



October 19, 2012

Final Investigative Report Concerning Ombudsman Complaint 2011-0240

COMPLAINT

An Anchorage homeowner contacted the Ombudsman regarding noise created by a local business's snow removal during the night of November 14, 2011. The case complaint is with Health and Human Services Department, Environmental Division and involves two parts. First the division did not adequately investigate if the noise level exceeded that allowed in the business's noise permit and second, the constituent feels like the division did not respond adequately to her concerns.

FINDINGS

The allegations against the Environmental Services division are **PARTIALLY JUSTIFIED**. The claim that the division failed to accurately measure noise levels to determine if noise permits were violated is **SUPPORTED**. However the claim that the division mishandled the complaints is **NOT SUPPORTED**. **Thus, the allegations of this complaint are PARTIALLY JUSTIFIED.**

ANALYSIS AND CONCLUSION

First allegation. The constituent claims that the noise level at her property exceeds the noise allowable in the noise permit issued to the local business by the Municipality according to AMC 15.70.070. However, the Municipality failed to accurately measure the sound level because their equipment failure in cold weather. AMC 15.70.040.B states; "In order to implement and enforce this chapter effectively, the department shall within a reasonable time carry out the following duties: 1. The department shall develop and promulgate standards, testing methods and procedures. 2. The department shall investigate and pursue possible violations of this chapter." Unfortunately, the department was unable to measure the noise levels at the constituent's home and therefore was unable to determine if sound levels exceeded those allowed on the given permit. **For all of the above reasons, this allegation that the departments failed to determine if there was a violation in the noise permit given to the local business is supported.**

Second allegation. The constituent also claims that the Environmental Services department failed to adequately respond to her numerous complaints. Our records show that there were at least eleven separate complaints to the department and that they responded to and addressed each one appropriately. In addition, it appears that the constituent did not write a formal claim that she was adversely affected by the allowance of a noise permit which is allowable under AMC 15.70.070.B.3. This would have

allowed her a hearing with the director of the department to address her concerns rather than frequent very early morning calls left on a voice recorder. **For the above reasons, this allegation that the Environmental Services department mishandled her complaints is unsupported.**

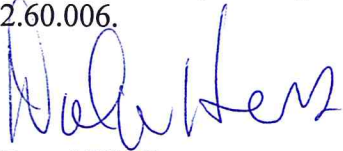
The Health and Human Services Environmental division was offered the opportunity to review a preliminary investigative report as required in the Municipal Code. The department's comments were as follows:

1. The department is unable to respond immediately to complaints that come in during the night and/or over the weekend. As a result, the Department cannot effectively determine whether the noise which resulted in the specific complaint exceeded allowable levels. It should be noted that noise levels at or below permitted levels for snow removal operations will likely still be loud enough to be heard inside nearby residences and may well be annoying to some residents. This is a largely unavoidable problem wherever commercial properties abut residential development.
2. The cold weather restrictions on the use of the noise meter primarily affect the ability to set up the equipment to take measurements over an extended period of time. We believe our equipment could be used to take quick measurements during an event, even in cold temperatures. However, the challenge lies in anticipating when such an event might occur and arranging to have staff available to conduct measurements.
3. The equipment that we use for continuous, unattended monitoring is not designed for use in temperatures below 32 degrees Fahrenheit. We are researching ways to deal with this issue, including heat pads in the equipment case and possibly new equipment.

For all of the above reasons, all of the allegations of this complaint are PARTIALLY JUSTIFIED. Thus, it is recommended that the Environmental Services department research and invest in equipment that can accurately measure sound levels in the cold Anchorage weather to resolve this issue. Because the department of Health and Human Services has agreed this is something they should do and have begun to do so, this matter is closed.

If you object to the Ombudsman's decision to decline or discontinue this investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C.R.

2.60.006.



Darrel W. Hess
Municipal Ombudsman