



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Responsiveness to Noise Complaints Related to New York City Nightlife Establishments

**New York City Police Department
New York State Liquor Authority**



Executive Summary

Purpose

To determine whether the New York City Police Department (NYPD) and the New York State Liquor Authority (SLA) have effectively addressed noise complaints related to nightlife establishments in New York City (NYC). Our audit period was January 1, 2010 through March 31, 2016, with a focus on calendar years 2014 and 2015.

Background

For the period January 1, 2010 through December 31, 2015, a total of 713,264 noise complaints were called in to NYC's 311 system. According to the World Health Organization's *Guidelines for Community Noise*, the general population is increasingly exposed to community noise, creating the potential for a significant public health concern. The Centers for Disease Control and Prevention has also outlined adverse health effects from noise, including: hearing loss; increased stress, anxiety, and fatigue; elevated blood pressure; cardiovascular disease; loss of sleep; increased heart rate; and increased sensitivity to sound.

Various State and City agencies are responsible for handling noise complaints. For purposes of this audit, which focuses on noise complaints pertaining to NYC-based nightlife establishments, the NYPD and the SLA are the agencies primarily responsible. Of the aforementioned 713,264 complaints registered through the 311 system, 328,289 pertained to addresses that had nightlife establishments, and these complaints were forwarded to the NYPD.

Key Findings

The number of noise complaints called in to NYC's 311 system has risen significantly in recent years, from 86,365 in 2010 to 179,394 in 2015. Over the same period, the annual number of noise complaints involving nightlife establishments also increased significantly, from 38,401 to 93,412. Thus, the number of noise complaints in NYC more than doubled between 2010 and 2015. As a result of our audit, we found:

- The NYPD's and the SLA's efforts to communicate and coordinate noise mitigation strategies and tactics with each other were limited. Also, the SLA did not access and analyze pertinent data from NYC's 311 system. As a result, certain establishments with numerous noise complaints lodged against them continued to operate with little or no notice from public oversight authorities to address such complaints.
- When the SLA took action against establishments with high levels of complaints, they were primarily due to violations other than those related to noise. In addition, actions were rarely taken (if ever) against certain establishments with comparatively high levels of noise complaints. The NYPD used its resources to respond to the same locations hundreds of times a year, often with little or no apparent effect on the numbers of complaints.
- The accuracy of records maintained by these agencies needs improvement. For example, according to 311 system data, NYPD officers issued a total of 14 summonses to several of the nightlife establishments we sampled. However, NYPD officials were able to provide supporting documentation for only 11 of the 14 reported summonses.

Key Recommendations

To NYPD:

- Enhance precinct record keeping of noise complaints to track the exact times of officer follow-up to improve management analysis of response times and the effectiveness of the actions taken.
- Develop formal system-wide procedures to follow up on establishments with high volumes of complaints, including periodic communications with the SLA. Formally assess the effectiveness of actions taken to mitigate persistent noise problems.

To SLA:

- Develop a formal process to access and analyze 311 noise complaint data to enhance the efficiency and effectiveness of efforts to address potential noise violations and associated licensing concerns.
- Develop and implement a formal communication protocol with the NYPD and any other public oversight authority responsible for addressing noise matters, as they pertain to SLA-licensed establishments.

State of New York
Office of the State Comptroller

Division of State Government Accountability

June 9, 2017

Mr. James P. O'Neill
Commissioner
New York City Police Department
1 Police Plaza
New York, NY 10038

Mr. Vincent G. Bradley
Chairman
New York State Liquor Authority
80 S. Swan Street, 9th Floor
Albany, NY 12210

Dear Commissioner O'Neill and Chairman Bradley:

The Office of the State Comptroller is committed to providing accountability for tax dollars spent to support government-funded services and operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Responsiveness to Noise Complaints Related to New York City Nightlife Establishments*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Article III of the General Municipal Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

Table of Contents

Background	5
Audit Findings and Recommendations	7
NYPD Enforcement Activities	7
Recommendations to NYPD	10
SLA Enforcement Activities	10
Recommendations to SLA	12
Audit Scope, Objective, and Methodology	12
Authority	13
Reporting Requirements	13
Contributors to This Report	14
Exhibit A	15
Exhibit B	16
Exhibit C	17
Exhibit D	18
Agency Comments – New York City Police Department	19
Agency Comments – New York State Liquor Authority	22
State Comptroller’s Comments	26

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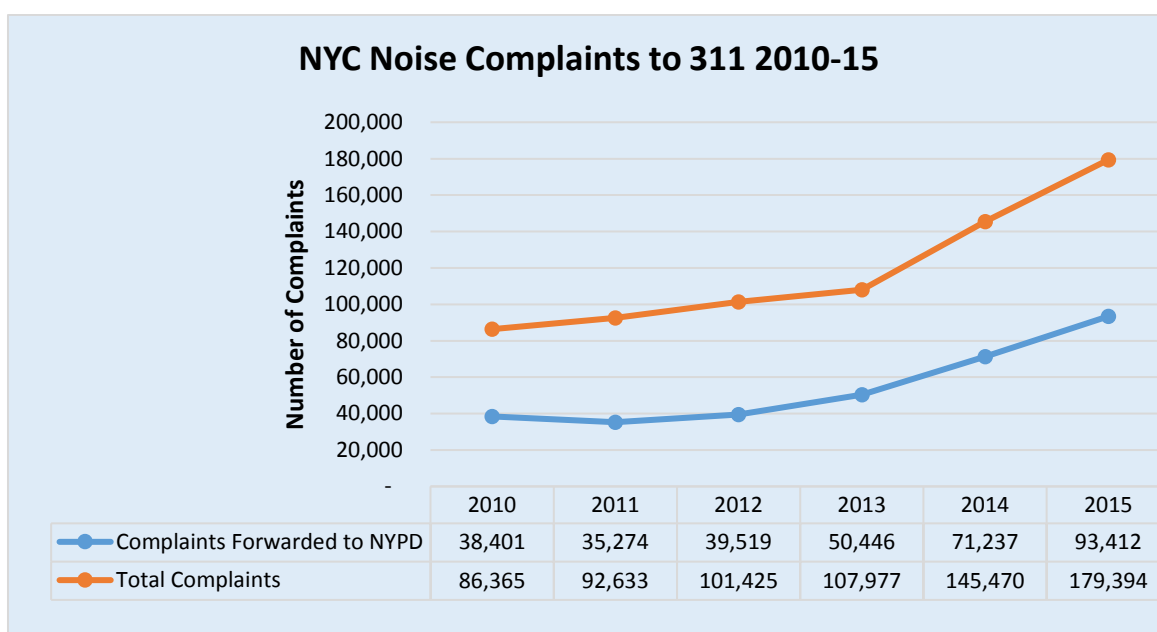
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This report is also available on our website at: www.osc.state.ny.us

Background

In 2003, New York City (NYC) launched a 311 telephone service with the mission of providing the public with quick, easy access to all NYC government services and information. According to the 311 public database, for the period January 1, 2010 through December 31, 2015, 713,264 calls were for noise-related complaints, of which 328,289 pertained to addresses that had nightlife establishments. As demonstrated in Chart 1, the annual number of noise complaints has risen significantly in recent years, from 86,365 in 2010 to 179,394 (about a 108 percent increase) in 2015. During the same period, the annual number of such complaints pertaining to addresses that had nightlife establishments rose by 55,011 complaints (from 38,401 to 93,412), or by 143 percent.

Chart 1



According to the World Health Organization's *Guidelines for Community Noise*, exposure to excessive levels of community noise can have adverse health effects for residents. The general population is increasingly exposed to community noise, creating the potential for a significant public health problem. The Centers for Disease Control and Prevention has also outlined the adverse health effects from noise. In addition to hearing loss, noise can lead to: increased stress, anxiety, and fatigue; elevated blood pressure; cardiovascular disease; loss of sleep; an increased heart rate; and an increased sensitivity to sound. Further, excessive noise during pregnancy may damage a newborn's hearing and lead to other harmful effects. Untreated, hearing loss can lead to social isolation, depression, dementia, falls, inability to work or travel, and lower physical activity.

New York Codes, Rules and Regulations Title 9, Section 53.1(q), states that any license issued pursuant to the Alcoholic Beverage Control Law (ABC Law) may be revoked, canceled, or suspended when any noise disturbance, misconduct, disorder, act, or activity occurs in the licensed premises,

in the area in front of or adjacent to the licensed premises, or in any parking lot provided by the licensee for use by the licensee's patrons, which, in the judgment of the authority, adversely affects or tends to affect the protection, health, welfare, safety, or repose of the inhabitants of the area in which the licensed premises are located, results in the licensed premises becoming a focal point for police attention, or is offensive to public decency.

Various State and City agencies are responsible for handling noise complaints. For purposes of this audit, which focuses on noise complaints related to NYC-based nightlife establishments, the New York City Police Department (NYPD) and the New York State Liquor Authority (SLA) are the responsible agencies.

Audit Findings and Recommendations

As noted previously, the number of noise complaints involving NYC nightlife establishments increased greatly in recent years. Nonetheless, the NYPD and the SLA, the agencies primarily responsible for addressing such noise complaints, collectively had limited impact in mitigating protracted noise problems. Communication and coordination between the NYPD and the SLA were limited, and the SLA did not leverage pertinent noise complaint data from the 311 system. When the SLA took actions against establishments, they were mainly due to violations other than those related to noise. As a result, certain establishments, which have had numerous noise complaints lodged against them, continued to operate without having to address those issues. There is material risk that persistent noise problems negatively affected the quality of life for residents of communities in the vicinity of certain nightlife establishments.

We conclude that improvements in inter-agency communications and coordination, as well as improvements in record keeping, are necessary to improve the efficiency and effectiveness of efforts to address persistent noise problems.

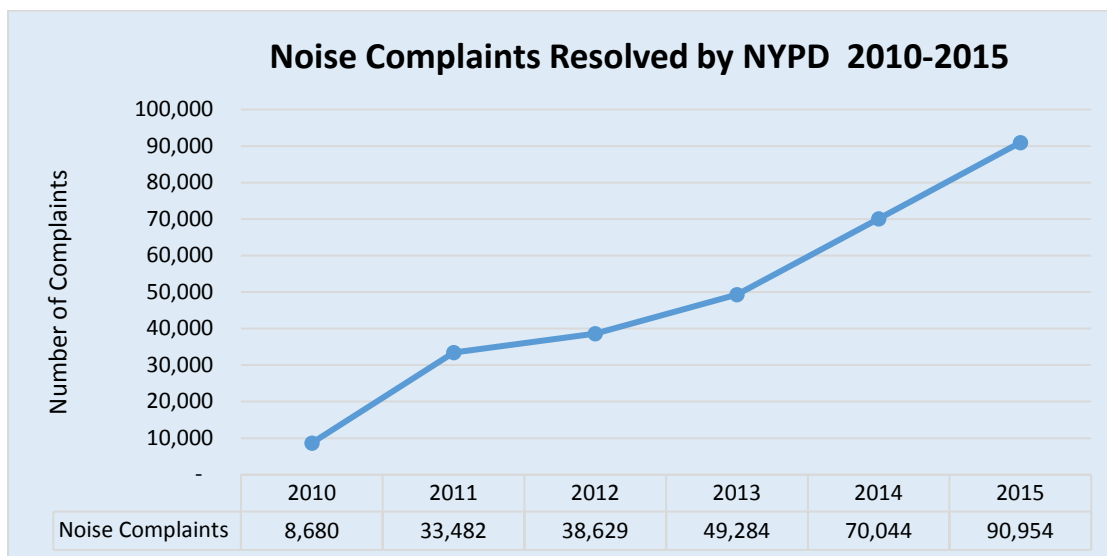
NYPD Enforcement Activities

The NYPD's mission is to enhance the quality of life in NYC by working in partnership with the community to enforce the law, preserve peace, reduce fear, and maintain order. The NYPD receives noise complaints either from the 311 system or directly from the public. According to NYPD officials, patrol officers are dispatched from local police precincts to respond to those complaints when they are not handling emergencies or more serious situations.

According to Patrol Guide procedure 214-35, the assigned officer should respond to a noise complaint as expeditiously as possible and notify the desk officer of the disposition of the complaint after his/her investigation is completed. If the complaint is not investigated by the end of the assigned officer's tour, the desk officer refers the complaint to the next shift as a priority assignment. Additionally, Patrol Guide procedure 214-34 states that if an action, such as the issuance of a summons, is taken at an establishment that serves alcohol, the assigned officer is to fill out a "Police Action: Licensed/Unlicensed Premises Form," which is forwarded to the SLA to inform the agency of the conditions found.

According to the 311 database for the period January 1, 2010 through December 31, 2015, there were 328,289 noise complaints routed to the NYPD, of which 291,073 were reported as resolved in some manner. Chart 2 summarizes the annual number of noise complaints the NYPD classified as resolved from 2010 through 2015.

Chart 2



As indicated in Chart 2, the number of noise complaints resolved each year has risen dramatically, from 33,482 in 2011 to 90,954 in 2015. (Note: In 2010, there was a significant number of complaints purportedly closed out by the NYPD; however, there were no resolution codes in the 311 system for these complaints.) Thus, in 2015, the NYPD reported the resolution of almost three times the number of complaints than in 2011.

Our analysis and mapping of the on-premises licensed establishments with the most complaints found that these locations were generally clustered within particular police precincts, such as the 34th in Manhattan and the 114th in Queens. (See Exhibit A for the 100 locations with the most complaints.) Further, a map illustrating the distribution of all licensed establishments within NYC is shown in Exhibit B. We selected the 30 locations with on-premises liquor licenses that generated the most noise complaints between January 1, 2010 and December 31, 2015 (see Exhibit C) to examine what actions the NYPD took to address those complaints. The total number of noise-related complaints from these 30 locations during this period was 13,432. Of these, 7,853 (58.5 percent) were made in 2014 and 2015 alone.

Regarding the 30 sampled establishments, we requested documentation of the actions taken by the NYPD to address the noise complaints. According to NYPD officials, patrol officers took various actions at 22 of the 30 locations, including meeting with the establishments' owners as well as coordinating activities with other agencies, such as the SLA, that have a role in addressing noise. However, NYPD officials could only document actions related to 8 of the 22 establishments. For example, the NYPD reported that officers met on several occasions with the owners of the establishment at 2117 3rd Avenue (the recipient of over 1,350 complaints during the review period), but did not provide supporting documentation of such meetings.

We also visited the two precincts (the 34th and the 114th) with the highest concentration of high-complaint establishments in our sample to determine how precinct staff tracked the complaints and documented the assigned officers' actions. We learned that once officers responded to a

complaint, they called the precinct with the disposition of the complaint or informed the desk officer when they returned to the precinct. The desk officer at the precinct then entered the disposition into the 311 system to close out the complaint. The time entered for case resolution was the time the desk officer was informed of such resolution, not necessarily the time the officer actually responded to and/or resolved the complaint. Thus, we were unable to determine how quickly officers actually responded to their assigned noise complaints.

Based on the times between NYPD receipt of complaints and the corresponding resolution times reported in the 311 system, it took an average of 2 hours 52 minutes to close a complaint. However, some complaints took significantly longer, and neither 311 nor the NYPD tracked the time it took for an officer to respond to the complaint. Rather, the only times tracked are the time the call came into 311, and the time a resolution to the complaint was posted. For example, for a complaint made on November 21, 2015, 9 hours 39 minutes had elapsed between the time it was received and the time it was noted as resolved in 311. However, during this period, the noise in question could have stopped or significantly diminished some time before patrol officers arrived on scene. Of note, the Mayor's Management Report for 2016 established a limit of 0.3 days (or 7.2 hours) for officers to respond to a noise complaint. Considering the time allowed to respond to these complaints, there is considerable risk that the noise in question stopped or diminished prior to the arrival of the officers. Further, we note that 1,661 of the 291,073 complaints reported as resolved – less than 1 percent – resulted in the issuance of a summons by the NYPD.

From our review of the 311 data, the NYPD usually used nine disposition codes to describe how each case was resolved. For 184,146 of the 328,289 complaints (about 56 percent) for 2010-2015, one of the following three dispositions was recorded:

- No evidence of a noise violation at the time of arrival;
- Those persons allegedly responsible for the noise condition had left the scene; and
- The responding officer determined that police action was not necessary.

For another 95,464 (about 29 percent) of the complaints, the disposition was recorded as, "The Police Department responded to the complaint and took action to fix the condition." In these instances, however, there was no record detailing the nature of the actions taken and the results of such actions. Thus, for 85 percent (56 plus 29) of the NYPD's responses to these complaints, either no actions were taken or it is unclear what actions were taken to address the complaints.

For example, a detailed review of the complaint history for 2117 3rd Avenue showed that, of the 1,350 noise complaints received (in 2014 and 2015), 243 and 346 of the complaints were filed in November and December 2015, respectively. On two days in December 2015 alone (the 7th and the 21st), there were 78 and 68 complaints filed, respectively. This pattern continued in January 2016, when there were 239 more complaints. In total, there were 828 complaints for this address for the three-month period. For 704 of these 828 complaints, the NYPD determined either that police action was not necessary or there was no evidence of any violations. For only 119 complaints was there an indication that police took corrective action.

As discussed later in this report, the SLA can revoke, cancel, or suspend a liquor license when any

noise adversely affects or tends to affect the protection, health, and welfare of the citizens of the area in which the licensed premises are located, results in the licensed premises becoming a focal point for police attention, or is offensive to public decency. Clearly, a location like 2117 3rd Avenue was a focal point of police attention. However, pertinent NYPD information about such locations is not routinely shared with, nor requested by, the SLA. Consequently, the SLA's use of pertinent NYPD data for its licensing and code enforcement functions was limited.

The 311 system data for our scope period indicated that 50 summonses were issued by officers responding to complaints about nightlife establishments – 14 of which pertained to our 30 sampled establishments. However, NYPD officials were only able to document 11 of the 14 reported summonses. Consequently, in three (14 minus 11) instances, it was unclear if summonses were in fact issued.

Further, as evidence of communication and coordination with the SLA, NYPD officials provided details of five noise referrals to the SLA on two nightlife establishments in our sample. However, SLA officials were able to confirm only three of the five referrals. The two unconfirmed referrals (for the same location) related to loud television sound that carried into the street. Further, there were 2,743 noise complaints between the two establishments with the most complaints. However, there was no evidence of police referrals per NYPD or SLA records, nor were we provided with any evidence of ongoing communication between the NYPD and the SLA related to complaints made about these establishments. Consequently, based on our review, we questioned the adequacy of communication and coordination between the NYPD and the SLA to address establishments with comparatively high levels of noise complaints.

Recommendations to NYPD

1. Enhance precinct record keeping of noise complaints to track the exact times of officer follow-up to improve management analysis of response times and the effectiveness of the actions taken.
2. Develop formal system-wide procedures to follow up on establishments with high volumes of complaints, including periodic communications with the SLA. Formally assess the effectiveness of actions taken to mitigate persistent noise problems.

SLA Enforcement Activities

The SLA was created in 1934, pursuant to the ABC Law, which was enacted “for the protection, health, welfare and safety of the people of the State” and to “regulate and control the manufacture, and distribution within the state of alcoholic beverages for the purpose of fostering and promoting temperance in their consumption and respect for and obedience to law.”

The SLA's mission is to “work cooperatively with community leaders and industry members to ensure participation by all agency stakeholders in the licensing and enforcement processes; and ensure that those who abuse the privilege of holding a license are fairly and firmly disciplined.” The

SLA carries out this mission through its various divisions. The Licensing Division is responsible for processing licenses, permits, and brand label registrations, while the Enforcement Unit and Legal Bureau are responsible for the protection of the public by working with local law enforcement agencies to bring administrative actions against licensees who violate the law.

New York Codes, Rules and Regulations Title 9, Section 53.1(q), states that the SLA can revoke, cancel, or suspend a liquor license when any noise adversely affects or tends to affect the protection, health, and welfare of the citizens of the area in which the licensed premises are located, results in the licensed premises becoming a focal point for police attention, or is offensive to public decency. SLA officials informed us that their enforcement actions and investigations are complaint driven. Although officials usually do not open cases based solely on noise complaints, such complaints are coupled with other issues (such as alcohol sales to minors or non-compliance with building codes) that officials believe are of greater importance.

SLA officials also informed us that they receive complaints from elected officials, community boards, private individuals, and corporations and through NYPD referrals. However, they do not proactively access the 311 system, where the majority of noise-related complaints are lodged, nor do they have a structured process to consider relevant NYPD actions when making licensing and renewal decisions. Formal communication and coordination with the NYPD could help SLA officials to identify locations that have been the focal point of police activity, a factor that officials could use to determine whether a license should be renewed, suspended, canceled, or revoked. According to SLA officials, the most effective way to control noise is to place limitations on licenses and prosecute establishments for not operating within their license agreement. For instance, the SLA Board has placed conditions and/or restrictions on licenses for certain restaurants with backyard seating to help reduce community noise. If a restaurant violates its conditions/restrictions, the SLA can prosecute the licensee and assess a civil penalty of up to \$10,000, or cancel or suspend the license.

According to SLA records, since January 1, 2014, the SLA has denied 619 new or renewable on-premises liquor licenses and canceled or revoked an additional 42 for a variety of reasons, including (but not solely due to) noise. As noted previously, reasons to not issue, renew, or to cancel a license typically included serving alcohol to an under-aged individual or non-compliance with building codes.

We reviewed data from the SLA's electronic files for the 30 sampled establishments listed in Exhibit C to determine the actions taken by the SLA to address the numerous complaints lodged against those entities. As shown in Exhibit D, 32 cases with a noise component were opened, investigated, or prosecuted by the SLA between 2010 and 2015, with 20 of those cases opened during our audit period (2014 and 2015). Further, the resolutions of 10 of the 32 cases were noted as "Insufficient Resources." According to SLA officials, when a complaint was not considered a high priority, a previous SLA director would routinely close the case without any action taken, citing a lack of available staff. SLA officials told us that this practice has since been discontinued, and now all open cases are reviewed to ensure that appropriate action is taken.

However, as illustrated in Exhibit D, the SLA opened relatively few cases between 2010 and 2015

for the 30 establishments, despite the significant number of 311 noise complaints lodged against them. By not accessing 311 data, the SLA limited its use of information that was relevant to apparent noise problems in NYC. As such, there was material risk that serious noise violations, if not brought directly to the attention of the SLA, were not adequately addressed.

In response to a preliminary audit finding, SLA officials disagreed with our recommendation to use 311 data, because a 311 complaint did not necessarily prove that an establishment was excessively noisy. We acknowledge that a complaint, in and of itself, is not proof of excessive noise. Nonetheless, a significant aggregation of complaints is an indicator that noise levels could be excessive and should be investigated as warranted.

Recommendations to SLA

3. Develop a formal process to access and analyze 311 noise complaint data to enhance the efficiency and effectiveness of efforts to address potential noise violations and associated licensing concerns.
4. Develop and implement a formal communication protocol with the NYPD and any other public oversight authority responsible for addressing noise matters, as they pertain to SLA-licensed establishments.

Audit Scope, Objective, and Methodology

The objective of this audit was to determine whether the NYPD and the SLA effectively addressed noise complaints related to nightlife establishments in NYC. Our audit period was January 1, 2010 through March 31, 2016, with a focus on calendar years 2014 and 2015.

To accomplish our objective and assess related internal controls over noise data collection and mitigation procedures, we interviewed NYPD and SLA officials and staff and reviewed the NYC Noise Code, ABC Law, and relevant NYPD patrol guides. We reviewed and analyzed NYC Open Data noise complaints, SLA compliance and resolution documents regarding noise attributed to nightlife establishments, and NYPD reports and other documents regarding noise complaint actions. We also visited two NYPD precincts to observe their processes.

NYC Open Data contained 1.6 million noise complaints for calendar years 2010 through 2015, of which some 900,000 were described as complaints regarding residential noise, which were not the subject of this audit. When excluded, there were 713,264 complaints related to non-residential establishments. Of this number, 328,289 complaints were forwarded to the NYPD, including for addresses where there are nightlife establishments.

We conducted our performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our

findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Article III of the General Municipal Law.

Reporting Requirements

We provided draft copies of this report to NYPD and SLA officials for their review and formal comment. We considered officials' comments in preparing this final report and have attached them in their entirety to it. In their response, NYPD officials described actions planned and taken to improve their responsiveness to noise complaints and coordination efforts with the SLA. In contrast, SLA officials disagreed with our report's findings and recommendations. They indicated, for example, that 311 complaint data alone does not provide a sufficient basis for the successful prosecution of an on-premises noise violation. This, however, sidesteps our report's main observations and conclusions. Further, our report neither explicitly states nor implies that prosecutions be based primarily on 311 data. Instead, our report recommends that the SLA develop a formal process to analyze 311 data to enhance its efforts to address potential noise violations. Our rejoinders to certain NYPD and SLA comments are included in the report's State Comptroller's Comments.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the New York State Liquor Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising them what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

We also request that the Commissioner of the New York City Police Department report to the State Comptroller advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

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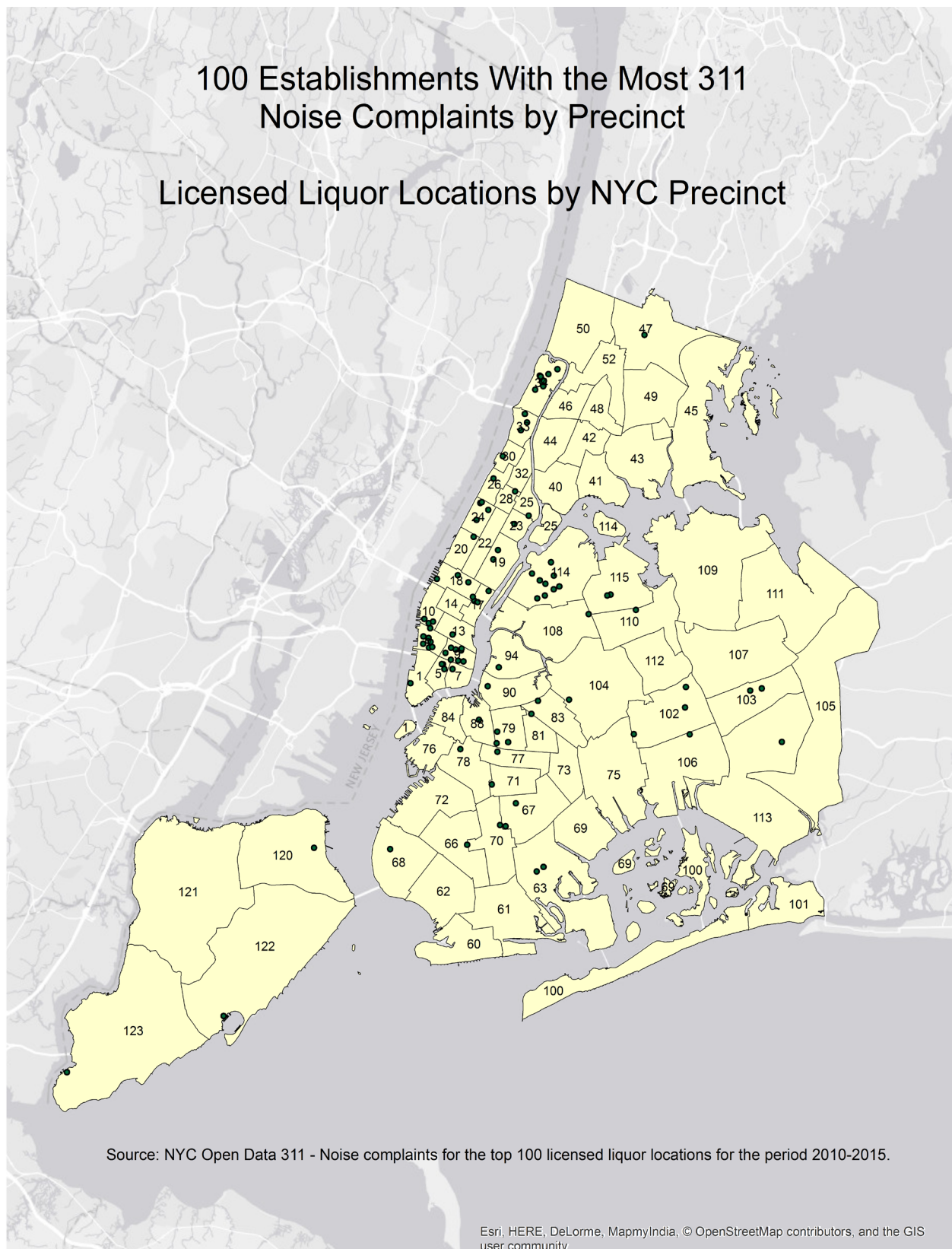
Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Exhibit A



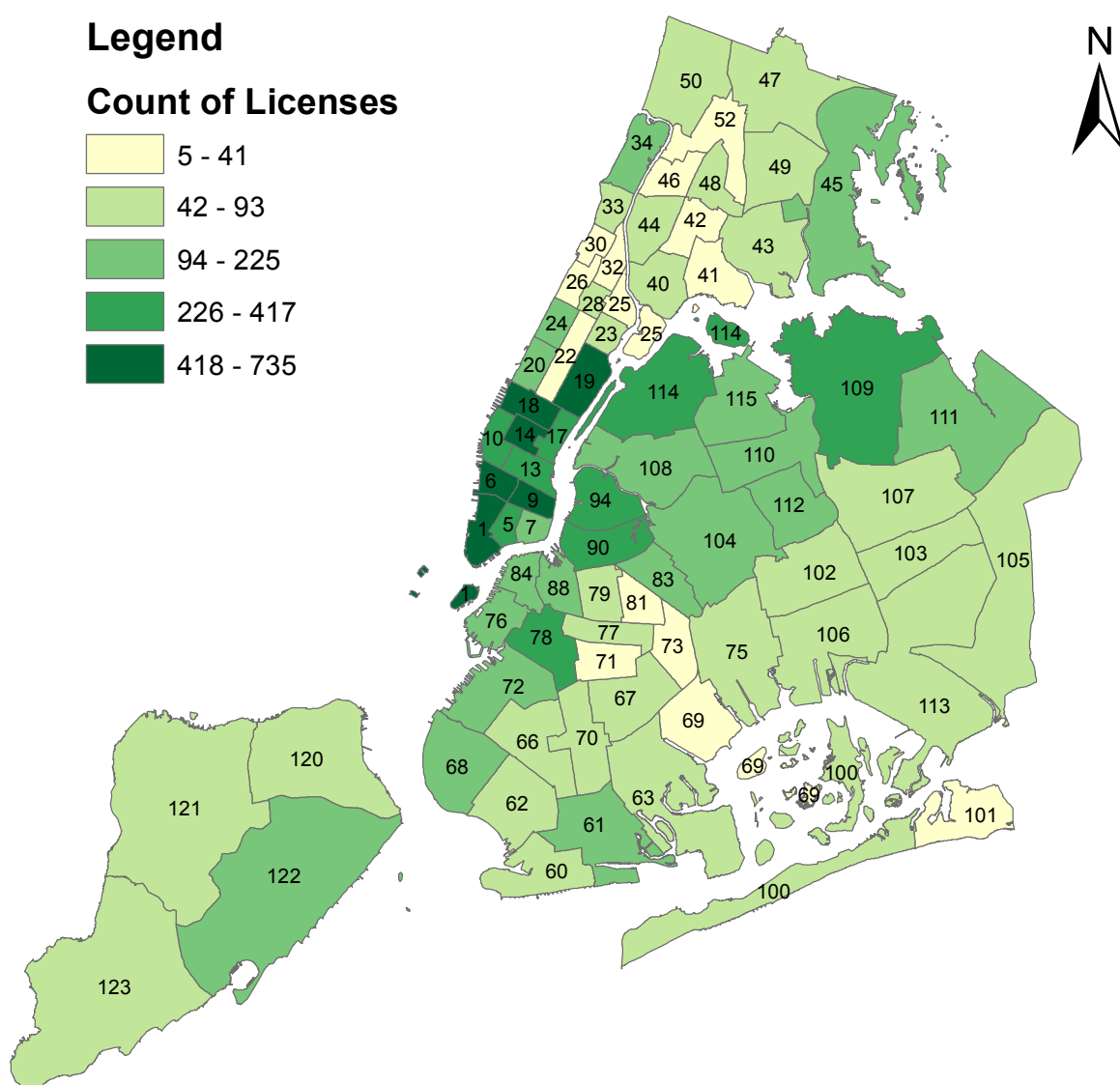


Exhibit C

Number of Noise-Related Complaints for Selected Nightlife Establishments With the Largest Numbers of 311 Complaints for Calendar Years 2014 and 2015

Sample Number	Address	Borough	NYPD Precinct	Number of Complaints in 2014	Number of Complaints in 2015	Total Complaints 2014-2015
1	2117 3 rd Avenue	Manhattan	25	689	661	1,350
2	622 Degraw Street	Brooklyn	78	215	231	446
3	16 1 st Avenue	Manhattan	9	156	108	264
4	82 70 th & 72 nd Austin Street	Queens	102	129	117	246
5	130 132 nd Audubon Avenue	Manhattan	33	531	12	543
6	1233 Flatbush Avenue	Brooklyn	70	225	2	227
7	70-04 Roosevelt Avenue	Queens	108	442	0	442
8	234 West 4 th Street	Manhattan	6	71	7	78
9	3272 Steinway Street	Queens	114	87	290	377
10	210 East 46 th Street	Manhattan	17	55	319	374
11	5025-5035 Broadway	Manhattan	34	117	189	306
12	95 Halsey Street	Brooklyn	79	48	230	278
13	25-27-29 Broadway	Queens	114	137	32	169
14	1 Nagle Avenue	Manhattan	34	54	241	295
15	25-30 Broadway	Queens	114	51	0	51
16	182 West 4 th Street	Manhattan	6	18	53	71
17	32-03 Broadway	Manhattan	114	92	154	246
18	186 Dyckman Street	Queens	34	53	28	81
19	243-249 Dyckman Street	Manhattan	34	49	57	106
20	1236 Rogers Avenue	Brooklyn	67	127	77	204
21	929 Columbus Avenue	Manhattan	24	85	2	87
22	126-19 Merrick Boulevard	Queens	113	38	70	108
23	65 Sherman Avenue	Manhattan	34	46	218	264
24	151 Nagle Avenue	Manhattan	34	113	82	195
25	101 Sherman Avenue, Store #3	Manhattan	34	89	55	144
26	899 917 Bergen Street	Brooklyn	77	124	130	254
27	939-945 8 th Avenue	Manhattan	18	50	36	86
28	1111 Lexington Avenue	Manhattan	19	152	92	244
29	501-503 Columbus Avenue	Manhattan	20	93	52	145
30	1088 Fulton Street	Brooklyn	79	95	77	172
Totals				4,231	3,622	7,853

Exhibit D

SLA License-Related Actions Regarding Selected Establishments as of March 16, 2016

Sample Number	Address	Borough	Status Indicator as of July 13, 2016	311 Complaints in 2010-15	All SLA Case(s) Since 2010	Noise Related Case(s) Since 2010
1	2117 3 rd Avenue	Manhattan	Active	1,378	8	2
2	622 Degraw Street	Brooklyn	Active	1,365	1	0
3	16 1 st Avenue	Manhattan	Active	962	1	1
4	82 70 th & 72 nd Austin Street	Queens	Active	957	5	3
5	130 132 nd Audubon Avenue	Manhattan	Active	752	1	1
6	1233 Flatbush Avenue	Brooklyn	Revoked	743	10	4
7	70-04 Roosevelt Avenue	Queens	Active	448	18	0
8	234 West 4 th Street	Manhattan	Active	416	2	0
9	3272 Steinway Street	Queens	Canceled	378	5	0
10	210 East 46 th Street	Manhattan	Active	374	1	0
11	5025-5035 Broadway	Manhattan	Canceled	356	9	1
12	95 Halsey Street	Brooklyn	Active	349	9	3
13	25-27-29 Broadway	Queens	Active	334	6	1
14	1 Nagle Avenue	Manhattan	Canceled	307	4	2
15	25-30 Broadway	Queens	Active	306	0	0
16	182 West 4 th Street	Manhattan	Active	300	9	1
18	32-03 Broadway	Manhattan	Active	284	1	0
17	186 Dyckman Street	Queens	Active	284	0	0
19	243-249 Dyckman Street	Manhattan	Active	282	9	4
20	1236 Rogers Avenue	Brooklyn	Active	281	6	2
21	929 Columbus Avenue	Manhattan	Active	276	0	0
22	126-19 Merrick Boulevard	Queens	Active	272	18	2
23	65 Sherman Avenue	Manhattan	Active	271	3	1
24	151 Nagle Avenue	Manhattan	Canceled	269	8	2
25	101 Sherman Avenue, Store #3	Manhattan	Active	256	0	0
26	899 917 Bergen Street	Brooklyn	Active	255	3	1
27	939-945 8 th Avenue	Manhattan	Active	248	0	0
28	1111 Lexington Avenue	Manhattan	Active	246	0	0
29	501-503 Columbus Avenue	Manhattan	Active	244	1	0
30	1088 Fulton Street	Brooklyn	Active	239	3	1
Totals				13,432	141	32

Agency Comments – New York City Police Department



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March 17, 2017

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59 Maiden Lane - 21st Floor
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Re: New York State Office of the Comptroller Audit of Responsiveness to Noise
Complaints Related to New York City Nightlife Establishments (2016-S-37)

Dear Director Sifontes:

I write in response to the draft audit report, *Responsiveness to Noise Complaints Related to New York City Nightlife Establishments* (the "Report"). The Report was jointly issued to the NYPD and the New York State Liquor Authority ("SLA") and covered an audit period from January 1, 2010 through March 31, 2016, with a focus on calendar years 2014 and 2015. The Department would like to thank the Comptroller for the opportunity to review the draft Report and comment upon the audit's methodology, findings, and recommendations.

The Comptroller's stated purpose in conducting this audit is "[t]o determine whether the New York City Police Department (NYPD) and the New York State Liquor Authority (SLA) have effectively addressed noise complaints related to nightlife establishments in New York City." From January 1, 2010 through December 31, 2015, a total of 713,264 noise complaints were called in to New York City's 311 system. The number of noise complaints has risen from 86,365 in 2010 to 179,394 in 2015. Over the same period, the annual number of noise complaints involving nightlife establishments also increased from 38,401 to 93,412. The Department understands that excessive noise negatively impacts the quality of life of those exposed to it and is committed to supporting our communities so they do not suffer from the adverse effects noted in the Report. In addition, responding to the large volume of noise complaints requires a significant amount of NYPD resources; therefore, recommendations to improve our processes are greatly appreciated.

The Report found that there is limited communication and coordination between NYPD and SLA resulting in little to no action taken against certain establishments with

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multiple noise complaints. Additionally, with respect to NYPD, it found that the Department could improve its records' management and better document actions taken. Based on these findings, the Report makes two key recommendations to the Department: a) to enhance precinct recordkeeping of noise complaints generated by the City's 311 system, including the tracking of officer response time, and b) to develop formal system-wide procedures to follow up with establishments with numerous complaints, including an improved communication process with SLA.

NYPD has procedures in place for responding to 311 calls and addressing noise complaints, as well as, procedures for how and when officers must escalate matters to SLA. There are a number of factors that contribute to the number of complaints lodged against a location (e.g. subjective nature of noise complaints, management and ownership turnover, chronic repeat callers, establishment closures, etc.) and the appropriate actions to correct the conditions vary based on the circumstances. There are also limitations to the enforcement actions that an officer can take against an establishment due to noise alone. However, we acknowledge that traditionally the administration of noise complaints has been at the precinct level and recognize that city-wide procedures specifically tailored towards establishments with multiple noise complaints could potentially reduce operational inefficiencies and better serve our communities. There have been some recent adjustments to these procedures that are intended to work towards the goals recommended in the Report, as well as, some processes we intend to put into place to address any issues further.

First, the Department has tasked the Detective Bureau's Vice Enforcement Division ("Vice") with being the centralized liaison to SLA, rather than relying on communication individually occurring at the precinct level. Vice is in the process of conducting training in each patrol borough to update commands on this process and remind them how and when reporting to SLA is required. We have already seen a substantial increase in the number of referrals from 2015. Additionally, Vice has developed a tracking database of SLA reports. The Department intends to use data from this system to compile a list of recidivist locations and communicate the list to the Patrol Services Bureau on a regular basis (e.g. a monthly "Top Ten" list). Administrators at the borough level will refer these lists to precincts. By increasing and formalizing communication in both directions (i.e. to and from Vice), NYPD hopes to provide actionable information to both precinct commanders and SLA.

Second, at the precinct level, the Department sees this as an opportunity to implement some of the Report's recommendations through our Neighborhood Coordination Officer ("NCO") program. As part of NYPD's neighborhood-based policing model, NCOs are being designated in precincts and are responsible for engaging with the community. NCOs are the officers who are expected to address quality of life issues such as noise complaints in their sectors. NCOs can learn about and track the repeat noise offenders and form relationships with the establishment owners and complainants to help resolve issues. NCOs are already given a weekly report that includes 311 conditions in their sectors. Coupled with the information from the Vice database, the NCOs will be able to track repeat noise offenders, document actions taken, and note complaint resolutions. Regular meetings with borough commanders and NCOs are being held at which NCOs will be asked to report on the status of quality of life issues. For commands that do not yet have NCOs assigned, the precinct commander will be responsible for delegating this

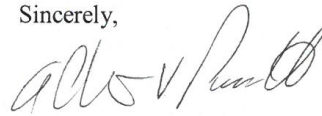
responsibility. As these processes are implemented, we will periodically review and assess their efficacy in mitigating persistent noise problems.

Lastly, the Department declines to implement the recommendation of tracking officer response time. Response time is not a category within the 311 database, and therefore, cannot be tracked without modifications to the 311 system which is neither managed nor controlled by NYPD. And because noise complaints and other jobs received through the 311 system are considered non-priority, they are addressed only after 911 emergency calls are completed. Even if the 311 system had the capability to record arrival times, such times are not a fair metric of the efficacy of NYPD's response.

We appreciate the time and effort the examiners used to complete this audit. If you have any questions concerning this response, please contact Agency Attorney Rebecca Blumenkopf at 646-610-6335.

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Sincerely,



Matthew V. Pontillo
Assistant Chief
Risk Management Bureau

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*See State Comptroller's Comments, page 26.

Agency Comments – New York State Liquor Authority



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Governor

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Chairman

GREELEY FORD
Commissioner

March 6, 2017

Office of the State Comptroller
Division of State Government Accountability
C/O Mr. Kenrick Sifontes, Audit Director
59 Maiden Lane, 21st Floor
New York, NY 10038

Dear Mr. Sifontes:

The New York State Liquor Authority (“SLA”) acknowledges receipt of the Office of the State Comptroller’s (“OSC”) Draft Report regarding the New York City Police Department (“NYPD”) and the SLA’s collective Responsiveness to Noise Complaints Related to New York City Nightlife Establishments dated February 8, 2017.

The SLA is the regulatory Authority charged with the statutory duty and responsibility for licensing and enforcing the alcoholic beverage control laws in the State of New York, including the manufacturing, wholesaling, and retail sale of alcoholic beverages within the State. The subject of this Draft Report, specifically noise at on-premises retail licenses within the confines of New York City, and the sale of alcoholic beverages at these locations, is only a small portion of the industry that falls within the SLA’s statutory jurisdiction.

In addition, it is important to note that noise pollution in New York City is the province of the New York City Police Department (“NYPD”) and the New York City Department of Environmental Protection (“DEP”), the statutorily designated primary responders. Nonetheless, excessive noise from on premises locations is an issue that SLA consistently attempts to address.

How the SLA Responds to Noise Complaints

Given the large jurisdiction the SLA covers, the SLA takes a complaint driven approach to enforcing the State’s alcoholic beverage control laws. As such, the SLA reviews every complaint it receives, including complaints regarding noise. Complaints usually come from two sources. First, the SLA

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receives a number of referrals directly from the NYPD. Second, the SLA receives a number of complaints directly from private individuals, most often via the SLA's website.

For NYPD referrals, the complaints generally involve police summonses, arrest reports, and complaint reports detailing disorder and illegal behavior at a particular licensed premise. At times, these complaints include noise based violations. Given that the SLA is both a regulatory enforcement body as well as a quasi-judicial administrative agency, any legal referrals we receive from the NYPD are inherently of higher value because they usually provide background, information, and identify specific Police Officers who would be available to testify in a quasi-judicial hearing in order to prove, by substantial evidence, the charges we bring against our licensees. For noise complaints received directly from private individuals, the SLA must first determine whether the complaint is made by an identifiable source or anonymously.

The OSC does not distinguish between these two forms of complaints within the Draft Report, nor does the OSC discuss their probative value. While anonymous calls to 311 may be from neighbors who are sincerely aggrieved due to noise from a particular licensed establishment, the calls to 311 may also be from competing businesses, or people with an ulterior motive who are attempting to harass the licensee.

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Additionally, when there are a voluminous number of anonymously received 311 calls, it is very difficult to know if the calls are from numerous callers, or all from one caller. Regardless of the source, however, the SLA still reviews every complaint we receive. When a complaint is made anonymously and the licensed premise has little or no adverse history, the SLA will frequently respond to the complaint by sending a Letter of Advice informing the licensee that the SLA received a complaint, that they may be violating the alcoholic beverage control law by creating excessive noise, and that they should in good faith take corrective action.

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The SLA may also request that the licensee make an in-person appearance at the SLA's office to discuss the complaints the SLA has received, review the potential for charges based upon the alcoholic beverage control law, and confer on specific corrective measures that the licensee should employ to avoid future adverse action. Again, the OSC's Draft Report fails to consider this type of response by the SLA, or its critical value in assisting the NYPD and DEP in their primary responsibility to police noise within New York City.

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Finally, upon reviewing any complaints received, and prosecutorial confirmation that charges should be sustainable based upon the evidence and testimony available, the SLA will issue charges and commence an administrative disciplinary action against a licensee. In that disciplinary action, the SLA must prove the charges by the administrative standard of substantial evidence, using the evidence and testimony that is available. This

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legal burden is far easier to meet using the resources and testimony of the NYPD, as opposed to the near impossibility of meeting this legal burden using anonymous calls to 311.

The Use of 311 Calls in Prosecuting Noise Violations

The OSC's Draft Report acknowledges that a 311 call, in and of itself, is not proof of excessive noise. The Draft Report fails, however, to encapsulate in any detail that the SLA cannot meet its legal burden of proving by substantial evidence that a licensed establishment was excessively noisy by simply providing evidence within an administrative hearing that 311 calls were made. Further, at no point did the OSC Draft Report review decisions of any SLA Administrative Law Judges, which would almost immediately reveal the inherent difficulty of proving, by substantial evidence, noise related charges brought under the provisions of the alcoholic beverage control law.

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Instead, 311 call logs merely prove that calls were made to 311 – and absolutely nothing more. Successful prosecutions of on-premises noise violations almost uniformly require either reliable testimony from a person, or a number of persons, who heard the noise, or actual readings of regulated sound measuring equipment, in addition to reliable documentation of the date and time the noise was heard. In fact, even in the best of prosecutorial circumstances, where noise violation allegations are based on police observance and testimony, noise-related charges are often not sustained in the face of evidence and testimony that controverts the claim specifically because sound volume is, by definition, subjective.

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While the OSC's Draft Report notes that noise violations rarely happen singlehandedly, and are frequently found in conjunction with other more-serious violations of the alcoholic beverage control law, the Draft Report again fails to consider the value that these other prosecutions have on noise within New York City. Noise is often caused by licensees who tend to violate their method of operation by having DJs, dancing, or overcrowding at their establishment. On-premises locations that serve minors, or over-serve their patrons, also will frequently become noisy, as do licensees who impermissibly operate in their backyards in violation of the law.

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Consequently, SLA investigations and police referrals have historically tended to focus on the underlying, more substantive illegal conditions at licensed establishments, rather than simply focusing on the resulting byproduct of excessive noise. By prosecuting these contemporaneous violations, and correcting the underlying conditions that lead to excessive noise, the SLA indirectly addresses noise complaints, even in cases where evidence and testimony alone may not support the sustaining of a noise complaint in and of itself.

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Other Means by Which SLA Addresses Noise

In New York City, the alcoholic beverage control law also requires applicants for on-premises liquor licenses to inform the local community board of their application. The law permits, and the SLA strongly encourages, local community boards to express their opinions for or against the approval of these types of licenses. All on-premises applications that receive written community board opposition are reviewed directly by the SLA Commissioners at public meetings, rather than being reviewed administratively by members of the SLA's licensing staff. Frequently, local community boards, area residents, and other involved citizens will appear before the Commissioners and speak at great length regarding their opposition and concerns about the granting of a license. This is another critical gap that is lacking from the OSC's Draft Report.

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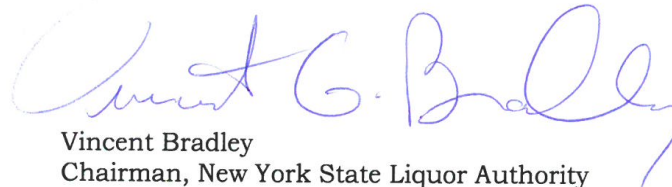
In addition, the SLA Commissioners regularly disapprove, or place restrictions upon, license applications that they believe will create unacceptable community noise. For example, in New York City, the closing hour for on premises locations is 4 a.m. Yet, it is not uncommon for the Commissioners to order a licensee to close at 2 a.m., 1 a.m., or even midnight because of noise concerns raised by area residents.

The Commissioners also frequently require the windows and doors of licensed premises to be closed at a certain hour, or remain closed during all hours of operation, in order to limit any noise disturbance to their surroundings. The SLA may also prohibit the use of live music or DJs at licensed premises, and may give a high level of scrutiny to applications for backyard seating or sidewalk cafes. These actions not only assist to limit noise, but also create a much stronger means to enforce the alcoholic beverage control law than the inherently unreliable reporting of anonymous 311 calls.

Conclusion

For these reasons as stated herein, the SLA disagrees with the assertions and recommendations set forth in OSC's report. If you have questions or need any clarification, please feel free to contact me at your convenience.

Very Truly Yours,



Vincent Bradley
Chairman, New York State Liquor Authority

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State Comptroller's Comments

1. We acknowledge that 911 emergencies take priority over 311 calls. Nonetheless, we maintain that tracking response times to noise complaints, outside of the 311 system if necessary, could provide NYPD management with useful information to help assess the effectiveness of responses to this mounting problem.
2. In fact, our report details and distinguishes the relevant activities of the NYPD and the SLA. The report has separate sections on NYPD enforcement activities (including the issuance of summonses) and SLA enforcement activities (including placing limitations on licenses, suspending or canceling licenses, and assessing monetary penalties). Further, we acknowledge that 311 calls could be placed by business competitors or people with ulterior motives. Nonetheless, we maintain that there is material risk that comparatively large volumes of 311 calls (as detailed in the report) are indicative of genuine noise problems, particularly if the patterns of such complaints persist. Consequently, we maintain that SLA officials should analyze pertinent 311 data in their assessments of SLA-licensed establishments' compliance with the provisions of the applicable laws, rules, and regulations.
3. We acknowledge that the SLA can send a "Letter of Advice" to a licensee or request a licensee to make an "in-person visit" to SLA offices. However, SLA officials provided no detailed information as to the extent and/or effectiveness of such efforts. Moreover, the fact that SLA officials can and/or do take such actions does not preclude them from accessing and analyzing pertinent 311 data to help ensure that the SLA adequately enforces applicable laws, rules, and regulations.
4. Our audit focused on the use of 311 data as a salient resource for the SLA and the NYPD to address the issue of excessive noise at SLA-licensed establishments in NYC. Further, our report neither states explicitly nor otherwise implies that 311 data be used as the sole or primary source for prosecuting licensees. Moreover, based on the significant annual increases in the number of 311 noise complaints, we concluded that a primary reliance on complaints received directly by the SLA (while eschewing 311 data) considerably limited SLA's ability to identify and address noise problems emanating from SLA-licensed establishments.
5. We acknowledge that SLA's formal citations and sanctions of licensed establishments for non-noise-related violations can help to address noise problems. Nonetheless, we maintain that SLA officials need to strengthen their efforts to address licensed establishments whose non-compliance is primarily limited to noise-related concerns. Under SLA's current approach, systematic efforts to address establishments with noise problems are relatively minimal. Thus, we reiterate our recommendation that the SLA use 311 noise complaint data to enhance efforts to address potential noise violations.
6. We acknowledge that the SLA focuses on certain illegal (and generally non-noise-related) conditions at licensed establishments. Nonetheless, New York Codes, Rules and Regulations Title 9 empowers the SLA to revoke, cancel, or suspend a liquor license when noise adversely affects or tends to affect the protection, health, and welfare of the citizens of the area in which the licensed premises are located, results in the licensed premises becoming a focal point for police attention, or is offensive to public decency. Given this

regulation, we maintain that SLA officials should not overlook the material volumes of 311 noise complaints, as detailed in our report, which are credible indicators that certain establishments have significant risk of noise problems and/or are focal points of police attention.

7. We acknowledge that local community boards, area residents, and other citizens appear before the SLA Commissioners to express concerns about the granting of licenses. However, such appearances do not obviate the SLA's responsibility for effectively enforcing the aforementioned regulation. Further, we maintain that analysis of pertinent 311 data could significantly assist the SLA in such enforcement efforts.
8. In their response, SLA officials challenge neither the statistical accuracy of the 311 data presented in our report nor our quantitative analysis of such data, which serve as the basis of our report's conclusions and recommendations. Instead, SLA assumes a primarily defensive posture in its response, focusing, for example, on 311 data limitations with respect to prosecutions – and thereby sidestepping the audit's main observations and conclusions. We urge SLA officials to reconsider their perspective and give genuinely forward-thinking consideration to our report's recommendations (as NYPD officials did) to address this serious quality of life issue for many NYC residents.