bring all stakeholders together. Both Police and Health should be represented as enforcement agencies for mechanical and behavior noise sources respectively.

Rajiv

Alicia Maria Gamez <amgamez@yahoo.com>

03/28/2011 03:35 PM

Dr. Bhatia,

It issue is not what I believe. I have demonstrated your department's failure to enforce. I have done so with scientific reports, supported by data, and professional analysis.

Regarding third-party intervention: As you know, Grub has on repeated occasion shouted abuse and slandered the people who simply want them to comply with the noise ordinance.

Now, Grub is actively threatening people who are finally considering complaint to the city. It is clear that the enforcement agency simply doing its job would alleviate the problems for all of Grub's neighbors. Simple enforcement would be super-efficient of all of our resources.

You had previously stated that a "public hearing" would be the next step. This step honors your department's role in government and respects the valuable time of all stakeholders. Further, it provides for an appropriate public record of the matter. This is important where Grub is threatening people with baseless litigation. Grub is exercising intimidation. Your failure to follow through on your claimed next steps simply bolsters them.

I don't see why you kick the can to non-enforcement third-parties. Enforcement is your job; it is your *raison d'être*. And you have the ability to fix the problem.

You are mistaken if you think this is about anything other than noise for the neighbors. Fix the noise problem and this trouble will go away.

Alicia

Gillian Gillett/BOS/SFGOV

04/01/2011 11:36 AM

Tom,

Thank you for this update. I am copying this reply to my counterpart, Adam Taylor, who has also received e-mails from Ms. Gamez.

Thank you for your e-mail to Morningstar Vancil. Please keep us in the information loop.

cheers,

Gillian Gillett
Legislative Aide
Office of Supervisor Scott Wiener
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Pl.
City Hall, Room 244
San Francisco, CA 94102
Telephone: (415) 554-6986
Fax: (415) 554-5227
E-mail: gillian.gillett@sfgov.org

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From: Tom Rivard/DPH/SFGOV
To: Gillian Gillett/BOS/SFGOV@SFGOV
Date: 03/31/2011 09:50 AM
Subject: Grub 758 Valencia

Hi Gillian

Received your telephone call about noise issues at Grub. Needless to say it is challenging to make everyone happy with new restaurant installations, however, significant acoustical improvements were made by the owners of Grub. These improvement included relocating the air intake to rooftop,

relocating the refrigeration compressor to the roof, and improving the efficiency of the exhaust fan. If you would like to discuss this case please give me a call. Ms. Gamez alerted DPH to the fact that there may be another tenant, Morningstar Vancil, who is impacted by noise. I have reached out to her by email and have bcc'ed you on the communication.

Tom Rivard, MS, REHS
Manager, Health Hazard Assessment Group
Department of Public Health
Asst. Clinical Professor, UCSF
1390 Market St., Suite 210
San Francisco, CA., 94102
415-252-3933

-----Original Message-----

From: Tom Rivard <Tom.Rivard@sfdph.org>
To: kodiakg <kodiakg@aol.com>
Sent: Tue, Apr 5, 2011 11:46 am
Subject: Grub- progress and issues

George,

The self closing quiet doors on the walkin and rear door are a good acoustical improvement. Here are few things that will improve noise levels for you neighbors.

Rattle inside vertical duct needs to be repaired

Vibration isolators on exhaust fan need to be elevated to suspend unit and decrease vibration transmission

All bolts and screws should be tightened

Wedges and insulation should be used to secure and stop any rattling with fan

No smoking is permitted in backyard

Please repair as soon as possible. Call or email me when work is complete, but not later than April 12, 2011. I will take follow up measurements

Tom Rivard, MS, REHS
Manager, Health Hazard Assessment Group
Department of Public Health
Asst. Clinical Professor, UCSF
1390 Market St., Suite 210
San Francisco, CA., 94102
415-252-3933

kodiakg@aol.com
04/13/2011 01:15 PM

Hello Mr Rivard, (City Inspector)
and Cpt. Greg Corrales (SF Police Mission Station)

If you dont mind Mr.Rivard I am copying this to Cpt. Greg Corrales of the Mission Street Police Station. I feel he has to start hearing about our situation and understaning our concerns too. We didn't want to bother them with minor issues, but Miss Gamez leaves us no other options.

An update on progress. We understand everything is to best of our ability and that only so much can be done. Per our last meeting, you suggested we try to fine tune the slight vibration that was coming out of the hood ventilation. On Sunday 04/10/11, Afif (our contractor) and myself adjusted the springs on the hood motor. We raised them so there is no contact with the frames at all. We noticed the difference right away. We also noticed a little noise from the motor and fan. It turned out it was maybe 1/8 " off, so the drive shaft connecting to the fan was not aligned. We took care of this too. We even went above all that and lowered the speed of the fan, it helped even more, but in the evening when the ovens were working it smoked up in the restaurant. We had to raise it a bit. On Monday the compressor for the cooler was adjusted also in the same manner. We cut the boards down so the frame is on a smaller flat area so it minimized the contact on the surface area of the compressor to the roof. We feel we have done far above and beyond the nature of this matter. Not to mention the cost of almost \$15,000.00 for nothing and for work that was not needed. It was done to keep our neighbors happy and comfortable. We acknowledge their problems and fixed to the best of our ability. We don't know why Alicia Gamez has an issue with us, the complaints she had are all cleared and approved. Is her persistence due to personal reasons or some sort of discriminatory hatred towards us because of our origin or cultural background. This should not mean the entire city has to jump when she speaks. She is costing the CITY, the Police, the Neighborhood and ourselves here at Grub a considerable amount of losses, in my opinion she is the noise nuisance not us. She has complained about almost all the projects in our area that are helping the community. We have passed form day one and she keeps influencing and harassing people to put pressure on your dept. We would like for you to come see the change and see if any other recommendations are needed. We need this cleared and we would like for your department to help us out. We ask that once cleared, your dept will ignore the persistent harassment by Miss Alicia Gamez and the tenant above us Miss. Morningstar who is ibeing influence and manipulated by Miss Gamez for issues that have been approved by your dept.

Thank You
George Nasrah

----- Forwarded Message -----

From: Alicia Maria Gamez <amgamez@yahoo.com>
To: steven Keith <steven.keith@sfgov.org>
Sent: Wed, April 13, 2011 6:37:14 PM
Subject: Fw: 758 Valencia

Officer Keith,

Here is another chain that begins with a report by Inspector Mohanned Malhi. The method that the inspector uses does not follow any aspect of the Noise Ordinance. I explain the ways that it does not conform to the code in two emails below.

The two emails by me, the one on Sat October 16, 2010 4:48:24 AM and on October 12 2010 9:00:18 PM, sort out the what the noise ordinance says. In my original email on October 12 2010 9:00:18 PM, I didn't yet understand the residential noise standard, so my email on Sat October 16, 2010 4:48:24 AM is not fully informed by the law. Read together, I think, these two emails together do explain the noise ordinance.

Alicia

Alicia Maria Gamez
<amgamez@yahoo.com>

04/15/2011 11:54 AM

To
cc
Subject
Fw: 758 Valencia

Dear Mr. Sass,

Thank you for taking the time to speak with me last night.

Here I am forwarding a few emails that I sent to Officer Keith at the SFPD. I believe these emails represent the complaints regarding Grub and the complaint history.

Also, I have attached to this email sound reports that I have had done by a private sound consultant.

Alicia
Alicia Gamez

Gregg Sass/DPH/SFGOV

04/15/2011 12:55 PM

To
cc
Subject
Fw: 758 Valencia

This person approached me at the Town Hall meeting at Mission High last night. She says she has not had a response from EH that is in accord with the underlying ordinances etc. Can you let me know what is up here? If there is a significant noise issue for residents, is there a mitigation that can be enforced?

I am forwarding you the other 3 emails she also sent me today.

Gregg L. Sass
CFO, Department of Public Health
101 Grove Street, Room 308
San Francisco, CA 94102
Office: 415.554.2610
Fax: 415.554.2811

Rajiv Bhatia/DPH/SFGOV

04/17/2011 03:02 PM

gregg

Staff have invested significant time in the case and gained both substantive action from the property owner; i have followed the actions in the case myself; however the the particular complainant is unmoved. One of the issues at the heart of this is that complainant differs in her interpretation of the standards noise law than we do.

I don't know how much detail you want but there is a long chronology of investigations and improvements; as far as we are concerned today there are no remaining code violations that are enforceable by sfdph.

Note, SFDPH enforces noise from mechanical equipment. SFPD is the enforcement agent for noise generated by human activity but has not been involved.

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Gregg Sass/DPH/SFGOV

04/19/2011 03:39 PM

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Alicia Maria Gamez <amgamez@yahoo.com>

Re: Fw: Noise at Grub, 758 Valencia

I reviewed the emails you sent me with Mr Bhatia and also reviewed correspondence with the owners of Grub detailing several modifications they made to reduce mechanical noise levels. As you commented at the town hall meeting, this is not my area of expertise. I agree that is so. So with respect to the interpretation of the noise ordinance, I need to defer to Environmental Health.

They make it clear that they are responsible for mechanical noise and the SFPD is responsible for human noise. As for the mechanical noise, Environmental Health staff and leadership feel there are no remaining code violations that are enforceable.

I too live in SF and am only a short distance from bars on Chestnut Street. The twentysomethings leaving late at night are oblivious to the fact that they are in a residential neighborhood. One of our backyard neighbors has a ping pong table in their back yard, opposite ours, and get pretty loud on the weekends late into the night. Living in the city, we also get the fire engines and ambulances at all hours. We recently installed double insulated windows and insulated shades in front and back which had a major effect in reducing noise from late night customers, summer backyard parties and barking dogs in back yards and reduced our heating bill.

We share a pair of flats with another owner who gets upset when the sprinklers in our back yard go on in the morning for 8 minutes. She says the noise from the pipes wakes her up. I don't even hear them.

When we stay with friends in Sebastopol it's so quiet it actually keeps me awake. I guess I've adjusted to a certain amount of noise as being in the natural order of things and a fact of life in an urban environment.

Hopefully you can succeed in getting the noise to a level that is OK for you. But if you cannot, it is also unhealthy to be stressed and frustrated about it. Life is too short. Most likely, the restaurant will change ownership eventually. Its a tough business. You can probably outlast them.

I hope this is helpful in some way, but suspect it probably isn't.

Gregg L. Sass
CFO, Department of Public Health
101 Grove Street, Room 308
San Francisco, CA 94102
Office: 415.554.2610
Fax: 415.554.2811

Alicia Maria Gamez <amgamez@yahoo.com>
04/19/2011 07:14 PM

Dr. Bhatia,

Could you please let me know what your interpretation of the noise ordinance is? I have explained my understanding, which I arrived at by simply reading the noise ordinance. You have told me that you have a different interpretation. I would very much like to understand your interpretation and its basis.

To recap, here is my understanding of the code and of the Department's interpretation:

My understanding is quite simple. The noise ordinance provides a standard for residential property that allows 5 dBA above ambient (section 2909(a)(1)) and for commercial 8 dBA above ambient (Section 2909(b)). The noise ordinance provides that residential property means "any property that has at least one dwelling unit and has been approved for human habitation by the City and County of San Francisco." Section 2909(m). So, as applied to Grub, which is in the same property as Morningstar and Jacqueline's apartment, Grub is in a residential property. To get the noise level, Section 2901(g) says that you take the maximum continuous sound level. To get the Ambient sound level, Section 2901(a) says that you take the lowest repeating noise level with the noise source silent. If there are any, "by one or more individual identifiable sources of noise" that are affecting the ambient, Section 2901(a) says "determination of the ambient shall be accomplished with these separate identifiable noise sources silent or otherwise removed or subtracted from the measured ambient sound level".

In short, the code says, factor out noise sources from the ambient. Take the lowest noise level, and the highest noise level, and if there are over 5 dBA difference and it's a residential property, the noise source is in violation of the ordinance.

Here is what I understand of the Department's understanding:

Department applies the commercial noise standard to Grub based on the "use" defined by the planning department. Dr. Bhatia has so stated in a prior email (attached, Oct 19, 2010). Mr. Rivard so stated in his email of Oct. 15, 2010, "As you know Article 29 permits 8 dBA over the ambient in mixed use conditions." Could Mr. Rivard and Dr. Bhatia, please provide the origin or basis for finding a "mixed use" standard? The ordinance does not mention any mixed use standard. Recall, residential means "any property that has at least one dwelling unit and has been approved for human habitation by the City and County of San Francisco." Section 2909(m). Grub is in a property that has multiple dwelling units and a restaurant. Per the ordinance, Grub is in residential property. A plain reading of the code indicates that it should be subject to the 5 dBA standard. But I would love to hear your and the department's basis for finding a "mixed use" category that gets the higher standard. Please do explain.

The department does not factor out other noise sources in determining ambient. For example, Mr. Rivard's report on October 15, 2010 (which I include immediately below, in the attached PDF of Mr. Rivard's email, and Mr Rivard's Noise Survey Form), does not factor out ambient as is required by the definition of ambient in the code. Recall, section 2901(a) provides that if "a significant portion of the ambient is produced by one or more individual identifiable sources of noise that contribute cumulatively to the sound level... determination of the ambient shall be accomplished with these separate identifiable noise sources silent or otherwise removed or subtracted from the measured ambient sound level". Please explain your interpretation that allows the ambient to include other separate identifiable noise sources.

The department averages of the ambient and the noise levels before determining the difference in dBA. This methodology is reflected in Mr. Mahli's report, attached as a PDF to this email. (Mr. Mahli here also applies the the commercial standard of 8 dBA to Grub.) Section 2901(a) provides that ambient means the lowest sound level repeating itself during a minimum ten-minute period. Section 2901(g) provides that noise level means the maximum continuous sound level or repetitive peak sound level, produced by a source or group of sources. The noise ordinance specifies that the ambient is the lowest sound and the noise level is the maximum sound--not an average. But, I would love to understand where or how the department finds a basis for this methodology.

In going over these prior emails, I noted that the Grub signed an agreement to take certain actions and to do so with proper permits. This Agreement is included below and in the attached PDF of Mr. Rivard's email.

Mr Rivard required that Grub take further measures: "Since Grub intends to operate into the early morning we are confronted with the possibility that the ambient noise level will decrease somewhat. For this reason I required Grub to agree to further mitigate noise impacts by constructing an additional sound barrier on the rooftop. Below you will find a written agreement that Grub will implement this condition after receiving necessary building permits."

Please note that Grub has not complied with its written agreement with the Department. It has not built the sound barrier. Further, the alterations that they have done were performed without permits--this is reflected by the notice of violation issued today (see attached PDF "758 Valencia Street - Department of Building Inspection 4-19.pdf"). I have attached a PDF of the Department of Building Inspection's notice of violation here. Can you please explain why the department has not enforced this agreement with Grub?

So this is all to ask:

Can you please confirm that my understanding of the Department's interpretation is correct?

If my understanding of the Department's practice is not correct, could you please help me understand the Department's methods for measuring sound?

Once you have explained the method and standards that the Department follows, could you please explain how the Department's practices observe (or enforce) the law?

Finally, Can you please explain why the Department has not enforced the written agreement it received from Grub?

Morningstar has drawn new attention to this problem. I am here just trying to understand what standard it is that the department is applying. I understand that the department states that there is no noise issue here. But the plaster in Morningstar's apartment is being cracked and broken by a machine that makes noise. Further, Grub has not performed on the agreement it made with the Department. I don't understand how the Department is claiming that Grub has complied or that there is no noise problem. The phenomenon is readily observed.

Please note, if you follow a plain reading of the noise ordinance, Grub has never been in compliance. I am forwarding to you again the noise reports that were professionally prepared, in the PDF titled, "Sound Reports - All".

Alicia

Rajiv Bhatia/DPH/SFGOV

04/20/2011 11:26 AM

i feel that we should probably conduct another set of measurements so we can be comfortable with the lack of violation-- i feel comfortable with our interpretation of the law

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Tom Rivard/DPH/SFGOV

04/20/2011 09:29 AM

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Rajiv Bhatia

Fw: F/u Actions on Noise at Grub, 758 Valencia

Rajiv,

Lets give this some thought and try to craft a path to closure. I will be preparing some recommendations for your consideration with Cecilia

Tom Rivard, MS, REHS

Stephen Mungovan/DBI/SFGOV

04/21/2011 01:14 PM

Hi Tom,

I've answered a complaint at this address from the tenant above The Grub Restaurant in #756-A and I'd like to ask where this property might be in your code enforcement process. I understand that you've been out to take sound readings and I've been forwarded some e-mail correspondence from October 2010 between you and the owner of The Grub as well. According to the e-mails the owner of The Grub agreed to install sound dampening barriers on the roof as a condition of their receiving permission to operate. As of 4/15/11, the date of my investigation, no sound or vibration dampeners had been installed. Permit research seems to indicate that no permits have been taken out for the installation of the equipment now on the roof. Because of this I've made a referral to the Building Inspection Division in Notice of Violation #201121181 to investigate for possible work without permit. In addition, I've written NOV #201117761 because the ceiling and wall plaster in the room below this equipment is badly damaged. I assume that you've seen the referral I made back to your Dept. for the sound issues.

Any information that you can provide would be greatly appreciated.

Thanks,

Steve Mungovan

Housing Inspector
San Francisco Department of Building Inspection
415 558-6496
stephen.mungovan@sfgov.org

Rajiv Bhatia/DPH/SFGOV
04/21/2011 02:47 PM

Dear Ms. Gamez:

On the evening of Wednesday, April 20, 2010, DPH inspected the exhaust and supply ventilation systems at Grub. The equipment was judged by staff to be functioning normally and, subjectively, generated noise that was just audible when turned on. We measured the noise levels associated with the systems at Grub to be 51--52 dBA at the property plane associated with your dwelling. The many improvements made by Grub appear to have cumulatively resulted in the lower measured levels. Even relative to the *minimum* ambient level, which is fixed by the ordinance at 45 dBA, the mechanical ventilation system would comply with the Article 29 of the Police Code at any time of the day. DPH considers the restaurant use to be subject to the commercial standard in Section 2909(b).

As a precautionary measure, we intend to measure the noise level again in 3-6 months to assess whether the situation changes.

I hope this will bring closure to this matter. I am copying other city agency which may conduct related inspections of the property so they may be aware of our most recent findings.

Rajiv

Rajiv Bhatia, MD, MPH.
Director, Occupational & Environmental Health,
San Francisco Department of Public Health

Alicia Maria Gamez <amgamez@yahoo.com>
04/21/2011 04:03 PM

Dear Dr. Bhatia,

Thank you for your note.

Your note does not respond to my requests and questions. I pose them here again for you:

1. Please explain the methodology by which DPH enforces noise ordinance; this includes how DPH arrives at the "ambient" and "noise" levels, and what the noise standards are;
2. Please explain how DPH's methodology relates to the noise ordinance; and
2. Why hasn't DPH enforced the agreement that Mr. Rivard required of Grub to get its permit.

The method by which you derive the ambient and noise levels will determine whether the difference is within limits provided by the noise ordinance. You asset data, which cannot be relied upon because you do not provide the method by which the data were derived. The information you provide does not account for whether other identifiable sounds were contributing to the ambient. Because we were not informed of your visit and were not present, we could not verify which or any of the machines that actually contribute to the noise level were running. While, I understand that you have provided numbers, I don't

know what they represent. So, again, please explain your methods, measurements, inclusions and exclusions.

Thank you for confirming that you do apply a "commercial" standard of 8 dBA to the property, despite there being residential units in the building and despite the definition of residential property in the noise ordinance. The noise ordinance says it should be the residential standard of 5 dBA. So my question here is, where or how do you find a legal basis for applying a commercial standard of 8 dBA to a property that is residential as defined in the noise ordinance? Please explain.

I don't know why you might think that your statement will bring closure to the matter. You haven't addressed the problem. It is clear that the equipment at Grub continues to disrupt the lives of the people who live under and near it--to the extent now that it is cracking the plaster of the unit below. Do you believe that such a machine functions silently? Whatever work Grub has performed was without permit, not to code, and has not performed the work that Mr. Rivard required them to perform to abate the noise. Mr. Rivard required the agreement, as he states, precisely because Grub operates until and during the early morning. I have attached the agreement again here so that you may review it.

I wish you had informed me that your department would be taking new measurements. We could have had an independent consultant on hand to take measurements that would corroborate, or not, the measurements of your staff. The fact that we were not informed and were not allowed to be present undermines the credibility of the results. Again, the measurements that the consultant takes are taken with a device that logs the data, with a time and date stamp, and makes a sound recording of the phenomena. Data measured and documented in this manner is far more reliable than data that is merely asserted. Finally, independent consultants must rely on the methods described by the noise ordinance to interpret data, since they cannot make up the law.

So, I will pose my requests again. Please:

1. explain your methods for arriving at the ambient level and how you treat separate identifiable sources of noise,
2. explain your methods for arriving at the noise level and how you ensure that the noise tested is the noise causing the problems,
3. explain how the methods applied conform to the code,
4. explain your basis for applying the commercial standard to a property that the noise ordinance defines as residential,
5. explain why the department has not enforced the agreement it required for Grub to open.

I will very much appreciate your response to these questions posed here and previously. Please be aware that with just a little cooperation from your office, I am sure that all relevant parties can be present when measurements are taken.

I have just spoken with Morningstar. She reports that she and her roommate are sick with exhaustion. They have not been able to sleep. Remember, the machines are directly over their residence. Morningstar states that no one notified her of DPH's visit. She asks how did you reach the roof? She states that Grub has no right to enter private areas to reach the roof without an emergency. She is supposed to be given at least 24 hour notice and to be asked permission. So she would like to know how your staff reached the roof. She states that even her landlord asks permission and gives 24 hours notice in non-emergency circumstances. Please explain.

Alicia Gamez

From: morningstar vancil <morningstar_v@yahoo.com>

To:

Sent: Thu, April 21, 2011 5:46:17 PM

Subject: Re: Noise status at Grub, 758 Valencia

To whom it may concern:

I have lost my faith and respect for owners of Grub and inspectors of Public Health.

I did some research on my own. Tom Rivard came to my apt late from his visit from George, one of the owners of Grub. I saw Tom Rivard spend some time at Grub. He arrived at my apartment late for our appointment. He arrived at my apt via the backdoor, as though we are neighbors. He then took noise measurements. His equipment registered about 45, and then it went to 93 right in front of us (my roommate, Jacqueline Lomeli, and dinner guest, Alvin). Seeing this, Tom said that his meter is broken. He tried to adjust it right there. After he adjusted it, it went down to 43. But the only things running at the time was a fan, without the compressors or the other fans. We feel his behavior was wrong and we do not trust his measurements.

It been six months now that we had not slept that well. We tried to work with Grub and tried to be good neighbors. Grub keep making promises to fix it until one day my roommate, Jaqueline Lomeli, went to the rooftop and took pictures. The roof was a mess and filthy. nothing was done to rectify the situation. I have lived here for 20 yrs and i never had this kind of problem. I have to get bldg inspector to come here. And he did research that there is no permit to put up the compressor on the rooftop. I have asked my landlord if they ever ask him permission to put at rooftop. He said no.

I am a disabled, cancer survivor and just got out of hospital due chest pain in December. I cannot afford to get sick again. Tom and owners of Grub keep accusing me of being in cohorts with alecia Gamez. I approach her because 2 times George had intimidated me that when this is clear that his lawyer will send me a paper for harassment. That is when i approached alecia Gamez for help. Since i am being intimated by George, when i let them into my apt one evening to show the cracks, instead trying to help me, he spent a lot of time arguing with me that I am being brainwashed by alecia. He also argued that the neighbor next door let them on the rooftop. I asked the neighbor if she let them in, she said no that Sam just walk in through my 756 residence like they lived here.

I am the roommate of Morning Star and i can say that all this is true and more!! Since the second week of feb. We have been nothing but tortured by this establishment and its rude workers and esp. the owners!! We have been nothing but patient with them and their empty promises!! The owners have been to our apartment numerous times at odd hours of the night to identify these sounds. one time they showed up at 2am to listen! I work in a busy clinic and i NEED MY SLEEP!! We only let them in because they promised to fix the problem! Now since we have complained about this for 3.5 months we are being retaliated against by the owners and esp. the workers! This all happens between the hours of 11pm and 130am, and sometimes until 230am, this is FREAKING RIDICULOUS!!!! We have called the police more than 12times about this! We are besides ourselves...please dear god help us!!! We also had a man come out to do a noise test in our house, Tom Rivard and he said he knows what Grub needs to do but it's gonna cost a lot of money..his words exactly! he also said that they were gonna try some other ways first. I said just fix the problem and stop playing around! Then he came into my bedroom - at the first with all the sound off it read 45db then when he turned it on it read 93db!!!! Then he tried to hide it from me and morning star and my friend Alvin Comacho and say it was broken--I told him to do us all a favor and come back with one that works and that i wanted that reading and all that went on in writing and he told me NO!!!! WTH!!!!

Tom Rivard said he will come back after hours and do another test. But he said we were not to tell our landlord, alicia gamez or anyone. He said we were supposed to keep it a secret! What kinda guy is this to be working for the city of san fran!!! I felt threatened but all the while he is talking to George, one of the supposed owners, who threatened my roommate, once right in front of me and once while I was gone!! We do not trust these people and our patience are getting thin...tell me how long could you try to function with no sleep. Also that thing on the roof is damaging our apartment -there are cracks on my ceiling and our living room! What's up with that! Someone DEAR GOD HELP US!!! IF YOU PEOPLE HAVE ANY HEART_PLEASE INVESTIGATE THIS AND BRING US SOME KIND OF JUSTICE SO WE CAN LIVE!!!! WE HAVE BEEN HERE 20years PLUS AND NEVER EVER HAD THIS PROBLEM!!!! THIS NEEDS TO STOP!!!!

thank you

Jacqueline S. Lomeli
morningstar vancil <morningstar_v@yahoo.com>

--- On Thu, 3/31/11, Tom Rivard <Tom.Rivard@sfdph.org> wrote:

From: Tom Rivard <Tom.Rivard@sfdph.org>
Subject: noise at Grub, 758 Valencia
To: morningstar_v@yahoo.com
Date: Thursday, March 31, 2011, 9:35 AM

Dear Morningstar,

If you are having any specific problems with machinery or equipment noise at Grub, 758 Valencia, please feel free to let me know by email or telephone. If there are other noise issues you would like to discuss please give me a call

Tom Rivard, MS, REHS
Manager, Health Hazard Assessment Group
Department of Public Health
Asst. Clinical Professor, UCSF
1390 Market St., Suite 210
San Francisco, CA., 94102
415-252-3933

morningstar vancil
<morningstar_v@yahoo.com>

04/22/2011 09:36 PM

T
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Tom Rivard <Tom.Rivard@sfdph.org>,
rajiv.bhatia@sfdph.org

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reginadick-endrizzi@sfgov.org,
steven.keith@sfgov.org, vivian.day@sfgov.org,
stephen.mungovan@sfgov.org,
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gillianE.gillette@sfgov.org, gregg.sass@sfdph.org,
kenny.wong@sfdph.org, pristhorne@yahoo.com,
richard.lee@sfdph.org, scott.weiner@sfgov.org,
steve.keith@sfgov.org, amgamez@yahoo.com

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Re: noise at Grub, 758 Valencia

Sir,i thought your supervisor, Dr.Johnson Ojo,had told you that i do not want to work with you.I dont trust you! that you have display in manner of "playing favorites".You have called me 4 time by phone and e-mail me few times.You are not respecting my boundaries..After you told me and my roommate,Jacqueline Lomeli,Not to talk to anybody.I dont understand why a city employee will tell us not to talk to anybody?There is something wrong with pictures.We heard you talking to George outside my apartment.Like your his best friend.

.If you have a problem with somebody.I do not appreciate to hear or know about it.I have NO knowledge what went on.but is not my business.You supposed to conduct yourself professional at all times.I am concern,sir that you are not working of best intention or being fair.What concern me that in the past we tried to get your attention like that why nobody notify us? about the situatin on rooftop.and to make a "false statement" that people who lived below are not complaining.when U,sir and other inspector ignore and dont acknowledge us as tenant..We are being left out with decisions.As you can tell in the past,that i did tried to work with everybody. I feel that you are playing favorites to owner of grub.

Just because,i am disabled,and poor.how can i trust someone like you.After your supervisor asked you that i dont want to work with you.Then you need to respect that especially when Dr Ojo had told you that i need to work with someone else.I feel that need a private and neutral professional to do a test on the sound.Since we are being not recognized that we do NOT count on this situation.We got a lot of complains from other neighbors.Matter of fact,one of the neighbor just moved out due to noise.I hope this be taking care of ASAP.It been 6months now,I need my sleep.

g
Morningstar

"George Nasrah"
<kodiakg@aol.com>

04/28/2011 10:57 AM

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tom.rivard@sfdph.org

Signs

Mr Rivard here is one sign they have posted. There are 3 posted on widows and doors and hall ways. Notice time restrictions. This sounds like the helping work of Alicia Gamez. We text Morningstar for permission to go on roof she refused us access

Thanks for your time
George Nasrah
Grub



Sent from my Motorola ATRIX™ 4G on AT&T 2011-04-25_18-12-43_556.jpg

kodiakg@aol.com

04/28/2011 11:56 AM

Mr. Tom Rivard,

I am attaching copy of Permit for the placement of the compressor and vents on the roof. There seems to be an issue

with everyone that there is no permit. Miss Morningstar and Alicia Gamez keep pushing that work is being done with out Permits,

here is the proof again, that they are fabricating allegations to keep this issue open. Please see too it that we can close this ASAP. How many times

and how much money do we have to keep pumping out to keep showing that we are in compliance with all work and business

obligations to run our restaurant with out any more **HARASSMENTS** from these two and **ONLY TWO** complainants. Just a reminder that

Miss Morningstar never complained from day one, all this, we suspect, is being instigated by Alicia Gamez, the neighbor

behind us. After she could no longer attack us with her personal problems with us being there. Now that everything is clear Mrs Gamez is using our

neighbor upstairs to keep harassing us. As a NOTE Mrs Gamez', when I first met her on the first occasion of the complaints stated in front of the police officer, who was present with me, that " I am an attorney, this won't cost me anything , it will cost you guys lots of money". That showed us her intentions from day one to limit and restrict us to running business the way she wants it. I am hoping that she does not limit your department to her standards too. We are still committed to any and all requirements your department asks of us and we ask that her constant harassment of your department does hold us to higher protocol or standards.

Please forward to your heads so they understand this issue as well.

Thank you
George Nasrah
Grub

-----Original Message-----

From: Markus Pesce <Markus@baysideinc.com>
To: kodiakg <kodiakg@aol.com>
Sent: Thu, Apr 28, 2011 10:50 am
Subject: Permit

George,

Please find the requested permit in the attachment above.

If you have any questions or concerns, feel free to contact me.

Thank you,

Markus Pesce
Service Department
Bayside Mechanical, Inc.
333 N. Amphlett Blvd
San Mateo, CA 94401
650-578-9080 Office
650-578-0266 Fax



DOC042811.pdf

kodiakg@aol.com

04/28/2011 12:09 PM

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Tom.Rivard@sfdph.org

Re: Permit

Thank you

-----Original Message-----

From: Tom Rivard <Tom.Rivard@sfdph.org>
To: kodiakg <kodiakg@aol.com>
Cc: ussamafriej <ussamafriej@gmail.com>
Sent: Thu, Apr 28, 2011 12:07 pm
Subject: Re: Fwd: Permit

Dear George,

I have supplied copies of your permits to involved City agencies.

Tom Rivard, MS, REHS
Manager, Health Hazard Assessment Group
Department of Public Health
Asst. Clinical Professor, UCSF
1390 Market St., Suite 210
San Francisco, CA., 94102
415-252-3933

kodiakg@aol.com

04/28/2011 11:56
AM

tom.rivard@sfdph.org

cc

ussamafriej@gmail.com

To

Subject

Fwd: Permit

Steven Keith/SFPD/SFGOV

04/28/2011 03:40 PM

Tom,

I believe the discrepancy lies in when the work occurred (or for that matter is it ongoing). The link below is to DBI's permit/complaint tracking site that lists the permit that George emailed to you as "cancelled."

http://dbiweb.sfgov.org/dbipts/default.aspx?page=PID_PermitDetails&PermitNo=PMW20101203867

The complaint of suspected work without a permit can be found here;

<http://dbiweb.sfgov.org/dbipts/default.aspx?page=AddressComplaint&ComplaintNo=201121181>

DBI Investigator Chris Schoeder determined the work being performed was covered under this permit;

<http://dbiweb.sfgov.org/dbipts/default.aspx?page=PermitDetails>

The case was abated.

I told Morningstar about the apparent misunderstanding of permits.

Officer Steven Keith #2222

Code Enforcement Officer

Mission Police Station

415-558-5400 Main

415-558-5462 Desk

Alicia Maria Gamez <amgamez@yahoo.com>

05/02/2011 05:16 PM

Dear Dr. Bhatia,

We are still waiting for your response to the questions posed again on April 21, 2011, see email below.

Can you please respond as to each part of your department's procedures and how they relate to or depart from the Noise Ordinance? For example, you acknowledge that you disregard the Noise Ordinance's definition of residential property; please explain on what authority you do so.

Please note that we are very interested in your response and eagerly await it.

Best regards,

Rajiv Bhatia/DPH/SFGOV

05/02/2011 05:50 PM

Ms. Gamez:

I feel that the Department has endeavored to provide clear answers to all of your questions. I hope these additional responses below provide the specificity you are requesting.

I understand that you do not like the findings and conclusions of our investigation, yet I feel the Department has been objective and the restaurant has been responsive and made substantial investments in the relocation and redesign of mechanical equipment. We have consulted with the Office of the city attorney and have confirmed that our approach is abiding by the terms of the noise ordinance.

Question 1/2: Staff use the noise measurement methods as specified in the ordinance. The ordinance is clear about these methods.

Question 3: Grub has met the performance standards specified by the ordinance with a viable and acceptable set of methods. The Department is not proscriptive with regards to the methods, only the performance standards.

For your information, we followed up and your allegation regarding the unpermitted work was not confirmed. The department of building inspection verified a valid permit for the work.

Rajiv

Alicia Maria Gamez
<amgamez@yahoo.com>

05/02/2011 08:19 PM

To

Rajiv Bhatia <Rajiv.Bhatia@sfdph.org>

cc

adam.taylor@sfgov.org, Derek Watry
<dwatry@wiai.com>, Jimmy Pon
<eggrollstick@yahoo.com>, Gillian.E.Gillett@sfgov.org,
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<Gillian.Gillett@sfgov.org>, aragon@berkeley.edu

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Re: your three questions Noise status at Grub, 758
Valencia

Dr. Bhatia,

Thank you for your response. Please note that you haven't responded to my questions posed on 4/19 and 4/21. Please review those emails again.

First: "allegations"

The statement that the work was performed with out a permit was not my allegation. It was an observation by the relevant inspector. Please do not confuse these things; further please do not characterize as an "allegation" what is actually an observation.

Here an excerpt of the text of the report from complaint #**201121181**: "Restaurant equipment installed on roof over a residential unit. Equipment has no vibration or sound dampeners at the roof connection. Permit research shows no permits for this work. Plaster walls and ceiling below are badly cracked; addressed in NOV #201117761"

Dr. Bhatia, please notice, the Department of Building Inspection has issued a Notice of Violation ("NOV"); I have trouble squaring your statement that the work performed with permits with the NOV. If you look at the City's on-line permit tracking service shows no completed permits after 10/21/2010. You have observed that that Grub has done significant construction on the roof of the building since 10/21/2010. You say that your staff has found a permit for the work that your Department has supervised since 10/21/10. Please do send me the permit number for that work that your Department has supervised.

Second: "methods"

Again, you have not answered the questions that I so carefully posed and substantiated on 4/19 and 4/21.

If you have consulted with the City Attorney regarding your methods, this means that you have actually described your methods to someone. I have requested, but not received, this very description. I have only been able to infer the department's methods from the staff reports that you have seen and that I forwarded to you again on 4/19 and 4/21. Again, your department's methods should be public and readily available; your staffs' reports should match those methods.

The issue here is NOT that I do not "like" the result. Until my independent sound consultant uses the same methods that your department uses, my independent testing will show Grub to be in violation of the noise ordinance. Until we understand your department's methods, we cannot replicate them.

Dr. Bhatia, you are a Medical Doctor. You know that protocols must be clear if unrelated labs and practitioners are to arrive at consistent outcomes. I hope that you will help us all arrive at consistent outcomes by providing your department's protocols. Until your department provides the protocols, we have no choice but to rely on the text of the Noise Ordinance; so relying, the outcome is that Grub is in violation of the Noise Ordinance.

So, I will again go through the issues:

You state: "Staff use the noise measurement methods as specified in the ordinance. The ordinance is clear about these methods."

I agree that the ordinance is clear. What isn't clear is how your department's practices (as described in your staffs' reports) conform to them. This is precisely the point on which I have repeatedly requested clarification. I have quoted to you the Noise Ordinance's very clear text for the residential standard, methods, ambient, noise level, etc. I have asked you to review your staffs' reports and to explain how these reports conform to the Ordinance. I have specifically asked you about very specific variations from the code in specific staff reports.

I will restate a few of the variations and resulting questions again here. Note, that I cite the Noise Ordinance as authority for my reading. It would be very helpful if you would provide such authority for yours.

1. You have specifically confirmed that the Department applies an 8 dBA "mixed use" standard. The residential standard in the Noise Ordinance allows 5 dBA above ambient. The definition of residential property includes residential units that are in commercial buildings. (See the definition of "Dwelling Unit" in Section 2901(c) and "Residential Property" in Section 2901(m)). I cannot find a reference in the Ordinance for a "mixed use" standard that is 8 dBA. While you acknowledge that you apply this "mixed-use" standard, you have not explained what you base this on, where the Noise Ordinance authorizes it, or what other authority does allow it. Please provide such authority, ideally a citation to a code section in the Noise Ordinance.

2. You have not explained your method for arriving at an "ambient" or "noise" level. In his reports, Mr. Rivard specifically observes that other identifiable sources of noise contribute to both the ambient and noise levels. The Noise Ordinance specifically provides that

identifiable sources of noise are to be either silenced or the ambient level reduced to factor out those contributing factors. See Section 2901(a), last sentence. Please provide your authority for not factoring out the contributing sources or to test with them silent. A simple citation to Code will suffice.

3. You have not explained how the code supports taking an average of the ambient or and the noise level to establish the difference of the 5 dBA for residential or 8 dBA for Commercial. The Noise Ordinance is clear that the noise level is the maximum sound measured (Section 2901(g)), the ambient level is the lowest sound over a 10 minute measurement period (Section 2901(a)), and the allowable sound standard is the difference (5 dBA for residential (Section 2909(a)) and 8 dBA for commercial (Section 2909(b))). Recall, Mr. Mahli took an average of 20 points to derive the ambient and the noise levels. Averaging 20 points is a materially different result than taking the lowest and the maximum.

The Noise Ordinance provides for averaging only when making a measurement of "the inside noise level measurements" in Section 2902. When measuring outside noise and ambient levels, the Ordinance states "lowest" and "maximum", not averages. Can you please help me understand how your department's practice for averaging outside ambient and noise levels conforms to the Noise Ordinance? Or, where this averaging finds a basis? A simple citation to Code will suffice.

Finally, allow me to remind you Mr. Bhatia, that Mr. Rivard has specifically and clearly told me that he does not apply the Noise Ordinance. I will refresh your memory, Mr. Rivard said : "I wrote the ordinance. The noise ordinance is what I say it is. If its words say something different, it is still what I think it is because I wrote it." Thus far, this is the only explanation and authority that supports your department's practices.

I will look forward to receiving a description of your protocols, an explanation of how they conform to the Ordinance, or authority for not conforming to the Ordinance. I truly hope that you will respond substantively with an explanation that is better than, "the Noise Ordinance is what we say it is, because we say so."

Alicia
57 Lapidge Street
415-225-8738 cell

Rajiv Bhatia/DPH/SFGOV
05/04/2011 08:36 AM

Alicia:

Your comments are noted. I will have no further responses.

Rajiv

Rajiv Bhatia/DPH/SFGOV
05/04/2011 10:30 AM

Johnson -- record requests go through eileen our PIO

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Johnson Ojo/DPH/SFGOV

05/04/2011 10:28 AM

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Rajiv Bhatia/DPH/SFGOV@SFGOV

Richard H Lee/SFSD/SFGOV@SFGOV, Tom
Rivard/DPH/SFGOV@SFGOV

Re: your three questions Noise status at Grub, 758
Valencia

Thanks for sharing your response to Alicia.

FYI

She called me this morning and I listened to what she had to say. I have asked her to direct her questions to Tom Rivard as Tom is the resident expert on noise and that you are the Medical Director and the over all boss that oversees Env . Health. I am sure you both have her number. She wants copies of our records and I have asked to make a formal request.

Johnson OJo

Rajiv Bhatia/DPH/SFGOV

05/04/2011 07:15 PM

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Tom Rivard/DPH/SFGOV@SFGOV, Cecilia
Mangoba/CTYATT@CTYATT

Fw: your three questions Noise status at Grub,
758 Valencia

we need to talk sir.I need your help because i have not slept for a while.I prefer to be resolved for this situation.You can asked Tom Revard,i did get along along with everybody.I had a stroke at my apt due to stress and due not able to sleep.could you please me.I am going to Human rights comission because all i needed is to be able to rest.My landlord gets along with me.I have been here for 20 yrs.I rather this being resolved for me to take care of myself.I have been cancer treatment while living here at 756 valencia st.I am very active at american Cancer society.As legislative ambassador.to Washington D.C i ahve been harrassed by people downstair,the grub.I promised i will do anything to take care of business.all i am asking is for peace of mind,A lot of rest.I might be going to Open Heart surgery.I am always passingout at clinic.please help me out here.

May you walk in beauty,

Morningstar

Gillian Gillett/BOS/SFGOV

05/05/2011 12:43 PM

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Tom Rivard/DPH/SFGOV@SFGOV, Joaquin
Torres/MAYOR/SFGOV@SFGOV

Adding to the communication loop

Dear Tom,

Ms. Gamez has been in touch with the Mayor's Office Of Neighborhood Services - specifically the Director of same, Joaquin Torres.
Please copy your process e-mails to Mr. Torres as well.

Thank you.

Gillian Gillett
Legislative Aide
Office of Supervisor Scott Wiener
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Pl.
City Hall, Room 244
San Francisco, CA 94102
Telephone: (415) 554-6986
Fax: (415) 554-6909
E-mail: gillian.gillett@sfgov.org

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Joaquin Torres/MAYOR/SFGOV

05/05/2011 12:50 PM

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Gillian Gillett/BOS/SFGOV@SFGOV

Tom Rivard/DPH/SFGOV@SFGOV

Re: Adding to the communication loop

Thank you, Gillian.

Looking forward to connecting, Tom.

Best regards,
Joaquin

Joaquin Torres
Director - Mayor's Office of Neighborhood Services
Office of Mayor Edwin M. Lee
1 Dr. Carlton B. Goodlett Place, Room 160
San Francisco, CA 94102
415-554-5975 - Direct
Joaquin.Torres@sfgov.org

From: Gillian Gillett/BOS/SFGOV
To: Tom Rivard/DPH/SFGOV@SFGOV, Joaquin Torres/MAYOR/SFGOV@SFGOV
Date: 05/05/2011 12:43 PM
Subject: Adding to the communication loop

Dear Tom,

Ms. Gamez has been in touch with the Mayor's Office Of Neighborhood Services - specifically the Director of same, Joaquin Torres.
Please copy your process e-mails to Mr. Torres as well.

Thank you.

Gillian Gillett
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From: "Alicia Maria Gamez" <amgamez@yahoo.com>
Date: May 6, 2011 6:46:17 PM PDT
To: "joaquin torres" <joaquin.torres@sfgov.org>
Subject: Request for Info re Implementation of the Noise Ordinance

Joaquin,

As we have discussed, I have requested a statement of policy and or procedures -- other than the Noise Ordinance itself -- that the Department of Public Health uses to implement the Noise Ordinance. This statement could be an email, memo, training manual, video, recording or any other kind of documentation in any format (or draft of such documentation) that does all or any part of the items described below:

- instructs an employee, a technician or anyone on how to take sound measurements,
- instructs an employee, a technician or anyone on how to calculate or derive the ambient and the noise levels,
- describes the standard to apply to certain situations,
- provides when a "deemed" ambient level applies -- this is a reference to the deemed level of 35 dBA for interior and 45 dBA for exterior that we discussed,
- Describes or clarifies what is commercial, residential and or "mixed-use",
- states a policy or procedure regarding the implementation of the Noise Ordinance,
- provides authority for the Department's interpretation of the Noise Ordinance, or otherwise describes or provides guidance on any part of the implementation of the Noise Ordinance.

These should be available under the Sunshine Act, Brown Act and Public Records Act. If the department refuses to produce information, the department must provide a basis for refusing to produce information.

As you mentioned to me, the Dr. Bhatia represented to you that the department finds fault with my consultant's report. They have not expressed that to me. Thus far, they have refused to provided any guidance on what procedure one would follow to produce a satisfactory report.

I would very much appreciate your help in securing this information.

Alicia

Joaquin Torres/MAYOR/SFGOV

05/09/2011 07:50 AM

Good Morning Tom,

Please advise on availability of statements of policy and procedures related to this request.

I believe the issue with Ms. Gamez' readings were twofold - 1.) Ms. Gamez took the reading and not the sound engineer. 2.) Location of the reading not in prescribed location

Please advise so I may relay this information to Ms. Gamez.

Best regards,
Joaquin