

**Public Safety Committee**  
**Special Meeting**  
9:30 a.m., Tuesday, March 10, 2015

A Special Meeting of the Public Safety Committee was held at 9:30 a.m., Tuesday, March 10, 2015 in the City Hall Conference Room, 1207 Palm Boulevard, Isle of Palms, South Carolina. Attending the meeting were Councilmembers Bergwerf and Carroll, Chair Bettelli, Administrator Tucker, Attorney Halversen, Assistant Administrator Dziuban and City Clerk Copeland; a quorum was present to conduct business.

1. Chair Bettelli called the meeting to order and acknowledged that the press and public were duly notified of the meeting in accordance with the Freedom of Information Act.

**MOTION: Chair Bettelli moved to allow public comments in the meeting; Councilmember Bergwerf seconded and the motion PASSED UNANIMOUSLY.**

No one took advantage of the opportunity to speak.

**2. Purpose**

**Consideration of a Plan for Morgan Creek Grill Sound Mitigation Test Period**

Jay Clarke, owner of Morgan Creek Grill (MCG), stated that a sound suppression test plan had been compiled with the assistance of Dale Gould and island resident Ray Gay. The plan was distributed to the Committee prior to the meeting for their study; Mr. Clarke said that they had tried to answer all of the questions posed at the previous meeting. (A copy of the plan is attached to the historical record of the meeting.)

Chair Bettelli referenced the first paragraph that stated "upon concurrence of the Public Safety Committee" and explained that the Committee would consider the test plan and, if approved, take it to City Council; the City's plan was to make the test period a City-sponsored event which must be approved by Council. The Chair stated that Council would meet on Tuesday, March 31<sup>st</sup>.

Mr. Clarke commented that MCG had notified the City late on Friday, March 6<sup>th</sup> that they wanted to do brief baseline testing today; he noted that they wanted to find out where they were at this point in time. He explained that the baseline test would involve setting up Rene Russell with a single amplifier to play for a few moments while they took decibel readings at various points on the MCG property and various other locations in close proximity to MCG for engineering purposes.

Mr. Gould said that the testing would give them a firm establishment of what the baseline is in planning for modifications to the stage.

Mr. Clarke noted that MCG has instituted some sound mitigating measures since Mr. Gould did the readings on Waterway Island Drive a couple of years ago, so they need the baseline readings now.

Administrator Tucker asked where they would be taking the readings.

Mr. Gould responded that they would be taking some readings directly across the creek some four hundred twenty-six feet (426 ft.) from the restaurant, laterally left and right of the stage and one (1) reading in the parking lot about two hundred feet (200 ft.) from the stage.

Mr. Clarke indicated that he was interested in getting readings from the area of Francis Lynch's home on Waterway Island Drive, Phillip Smith's property which is the closest neighbor to the marina, at multiple spots in Morgan Creek and at Fire Station #2.

Mr. Gould commented that the decibel level of normal conversation was sixty to sixty-five (60-65); he explained that his goal was to have the sound level at fifty (50) or below across the creek.

Administrator Tucker explained that, for the City, there was a difference between the plan MCG has submitted and the baseline testing MCG has asked for at this meeting, and the Committee must decide whether to allow the baseline testing today.

Mr. Clarke said that, if there was a complaint during the testing today, they would cease testing immediately and re-schedule.

Councilmember Bergwerf voiced her understanding that MCG would not start the test period until the new stage was constructed, and Mr. Clarke confirmed that she was correct.

According to Mr. Clarke, if they were to complete the baseline testing today, they could begin the engineering phase. One (1) of the materials they plan to use has a three-week (3 wk.) lead-time and, if they were to have to wait until the Council meeting on March 31<sup>st</sup> for approval of the baseline testing, they would be delayed two to three (2-3) additional weeks before starting the engineering necessary for the new stage. He added that, until the stage was built, MCG could not set the dates or book any entertainment for the testing period.

The Administrator acknowledged that MCG could not get started before the baseline testing has been completed, but she expressed concern this testing and any testing going forward should be absent the possibility of MCG gaining the results that it wants. She indicated that the testing should have some degree of measurable integrity to it so that there would be no possibility that someone might opine that the results had been manipulated.

Mr. Gould repeated that he had done the testing across the creek a couple of years ago, and no one had questioned his integrity then; he added that his company was based on integrity – his figures have to accurate and he must be impartial. He hoped that there was no question to his integrity or his delivery to the City of the exact, impartial measurements.

Administrator Tucker stated that MCG would not be doing its own testing; the testing was going to be done by a third party. She said that she did not think that was made clear earlier.

Mr. Gould assured the Committee that he was "an independent contractor and his integrity means more than the measurements of this project."

**MOTION: Councilmember Carroll moved to allow the baseline testing Morgan Creek Grill has scheduled for later today; Councilmember Bergwerf seconded.**

Chair Bettelli added that the testing would also help Mr. Gould design the new stage facility.

Councilmember Bergwerf stated that she did not think the testing was for MCG to bring back findings to the Committee, but to determine what they have to accomplish.

Councilmember Carroll said that he would always err on the side of the residents, but, at the same time, he would like to see the restaurant remain successful. He acknowledged that MCG was trying to work with everybody, and the only way for MCG and the City to find out whether outside music at the restaurant could resume was to have professional testing.

Chair Bettelli commented that the entire area and the conditions must also be taken into consideration when baseline testing occurs.

Mr. Gould assured the Committee that all of that would be in his report.

**VOTE: The motion PASSED UNANIMOUSLY.**

Councilmember Bergwerf asked Assistant Dziuban if the City had a list of people living on Waterway Island Drive or email addresses for them to inform them that the testing was going to take place later in the day.

Assistant Dziuban replied that the City did not have an isolated list of residents that live in that area.

The Chair asked Mr. Clarke if he had lists of people who have been involved in earlier meetings.

Mr. Clarke stated that MCG would get emails off to everybody as quickly as possible; he indicated that he had also alerted the residents of Waterway Island of this meeting.

The Chair suggested that the City get those email addresses to notify these residents of the dates MCG would have outdoor music as part of the test period for their noise suppression efforts. Mr. Clarke committed to the City that MCG would take the responsibility of notifying the surrounding neighbors and the residents of Waterway Island Drive about the test period.

Chair Bettelli cautioned Mr. Clarke that there was a chance that Council would not approve the test period.

Councilmember Bergwerf noted that MCG has music upstairs and asked if MCG had plans to test sound levels emanating from that area.

Mr. Clarke replied that they had no such plans at this time; they were focusing on outdoor music. He reported that they had not had any music upstairs during the season last year;

however, it was another phase that would be addressed once this issue was resolved. He acknowledged that music from the upstairs presented more of a problem than the outdoor music, but he was planning to add comprehensive soundproofing upstairs so the area could be used as well.

Administrator Tucker commented that the only thing this Committee has granted permission for has been today's baseline testing and that no recommendation has been made for the test period.

The Administrator then asked whether the Committee was going to make a recommendation to forward this plan to City Council. In addition, she asked whether the Committee was going to make a recommendation to Council for the March 31<sup>st</sup> meeting or wait to take action on the proposal until the results of the baseline testing were presented to them.

The Administrator explained to Mr. Clarke that a notification to the City was not equal to permission from the City.

Mr. Clarke requested that the Committee approve the sound suppression test plan as presented at this meeting and move it along to City Council for their consideration on March 31<sup>st</sup>. If any additions are made to the plan, the City would have copies of them before the Council meeting so that MCG could move forward.

Chair Bettelli summarized that MCG needed the baseline testing to design the system that they need to have in place to do the testing as outlined.

**MOTION: Councilmember Bergwerf moved to take the Morgan Creek Grill Sound Suppression Test Plan to City Council for approval; Councilmember Carroll seconded.**

Councilmember Carroll expressed his opinion that Tuesday afternoon seemed to him to be an odd day for entertainment on the island.

Ms. Pope responded that the day was chosen arbitrarily and that MCG was not planning on having full three to four hour (3-4 hr.) performances; additionally, they thought that an afternoon for testing would be less intrusive. She stated that there were so many variables in the plan, but they needed to get started. They did not know how long the testing period would actually last; it could be one (1) week or it could be two (2) weeks. With the baseline testing today, they would know exactly what they needed to meet the criteria established; then MCG would need to put those actions to the test with the approval of City Council. Enforcement of the City's noise ordinance would continue to fall on the Police Department, and, if necessary, they would notify the MCG management that complaints were still coming in.

Ms. Pope reported that a limiter was a big piece of the plan; a limiter is a piece of equipment that will never let the sound exceed a set decibel level; she indicated that there are also systems available that turn the equipment off if the sound reaches a set decibel level. She

repeated that there were many things MCG could do to make outdoor music work within the City's noise ordinance and that they were willing to do it.

**VOTE: The motion PASSED UNANIMOUSLY.**

**3. Executive Session** to receive legal advice related to potential claims concerning the City's noise ordinance.

**MOTION: Chair Bettelli moved to go into Executive Session for the reason stated above; Councilmember Carroll seconded and the motion PASSED UNANIMOUSLY.**

The Committee returned to regular session at 10:39 a.m.; Chair Bettelli announced that the Committee had not taken a vote or taken any action during Executive Session.

Administrator Tucker stated that any action by this Committee was just a recommendation to the full Council for City-sponsored event status on which Council must act. She strongly recommended that an end-date for the testing be established; the test period would still be subject to the noise ordinance and founded noise complaints, even if the decibel meter indicated fifty (50) for example. Morgan Creek was still risking an action of no further amplified music outdoors, and all of the financial risk associated with conducting this test period and attempting to mitigate the noise would go to Morgan Creek Grill and not the City.

Chair Bettelli added that the City should have a written agreement with Morgan Creek Grill about the testing period that specifies dates when the test would be conducted, as well as the end-date.

Administrator Tucker opined that City Council should have the end date information prior to considering Morgan Creek Grill's proposal.

**4. Adjourn**

**MOTION: Councilmember Carroll moved to adjourn the meeting at 10:45 a.m.; Councilmember Bergwerf seconded and the motion PASSED UNANIMOUSLY.**

Respectfully submitted:

Marie Copeland  
City Clerk