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City of Myrtle Beach
SOUTH CAROLINA
OFFICE OF THE CITY ATTORNEY

March 10, 2011

Mr. David Hucks
1293 Professional Drive, Suite D
Myrtle Beach, SC 29577

Dear Mr. Hucks,

I am sorry that I could not take your calls on Tuesday, March 8, 2011, but I know that you were informed by Gail on your first call that my unavailability arose from my duty to attend City Council workshops and meetings all that day. She has no idea when they will end. Therefore, I must disagree with your characterization that I have decided to make myself unavailable.

I also must disagree with your assertion that I left no messages. I called the business number twice on Monday, March 7, 2011 shortly before 5:00 p.m. In the first call, I identified myself fully, the purpose of my phone call and politely asked who the person would be that I should speak to on the subject. The lady would not identify anyone I could speak to, and after I asked again, she declined to provide me with any named contact, but did say that she would forward the information to probably someone on the sales team, and then very quickly and cheerfully told me to have a wonderful day as she hung up on me. I immediately called back, and spoke with a different lady this time, again identifying myself fully, and politely asked her to inform the previous lady not to bother with having someone in sales to return my call, but rather to have a company attorney call me back to deal with a legal matter. She said fine and hung up again. Given the abrupt termination of these calls, their subsequent mischaracterization and, now with the voluntary removal of the misleading information, I believe any further phone calls on the subject would be pointless.

It is my practice to attempt resolution first through courtesy and informality. The purpose of my two phone calls and messages was to speak to a responsible party, and simply ask that Myrtle-Beach.com's Facebook information page be reworded to remove what appeared to be a declaration that it was an official city site. Today, I see that you have done that. Thank you for taking that action.

In reviewing your website today, I could not help but notice that you asserted that the 1% Local Option Tourism Development Fee was "voted on behind closed doors." As a point of factual clarification, you may be interested to learn that the 1% tax was the subject of two (2) publicly advertised and open workshops, and voted on publicly in two (2) regularly convened meetings of City Council on May 12, 2009 and then again on May 26, 2009. Those public meetings were televised then and are now available on DVDs.

As an additional point of factual clarification, it is erroneously being reported to your readers by Tammy Curry that the only ordinances left in place regarding rallies were related to trailer parking. Actually, every single ordinance relating to the rallies remains fully enacted and enforceable, with the sole exception of a requirement to wear a helmet. Please refer to our Code of Laws for accuracy in reporting laws.

Finally, Ms. Curry asserts that the City has raised its noise level to a national average, in an admission that it cannot restrain bikers from entering. Apart from the uninformed editorial comment, in reality, there is no "national average" for noise level. The former level of 89 dB(A) was passed based on the results of applying the SAE J2825 testing procedures at that time. The 92 dB(A) level passed by the City Council was based on more recent approved SAE testing results.

Current federal regulations found in 40 CFR 205 subparts D & E require all new on-highway motorcycles sold in the U.S. to emit no more than 80 dB(A) as measured at 50 feet during a pass-by test of the motorcycle under very specific acceleration parameters. The regulations also require the motorcycle exhaust system to carry a permanent stamp that identifies the exhaust system as compliant with federal regulations for the specific year, make and model motorcycle on which it is installed. This is commonly referred to as an EPA sticker. However, aftermarket systems typically do not have an EPA sticker. The excessive noise is measured in another way, such as stationary testing.

Stationary sound testing refers to the procedure of measuring a motorcycle's exhaust system sound level at a predetermined engine speed while the motorcycle transmission is in neutral. Specifically, the Society of Automotive Engineers (SAE) J2825 "Measurement of Exhaust Sound Pressure Levels of Stationary On-Highway Motorcycles" recommended practice is the approved test procedure used to determine compliance. A Type I (as defined by the American National Standards Institute requirements of ANSI S1.4-1983 (R2006)) sound meter measures acoustical pressure and is accurate to plus or minus one decibel and provides the precision necessary for the enforcement of this ordinance. A decibel is a unit of measure that is used to express sound level pressure. The "A" weighting scale (written as dBA) approximates human hearing and is used in the J2825 recommended practice. The J2825 recommended practice recommends two testing procedures. The first, an idle test, establishes a maximum sound level of 92 dB(A) for an on-highway stationary motorcycle at idle, regardless of the number of engine cylinders. This is the testing procedure the City uses. A 2 dB(A) 'bonus' (max level of 94 dB(A)) is established for motorcycles with U.S. EPA compliant (i.e., labeled) exhaust systems. The second, called a set RPM test procedure, establishes a maximum sound level of 100 dB(A) at 5,000 RPM for 3 or 4 cylinder engines and 96 dB(A) at 2,000 RPM for all other engine configurations. Alternately, if a motorcycle cannot maintain a constant 2,000 or 5,000 RPM reading, a swept test procedure (gradual increase to specified RPM level) is permitted. The American Motorcycle Association supports the SAE J2825 recommended practice. That is why City Council raised the dB(A) level by three (3) points.

Sincerely,



Thomas E. Ellenburg
City Attorney

TEE/gbm