

CITY OF MILWAUKEE

Form CA-43

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April 21, 2005

Ald. Michael D'Amato, Chair
Judiciary and Legislation Committee
200 E. Wells Street, Room 205
Milwaukee, WI 53202-3570

RE: File No. 041619
Loud Car Stereos

Dear Ald. D'Amato:

This is in response to your communication dated April 7, 2005 regarding the above stated file, pertaining to "loud sounds emitting from radios and other electrical sound amplification devices in motor vehicles." Specifically, you stated that a question arose at the last Judiciary and Legislation Committee meeting relative to use of the citizen complaint forms.

As you are aware the Honorable James A. Gramling, Jr. found "that Wis. Stats. § 346.94(16), as adopted by sec. 101-3, Milwaukee Code of Ordinances, violates the First Amendment to the United States Constitution." (See *City of Milwaukee v. Victor J. Perez*, Case No. 01135383, p. 6) The Court found that the law is a content-based restriction on free speech because the statute permits noise by commercial vehicles, for example, but prohibits noise from a citizen's noncommercial vehicle. At least one other court ruling on the same issue reached the same conclusion. Therefore, our office has recommended that the City lobby to have the statute amended. We understand that the State Attorney General's office would support such an amendment.

Ald. Michael D'Amato, Chair


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As a result, our office advised the Milwaukee Police Department that until the above statute, and related statutes, are amended, traffic citations should not be issued based upon the aforementioned statutes, and also that forms that reference those statutes should not be used. However, the police department was informed that the City noise nuisance ordinance, sec. 80-65, (MCO) could be utilized. Thus, a noise complaint may still be issued either by the police department or the Department of Neighborhood Services. However, strict liability may not be imposed against the owner of the vehicle. Therefore, as former Deputy Inspector Ray Sucik stated, a citation may be issued based on a citizen complaint, "as long as the person who is responsible for the noise can be adequately identified and the complainant is willing to appear in Municipal Court if the matter is contested."

We hope this answers your concerns. If we can be of further assistance, please do not hesitate to contact us.

Very truly yours,



GRANT F. LANGLEY
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