



TO: Honorable Mayor & Members of the Fort Lauderdale City Commission

FROM: Lee Feldman, ICMA-CM, City Manager

DATE: December 18, 2012

TITLE: Motion for Discussion – 111 Properties, Inc., v. City – Land Use Dispute Resolution – Settlement Agreement

Recommendation

It is recommended the City Commission approve Land Use Dispute Resolution Settlement– **Exhibit 1**.

Background

On March 3, 2011, the Code Enforcement Special Magistrate found the property owner, 111 Properties, Inc., was in violation of City Ordinance, Sec. 5-56(d). The property, America's Backyard, is located in the Special Entertainment District ("SED") and is required to comply with Sec. 5-56(d) which prohibits music and entertainment outdoors after 12 a.m. weekdays and 1 a.m. on holidays, Fridays, Saturdays and Sundays.

After the hearing, the property owner filed a Request for Relief from Local Government Action pursuant to Section 70.51, F.S. The Special Magistrate, E. Hugh Chappell, Jr. issued his report and recommendations on May 21, 2012. He found that the code enforcement action is unreasonable or unfairly burdens the use of the subject property "America's Backyard". Mr. Chappell recommended amendments to the City's noise ordinance to: 1) reduce decibel levels in the Special Entertainment District after 12 a.m. through 4 a.m., 2) penalties for failure to comply with the noise ordinances more than three times with a 12 month period resulting in 12 a.m. closure time (instead of 4 a.m. closure time), 3) allow outside singing and music until 4:00 a.m. and 4) create a new design for outdoor speakers and other sources of amplified music and singing.

On June 19, 2012 Steve Tilbrook, representing 111 Properties, Inc., (the site of America's Backyard Revolution Live, 109 SW 2 Ave.) advised they were willing to waive the time requirement and requested to work with City staff to develop a land use resolution concerning this Code Enforcement case.

Upon direction from Commission on June 19, 2012, Mr. Tilbrook and City staff worked collaboratively and drafted the proposed Land Use Dispute Resolution Settlement agreement for consideration of approval by the Commission. **(Exhibit 1)**. A summary of the terms of the agreement are as follows:

- 1) The parties jointly agree to reject the Report and Recommendations of the Special Magistrate rendered on May 18, 2012.
- 2) The parties to this Settlement Agreement do not waive or abandon any legal rights, arguments or positions that they may have relative to matters not included in, or addressed by, this Settlement Agreement.
- 3) Each party shall bear its own costs and expenses in connection with this proceeding.
- 4) The parties agree that this Settlement Agreement is to further the public interest in protection of the peace and quiet of the surrounding neighborhoods of the SUBJECT PROPERTY while providing the OWNER with the ability to provide music and entertainment at the facility known as "America's Backyard" after midnight on weekdays and 1 a.m. on weekends.
- 5) The parties agree that the CITY shall allow the OWNER to provide music, singing and other forms of entertainment after midnight on weekdays and 1:00 a.m. on weekends in accordance with the requirements of the Downtown Himmarshee Special Entertainment Overlay District and hours of operation subject to the following requirements of this Settlement Agreement and the Code of Ordinances of the City of Fort Lauderdale, County, State and Federal law.
- 6) OWNER agrees to take the following actions within thirty (30) days of the execution of this Settlement Agreement:
 - a. Cease all live music after 11:00 p.m. during weekdays and 12:00 a.m. on the weekends, unless permitted in advance by the City as a Special Event.
 - b. Cease all microphone work by disc jockeys (DJs) and other entertainers from 12:00 a.m. until closing.
 - c. Cease the use of buzzers, horns or whistles.
 - d. Remove upper street-side balcony speakers as identified in images ABY108 and ABY108(b), attached hereto as Exhibit A.
 - e. Remove pair of rear-facing upper canopy speakers as identified in images ABY109, ABY109(b) and ABY119, attached hereto as Exhibit B.
- 7) OWNER agrees to take the following actions within ninety (90) days of the execution of this Settlement Agreement:
 - a. Develop and implement a sound management policy with maximum sound levels and regular monitoring by staff and management of America's Backyard, or any other tenant of the SUBJECT PROPERTY, that is compliance with the CITY's Code of Ordinances, Chapter 17, Noise Control, as may be amended from time to time.
 - b. Install electronic broadcast limiters on the sound system inputs to level the loudness of the system and automatically reduce the sound levels to be in compliance with the
 - a. CITY's Code of Ordinances, Chapter 17, Noise Control, as may be amended from time to time.

- b. Provide managerial and operational override control of the output.
 - c. Provide controls to process the entertainer's microphone(s) at all times and provide an automatic cessation of the microphone(s) at 12:00 a.m.
- 8) OWNER agrees to take the following actions within one hundred (120) days of the execution of this Settlement Agreement:
- a. Lower the main dance floor (stage area) speakers to nine (9) feet above finished floor to bottom of cabinet and vertically orient and tilt speakers downward so that the upper axis of the coverage ends at the dance floor edge.
 - b. Provide subwoofer speaker enclosures which should at a minimum surround the bottom, top and sides of the speaker cabinets.
 - c. Provide that the speaker cabinets be laid four wide and not stacked in any combination.
 - d. Provide that the bass frequency energy is brought inwards toward the facility.
 - e. Provide that subwoofer speaker cabinets are acoustically isolated from the sub-floor slab with commercial vibration isolators.
 - f. Provide that hanging speakers are acoustically isolated from the facility through the use of commercial vibration isolators.
- 9) Parties agree that this Settlement Agreement is predicated upon the OWNER performing the above requirements within the time periods provided and within thirty (30) days thereafter an inspection shall be performed by a certified sound technician to be chosen by mutual agreement between the CITY and OWNER and paid by the OWNER that includes testing of the sound system of the facility to determine whether the OWNER has complied with the conditions of this Settlement Agreement and that the OWNER is in compliance with CITY's Code of Ordinances, Chapter 17.

Resource Impact

There is no fiscal impact associated with this item as there are no fines recorded.

Attachment

Exhibit 1 – Land Use Dispute Resolution Settlement Agreement

Prepared by: Jeri Pryor, Administrative Assistant II

Department Director: Greg Brewton, Sustainable Development