

RE: Follow-up to Ballpark Commons sound violations

Heath Eddy <HEddy@franklinwi.gov>

Wed 9/29/2021 4:37 PM

To: Hertzberg, Aaron <Aaron.Hertzberg@milwaukeecountywi.gov> 2 attachments (880 KB)

signed letter.pdf; 2021-09-02 - Franklin Field - Notice of noise violation.pdf;

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Aaron,

Please find attached the two letters we sent. The first is the letter dated August 11, 2020, which was more technically an "hours of operation" violation, as the use of the sound system at Franklin Field is not authorized as early as 7:00 a.m., the second letter was sent on September 2, 2021 detailing a material violation of the noise standards for PDD-37.

Heath Eddy, AICP

Planning Manager, Department of City Development

City of Franklin

9229 W. Loomis Road

Franklin, WI 53132

Phone: 414.425.4024 / 425.7561

HEddy@franklinwi.gov

From: Hertzberg, Aaron <Aaron.Hertzberg@milwaukeecountywi.gov>**Sent:** Wednesday, September 29, 2021 4:31 PM**To:** Heath Eddy <HEddy@franklinwi.gov>**Cc:** Steve Olson <Solson@franklinwi.gov>**Subject:** Re: Follow-up to Ballpark Commons sound violations

Thanks, Heath. On our recent call you mentioned instances where complaints were received, and a review of sound logs confirmed a violation of local ordinance. You specifically noted a morning (approximately 7am) instance and another more recent instance associated with a game night. In those instances, you noted that the City pursues enforcement by issuing notice of violation to the owner.

Can you confirm that's accurate? I'd like to document our discussion for my records.

Aaron



Aaron Hertzberg (he/him/his)

Director, Department of Administrative Services

Milwaukee County

901 N. 9th St., #308, Milwaukee, WI 53233

Office: 414-278-4185 | **Mobile: 414-389-7255**

By achieving racial equity, Milwaukee County is the healthiest county in Wisconsin.

From: Heath Eddy <HEddy@franklinwi.gov>

Sent: Wednesday, September 29, 2021 3:15 PM

To: Hertzberg, Aaron <Aaron.Hertzberg@milwaukeecountywi.gov>

Cc: Mayor Steve Olson <solson@franklinwi.gov>

Subject: Follow-up to Ballpark Commons sound violations

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Aaron,

I understand there was a follow-up question regarding sound violations. Specifically, what happens with complaints that are investigated and determined that there is not a "material violation" as provided in the Sound and Light Addendum.

When Planning staff receive a complaint, it's after the fact. We review the data from the date in question and determine if the complaint results in a material violation. When it does not we close out the official complaint in our system.

However, the Mayor oftentimes gets calls from residents or others who indicate that the sound level is too high. He goes to the site each time he receives a call and requests the operator to lower the volume. This is done as-needed and is a quick turn-around from call to investigation. This is an informal response to complaints that he receives personally.

I hope this clarifies how the City of Franklin responds to noise complaints where the sound does not rise to a material violation.

Sincerely,

Heath Eddy, AICP

Planning Manager, Department of City Development
City of Franklin
9229 W. Loomis Road
Franklin, WI 53132

Phone: 414.425.4024 / 425.7561

HEddy@franklinwi.gov



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City of Franklin
Department of City Development

September 2, 2021

Steve F. Taylor, Executive Director
ROC Foundation
7044 S. Ballpark Drive, Ste 300
Franklin, WI 53132

Re: Franklin Field - Notice of Violation for exceeding noise levels.

Dear Mr. Taylor:

Please be advised, it has come to the attention of the City of Franklin that on Friday, August 27, 2021, the west sound monitor registered three (3) events exceeding the trigger level of 65 dBA, specifically at 20:26, 20:49 and 21:18 hours. According the Noise and Light Addendum for the Rock Sports Complex and Ballpark Commons (page 3), *a violation will be considered material if it represents a complaint filed with the operator or the City of Franklin and is evidenced in the monitoring data logs by an exceedance ("Trigger Event") that is not permitted and is not corrected and remediated within 30 minutes of the Trigger Event.*

This is the 1st noise violation in this calendar year 2021, please note that said addendum states that *if the operator has more than four unpermitted material violations in a calendar year, the operator shall be subject to stepped-up enforcement measures as specified in the Noise and Light Standards. If the City declines to take enforcement action, the County, under the terms of this agreement, shall have the right to impose penalties on the operator, in the County's reasonable judgment given the severity and duration of the violation and the number of violations, which shall not exceed \$1,000 for an individual violation and \$10,000 in aggregate for a calendar year.*

Recorded trigger events and sound report attached to electronic communication (e-mail).

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "RM", written over a light blue horizontal line.

Régulo Martínez-Montilva, AICP
Principal Planner

cc: Brian Sajdak, Assistant City Attorney
Ald. Daniel Mayer
Sandra L. Wesolowski, City Clerk



Department of City Development
9229 West Loomis Road, Franklin, Wisconsin 53132
(414) 425-4024

August 11, 2020

The Rock Sports Complex, LLC
Michael Zimmerman
7044 S Ballpark Dr. #300
Franklin, WI 53132

Re: The Rock Sports Complex (Tax key No. 744-1003-000)
Notice of Violation - Hours of Operation

Dear Mr. Zimmerman:

Please be advised, it has come to the attention of the City of Franklin that the owner, user, operator or sub-lessee of the Rock Sports Complex has operated outside the approved hours of operation for the Athletic Fields and Concession Stands limited to 7:00 a.m. to 11:00 p.m. set forth in Ordinance No. 2019-2368 Section 15-3.0442A(D)(6). The event in question was reported at 6:35 a.m. on August 9, 2020. This is a violation of the terms of the ordinance.

Considering the limited nature of the event, this letter serves as a warning against further violations. Please ensure that further use of the Rock Sports Complex complies with the approved hours of operation noted above. Failure to comply with this ordinance will result in the issuance of a citation.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heath Eddy", is written over the word "Sincerely,".

Heath Eddy, AICP
Planning Manager

cc: Ald. Daniel Mayer
Mayor Steven Olson
Attorney Chris Smith
Régulo Martínez-Montilva, Associate Planner



MEMORANDUM: FROM PLANNING DEPARTMENT

DATE: September 16, 2021
TO: Mayor Steve Olson
FROM: Heath Eddy, AICP
CC: Regulo Martinez-Montilva, AICP
SUBJECT: ROC Ventures Agreement Audit – Requests from Milwaukee County

Per the September 15, 2021 message from Aaron Hertzberg, Director of Administration, County of Milwaukee, Wisconsin, here are the questions he posed for responses.

1. Clarity on where complaints should be made (website, phone and/or email?)

Complaints should be submitted through the City of Franklin website. Staff does accept complaints via phone but rarely through email.

2. What Franklin does once it received the complaint? How is it investigated?

Complaints are processed through the website and added to the internal tracking system (a complaints component of BS&A). We receive the complaint by way of an email communication generated by BS&A. Noise complaints from the Ballpark Commons development are handled by checking the sound monitor data generated at about the same time the complainant cites in their complaint. We evaluate the complaint based on the terms of the “Noise and Light” Addendum attached to the Ballpark Commons approval ordinance, which specifies that

“a violation will be considered material if it represents a complaint filed with the operator or the City of Franklin and is evidenced in the monitoring data logs by an exceedance (“Trigger Event”) that is not permitted and is not corrected and remediated within 30 minutes of the Trigger Event.”

Staff reviews the sound monitor logs to verify if the complaint results in the material violation per the Addendum, then either follows up with the operator or closes out the complaint due to lack of violation.

[Note: The noise limit in Ballpark Commons is allowed to reach up to 79 dBA, and is allowed until 10:30 pm; however, special events approved by the Common Council, or temporary uses approved either by staff (authorized by the Ballpark Commons approval ordinance) or via the Plan



Commission, authorize higher noise levels for discrete activities after 10:30 pm. Common special events include fireworks displays after select Milwaukee Milkmen games at Franklin Field; the concert series at the Umbrella Bar; and the Hills Have Eyes Halloween event.]

3. Are complaints and violations regulated tracked in aggregate and reported to the public via websites or to the Common Council?

There is no aggregation of complaints reported via the website. Staff does provide accurate information of the number of complaints under the Planning Department section of the annual budget. Staff handles all complaints on a submittal basis, meaning we only combine complaints if they are for the same location, time, or activity.

For reference to Milwaukee County, staff has accumulated the following set of noise complaints during 2021 thus far (date is when submitted):

January 4 – 3 complaints

January 19 – 1

February 26 – 1

May 21 – 1

May 27 – 2

June 1 – 7

June 2 – 2

June 4 – 1

June 7 – 1

June 14 – 1

July 14 – 1

July 15 – 1

July 19 – 3

July 30 – 3

August 2 – 7

August 3 – 1

August 16 – 2

August 30 – 12 [material violation from August 29 found; Notice of Violation sent to operator]

4. What occurs if a violation is found?

If a material violation is determined to have occurred at Ballpark Commons, staff prepares and sends a Notice of Violation to the operator. These Notices are different than a standard zoning notice, in the sense that the violation occurred at one point in time and is not currently in evidence (considered “after the fact” notice). The violation is based on the data collected by sound monitors. The corrective action required is that the operator is on notice regarding the material violation. Follow-up actions haven’t been required to date primarily because the actual material violations are occurring



approximately 1 year apart. It should be noted that the Noise and Light Addendum permits the operator to have up to 4 unpermitted material violations in a calendar year.

5. Are any actions taken if complaints are made that don't reach the level of a violation, but demonstrated disruptiveness to the community?

Staff (or the Mayor) have contacted the operator at points where it sounds as if the operation is “too loud”, even if it doesn't reach the level of a material violation. In those instances, we convey to the operator that while it's not a full violation, the noise level is not appropriate for this location or the particular event, and they should lower the sound level.

6. Any other relevant information for receiving, tracking, enforcing or following up on complaints and violations?

Staff works on these complaints on an as-needed basis. Noise complaints are complicated because staff is not present when the violation is occurring. Therefore, we rely on the sound monitors to track the sound levels, and determine if a material violation has occurred.

RE: ROC Ventures agreement audit**Steve Olson** <steve-olson@wi.rr.com>

Thu 9/16/2021 6:00 PM

To: Hertzberg, Aaron <Aaron.Hertzberg@milwaukeecountywi.gov>**Cc:** 'Heath Eddy' <heddy@franklinwi.gov>; CBerg@franklinwi.gov <CBerg@franklinwi.gov>; Reindl, Heather <Heather.Reindl@milwaukeecountywi.gov>; 'Peggy Steeno' <PSteen@franklinwi.gov>; 'Sandi Wesolowski' <SWesolowski@franklinwi.gov> 1 attachments (139 KB)

2021-09-16 Responses to Noise Audit Questions.pdf;

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Mr. Hertzberg:

The City of Franklin is happy to provide factual information to help the County in the audit process of your agreements with ROC Ventures, BPC Lands and others operating the Rock Sports Complex, Franklin Field, the Umbrella Bar and the Roc Snowpark.

The City has a sophisticated complaint handling system in place to receive, track and close out complaints of all sorts. Noise complaints are handled within the system. Complaints are easily entered via the city of Franklin website. [Contact City of Franklin WI](#) Because of the procedures put in place several years ago with the signing of the "Sound and Light Addendum" and other documents, Franklin Police no longer routinely investigate noise complaints against the facility.

The attached memorandum from Heath Eddy, Planning Manager, outlines the procedure and provides additional information on number of complaints filed. I believe that Mr. Eddy's memo will provide the data that has been asked for.

The City, just as the County must enforce agreements (and ordinances) as they are written. A complaint does not constitute a violation until it has been investigated. Hearing sounds does not necessarily constitute a legal nuisance until the agreed threshold is met. The installed monitoring system has been successful in providing data from which enforcement can be based. The complaint procedure is specifically designed to remove real or perceived bias from enforcement by relying on empirical data and professional staff for evaluation and enforcement.

Also, be aware that during Audit staff interviews with both city staff and me, this procedure was discussed in detail.

Don't hesitate to ask if we can help with more information.

Mayor Steve Olson

Steve Olson
Mayor
City of Franklin
9229 W. Loomis Rd.
Franklin, Wi. 53132
O: 414-427-7529



From: Hertzberg, Aaron <Aaron.Hertzberg@milwaukeecountywi.gov>
Sent: Wednesday, September 15, 2021 4:44 PM
To: Steve Olson <steve-olson@wi.rr.com>
Cc: 'Heath Eddy' <heddy@franklinwi.gov>; CBerg@franklinwi.gov; Reindl, Heather <Heather.Reindl@milwaukeecountywi.gov>
Subject: Re: ROC Ventures agreement audit

Mayor Olson,

During the presentation of the Rock Audit to the Audit Committee, there was a request made for the City of Franklin to provide an explanation as to how citizen complaints related to noise at the Rock/BPC are handled and followed up on with in the City. The full request, presentation, and comments are included here (or will be when the video is available): <https://milwaukeecounty.legistar.com/LegislationDetail.aspx?ID=5127664&GUID=9C4CB7B1-65CB-4AB8-8660-EDCC5EAE1210&Options=&Search=>

Would the City of Franklin be able to provide a written explanation that we could share with the Board of Supervisors? It may also be helpful for public understanding as we continue to educate around how best to address on-going concerns at the property. Included in the request was an invitation to attend a future committee meeting. We welcome participation from you or a Franklin staff member.

Ideally, the request would include a written explanation of the following:

- Clarity on where complaints should be made (website, phone and/or email?)
- What Franklin does once it receives the complaint? How is it investigated?
- Are complaints and violations regularly tracked in aggregated and reported to the public via websites or to the Common Council?
- What occurs if a violation is found?
- Are any actions taken if complaints are made that don't reach the level of a violation, but demonstrate disruptiveness to the community?
- Any other relevant information for receiving, tracking, enforcing or following up on complaints and violations?

To date, I have maintained near quarterly communication with Franklin staff to inquire about violations. We are only aware of one such instance where a material violation has occurred. As part of the Audit process our Economic Development Division will be working to formalize our own tracking of complaints, violations and material violations. We would respectfully request that we work together to gather and share this information.

I'll note that we continue to try and educate Supervisors and citizens on a couple of key points. We are hopeful that being more transparent about the processes and openly sharing information about complaints and violations will better inform the public conversations on topic.

In addition to the abovementioned, I see opportunity for the County to continue to educate Supervisors and the public about the following:

- There is a difference between complaints, violations and what we define in our contracts as material violations where the County has enforcement mechanisms.
- The goal of the real-time data from the sound monitors is not for punitive action, but rather to avoid disruptions (complaints and violations) from ever occurring.
- Milwaukee County does not set sound ordinances and only requires the developer to comply with local standards.

Thank you in advance for your assistance on this issue. I welcome and questions you or staff may have in answer these questions and look forward to working with staff to better formalize County processes.

Aaron



Aaron Hertzberg (he/him/his)

Director, Department of Administrative Services

Milwaukee County

901 N. 9th St., #308, Milwaukee, WI 53233

Office: 414-278-4185 | **Mobile: 414-389-7255**

By achieving racial equity, Milwaukee County is the healthiest county in Wisconsin.

From: Steve Olson <steve-olson@wi.rr.com>

Sent: Monday, August 30, 2021 5:58 PM

To: Hertzberg, Aaron <Aaron.Hertzberg@milwaukeecountywi.gov>

Cc: 'Heath Eddy' <heddy@franklinwi.gov>; CBerg@franklinwi.gov <CBerg@franklinwi.gov>

Subject: RE: ROC Ventures agreement audit

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Thanks.

Steve

Steve Olson

Mayor
City of Franklin
9229 W. Loomis Rd.
Franklin, Wi. 53132
O: 414-427-7529



From: Hertzberg, Aaron <Aaron.Hertzberg@milwaukeecountywi.gov>
Sent: Monday, August 30, 2021 5:20 PM
To: Steve Olson <steve-olson@wi.rr.com>
Cc: Heath Eddy <heddy@franklinwi.gov>; CBerg@franklinwi.gov
Subject: Re: ROC Ventures agreement audit

Mayor Olson,

Thanks for the reminder. It's not yet available in our Legistar system, but attached is a copy. Assuming it gets referred by Chairwoman Nicholson and scheduled by the Committee Chairwoman Taylor, it will appear on the agenda for our Audit Committee at 1:30pm on September 15th. The full file should be available in the lead up to the meeting on Legistar as file 21-760, <https://milwaukeecounty.legistar.com/Legislation.aspx>.

Aaron



Aaron Hertzberg (he/him/his)

Director, Department of Administrative Services

Milwaukee County

901 N. 9th St., #308, Milwaukee, WI 53233

Office: 414-278-4185 | **Mobile: 414-389-7255**

By achieving racial equity, Milwaukee County is the healthiest county in Wisconsin.

From: Steve Olson <steve-olson@wi.rr.com>
Sent: Monday, August 30, 2021 11:52 AM
To: Hertzberg, Aaron <Aaron.Hertzberg@milwaukeecountywi.gov>
Cc: Heath Eddy <heddy@franklinwi.gov>; CBerg@franklinwi.gov <CBerg@franklinwi.gov>
Subject: ROC Ventures agreement audit

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suspicious.

Mr. Hertzberg:

We talked some time ago about the city obtaining a copy of the County audit on the agreement that the county has with ROC Ventures.

You mentioned then that it was in final review.

Just a reminder that we'd like a copy.

Thanks.

Steve

Steve Olson
Mayor
City of Franklin
9229 W. Loomis Rd.
Franklin, Wi. 53132
O: 414-427-7529



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